

ARTICLE 9A

Telecommunications Services

63-9A-1. Short title.

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

History: Laws 1985, ch. 242, § 1; 1998, ch. 108, § 59.

ANNOTATIONS

Compiler's notes. — The New Mexico Telecommunications Act, 63-9A-1 to 63-9A-20 NMSA 1978, would have been repealed by Laws 1998, ch. 108, § 82, effective July 1, 2003. However, Laws 2003, ch. 23, § 1 and Laws 2003, ch. 416, § 5 repealed Laws 1998, ch. 108, § 82 before the repeal took effect.

Cross references. — For telecommunications services in correctional facility or jail, see 33-14-1 NMSA 1978.

For power of public regulation commission to impose fines on telecommunications providers, see 63-7-23 NMSA 1978.

The 1998 amendment, effective January 1, 1999, substituted "Chapter 63, Article 9A NMSA 1978" for "Sections 1 through 21 of this act" near the beginning of the section.

New Mexico Telecommunications Act constitutes a general law. *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258 (10th Cir. 2004).

This article applicable to high-speed data transmission services. *Las Cruces TV Cable v. N.M. SCC*, 1985-NMSC-087, 103 N.M. 345, 707 P.2d 1155.

Law reviews. — For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — State civil actions by subscription television business for use, or providing technical means of use, of transmissions by nonsubscribers, 46 A.L.R.4th 811.

Liability of telephone company for mistakes in or omissions from its directory, 47 A.L.R.4th 882.

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 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 comparable telecommunications service rates, it is further the policy of this state to encourage competition in the provision of public telecommunications services,

thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of the New Mexico Telecommunications Act to permit a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment. It is further the intent of the legislature that the encouragement of competition in the provision of public telecommunications services will result in greater investment in the telecommunications infrastructure in the state, improved service quality and operations and lower prices for such services.

History: Laws 1985, ch. 242, § 2; 1987, ch. 21, § 1; 2000, ch. 100, § 3; 2000, ch. 102, § 3.

ANNOTATIONS

The 2000 amendment, effective March 7, 2000, changed "comparable message communications" to "comparable telecommunications" in the second and third sentences, substituted "provision of public telecommunications services" for "telecommunications industry" in the third sentence, and added the last sentence in the section.

Laws 2000, ch. 100, § 3 and Laws 2000, ch. 102, § 3, both effective March 7, 2000, enacted identical amendments to this section. The section was set out as amended by Laws 2000, ch. 102, § 3. See 12-1-8 NMSA 1978.

This article applicable to high-speed data transmission services. *Las Cruces TV Cable v. N.M. SCC, 1985-NMSC-087, 103 N.M. 345, 707 P.2d 1155.*

Constitutionality of commission order relating to primary orders. — Commission's order to a telephone local exchange carrier imposing a state-wide standard of zero primary orders held over 30 days did not violate substantive due process, nor amount to an illegal taking of property or violation of equal protection under the federal or state constitutions. *U.S. W. Commc'ns, Inc. v. N.M. SCC, 1997-NMSC-031, 123 N.M. 554, 943 P.2d 1007.*

Commission order regarding cost accounting held valid. — State corporation commission's (now public regulation commission) order to a telephone local exchange carrier requiring that all costs of the carrier's service guarantee and alternative programs be booked below-the-line for rate-making purposes was supported by the evidence and was not a penalty. *U.S. W. Commc'ns, Inc. v. N.M. SCC, 1997-NMSC-031, 123 N.M. 554, 943 P.2d 1007.*

63-9A-3. Definitions.

