

ARTICLE 9H

Rural Telecommunications

63-9H-1. Short title.

Chapter 63, Article 9H NMSA 1978 may be cited as the "Rural Telecommunications Act of New Mexico".

History: [Laws 1999, ch. 295, § 1](#), [2013, ch. 194, § 1](#).

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the Rural Telecommunications Act; and at the beginning of the sentence, changed "This act" to "Chapter 63, Article 9H NMSA 1978".

63-9H-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 rates for rural customers, it is further the policy of this state to encourage competition and reduce regulation in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of the Rural Telecommunications Act of New Mexico to permit a regulatory framework that will allow an orderly transition for rural telephone carriers from a regulated telecommunications industry to a competitive market environment consistent with the federal act. Further, the legislature finds that as part of such regulatory framework, it is necessary to provide disparate regulatory treatment between rural telephone carriers and non-rural telephone carriers in order to assist with accomplishing the goals established by the above declared policies. Disparate regulatory treatment is particularly necessary for those citizens who reside in rural New Mexico, because those rural areas constitute the bulk of the surface area within the boundaries of the state. Disparate regulatory treatment for rural telephone carriers requires relaxed regulation for rural telephone carriers with the objective of reducing the cost of regulation as well as the regulatory burden, permitting pricing flexibility and expediting required rate approvals, all in a manner consistent with both the purpose of an orderly transition from regulation to a competitive market environment and the federal act.

History: [Laws 1999, ch. 295, § 2](#).

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.

63-9H-3. Definitions.

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

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

C. "broadband infrastructure" means any cable or device used for high-capacity transmission over a wide range of frequencies that enables a large number of electronic messages to be transmitted or received simultaneously;

D. "cable service" means the transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service;

E. "commission" means the public regulation commission;

F. "comparable carrier" means an eligible telecommunications carrier established prior to enactment of the Rural Telecommunications Act of New Mexico that has a similar number of access lines as an eligible telecommunications carrier established after enactment of that act;

G. "digital equity" means information technology needed for civic and cultural participation, employment, education, business and economic development, lifelong learning and access to essential services generally available to residents regardless of their racial grouping, socioeconomic status or cultural identity;

H. "digital inclusion" means access to and the ability to use information technologies;

I. "eligible telecommunications carrier" means an eligible telecommunications carrier as defined in the federal act;

J. "federal act" means the federal Telecommunications Act of 1996;

K. "fund" means the state rural universal service fund;

L. "incumbent local exchange carrier" means a person that:

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

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

M. "incumbent rural telecommunications carrier" means an incumbent local exchange carrier that serves fewer than fifty thousand access lines within the state and has been designated as an eligible telecommunications carrier by the state corporation commission or the public regulation commission;

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

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

P. "long distance service" means telecommunications service between local exchange areas that originate and terminate within the state;

Q. "private telecommunications service" means a system, including its construction, maintenance or operation for the provision of telecommunications service, or any portion of that service, by a person for the sole and exclusive use of that person and not for resale, directly or indirectly. For purposes of this definition, the person that may use the service includes any affiliates of the person if at least eighty percent of the assets or voting stock of the affiliates is owned by the person. If any other person uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

R. "public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. "Public telecommunications service" does not include the provision of terminal equipment used to originate or terminate the service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or cable service;

S. "statewide broadband plan" means the *State of New Mexico Broadband Strategic Plan and Rural Broadband Assessment* published by the department of information technology in June 2020; provided that, upon Senate Bill 93 of the first session of the fifty-fifth legislature becoming law, "statewide broadband plan" means the statewide broadband plan developed pursuant to that law; and

T. "telecommunications carrier" means a person that provides public telecommunications service.

History: [Laws 1999, ch. 295, § 3](#); [2013, ch. 194, § 2](#); [2021, ch. 118, § 1](#); [2021, ch. 120, § 8](#).

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For the federal Telecommunications Act of 1996, see Titles 15, 18, and 47 of the United States Code.

2021 Multiple Amendments. — [Laws 2021, ch. 118, § 1](#), effective June 18, 2021, and [Laws 2021, ch. 120, § 8](#), effective July 1, 2021, enacted different amendments to this section that can be reconciled. Pursuant to [12-1-8 NMSA 1978, Laws 2021, ch. 120, § 8](#), as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by [Laws 2021, ch. 118, § 1](#) and [Laws 2021, ch. 120, § 8](#) are described below. To view the session laws in their entirety, see the 2021 session laws on [NMOneSource.com](#).

