

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF A NOTICE OF )  
INQUIRY TO DEVELOP A RULE )  
TO IMPLEMENT HOUSE BILL 776, )  
RELATING TO ACCESS CHARGE )  
REFORM )  
\_\_\_\_\_ )**

**Case No. 05-00211-UT**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission ("Commission") proposes to adopt a rule for the implementation and administration of the State Rural Universal Service Fund ("the Fund").

**THE COMMISSION FINDS AND CONCLUDES:**

1. On April 7, 2005, New Mexico Governor Bill Richardson signed House Bill 776 entitled "An Act Relating to Telecommunications; Amending Sections of the Rural Telecommunications Act of New Mexico to Provide for the State Rural Universal Service Fund."<sup>1</sup> House Bill 776 amends Sections 63-9H-6 and 63-9H-7 of the Rural Telecommunications Act ("Rural Telecom Act"). All citations to the Rural Telecom Act ("the Act") in this Notice of Proposed Rulemaking are to the amended version of the Act. Section 63-9H-6 — often referred to as the Universal Service Fund statute — requires the Commission to implement a "state rural universal service fund" ("Fund") to maintain and support rural public telecommunications services at affordable rates. NMSA 1978, § 63-9H-6(A).<sup>2</sup>

2. House Bill 776 amends Section 63-9H-6 for the purpose of reducing intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner.

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<sup>1</sup> <http://legis.state.nm.us/Sessions/05%20Regular/final/HB0776.pdf>. House Bill 776 has an emergency clause stating that the Act takes effect immediately. House Bill 776, § 3.

Switched access charges (“access charges”) are charges that local exchange companies (“LECs”) charge to long-distance companies for originating and terminating long-distance calls over the LECs’ portion of the telecommunications network. Intrastate access charges are imposed for originating and terminating long-distance calls within a state. Interstate access charges are imposed for originating and terminating long-distance calls between states. Historically, access charges have been priced above cost to subsidize local service rates. The effect of the high access charges is that rates for in-state long-distance calls are high. The Federal Communications Commission (“FCC”) addressed this problem at the interstate level by lowering access charges and recovering lost access charge revenues through a federal access charge of \$6.50.

3. House Bill 776 follows the FCC model by reducing intrastate access charges to the level of interstate access charges and allowing recovery of lost access charge revenue through a surcharge on intrastate retail telecommunications services. House Bill 776 directs the Commission to establish benchmark rates for local residential and business services. NMSA 1978, § 63-9H-6(D)(5). House Bill 776 does not require a LEC whose local rates are below the benchmark rates to raise its local rates to the benchmark rates. However, no LEC can recover lost access charge revenue equal to revenues that can be earned by increasing local rates to the benchmark rates. *See id.*, § 63-9H-6(K). Thus, the Fund cannot be used to subsidize local rates that are lower than the benchmark rates. Any additional lost access charge revenue not recovered by increasing local rates to the benchmark rates may be recovered from the Fund, which is funded through the surcharge. *See id.*

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<sup>2</sup> Subsection 63-9H-6(A) was not amended by House Bill 776.

4. House Bill 776 requires the Commission to:
  - a. establish eligibility criteria for participation in the Fund consistent with federal law that ensure the availability of service at affordable rates;
  - b. provide for the collection of the surcharge on a competitively neutral basis and for the administration and disbursement of money from the Fund;
  - c. provide for the separate administration and disbursement of federal universal service funds consistent with federal law; and
  - d. establish affordability benchmark rates for local residential and business services that shall be utilized in determining the level of support from the Fund.

NMSA 1978, § 63-9H-6(D).

5. House Bill 776 requires the Commission to adopt rules, including a provision for variances, for the implementation and administration of the Fund no later than November 1, 2005. *Id.*, 63-9H-7(F). The Public Regulation Commission Act authorizes the Commission to "adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties." NMSA 1978, § 8-8-4(B)(10).

6. On May 24, 2005, this Commission initiated this case through issuance of its Notice of Inquiry. The Notice of Inquiry solicited proposed rules to implement House 776 and solicited responses to enumerated questions that are relevant to the adoption of a proposed rule.

7. The following persons filed responses to the Notice of Inquiry: the New Mexico Attorney General; Leaco Rural Telephone Cooperative; the New Mexico Exchange Carriers Group; Qwest Corporation; the New Mexico Wireless Group; and MCI, Inc.

8. Having considered the responses to the Notice of Inquiry and being otherwise fully informed, the Commission has developed a proposed rule — which includes alternatives for certain provisions — that is attached as Exhibit 1 to this Notice of Proposed Rulemaking.

9. The Commission will accept written comments on the rule proposed in this Notice of Proposed Rulemaking — including comments on alternatives where they exist — from any

interested person. Interested persons shall file their written comments on the proposed rule no later than August 31, 2005. Any response comments shall be filed no later than September 23, 2005. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. The Commission invites comments regarding whether the proposed rule is consistent with federal statutes and regulations and whether additional definitions should be added to 17.11.10.7 of the proposed rule. A copy of the proposed rule in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to the proposed rule shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (compact disc in Microsoft 2000 Word format). The label on the compact disc shall state the name of the person submitting the proposed changes and the docket number of this proceeding (Case No. 05-00211-UT). All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

10. Written comments or written response comments shall be sent to:

Melanie Sandoval  
New Mexico Public Regulation Commission  
Attention: Proposed Rule Relating to Access Charge Reform  
224 East Palace Avenue, Marian Hall  
Santa Fe, NM 87501  
Telephone: (505) 827-6968

11. Copies of the proposed rule may also be downloaded from the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), under "Meetings," then "Public Notices."

12. The Commission will review all timely submitted written comments and will hold public comment hearings on the following dates and at the following times and places:

a. August 29, 2005, beginning at 9:30 a.m. at the Albuquerque/Bernalillo Governmental Center, 9<sup>th</sup> floor, Room 9081, 1 Civic Plaza NW, Albuquerque, New Mexico, corner of 5<sup>th</sup> Street and Marquette;

b. September 14, 2005, in Gallup, New Mexico. After September 1, 2005, please call Cecilia Rios at 827-4501 or Alice Lucero at 827-6947 for the location and time.

13. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

14. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

15. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

**IT IS THEREFORE ORDERED:**

A. The proposed rule, attached to this Notice of Proposed Rulemaking as Exhibit 1, is proposed for adoption as a permanent rule as provided by this Notice.

B. Initial comments on the proposed rule must be filed by August 31, 2005, and response comments must be filed by September 23, 2005.

C. Public comment hearings shall be held as provided in this Notice of Proposed Rulemaking.

D. A copy of this Notice, including Exhibit 1, shall be mailed to all persons listed on the attached Certificate of Service. This Notice, excluding Exhibit 1, shall be published in two newspapers of general circulation in the state and in the *New Mexico Register*. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rule on the Commission's web site.

E. This Notice is effective immediately.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 28th day of July, 2005.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

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**BEN R. LUJAN, CHAIRMAN**

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**JASON A. MARKS, VICE-CHAIRMAN**

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**DAVID W. KING, COMMISSIONER**

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**LYNDA M. LOVEJOY, COMMISSIONER**

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**E. SHIRLEY BACA, COMMISSIONER**