CHAPTER 63
Railroads and Communications

ARTICLE 1
Organization and Management of Railroads

63-1-1. [Formation of corporations.]

Railroad corporations may be formed by the voluntary association of any five or more persons, in the manner prescribed in this chapter. Such persons must be citizens of the United States.

History: Laws 1878, ch. 1, ch. [tit.] 1, § 1; C.L. 1884, § 2622; C.L. 1897, § 3804; Code 1915, § 4653; C.S. 1929, § 116-101; 1941 Comp., § 74-101; 1953 Comp., § 69-1-1.

ANNOTATIONS

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

Compiler's notes. — Laws 1878, ch. 1, consisted of nine chapters with the word "title" appearing before each chapter designation in the printed act. A bracketed abbreviation reflecting the title designation has been inserted in the respective history notes.

The term "this chapter" refers to Laws 1878, ch. 1, ch. (tit.) 1, the provisions of which are presently compiled as 63-1-1 to 63-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 186 to 198; 65 Am. Jur. 2d Railroads §§ 8 to 13.

74 C.J.S. Railroads §§ 7, 8.

63-1-2. [Articles of incorporation.]

Articles of incorporation must be prepared, setting forth:

A. the name of the corporation;

B. the purpose for which it is formed;

C. the place where its principal business is to be transacted;

D. the term for which it is to exist, not exceeding fifty years;

E. the number of its directors, which shall not be less than five, nor more than eleven; and the names and residences of the persons who are appointed to act as such, until their successors are elected and qualified;

F. the amount of its capital stock, which shall not exceed the amount actually required for the purposes of the corporation, as estimated by competent engineers, and the number of shares into which it is divided;

G. the amount of capital stock actually subscribed, and by whom;

H. the termini of its road and intermediate branches;

I. the estimated length of its road and of each of its branches;

J. that at least ten percent of its capital stock subscribed, has been paid to the treasurer of the intended corporation, giving his name and residence.

History: Laws 1878, ch. 1, ch. [tit.] 1, § 2; C.L. 1884, § 2623; C.L. 1897, § 3805; Code 1915, § 4654; C.S. 1929, § 116-102; 1941 Comp., § 74-102; 1953 Comp., § 69-1-2.

ANNOTATIONS

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

Subscription payment in checks never intended to be cashed. — Where 10% of the subscriptions to the capital stock of a corporation, required by statute to be paid on the formation of the corporation, was paid in checks, which were never intended to be presented for payment, the obligation to pay dated from the date of filing of articles of incorporation. *Albright v. Texas, Santa Fe & N.R.R.*, 1895-NMSC-018, 8 N.M. 110, 42 P. 73, *rev'd on other grounds*, 1896-NMSC-010, 8 N.M. 422, 46 P. 448.

Discovery of insufficient stock subscription. — Where articles of incorporation stated that 10% of subscription to capital stock had been paid to company treasurer, and the treasurer made affidavit that the amount had been actually paid him, the fact that, at the time an indebtedness was incurred by the corporation, the creditor was informed by the treasurer that such subscription had not been paid in did not constitute such a discovery as to make the statute of limitations begin to run. *Albright v. Texas, Santa Fe & N.R.R.*, 1895-NMSC-018, 8 N.M. 110, 42 P. 73, *rev'd on other grounds*, 1896-NMSC-010, 8 N.M. 422, 46 P. 448.

Liability of stockholders. — Where stock subscribed on formation of a corporation was sold upon an assessment made thereon, the creditors of the corporation were not precluded thereby from recovering on the failure of the stockholders to pay the 10% of their subscriptions required by statute to be paid upon incorporation, nor could such failure be set up by the stockholders in avoidance of the statute to escape liability.

Albright v. Texas, Santa Fe & N.R.R., 1895-NMSC-018, 8 N.M. 110, 42 P. 73, *rev'd on other grounds*, 1896-NMSC-010, 8 N.M. 422, 46 P. 448.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 199 to 206; 65 Am. Jur. 2d Railroads §§ 8 to 13.

74 C.J.S. Railroads § 10.

63-1-3. [Execution of articles of incorporation.]

The articles of incorporation must be subscribed by five or more persons, who must be citizens of the United States, and acknowledged by each of them before some officer authorized by the laws of this state to take and certify acknowledgments of conveyances of real property situate within this state. Each subscriber may subscribe said articles personally or by an attorney-in-fact, thereunto duly authorized in writing signed by said subscriber and acknowledged before some officer authorized by the laws of this state to take and certify acknowledgments of conveyances of real property situated within this state. All such powers of attorney must be securely attached to said articles of incorporation, and be filed therewith, as hereinafter provided.

History: Laws 1878, ch. 1, ch. [tit.] 1, § 3; C.L. 1884, § 2624; C.L. 1897, § 3806; Code 1915, § 4655; C.S. 1929, § 116-103; 1941 Comp., § 74-103; 1953 Comp., § 69-1-3.

ANNOTATIONS

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

Cross references. — For officers who may take acknowledgments, *see* 14-13-14 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations § 207.

74 C.J.S. Railroads § 10.

63-1-4. [Subscriptions to capital stock; minimum amount paid in.]

The corporators of each intended corporation, before filing articles of incorporation, must have actually subscribed to the capital stock of the corporation at least one thousand dollars [($1,000)] for each mile of its road and branches, and at least ten percent thereof must have been paid for the benefit of the corporation, to a treasurer appointed by the subscribers in its articles of incorporation, or their attorneys-in-fact as aforesaid.

History: Laws 1878, ch. 1, ch. [tit.] 1, § 4; C.L. 1884, § 2625; C.L. 1897, § 3807; Code 1915, § 4656; C.S. 1929, § 116-104; 1941 Comp., § 74-104; 1953 Comp., § 69-1-4.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 222, 578, 579.

Fraud in promissory statements to secure subscription, 51 A.L.R. 123, 68 A.L.R. 635, 91 A.L.R. 1295, 125 A.L.R. 879.

74 C.J.S. Railroads § 9.

63-1-5. [Affidavit stating amount of stock subscribed and amount paid.]

There must be securely attached to said articles of incorporation, an affidavit of the treasurer named therein, that the requisite amount of the capital stock of the intended corporation has been actually subscribed, and that ten percent thereof has been actually paid to him for the benefit of said corporation, stating the amount of stock subscribed, and the amount actually paid in.

History: Laws 1878, ch. 1, ch. [tit.] 1, § 5; C.L. 1884, § 2626; C.L. 1897, § 3808; Code 1915, § 4657; C.S. 1929, § 116-105; 1941 Comp., § 74-105; 1953 Comp., § 69-1-5.

ANNOTATIONS

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

63-1-6. Filing; effect.

Articles of incorporation, with the powers of attorney mentioned in Section 63-1-3 NMSA 1978, if any such there be, and the affidavit mentioned in Section 63-1-5 NMSA 1978 shall be filed in the office of the secretary of state, and thereupon, the persons who have signed the articles, and their associates and successors, shall be a body politic and corporate, by the name stated in the articles, for the term of years therein specified.

History: Laws 1878, ch. 1, ch. [tit.] 1, § 6; C.L. 1884, § 2627; C.L. 1897, § 3809; Code 1915, § 4667; C.S. 1929, § 116-115; 1941 Comp., § 74-106; 1953 Comp., § 69-1-6; 2013, ch. 75, § 35.

ANNOTATIONS

Cross references. — For fee for filing certificate of incorporation, *see* 53-2-1 NMSA 1978.

For amendment of certificate of incorporation, *see* 53-2-7 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required that articles of incorporation with powers of attorney be filed with the secretary of state; added the title of the section; at the beginning of the section, deleted "Said", and after "filed in the office of the", deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18 Am. Jur. 2d Corporations § 67; 18A Am. Jur. 2d Corporations § 208.

18 C.J.S. Corporations § 24.

63-1-7. Articles of incorporation; certified copies.

A copy of any articles of incorporation filed in pursuance of the provisions of this chapter, certified by the secretary of state, or heretofore certified by the secretary of the territory of New Mexico, must be received in all courts and other places as prima facie evidence of the facts therein stated.

History: Laws 1878, ch. 1, ch. [tit.] 1, § 8; C.L. 1884, § 2629; C.L. 1897, § 3811; Code 1915, § 4669; C.S. 1929, § 116-117; 1941 Comp., § 74-107; 1953 Comp., § 69-1-7; 2013, ch. 75, § 36.

ANNOTATIONS

Compiler's notes. — For meaning of "this chapter", *see* compiler's notes to 63-1-1 NMSA 1978.

The 2013 amendment, effective July 1, 2013, provided that copies of articles of incorporation certified by the secretary of state are prima facie evidence of the facts stated therein; added the title of the section; after "certified by the", deleted "state corporation commission" and added "secretary of state".

63-1-8. [Owners of capital stock are stockholders.]

The owners of shares of the capital stock of corporations formed under this chapter shall be called stockholders.

History: Laws 1878, ch. 1, ch. [tit.] 1, § 7; C.L. 1884, § 2628; C.L. 1897, § 3810; Code 1915, § 4668; C.S. 1929, § 116-116; 1941 Comp., § 74-108; 1953 Comp., § 69-1-8.

ANNOTATIONS

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

Compiler's notes. — The 1915 Code compilers substituted "this chapter" for "this act."

The term "this chapter" refers to Chapter 95 of the 1915 Code, the provisions of which are presently compiled as 63-1-1 to 63-1-42, 63-2-1 to 63-2-3, 63-2-6 to 63-2-17, 63-3-1, 63-3-2, 63-3-5 to 63-3-22, 63-3-24 to 63-3-28, 63-3-34, 63-5-1 to 63-5-4 and 63-6-1 to 63-6-7 NMSA 1978.

63-1-9. [Bylaws; adoption.]

Every corporation formed under this chapter must, within three months after filing articles of incorporation, adopt a code of bylaws for its government, not inconsistent with the laws of this state. Bylaws may be adopted by stockholders representing a majority of all the subscribed capital stock, at a meeting of stockholders called for that purpose by order of the acting president, served upon them personally in writing, or by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, if there be one published therein, but if not, then in some paper published in some adjoining county. The time specified in said order for such meeting shall not be less than two weeks from the date thereof: provided, that the written assent of the holders of two-thirds of the subscribed capital stock shall be effectual to adopt a code of bylaws without a meeting of the stockholders for that purpose.

History: Laws 1878, ch. 1, ch. [tit.] 2, § 1; C.L. 1884, § 2630; C.L. 1897, § 3812; Code 1915, § 4670; C.S. 1929, § 116-118; 1941 Comp., § 74-109; 1953 Comp., § 69-1-9.

ANNOTATIONS

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

Compiler's notes. — For meaning of "this chapter", *see* compiler's notes to 63-1-8 NMSA 1978.

Cross references. — For legal newspapers, *see* 14-11-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 310, 314, 315, 317.

18 C.J.S. Corporations §§ 65 to 69.

63-1-10. [Contents of bylaws.]

Where no other provision is especially made by this chapter, a railroad corporation may, by its bylaws, provide for:

A. the time, place and manner of calling and conducting the meetings of its directors and stockholders;

B. the number of stockholders constituting a quorum at meetings of stockholders;

C. the mode of voting by proxy at meetings of stockholders;

D. the time for holding annual elections for directors and the mode and manner of giving notice thereof;

E. the compensation and duties of officers;

F. the manner of election and the tenure of office of all officers other than the directors;

G. suitable fines for violation of bylaws, not exceeding in any case one hundred dollars [($100)] for any one offense; and

H. the mode and manner of collecting assessments, except as otherwise provided in this chapter.

History: Laws 1878, ch. 1, ch. [tit.] 2, § 2; C.L. 1884, § 2631; C.L. 1897, § 3813; Code 1915, § 4671; C.S. 1929, § 116-119; 1941 Comp., § 74-110; 1953 Comp., § 69-1-10.

ANNOTATIONS

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

Compiler's notes. — For meaning of "this chapter", *see* compiler's notes to 63-1-8 NMSA 1978.

63-1-11. [Book of bylaws; public inspection; amendment and repeal of bylaws.]

All bylaws must be certified by a majority of the directors and the secretary of the corporation, and copied in a legible hand in a book to be kept in the office of the secretary of the corporation, to be known as the book of bylaws, which shall be open to public inspection during office hours of each day, except holidays. When recorded, as aforesaid, the bylaws shall take effect, unless otherwise therein provided. Bylaws may be amended or repealed, or new bylaws may be adopted at an annual meeting, or any other meeting of the stockholders, called by the directors for that purpose, by a vote representing two-thirds of the subscribed capital stock; or the power to amend or repeal

or adopt new bylaws may, by a similar vote, at any such meeting, be delegated to the board of directors. Such power, when delegated, may be revoked by a similar vote at any regular meeting of the stockholders. Whenever an amendment or new bylaw is adopted, it shall be copied in the book of bylaws, immediately after the previous bylaws and shall not take effect until so recorded. If any bylaw be repealed, the fact and date of repeal shall be noted in the book of bylaws, and until so noted the repeal shall not take effect.

History: Laws 1878, ch. 1, ch. [tit.] 2, § 3; C.L. 1884, § 2632; C.L. 1897, § 3814; Code 1915, § 4672; C.S. 1929, § 116-120; 1941 Comp., § 74-111; 1953 Comp., § 69-1-11.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 317, 327 to 329.

18 C.J.S. Corporations §§ 65 to 69.

63-1-12. [Management by board of directors; number; quorum; vacancies.]

The corporate powers, business and property of all railroad corporations must be exercised, conducted, controlled and managed by a board of not less than five nor more than eleven directors, to be elected from among the stockholders, who are citizens of the United States. Unless a quorum be present and acting, no business performed or act done, shall be valid or binding as against the corporation. Vacancies in the board of directors shall be filled by appointment by the board, unless otherwise provided by the bylaws of the corporation. Within the limits above specified, the number of directors may be increased or diminished by a vote of stockholders representing two-thirds of the subscribed capital stock, at any annual meeting of the stockholders.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 1; C.L. 1884, § 2633; C.L. 1897, § 3815; Code 1915, § 4673; C.S. 1929, § 116-121; 1941 Comp., § 74-112; 1953 Comp., § 69-1-12.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18B Am. Jur. 2d Corporations §§ 1345, 1347, 1349 to 1352, 1354 to 1358, 1400, 1401, 1470, 1471.

19 C.J.S. Corporations §§ 272 to 274; 74 C.J.S. Railroads § 15.

63-1-13. [Election and term of directors.]

The directors named in the articles of incorporation shall hold their offices for one year from and after the date of the filing of said articles as provided in Section 63-1-6 NMSA 1978, or until their successors are elected and qualified; thereafter, directors must be elected annually by the stockholders at such time as may be provided in the bylaws of the corporation: provided, that, if no time be fixed in the bylaws, such elections shall be had on the first Wednesday in July of each year.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 2; C.L. 1884, § 2634; C.L. 1897, § 3816; Code 1915, § 4674; C.S. 1929, § 116-122; 1941 Comp., § 74-113; 1953 Comp., § 69-1-13.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18B Am. Jur. 2d Corporations §§ 1362, 1363, 1365, 1395, 1396.

19 C.J.S. Corporations §§ 272 to 283.

63-1-14. [Ballots; majority required; voting rights.]

All elections of directors must be by ballot, and a vote of stockholders representing a majority of the subscribed capital stock shall be necessary to a choice. At all such elections, and at all other elections, and at all meetings of stockholders, each stockholder shall be entitled to one vote for each share of the capital stock owned by him.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 3; C.L. 1884, § 2635; C.L. 1897, § 3817; Code 1915, § 4675; C.S. 1929, § 116-123; 1941 Comp., § 74-114; 1953 Comp., § 69-1-14.

ANNOTATIONS

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

63-1-15. [Directors' organization meeting; officers; majority.]

The directors named in the articles of incorporation must meet within one week after the filing of said articles and organize by the election of the president, who shall be one of their number, a secretary and a treasurer; and their successors must so meet and organize immediately after their election. Directors must perform the duties enjoined upon them by law and the bylaws of the corporation. A majority of the directors shall constitute a board for the transaction of business, and every decision of a majority of the

directors forming such board, made when duly assembled and in session as such board, shall be valid as a corporate act.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 4; C.L. 1884, § 2636; C.L. 1897, § 3818; Laws 1899, ch. 29, § 1; Code 1915, § 4676; C.S. 1929, § 116-124; 1941 Comp., § 74-115; 1953 Comp., § 69-1-15.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations § 219; 18B Am. Jur. 2d Corporations §§ 1353, 1360, 1470, 1471, 1684.

63-1-16. [Meetings of directors; call; notice.]

When no provision is made in the bylaws for regular meetings of the directors and the mode of calling special meetings, all meetings of the directors must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be no president, on the order of any two directors. Such orders and notice shall be recorded in the journal of the proceedings of the board of directors.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 16; C.L. 1884, § 2648; C.L. 1897, § 3830; Code 1915, § 4688; C.S. 1929, § 116-136; 1941 Comp., § 74-116; 1953 Comp., § 69-1-16.

ANNOTATIONS

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

Cross references. — For content of bylaws, *see* 63-1-10 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18B Am. Jur. 2d Corporations §§ 1452-1455, 1464, 1465, 1479.

19 C.J.S. Corporations §§ 294, 297, 298, 300, 301.

63-1-17. [Removal of directors; call and notice of meetings; filling vacancy.]

Directors may be removed from office by a vote of stockholders holding two-thirds of the subscribed capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president or by a majority of the directors, or by stockholders holding at least one-half of the subscribed capital stock. Such calls must

be in writing and addressed to the secretary who must thereupon give notice of the time, place and object of the meeting, and by whose order it is called. If the secretary refuses to give such notice, or if there be no secretary, the call may be addressed directly to the stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner prescribed in the bylaws. If, however, no provision has been made in the bylaws, then it shall be served in the manner prescribed in Section 63-1-9 NMSA 1978. In case of removal, the vacancy may be immediately filled by election at the same meeting.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 6; C.L. 1884, § 2638; C.L. 1897, § 3820; Code 1915, § 4677; C.S. 1929, § 116-125; 1941 Comp., § 74-117; 1953 Comp., § 69-1-17.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 958 to 960, 963 to 966; 18B Am. Jur. 2d Corporations §§ 1400, 1434 to 1437.

Power of directors of private corporation to remove officers or fellow directors, 63 A.L.R. 776.

19 C.J.S. Corporations §§ 290 to 292.

63-1-18. [Declaring dividends; restrictions; liability of directors.]

The directors must not make or declare dividends, except from the surplus profits arising from the business of the corporation; nor must they withdraw, divide or pay to the stockholders, or any of them, any part of the capital stock, nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the proceedings of the directors at the time, or were not present when the same did happen, shall be, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out or reduced or debt contracted; and no statute of limitations shall be a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock and property of the corporation which may remain after the payment of all its debts, upon the dissolution of the corporation or the expiration of its term of existence.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 5; C.L. 1884, § 2637; C.L. 1897, § 3819; Code 1915, § 4678; C.S. 1929, § 116-126; 1941 Comp., § 74-118; 1953 Comp., § 69-1-18.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 463 to 483; 18B Am. Jur. 2d Corporations §§ 1168 to 1170, 1173, 1175 to 1183, 1185.

18 C.J.S. Corporations §§ 188 to 192.

63-1-19. [Calls for installment payment of subscriptions; notice of assessment; publication; form; default; suit or sale of shares.]

The directors may call in and demand from the stockholders the sums by them subscribed, in installments of not more than ten percent per month: provided, that if the whole capital stock has not been paid in, and the corporation is unable to meet its liabilities, or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount. Notice of each assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks in a newspaper published at the place designated as the principal place of business of the corporation, or if none be published there, in some newspaper nearest to such place, which notice shall be substantially in the following form:

Notice is hereby given that an assessment of ... dollars per share on the capital stock of .... corporation is due and payable at the office of the corporation in ..... (and at such other places as the directors may designate, naming them), within thirty days from date. All stockholders are requested to make payment on or before that time, or such assessments will be promptly collected in the manner prescribed by law, and the bylaws of said corporation.

(Signed)

Secretary.

If after such notice shall have been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, the same may be collected by suit in any court of competent jurisdiction, in the name of the corporation; or so many of such shares may be sold as may be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the bylaws of the corporation: provided, that no sale shall be made except at public auction, to the highest bidder; and at such sale the person who will agree to pay the assessment so due, together with the expenses of advertisement and all other expenses of the sale, for the smallest number of whole shares, shall be deemed to be the highest bidder. All

stock shall be liable to such sale, and all stockholders shall be liable to recovery by action at law, as aforesaid.

History: Laws 1878, ch. 1, ch. [tit.] 5, § 1; C.L. 1884, § 2655; C.L. 1897, § 3837; Code 1915, § 4658; C.S. 1929, § 116-106; 1941 Comp., § 74-119; 1953 Comp., § 69-1-19.

ANNOTATIONS

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

Cross references. — For legal newspapers, *see* 14-11-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 643 to 653, 660 to 680.

18 C.J.S. Corporations §§ 98 to 103; 74 C.J.S. Railroads § 14.

63-1-20. [Assessment remaining unpaid; requirements for new levy.]

No assessment shall be levied while any portion of a previous one remains unpaid, unless:

A. the power of the corporation has been exercised in accordance with the provisions of this chapter, for the purpose of collecting such previous assessment;

B. the collection of the previous assessment has been enjoined; or

C. the assessment falls within the first proviso contained in the preceding section [63-1-19 NMSA 1978].

History: Laws 1878, ch. 1, ch. [tit.] 5, § 2; C.L. 1884, § 2656; C.L. 1897, § 3838; Code 1915, § 4659; C.S. 1929, § 116-107; 1941 Comp., § 74-120; 1953 Comp., § 69-1-20.

ANNOTATIONS

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

Compiler’s notes. — The term "this chapter" refers to Laws 1878, ch. 1, ch. (tit.) 5, the provisions of which are presently compiled as 63-1-19 to 63-1-27 NMSA 1978. *See also* compiler's note to 63-1-1 NMSA 1978.

63-1-21. [Transfer of shares sold for assessment.]