The nature of the difference between the amendments is that [Laws 2021, ch. 118, § 1](#), defined "comparable carrier", as used in the Rural Telecommunications Act of New Mexico, and [Laws 2021,](#)

ch. 120, § 8, defined "broadband infrastructure", "digital equity", "digital inclusion", and "statewide broadband plan", as used in the Rural Telecommunications Act of New Mexico.

Laws 2021, ch. 118, § 1, effective June 18, 2021, defined "comparable carrier", as used in the Rural Telecommunications Act of New Mexico; and added a new Subsection E (now Subsection F) and redesignated the succeeding subsections accordingly.

Laws 2021, ch. 120, § 8, effective July 1, 2021, defined "broadband infrastructure", "digital equity", "digital inclusion", and "statewide broadband plan", as used in the Rural Telecommunications Act of New Mexico; added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; added new Subsections F and G and redesignated former Subsections E through N as Subsections H through Q, respectively; and added a new Subsection R and redesignated former Subsection O as Subsection S.

The 2013 amendment, effective June 14, 2013, amended the definition of "incumbent rural telecommunications carrier"; and in Subsection I, after "means", deleted "a" and added "an incumbent" and after "state corporation commission", deleted "on or before November 1, 1997, including any successor in interest thereto" and added "or the public regulations commission".

63-9H-4. Regulation by commission.

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

B. The commission has exclusive jurisdiction to regulate incumbent rural telecommunications carriers only in the manner and to the extent authorized by the Rural Telecommunications Act of New Mexico, and Section 63-7-1.1 NMSA 1978 does not apply; provided, however, that the commission's jurisdiction includes the regulation of wholesale rates, including access charges and interconnection agreements consistent with federal law and its enforcement and a determination of participation in low-income telephone service assistance programs pursuant to the Low Income Telephone Service Assistance Act [Chapter 63, Article 9C NMSA 1978].

C. The commission shall adopt rules consistent with the requirement for relaxed regulation for incumbent rural telecommunications carriers set forth in the Rural Telecommunications Act of New Mexico that provide for:

(1) reduced filing requirements for applicants in rate increase proceedings under the Rural Telecommunications Act of New Mexico and proceedings under that act seeking payments from the fund; and

(2) expedited consideration in all proceedings initiated pursuant to the Rural Telecommunications Act of New Mexico in order to reduce the cost and burden for incumbent rural telecommunications carriers and other applicants.

History: **Laws 1999, ch. 295, § 4; 2013, ch. 194, § 3.**

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided for the adoption of rules for the relaxed regulation of incumbent rural telecommunications carriers; in Subsection B, after "jurisdiction to regulate", added "incumbent"; and added Subsection C.

63-9H-5. Certificate required.

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

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

C. The commission has full power and authority to determine matters of public convenience and necessity relating to the issuance of a certificate of public convenience and necessity to a provider of rural public telecommunications service, but in keeping with the purposes of the Rural Telecommunications Act of New Mexico and the federal act, the commission shall not deny an applicant a certificate on the grounds of need if it is shown that the applicant possesses adequate financial resources and technical competency to provide the service.

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

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

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

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

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

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

F. All certificates of public convenience and necessity shall:

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

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

History: [Laws 1999, ch. 295, § 5.](#)

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.

Cross references. — For the federal Telecommunications Act of 1996, see Titles 15, 18, and 47 of the United States Code.

63-9H-6. State rural universal service fund; establishment.

A. The commission shall implement and maintain a "state rural universal service fund" to maintain and support universal service that is provided by eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission. As used in this section, "universal service" means basic local exchange service, comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan and broadband internet access service to unserved and underserved areas as determined by the commission.

B. The fund shall be financed by a surcharge on intrastate retail public telecommunications services to be determined by the commission, excluding services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier, and excluding all amounts from surcharges, gross receipts taxes, excise taxes, franchise fees and similar charges. For the purpose of funding the fund, the commission has the authority to apply the surcharge on intrastate retail public telecommunications services provided by telecommunications carriers, including commercial mobile radio services and voice over internet protocol services, at a competitively and technologically neutral rate or rates to be determined by the commission. The commission may establish the surcharge as a percentage of intrastate retail public telecommunications services revenue or as a fixed amount applicable to each communication connection. For purposes of this section, a "communication connection" means a voice-enabled telephone access line, wireless voice connection, unique voice over internet protocol service connection or other uniquely identifiable functional equivalent as determined by the commission. Such surcharges shall be competitively and technologically neutral. Money deposited in the fund is not public money, and the administration of the fund is not subject to the provisions of law regulating public funds. The commission shall not apply this surcharge to a private telecommunications network; to the state, a county, a municipality or other governmental entity; to a public school district; to a public institution of higher education; to an Indian nation, tribe or pueblo; or to Native American customers who reside on tribal or pueblo land.

