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HOUSE BILL 70

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

Natalie Figueroa

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING THE RURAL  
TELECOMMUNICATIONS ACT OF NEW MEXICO; RAISING THE CAP FOR  
OBLIGATIONS ON THE STATE RURAL UNIVERSAL SERVICE FUND TO FORTY  
MILLION DOLLARS (\$40,000,000) PER YEAR FOR THE YEARS 2022, 2023  
AND 2024; AUTHORIZING THE PUBLIC REGULATION COMMISSION TO SPEND  
UP TO SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) FOR AUDITS OR  
EVALUATIONS OF RESULTS OF CERTAIN EXPENDITURES FROM THE STATE  
RURAL UNIVERSAL SERVICE FUND.

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

SECTION 1. Section 63-9H-6 NMSA 1978 (being Laws 1999,  
Chapter 295, Section 6, as amended by Laws 2021, Chapter 118,  
Section 2 and by Laws 2021, Chapter 120, Section 9) is amended  
to read:

"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--

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1 ESTABLISHMENT.--

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

12           B. The fund shall be financed by a surcharge on  
13 intrastate retail public telecommunications services to be  
14 determined by the commission, excluding services provided  
15 pursuant to a low-income telephone assistance plan billed to  
16 end-user customers by a telecommunications carrier, and  
17 excluding all amounts from surcharges, gross receipts taxes,  
18 excise taxes, franchise fees and similar charges. For the  
19 purpose of funding the fund, the commission has the authority  
20 to apply the surcharge on intrastate retail public  
21 telecommunications services provided by telecommunications  
22 carriers, including commercial mobile radio services and voice  
23 over internet protocol services, at a competitively and  
24 technologically neutral rate or rates to be determined by the  
25 commission. The commission may establish the surcharge as a

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1 percentage of intrastate retail public telecommunications  
2 services revenue or as a fixed amount applicable to each  
3 communication connection. For purposes of this section, a  
4 "communication connection" means a voice-enabled telephone  
5 access line, wireless voice connection, unique voice over  
6 internet protocol service connection or other uniquely  
7 identifiable functional equivalent as determined by the  
8 commission. Such surcharges shall be competitively and  
9 technologically neutral. Money deposited in the fund is not  
10 public money, and the administration of the fund is not subject  
11 to the provisions of law regulating public funds. The  
12 commission shall not apply this surcharge to a private  
13 telecommunications network; to the state, a county, a  
14 municipality or other governmental entity; to a public school  
15 district; to a public institution of higher education; to an  
16 Indian nation, tribe or pueblo; or to Native American customers  
17 who reside on tribal or pueblo land.

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

25 D. The commission shall:

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

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

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

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

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

20 E. All incumbent telecommunications carriers and  
21 competitive carriers already designated as eligible  
22 telecommunications carriers for the fund shall be eligible for  
23 participation in the fund. All other carriers that choose to  
24 become eligible to receive support from the fund may petition  
25 the commission to be designated as an eligible

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1 telecommunications carrier for the fund. The commission may  
2 grant eligible carrier status to a competitive carrier in a  
3 rural area upon a finding that granting the application is in  
4 the public interest. In making a public interest finding, the  
5 commission may consider at least the following items:

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

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

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

12 F. The commission shall adopt rules, including a  
13 provision for variances, for the implementation and  
14 administration of the fund in accordance with the provisions of  
15 this section. The rules shall enumerate the appropriate uses  
16 of fund support and any restrictions on the use of fund support  
17 by eligible telecommunications carriers. The rules shall  
18 require that an eligible telecommunications carrier receiving  
19 support from the fund pursuant to Subsection K, L or M of this  
20 section must expend no less than sixty percent of the support  
21 it receives to deploy and maintain broadband internet access  
22 services in rural areas of the state. The rules also shall  
23 provide for annual reporting by eligible telecommunications  
24 carriers verifying that the reporting carrier continues to meet  
25 the requirements for designation as an eligible

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1 telecommunications carrier for purposes of the fund and is in  
2 compliance with the commission's rules, including the  
3 provisions regarding use of support from the fund.

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

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

21 I. The commission shall ensure that intrastate  
22 switched access charges are equal to interstate switched access  
23 charges established by the federal communications commission as  
24 of January 1, 2006. Nothing in this section shall preclude the  
25 commission from considering further adjustments to intrastate

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1 switched access charges based on changes to interstate switched  
2 access charges.

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

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

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

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

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

25 (1) an eligible incumbent telecommunications

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

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

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

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

22 M. The commission may also authorize payments from  
23 the fund to incumbent rural telecommunications carriers or to  
24 telecommunications carriers providing comparable retail  
25 alternative services that have been designated as eligible

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1 telecommunications carriers serving in rural areas of the state  
2 upon a finding, based on factors that may include a carrier's  
3 regulated revenues, expenses or investment, by the commission  
4 that such payments are needed to ensure the widespread  
5 availability and affordability of universal service. The  
6 commission shall decide cases filed pursuant to this subsection  
7 with reasonable promptness, with or without a hearing, but no  
8 later than six months following the filing of an application  
9 seeking payments from the fund, unless the commission finds  
10 that a longer time will be required, in which case the  
11 commission may extend the period for an additional three  
12 months.

13 N. The commission shall adopt rules that establish  
14 and implement a broadband program to provide funding to  
15 eligible telecommunications carriers for the construction and  
16 maintenance of broadband infrastructure. Each year, a minimum  
17 of eight million dollars (\$8,000,000) of the fund shall be  
18 dedicated to the broadband program.

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

21 (1) consider applications for funding on a  
22 technology-neutral basis;

23 (2) submit applications for funding to the  
24 connect New Mexico council for prioritization and alignment  
25 with the statewide broadband plan to ensure digital equity and

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1 digital inclusion; and

2 (3) require that the awards of support be  
3 consistent with federal universal service support programs.

4 P. For the years 2022, 2023 and 2024, the total  
5 obligations of the fund determined by the commission pursuant  
6 to this section, plus administrative expenses and a prudent  
7 fund balance, shall not exceed a cap of forty million dollars  
8 (\$40,000,000) per year or a cap of thirty million dollars  
9 (\$30,000,000) per year for the year 2025 and subsequent years.

10 ~~[The commission shall evaluate the amount of the cap in an~~  
11 ~~appropriate proceeding to be completed by June 30, 2019 and~~  
12 ~~consider whether, based on the then-current status of the fund,~~  
13 ~~the cap should be modified, maintained or eliminated.]~~

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

17 (1) relevant data relating to implementation  
18 of the broadband program and the progress toward digital equity  
19 and digital inclusion in rural areas of the state;

20 (2) recommendations for changes to the  
21 structure, size and purposes of the fund and whether the cap on  
22 the fund provided for in Subsection P of this section should be  
23 modified, maintained or eliminated; and

24 (3) the service areas that received funding  
25 awards from the broadband program and the amounts of those

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1 awards.

2 R. The commission may authorize up to seventy-five  
3 thousand dollars (\$75,000) for payments from the fund to  
4 third-party providers of auditing, measurement,  
5 evaluation or similar services to:

6 (1) conduct audits regarding the appropriate  
7 uses of fund support by incumbent local exchange carriers  
8 receiving support pursuant to Subsection K of this section or  
9 by eligible telecommunications carriers receiving support  
10 pursuant to Subsection L of this section; or

11 (2) measure and evaluate the results achieved  
12 by projects that have received broadband program funding  
13 pursuant to Subsection N of this section."