As used in the New Mexico Telecommunications Act:

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

B. "cable television service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection of such video programming or other programming service;

C. "commission" means the public regulation commission;

D. "competitive telecommunications service" means a service that has been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

E. "competitive telecommunications service provider" includes competitive carriers holding certificates of public convenience and necessity issued by the commission pursuant to laws and regulations, including, without limitation, Section 63-9A-6 NMSA 1978;

F. "effective competition" means the competition that results from the customers of the service having reasonably available and comparable alternatives to the service, consistent with the standards set forth in Section 63-9A-8 NMSA 1978;

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

H. "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 New Mexico on February 8, 1996; or

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

I. "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 company by the state corporation commission or the public regulation commission;

J. "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;

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

L. "message telecommunications service" means telecommunications service between local exchange areas within the state for which charges are made on a per-unit basis, not including wide-area telecommunications service, or its equivalent, or individually negotiated contracts for telecommunications services;

M. "noncompetitive telecommunications service" means a service that has not been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

N. "private telecommunications service" means a system, including the construction, maintenance or operation thereof, 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 such 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;

O. "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 such 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 one-way cable television service;

P. "telecommunications company" means a person that provides public telecommunications service;

Q. "wire center" means a facility where local exchange access lines converge and are connected to a switching device that provides access to the public switched network and includes remote switching units and host switching units; and

R. "wire center serving area" means the geographic area of a local exchange area served by a single wire center.

History: Laws 1985, ch. 242, § 3; 1987, ch. 21, § 2; 1998, ch. 108, § 60; 2004, ch. 3, § 1; 2017, ch. 71, § 1.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, defined "competitive telecommunications service provider", "incumbent local exchange carrier", incumbent rural telecommunications carrier", "wire center", and removed and revised the definitions of certain terms as used in the New Mexico Telecommunications Act; in Subsection A, after "exchange", deleted "service"; added a new Subsection E and redesignated former Subsections E and F as Subsections F and G, respectively; in Subsection F, after "means", added "the competition", after "that", added "results from", and added "consistent with the standards set forth in Section 63-9A-8 NMSA 1978"; added new Subsections H and I and redesignated former Subsections G through I as Subsections J through L, respectively; deleted former Subsection J, which defined "mid-size carrier", and redesignated Subsections K through N as Subsections M through P, respectively; and added Subsections Q and R.

The 2004 amendment, effective May 19, 2004, added a new Subsection J defining "mid-size carrier" and redesignated the succeeding subsections.

The 1998 amendment, effective January 1, 1999, substituted "that" for "which" throughout the section; substituted "public regulation" for "state corporation" near the beginning of Subsection C; in Subsection K, substituted "that" for "such", deleted "or entity" in four places, substituted "that" for "or entity which" near the middle, and substituted "if" for "or entity, provided that" near the end; deleted "but not limited to" preceding "services, including" in Subsection L; and rewrote Subsection M.

Subsection M encompasses high speed data transmission services. — High speed data transmission services fall within the scope of the definition of "public telecommunications service" in Subsection B (now Subsection M). *Las Cruces TV Cable v. N.M. SCC*, 1985-NMSC-087, 103 N.M. 345, 707 P.2d 1155.

63-9A-4. Exemption for private service.

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

History: Laws 1985, ch. 242, § 4.

ANNOTATIONS

63-9A-5. Regulation by commission.

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

B. The commission has exclusive jurisdiction to regulate incumbent local exchange carriers that serve fifty thousand or more access lines within the state only in the manner and to the extent authorized by the New Mexico Telecommunications Act, and Subsection B of 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 determinations of participation in low-income telephone service assistance programs pursuant to the Low Income Telephone Service Assistance Act [Chapter 63, Article 9C NMSA 1978]. The New Mexico Telecommunications Act expressly preserves and does not diminish or expand:

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

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

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

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

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

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

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

C. For incumbent local exchange carriers that serve fifty thousand or more access lines within the state, the commission shall adopt relaxed regulations that provide for:

(1) reduced filing requirements for applicants in rate increase proceedings under the New Mexico Telecommunications Act; and

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

D. The regulatory requirements and the commission's regulation of competitive local exchange carriers, competitive access providers and interexchange carriers shall be no greater than, and no more extensive than, that of incumbent local exchange carriers that serve fifty thousand or more access lines.