C. The fund shall be competitively and technologically neutral, equitable and nondiscriminatory in its collection and distribution of funds, portable between eligible telecommunications carriers and additionally shall provide a specific, predictable and sufficient support mechanism as determined by the commission that ensures universal service in the state.

D. The commission shall:

(1) establish eligibility criteria for participation in the fund consistent with federal law that ensure the availability of universal service at affordable rates. The eligibility criteria shall not restrict or limit an eligible telecommunications carrier from receiving federal universal service support;

(2) provide for the collection of the surcharge on a competitively neutral basis and for the administration and disbursement of money from the fund;

(3) determine those services and areas requiring support from the fund;

(4) provide for the separate administration and disbursement of federal universal service funds consistent with federal law; and

(5) establish affordability benchmark rates for local residential and business services that shall be utilized in determining the level of support from the fund. The process for determining subsequent adjustments to the benchmark shall be established through a rulemaking.

E. All incumbent telecommunications carriers and competitive carriers already designated as eligible telecommunications carriers for the fund shall be eligible for participation in the fund. All other carriers that choose to become eligible to receive support from the fund may petition the commission to be designated as an eligible telecommunications carrier for the fund. The commission may grant eligible carrier status to a competitive carrier in a rural area upon a finding that granting the application is in the public interest. In making a public interest finding, the commission may consider at least the following items:

(1) the impact of designation of an additional eligible carrier on the size of the fund;

(2) the unique advantages and disadvantages of the competitor's service offering; and

(3) any commitments made regarding the quality of telephone service.

F. The commission shall adopt rules, including a provision for variances, for the implementation and administration of the fund in accordance with the provisions of this section. The rules shall enumerate the appropriate uses of fund support and any restrictions on the use of fund support by eligible telecommunications carriers. The rules shall require that an eligible telecommunications carrier receiving support from the fund pursuant to Subsection K, L or M of this section must expend no less than sixty percent of the support it receives to deploy and maintain broadband internet access services in rural areas of the state. The rules also shall provide for annual reporting by eligible telecommunications carriers verifying that the reporting carrier continues to meet the requirements for designation as an eligible telecommunications carrier for purposes of the fund and is in compliance with the commission's rules, including the provisions regarding use of support from the fund.

G. The commission shall, upon implementation of the fund, select a neutral third-party administrator to collect, administer and disburse money from the fund under the supervision and control of the commission pursuant to established criteria and rules promulgated by the commission. The administrator may be reasonably compensated for the specified services from the surcharge proceeds to be received by the fund pursuant to Subsection B of this section. For purposes of this subsection, the commission shall not be a neutral third-party administrator.

H. The fund established by the commission shall ensure the availability of universal service as determined by the commission at affordable rates in rural areas of the state; provided, however, that nothing in this section shall be construed as granting any authority to the commission to impose the surcharge on or otherwise regulate broadband internet access services.

I. The commission shall ensure that intrastate switched access charges are equal to interstate switched access charges established by the federal communications commission as of January 1,

2006. Nothing in this section shall preclude the commission from considering further adjustments to intrastate switched access charges based on changes to interstate switched access charges.

J. To ensure that providers of intrastate retail communications service contribute to the fund and to further ensure that the surcharge determined pursuant to Subsection B of this section to be paid by the end-user customer will be held to a minimum, the commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting.

K. The commission shall authorize payments from the fund to incumbent local exchange carriers, in combination with revenue-neutral rate rebalancing up to the affordability benchmark rates. Beginning in 2018, the commission shall make access reduction support payments in the amount made from the fund in base year 2014, adjusted each year thereafter by:

(1) the annual percentage change in the number of access lines served by the incumbent local exchange carriers receiving such support for the prior calendar year, as compared to base year 2014; and

(2) changes in the affordability benchmark rates that have occurred since 2014.