All shares sold for assessments, as provided in Section 63-1-19 NMSA 1978 shall be transferred to the purchaser on the transfer book of the corporation on payment of the assessment and costs.

History: Laws 1878, ch. 1, ch. [tit.] 5, § 3; C.L. 1884, § 2657; C.L. 1897, § 3839; Code 1915, § 4660; C.S. 1929, § 116-108; 1941 Comp., § 74-121; 1953 Comp., § 69-1-21.

ANNOTATIONS

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

63-1-22. [Purchase by corporation of stock sold for assessments; procedure.]

If, at the sale, no bidder offers the amount of the assessments, costs and charges due, the stock may be bid in and purchased by the corporation, through the secretary, president or any director thereof, at the amount of the assessments, costs and charges due; and the amount of the assessments, costs and charges shall be credited, as paid in full, on the books of the corporation, and an entry of the transfer of the stock to the corporation, must be made on the transfer book thereof. While the stock remains the property of the corporation, it shall not be assessable, nor shall any dividends be declared thereon; but all assessments and dividends shall be apportioned upon the stock held by the stockholders of the corporation.

History: Laws 1878, ch. 1, ch. [tit.] 5, § 4; C.L. 1884, § 2658; C.L. 1897, § 3840; Code 1915, § 4661; C.S. 1929, § 116-109; 1941 Comp., § 74-122; 1953 Comp., § 69-1-22.

ANNOTATIONS

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

63-1-23. [Effect of corporation purchase.]

All purchases of its own stock made by any corporation, as provided in the last section [63-1-22 NMSA 1978], shall vest the legal title to the same in the corporation; and the stock so purchased shall be held subject to the control of the stockholders, who may make such disposition of the same as they may deem proper, in accordance with the bylaws of the corporation, or by vote of the stockholders representing a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, as aforesaid, a majority of the remaining shares shall be a majority of the stock for all purposes of election, or voting on any question at the meeting of the stockholders.

History: Laws 1878, ch. 1, ch. [tit.] 5, § 5; C.L. 1884, § 2659; C.L. 1897, § 3841; Code 1915, § 4662; C.S. 1929, § 116-110; 1941 Comp., § 74-123; 1953 Comp., § 69-1-23.

ANNOTATIONS

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

63-1-24. [Extension of time for assessment payment or stock sale; restrictions.]

The dates fixed in any notice of assessment, or notice of delinquent sale, may be extended from time to time for not more than thirty days, by order of the directors, entered in the journal of their proceedings; but no order extending the time for the performance of any act specified in any notice shall be effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

History: Laws 1878, ch. 1, ch. [tit.] 5, § 6; C.L. 1884, § 2660; C.L. 1897, § 3842; Code 1915, § 4663; C.S. 1929, § 116-111; 1941 Comp., § 74-124; 1953 Comp., § 69-1-24.

ANNOTATIONS

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

63-1-25. [Errors in proceedings; effect.]

No assessment shall be invalidated by a failure to make publication of the notice thereof, hereinbefore provided for, or any notice required by the bylaws of the corporation, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, shall be void, and publication shall be begun anew.

History: Laws 1878, ch. 1, ch. [tit.] 5, § 7; C.L. 1884, § 2661; C.L. 1897, § 3843; Code 1915, § 4664; C.S. 1929, § 116-112; 1941 Comp., § 74-125; 1953 Comp., § 69-1-25.

ANNOTATIONS

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

63-1-26. [Actions to recover stock sold for assessments; restrictions.]

No action shall be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect in the notice of sale, or in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold as the case may be, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon, and interest on such sums from the time they were paid; and no such action shall be sustained unless the same shall be commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale shall have been made.

History: Laws 1878, ch. 1, ch. [tit.] 5, § 8; C.L. 1884, § 2662; C.L. 1897, § 3844; Code 1915, § 4665; C.S. 1929, § 116-113; 1941 Comp., § 74-126; 1953 Comp., § 69-1-26.

ANNOTATIONS

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

63-1-27. [Proof of publication of assessment or stock sale for default in payment.]

The publication of notices required by Section 63-1-19 NMSA 1978 or by the bylaws of the corporation may be proved by the affidavit of the printer, foreman or principal clerk of the newspaper in which the same shall have been published; and the affidavit of the secretary or auctioneer shall be prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom and for what price and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary under the corporate seal shall be prima facie evidence of the facts therein stated, in all courts and other places.

History: Laws 1878, ch. 1, ch. [tit.] 5, § 9; C.L. 1884, § 2663; C.L. 1897, § 3845; Code 1915, § 4666; C.S. 1929, § 116-114; 1941 Comp., § 74-127; 1953 Comp., § 69-1-27.

ANNOTATIONS

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

63-1-28. [Stock shares; nature; transfer; restrictions.]

Shares of the capital stock of any railroad corporation shall be personal property, and may be transferred, by endorsement, by the signature of the proprietor, or his attorney, or legal representative and delivery of the certificate; but such transfer shall not be valid, except between the parties thereto, until the same shall have been entered upon the transfer book of the corporation so as to show the names of the parties by,

and to whom, transferred, the number or designation of the shares and the date of transfer: provided, no stock shall be transferred upon the transfer book of the corporation until all previous assessments thereon shall have been fully paid in, nor shall any such transfer be valid except as between the parties thereto, unless at least twenty percent shall have been paid thereon, and certificates issued therefor, and the transfer approved by the board of directors, except by consent of the board of directors.

History: Laws 1878, ch. 1, ch. [tit.] 4, § 1; C.L. 1884, § 2651; C.L. 1897, § 3833; Code 1915, § 4691; C.S. 1929, § 116-139; 1941 Comp., § 74-128; 1953 Comp., § 69-1-28.

ANNOTATIONS

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

Compiler's notes. — The 1915 Code compilers substituted "railroad corporation" for "corporation formed under this act."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 681, 682, 715 to 718.

18 C.J.S. Corporations §§ 150 to 188.

63-1-29. [Issuance of stock certificates.]

Certificates for stock, when fully paid up, signed by the president and secretary, shall be issued to the owners thereof, and provision may be made in the bylaws for issuing certificates prior to full payment, under such restrictions, and for such purposes, as the bylaws may provide.

History: Laws 1878, ch. 1, ch. [tit.] 4, § 2; C.L. 1884, § 2652; C.L. 1897, § 3834; Code 1915, § 4692; C.S. 1929, § 116-140; 1941 Comp., § 74-129; 1953 Comp., § 69-1-29.

ANNOTATIONS

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

63-1-30. [Transfer of nonresident's shares of stock.]

When shares of stock are owned by persons residing out of the state, the president, secretary or directors of the corporation, before entering any transfer thereof on the books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the nonresident owner, or from the person claiming under the transfer, an affidavit or other evidence that the nonresident owner was alive at the date of the transfer, and that his signature to the transfer is genuine; and if such affidavit or other

satisfactory evidence be not furnished, may require from the attorney, agent or claimant, a bond of indemnity with two sureties, satisfactory to the board of directors; or if not so satisfactory, then one approved by a district or county judge of the county in which the principal office of the corporation is situated, conditioned to protect and indemnify the corporation against any liability to the nonresident owner or his or her legal representatives, in case of his or her death before the transfer, and if such affidavit or other evidence, or bond, be not furnished when required as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

No person holding stock as executor, guardian or trustee, or holding it as collateral security or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian or trustee, shall be liable in like manner to the same extent as testator or intestate, or as the ward or person interested in the trust fund would have been if he had been living and competent to act and hold the stock in his own name.

History: Laws 1878, ch. 1, ch. [tit.] 4, § 4; C.L. 1884, § 2654; C.L. 1897, § 3836; Laws 1899, ch. 29, § 4; Code 1915, § 4694; C.S. 1929, § 116-142; 1941 Comp., § 74-131; 1953 Comp., § 69-1-31.

ANNOTATIONS

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

63-1-31. [Call for stockholders' meeting when authority is lacking; warrant of magistrate.]

Whenever, from any cause, there is no person authorized to call or preside at a meeting of the stockholders, any justice of the peace [magistrate] of the county where the principal place of business of the corporation is established, may, on written application of three or more of the stockholders, issue a warrant to one of the stockholders directing him to call a meeting of the stockholders, by giving the notice required in other cases; and said justice [magistrate] may in the same warrant direct such stockholder to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 7; C.L. 1884, § 2639; C.L. 1897, § 3821; Code 1915, § 4679; C.S. 1929, § 116-127; 1941 Comp., § 74-132; 1953 Comp., § 69-1-32.

ANNOTATIONS

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

The office of justice of the peace was abolished, and the jurisdiction, powers and duties were transferred to the magistrate court. *See* 35-1-38 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 958, 989.

63-1-32. [Quorum for stockholders' meeting; adjournment; record.]

At all meetings of the stockholders for any purpose, a majority of the subscribed capital stock must be represented by the holders thereof, in person or by proxy, in writing. Every person acting thereat, in person, or by proxy, or by representative, must be a bona fide stockholder, having stock in his own name on the stock books of the corporation, at least ten days prior to the meeting. Any election or vote had, other than in accordance with the provisions of this chapter, shall be voidable at the instance of absent stockholders, and may be set aside upon petition to the district court for the county where the same was had. Any regular or called meeting of the stockholders may be adjourned from day to day, or from time to time, if, for any cause, there are not present stockholders representing a majority of the subscribed stock, or no election or majority vote had. Such adjournments, and the reasons therefor, shall be noted in the minutes of the proceedings of the meeting, which shall be recorded in the journal of proceedings of the board of directors.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 8; C.L. 1884, § 2640; C.L. 1897, § 3822; Code 1915, § 4680; C.S. 1929, § 116-128; 1941 Comp., § 74-133; 1953 Comp., § 69-1-33.

ANNOTATIONS

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

Compiler’s notes. — The term "this chapter" refers to Laws 1878, ch. 1, ch. (tit.) 3, the provisions of which are presently compiled as 63-1-12 to 63-1-18 and 63-1-31 to 63-1-40 NMSA 1978. *See also* compiler's note to 63-1-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 993 to 998, 1012 to 1014, 1026, 1029, 1069; 18B Am. Jur. 2d Corporations §§ 1372, 1373.

18 C.J.S. Corporations § 213.

63-1-33. [Postponement of election.]

If from any cause an election does not take place on the day appointed in the bylaws, or if no day be appointed in the bylaws, then on the day appointed in Section

63-1-13 NMSA 1978, it may be held on any day thereafter as is provided for in such bylaws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as provided in Section 63-1-17 NMSA 1978.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 10; C.L. 1884, § 2642; C.L. 1897, § 3824; Code 1915, § 4682; C.S. 1929, § 116-130; 1941 Comp., § 74-135; 1953 Comp., § 69-1-35.

ANNOTATIONS

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

63-1-34. [Court review of elections; notice.]

Upon the application of any person or body corporate aggrieved by any election held by any railroad corporation, or any proceedings thereof, the district judge of the district in which such election has been held must proceed forthwith, summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters complained of; and thereupon confirm the election, order a new one or direct such other relief in the premises as accords with right and justice. Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 11; C.L. 1884, § 2643; C.L. 1897, § 3825; Code 1915, § 4683; C.S. 1929, § 116-131; 1941 Comp., § 74-136; 1953 Comp., § 69-1-36.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations § 1159.

63-1-35. [Waiver of notice of stockholders' meeting.]

When all the stockholders are present at any meeting, however called or notified, and sign a written consent thereto, on the record of such meeting, the doings of such meeting shall be as valid as if had at a meeting otherwise legally called and noticed.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 13; C.L. 1884, § 2645; C.L. 1897, § 3827; Code 1915, § 4685; C.S. 1929, § 116-133; 1941 Comp., § 74-137; 1953 Comp., § 69-1-37.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 980, 981; 18B Am. Jur. 2d Corporations § 1370.

18 C.J.S. Corporations § 212.

63-1-36. [Validity of proceedings where notice of meeting is waived.]

The stockholders, when assembled, as provided in the last section [63-1-35 NMSA 1978], may elect officers to fill all vacancies then existing, and may act upon such other business as may lawfully be transacted at regular meetings of the stockholders.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 14; C.L. 1884, § 2646; C.L. 1897, § 3828; Code 1915, § 4686; C.S. 1929, § 116-134; 1941 Comp., § 74-138; 1953 Comp., § 69-1-38.

ANNOTATIONS

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

63-1-37. [Place for stockholders' meeting.]

The meetings of stockholders must be held at the office or principal place of business of the corporation: provided, that nothing in this chapter shall be construed to prevent or prohibit any railroad corporation from holding the meetings of its stockholders or board of directors at the principal place of business of such corporation in any other state or territory where a majority of the stock of such corporation is held or owned therein.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 15; C.L. 1884, § 2647; C.L. 1897, § 3829; Laws 1899, ch. 29, § 2; Code 1915, § 4687; C.S. 1929, § 116-135; 1941 Comp., § 74-139; 1953 Comp., § 69-1-39.

ANNOTATIONS

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

Compiler's notes. — The 1915 Code compilers substituted "this chapter" for "this act."

For meaning of "this chapter", *see* compiler’s notes to 63-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 956, 957.

63-1-38. [Change of principal place of business.]

Every railroad corporation may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this state. Before such change is made, the assent, in writing, of the holders of two-thirds of the subscribed capital stock must be obtained and filed in the office of the secretary of the corporation. When such consent is obtained and filed, notice of the intended removal or change must be published at least once a week for three successive weeks, in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper published in an adjoning [adjoining] county, gving [giving] the name of the county or city or town where it is situated, and that to which it is intended to remove it.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 17; C.L. 1884, § 2649; C.L. 1897, § 3831; Code 1915, § 4689; C.S. 1929, § 116-137; 1941 Comp., § 74-140; 1953 Comp., § 69-1-40.

ANNOTATIONS

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

Cross references. — For legal newspapers, *see* 14-11-2 NMSA 1978.

63-1-39. [Corporate records; debts of corporation; minutes of all meetings; list of stockholders; stock transfer book.]

The directors must cause a book to be kept by the secretary to be called, record of corporation debts, in which the secretary shall record all written contracts of the directors, and a succinct statement of the debts of the corporation, the amount thereof and to whom contracted, which book shall at all times be open to inspection by any stockholder or other party in interest. When any contract or debt shall be paid or discharged, the secretary shall make a memorandum thereof in the margin, or in some other convenient place in the record where the same is recorded. They must also cause a complete record to be kept by the secretary, of the proceedings of all meetings of the board of directors and of the stockholders, in a book provided specially for that purpose. Such record must show the name of each director present at the opening of each meeting of the board and at what stage of the proceedings any director not present at the opening appeared, and also at what stage of the proceedings any director may absent himself on leave or otherwise. The record must also show the name of each director voting against any proposition, whenever any director may require the same to be placed upon the record. Prior to the adjournment of each meeting of the board or of the stockholders, as the case may be, the record of the proceedings of such meeting must be read and approved. The directors must also cause such other books to [be]

kept by the secretary as may be deemed necessary, or prescribed by the directors, in which all the business transactions of the corporation must be plainly and accurately entered and kept; also a book to be labeled, book of stockholders, which shall contain the names of all persons alphabetically arranged, who are, or shall have been, stockholders of the corporation, showing their places of residence, if known, the number of shares of stock held by them respectively, the time when they, respectively, became the owners of such shares, the amount of cash actually paid to the company by them respectively for their stock and also the time when they may have ceased to be stockholders. Said book of stockholders, during the office hours of the secretary, shall be open to the inspection of stockholders and creditors of the corporation and their personal representatives. The directors must also cause to be kept by the secretary a book to be labeled, transfer book, in which all transfers of stock must be entered. Said transfer book, shall be received in all courts and places as prima facie evidence of the facts therein stated.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 18; C.L. 1884, § 2650; C.L. 1897, § 3832; Code 1915, § 4690; C.S. 1929, § 116-138; 1941 Comp., § 74-141; 1953 Comp., § 69-1-41.

ANNOTATIONS

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

Use of oral testimony where no records kept. — Although this section requires the record of proceedings of directors to be kept in a special book, the admission of oral testimony of the chief engineer of a railway company to prove adoption by the board of directors of a proposed railway line was not error, no record of the adoption having been made. *Denver & Rio Grande R.R. Co. v. Arizona & Colo. R.R. Co.*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 333 to 338, 348 to 352, 357 to 362, 715, 951, 952, 1029 to 1031; 18B Am. Jur. 2d Corporations § 1479.

18 C.J.S. Corporations §§ 65, 179, 214.

63-1-40. [False entries or reports; liability.]

Any officer of a railroad corporation who wilfully gives a certificate, or wilfully makes an official report, or gives public notice, or makes an entry in any of the records or books of the corporation concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom, to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable for such damages.

History: Laws 1878, ch. 1, ch. [tit.] 3, § 12; C.L. 1884, § 2664; C.L. 1897, § 3826; Code 1915, § 4684; C.S. 1929, § 116-132; 1941 Comp., § 74-142; 1953 Comp., § 69-1-42.

ANNOTATIONS

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

63-1-41. [Annual report to public regulation commission.]

Every railroad corporation must make an annual report to the state corporation commission [public regulation commission] of the operations of the year ending on the thirty-first day of December, which report shall be verified by the president or general superintendent, and the secretary and treasurer of the corporation. Such report must be filed in the office of said commission on or before the first day of March next ensuing, and shall state:

A. the capital stock, and the amount thereof actually paid in;

B. the amount paid for the purchase of lands for the construction of the road, for buildings, engines and cars, respectively;

C. the amount and nature of the indebtedness of the corporation, and the amount due to it;

D. the amount received for the transportation of passengers, property, mails, express matter, respectively, and the amount received from any other sources;

E. the amount of freight transported, specifying the quantity in tons;

F. the amount paid for the repair of engines, cars, buildings and other expenses, in gross, showing the current expense of running its road;

G. the number and amount of dividends, and when paid;

H. the number of engine houses and shops, of engines and cars and their character.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 22; C.L. 1884, § 2686; C.L. 1897, § 3875; Code 1915, § 4695; C.S. 1929, § 116-143; 1941 Comp., § 74-143; 1953 Comp., § 69-1-43.

ANNOTATIONS

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

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

Cross references. — For Corporate Reports Act, *see* 53-5-1 to 53-5-9 NMSA 1978.

Compiler's notes. — The 1915 Code compilers substituted "state corporation commission" and "said commission" for "secretary of this territory" in the preliminary paragraph to be consistent with N.M. Const., art. XI, § 6. Article XI, § 6 was repealed and a new Article XI, § 1 was adopted effective January 1, 1999 creating the public regulation commission.

63-1-42. Change of name.

Any corporation formed under the laws of this state may at any time by resolution of its stockholders, at a regular or special meeting, change its corporate name. After the resolution has been adopted, the president of the company or corporation seeking to change its name, and the secretary thereof, shall sign a certificate, attested with the seal of the company, which shall state, substantially, that the company or corporation, by resolution duly adopted, agreed to change the original corporate name of the corporation, to whatever name has been agreed on, and under the new corporate name the corporation proposes, from and after the date of the certificate, to do, carry on and transact all business pertaining to the corporation, which shall be filed in the office of the secretary of state, and immediately upon the filing of the certificate, the name of the corporation shall be changed to the name set forth in the certificate.

History: Laws 1871-1872, ch. 13, § 8; C.L. 1884, § 2708; C.L. 1897, § 3897; Code 1915, § 4732; C.S. 1929, § 116-701; 1941 Comp., § 74-144; 1953 Comp., § 69-1-44; 2013, ch. 75, § 37.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that a certificate of name change be filed with the secretary of state; added the title of the section; and in the second sentence, after "filed in the office of the", deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18A Am. Jur. 2d Corporations §§ 287, 288.

ARTICLE 2
Powers and Construction of Roads

63-2-1. [Corporate powers.]

Every railroad corporation as such shall have power:

A. of succession by its corporate name for the period limited in its articles of incorporation;

B. to sue and be sued in any court;

C. to make and use a common seal, and alter the same at pleasure;

D. to acquire, purchase, hold and convey such real and personal estate as the purposes of the corporation may require;

E. to appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

F. to make bylaws, not inconsistent with any existing law, for the management of its business and property, the regulation of its affairs and for the transfer of its stock;

G. to admit stockholders and to sell their stock or shares for the payment of assessments or installments;

H. to construct, maintain and operate telegraph lines in connection with its railroad and branches;

I. to enter into any obligations or contracts necessary or convenient to the transaction of its ordinary affairs, or for carrying out the purposes of the corporation; and generally, such corporation shall have and possess, for the purpose of construction, maintaining and operating its railroads and telegraph lines, and carrying on its business, all the rights, powers and privileges which are enjoyed by natural persons;

J. to construct such branches from its main line or intermediate branches as it may from time to time deem necessary to increase its business and accommodate the trade or travel of the public.

History: Laws 1878, ch. 1, ch. [tit.] 6, § 1; C.L. 1884, § 2664; C.L. 1897, § 3846; Laws 1899, ch. 29, § 3; Code 1915, § 4696; C.S. 1929, § 116-201; 1941 Comp., § 74-201; 1953 Comp., § 69-2-1.

ANNOTATIONS

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

Trustees in bankruptcy subject to franchise tax. — Trustees in bankruptcy of a foreign corporation are subject to a state franchise tax for doing business or continuing in business exactly the same as if the bankrupt corporation was conducting the business. *Lowden v. SCC*, 1938-NMSC-016, 42 N.M. 254, 76 P.2d 1139.

Common seal may be altered by board of directors only, and not by the corporation solicitor. *Saxton v. Texas, Santa Fe & N.R.R.*, 1888-NMSC-006, 4 N.M. (Gild.) 378, 16 P. 851.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18B Am. Jur. 2d Corporations §§ 1990 to 2008; 65 Am. Jur. 2d Railroads § 12.

Right to give exclusive privilege of soliciting patronage at railroad stations or on trains, 15 A.L.R. 356.

Injunction against repeated or continuous trespasses on railroad property, 32 A.L.R. 544, 60 A.L.R.2d 310.

Proper remedy for interference with right-of-way, 47 A.L.R. 563.

Power of corporation after expiration or forfeiture of its charter, 47 A.L.R. 1288, 97 A.L.R. 477.