E. The provisions of the New Mexico Telecommunications Act do not apply to incumbent rural telecommunications carriers.

History: Laws 1985, ch. 242, § 5; 2017, ch. 71, § 2.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, provided the scope of jurisdiction of the public regulation commission to regulate telecommunications carriers, and provided an exemption to incumbent rural telecommunications carriers from the provisions of the New Mexico Telecommunications Act; added the subsection designation "A."; in Subsection A, after "thereof as", deleted "hereinafter", and after "provided", added "in this act"; and added Subsections B through E.

Authority of public regulation commission. — The public regulation commission has broad authority to regulate telecommunications in New Mexico and find that the New Mexico Telecommunications Act explicitly authorized the PRC to enter into an AFOR plan and add a consumer credit or refund order incentive. The PRC's consumer credit or refund order based primarily on the AFOR plan terms is not a prohibited form of retroactive remedy. The incentive order is neither premature nor speculative because Qwest admitted it would not meet the \$788 million investment commitment and that it should not be forced to comply. *Qwest Corp. v. NMPRC*, 2006-NMSC-042, 140 N.M. 440, 143 P.3d 478.

Local ordinance not preempted by state law. — Reading the New Mexico Telecommunications Act, Section 63-9A-1 NMSA 1978 et seq., and N.M. Const., art. XI, § 2 in *pari materia* with New Mexico's Municipal Code, Chapter 3 NMSA 1978, and N.M. Const., art. X, § 6, the provisions of a Santa Fe telecommunications ordinance, regulating the power to contract with a service provider and to enforce provisions related to land use and rights of way held by the city, were not preempted by state law, inasmuch as they did not purport to usurp New Mexico's public regulation commission power to issue certificates of public convenience and necessity to providers of public telecommunications services or to regulate rates and quality of service for intrastate telecommunications services. *Qwest Corp. v. City of Santa Fe*, 224 F. Supp. 2d 1305 (D.N.M. 2002), 380 F.3d 1258 (10th Cir.).

63-9A-5.1. Repealed.

History: Laws 2004, ch. 3, § 4.; repealed by Laws 2017, ch. 71, § 8.

ANNOTATIONS

Repeals. — [Laws 2017, ch. 71, § 8](#) repealed [63-9A-5.1 NMSA 1978](#), as enacted by [Laws 2004, ch. 3, § 4](#), relating to mid-size carriers, separate regulation, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

63-9A-5.2. Repealed.

History: [Laws 2004, ch. 3, § 5](#); repealed by [Laws 2017, ch. 71, § 8](#).

ANNOTATIONS

Repeals. — [Laws 2017, ch. 71, § 8](#) repealed [63-9A-5.2 NMSA 1978](#), as enacted by [Laws 2004, ch. 3, § 5](#), relating to transition of regulation, report to legislature, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

63-9A-6. Certificate required.

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

B. No public telecommunications service shall be offered within this state without the telecommunications company 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 New Mexico Telecommunications Act.

C. The commission shall have 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 public telecommunications service; provided, however, that in keeping with the purposes of the New Mexico Telecommunications 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. It shall be within the discretion of the commission to determine when and upon what conditions plant, equipment or services may be provided under certificates of public convenience and necessity, by more than one person, and the commission may attach to the exercise of rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require or as otherwise authorized.

D. 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 1985, ch. 242, § 6](#); [1987, ch. 21, § 3](#); [2001, ch. 107, § 1](#).

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, deleted former Subsections D and E, regarding the prohibition of competition for certain telecommunications companies under certain conditions, and under what conditions competition would be allowed, respectively; and renumbered the remaining subsection accordingly.

Certificates required prior to service. — Telecommunications companies are required to obtain certificates of public convenience and necessity from the public regulation commission before they may offer services. *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258 (10th Cir. 2004).

63-9A-6.1. Repealed.

ANNOTATIONS

Repeals. — **Laws 1999, ch. 295, § 15** repealed **63-9A-6.1** NMSA 1978, as amended by Laws 1988, ch. 16, § 1, relating to the New Mexico universal service fund, effective July 1, 2000. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

63-9A-6.2. Carrier of last resort.