L. The commission shall determine the methodology to be used to authorize payments to all other carriers that apply for and receive eligible carrier status; provided that:

(1) an eligible incumbent telecommunications carrier that is not eligible for funding pursuant to rate rebalancing in Subsection K of this section and that has been previously authorized pursuant to Subsection M of this section for need-based support may apply for ongoing fund support;

(2) the commission shall award an applicant ongoing fund support at no less than the average access line amount of funding support for comparable carriers; provided that an eligible telecommunications carrier receiving fund support pursuant to this subsection shall not offer basic local exchange residential and business services at rate levels lower than the rates for such services charged by any of the comparable carriers used for the determination of the level of support;

(3) the commission shall act upon a request for ongoing fund support within one hundred twenty days of the filing of the request; and

(4) nothing in this section shall limit the commission's authority to adopt rules pursuant to Subsection F of this section regarding appropriate uses of fund support and any restrictions on the use of the fund support by eligible telecommunications carriers.

M. The commission may also authorize payments from the fund to incumbent rural telecommunications carriers or to telecommunications carriers providing comparable retail alternative services that have been designated as eligible telecommunications carriers serving in rural areas of the state upon a finding, based on factors that may include a carrier's regulated revenues, expenses or investment, by the commission that such payments are needed to ensure the widespread availability and affordability of universal service. The commission shall decide cases filed pursuant to this subsection with reasonable promptness, with or without a hearing, but no later than six months following the filing of an application seeking payments from the fund, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

N. The commission shall adopt rules that establish and implement a broadband program to provide funding to eligible telecommunications carriers for the construction and maintenance of broadband

infrastructure. Each year, a minimum of eight million dollars (\$8,000,000) of the fund shall be dedicated to the broadband program.

O. Rules adopted pursuant to Subsection N of this section shall require that the commission:

- (1) consider applications for funding on a technology-neutral basis;
- (2) submit applications for funding to the connect New Mexico council for prioritization and alignment with the statewide broadband plan to ensure digital equity and digital inclusion; and
- (3) require that the awards of support be consistent with federal universal service support programs.

P. The total obligations of the fund determined by the commission pursuant to this section, plus administrative expenses and a prudent fund balance, shall not exceed a cap of thirty million dollars (\$30,000,000) per year. The commission shall evaluate the amount of the cap in an appropriate proceeding to be completed by June 30, 2019 and consider whether, based on the then-current status of the fund, the cap should be modified, maintained or eliminated.

Q. By October 1 of each year, the commission shall make a report to the legislature regarding the status of the fund, including:

- (1) relevant data relating to implementation of the broadband program and the progress toward digital equity and digital inclusion in rural areas of the state;
- (2) recommendations for changes to the structure, size and purposes of the fund and whether the cap on the fund provided for in Subsection P of this section should be modified, maintained or eliminated; and
- (3) the service areas that received funding awards from the broadband program and the amounts of those awards.

History: [Laws 1999, ch. 295, § 6](#); [2005, ch. 335, § 1](#); [2013, ch. 194, § 4](#); [2017, ch. 89, § 1](#); [2021, ch. 118, § 2](#); [2021, ch. 120, § 9](#).

ANNOTATIONS

2021 Multiple Amendments. — [Laws 2021, ch. 118, § 2](#), effective June 18, 2021, and [Laws 2021, ch. 120, § 9](#), effective July 1, 2021, enacted different amendments to this section that can be reconciled. Pursuant to [12-1-8 NMSA 1978, Laws 2021, ch. 120, § 9](#) as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by [Laws 2021, ch. 118, § 2](#) and [Laws 2021, ch. 120, § 9](#) are described below. To view the session laws in their entirety, see the 2021 session laws on [NMOneSource.com](#).

The nature of the difference between the amendments is that [Laws 2021, ch. 118, § 2](#), authorized certain telecommunications carriers to apply and receive support from the state rural universal service fund, and required the commission to act upon a request for ongoing fund support within one hundred twenty days of filing the request, and [Laws 2021, ch. 120, § 9](#), raised the level of disbursement for broadband from the state rural universal service fund, required the public regulation commission to submit applications for funding to the connect New Mexico council for prioritization and alignment with the statewide broadband plan, changed the date by when the commission must report to the

legislature regarding the status of the rural universal service fund, and revised the required contents of the report on the status of the fund.

Laws 2021, ch. 118, § 2, effective June 18, 2021, authorized certain telecommunications carriers to apply and receive support from the state rural universal service fund, and required the commission to act upon a request for ongoing fund support within one hundred twenty days of the filing of the request; and in Subsection L, added Paragraphs L(1) through L(3).