Right of railroad company to use right-of-way for housing or boarding employees or others, 59 A.L.R. 1287.

Right of railroad company to use or grant use of land in right-of-way for other than railroad purposes, 94 A.L.R. 522, 149 A.L.R. 378.

Adverse possession or prescription nature, and extent of interest acquired by railroad in right-of-way by, 127 A.L.R. 517.

Title or interest acquired by railroad in exercise of eminent domain as fee or easement, 155 A.L.R. 381.

What losses are within clause of contract purporting to relieve the railroad from liability, 2 A.L.R.2d 1074.

74 C.J.S. Railroads § 16.

63-2-2. Additional powers.

In addition to those powers enumerated in Section 63-2-1 NMSA 1978, every railroad corporation shall have the following powers:

A. to cause such examinations and surveys to be made as may be necessary to the selection of the most suitable routes for its railroad and telegraph lines, and for that purpose, by its officers and agents, to enter upon the lands and waters of the state, of private persons and of private and public corporations, subject, however, to responsibility for all damages that it may do thereto;

B. to take, hold and convey, by deed or otherwise, the same as a natural person, such voluntary grants and donations of real and personal property as may be made to aid the construction and maintenance and to provide for the accommodation of its railroad and telegraph lines, or either thereof;

C. to purchase and, by voluntary grants and donations, to receive and take and, by its officers, engineers, surveyors and agents, to enter upon, possess, hold and use in any manner it may deem proper all such lands and other property as its directors may deem necessary, proper and convenient for the construction, maintenance and operation of its railroad and telegraph lines, or either thereof, and for the erection of stations, depots, water tanks, side tracks, turnouts, turntables, yards, workshops, warehouses and for all other purposes necessary or convenient to the corporation in the transaction of its business;

D. to lay out its railroad and branches, not exceeding two hundred feet wide, and to construct and maintain the same, with single or double track, with such appendages as its directors may deem necessary for the convenient use thereof. For the purpose of making embankments, excavations, ditches, drains, culverts and the like and of procuring timber, stone, gravel and other materials for the proper construction and security of its railroad and branches, the corporation may take and occupy as much more land as its directors may deem necessary or convenient for the purposes aforesaid;

E. to construct its railroads and telegraphs across, along or upon any stream of water, water course, street, avenue or highway or across any railway, canal, ditch or flume that its railroad and telegraph, or either thereof, shall intersect, cross or run along; but the corporation shall restore such stream, water courses, streets, avenues, highways, railways, canals, ditches and flumes, so intersected, to their former state, as near as may be, so as not to unnecessarily impair their use or injure their franchises. Wherever its road crosses a navigable stream or body of water, the bridge shall be constructed with a draw, if a draw is necessary, to avoid obstructing the navigation of such stream or body of water;

F. to cross, intersect, join and unite its railroad with any other railroads that have been constructed or that may be constructed at any point on the routes thereof, and upon the grounds of such other railroad companies, with the necessary turnouts, sidings and switches and such other conveniences and appliances as may be necessary to make and complete the crossings, intersections and connections. Such other railroad companies shall unite with the directors of the corporation in making the crossings, intersections and connections and shall grant the facilities therefor upon such terms and conditions as may be agreed upon between them; but if they are unable to agree upon the compensation to be made therefor or the points at which or the manner in which such crossings, intersections and connections shall be made, the same shall be ascertained, determined and declared in the manner and by the proceedings hereinafter provided for the taking of private property for the use of the corporation;

G. to purchase or take by donation or otherwise, land, timber, stone, gravel or other materials to be used in the construction and maintenance of its railroads and telegraphs, or either thereof, and if the same cannot be obtained by agreement with the owners thereof, to take the same by the proceedings and in the manner hereinafter provided for the taking of private property for the use of the corporation;

H. to take, transport, carry and convey persons and property on its railroads by the force and power of steam, of animals or any other mechanical power, or by any combination thereof, and to collect and receive tolls or compensation therefor;

I. to erect and maintain all necessary and convenient buildings, stations, depots, watering places, fixtures and machinery for the accommodation of its passengers, freight and business and to obtain and hold, by purchase, donation or condemnation as hereinafter provided, lands and other property necessary therefor;

J. to take, possess and enjoy, by purchase, donation or condemnation, such natural springs and streams of water, or so much thereof as may be necessary for its uses and purposes in operating its railroad, together with the right of way thereto for pipes, ditches, canals or aqueducts for the conveyance thereof;

K. to regulate the time and manner in which passengers and property shall be transported over its roads and the tolls or compensation to be paid therefor; provided that it shall be unlawful for such corporation to charge more than six cents ($.06) per mile for each passenger and fifteen cents ($.15) per mile for each ton of two thousand pounds, or forty cubic feet, of freight transported on its roads; provided, further, that in no case shall such corporation be required to receive less than twenty-five cents ($.25) for any one lot of freight for any distance; provided, further, that such corporation shall not be required to transport domestic animals, nitroglycerine compounds, gunpowder, acids, phosphorous and other explosive or destructive combustible materials except upon such terms, conditions and rates of freightage as its board of directors may from time to time prescribe and establish;

L. to regulate the force and speed of its locomotives, cars, trains or other machinery used on its roads and to establish, execute and enforce all needful and proper rules and regulations for the management of its trains, the conduct of its business and to secure the safety, comfort and good behavior of its passengers and employees and agents and for the prevention and suppression of gambling of every kind and description on its cars or within its depots or station grounds;

M. to expel from its cars at any stopping place, using no more force than may be necessary, any passenger who, upon demand, refuses to pay the passenger's fare or behaves in a rude, riotous or disorderly manner toward other passengers or the employees of such corporations in charge of such cars or, upon the passenger's attention being called thereto, persists in violating the rules of the corporation against gambling upon its cars;

N. to borrow on the credit of the corporation and under authority of its board of directors or in such manner as the board may prescribe under regulation, resolution or otherwise such sums of money as may be necessary for constructing and equipping its railroad and telegraph lines or for making extensions or additions thereto or betterments or improvements thereof or for funding or refunding its outstanding indebtedness or retiring its obligations and for such other purposes as may be deemed proper in the conduct of its business or in the execution of its powers and to issue and dispose of its bonds and promissory notes or obligations therefor in denominations of not less than one hundred dollars ($100) or any multiple thereof and at a rate of interest not exceeding ten percent per year and for such amounts as the board of directors may deem proper, although in excess of its capital stock. To secure the payment of such bonds, notes or obligations or the bonds or obligations of any other corporation that may be issued in its interest, or for any of the above purposes or to raise funds therefor, it may mortgage or convey in trust its corporate property or any part thereof and the rights, privileges, powers and franchises in connection therewith or appurtenant thereto;

O. to grant to any railroad corporation the right to use in common with it its railroad and telegraph lines or any part thereof. In making such grants and in agreeing upon and prescribing the terms and conditions thereof and the amount and nature of the consideration therefor, such corporation shall have all the rights, powers, capacities and abilities that are enjoyed by natural persons;

P. to take grants of the right to use in common railroad and telegraph lines of other railroad corporations and, in taking and receiving such grants, to have and enjoy the same rights, powers, capacities and abilities that are granted in Subsection O of this section;

Q. to change the line of its road, in whole or in part, whenever a majority of its directors may so determine; provided no such change shall vary the general route of such road as described in its articles of incorporation. The land required for such new line may be acquired by contract with the owners thereof or by condemnation, as provided by law, as in the case of the original line;

R. to increase or diminish its capital stock if at any time it appears that the amount thereof, as fixed in its articles of incorporation, is either more or less than is actually required for constructing, equipping, operating and maintaining its road and telegraph lines. Such increase or decrease shall not be made except by a vote of stockholders representing at least two-thirds of the subscribed capital stock. A certified copy of the proceedings of the meeting and its action in the premises, under the seal of the corporation, shall be filed in the office of the secretary of state and be, by the secretary of state, attached to the articles of incorporation on file in the secretary of state's office; and

S. to consolidate with one or more railroad corporations or under the laws of any other state or territory, its capital stock, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, obligations, debts, liabilities and

assets of every kind and description upon such terms and in such manner as may be agreed upon by the respective boards of directors; provided no such consolidation shall take effect until it has been ratified and confirmed in writing by stockholders of the respective corporations representing three-fourths of the subscribed capital stock of their respective corporations. In case of such consolidation, articles of incorporation and consolidation shall be prepared setting forth:

(1) the name of the new corporation;

(2) the purpose for which it is formed;

(3) the place where its principal business is to be transacted;

(4) the term for which it is to exist, which shall not exceed fifty years;

(5) the number of its directors, which shall not be less than five nor more than eleven, and the names and residences of the persons appointed to act as such until their successors are elected and qualified;

(6) the amount of its capital stock, which shall not exceed the amount actually required for the purposes of the new corporation, as estimated by competent engineers, and the number of shares into which it is divided;

(7) the amount of stock actually subscribed and by whom;

(8) the termini of its road and branches;

(9) the estimated length of its road and branches;

(10) that at least ten percent of its subscribed capital stock has been paid in;

(11) the names of the constituent corporations and the terms and conditions of consolidation in full. The articles of incorporation and consolidation shall be signed and countersigned by the presidents and secretaries of the several constituent corporations and sealed with their corporate seals. There shall be annexed thereto memoranda of the ratification and confirmation thereof by the stockholders of each constituent corporation, which must be respectively signed by stockholders representing at least three-fourths of the capital stock of their respective corporations. When completed, the articles shall be filed in the office of the secretary of state, and thereupon the constituent corporations named therein must be deemed and held to have become extinct in all courts and places and the new corporation shall be deemed and held in all courts and places to have succeeded to all their several capital stocks, properties, roads, equipments, adjuncts, franchises, claims, demands, contracts, agreements, assets, choses and rights in action, of every kind and description, both at law and in equity, and to be entitled to possess, enjoy and enforce the same and every thereof, as fully and completely as either and every of its constituents might have done had no consolidation

taken place. The consolidated or new corporation shall also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof in respect to all their contracts and agreements with other parties and all their debts, obligations and liabilities of every kind and nature to any persons, corporations or bodies politic. The new corporation shall sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued, at law or in equity, had no such consolidation been made. Such consolidated or new corporation shall possess, enjoy and exercise all its franchises, properties, powers, privileges, abilities, rights and immunities under the provisions of this chapter, and shall conduct its business according to its provisions and be subject to all its pains and penalties. Nothing in this paragraph shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation and satisfaction obtained out of the property that, at the date of the consolidation, belonged to the constituent, that was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation; and

(12) every railroad corporation, in addition to the foregoing, shall have such further powers as may be necessary or convenient to enable it to exercise and enjoy, fully and completely, all the powers granted by this chapter and, generally all such powers as are usually conferred upon, required and exercised by railroad corporations and, in the exercise of its powers and every thereof, shall have and enjoy all the rights, privileges, abilities and capacities that are enjoyed by natural persons.

History: Laws 1878, ch. 1, ch. [tit.] 6, § 2; C.L. 1884, § 2665; C.L. 1897, § 3847; Laws 1913, ch. 31, § 1; Code 1915, § 4697; Laws 1915, ch. 20, § 1; C.S. 1929, § 116-202; 1941 Comp., § 74-202; 1953 Comp., § 69-2-2; 2013, ch. 75, § 38.

ANNOTATIONS

Compiler's notes. — For meaning of "this chapter", *see* compiler's notes to 63-1-8 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required that a certificate of proceedings and action to change the corporation's capital stock be filed with the secretary of state; and added the title of the section; in the introductory sentence, after "In addition to", deleted "the foregoing" and added "those powers enumerated in Section 63-2-1 NMSA 1978"; and in Subsection R, in the second sentence, after "filed in the office of the", deleted "state corporation commission" and added "secretary of state", after "and be, by", deleted "said commission" and added "the secretary of state", and after "incorporation on file in" deleted "it" and added "the secretary of state's".

Converging lines of railroad were properly connected by constructing a connecting line at a short distance from the converging point, even though this involved abandonment of one of the lines extending between the connecting line and the former

converging point. *Territory v. Eastern Ry. of N.M.*, 1910-NMSC-051, 15 N.M. 591, 110 P. 852.

Abutting property owner is entitled to compensation for damages resulting from construction of railroad on a street. *N.M. R.R. Co. v. Hendricks*, 1892-NMSC-025, 6 N.M. 611, 30 P. 901.

In computing damages resulting to abutting property owner from construction of a railroad on a street, the damages are determined by comparing the value of the property immediately before and after the construction of the road. *N.M. R.R. Co. v. Hendricks*, 1892-NMSC-025, 6 N.M. 611, 30 P. 901.

Rate-making power of state corporation commission (now public regulation commission) to control. — The power granted in Subsection K yields to the rate-making power of the state corporation commission (now public regulation commission). *San Juan Coal & Coke Co. v. Santa Fe, S.J. & N. R.R.*, 1931-NMSC-039, 35 N.M. 512, 2 P.2d 305.

Nature of rates fixed below maximum. — In view of this section and N.M. Const., art. XI, intrastate freight rates specified in a regularly filed and published tariff schedule, if below the maximum fixed by the legislature, and remaining uncanceled, are legislature-made or commission-made rates, as distinguished from purely carrier-made rates. *Kemp Lumber Co. v. Atchison, T. & S.F. Ry.*, 1932-NMSC-020, 36 N.M. 126, 9 P.2d 387 (decided under art. XI, N.M. constitution, now repealed and replaced).

Sufficiency of pleadings. — Averment by railroad in trespass action that it had "adopted such location" was sufficient against demurrer, without allegation that it was done by its board of directors. *Arizona & Colo. R.R. Co. v. Denver & Rio Grande R.R. Co.*, 1906-NMSC-007, 13 N.M. 345, 84 P. 1018, *aff'd*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

Generally, as to recovery where statute sets maximum rates. — A statute fixing maximum rates amounts to a declaration that rates below maximum are just and reasonable. For a shipper to recover damages for overcharges, it must establish that rates exceed the schedule. *Kemp Lumber Co. v. Atchison, T. & S.F. Ry.*, 1932-NMSC-020, 36 N.M. 126, 9 P.2d 387.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 18B Am. Jur. 2d Corporations §§ 1990 to 2008; 65 Am. Jur. 2d Railroads § 12.

Effect of grant of land in fee for railroad purposes on right to underlying minerals, 5 A.L.R. 1501, 39 A.L.R. 1340.

Liability of lessee of railroad for debts of predecessor, 15 A.L.R. 1165, 30 A.L.R. 558, 39 A.L.R. 143, 40 A.L.R. 273, 149 A.L.R. 787.

Liability for injuries caused by breach by lessee of positive duties correlative to corporate franchise, 28 A.L.R. 140.

Public utility commission's power to require company to grant or renew leases or other privileges on railroad right-of-way, 47 A.L.R. 109.

Judicial power in respect to consolidation or merger of railroads, 51 A.L.R. 1249.

Right of railroad company to use, or grant use of, land on right-of-way for other than railroad purposes, 94 A.L.R. 522, 149 A.L.R. 378.

74 C.J.S. Railroads § 16.

63-2-3. [Sale to railroad of property of infant or insane person; approval by probate court.]

If it shall become necessary, for any of the aforesaid purposes of such corporation, to acquire any land, or any right, title, interest or estate therein, which is the property of an infant, idiot or insane person, the guardian, executor or administrator, as the case may be, may sell and convey the same to such corporation, but such sale and conveyance shall not be valid, unless approved by the probate court, or the judge thereof, within whose jurisdiction such lands shall be situated; and the judge of such court is hereby authorized to examine into the terms and conditions of such sales and conveyances, and if he finds them to be just, fair and proper, he shall enter his approval upon the records of said court, and endorse the same upon such conveyances, and thereupon, such conveyances shall have the same force and effect as conveyances made by persons competent to convey in their own names. Should there be no guardian, executor or administrator competent to make such sale and conveyance, it shall be the duty of such judge, upon the petition of any relative or friend acting for the benefit and in the interest of such infant, idiot or insane person, to appoint a guardian for the purpose of making such sale and conveyance, who shall be required to give a bond, with sureties, to be approved by said judge, for the faithful performance of his trust. For the purpose of transacting the business provided for in this section, said court shall be deemed to be always open, and a complete record of its proceedings therein shall be kept as in other cases.

History: Laws 1878, ch. 1, ch. [tit.] 6, § 3; C.L. 1884, § 2666; C.L. 1897, § 3848; Code 1915, § 4698; C.S. 1929, § 116-203; 1941 Comp., § 74-203; 1953 Comp., § 69-2-3.

ANNOTATIONS

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

63-2-4. [Power to use highway, air and water transports; limitations.]

Every corporation now or hereafter incorporated under the laws of the state of New Mexico, or under the laws of any other state and lawfully authorized and admitted to do business in the state of New Mexico, which is now or may hereafter be authorized by law to own and/or operate railroads in the state of New Mexico, shall, in addition to the powers now conferred by the statutes of the state of New Mexico, have power and authority to engage in the transportation of persons, property and mail by highway transport, air transport and water transport; provided, that any such corporation so engaged in the transportation of persons, property and mail by highway transport, air transport and water transport, shall, in the exercise of any and all of such rights and powers, be subject to all lawful regulations and requirements as are now or may hereafter be prescribed by the statutes of the state of New Mexico relating to certificates of convenience and necessity, permits, registration and public regulations governing the operation of like transportation service and facilities by any person or corporation; and, provided further, than any such corporation organized under the laws of the state of New Mexico for the purpose of owning and/or operating railroads, may exercise in any other state any power hereby granted only in conformity with and to the extent permitted by the laws of such other state.

History: Laws 1933, ch. 183, § 1; 1941 Comp., § 74-204; 1953 Comp., § 69-2-4.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads §§ 22, 23.

63-2-5. [Methods of exercising rights and powers.]

Any corporation so authorized by law to own or operate railroads in the state of New Mexico, may exercise the rights and powers hereby granted by one or more of the following methods:

A. by direct operation of equipment and facilities owned, leased and/or otherwise held or controlled by it;

B. through operations conducted by a corporation owned or controlled in whole or in part by such corporation authorized by law to own and/or operate railroads in the state of New Mexico, either through stock ownership or otherwise, with equipment and facilities owned, leased and/or otherwise held by either or both of such corporations;

C. by operations conducted under contract with such corporation authorized by law to own and/or operate railroads in the state of New Mexico, by a corporation

independently owned or controlled, or by an individual or association of individuals, with equipment owned, leased and/or otherwise held or controlled by either or both of the parties to such contract.

History: Laws 1933, ch. 183, § 2; 1941 Comp., § 74-205; 1953 Comp., § 69-2-5.

ANNOTATIONS

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

63-2-6. [Power to borrow, purchase and mortgage.]

Any railroad company heretofore or hereafter organized under the laws of New Mexico, shall have power to borrow money and purchase property, real and personal, for the use of the corporation, and to mortgage and pledge all or any part of its corporate franchises and property in possession or subsequently to be acquired, as security for the payment of the money so borrowed and for the payment of the purchase money for the property so purchased.

History: Laws 1871-1872, ch. 13, § 1; C.L. 1884, § 2700; C.L. 1897, § 3890; Code 1915, § 4733; C.S. 1929, § 116-702; 1941 Comp., § 74-206; 1953 Comp., § 69-2-6.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads §§ 149 to 159.

74 C.J.S. Railroads §§ 246, 282.

63-2-7. [State lands; granting right-of-way over and right to appropriate water thereon.]

There is hereby granted to every railroad corporation formed under the laws of New Mexico a right-of-way for its railroads and telegraphs to the width of one hundred feet on each side of the center line of the track over and through any of the swamp or overflowed lands or other lands, which belonged to the territory of New Mexico, and in cases where deep excavations, or heavy embankments, or other cuttings, ditches, drains, canals, culverts or structures to protect the road beds and to facilitate the use and enjoyment of the same, is or may be required for the grade or other uses of said roads, then, at such places, a greater width of such lands may be taken by such corporation, and the same is hereby further granted to such corporation, not exceeding, in addition, five hundred feet wide. And the right is hereby further granted to such corporation to locate, occupy and hold so much of said lands as may be necessary for

sites and grounds for watering places, depots, stations or other buildings or structures, along the line of said railroads necessary for the accommodation of the public, the operating of said roads and the transaction of the business of such corporation. And the further right is hereby granted to such corporation to appropriate to its use, by means of pipes, ditches, aqueducts or other conduits, so much of the waters of any springs or streams on said lands as may be necessary to the operating of the roads and the transaction of the business of such corporation, together with the right-of-way over said lands to such springs or streams for such pipes, ditches, aqueducts or other conduits.

History: Laws 1878, ch. 1, ch. [tit.] 9, § 1; C.L. 1884, § 2689; C.L. 1897, 3878; Code 1915, § 4700; C.S. 1929, § 116-301; 1941 Comp., § 74-209; 1953 Comp., § 69-2-9.

ANNOTATIONS

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

Compiler's notes. — On July 3, 1914, the attorney general held that this section had been superseded by Laws 1899, ch. 74, § 11, Laws 1905, ch. 111, § 13, Laws 1907, ch. 104, § 30, as amended by Laws 1909, ch. 25, § 1, and by Laws 1912, ch. 82, § 53 (19-7-57 NMSA 1978). The 1915 Code compilers substituted "which belonged to the territory of New Mexico" for "which now belong to this territory or may hereafter become the property of this territory," making this section applicable to former territorial lands, while 19-7-57 NMSA 1978 might be applicable only to other state lands. However, insofar as land granted to the territory by the federal government is concerned, the same opinion of the attorney general appears still applicable, since it holds that such lands cannot be given away but must be used for the purposes and in the manner provided by the acts of congress which made the donations.

Cross references. — For state and municipalities not to aid private enterprise, *see* N.M. Const., art. IX, § 14.

For fencing of railroads and liability for animals killed, *see* 77-16-16 to 77-16-18 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction of statutes requiring railroads to provide for the drainage or flow of waters, 19 A.L.R.2d 967.

Railroads' liability for obstruction of stream by debris or waste causing damage by flooding or the like, 29 A.L.R.2d 447.

63-2-8. [Municipalities may grant use of streets.]