Any telecommunications company which has a certificate of public convenience and necessity permitting it to provide message telecommunications service between or among local exchange areas shall not be allowed to terminate or withdraw from providing message telecommunications service between or among local exchange areas without an order of the commission upon a finding that there is another telecommunications company in place capable of providing service without interruption.

History: Laws 1987, ch. 21, § 5.

ANNOTATIONS

63-9A-7. Manner of regulation.

The granting of any certificate of public convenience and necessity to provide a public telecommunications service shall not be deemed to require the holder thereof to provide other telecommunications services under regulation which are otherwise subject to competition.

History: Laws 1985, ch. 242, § 7.

ANNOTATIONS

63-9A-8. Regulation of rates and charges; effective competition.

A. In accordance with the policy established in the New Mexico Telecommunications Act, the commission shall, by its own motion or upon petition by any interested party, hold hearings to determine if any public telecommunications service is subject to effective competition in the relevant market area. When the commission has made a determination that a service or part of a service is subject to effective competition, the commission shall, consistent with the purposes of the New Mexico Telecommunications Act, modify, reduce or eliminate rules, regulations and other requirements applicable to the provision of such service, including the fixing and determining of specific rates, tariffs or fares for the service. The commission's action may include the detariffing of service or the establishment of minimum rates that will cover the costs for the service. Such modification shall be consistent with the maintenance of the availability of access to local exchange service at affordable rates and comparable message telecommunications service rates, as established by the commission, for comparable markets or market areas, except that volume discounts or other discounts based on reasonable business purposes shall be permitted. Upon petition or request of an affected telecommunications company, the commission, upon a finding that the requirements of Subsection B of this section are met, shall modify the same or similar retail regulatory requirements for those providers of comparable public telecommunications services in the same relevant markets so that there shall be parity of retail regulatory standards and requirements for all such providers; provided, however, that this subsection shall not be construed to permit the adoption of any new regulatory requirements or standards for providers of comparable telecommunications services.

B. In determining whether a service is subject to effective competition, the commission shall consider the following on a wire center serving area basis for each wire center serving area and service for which a determination of effective competition is requested, and separate determinations shall be made for residential and business services in each wire center serving area:

- (1) the extent to which services are reasonably available from alternate providers;
- (2) the ability of alternate providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions;
- (3) existing economic, technological, regulatory or other barriers to market entry and exit;
- (4) the number of other providers offering the same or reasonably comparable services;
- (5) the presence of at least two facilities-based competitors, including without limitation facilities-based providers of wireless or voice over internet protocol services, operating in all or part of the wire center for which a determination of effective competition is requested that are unaffiliated with the petitioning carrier and provide the same or reasonably comparable service of the type for which the finding of effective competition is sought;
- (6) the ability of the petitioning provider to affect prices or deter competition; and
- (7) such other factors as the commission deems appropriate.

C. If, in the wire center serving area for which a determination of effective competition is requested, the incumbent local exchange carrier provides basic local exchange service either separately or bundled to less than one-half of the customer locations where such service is available at the time the petition is filed, the public interest requires that effective competition be presumed for all regulated telecommunications services provided by the incumbent provider in that wire center serving area;

provided, however, that findings and presumptions applied pursuant to this section shall be made separately for residential and business services and customer locations.

D. No provider of public telecommunications service may use current revenues earned or expenses incurred in conjunction with any noncompetitive service to subsidize competitive public telecommunications services. In order to avoid cross-subsidization of competitive services by noncompetitive telecommunications services, prices or rates charged for a competitive telecommunications service shall cover the cost for the provision of the service consistent with the provisions of Subsection G of Section 63-9A-8.1 NMSA 1978. In any proceeding held pursuant to this section, the party claiming that the price for a competitive telecommunications service does not cover the cost shall bear the burden of proving that the prices charged for competitive telecommunications services do not cover cost; provided, however, that the commission may require the telecommunications company against whom the complaint is filed to submit a cost study for the service that is the subject of the complaint as part of its examination and determination of the complaint.