Laws 2021, ch. 120, § 9, effective July 1, 2021, raised the level of disbursement for broadband from the state rural universal service fund, required the public regulation commission submit to applications for funding to the connect New Mexico council for prioritization and alignment with the statewide broadband plan, and changed the date by when the commission must report to the legislature regarding the status of the rural universal service fund, and revised the required contents of the report on the status of the fund; in Subsection N, after "construction and maintenance of", deleted "facilities capable of providing broadband internet access service. Such rules shall require that the commission consider applications for funding on a technology-neutral basis and shall require that the awards of support be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state" and added "broadband infrastructure", and after "a minimum of", deleted "five million dollars (\$5,000,000)" and added "eight million dollars (\$8,000,000)"; added a new Subsection O and redesignated former Subsections O and P as Subsections P and Q, respectively; and in Subsection Q, in the introductory clause, deleted "By December 31, 2019" and added "By October 1 of each year", in Paragraph Q(1), after "broadband program and", deleted "expansion of broadband internet access services" and added "the progress toward digital equity and digital inclusion", in Paragraph Q(2), after "Subsection", deleted "O" and added "P", and added Paragraph Q(3).

The 2017 amendment, effective June 16, 2017, updated state rural universal service fund provisions and established a broadband program administered by the public regulation commission to facilitate expansion of broadband service in rural areas; in Subsection A, deleted "No later than January 1, 2000", after "shall implement", added "and maintain", after "maintain and support", deleted "at affordable rates those public telecommunications services and comparable retail alternative service" and added "universal service that is", after "provided by", deleted "telecommunications carriers that have been designated as", and deleted "All of the balances in the existing New Mexico universal service fund as of July 1, 1999 shall be transferred into the state rural universal service fund" and added the last sentence; in Subsection B, after "telecommunications services provided by telecommunications carriers", deleted "and to comparable retail alternative services provided by telecommunications carriers", after "commercial mobile radio services", added "and voice over internet protocol services", after "rates to be determined by the commission", added the next two sentences, after "as determined by the commission", deleted "In prescribing" and added "Such surcharges shall be", after "technologically neutral", deleted "surcharge rates, the commission may make distinctions between services subject to a surcharge, but it shall require all carriers subject to the surcharge to apply uniform surcharge rates for the same or comparable services", and added "or to Native American customers who reside on tribal or pueblo land"; in Subsection C, after "determined by the commission that", deleted "reduces intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner and"; in Subsection D, Paragraph D(1), after "ensure the availability of", added "universal", in Paragraph D(3), after "services", added "and areas"; in Subsection E, in the introductory paragraph, after "finding, the commission", deleted "shall" and added "may", deleted former Paragraph E(1) and renumbered Paragraphs E(2) through E(4) as Paragraphs E(1) through E(3), respectively, and deleted former Paragraph E(5); in Subsection F, after "eligible telecommunications carriers", deleted "and", after the next period, added the next sentence, and added "The rules also"; in Subsection H, after "ensure the availability of", deleted "local telecommunications" and added "universal", after "affordable rates in rural", deleted "high-cost", and

added the remainder of the subsection; in Subsection I, deleted "Beginning April 1, 2006, the commission shall commence the phase-in of reductions in intrastate switched access charges. By May 1, 2008", and after "on changes to interstate switched access charges", deleted "after May 1, 2008"; in Subsection J, after "ensure that the surcharge", added "determined pursuant to Subsection B of this section", after "held to a minimum,", deleted "no later than November 1, 2005", and after "ensure accurate reporting", deleted "and shall establish a cap on the surcharge"; in Subsection K, in the introductory paragraph, after "affordability benchmark rates", deleted "in an amount equal to the reduction in revenues that occurs as a result of reduced intrastate switched access charges" and added the remainder of the introductory paragraph, added Paragraphs K(1) and K(2), and after Paragraph K(2), added new subsection designation "L." and redesignated former Subsection L as new Subsection M; in Subsection L, deleted "Any reductions in charges for access services resulting from compliance with this section shall be passed on for the benefit of consumers in New Mexico" and added the remainder of the subsection; in Subsection M, after "telecommunications carriers serving in", deleted "high-cost" and added "rural", after "may include a carrier's", added "regulated", and after "availability and affordability of", deleted "residential local exchange" and added "universal"; and deleted former Subsection M, which related to the access reductions report by the fund administrator, and added Subsections N through P.