Any county, city or town in this state is empowered, by vote of its governing body, to give, grant or donate to any such railroad corporation, the use of any of the streets or highways which may be necessary or convenient to enable such corporation to reach

an accessible point for a depot or station in such county, city or town, or to pass through the same on as direct a route as possible so as to accommodate the traveling and commercial interests of such county, city or town.

History: Laws 1878, ch. 1, ch. [tit.] 9, § 2; C.L. 1884, § 2690; C.L. 1897, § 3879; Code 1915, § 4701; C.S. 1929, § 116-302; 1941 Comp., § 74-210; 1953 Comp., § 69-2-10.

ANNOTATIONS

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

Cross references. — For assessments for street improvements, *see* 3-33-20 NMSA 1978.

63-2-9. Location maps to be filed.

Every corporation formed under this chapter within a reasonable time after its road has been finally located shall cause a map and profile thereof and of the land required and taken for the use thereof and the boundaries of the several counties through which the same may run to be made and file the same in the office of the secretary of state and also similar maps of the parts thereof located in different counties and file the same in the office of the county clerk of the county in which such parts of the road shall be situated, there to remain on record forever. In case the line of the road is changed at any time, as in this chapter provided, similar maps of the new line must be made and filed. The maps and profiles shall be certified by the chief engineer of the corporation and copies so filed and certified shall be kept in the office of the secretary of the corporation, subject to examination by all persons interested. Copies of the maps and profiles certified by any secretary of the territory of New Mexico or by the secretary of state shall be received as prima facie evidence of what they contain in all courts and places within this state.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 19; C.L. 1884, § 2683; C.L. 1897, § 3874; Code 1915, § 4702; C.S. 1929, § 116-303; 1941 Comp., § 74-211; 1953 Comp., § 69-2-11; 2013, ch. 75, § 39.

ANNOTATIONS

Compiler's notes. — For meaning of "this chapter", *see* compiler's notes to 63-1-8 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required that a map and profile of the corporation's road be filed with the secretary of state; added the title of the section; in the first sentence, after "file the same in the office of the", deleted "state corporation commission" and added "secretary of state"; and in the fourth sentence, after "New Mexico or by", deleted "said commission" and added "the secretary of state".

To constitute valid location of proposed railroad, there must be first a survey and actual staking of the proposed line upon the ground and second the adoption of such survey by the board of directors as its permanent line or right-of-way. *Arizona & Colo. R.R. Co. v. Denver & Rio Grande R.R. Co.*, 1911-NMSC-034, 16 N.M. 281, 117 P. 730, *aff'd*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

Railroad is entitled to protection of its right of way as soon as its final location is complete, without having recorded map of road as required by this section. *Denver & Rio Grande R.R. Co. v. Ariz. & Colo. R.R. Co.*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

Failure to file map will not cause a railroad to lose its interest in a stake-out location for a road, which interest is sufficient to maintain an action of trespass, until a reasonable time after final location. *Arizona & Colo. R.R. Co. v. Denver & Rio Grande R.R. Co.*, 1911-NMSC-034, 16 N.M. 281, 117 P. 730, *aff'd*, 233 U.S. 601, 34 S. Ct. 691, 58 L. Ed. 1111 (1914).

63-2-10. Commencement and completion of road.

Every corporation formed under this chapter shall commence the construction of its road within two years after the date of the filing of its articles of incorporation in the office of the secretary of state and shall finish and put the same in full operation within six years thereafter or its right to further complete the same, in the discretion of the legislature of this state, may be forfeited.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 24; C.L. 1884, § 2688; C.L. 1897, § 3877; Code 1915, § 4703; C.S. 1929, § 116-304; 1941 Comp., § 74-212; 1953 Comp., § 69-2-12; 2013, ch. 75, § 40.

ANNOTATIONS

Compiler's notes. — For meaning of "this chapter", *see* compiler's notes to 63-1-8 NMSA 1978.

The 2013 amendment, effective July 1, 2013, provided a time limit, after articles of incorporation are filed with the secretary of state, within which to complete the road; added the title of the section; and after "in the office of the", deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 74 C.J.S. Railroads § 123.

63-2-11. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-2-11 NMSA 1978, as enacted by Laws 1878, ch. 1, tit. 8, § 23, relating to gauge of track, effective January 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-2-12. [Aiding other roads; operating jointly; assent of stockholders.]

Any railroad company organized under the laws of this state, may at any time by means of subscription to the capital of any other company or otherwise aid such company in the construction of its railroad within or without the state, for the purpose of forming a connection with the said last mentioned road with the road owned by the company furnishing such aid, or any railroad organized in pursuance of law, either within this state or any other state or territory, may lease or purchase any part or all of any railroad constructed, owned or leased by any other company, upon such terms and conditions as may be agreed on between such companies respectively, or any two or more railroad companies may enter into any arrangement for their common benefit consistent with, and calculated to promote the objects for which they were created: provided, that no such aid shall be furnished, nor any purchase, lease, subletting or arrangements be perfected until a meeting of stockholders of such company of this state, party to such agreement, shall have been called by the directors thereof, at such time and place and in such manner as they shall designate, and the holders of at least two-thirds of the stock of such company represented at such meeting, in person or by proxy, and voting thereat, shall have assented thereto.

History: Laws 1871-1872, ch. 13, § 2; C.L. 1884, § 2701; C.L. 1897, § 3891; Code 1915, § 4699; C.S. 1929, § 116-204; 1941 Comp., § 74-214; 1953 Comp., § 69-2-14.

ANNOTATIONS

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

63-2-13. Corporate power under former acts.

All the powers, privileges and exemptions conferred upon corporations organized under the preceding sections of this chapter are conferred upon all corporations incorporated under the laws of this state for the purpose of constructing railroads and also upon all corporations organized for railroad purposes that have registered in the office of the secretary of state the original, or a certified copy, of their articles of incorporation, in accordance with an act entitled, "An act to amend an act entitled an act to create a general incorporation law, permitting persons to associate themselves together as bodies corporate, for mining, manufacturing and other industrial pursuits, and to repeal the sixteenth section of said act, approved January 30th, 1868".

History: Laws 1878, ch. 3, § 1; C.L. 1884, § 2727; C.L. 1897, § 3908; Code 1915, § 4734; C.S. 1929, § 116-703; 1941 Comp., § 74-215; 1953 Comp., § 69-2-15; 2013, ch. 75, § 41.

ANNOTATIONS

Compiler's notes. — The 1915 Code compilers substituted "the preceding sections of this chapter" for "An act entitled 'An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto,' approved February 2d, A. D. 1878." The reference is to Laws 1878, ch. 1, presently compiled as 63-1-1 to 63-1-41, 63-2-1 to 63-2-3, 63-2-7, 63-2-11, 63-2-13, 63-3-1, 63-3-2, 63-3-5 to 63-3-8, 63-3-11, 63-3-12, 63-3-20, 63-3-24 and 63-3-34 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required all railroad corporations to register with the secretary of state; added the title of the section; after "registered in the office of the", deleted "state corporation commission" and added "secretary of state".

Protection under burglary law not privilege. — By conferring the "privileges" granted corporations organized under Laws 1878, ch. 1, as railroad corporations organized under the prior general incorporation act, this section did not extend the former railroad burglary section, Laws 1878, ch. 1, ch. [tit.] 8, § 8, to railroad cars of corporations not organized under the act of 1878, since the protection of a burglary law is not a privilege. *Territory v. Stokes*, 1881-NMSC-013, 2 N.M. (Gild.) 161.

63-2-14. [Extensions into other states; power to purchase, lease and sell.]

Any railroad company may construct and extend its line of railroad into or through any other state, territory or foreign country upon such terms and regulations as may be prescribed by the laws of such other state, territory or foreign country, and such railroad company may purchase or lease the railroad constructed or to be constructed, and other property of any railroad company now or hereafter existing under the laws of this, or of any other state, territory, or of the United States or of any foreign country, with all rights, powers and franchises thereto in anywise appertaining or belonging, or may buy the stock and bonds or either of them, of any such company, and any railroad company now or hereafter existing under the laws of this state may, with the consent of the holders of two-thirds of its entire capital stock, given by a vote at a meeting, or in writing without a meeting, sell or lease its railroad, lands, rights, franchises, powers and appurtenances to any railroad corporation organized under the laws of New Mexico, or of any other state, territory or foreign country, subject to the restrictions and limitations imposed by law upon railroad corporations in this state.

History: Laws 1897, ch. 18, § 1; C.L. 1897, § 3921; Laws 1909, ch. 35, § 1; Code 1915, § 4736; C.S. 1929, § 116-705; 1941 Comp., § 74-216; 1953 Comp., § 69-2-16.

ANNOTATIONS

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

Compiler's notes. — The 1915 Code compilers deleted the phrase "heretofore or hereafter incorporated or consolidated or existing under the laws of this territory."

63-2-15. [Extensions, branches, sidings and switches of foreign companies; eminent domain.]

Any railroad company organized under the laws of another state or territory, which, by a compliance with the laws of this state relating to foreign railroad companies, has purchased or may purchase a line of railroad constructed by another company within this state, may extend such line of railroad, and project and build branches to the same, and sidetracks and switches connecting therewith, and otherwise improve the same, and for such purpose exercise the right of eminent domain to the same extent and in like manner as may be done by a domestic railroad corporation. And any railroad company organized under the laws of this state shall also have the right to extend its line of railroad, to project and build branches, sidetracks and switches, to improve the same and to exercise the right of eminent domain in acquiring lands, right-of-way and other privileges therefor to the same extent as provided by law for the main line of such railroad.

History: Laws 1901, ch. 9, § 1; 1907, ch. 27, § 1; Code 1915, § 4737; C.S. 1929, § 116-706; 1941 Comp., § 74-217; 1953 Comp., § 69-2-17.

ANNOTATIONS

Cross references. — For eminent domain, *see* 42A-1-1 NMSA 1978.

63-2-16. Foreign roads; extensions; certificate to be filed; time for commencement and completion.

Any such railroad corporation owning or operating a line of railroad in this state and projecting one or more extensions or branches of such line of railroad in this state shall file in the office of the secretary of state and in the office of the county clerk of each county through or in which the line of any such extension or branch shall be located a declaration, subscribed by its president or vice president and attested under its corporate seal, of its intention to construct such extension or branch line, stating the places from and to which it is intended to build the same, together with a map or plat showing the surveyed line or route thereof. The filing of such declaration and map or plat shall entitle such railroad corporation to a prior right to construct such extension or branch line along the line or route described therein; provided such corporation shall commence construction within four years after date of filing in the office of the secretary

of state and complete the same within six years, and provided further, that it shall comply with the laws of this state for acquiring lands for right of way. Nothing in this section or Section 63-2-15 NMSA 1978 shall be deemed to exclude the jurisdiction of this state over the control of all railroads or parts thereof situate within the boundaries of this state.

History: Laws 1901, ch. 9, § 2; 1907, ch. 94, § 1; 1909, ch. 44, § 1; Code 1915, § 4738; C.S. 1929, § 116-707; 1941 Comp., § 74-218; 1953 Comp., § 69-2-18; 2013, ch. 75, § 42.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required railroad corporations to file declarations of intention to construct extensions and branches with the secretary of state; added the title of the section; in the first sentence, after "file in the office of the", deleted "state corporation commission" and added "secretary of state"'; in the second sentence, after "filing in the office of", deleted "state corporation commission" and added "secretary of state"; and in the third sentence, after "Nothing in this", deleted "or the preceding" and after "section", added "or Section 63-2-15 NMSA 1978".

63-2-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-2-17 NMSA 1978, as enacted by Laws 1882, ch. 59, § 1, relating to contracts against public policy declared void, effective January 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-2-18. [Peace officers; appointment; bond; no authority in labor troubles.]

The governor of this state is hereby authorized and empowered, upon the application of any railroad company, to appoint, and to commission to serve, during his pleasure, one or more persons designated by such company, to serve at the sole expense of such company, as peace officers with all the powers of regular peace officers, and to give a good and sufficient bond to the state of New Mexico in the penal sum of five thousand dollars ($5,000.00) for the faithful performance of their duties. The company designating such person or persons shall be responsible civilly for any abuse of his or their authority; provided, that such peace officers so appointed shall not have authority as such to act or perform any service or to be used as peace officers with reference to strikes or labor troubles.

History: Laws 1921, ch. 141, § 1; C.S. 1929, § 116-901; 1941 Comp., § 74-220; 1953 Comp., § 69-2-20.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — Special railroad policeman as public officer, 84 A.L.R. 315, 156 A.L.R. 1356.

ARTICLE 3
Operation and Regulations Generally

63-3-1. [Schedules; accommodations; persons who may be refused transportation.]

Every railroad corporation shall start and run its cars for the transportation of persons and property at such regular times as it shall fix by public notice, and shall furnish sufficient accommodations for all such persons and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and the junction of other railroads and stopping places established for taking and leaving persons and property, and shall transport between such places all such persons and property on the payment of its lawful charges therefor: provided, such corporation may decline to receive any person afflicted with any contagious disease, or otherwise unfit to be admitted into its cars.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 4; C.L. 1884, § 2671; C.L. 1897, § 3862; Code 1915, § 4708; C.S. 1929, § 116-309; 1941 Comp., § 74-301; 1953 Comp., § 69-3-1.

ANNOTATIONS

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

Cross references. — For ticket fraudulently obtained at discount, fourth degree felony, *see* 30-16-13 NMSA 1978.

For registration for transportation of alcoholic liquors, *see* 60-6A-13 NMSA 1978.

For unlawful transportation of alcoholic liquors, *see* 60-7A-3 NMSA 1978.

For cotton shipping regulations, *see* 76-14-3 to 76-14-7 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Carriers §§ 235 to 250; 14 Am. Jur. 2d Carriers §§ 859 to 870; 65 Am. Jur. 2d Railroads § 345.

Duty of carrier to deliver goods on siding or private track of consignee, 1 A.L.R. 1425.

Rights as passenger of child traveling free of charge, 1 A.L.R. 1452.

Liability of railroad for delivery of goods to one whose authority to act for consignee has ceased, 2 A.L.R. 279.

Evidence of right to free transportation on public conveyance, 3 A.L.R. 387.

Liability for injury to passenger by articles belonging to carrier on the floor or in the aisles, 3 A.L.R. 640, 12 A.L.R. 1366.

Duty to notify consignor when consignee, or person to be notified, refuses to accept goods, 4 A.L.R. 1285.

Duty of carrier as to suitability, condition or equipment of cars furnished by shipper, 5 A.L.R. 108, 72 A.L.R. 885.

Right of passenger who has been ejected to reenter car or train, 5 A.L.R. 352.

Carrier's liability for misinformation as to running and destination of train, 8 A.L.R. 1183.

Carrier's duty to passenger while train is going through tunnel, 9 A.L.R. 96.

Casual or temporary condition of station or its approaches causing injury, 10 A.L.R. 259.

Shortage of cars as affecting liability of carrier for failure to furnish cars, 10 A.L.R. 342.

Liability of carrier for assault by or other misconduct of news agent, 10 A.L.R. 723.

Liability for injury to passengers by sparks or cinders, 11 A.L.R. 1076.

Recovery by passenger for physical consequences of freight resulting in physical injury, 11 A.L.R. 1119, 40 A.L.R. 983, 76 A.L.R. 681, 98 A.L.R. 402.

Insanity of passenger as ground for ejection, 12 A.L.R. 242.

Liability of carrier, for injury to one whom employee, in violation of instructions, permits to ride on train, 14 A.L.R. 151, 62 A.L.R. 1167, 74 A.L.R. 163.

Liability of carrier when passenger misled by inaccuracy of timepiece maintained by carrier, 14 A.L.R. 701.

Status of passenger in ordinary coach who enters Pullman coach for temporary purpose, 18 A.L.R. 71.

Acts of employee, in procuring warrant or aiding prosecution, as within scope of employment so as to render carrier liable for malicious prosecution, 18 A.L.R. 413.

Duty of railroad to operate side and switch tracks and spurs, 18 A.L.R. 722.

Liability to passenger due to obstruction of aisle or platform by property of another passenger, 19 A.L.R. 1372.

Duty and liability of carrier as to "step box" or other device to facilitate entering and leaving car, 20 A.L.R. 914.

Right to damages because of abandonment of depots and stations, 23 A.L.R. 555.

Delivery without collecting charge as stipulated or directed as affecting liability, 24 A.L.R. 1163, 78 A.L.R. 926, 129 A.L.R. 213.

Liability for injury to passenger by car door, 25 A.L.R. 1061, 41 A.L.R. 1089.

Liability of carrier for delay, or damages incident to delay, in transportation, due to strike, 28 A.L.R. 503, 45 A.L.R. 919.

Duty of carrier to guard young children against danger of falling from car, 28 A.L.R. 1035.

Independent contractor's acts or omissions causing injury to passenger, 29 A.L.R. 783.

Liability for injury to passenger by car window, 29 A.L.R. 1262, 45 A.L.R. 1541.

Duty of carrier to render special service to protect goods en route when not provided for by published tariffs, 32 A.L.R. 111.

Duty of carrier to receive freight on or along a private switch, spur or siding, 32 A.L.R. 193.

Duty of carrier as to heating of cars, 33 A.L.R. 168.

Liability of carrier to passenger for conditions on roadway or at stations of another carrier over whose line it detours, 33 A.L.R. 820.

Duty and liability to passenger temporarily leaving train, 35 A.L.R. 757, 61 A.L.R. 403.

Attractive-nuisance doctrine as applied to depots and stations, 36 A.L.R. 241, 39 A.L.R. 486, 45 A.L.R. 982, 53 A.L.R. 1344, 60 A.L.R. 1444.

Liability for injury to passenger while passing through turnstile, door or gate, 40 A.L.R. 828.

Liability for personal injury to passenger in Pullman car, 41 A.L.R. 1397.

Duty of railroad to keep trespassing children from getting on cars, 43 A.L.R. 38.

Delay in transportation or delivery as affecting carrier's liability for loss of, or damage to, goods by act of God, 46 A.L.R. 302.

Liability for injury to passenger due to construction of floor of car on different levels, 48 A.L.R. 1424.

Liability to passenger for failure to keep trains on schedule, 52 A.L.R. 1332.

Liability of carrier for delivery by carrier to impostor, 54 A.L.R. 1330.

Duty and liability of carrier as to assisting passenger to board or alight from car or train, 55 A.L.R. 389, 59 A.L.R. 940.

Liability of carrier or other bailee because of misinformation as to time or place of arrival or storage of goods, 56 A.L.R. 1382.

Liability of proprietor or operator of private railroad for injury to one other than employee riding thereon, 57 A.L.R. 818.

Carrier's liability for injury to passenger by heating apparatus, 58 A.L.R. 692.

Duty of carrier as to notifying passenger of approach to or arrival at destination, 58 A.L.R. 1064.

Liability of one not named as consignor or consignee for freight on goods delivered to and accepted by him, 61 A.L.R. 422.

Right of shipper or consignee to divert shipment, 61 A.L.R. 1309.

Jurisdiction of state court of action for failure to furnish cars for interstate shipment, 64 A.L.R. 351.

Custom as standard of care, 68 A.L.R. 1401.

Improper packing or preparation of goods for shipping as affecting carrier's liability, 81 A.L.R. 811.

Duty and liability of carrier toward one accompanying departing passenger or present to meet incoming one, with respect to conditions at or about station, 92 A.L.R. 614.

Remedy as against carrier, or consignor or consignee, who wrongfully refuses to accept goods and pay freight because of damages for which carrier is responsible, 96 A.L.R. 774.

Presumption as to carrier's responsibility for perishable goods received in good condition and delivered to consignee in bad condition, 106 A.L.R. 1164.

Changed conditions as affecting duty, or enforcement of duty, as to maintenance of stations imposed upon railroad by charter or statute, 111 A.L.R. 57.

What constitutes delivery of freight to carrier, 113 A.L.R. 1459.

When relation of carrier and passenger commences as between railway company and one intending to take train or car not at a regular stopping place, 116 A.L.R. 756.

Liability of carrier for injury to passenger as result of ice, snow or rain on exposed or interior portions of car, 117 A.L.R. 522.

Duty of carrier to discover abnormal condition of passenger, 124 A.L.R. 1428.

Carrier's liability for injury to passenger due to rushing or crowding of passengers, 155 A.L.R. 634.

Contributory negligence in entering dark place on familiar railroad car, 163 A.L.R. 613.

Carrier's liability to person in street or highway for purpose of boarding its vehicle, 7 A.L.R.2d 549.

Defense to cause of action based upon violation of statute imposing duty on railroad, 10 A.L.R.2d 853.

Liability for injury to customer or patron from defect in or fall of seat, 21 A.L.R.2d 420.

Carrier's liability for conversion by delivery in violation of provision in bill of lading prohibiting or limiting consignee's right to inspect goods shipped, 25 A.L.R.2d 770.

Contributory negligence of physically handicapped or intoxicated person in boarding or alighting from standing train or car, 30 A.L.R.2d 334.

Duty of railroad to children walking longitudinally along railroad tracks or right-of-way, 31 A.L.R.2d 789.

Attempt to board moving car or train as contributory negligence or assumption of risk, 31 A.L.R.2d 931.

Deviation by carrier in transportation of property, 33 A.L.R.2d 145.

Duty of railroad to passengers to keep steps or vestibule of car free from debris or foreign substances other than snow or ice, 34 A.L.R.2d 360.

Carrier's liability to passenger injured by landslide or the like, 34 A.L.R.2d 831.

Liability of carrier to one injured by article thrown from conveyance by passenger, 35 A.L.R.2d 788.

Carrier-passenger relationship as between railroad and express company employees, 36 A.L.R.2d 1412.

Carrier's liability for loss through weight deficiency of goods shipped, 39 A.L.R.2d 325.

Railroad's liability for injury or damage from collision of road vehicle with train or car at place other than crossing, 44 A.L.R.2d 680.

Liability of carrier by land for damage to goods shipped resulting from improper loading, 44 A.L.R.2d 993.

Liability of landowner for injury or death of adult falling down unhoused well, cistern, mine shaft or the like, 46 A.L.R.2d 1069.