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

F. If a wire center service area is deregulated pursuant to a determination of effective competition, for those wire center service areas where that service is deregulated, the petitioning telecommunications company shall no longer be eligible to claim an exemption from the application of the Unfair Practices Act [Chapter 57, Article 12 NMSA 1978] or the Antitrust Act [57-1-1 to 57-1-15 NMSA 1978].

History: Laws 1985, ch. 242, § 8; 1987, ch. 21, § 6; 2017, ch. 71, § 3.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, clarified and provided additional considerations for determining whether a service is subject to effective competition, and provided a presumption of effective competition in certain circumstances; in the catchline, added "effective competition"; in Subsection A, after "requirements of Subsection", deleted "C" and added "B", after "same or similar", added "retail", after "parity of", added "retail", and after the semicolon, added the remainder of the subsection; in Subsection B, in the introductory clause, after "following", added the remainder of the introductory clause, in Paragraph B(1), after "providers", deleted "in the relevant market area"; in Paragraph B(3), after "economic", deleted "or" and added "technological", after "regulatory", added "or other", and after "barriers", added "to market entry and exit", and added Paragraphs B(4) through B(7); added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; in Subsection D, after "provision of the service", added "consistent with the provisions of Subsection G of Section 63-9A-8.1 NMSA 1978", after "the party", deleted "providing the service" and added "claiming that the price for a competitive telecommunications service does not cover the cost", after "telecommunications services", added "do not", and after the semicolon, added the remainder of the subsection; and added Subsection F.

Constitutional authority not limited. — Although statutory authority specifically is granted to the state corporation commission (now public regulation commission) to regulate a public telecommunications service, such provisions do not limit its constitutional authority under *N.M. Const., Art. XI, § 7. Mountain States Tel. & Tel. Co. v. N.M. State Corp. Comm'n*, 1990-NMSC-017, 109 N.M. 504, 787 P.2d 423 (decided under prior law).

Under "filed rate doctrine" plaintiff's claims concerning the level of collect telephone call rates were properly dismissed, as the filed rate is the only legal rate. *Valdez v. State*, 2002-NMSC-028, 132 N.M. 667, 54 P.3d 71.

Commission may regulate rates for intrastate telecommunications services. *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258 (10th Cir. 2004).

Telephone company's third-party billing and collection services were subject to regulation by the state corporation commission (now public regulation commission), where such services involved timing calls through switching operations and transmitting recorded data to the company's billing department. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1988-NMSC-088, 107 N.M. 745, 764 P.2d 876.

Pay telephone services. — State corporation commission (now public regulation commission), in its discretion, could consider any relevant factor in making its determination whether to detariff pay telephone services if effective competition was found to exist. The commission could examine the market-share factor in order to make a decision regarding the existence of effective competition. *Mountain States Tel. & Tel. Co. v. N.M. State Corp. Comm'n*, 1990-NMSC-017, 109 N.M. 504, 787 P.2d 423.

63-9A-8.1. Change in rates.

A. Rates for retail public telecommunications services provided by an incumbent local exchange carrier that serves fifty thousand or more access lines within the state shall be subject to regulation by the commission only in the manner and to the extent authorized by this section.

B. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state 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 local exchange carrier that serves fifty thousand or more access lines within the state shall remain subject to complaint by an interested party subject to Section 63-9A-11 NMSA 1978.

C. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state 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 local exchange carrier that serves fifty thousand or more access lines within the state 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 local exchange carrier that serves fifty thousand or more access lines within the state 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 commission district as established by the Public Regulation Commission Apportionment Act [8-7-1 to 8-7-5 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 local exchange carrier that serves fifty thousand or more access lines within the state pursuant to Subsections D and E of this section shall be reviewed by the commission only upon written protest signed by at least one hundred 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 that notice of the rate change was sent to affected subscribers of an incumbent local exchange 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. 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 incumbent local exchange carrier that serves fifty thousand or more access lines within the state in its operations and may include other accounting adjustments authorized by the commission.

G. Rates for local exchange, vertical and long-distance service to retail residential and business end-user customers charged by incumbent local exchange carriers that serve fifty thousand or more access lines may be reduced to a level equal to, but not below, the intrastate cost. 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 shall also include any interexchange access rates charged to another telecommunications company for the service.

H. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state may offer or discontinue offering retail special incentives, discounts, packaged offerings, temporary rate waivers or other promotions and may offer individual contracts.

History: Laws 1998, ch. 108, § 61; 2004, ch. 3, § 2; 2017, ch. 71, § 4.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, completely rewrote the language in the section; deleted former Subsections A through E, which provided the process taken when a telecommunications company sought a change in rates, and added new Subsections A through H.

The 2004 amendment, effective May 19, 2004, added Subsection E excluding a mid-size carrier from the applicability of the section.

63-9A-8.2. Repealed.

History: Laws 2000, ch. 100, § 4 and Laws 2000, ch. 102, § 4; 2001, ch. 52, § 1; 2004, ch. 3, § 3; repealed by Laws 2017, ch. 71, § 8.

ANNOTATIONS

Repeals. — Laws 2017, ch. 71, § 8 repealed 63-9A-8.2 NMSA 1978, as enacted by Laws 2000, ch. 100, § 4, relating to identifying subsidies, rules, price caps, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

63-9A-8.3. Telephone service; seriously ill individuals.

Basic local exchange telephone service shall not be discontinued to any residence where a seriously or chronically ill person is residing if the person responsible for the telephone service charges does not have the financial resources to pay the charges and if a licensed physician, physician assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health or life and the certificate is delivered to a manager or officer of the provider of the local exchange service at least two days prior to the due date of a billing for telephone service. The commission shall provide by rule the procedure necessary to carry out this section.

History: Laws 2000, ch. 100, § 5 and Laws 2000, ch. 102, § 5.

ANNOTATIONS

Duplicate laws. — Laws 2000, ch. 100, § 5 and Laws 2000, ch. 102, § 5 enacted identical new sections of law, effective March 7, 2000. Both have been compiled as 63-9A-8.3 NMSA 1978.

63-9A-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 public telecommunications services in a manner that facilitates effective competition and shall authorize 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 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 such other information and in such form as the commission may prescribe. Such additional information shall be reasonably related to the determination of the existence of a competitive offer. A determination of effective competition pursuant to

Section **63-9A-8** NMSA 1978 shall not be necessary to file an application or to have an application granted by the commission pursuant to this section.

C. The commission shall approve or deny any such application within ten days or such other period as shall be 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 shall be 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, as provided in Subsection G of Section **63-9A-8.1** NMSA 1978.

D. The telecommunications company 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 service, upon request by the commission. If such contract or evidence is requested, it shall be maintained by the commission on a confidential basis subject to an appropriate protective order. Any interested party may receive copies of filings made pursuant to this section upon request to the commission and execution of an appropriate confidentiality agreement, if applicable.

History: Laws 1985, ch. 242, § 9; 1987, ch. 21, § 7; **2017, ch. 71, § 5.**

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, revised the provisions regarding the regulation of individual contracts for public telecommunications services, providing that the provider of telecommunications services must file with the public regulation commission the final contract upon request by the commission, and provided for the confidentiality of contracts for public telecommunications services; in Subsection C, after "costs of the service", added "as provided in Subsection G of Section **63-9A-8.1** NMSA 1978"; in Subsection D, deleted "Within ten days after the conclusion of negotiations, the provider of 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." and added the remainder of the subsection.

63-9A-10. Examination of books and records.

Nothing in the New Mexico Telecommunications Act shall preclude the commission from exercising its authority to require such accounting or reporting systems as are necessary to allow a proper allocation of investments, costs or expenses that are joint or common to both public telecommunications services and other services.

History: Laws 1985, ch. 242, § 10.

ANNOTATIONS

63-9A-11. Complaint alleging violation by provider of telecommunications services.