The 2013 amendment, effective June 14, 2013, changed the administration and uses of the rural universal service fund; in Subsection A, in the first sentence, after "telecommunications services", added "and comparable retail alternative services provided by telecommunications carriers that have been designated as eligible telecommunications carriers, including commercial mobile radio services carriers"; in Subsection F, after "this section", deleted "no later than November 1, 2005" and added the second sentence; in Subsection J, at the end of the sentence, added "and shall establish a cap on the surcharge"; in Subsection L, at the beginning of the section, deleted "In a rate proceeding filed pursuant to Subsection F of Section 63-9H-7 NMSA 1978"; and in Subsection L, in the first sentence, after "fund to incumbent rural telecommunications carriers", added "or to telecommunications carriers providing comparable retail alternative services that have been designated as eligible telecommunications carriers", after "high-cost areas of the state", deleted "that have reduced access charges", and after "upon a finding", added "based on factors that may include a carrier's revenues, expenses or investment" and added the second sentence.

The 2005 amendment, effective June 17, 2005, deleted references to "revenues" in Subsection B; provided in Subsection B that the surcharge shall be imposed on services to be determined by the commission; deleted the authority in Subsection B to apply the surcharge on comparable retail alternative services provided by non-telecommunications carriers, including operator services and aggregator services, offered by providers other than telecommunications carriers; deleted the former provision in Subsection B that the commission shall require telecommunications and non-telecommunications carriers to apply uniform surcharge rates; provided in Subsection B that the commission shall require all carriers subject to the surcharge to apply uniform surcharge rates; provided in Subsection B that the commission shall not apply the surcharge to the state, a county, a municipality or other governmental entity; to a public school district; to a public institution of higher education; or to an Indian nation, tribe or pueblo; deleted in Subsection C the former provision that the fund shall be targeted to high-cost rural areas and the former provision that the fund shall reduce implicit subsidies; provided in Subsection C that the fund reduce intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner; deleted the former provision in Subsection D(1), which provided that the criteria ensure service at affordable rates without unreasonably increasing rates for basic service while still granting carriers a reasonable profit on supported services in areas requiring support from the fund and that the criteria shall not require any investigations of costs or rates of the carrier receiving support; added Subsection D(5) to provide that the commission shall establish rates that will be used to determine the level of support from the fund; added Subsection E to provide for eligibility for participation in the fund and the criteria for determining

eligibility; provided in Subsection F that the commission's rules shall include a provision for variances and that rules shall be adopted no later than November 1, 2005; deleted the former provision in Subsection F, which provided that the cost basis for establishing the fund and determining the rate of distribution of the fund shall be the same cost of and be consistent with federal support mechanisms for providing supported service by geographic area as determined by the federal communications commission and include the same rate of return authorized by the federal communications commission and that the revenue basis with fewer than fifty thousand access lines shall include only revenue from public telecommunications services; deleted the former provision in Subsection G, which provided that the administrator shall consult with the advisory board established by the commission; added a new Subsection I to provide for changes in intrastate switched access charges; changed "long distance service" to "retail communications service" and "December 31, 1999" to "November 1, 2005" in Subsection J; deleted former Subsection I, which provided that upon the replacement of implicit subsidies with explicit subsidies, the commission shall reduce rates for intrastate service, excluding rates affected by the low-income telephone assistance program, in an amount equal to payment received by a rural carrier from the fund; provided in Subsection K for payments from the fund in combination with revenue-neutral rate rebalancing in an amount equal to the reduction in revenues that result from reduced intrastate switched access charges and for the methodology for authorizing payment to other carriers; added Subsection L to provide for payments from the fund to carriers in high-cost areas that have reduced access charges; and added Subsection M to provide for a report by the fund administrator.

Public regulation commission orders. — A party challenging a public regulation commission (PRC) order must establish that the order is arbitrary and capricious, not supported by substantial evidence, outside the scope of the agency's authority, or otherwise inconsistent with law. Under [63-9H-11 NMSA 1978](#), a PRC order must be upheld if the order substantially complies with the Rural Telecommunications Act of New Mexico, [63-9H-1 NMSA 1978](#) et seq. *N.M. Exch. Carrier Grp. v. N.M. Pub. Regulation Comm'n*, [2016-NMSC-015](#).