Carrier's liability to passenger injured while using washroom or lavatory facilities on conveyance, 50 A.L.R.2d 1071.

Carrier's liability as warehouseman for injury to or destruction of stored goods from floods, heavy rains or the like, 60 A.L.R.2d 1097.

Sleeping-car company's liability for ejection of passenger by employee, 60 A.L.R.2d 1115.

Contributory negligence of adult struck by train while walking or standing beside railroad track, 63 A.L.R.2d 1226.

Shipper's liability to carrier for damage to vehicle or to other cargo resulting from defects in shipper's containers, 65 A.L.R.2d 770.

Liability of carrier to passenger injured through fall of baggage or other object from overhead repository, 68 A.L.R.2d 667.

Liability of carrier by land for damage to goods resulting from improper packing by carrier, 7 A.L.R.3d 723.

Contributory negligence of child injured while climbing over or through railroad train blocking crossing, 11 A.L.R.3d 1168.

Validity and construction of stipulation exempting carrier from liability for loss or damage to property at nonagency station, 16 A.L.R.3d 1111.

Liability in connection with fire or explosion incident to bulk storage, transportation, delivery, loading or unloading of petroleum products, 32 A.L.R.3d 1169.

Liability for injury to or death of passenger from accident due to physical condition of carrier's employee, 53 A.L.R.3d 669.

Width or design of lateral space between loading platform and car entrance as affecting carrier's liability to passenger for injuries incurred from falling into space, 28 A.L.R.4th 748.

Liability of land carrier to passenger who becomes victim of third party's assault on or about carrier's vehicle or premises, 34 A.L.R.4th 1054.

Liability of land carrier to passenger who becomes victim of another passenger's assault, 43 A.L.R.4th 189.

Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation, 78 A.L.R.4th 1127.

Validity, construction, and effect of § 102(a) of Railroad Revitalization and Regulatory Reform Act (49 USCS § 11501), 143 A.L.R. Fed. 347.

13 C.J.S. Carriers §§ 232, 233, 281, 354, 372; 74 C.J.S. Railroads § 419.

63-3-2. [Damages in case of refusal of transportation.]

In case any railroad corporation shall refuse to transport persons or property as provided in the preceding section [63-3-1 NMSA 1978], or to leave the same at the place of destination, it shall pay to the party aggrieved all damages he or she shall sustain thereby.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 5; C.L. 1884, § 2672; C.L. 1897, § 3863; Code 1915, § 4709; C.S. 1929, § 116-310; 1941 Comp., § 74-302; 1953 Comp., § 69-3-2.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Carriers §§ 251 to 254; 14 Am. Jur. 2d Carriers §§ 862, 863.

Liability of carrier for ejection of passenger who boarded train mistakenly, due to misinformation as to its destination, 8 A.L.R. 1183.

Right to recover for mental pain and anguish resulting from being carried by station, apart from other damages, 23 A.L.R. 389, 44 A.L.R. 428, 56 A.L.R. 657.

Carrier's liability to passenger for consequences of ejection or threatened ejection by one employee due to fault of another employee, 36 A.L.R. 1018.

Liability of carrier responsible for passenger leaving train at station other than his destination, 118 A.L.R. 1327.

13 C.J.S. Carriers §§ 232, 233 281, 357, 372; 74 C.J.S. Railroads § 447.

63-3-3 to 63-3-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-3-3 to 63-3-5 NMSA 1978, as enacted by Laws 1878, ch. 1, tit. 8, § 14, and Laws 1947, ch. 49, §§ 1 and 2, relating to receiving livestock for shipment required, penalties, and tickets, effective January 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-3-6. [Injury to passenger; contributory negligence; insufficient room.]

If a passenger be injured while on the platform of any car, or while in any mail, express, baggage or freight car, or on the locomotive, or while his or her head, limbs or body is projected outside the window or door of any passenger car, in violation of the printed regulations of said corporation posted up at the time, in a conspicuous place inside of the passenger cars then in the train, or in violation of any verbal instructions given by any officer of the train, such passenger shall be deemed guilty of contributory negligence, and such corporation shall not be liable for such injury: provided, that there was, at the time, inside of its passenger cars, room sufficient for the accommodation of such passenger.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 7; C.L. 1884, § 2674; C.L. 1897, § 3865; Code 1915, § 4711; C.S. 1929, § 116-312; 1941 Comp., § 74-304; 1953 Comp., § 69-3-6.

ANNOTATIONS

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

Law reviews. — For comment, "Bartlett Revisited: New Mexico Tort Law Twenty Years After the Abolition of Joint and Several Liability — Part One," see N.M. L. Rev. 1 (2003).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads §§ 460 to 476.

Liability for injury to passenger by car door, 25 A.L.R. 1061, 41 A.L.R. 1089.

Duty of carrier to guard young children against danger of falling from car, 28 A.L.R. 1035.

Liability for injury to passenger by car window, 29 A.L.R. 1262, 45 A.L.R. 1541.

Carrier's liability for injury to passenger due to rushing or crowding of passengers, 155 A.L.R. 634.

Contributory negligence of physically handicapped or intoxicated person in boarding or alighting from standing train or car, 30 A.L.R.2d 334.

Carrier's duty and liability to its passenger injured on platform or the like of station or terminal owned by another company, 41 A.L.R.2d 1286.

Width or design of lateral space between passenger loading platform and car entrance as affecting carrier's liability to passenger for injuries incurred from falling into space, 28 A.L.R.4th 748.

75 C.J.S. Railroads §§ 943, 944.

63-3-7. [Baggage checks; refusal to furnish; nondelivery of baggage; damages.]

A check shall be affixed to every package or parcel of baggage when taken for transportation by such corporation, and a duplicate thereof shall be given to the passenger delivering the same for transportation, and, if such check be refused on demand, such corporation shall pay to such passenger the sum of twenty dollars [($20.00)], to be recovered by action in any court of competent jurisdiction and in addition to the foregoing, no fare or toll shall be collected from such passenger; and if such passenger shall have paid his or her fare, he or she shall be entitled, upon demand, to a return thereof. Upon the production of such check at his or her place of destination, such passenger shall be entitled to receive his or her baggage, and if the same be not delivered within a reasonable time, he or she may be a witness in any action brought on account of such nondelivery, to prove the contents and value thereof: provided, that all actions to recover such baggage, or the value thereof, shall be barred at the expiration of three months after the same shall have accrued.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 2; C.L. 1884, § 2669; C.L. 1897, § 3860; Code 1915, § 4706; C.S. 1929, § 116-307; 1941 Comp., § 74-305; 1953 Comp., § 69-3-7.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 14 Am. Jur. 2d Carriers §§ 1222, 1234.

Extra or excess baggage, 2 A.L.R. 109.

Carrier's liability in respect to baggage checked in parcel room, 7 A.L.R. 1234, 27 A.L.R. 157, 37 A.L.R. 762.

Regulation by public service commission as to checking and handling of baggage, 21 A.L.R. 323.

Liability of carrier for baggage not accompanied by passenger, 23 A.L.R. 1446.

Responsibility of carrier for acts or omission of red caps or porters other than train employees, 59 A.L.R. 126.

Discrimination by carrier between passengers as regards checking and handling of baggage, 59 A.L.R. 329.

Tort liability of master for theft by servant, 15 A.L.R.2d 829, 39 A.L.R.4th 543.

Railroad carrier's liability for loss of baggage or effects accompanying passenger, 32 A.L.R.2d 630.

Liability of carrier for loss of passenger's baggage or packages, 68 A.L.R.2d 1350.

13 C.J.S. Carriers §§ 499, 502.

63-3-8. [Unclaimed baggage; sale after three months' period; proceeds of sale.]

Every railroad corporation shall safely and securely keep, as warehouseman, all unclaimed baggage for the space of three months, at the expiration of which time it may sell the same, if not previously called for, at public auction, after ten days' public notice by publication in some newspaper of general circulation; or if there be no such paper in the vicinity, then by posting written or printed notices in three conspicuous places in the neighborhood in which such sale is to be made. For the purpose of making such sale, it shall be lawful to open each trunk, package or parcel, and make known the contents thereof. A true account of the sale shall be kept, showing the price at which each parcel was sold, and the number thereof, which shall be the same as the number stamped upon the check thereto attached; and if there be any name, initial letters or other marks upon such parcel, the same shall also be noted in said account. The proceeds of such sale shall be paid, less expenses of the sale, to the owner, upon demand and proof of ownership, at any time within sixty days after the sale, after which date all right of action therefor shall be barred.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 3; C.L. 1884, § 2670; C.L. 1897, § 3861; Code 1915, § 4707; C.S. 1929, § 116-308; 1941 Comp., § 74-306; 1953 Comp., § 69-3-8.

ANNOTATIONS

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

Cross references. — For legal newspapers, *see* 14-11-2 NMSA 1978.

63-3-9 to 63-3-22. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-3-9 to 63-3-22 NMSA 1978, as enacted by Laws 1882, ch. 59, §§ 2-7 and 9; Laws 1882, ch. 60, § 1; Laws 1878, ch. 1, tit. 8, §§ 12 and 18; and Laws 1912, ch. 62, §§ 1 and 2, relating to fares, track connections, transportation of freight cars from other roads, lines, and employee hours, effective January 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-3-23. [Injury to employees from defective equipment; report of defects; contributory negligence.]

It shall be unlawful for any railroad corporation knowingly and willfully to use or operate any car or locomotive that is defective, or any car or locomotive upon which the machinery or attachments thereto belonging are in any manner defective, or shops or machinery and attachments thereof which are in any manner defective, which defects might have been previously ascertained by ordinary care and diligence by said corporation.

If the employe [employee] of any such corporation shall receive any injury by reason of such defect in any car or locomotive or machinery or attachments thereto belonging, or shops or machinery and attachments thereof, owned and operated, or being run and operated by such corporation, through no fault of his own, such corporation shall be liable for such injury, and upon proof of the same in an action brought by such employe [employee] or his legal representatives, in any court of proper jurisdiction, against such railroad corporation for damages on account of such injury so received, shall be entitled to recover against such corporation any sum commensurate with the injuries sustained: provided, that it shall be the duty of all the employes [employees] of railroad corporations to promptly report all defects coming to their knowledge in any such car or locomotive or shops or machinery and attachments thereof to the proper officer or agent of such corporation and after such report the doctrine of contributory negligence shall not apply to such employe [employee].

History: Laws 1893, ch. 28, § 2; C.L. 1897, § 3217; Code 1915, § 1824; C.S. 1929, § 36-105; 1941 Comp., § 74-324; 1953 Comp., § 69-3-26.

ANNOTATIONS

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

Cross references. — For compensation for injury or death of railroad employees, *see* N.M. Const., art. XX, § 16.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Defect in appliance or equipment as proximate cause of injury to railroad employee in repair or investigation thereof, 30 A.L.R.2d 1192.

Duty of railroad company to prevent injury of employee due to surface of yard, 57 A.L.R.2d 493.

Momentary forgetfulness of danger as contributory negligence, 74 A.L.R.2d 950.

Excessiveness or adequacy of award of damages for personal injury or death in actions under Federal Employers' Liability Act (45 USCS § 51 et seq.) - modern cases, 97 A.L.R. Fed. 189.

74 C.J.S. Railroads §§ 356, 424, 426.

63-3-24. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-3-24 NMSA 1978, as enacted by Laws 1878, ch. 1, tit. 8, § 13, relating to intoxication of engineers and conductors on duty, effective January 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-3-25. [Fireguards; plowing; burning of vegetation; notice.]

The board of county commissioners of each county in this state, through which any line of railroad is operated or may hereafter be operated, shall have power, subject to the limitations in the three succeeding sections [63-3-26 to 63-3-28 NMSA 1978] contained, by an order to be entered of record, to require every railroad corporation oprating [operating] a line of railroad in their respective counties, to plow as a fireguard through such portions of said counties as shall be specially designated in such order, a continuous strip of no more than six feet in width, which said strip of land shall run parallel with said line of railroad, and be plowed in such good and workmanlike manner as to effectually destroy and cover the vegetation thereon, and be sufficient to prevent

the spreading of fires; and the outer line of said strip of plowed land shall be upon the outer line of the rights of way of such railroad corporation, not to exceed however, one hundred feet from the center of the track of the railroad. And such railroad corporations shall, in addition to the plowing of such strip, in each and every year burn off, or remove all dry grass or dead and dry vegetation, as soon as the same becomes sufficiently dry to burn, between said plowed strip and the track of such road or roads: provided, however, that such plowing and burning be done between the fifteenth of July and the first day of October, in each and every year: provided, further, that the board of county commissioners shall each year serve said railroad corporations with a duly certified copy of the order, designating the particular localities where such plowing and burning shall be done, in each of said counties, at least thirty days before the said fifteenth day of July; and such fireguards need not be constructed, or burning done within the limits of any city or town, nor along the line of railroads running through mountains or other lands impracticable to plow, nor where such plowing and burning, as aforesaid, would be of no practical utility.

History: Laws 1884, ch. 34, § 1; C.L. 1884, § 2723; C.L. 1897, § 3904; Code 1915, § 4744; C.S. 1929, § 116-713; 1941 Comp., § 74-326; 1953 Comp., § 69-3-28.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 74 C.J.S. Railroads § 435.

63-3-26. [Failure to maintain fireguard; penalty; enforcement.]

Any railroad corporation failing to comply with the provision [provisions] of the preceding section [63-3-25 NMSA 1978] shall be liable to pay a penalty of two hundred dollars [($200)] for each and every mile, or fractional part thereof, of such strip as it neglects to plow, as aforesaid, in each and every year as aforesaid, or neglects to burn and remove the dry grass and vegetation from, as provided above, the same to be collected by an action of debt in any court of competent jurisdiction, by the attorney general, or district attorney of the district, in the name of the state, provided, such action shall be brought within two years after the cause of action accrues.

History: Laws 1884, ch. 34, § 2; C.L. 1884, § 2724; C.L. 1897, § 3905; Code 1915, § 4745; C.S. 1929, § 116-714; 1941 Comp., § 74-327; 1953 Comp., § 69-3-29.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 74 C.J.S. Railroads § 437.

63-3-27. [Fireguard made under direction of county commissioners; expenses.]

Should any railroad corporation, operating a railroad in this state, not do the plowing and burning required to be done by the preceding two sections [63-3-25, 63-3-26 NMSA 1978], the board of county commissioners of such county may hire the same to be done and charge the expenses thereof to the railroad company so failing to do such plowing and burning, and such company shall be obliged to pay the same and all costs and attorneys' fees for the collection thereof.

History: Laws 1884, ch. 34, § 3; C.L. 1884, § 2725; C.L. 1897, § 3906; Code 1915, § 4746; C.S. 1929, § 116-715; 1941 Comp., § 74-328; 1953 Comp., § 69-3-30.

ANNOTATIONS

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

63-3-28. [Actions for damages by fire; limitation.]

All actions against railroad corporations for damages by fire, that may have been or shall be set out, or caused by operating any line of railroad in this state, shall be commenced by the parties injured within two years after the cause of action accrues.

History: Laws 1884, ch. 34, § 4; C.L. 1884, § 2726; C.L. 1897, § 3907; Code 1915, § 4747; C.S. 1929, § 116-716; 1941 Comp., § 74-329; 1953 Comp., § 69-3-31.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — Extinguishing fire set by engine without negligence, liability for failure to aid in, 3 A.L.R. 509.

Constitutionality of statutes imposing absolute liability for fires, 53 A.L.R. 875.

Interference with extinguishment of fire by operation of train, 71 A.L.R. 914.

Liability of railroad negligently causing fire for personal injuries sustained in attempt to control fire or to save life or property, 42 A.L.R.2d 494.

Res ipsa loquitur as to cause of or liability for real-property fires, 21 A.L.R.4th 929.

Liability of property owner for damages from spread of accidental fire originating on property, 17 A.L.R.5th 547.

Liability for spread of fire intentionally set for legitimate purpose, 25 A.L.R.5th 391.

74 C.J.S. Railroads § 512.

63-3-29 to 63-3-32. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-3-29 to 63-3-32 NMSA 1978, as enacted by Laws 1915, ch. 37, §§ 1-4, relating to headlights, effective January 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-3-33. [Failure of district attorney to act; prosecution by attorney general.]

In case of the failure of any district attorney to bring such suit within a reasonable time after information shall have been lodged with him, by the state corporation commission [public regulation commission] or any other person, of any violation of this act [63-3-29 to 63-3-33 NMSA 1978], it shall be the duty of the attorney general upon being informed of such fact to cause such prosecution to be commenced.

History: Laws 1915, ch. 37, § 5; C.S. 1929, § 116-325; 1941 Comp., § 74-334; 1953 Comp., § 69-3-36.

ANNOTATIONS

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

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

63-3-34. Bell to be rung at highway crossings.

A. Except as provided in Subsection B of this section, every railroad corporation shall cause a bell to be attached to each of its locomotives and shall cause the bell to be rung at a distance of not less than eighty rods from the crossing of any public street, road or highway.

B. For a railroad, owned by the state or one of its political subdivisions, if the crossing is within a designated quiet zone pursuant to federal railroad administration rules and the maximum allowed speed for a train using the crossing is equal to or less than forty miles per hour, the bell shall be rung not less than three hundred feet from the crossing.

C. A railroad corporation violating a provision of Subsection A or B of this section shall be subject to a penalty of one hundred dollars ($100) to be recovered by action in the name of the state in any court of competent jurisdiction, one-half of which shall go to the informer and the other half of which shall go to the state. The corporation shall also be liable for all damages that may be sustained by any person by reason of noncompliance with the provisions of this section.

History: Laws 1878, ch. 1, ch. [tit.] 8, § 1; C.L. 1884, § 2668; C.L. 1897, § 3859; Code 1915, § 4705; C.S. 1929, § 116-306; 1941 Comp., § 74-335; 1953 Comp., § 69-3-37; 1978 Comp., § 63-3-34, Laws 2009, ch. 229, § 1.

ANNOTATIONS

Cross references. — For disposition of fines and forfeitures, *see* N.M. Const., art. XII, § 4.

The 2009 amendment, effective June 19, 2009, in Subsection A, at the beginning of the sentence, added “Except as provided in Subsection B of this section”; after “shall cause a bell”, deleted “of at least twenty pounds weight”; added Subsection B; and in Subsection C, at the beginning of the first sentence, added “A railroad corporation violating a provision of Subsection A or B of this section shall be subject to”.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads § 363.

Customary or statutory signal from train as measure of railroad's duty as to warning at highway crossing, 5 A.L.R.2d 112.

74 C.J.S. Railroads §§ 427, 428.

63-3-35. [Highway crossings; definitions.]

The following words and phrases when used in this act [63-3-35 through 63-3-38 NMSA 1978] shall, for the purpose of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning.

A. "Public highways": every place or way of whatever nature open to the use of the public as a matter of right for purposes of vehicular travel.

B. "Grade crossing" or "crossing at grade": a crossing so constructed that a highway crosses railroad tracks upon the same grade as is occupied by such tracks.

C. "Grade separation": a separation of the grade of railroad tracks from that of a highway at a railroad crossing, so constructed that the highway will either pass under the tracks of the railroad or over such tracks, at a sufficient height above the same to permit railroad trains to pass under such highway.

D. "Grade separation limits": all that portion of a highway at or near a railroad crossing between the points where the grade line of such highway leaves its natural grade on one side of a railroad track and where it returns to its natural grade on the other side of such track.

History: Laws 1929, ch. 97, § 1; C.S. 1929, § 116-1201; 1941 Comp., § 74-336; 1953 Comp., § 69-3-38.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads § 265.

74 C.J.S. Railroads § 140.

63-3-36. Construction and maintenance of highway crossings.

A. Subject to the provisions of Subsection B hereof, every railroad company in this state shall construct and maintain in good condition, at its own expense, good and sufficient crossings at all places in this state where its railroad crosses public highways, city, town or village streets at grade, now or hereafter to be opened for public use. Such crossings shall be constructed of planks, macadam, concrete or other suitable material in such manner as to be level with the top of the rails for a reasonable distance on each side of each rail.

B. Any highway-railroad crossing at grade that may hereafter be constructed or reconstructed by the state highway department will be a full plank crossing of a material approved by the state highway department and railroad, to be installed by the railroad company at the state highway department's expense. If a joint investigation of railroad and highway engineers shows that a highway-railroad crossing at grade should be reconstructed, then the highway department shall pay the railroad for the initial full plank crossing. Said constructed or reconstructed crossing will be maintained in good condition at the railroad company's own expense.

History: Laws 1929, ch. 97, § 2; C.S. 1929, § 116-1202; 1941 Comp., § 74-337; 1953 Comp., § 69-3-39; Laws 1963, ch. 133, § 1.

ANNOTATIONS

Regulation of crossings by commission and highway department. — The state corporation commission (now public regulation commission) has the power to require a railway company to construct and maintain a crossing at grade whenever it finds that the company's tracts are intersected by any kind of way open to the public as a matter of right for vehicular travel. The commission's power includes the power to require the

company to do anything which will make the crossing "good and sufficient," that is, safe and convenient for public use. The commission can order the railroad company to construct and maintain a crossing at grade at its own expense, except when the state highway department (now department of transportation) is involved in the construction or reconstruction of the crossing. When the state highway department is involved, it will pay the costs of making the crossing's surface level with the rails. The railroad must bear the remaining construction costs as well as all maintenance costs. 1974 Op. Att'y Gen. No. 74-07.

Scope of obligation to provide and maintain crossings. — It is obligation of the railroads to provide and maintain highway crossings wherever to do so is in the public interest, reasonable and just. 1949-50 Op. Att'y Gen. No. 49-5248.

Effect of changing circumstances. — The duty of maintaining and keeping in repair highway crossings is a continuing duty, requiring the railroad companies to put such highway crossings in such condition as changes in circumstances require, therefore, where a highway is improved by widening same to accommodate increasing traffic, it is the duty of the railroad company to improve its crossing so that it will be reasonably comparable to the roadway approaching the crossing. 1937-38 Op. Att'y Gen. No. 37-1758.