A. Complaint may be made by any interested party setting forth any act or omission by a provider of telecommunications services alleged to be in violation of any provision of the New Mexico Telecommunications Act 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, if a hearing is required, 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 New Mexico Telecommunications Act 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 that party's 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 1985, ch. 242, § 11; 2017, ch. 71, § 6.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, clarified that a hearing on a complaint alleging a violation by a provider of telecommunications services shall be set by the public regulation commission only if a hearing is required, and made technical changes; in Subsection B, after "place of hearing,", added "if a hearing is required", and after "ten days' notice", deleted "thereof" and added "of the hearing"; in Subsection E, after "complaint of or", deleted "his" and added "that party's"; and in Subsection F, after "procedure", deleted "heretofore or hereafter".

63-9A-12. Validity of orders; substantial compliance with act sufficient.

A substantial compliance by the commission with the requirements of the New Mexico Telecommunications Act shall be sufficient to give effect to all rules, orders, acts and regulations 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 1985, ch. 242, § 12.

ANNOTATIONS

63-9A-13. Repealed.

ANNOTATIONS

Repeals. — [Laws 1998, ch. 108, § 81](#) repealed [63-9A-13](#) NMSA 1978, as enacted by Laws 1985, ch. 242, § 13, relating to rules, effective January 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

63-9A-14. Appeal of orders of the commission.

Any provider of telecommunications services and any other person in interest being aggrieved by a final order or determination of the commission under the New Mexico Telecommunications Act 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 1985, ch. 242, § 14; [1998, ch. 108, § 62](#).

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "Appeal of orders of the commission" for "Action to set aside nonremovable" in the section heading; in the first sentence, substituted "a final" for "an", deleted "not removable to the supreme court of New Mexico under the provisions of Article II, Section 7 of the constitution of" preceding "New Mexico Telecommunications Act" and deleted "therein" preceding "final orders"; in the second sentence, after "A notice of appeal", substituted "shall" for "must"; and in the third sentence, deleted "state corporation" following "commission as appellee".

63-9A-15. Repealed.

ANNOTATIONS

Repeals. — [Laws 1998, ch. 108, § 81](#) repealed [63-9A-15](#) NMSA 1978, as enacted by Laws 1985, ch. 242, § 15, relating to notice to commission, effective January 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

63-9A-16. Appeal on the record.

A. The 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 1985, ch. 242, § 16; 1998, ch. 108, § 63.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, rewrote this section.

63-9A-17, 63-9A-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-9A-17 and 63-9A-18 NMSA 1978, as enacted by Laws 1985, ch. 242, §§ 17 and 18, relating to burden of showing that order is unreasonable or unlawful and decision on appeal, effective January 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

63-9A-19. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 175, § 2, repealed 63-9A-19 NMSA 1978, as enacted by Laws 1985, ch. 242, § 19, relating to penalty for violations of the New Mexico Telecommunications Act, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 63-7-23 NMSA 1978.

63-9A-20. Injunctions; contempt.

The commission may apply to the district court for injunctions to prevent violations of any provision of the New Mexico Telecommunications Act 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 1985, ch. 242, § 20; 1998, ch. 108, § 64.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, rewrote this section.

63-9A-21. Commission review of impacts.

The commission shall review the impact of provisions of the New Mexico Telecommunications Act on residential and business consumers in urban and rural areas of the state every three years, the first review to be completed by July 31, 2019, and shall report its findings to the legislature. The review shall investigate the impact on rates, service quality, incumbent local exchange carrier employment, investment in telecommunications infrastructure and the availability and deployment of high speed data services. The review shall also include a report on those wire center serving areas that have been deemed to have effective competition and any wire centers no longer subject to carrier of last resort obligations. For any wire center serving an area deregulated pursuant to the provisions of Section 63-9A-8 NMSA 1978, if the commission finds that reregulation of basic local exchange service is necessary to protect the public interest following a hearing and findings of fact and conclusions of law, after July 31, 2021, the commission shall regulate basic local exchange service pursuant to the New Mexico Telecommunications Act.

History: [Laws 2017, ch. 71, § 7.](#)

ANNOTATIONS

Effective dates. — Laws 2017, ch. 71 contained no effective date provision, but, pursuant to [N.M. Const., art. IV, § 23](#), was effective June 16, 2017, 90 days after the adjournment of the legislature.