Where the public regulation commission's (PRC) surcharge rate order, adopting a three percent consumer surcharge rate to be collected and placed in the state rural universal telephone communication services fund, would have resulted in a projected fund deficit, the order was arbitrary, not supported by substantial evidence, and in violation of the PRC's own rules which required that the surcharge be large enough to allow for a prudent fund balance. *N.M. Exch. Carrier Grp. v. N.M. Pub. Regulation Comm'n*, [2016-NMSC-015](#).

Where the public regulation commission adopted a rule order which amended 2005 rules which set forth the procedures for administering and implementing the state rural universal service fund, there was not substantial evidence in the record to support a finding that the newly adopted funding formula was adequate to satisfy the requirements of [63-9H-6\(C\)](#) and [\(K\) NMSA 1978](#), that the surcharge be large enough to allow for a prudent fund balance. *N.M. Exch. Carrier Grp. v. N.M. Pub. Regulation Comm'n*, [2016-NMSC-015](#).

63-9H-7. Regulation of retail rates of incumbent rural telecommunications carrier.

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

B. An incumbent rural telecommunications carrier shall file tariffs for all retail public telecommunications services that, other than residential local exchange service, shall be effective after ten days' notice to its customers and the commission. An incumbent rural telecommunications carrier shall remain subject to complaint by an interested party subject to Section 63-9H-10 NMSA 1978.

C. An incumbent rural telecommunications carrier may increase its rates for residential local exchange service in the manner provided in Subsection B of this section to comply with requirements imposed by any federal or state law or rule. The procedures of Subsections D, E and F of this section shall not apply to increases under this subsection.

D. Except as provided in Subsection C of this section, rates for residential local exchange service may be increased by an incumbent rural telecommunications carrier only after sixty days' notice to all affected subscribers. The notice of increase shall include:

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

E. An incumbent rural telecommunications carrier that proposes to increase its rates for residential local exchange service pursuant to Subsection D of this section shall hold at least one public informational meeting in each public regulation commissioner's district as established by the Public Regulation Commission Apportionment Act [Chapter 8, Article 7 NMSA 1978] in which there is a local exchange area affected by the rate change.

F. Residential local exchange service rates increased by an incumbent rural telecommunications carrier pursuant to Subsections D and E of this section shall be reviewed by the commission only upon written protest signed by two and one-half percent of all affected subscribers or upon the commission staff's own motion for good cause. The protest shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review and the relief that the persons protesting desire. If a proper protest is presented to the commission within sixty days from the date notice of the rate change was sent to affected subscribers of an incumbent rural telecommunications carrier, the commission may accept and file the complaint and, upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the intrastate cost of providing the service, which shall include the cost methodology and rate of return authorized by the federal communications commission. In the order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing, which may be paid as a credit against billings for future services. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates shall be deemed approved. For purposes of this section, cost shall also include a reasonable amount of joint and common costs incurred by the telecommunications carrier in its operations and may include other accounting adjustments authorized by the commission.

G. An incumbent rural telecommunications carrier may at any time elect to file an application with the commission requesting the commission to prescribe fair, just and reasonable rates for the carrier, based on the carrier's revenue, expenses and investment in accordance with traditional rate-making principles factors that may include the carrier's revenues, expenses or investment, in a manner consistent with the policy calling for relaxed regulation of incumbent rural telecommunications carriers expressed in Section 63-9H-2 NMSA 1978 and Subsection C of Section 63-9H-4 NMSA 1978. The commission shall decide cases filed under this subsection with reasonable promptness but no later than nine months following the filing of an application, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

H. Rates for local exchange, vertical and long distance service to retail end-user customers may be reduced to a level equal to, but not below, the intrastate cost, which shall include the cost methodology and rate of return authorized by the federal communications commission. If an incumbent rural telecommunications carrier loses its exemption pursuant to Section 251 of the federal act, the rate for a service, excluding basic service, must cover the cost of the service, including the imputed rate of wholesale service elements as may be required by the commission. The cost of long distance service must also include any interexchange access rates charged to another telecommunications carrier for the service.

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

History: [Laws 1999, ch. 295, § 7](#); [2005, ch. 335, § 2](#); [2013, ch. 194, § 5](#).

ANNOTATIONS

Cross references. — For the federal Telecommunications Act of 1996, see Titles 15, 18, and 47 of the United States Code.