Common-law duty of railroad companies is to keep and maintain crossings for roads already established at the time of the building of the railroad line in a safe and suitable state of repair, including not only the crossing of the tracks but also the approaches thereto. 1937-38 Op. Att'y Gen. No. 37-1758.

Railroad's only duty is to make crossing safe and convenient to the public with proper regard for the class of traffic at such crossing. If the highway commission (now state transportation commission) desires further improvement beyond that, it may expend state funds for improvement thereof but cannot hold railroad liable for same. 1937-38 Op. Att'y Gen. No. 37-1758.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads, §§ 265 to 275.

Constitutional power to compel railroad to relocate its tracks and abolish grade crossings, 35 A.L.R. 1322, 36 A.L.R. 1122, 55 A.L.R. 660, 109 A.L.R. 768.

Covenant to establish and maintain crossing as running with the land, 41 A.L.R. 1369, 102 A.L.R. 781, 118 A.L.R. 982.

Railroad's right to construct and maintain piers, pillars or abutments at crossing on highway, 62 A.L.R. 1519.

Liability of railroad for damages other than those incident to bodily injury for blocking street or highway crossing, 71 A.L.R. 917.

Prohibition to control action of administrative officers as to construction of crossing or viaduct, 115 A.L.R. 23, 159 A.L.R. 627.

Duty of railroad to person using private crossing or footpath over or along railroad tracks, 167 A.L.R. 1253.

Customary or statutory signals from train as measure of railroad's duty as to warning at highway crossing, 5 A.L.R.2d 112.

Failure of occupants of motor vehicle stalled on railroad crossing to get out and move to place of safety as contributory negligence, 21 A.L.R.2d 742.

Duty of railroad company to maintain flagmen at crossing, 24 A.L.R.2d 1161.

Liability of railroad to adult pedestrian attempting to pass over, under or between cars obstructing crossing, 27 A.L.R.2d 369.

Rights of injured guest in vehicle involved in railroad crossing accident as affected by obscured vision from vehicle, 42 A.L.R.2d 350.

Contributory negligence of one jumping from moving motor vehicle, 52 A.L.R.2d 1433.

Liability for injury or death of pedestrian due to condition of surface of crossing, 64 A.L.R.2d 1199.

Duty of person with physical handicap, such as impaired vision or hearing, to stop and look upon reaching a railroad crossing to avoid charge of contributory negligence, 65 A.L.R.2d 703.

Liability to owner or occupant of motor vehicle for accident allegedly resulting from defective condition of road surface at crossing, 91 A.L.R.2d 10.

Liability of railroad or other private landowner for vegetation obscuring view at railroad crossing, 66 A.L.R.4th 885.

74 C.J.S. Railroads §§ 141 to 145, 156.

63-3-37. Separation of grade crossing; determination; cost.

Whenever a state, county, municipal or other street or highway, including a highway that may be designated as a part of the federal aid highway system, which may be constructed or reconstructed in such manner that it crosses or intersects any railroad, the state transportation commission, or other governing body, may, if in its opinion it is practicable and reasonably necessary for the protection of the traveling public, separate the grades at such crossing and, if unable to agree with the railroad as to the grade separation and the method of accomplishing the separation, may apply to the district

court of the county in which the separation is located by verified petition praying for the separation of grades at the crossing and shall accompany the petition with plans and specifications of the proposed grade separation. The procedure on the petition shall be the same as in ordinary civil action. If the court determines in such proceeding that the grade separation is practicable and reasonably necessary for the protection of the traveling public over the highway, it shall order the grade separation to be made, either in accordance with the plans and specifications filed with the petition or in accordance with such modification of the plans and specifications as the court determines to be proper, and upon condition that the then existing grade crossing shall be closed to all forms of street or highway traffic upon the completion of the grade separation. The orders of court in such proceedings shall be enforced in the same manner as decrees in equity. When any separation of grades is made either by agreement or by court order, the railroad company shall pay not to exceed ten percent of the cost between the grade separation limits, provided that the then existing grade crossing shall be closed to all forms of street or highway traffic upon the completion of the grade separation and provided that where funds are made available for such purposes under the provisions of the act of congress known as 23 USCA 101 et seq., as amended and supplemented, the participation of the railroad company in the cost of construction and maintenance of any grade separation structure and the approaches thereto shall be in conformity with and subject to the provisions of that act. In cases where two or more railroads are located in such proximity to each other as to be involved in any single separation of grades, the portion of the cost of the grade separation shall be apportioned between the railroads either by agreement or in such manner as may be just by order of court in such proceeding. Whenever the plans and specifications for a grade separation, as finally fixed by agreement or order of court, provide for raising or lowering the grade of the railroad tracks, the cost shall be included in the cost of the grade separation.

History: Laws 1929, ch. 97, § 3; C.S. 1929, § 116-1203; 1941 Comp., § 74-338; Laws 1945, ch. 112, § 1; 1949, ch. 118, § 1; 1953 Comp., § 69-3-40; 2003, ch. 142, § 5.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added the section heading; substituted "that" for "which now is or hereafter", and "transportation commission" for "highway commission" in the first sentence; and substituted "23 USCA 101 et seq." for "the Federal Aid Road Act, approved July 11, 1916" in the fifth sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads § 265.

74 C.J.S. Railroads § 143.

63-3-38. Maintenance of grade crossing.

After construction of every grade separation, the state transportation commission shall maintain the highway roadbed and the structures supporting it and the railroad shall maintain its roadway and track and the structures supporting them.

History: Laws 1929, ch. 97, § 4; C.S. 1929, § 116-1204; 1941 Comp., § 74-339; 1953 Comp., § 69-3-41; 2003, ch. 142, § 6.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added the section heading; and substituted "transportation commission" for "highway commission".

63-3-39. [Industrial railroads; hauling for others; not considered common carrier.]

No person or persons, and no industrial corporation not incorporated as a common carrier under the laws of this or some other state, and not holding himself, or itself, out as such common carrier, owning or operating industrial railroad tracks in connection with any industry in this state, shall be held or construed to be a common carrier by virtue of, or because of, the hauling of materials or supplies for others upon such industrial tracks, either free or under private contract for compensation for such service, and any and all contracts made for such service shall be lawful.

History: Laws 1921, ch. 191, § 1; C.S. 1929, § 116-801; 1941 Comp., § 74-340; 1953 Comp., § 69-3-42.

ANNOTATIONS

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

Cross references. — For private contracts of railroad without liability as common carrier, *see* 63-4-9 NMSA 1978.

ARTICLE 3A
Railroad Planning and Projects

63-3A-1. Short title.

This act [63-3A-1 through 63-3A-3 NMSA 1978] may be cited as the "Railroad Planning and Projects Act".

History: Laws 1985, ch. 36, § 1.

63-3A-2. Purpose.

It is the intent of the legislature to assign to the state highway and transportation department the functions of planning necessary to develop a coordinated program with

the United States department of transportation in the fields of rail freight and passenger transportation. In order to accomplish this purpose and to obtain all possible funds available to implement this activity, the Railroad Planning and Projects Act shall be liberally construed.

History: Laws 1985, ch. 36, § 2; 1987, ch. 268, § 5.

63-3A-3. State highway and transportation department; additional powers.

A. The state highway and transportation department is authorized to enter into agreements with any bureau, department or agency of the United States government dealing with or concerning the planning of any railroad freight or passenger system for operation in New Mexico.

B. The state highway and transportation department shall have the authority to plan and promote efficient rail transportation services and shall:

(1) maintain adequate programs of research, promotion and development with provision for public participation; and

(2) take all practical steps to improve the quality of rail freight and passenger services in New Mexico.

History: Laws 1985, ch. 36, § 3; 1987, ch. 268, § 6.

63-3A-4. Rail passenger study.

A. The alliance for transportation research institute at the university of New Mexico shall conduct a feasibility study regarding the potential for passenger rail service linking the El Paso-Juarez metropolitan area with New Mexico towns and cities along the Rio Grande corridor and continuing on to Denver, Colorado. The study shall:

(1) identify the alignment, condition and ownership of tracks;

(2) define an integrated network for intercity rail travel; and

(3) provide alternatives for intermodal connections between the affected airports and passenger rail services.

B. The study shall investigate the potential for New Mexico passenger rail service links to the national intermodal transportation initiative, "Reconnecting America".

C. The study shall be conducted in collaboration with the state highway and transportation department.

D. The alliance for transportation research institute shall report to the governor and the legislature on study recommendations for potential intermodal links to regional and national transportation strategies and interstate rail travel.

History: Laws 2003, ch. 106, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 106 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

Compiler's notes. — Laws 2003, ch. 106, § 1 was not enacted as part of the Railroad Planning and Projects Act. The section number was assigned by the compiler.

ARTICLE 4
Discontinuance of Operations

63-4-1 to 63-4-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-4-1 to 63-4-8 NMSA 1978, as enacted by Laws 1921, ch. 200, §§ 1-8, relating to discontinuance of operations, effective January 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-4-9. [Railroads constructed for special industry; private contracts without liability as common carriers.]

The owner or owners of any line of railroad, not exceeding 60 miles in length, in the state of New Mexico, which has been or shall be constructed primarily for the purpose of carrying coal, lumber or the products of some other particular industry, may enter into private contracts for the carriage of persons or freight over such line of railroad without thereby becoming liable to control as common carriers or becoming subject to the obligations and duties of common carriers.

History: Laws 1921, ch. 200, § 9; C.S. 1929, § 116-409; 1941 Comp., § 74-409; 1953 Comp., § 69-4-9.

ANNOTATIONS

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

Cross references. — For industrial railroads, *see* 63-3-39 NMSA 1978.

Certificates of convenience and necessity. — This section does not apply to a railroad operating under certificate of convenience and necessity from interstate commerce commission. *San Juan Coal & Coke Co. v. Santa Fe, San Juan & N.R.R.*, 1931-NMSC-039, 35 N.M. 512, 2 P.2d 305.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 C.J.S. Carriers § 2.

ARTICLE 5
Foreclosure of Mortgage on Railroad Property

63-5-1. Foreclosure; rights of purchases; new corporation; organization.

Whenever the railroad lands or other property of any railroad corporation created by or under any law of the United States or of the state or the part of the railroad, lands or other property of any such corporation situated in the state is sold by virtue of a mortgage or deed of trust or pursuant to the judgment or decree of any court of competent jurisdiction or by virtue of any execution issued thereon, the purchasers at any such sale may acquire and become vested with the property sold and may acquire any other property and franchises, rights and powers of the corporation in this state or elsewhere. Purchasers may associate with themselves any number of persons and with their associates may become a corporation with power to own, operate, exercise and enjoy the properties, franchises, rights and powers acquired by the purchasers upon making, acknowledging and filing in the office of the secretary of state a certificate in which the purchasers describe by name and by reference to the charter or law under which it was organized, the corporation whose property or part of whose property the purchasers have acquired, the court by whose authority the sale was made, with the date of the judgment or decree authorizing or directing the sale, a brief description of the property sold and also the following particulars:

A. the name of the new corporation intended to be formed by the filing of the certificate;

B. the maximum amount of its capital stock and the number of shares into which it is divided, and specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class; and

C. the number of directors, not less than three nor more than fifteen, who shall manage the affairs of the new corporation and the names and post office addresses of the directors for the first year.

History: Laws 1897, ch. 19, § 1; C.L. 1897, § 3922; Code 1915, § 4720; C.S. 1929, § 116-501; 1941 Comp., § 74-501; 1953 Comp., § 69-5-1; 2013, ch. 75, § 43.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, required that purchasers of railroad assets file a certificate with the secretary of state describing their corporation; added the title of the section; and in the second sentence, after "filing in the office of the", deleted "state corporation commission" and added "secretary of state".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads §§ 163 to 175.

Court's power to authorize discontinuation of railroad upon foreclosing mortgage on its plant, 8 A.L.R. 238.

74 C.J.S. Railroads §§ 328 to 338.

63-5-2. [Powers of new corporation.]

Such new corporation shall thereupon be vested with, and shall be entitled to exercise and enjoy, all the rights, franchises and powers, which belong to or could be exercised by the corporation whose property, or part of whose property, was acquired by such purchasers, as aforesaid, and may acquire and enjoy all or any part of the railroad, lands or other property of such corporation in the state of New Mexico, or elsewhere, and may conduct its business generally, under and in the manner provided in the charter of such last mentioned corporation, or under the laws relating thereto, with such variations in manner and form of organization as such purchasers and their associates may deem necessary and set forth in such certificates, subject to the restrictions and limitations imposed by law upon railroad corporations in this state, and any such corporation shall have the power to issue and dispose of its capital stock, of the kind and character, and of the amount specified in said certificate; and such new corporation shall, in no manner, be deemed or held liable for the debts, obligations or liabilities of the corporation whose property, or a part thereof, it may have acquired, except state and county taxes.

History: Laws 1897, ch. 19, § 2; C.L. 1897, § 3923; Code 1915, § 4721; C.S. 1929, § 116-502; 1941 Comp., § 74-502; 1953 Comp., § 69-5-2.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 65 Am. Jur. 2d Railroads §§ 173, 174, 294.

74 C.J.S. Railroads § 339.

63-5-3. [Rights of new corporation.]

Such corporation shall be vested with and be entitled to possess, exercise and enjoy any and all rights, franchises and powers which are given or may hereafter be given to any railroad company organized under the general laws of this state, and that such new corporation, when organized to purchase, acquire or take the property of any railroad company sold as aforesaid, may lease or purchase the railroad and other property and franchises of any railroad company organized under the laws of the United States or any state or territory thereof, and thereafter operate and maintain the same, or may lease or sell its railroad and other property to any railroad company organized under the laws of any state or territory subject to the restrictions and limitations imposed by law upon railroad corporations in this state.

History: Laws 1897, ch. 19, § 3; C.L. 1897, § 3924; Code 1915, § 4722; C.S. 1929, § 116-503; 1941 Comp., § 74-503; 1953 Comp., § 69-5-3.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 74 C.J.S. Railroads § 342.

63-5-4. [Sale of foreclosed railroad.]

The purchasers at any such sale as aforesaid, may, if they choose, sell, transfer or assign all the railroads, lands, properties, rights, franchises and powers so purchased or acquired by them or belonging to the corporation whose property or a part of whose property was so purchased, to a corporation of any state or territory which may be authorized by the laws of such state or territory, or by its charter, to purchase or acquire such or similar property, and upon such sale, transfer or assignment being made, such corporation to whom the same shall be made shall become vested with all of said property, together with all the rights, franchises and powers thereto belonging or in anywise appertaining or [sic] to the corporation whose property or a part thereof was sold, subject to the restrictions and limitations imposed by law upon railroad corporations in this state, but shall not be deemed or held liable in any manner for the debts, obligations or liabilities, or any of them, of the corporation whose property or a part thereof may have been sold, except state and county taxes.

History: Laws 1897, ch. 19, § 4; C.L. 1897, § 3925; Code 1915, § 4723; C.S. 1929, § 116-504; 1941 Comp., § 74-504; 1953 Comp., § 69-5-4.

ANNOTATIONS

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

ARTICLE 6
Dissolution of Railroad Companies

(Repealed by Laws 1998, ch. 108, § 81.)

63-6-1 to 63-6-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-6-1 to 63-6-7 NMSA 1978, as enacted by Laws 1878, ch. 1, tit. 9, §§ 4-10, relating to voluntary dissolution and venue, effective January 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

ARTICLE 7
Public Regulation Commission; Complaints, Hearings and Reports

63-7-1. Public regulation commission; term defined; office.

The term "commission", as used in Chapter 63, Article 7 NMSA 1978, means the public regulation commission. The office of the commission shall be located in the city of Santa Fe, New Mexico.

History: Laws 1912, ch. 78, § 1; Code 1915, § 5373; C.S. 1929, § 134-1106; 1941 Comp., § 74-701; 1953 Comp., § 69-7-1; Laws 1998, ch. 108, § 50; 2001, ch. 245, § 2.

ANNOTATIONS

Compiler's notes. — Chapter 63, Article 7, 63-7-1 to 63-7-23 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 creation of commission, *see* N.M. Const., art. XI, § 1.

For duties of commission, *see* N.M. Const., art. XI, § 2.

The 2001 amendment, effective July 1, 2001, substituted "term defined; office" for "terms defined; office organization" in the section heading; and rewrote the first sentence, which formerly read "The terms 'commission' and 'clerk' or 'chief clerk' where used in this article shall mean, respectively, the public regulation commission and the chief clerk of the commission."

The 1998 amendment, effective January 1, 1999, amended this section to change "state corporation commission" to "public regulation commission" to reflect the January 1, 1999 repeal of former Article XI, § 1 of the New Mexico Constitution.

Generally, as to power to fix rates. — The power to fix rates is an attribute of sovereignty, legislative in its nature and delegated by the constitution to the corporation commission (now public regulation commission) which was intended to have all the power to fix rates, and the legislature to have none of it. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

No power to make rates retroactive. — Neither the applicable constitutional provisions nor the pertinent statutes provide the commission with permission to make rates retroactive. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Economic scheme as a whole to be looked at. — The commission has a constitutional mandate to consider a telephone company's earnings, investments and expenditures as a whole within the state in promulgating rates; it is not confined solely to the cost-of-service formula. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Value of service may be looked at. — Under some circumstances the value of telephone service may be entitled to more weight than an estimate of cost of service, which necessarily involves many allocations on a more or less arbitrary basis. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Latest available economic information should be utilized by the commission in order to insure that projected figures bear a meaningful relation to future as well as past and present fiscal realities. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Determining level of subsidies to telephone users is commission function. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Rate-making power of commission is plenary, except as restricted by those principles of constitutional law which would have limited its exercise if it had been intrusted to the legislature. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Bond requirement. — Where the supreme court's order prior to review fixed interim telephone rates to be in force under bond for one year, and after review the court found substantial evidence in the record to show that these rates were just and reasonable, it held that there was no necessity that a bond be provided. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Given by implication of law. — The authority to grant rates under bond, as a lawful and necessary adjunct to the effectual exercise of the power to fix interim rates, is given by implication of law. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Generally, as to duty to formulate rates. — It is inherent in the commission's constitutional mandate that it has the authority to refuse to fix telephone rates when it does not have substantial evidence from which fair rates can be reasonably calculated or determined. Under such circumstances the commission has a duty to deny the rates, and thus it cannot be said that under all situations, without regard for the state of the evidence, the commission has a duty to formulate rates. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Duty affirmative, not passive. — The commission has an ongoing, affirmative duty to establish rules and regulations, issue orders, examine records, conduct investigations, grant continuances and do all other things necessary to insure that the public has fair telephone rates and that the utility is fairly treated; its role is not a passive one. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Where constitutional duty to fix interim rates. — The commission, when it had found that the rates of the telephone company were not fair and reasonable and when it became obvious that it would be a considerable length of time before permanent rates could be fixed, had a constitutional duty to fix interim rates that would minimize the confiscation of the company's property, and failure to increase the rates was an unconstitutional confiscation of the company's property without due process of law. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Public policy enters into the apportionment of rates, and it is incumbent upon the commission to make public policy decisions and to change proposed rates that do not comport therewith. *Mountain States Tel. & Tel. Co. v. N.M. SCC*, 1977-NMSC-032, 90 N.M. 325, 563 P.2d 588.

Generally, as to construction and maintenance of railroad crossing. — The state corporation commission (now public regulation commission) has the power to require a railway company to construct and maintain a crossing at grade whenever it finds that the company's tracks are intersected by any kind of way open to the public as a matter of right for vehicular travel. The commission's power includes the power to require the company to do anything which will make the crossing "good and sufficient," that is, safe and convenient for public use. The commission can order the railroad company to construct and maintain a crossing at grade at its own expense, except when the state highway department (now department of transportation) is involved in the construction or reconstruction of the crossing. When the state highway department (now department of transportation) is involved, it will pay the costs of making the crossing's surface level

with the rails. The railroad must bear the remaining construction costs as well as all maintenance costs. 1974 Op. Att'y Gen. No. 74-07.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 13 Am. Jur. 2d Carriers §§ 20 to 32; 74 Am. Jur. 2d Telecommunications §§ 18 to 20.

86 C.J.S. Telecommunications §§ 5, 6, 8 to 12, 17.

63-7-1.1. Commission powers and duties; transportation and transmission companies and common carriers; telephone and telegraph companies.

A. With respect to transportation and transmission companies and common carriers, the commission shall:

(1) fix, determine, supervise, regulate and control all charges and rates of railway, express, telegraph, telephone, sleeping car and other transportation and transmission companies and common carriers within the state;

(2) determine any matters of public convenience and necessity with respect to matters subject to its regulatory authority as provided by law;

(3) require railway companies and other common carriers to provide and maintain adequate equipment, depots, stockpens, station buildings, agents and facilities for the accommodation of shippers and passengers and for receiving and delivering freight and express and to provide and maintain necessary crossings, culverts, sidings and other facilities for convenience and safety whenever in the commission's judgment the public interest demands;

(4) require railway companies, transportation companies and common carriers to provide such reasonable safety appliances and use such reasonable safety practices as may be necessary and proper for the safety of employees and the public as required by federal or state laws and rules;

(5) change, amend and rescind rates;

(6) enforce its rules through administrative sanctions and in the courts; and

(7) carry out all other duties and have all other powers provided by law.

B. In fixing rates of telephone and telegraph companies, due consideration shall be given to the earnings, investments and expenditures as a whole within the state. The commission shall include in that consideration the earnings, investments and expenditures derived from or related to the sale of directory advertising and other directory listing services.

C. The commission may subpoena witnesses and documents, enforce its subpoenas through any court and, through the court, punish for contempt.

D. The commission has the power, after notice and hearing of record, to determine and decide any question and to issue orders relating to its powers and duties.

E. An interested party may appeal from a final order of the commission by filing a notice of appeal with the supreme court asking for review of the order within thirty days of the final order. The appellant shall pay to the commission any costs of preparing and transmitting the record to the court.

F. The pendency of an appeal shall not automatically stay the order appealed from. The appellant may seek to obtain a stay from the commission or the supreme court.

G. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. 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.