The 2013 amendment, effective June 14, 2013, provided for rate increases and for the determination of fair, just and reasonable rates; in Subsection B, in the first sentence, after "ten days' notice to", added "its customers and" and after "the commission", deleted "and publication in a local newspaper in the incumbent service area"; added Subsection C; in Subsection D, in the first sentence of the introductory paragraph, added "Except as provided in Subsection C of this section"; deleted former Subsection D, which provided for rate increases by incumbent rural telecommunications carriers for residential local exchange service; in Subsection E, after "local exchange service", added "pursuant to Subsection D of this section"; in Subsection F, in the first sentence, after "carrier pursuant to", changed "Subsection D" to "Subsections D and E"; and in Subsection G, in the first sentence, after "telecommunications carrier", deleted "that serves less than five percent of the state's aggregate statewide subscriber lines" and after "for the carrier based on", deleted "the carrier's revenue, expense and investment in accordance with traditional rate-making principles" and added the remainder of the sentence, and added the second sentence.

The 2005 amendment, effective June 17, 2005, deleted the former provision of Subsection E, which provided that if the commission adjusted rates after a hearing, the rate shall not be set below the intrastate cost of service that will include the cost and rate of return pursuant to Section 63-9H-6D NMSA 1978; provided in Subsection E that if the commission adjusts rates after a hearing, the rate shall not be set below the intrastate cost of service which shall include the cost methodology and rate of return authorized by the federal communications commission; deleted the former provision of Subsection G, which provided that rates may not be reduced below the intrastate cost which shall

include the cost and rate of return pursuant to Section 63-9H-6D NMSA 1978 and provided in Subsection E that rates shall not be reduced below the intrastate cost which shall include the cost methodology and rate of return authorized by the federal communications commission.

63-9H-8. Exemption for private service.

Construction, maintenance or operation of a private telecommunications service does not constitute the provision of rural public telecommunications service, and a private telecommunications service shall not be subject to regulation by the commission pursuant to the Rural Telecommunications Act of New Mexico.

History: [Laws 1999, ch. 295, § 8.](#)

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.

63-9H-9. Regulation of individual contracts to facilitate competition.

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

B. At any time, the provider of rural public telecommunications services may file a verified application with the commission for authorization to provide a public telecommunications service on an individual contract basis. The application shall describe the telecommunications services to be offered, the party to be served and the parties offering the service, together with other information and in a form that the commission may prescribe. Such additional information shall be reasonably related to the determination of the existence of a competitive offer.

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

D. Within ten days after the conclusion of negotiations, the provider of rural public telecommunications services shall file with the commission the final contract or other evidence of the

service to be provided, together with the charges and other conditions of the service, which shall be maintained by the commission on a confidential basis subject to an appropriate protective order.

History: [Laws 1999, ch. 295, § 9.](#)

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.

63-9H-10. Complaint alleging violation by provider of rural public telecommunications services.

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

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

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

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

E. After conclusion of the hearing, the commission shall make and file an order containing its findings of fact and decision. A copy of the order shall be served upon the party complained of or his attorney.

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

History: [Laws 1999, ch. 295, § 10.](#)

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.

63-9H-11. Validity of orders; substantial compliance with act sufficient.

A substantial compliance by the commission with the requirements of the Rural Telecommunications Act of New Mexico shall be sufficient to give effect to all rules, orders and acts of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature, in respect thereto.

History: [Laws 1999, ch. 295, § 11.](#)

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.

63-9H-12. Appeal of orders of the commission.

Any provider of rural public telecommunications services and any other person in interest being aggrieved by a final order or determination of the commission under the Rural Telecommunications Act of New Mexico may file a notice of appeal in the supreme court asking for a review of the commission's final orders. A notice of appeal shall be filed within thirty days after the entry of the commission's final order. Every notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may upon proper notice order any person to be joined as a party.

History: [Laws 1999, ch. 295, § 12.](#)

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.

63-9H-13. Appeal on the record.

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

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

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

History: [Laws 1999, ch. 295, § 13.](#)

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.

Cross references. — For the Rules of Appellate Procedure, see Rule [12-101](#) NMRA.

63-9H-14. Injunctions; contempt.

The commission may apply to the district court for injunctions to prevent violations of any provision of the Rural Telecommunications Act of New Mexico or of any rule or order of the commission issued pursuant to that act, and the court has the power to grant such injunctions and to enforce such injunctions by contempt procedure.

History: [Laws 1999, ch. 295, § 14](#).

ANNOTATIONS

Effective dates. — [Laws 1999, ch. 295, § 16](#) made the Rural Telecommunications Act of New Mexico effective July 1, 1999.