H. In the case of a failure or refusal of any person to comply with an order of the commission within the time prescribed in the order or within thirty days after the order is entered, whichever is later, unless a stay has been granted, the commission shall seek enforcement of the order in the district court. The enforcement hearing shall be held on an expedited basis. At the hearing, the sole question shall be whether the person has failed to comply with or violated the order.

History: Laws 1998, ch. 108, § 52.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 108, § 83 made Laws 1998, ch. 108, § 52 effective January 1, 1999.

Adoption of conclusions from a previous proceeding denied due process. — Where the PRC entered an order in a case that determined the price floor for promotional offerings by the utility intervenor; in a second case, the PRC incorporated findings from the first case into the order entered in the second case; the findings were based on evidence in the first case, and appellant was a party to the second case but not to the first case, appellant’s due process rights were violated because appellant was denied the opportunity to present evidence and to examine and cross-examine

witnesses regarding the PRC's decision in the first case. *TW Telecom of N.M., LLC v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-029, 150 N.M. 12, 256 P.3d 24.

Appeals from final orders. — The public regulation commission (PRC) was not authorized to issue orders of removal under the former provisions of N.M. Const., art. XI, § 7 that were repealed effective January 1, 1999; instead, Section 8-8-21 NMSA 1978 authorized the parties to treat final orders of the state corporation commission that were not removed to the supreme court prior to that date as final orders of the PRC for purposes of appeal under this section. *U.S. W. Commc'ns, Inc. v. N.M. Pub. Regulation Comm'n*, 1999-NMSC-024, 127 N.M. 375, 981 P.2d 789.

Imputation of telephone directory revenue to set telephone rates. — New Mexico's imputation of the telephone directory revenue of plaintiff's subsidiary to plaintiff's telephone services for telephone rate setting purposes did not interfere with interstate commerce and plaintiff's challenge to the imputation was a challenge to an order affecting rates that was barred under the Johnson Act, 28 U.S.C. §1342. *U.S. West Inc. v. Tristani*, 182 F.3d 1202 (10th Cir. 1999).

63-7-2 to 63-7-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-7-2 through 63-7-9 NMSA 1978, as enacted by Laws 1912, ch. 78, §§ 2-8 and by Laws 1925, ch. 19, § 1, relating to complaints and hearings by the corporation commission, effective January 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-7-10. [Inspection of books and records.]

The commission or any commissioner or person authorized by the commission in writing, under its seal to make such examination, shall have the right at all times to inspect the books, papers and records of all such companies and common carriers doing business in this state relating to any matter pending before, or being investigated by, the commission. Any officer, agent or employe [employee] of any such company or corporation, or any person, in charge of such books, papers and records, who shall refuse to permit such examination, or who shall conceal, destroy or mutilate, or attempt to conceal, destroy or mutilate any such books, papers or records, or remove the same beyond the limits of the state for the purpose of preventing such examination shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined not to exceed five hundred dollars [($500)] or imprisoned in the county jail not more than six months.

History: Laws 1912, ch. 78, § 9; Code 1915, § 5381; C.S. 1929, § 134-1114; 1941 Comp., § 74-710; 1953 Comp., § 69-7-10.

ANNOTATIONS

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

Cross references. — For inspections by commission, *see* N.M. Const., art. XI, § 11.

63-7-11 to 63-7-19. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-7-11 through 63-7-19 NMSA 1978, as enacted by Laws 1912, ch. 78, §§ 10-18, relating to corporation commission hearings, records, removal, amendments and tariffs, effective January 1, 1999. For provisions of former sections, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

63-7-20. Utility and carrier inspection; fee.

A. Each utility and carrier doing business in this state which is subject to the control and jurisdiction of the commission by virtue of the provisions of Article 11 of the constitution of New Mexico with respect to its rates and service shall pay annually to the commission a fee in performance of its duties as now provided by law. The fee for carriers shall not exceed two hundred fifty-six thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. The fee for utilities shall not exceed five hundred eleven thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. This sum shall be payable annually on or before April 1 in each year. No similar fee shall be imposed upon the utility or carrier. In the case of utilities or carriers engaged in interstate business, the fees shall be measured by the gross receipts of the utilities or carriers from intrastate business only for the preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. As used in this section, "utility" includes telephone companies and transmission companies but does not include public utilities subject to the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978].

B. When a fee is not paid on the date it is due, interest shall be paid to the state on the amount due. The interest on the amount due shall start to accrue on the day following the due date and shall continue to accrue until the total amount due is paid. The rate of interest on a late fee payment shall be fifteen percent per year, computed at the rate of one and one-fourth percent per month.

C. In addition to any interest due on a late fee payment, a penalty shall be paid to the state for failure to pay the fee when it is due. The penalty imposed shall be two percent of the amount of the fee due.

D. The attorney general, in the name of the state, shall bring suit to collect fees, interest and penalties that remain unpaid.

History: 1941 Comp., § 74-722, enacted by Laws 1951, ch. 194, § 1; 1953 Comp., § 69-7-22; Laws 1989, ch. 233, § 1; 1993, ch. 311, § 11; 2003, ch. 14, § 20; 2005, ch. 339, § 7.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, changed the date in Subsection A when the sum is payable from on or before January 20 or in quarterly installments on or before January 20, April 20, July 20 and October 20 to on or before April 1 of each year; provided in Subsection A that "utility" does not include public utilities subject to the Public Utility Act; added Subsection B to provide for the payment of interest on late payments of fees; added Subsection C to provide for a penalty on late payments of fees; and added Subsection D to provide that the attorney general shall collect fees, interest and penalties that are unpaid.

The 2003 amendment, effective July 1, 2003, substituted "two hundred fifty-six thousandths" for "one-fourth of one" in the second and third sentences.

The 1993 amendment, effective July 1, 1993, substituted "one-half" for "three-eighths" in the third sentence.

The 1989 amendment, effective January 1, 1990, added the present catchline, restructured the former first sentence as the present first and second sentences, added the present third and last sentences, and made minor stylistic changes throughout the section.

Collection of fees should be based strictly upon intrastate business, receipts not derived in whole or in part from interstate business. 1951-52 Op. Att'y Gen. No. 52-5533.

63-7-21. [Disposition of fees.]

All moneys collected under the provisions of Chapter 194, Laws of 1951 [63-7-20 through 63-7-22 NMSA 1978], shall be deposited with the state treasurer and by him credited to the general fund.

History: 1941 Comp., § 74-723, enacted by Laws 1951, ch. 194, § 2; 1953 Comp., § 69-7-23; Laws 1957, ch. 10, § 1.

ANNOTATIONS

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

Collection of fees should be based strictly upon intrastate business, receipts not derived in whole or in part from interstate business. 1951-52 Op. Att'y Gen. No. 52-5533.

63-7-22. [Exemptions from act.]

The provisions of this act [63-7-20 through 63-7-22 NMSA 1978] shall not apply to pipelines which are used for the transportation of oil, natural gas or the products thereof; neither shall the provisions of this act apply to common or contract motor carriers or aircraft carriers transporting passengers or property for hire.

History: 1941 Comp., § 74-724, enacted by Laws 1951, ch. 194, § 3; 1953 Comp., § 69-7-24.

ANNOTATIONS

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

63-7-23. Telecommunications; administrative fines.

A. For purposes of this section:

(1) "commission" means the public regulation commission; and

(2) "telecommunications provider" means any telegraph company, telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular service company or pay telephone provider regulated in whole or in part by the commission under law, including the Telephone and Telegraph Company Certification Act [Chapter 63, Article 9 NMSA 1978], the New Mexico Telecommunications Act [Chapter 63, Article 9A NMSA 1978], the Cellular Telephone Services Act [Chapter 63, Article 9B NMSA 1978] and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

B. The commission may impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the commission.

C. Except in the case of disputes between telecommunications providers, an administrative fine of not more than one thousand dollars ($1,000) may be imposed for each violation or each of multiple violations arising out of the same facts up to a maximum of twenty-five thousand dollars ($25,000); or an administrative fine of not more than one thousand dollars ($1,000) may be imposed for each day of a continuing violation arising out of the same facts up to a maximum of twenty-five thousand dollars ($25,000). Notwithstanding any other provision of this subsection, the commission may

impose an administrative fine not to exceed twenty-five thousand dollars ($25,000) for a single violation:

(1) that results in substantial harm to the customers of the telecommunications provider or substantial harm to the public interest; or

(2) for failure to obtain a certificate of public convenience and necessity required by law or for operation outside the scope of that certificate.

D. In the case of disputes between telecommunications providers, an administrative fine of not more than one hundred thousand dollars ($100,000) may be imposed for the violation of a telecommunications provider interconnection agreement, telecommunications provider wholesale tariff, or commission regulation or order otherwise relating to the provision of services between telecommunications providers. An administrative fine of not more than one hundred thousand dollars ($100,000) may be imposed for each day of a continuing violation.

E. The amount of the fine should bear a reasonable relationship to the nature and severity of the violation.

F. The commission shall initiate a proceeding to impose an administrative fine by giving written notice to the provider that the commission has facts as set forth in the notice that, if not rebutted, may lead to the imposition of an administrative fine under this section and that the telecommunications provider has an opportunity for a hearing. The commission may only impose an administrative fine by written order that, in the case of contested proceedings, shall be supported by a preponderance of the evidence.

G. The commission may initiate a proceeding to impose an administrative fine within two years from the date of the commission's discovery of the violation, but in no event shall a proceeding be initiated more than five years after the date of the violation. This limitation shall not run against any act or omission constituting a violation under this section for any period during which the telecommunications provider has fraudulently concealed the violation.

H. The commission shall consider mitigating and aggravating circumstances in determining the amount of administrative fine imposed.

I. For purposes of establishing a violation, the act or omission of any officer, agent or employee of a telecommunications provider, within the scope of such person's authority, duties or employment, shall be deemed the act or omission of the telecommunications provider.

J. Any telecommunications provider or other person aggrieved by an order assessing an administrative fine may appeal the order to the supreme court of New Mexico. A notice of appeal shall be filed within thirty days after the entry of the

commission's order. Notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken.

K. The commission shall promulgate procedural rules for the implementation of this section.

History: Laws 1995, ch. 175, § 1; 1998, ch. 108, § 51; 2000, ch. 100, § 2; 2000, ch. 102, § 2.

ANNOTATIONS

The 2000 amendment, effective March 7, 2000, added "Except in the case of disputes between telecommunications providers" at the beginning of Subsection C, added present Subsections D and E and redesignated the remaining subsections accordingly.

Laws 2000, ch. 100, § 2 and Laws 2000, ch. 102, § 2, both effective March 7, 2000, enacted identical amendments to this section. The section was set out as amended by Laws 2000, ch. 102, § 2. *See* 12-1-8 NMSA 1978.

The 1998 amendment, effective January 1, 1999, substituted "public regulation" for "state corporation" near the end of Paragraph A(1); deleted "but not limited to Article 11 of the constitution of New Mexico" following "the Telephone and" near the end of Subsection A; deleted "or violations" following "arising out of the" near the middle of Subsection C; substituted "that" for "any such" at the end of Paragraph C(2); substituted "appeal" for "remove" near the beginning of Subsection H; deleted "as authorized by the provisions of Article 11, Section 7 of the constitution of New Mexico. Any telecommunications provider or other person aggrieved by an order assessing an administrative fine that is not removable to the supreme court of New Mexico under the provisions of Article 11, Section 7 of the constitution of New Mexico may file a notice of appeal in the supreme court of New Mexico asking for a review of the commission's order therein" near the middle of Subsection H; and deleted "and regulations" following "for the implementation" at the end of Subsection I.

ARTICLE 8
Health and Safety of Railroad Employees

(Repealed by Laws 1998, ch. 108, § 81.)

63-8-1 to 63-8-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-8-1 through 63-8-7 NMSA 1978, as enacted by Laws 1955, ch. 43, §§ 1-7 and as amended by Laws 1967, ch. 202, §§ 1

and 2, relating to health and safety of railroad employees, effective January 1, 1999. For provisions of former sections, *see* the 1998 NMSA on *NMOneSource.com*.

ARTICLE 9
Telephone and Telegraph Companies

63-9-1. Short title.

Chapter 63, Article 9 NMSA 1978 may be cited as the "Telephone and Telegraph Company Certification Act".

History: 1953 Comp., § 69-10-1, enacted by Laws 1965, ch. 292, § 1; 1998, ch. 108, § 53.

ANNOTATIONS

Compiler's notes. — The Telephone and Telegraph Company Certification Act, 63-9-1 to 63-9-19 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 power of public regulation commission to impose fines on telecommunications providers, *see* 63-7-23 NMSA 1978.

For regulation of telecommunications other than mobile telephone and radio paging services, *see* 63-9A-1 NMSA 1978 et seq.

For interception of communications under court order, *see* 30-12-2 NMSA 1978.

For excavation damage to pipelines and underground utility lines, *see* 62-14-1 NMSA 1978.

The 1998 amendment, effective January 1, 1999, substituted "Chapter 63, Article 9 NMSA 1978" for "This act" at the beginning of the section.

Applicability of article. — This article applies only to mobile telephone and radio paging services and no longer applies to intrastate data transmission services. *Las Cruces TV Cable v. N.M SCC*, 1985-NMSC-087, 103 N.M. 345, 707 P.2d 1155.

Corporation commission (now public regulation commission) has no exclusive jurisdiction in dispute involving telephone. — Neither N.M. Const., art. XI, § 7 (now repealed) nor the Telephone and Telegraph Company Certification Act grants the state corporation commission (now public regulation commission) general power and exclusive jurisdiction over every dispute concerning telephone services. *First Cent. Serv. Corp. v. Mountain Bell Tel.*, 1981-NMCA-012, 95 N.M. 509, 623 P.2d 1023.

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — State regulation of radio paging services, 44 A.L.R.4th 216.

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

63-9-2. Definitions.

As used in the Telephone and Telegraph Company Certification Act:

A. "commission" means the public regulation commission;

B. "telephone company" means a company, corporation, partnership, individual or others, not engaged solely in interstate business, furnishing mobile telephone service or radio paging;

C. "public utility telephone service" means making and offering mobile telephone or radio paging service to or for the public generally and being ready, willing and able to furnish such service with adequate equipment; and

D. "certificated area" means the geographical area that a telephone company is authorized to serve by a certificate of public convenience and necessity and that is defined on the map as part of the certificate.

History: 1953 Comp., § 69-10-2, enacted by Laws 1965, ch. 292, § 2; 1975, ch. 59, § 1; 1985, ch. 242, § 22; 1998, ch. 108, § 54.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "public regulation" for "state corporation" near the end of Subsection A; and substituted "that" for "which" in two places in Subsection D.

63-9-3. Certificate required for operation.

No telephone company shall hereafter begin the construction or operation of any telephone plant or system or of any extension thereof, for the purpose of furnishing public utility telephone service, without first obtaining from the commission a certificate that public convenience and necessity requires or will require such construction or operation of the plant or system; provided, that this section shall not apply to:

A. construction of plant or system within a certificated area which such telephone company already lawfully serves, where such construction is necessary in the ordinary course of business;

B. extension of plant or system to area contiguous to the certificated area of such telephone company, if such contiguous areas are not certificated and are not receiving public utility telephone service from another telephone company; provided that the commission shall be notified, in such manner as it may prescribe by rule, of any such extension into contiguous area; and

C. such construction or extension occurring when a proper application is being made pursuant to Section 4 [63-9-4 NMSA 1978] of this act.

History: 1953 Comp., § 69-10-3, enacted by Laws 1965, ch. 292, § 3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 74 Am. Jur. 2d Telecommunications § 2.

Meaning of term "radius" employed in telephone company's rule as descriptive of area, location or distance, 10 A.L.R.2d 605.

86 C.J.S. Telecommunications §§ 21, 22.

63-9-4. Certificate for operations.

A telephone company furnishing public telephone or telegraph service, including any telephone cooperative operating in the state, shall file with the commission an application for a certificate of public convenience and necessity. The commission shall grant a certificate only to the extent of territory served and shall define such area on a map. Operations for which no application has been made are unlawful.

History: 1953 Comp., § 69-10-4, enacted by Laws 1965, ch. 292, § 4; 1998, ch. 108, § 55.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 86 C.J.S. Telecommunications §§ 21, 22.

63-9-5. Application for certificate.

A. If the applicant for a certificate of convenience and necessity is a corporation, a certified copy of its articles of incorporation shall be filed in the office of the commission before any certificate may issue.

B. The commission, upon the filing of an application, shall fix a time and place for hearing thereon, which shall be no sooner than ten days after the filing. The commission shall cause notice of the hearing to be served at least ten days before the hearing on all known interested parties. The commission may allow any interested party to intervene at the hearing.

C. The commission shall prescribe forms for use by applicants and make regulations relating to the manner of filing and filing fees.

History: 1953 Comp., § 69-10-5, enacted by Laws 1965, ch. 292, § 5.

ANNOTATIONS

63-9-6. Issuance of certificate; territory on map.

A. After conclusion of a hearing on an application for a certificate of convenience and necessity the commission shall make and file an order containing its findings of fact and decision. The order shall become operative twenty days after issuance, except as the commission may otherwise provide.

B. The commission shall grant all certificates as required by Section 4 [63-9-4 NMSA 1978] of this act.

C. As to all applications other than those based upon Section 4 of this act, the commission has the power, after having determined public convenience and necessity, to grant a certificate as applied for, or to refuse to grant it, or to grant it for the construction or operation of only a portion of the contemplated plant or system or extension thereof, or for the partial exercise only of the rights and privilege sought, and may attach to the exercise of the rights and privilege granted by a certificate such terms and conditions as in its judgment the public convenience and necessity may require.

D. The geographical field or area that a telephone company is authorized and required to serve by a certificate shall be defined on a map which will be part of the certificate. The commission shall prescribe the form of the map to be used.

History: 1953 Comp., § 69-10-6, enacted by Laws 1965, ch. 292, § 6.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 86 C.J.S. Telecommunications §§ 21, 22.

63-9-7. Duty to exercise authority; discontinuance.

A. Unless exercised within a period designated by the commission, exclusive of any delay due to the order of any court, authority conferred by a certificate of convenience and necessity issued by the commission shall be void. The beginning of the construction of a plant or system, in good faith, within the time prescribed by the commission and the prosecution of the same with reasonable diligence in proportion to the magnitude of the undertaking, shall constitute an exercise of the authority.

B. The holder of a certificate shall render continuous and adequate service to the public and shall not discontinue, reduce or impair service to a certificated area, or part of a certificated area, except ordinary discontinuance of service for nonpayment of charges, nonuse and similar reasons in the usual course of business, unless and until there shall first have been obtained from the commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction or impairment of service, without regard to the provisions of this section; provided, however, that nothing in this section shall be construed as requiring a certificate from the commission for any installation, replacement or other changes in plant, operation or equipment which will not impair the adequacy or quality of service provided.

History: 1953 Comp., § 69-10-7, enacted by Laws 1965, ch. 292, § 7.

ANNOTATIONS

Limitation on scope of section. — This section cannot be read so as to limit N.M. Const., art. XI, § 7 (now repealed); and it cannot be read to require the telephone company to provide service anywhere, anytime, to anybody, and under all circumstances. *Coachlight Las Cruces, Ltd. v. Mountain Bell Tel. Co.*, 1983-NMCA-040, 99 N.M. 796, 664 P.2d 994, cert. denied, 99 N.M. 787, 664 P.2d 985.

Discontinuation of service for nonpayment. — It is public policy that Mountain Bell can discontinue service for nonpayment of the charges incurred by a customer. *First Cent. Serv. Corp. v. Mountain Bell Tel.*, 1981-NMCA-012, 95 N.M. 509, 623 P.2d 1023.

Telephone utility has right to establish reasonable rules and regulations for furnishing service to patrons and for the conduct of its business; ordinarily regulations so made will be presumed to be reasonable and necessary, unless the contrary is shown. *First Cent. Serv. Corp. v. Mountain Bell Tel.*, 1981-NMCA-012, 95 N.M. 509, 623 P.2d 1023.

Subscriber for telephone service has no property right in telephone number. *First Cent. Serv. Corp. v. Mountain Bell Tel.*, 1981-NMCA-012, 95 N.M. 509, 623 P.2d 1023.

It is law that tariff required to be filed is not contract. *First Cent. Serv. Corp. v. Mountain Bell Tel.*, 1981-NMCA-012, 95 N.M. 509, 623 P.2d 1023.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 86 C.J.S. Telecommunications §§ 17, 21, 22, 68, 70, 71.

63-9-8. Assignability.

Any certificate of public convenience and necessity, or rights obtained under any such certificate held, owned or obtained by any telephone company, may be sold, assigned or leased as other property, only after determination by the commission that the purchaser, assignee or lessee is capable of rendering adequate public utility telephone service.

History: 1953 Comp., § 69-10-8, enacted by Laws 1965, ch. 292, § 8.

ANNOTATIONS

63-9-9. Nonduplication in certificated areas.

A. It is unlawful to construct, own, operate, manage, lease or control any plant or equipment for the furnishing of telephone or telegraph service in any certificated area granted to another telephone company unless public convenience and necessity require the second plant or equipment.

B. Any person, corporation, municipal corporation, partnership or association proposing to construct or operate the second plant or equipment shall first file an application with the commission, to which application the authority proposing to authorize the construction of the second plant or equipment and the owner, manager or operator of the plant or equipment then in operation shall be made parties. The applications shall set up the reasons why public convenience and necessity require the second plant or equipment. In determining whether the public convenience and necessity require the second plant or equipment, the commission shall consider and determine upon substantial evidence whether the following conditions existed at the time of the filing of the application:

(1) the existing telephone or telegraph service is inadequate to meet the reasonable needs and convenience of the public;

(2) the proposed second plant or equipment would eliminate such inadequacy;

(3) it is economically feasible to operate the proposed second plant or equipment successfully and continuously for the furnishing of telephone or telegraph service;

(4) the applicant for the second plant or equipment has sufficient financial resources to provide the proposed telephone or telegraph service properly and continuously;

(5) the applicant for the second plant or equipment has competent and experienced management and personnel to provide the proposed telephone or telegraph service;

(6) the applicant for the second plant or equipment is willing and able to conform to the constitution and law of New Mexico and the rules of the commission; and

(7) the applicant for the second plant or equipment is in every respect willing and able to provide the proposed telephone or telegraph service properly.

C. If the commission finds upon substantial evidence that each of the conditions enumerated in Subsection B of this section existed at the time of filing the application and after determining that the public convenience and necessity require that an additional plant or equipment is necessary, the commission shall issue an order in the alternative directing the owner, manager or operator of the plant or equipment then in operation to make such changes and additions in plant as may be reasonably necessary to meet the public convenience and necessity within not less than ninety days or such other additional time as the commission finds from the testimony would be reasonably required to expeditiously make the changes and additions specified and required by the commission. The order shall specifically direct what changes or additions in plant shall be made or what services shall be provided. If such changes or additions are not made within the time ordered by the commission or such additional time as may be ordered, then a certificate of public convenience and necessity for the second plant or equipment may issue.

History: 1953 Comp., § 69-10-9, enacted by Laws 1965, ch. 292, § 9; 1998, ch. 108, § 56.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "is" for "shall hereafter be" at the beginning of Subsection A; deleted "contemplated by Article XI, Section 7 of the constitution of New Mexico and this act" preceding "telegraph service" substituted "require the" for "shall require such" near the end of Subsection A; substituted "the" for "such" throughout the section; deleted "the state of" preceding "law of" in Paragraph B(6); deleted "and regulations" following "of the commission" near the end of Paragraph B(6); inserted new Subsection C; deleted "foregoing" following "conditions" inserted "enumerated in Subsection B of this section" following "existed at" near the beginning of Subsection C; and made minor stylistic changes throughout the section.

This section is concerned with prevention of certain duplicate utility services unless the court finds that public convenience and necessity require a second plant or equipment to furnish a similar service. 1963-64 Op. Att'y Gen. No. 63-66.

Operation without franchise. — The fact that a telephone company has operated in a county without a franchise does not limit the power of the county commission to grant a franchise to that company. The obtaining of a franchise is not mandatory, and operating without one is legal. 1963-64 Op. Att'y Gen. No. 63-66.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 86 C.J.S. Telecommunications §§ 3, 4, 17.

63-9-10. Conflict in noncertificated contiguous areas.

If any telephone company in constructing or extending its plant or system in a noncertificated area contiguous to its certificated area shall interfere with the plant or system constructed or extended by another telephone company in such noncertificated area contiguous also to that company's certificated area, the commission, on its own motion, or on complaint of the telephone company injured, may, after a hearing on reasonable notice, make an order prohibiting the construction or extension, or prescribing conditions and location of such construction or extension, or granting a certificate or certificates of public convenience and necessity assigning specific portions of such noncertificated area to one or each of the telephone companies, all after having given due regard to the rights of the respective parties and to the public convenience and necessity.

History: 1953 Comp., § 69-10-10, enacted by Laws 1965, ch. 292, § 10.

ANNOTATIONS

63-9-11. Complaint alleging violation by telephone company.

A. Complaint may be made by any interested party setting forth any act or omission by a telephone company alleged to be in violation of any provision of this act [63-9-1 through 63-9-19 NMSA 1978] or any order or rule of the commission relating to the issuance or nonissuance of a certificate of public convenience and necessity.

B. Upon filing of the complaint the commission shall set the time and place of hearing and at least ten days' notice thereof 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. 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.

E. Conduct of the hearings and rendering of decisions shall be governed by the rules of practice and procedure heretofore or hereafter promulgated by the commission.

History: 1953 Comp., § 69-10-11, enacted by Laws 1965, ch. 292, § 11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 261 et seq.

73A C.J.S. Public Administrative Law and Procedure §§ 118, 121, 122, 134 to 139, 143 to 147, 152.

63-9-12 to 63-9-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-9-12 to 63-9-14 NMSA 1978, as enacted by Laws 1965, ch. 292, § 14, relating to rules, actions to set aside rules, actions to set aside nonremovable orders of the commission, and time limit for seeking recourse in the courts, effective January 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-9-15. Validity of orders; substantial compliance with act sufficient.

A substantial compliance by the commission with the requirements of this act [63-9-1 through 63-9-19 NMSA 1978] 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: 1953 Comp., § 69-10-15, enacted by Laws 1965, ch. 292, § 15.

ANNOTATIONS

63-9-16. Appeal to supreme court.

A. A telephone company or other party in interest being aggrieved by a final order or determination of the commission pursuant to Sections 63-9-1 through 63-9-19 NMSA 1978 may appeal to the supreme court within thirty days.

B. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. 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: 1978 Comp., § 63-9-16, enacted by Laws 1998, ch. 108, § 57.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 108, § 83 made Laws 1998, ch. 108, § 57 effective January 1, 1999.

Repeals and reenactments. — Laws 1998, ch. 108, § 57 repealed former 63-9-16 NMSA 1978, as enacted by Laws 1965, ch. 292, § 16, and enacted a new 63-9-16 NMSA 1978, effective January 1, 1999.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 74 Am. Jur. 2d Telecommunications §§ 34, 35.

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

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-9-17 NMSA 1978, as enacted by Laws 1965, ch. 292, § 17, relating to process and procedure in courts, effective January 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

Laws 1995, ch. 175, § 2, repealed 63-9-18 NMSA 1978, as enacted by Laws 1965, ch. 292, § 18, relating to penalty for violations of the Telephone and Telegraph Certification 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.

63-9-19. Injunctions; contempt.

The commission may apply to the district court for injunctions to prevent violations of any provision of the Telephone and Telegraph Company Certification Act or of any rule or order of the commission in connection with the issuance or nonissuance of certificates of public convenience and necessity pursuant to that act, and the court has the power to grant injunctions and to enforce injunctions by contempt procedure.

History: 1953 Comp., § 69-10-19, enacted by Laws 1965, ch. 292, § 19; 1998, ch. 108, § 58.

ANNOTATIONS

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

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 through 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 through 8-7-10 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.

ARTICLE 9B
Cellular Telephone Services

63-9B-1. Short title.

Chapter 63, Article 9B NMSA 1978 may be cited as the "Cellular Telephone Services Act".

History: Laws 1987, ch. 296, § 1; 1998, ch. 108, § 65.

ANNOTATIONS

Compiler's notes. — The Cellular Telephone Services Act, 63-9B-1 to 63-9B-14 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 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 9B NMSA 1978" for "This act" at the beginning of the section.

63-9B-2. Purpose.

The legislature declares that it is the policy of the state of New Mexico to permit cellular telephone service to operate in this state as authorized by the federal communications commission. It is the purpose of the Cellular Telephone Services Act to permit a regulatory framework that will allow modification and detariffing of cellular telephone services as may be justified by the existence of competition in cellular telephone services in New Mexico.

History: Laws 1987 ch. 296, § 2.

ANNOTATIONS

63-9B-3. Definitions.

As used in the Cellular Telephone Services Act:

A. "commission" means the public regulation commission;

B. "cellular service company" means a cellular telephone company that uses cellular telephone equipment and is a radio common carrier or telephone or telecommunications company licensed by the federal communications commission. A cellular service company operates a cellular system that is a high capacity land mobile system in which assigned spectrum is divided into discrete channels that are assigned in groups to geographic cells covering a cellular geographic area, as defined by the federal communications commission. "Cellular service company" does not include noncellular radio common carrier service, including noncellular mobile telephone service, radio-paging service or one-way cable television service; and

C. "certificated area" means the geographical area that a cellular service company is authorized to serve by a certificate of public convenience and necessity and that is defined on the map as part of the certificate issued under such law authorizing the issuance of a certificate of public convenience and necessity for such purpose.

History: Laws 1987, ch. 296, § 3; 1998, ch. 108, § 66.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "public regulation" for "state corporation" in Subsection A; deleted "and operates within the 800 megahertz band of frequency" following "communications commission" in Subsection B; substituted "that" for "which" in two places in Subsection B; deleted "but not limited to" following "carrier service, including" near the end of Subsection B; and substituted "that" for "which" in Subsection C.

63-9B-4. Operation, regulation and tariffs.

A. A cellular service company may provide cellular telephone services in a certificated area as authorized by law and the commission, subject to reasonable rules and regulations of the commission or as otherwise provided by law. The provisions of Section 63-9A-6 NMSA 1978 shall not be construed to prevent a certificated cellular service company from providing cellular services in the certificated service territory of a telecommunications company having an exclusive right to provide local exchange service.

B. If the commission finds after holding hearings requested by any interested party or by its own motion that more than one cellular service company licensed by the federal communications commission is operating in all or part of a certificated area, then the commission may determine that competition in cellular telephone services exists in such area.

C. When the commission has made a determination that cellular telephone services are subject to competition, the commission shall, consistent with the purposes of the Cellular Telephone Services Act, modify, reduce or eliminate rules, regulations and other requirements applicable to the provision for 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 which will cover the costs for the service.

History: Laws 1987, ch. 296, § 4.

ANNOTATIONS

63-9B-4.1. Wireless emergency alerts; AMBER alert notification.

A. Each commercial mobile radio service provider that is authorized to conduct business in New Mexico shall submit to the authorized requester, designated by the chief of the New Mexico state police pursuant to the AMBER Alert Law [29-15A-1 through 29-15A-5 NMSA 1978], the provider's procedure for receiving a wireless emergency alert, including an AMBER alert, and for disseminating those alerts to the provider's customers as provided in this section.

B. Every alerting authority that has the necessary computer software or other infrastructure shall use the federal emergency management agency's integrated public alert and warning system or its successor federal public alert system to communicate wireless emergency alerts.

C. Upon receipt of a wireless emergency alert initiated by an alerting authority, every commercial mobile radio service provider shall disseminate the wireless emergency alert to the provider's customers in the geographic area identified in the wireless emergency alert. Dissemination of a wireless emergency alert as provided in this section shall be undertaken in the most technically efficient manner possible, using

standard network sharing protocol from authorized agencies or their respective communication contractors.

D. A wireless emergency alert disseminated pursuant to this section shall be disseminated at no additional expense to a provider's customer.

E. As used in this section:

(1) "alerting authority" means a state, local or tribal government that is authorized to use the federal emergency management agency's integrated public alert and warning system to communicate a wireless emergency alert;

(2) "commercial mobile radio service provider" means a federal communications commission licensee that provides commercial radio communication service for profit and that makes interconnected service available to the public in the state;

(3) "integrated public alert and warning system" means an internet-based system that provides for the dissemination of a wireless emergency alert; and

(4) "wireless emergency alert" means a public alert disseminated pursuant to the integrated public alert and warning system by an alerting authority through a commercial mobile radio service provider and includes:

(a) an extreme weather or other emergency alert;

(b) an AMBER alert; and

(c) an alert issued by the president during a national emergency.

History: Laws 2005, ch. 142, § 2; 2015, ch. 14, § 1.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, required each commercial mobile radio service provider to submit to the chief of the New Mexico state police its procedures for receiving and disseminating wireless emergency alerts and provided definitions relating to emergency alerts; in the catchline, added "Wireless emergency alerts"; in Subsection A, after "Each", deleted "cellular service company or paging service company" and added "commercial mobile radio service provider", after "New Mexico", deleted "and offers text messaging services to its customers shall file with" and added "shall submit to", after "AMBER Alert Law, the", deleted "names and telephone numbers of representatives that will be available at all times for notification of" and added "provider’s procedure for receiving a wireless emergency alert, including", and after "AMBER alert", added "and for disseminating those alerts to the provider’s customers as provided in this section"; in Subsection B, deleted "The authorized requester may

designate one or more services to accept notification of an AMBER alert and deliver the notification to each cellular service company or paging service company. Connections with the services" and added new Subsection B; preceding the remaining language in the former Subsection B, added "Upon receipt of a wireless emergency alert initiated by an alerting authority, every commercial mobile radio service provider shall disseminate the wireless emergency alert to the provider’s customers in the geographic area identified in the wireless emergency alert. Dissemination of a wireless emergency alert as provided in this section" and designated this paragraph as new Subsection C; in the present Subsection C, after the second occurrence of "shall" deleted "made" and added "undertaken"; deleted former Subsection C and added Subsections D and E.

63-9B-5. 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 cellular service company alleged to be in violation of any provision of the Cellular Telephone Services 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 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 Cellular Telephone Services 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 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 1987, ch. 296, § 5.

ANNOTATIONS

63-9B-6. Validity of orders; substantial compliance with act sufficient.

A substantial compliance by the commission with the requirements of the Cellular Telephone Services 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.

History: Laws 1987, ch. 296, § 6.

ANNOTATIONS

63-9B-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-9B-7 NMSA 1978, as enacted by Laws 1987, ch. 296, § 7, relating to rules, effective January 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

63-9B-8. Appeal of orders of the commission.

A cellular service company or other person in interest being aggrieved by an order or determination of the commission under the Cellular Telephone Services 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 1987, ch. 296, § 8; 1998, ch. 108, § 67.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "Appeal of" for "Action to set aside nonremovable" in the section heading; substituted "or" for "and any" near the beginning of the section; and 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 Telephone Services Act".

63-9B-9. Notice to the commission.

Upon the filing of a notice of appeal, the appellant shall cause a copy to be served upon the commission and parties of record in the proceeding before the commission in

the manner prescribed by the Rules of Appellate Procedure for Civil Cases. Within thirty days after service of the notice of appeal or such further time as the supreme court for good cause may specify, the commission shall certify to the supreme court the record of the testimony taken before the commission and all exhibits offered or received in evidence at the hearing before the commission and all pleadings, findings, conclusions, orders and opinions, or certified copies thereof, made and entered in, or in connection with, the hearing before the commission; provided, however, that the parties and the commission may stipulate that a specified portion only of the testimony taken at the hearing before the commission shall be certified to the supreme court for review on appeal.

History: Laws 1987, ch. 296, § 9.

ANNOTATIONS

Cross references. — For Rules of Appellate Procedure, *see* Rule 12-101 NMRA et. seq.

63-9B-10. 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 1987, ch. 296, § 10; 1998, ch. 108, § 68.

ANNOTATIONS

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

63-9B-11 to 63-9B-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 108, § 81 repealed 63-9B-11 and 63-9B-12 NMSA 1978, as enacted by Laws 1987, ch. 296, §§ 11 and 12, relating to burden of showing that order is unreasonable or unlawful and decision on appeal, effective January 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

Laws 1995, ch. 175, § 2, repealed 63-9B-13 NMSA 1978, as enacted by Laws 1987, ch. 296, § 13, relating to penalty for violations of the Cellular Telephone Services Act, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com*.

63-9B-14. Injunctions; contempt.

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

History: Laws 1987, ch. 296, § 14; 1998, ch. 108, § 69.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, at the beginning of the section, deleted "In any matter not removable to the supreme court of New Mexico under the provisions of Article II, Section 7 of the constitution of New Mexico"; substituted "the district court" for "courts having jurisdiction"; and substituted "the court has the" for "the courts shall have".

ARTICLE 9C
Low Income Telephone Service Assistance

63-9C-1. Short title.

Chapter 63, Article 9C NMSA 1978 may be cited as the "Low Income Telephone Service Assistance Act".

History: Laws 1987, ch. 197, § 1; 1998, ch. 108, § 70.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "Chapter 63, Article 9C NMSA 1978" for "This act" near the beginning of the section.

63-9C-2. Purpose.

It is the purpose of the Low Income Telephone Service Assistance Act to assure that telephone rate increases do not force many low-income New Mexicans to discontinue necessary telephone service and to increase the availability of basic telephone service to low-income New Mexicans by providing assistance to meet the cost of basic telephone service.

History: Laws 1987, ch. 197, § 2.

63-9C-3. Definitions.

As used in the Low Income Telephone Service Assistance Act:

A. "commission" means the public regulation commission;

B. "department" means the human services department; and

C. "local exchange company" means a person not engaged solely in interstate business that provides services or facilities for the transmission of two-way interactive switched voice communications over a telephone line within a local exchange area for single-line customers.

History: Laws 1987, ch. 197, § 3; 1998, ch. 108, § 71.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "public regulation" for "state corporation" in Subsection A; and in Subsection C, deleted "company, corporation, partnership, cooperative, joint venture or other business organization or association" following "means a person" and substituted "that" for "which".

63-9C-4. Low income assistance rates; commission authority.

A. A local exchange company may provide assistance in the form of reduced rates to those persons who meet the eligibility criteria of one or more need-based assistance programs administered by the department.

B. The commission shall promulgate rules and regulations for the implementation of the Low Income Telephone Assistance Act for those exchange companies who provide such assistance.

History: Laws 1987, ch. 197, § 4.

63-9C-5. Federal waiver.

In addition to any reduced rates provided by local exchange companies on behalf of low-income New Mexicans, the commission shall apply to the federal communications commission for a waiver of the federal end user common line charges. Upon receipt of the waiver, the commission shall notify the local exchange companies providing low income telephone service assistance and the monthly telephone bill shall reflect the waiver of the federal end user common line charges.

History: Laws 1987, ch. 197, § 5.

63-9C-6. Department cooperation.

Subject to state and federal statutes and regulations governing the sharing of confidential information, the department shall cooperate with the commission and the local exchange companies in identifying those persons eligible for assistance pursuant to the Low Income Telephone Service Assistance Act.

History: Laws 1987, ch. 197, § 6.

ARTICLE 9D
Enhanced 911

63-9D-1. Short title.

Sections 63-9D-1 through 63-9D-11.1 NMSA 1978 may be cited as the "Enhanced 911 Act".

History: Laws 1989, ch. 25, § 1; 1993, ch. 48, § 2; 1998, ch. 108, § 72.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "Sections 63-9D-1 through 63-9D-11.1" for "Chapter 63, Article 9D" at the beginning of the section.

63-9D-2. Findings and purpose.

A. The legislature finds that:

(1) isolated people, the elderly, the young and victims of crime are often at risk and without help;

(2) children, elderly persons and victims of crime are frequently unable to explain directions to the location of an emergency situation;

(3) life-threatening accidents, fires, crimes and natural disasters occur in the state each year;

(4) an enhanced 911 telephone emergency system provides:

(a) expansion of the benefits of the basic 911 emergency telephone number;

(b) faster response time which minimizes the loss of life and property;

(c) automatic routing to the appropriate emergency response unit;

(d) immediate visual display of the location and telephone number of the caller; and

(e) curtailment of abuses of the emergency system by documenting callers; and

(5) New Mexico communities could make efficient use of the enhanced 911 telephone emergency system if the communities had adequate funding available.

B. It is the purpose of the Enhanced 911 Act [63-9D-1 through 63-9D-11.1 NMSA 1978] to further the public interest and protect the safety, health and welfare of the people of New Mexico by enabling the development, installation and operation of enhanced 911 emergency reporting systems to be operated under shared state and local governmental management and control.

History: Laws 1989, ch. 25, § 2; 1993, ch. 48, § 3.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, in Subsection A, deleted former Paragraphs (4), (5), and (8) relating to the availability of the 911 emergency number and system, redesignated former Paragraphs (6) and (7) as current Paragraphs (4) and (5), and substituted "curtailment" for "curtailing" in subparagraph (4)(e); and in Subsection B, inserted "shared state and" near the end.

63-9D-3. Definitions.

As used in the Enhanced 911 Act:

A. "911 call" means any real-time communication, message, signal or transmission between a person needing assistance and a public safety answering point call-taker by dialing 9-1-1 or its equivalent;

B. "911 service area" means the area designated by the fiscal agent, local governing body or the division to receive enhanced 911 service;

C. "access line" means a telecommunications company's line that has the capability to reach local public safety agencies by dialing 911, but does not include a line used for the provision of interexchange services or commercial mobile radio service;

D. "commercial mobile radio service" means service provided by a wireless real-time two-way voice communication device, including:

(1) radio-telephone communications used in cellular telephone service;

(2) the functional or competitive equivalent of radio-telephone communications used in cellular telephone service;

(3) a personal communications service; or

(4) a network radio access line;

E. "commercial mobile radio service provider" means a person who provides commercial mobile radio services, including a person who purchases commercial mobile radio service from a provider and resells that service;

F. "commission" means the public regulation commission;

G. "communication service" means any service that:

(1) is capable of and required by law to access, connect with or interface with the enhanced 911 system by directly dialing, initializing or otherwise activating the enhanced 911 system regardless of the transmission medium or technology employed; and

(2) provides or enables real-time or interactive communication;

H. "communications service provider" means any entity that provides communication services;

I. "database" means information that is collected, formatted and disseminated and that is necessary for the functioning of the enhanced 911 system, including geographic information system (GIS) addressing and digital mapping information;

J. "department" means the taxation and revenue department;

K. "division" means the local government division of the department of finance and administration;

L. "enhanced 911 surcharge" means the monthly uniform charge assessed on each access line in the state, on each active number for a commercial mobile radio service subscriber and on the number of VoIP lines for which the VoIP service provider enables the capacity for simultaneous calls, regardless of actual usage, to be connected to the public switched telephone network during the period for which the fixed charge is imposed for a VoIP service subscriber in New Mexico and the charge assessed on any other consumer purchase of communication service provided by a communications service provider that enables communication between a person needing assistance and a public safety answering point call-taker by dialing 9-1-1 or its equivalent; provided that an enhanced 911 surcharge shall not be assessed on the provision of broadband internet access service;

M. "enhanced 911 system" means, regardless of the technology used, a landline, wireless, NG-911 or ESInet system consisting of network switching equipment, database, mapping and on-premises equipment, or the functional equivalent thereof, that uses the single three-digit number 911 for reporting police, fire, medical or other emergency situations, thereby enabling a caller to reach a public safety answering point to report emergencies by dialing 911, and includes the capability to:

(1) selectively route incoming 911 calls to the appropriate public safety answering point operating in a 911 service area;

(2) automatically display the name, address and telephone number of an incoming 911 call on a video monitor at the appropriate public safety answering point;

(3) provide one or more access paths for communications between users at different geographic locations through a network system that may be designed for voice, text or data, or any combination of these, and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies;

(4) relay to a designated public safety answering point a 911 caller's number and base station or cell site location and the latitude and longitude of the 911 caller's location in relation to the designated public safety answering point; and

(5) manage or administer the functions listed in Paragraphs (1) through (4) of this subsection;

N. "enhanced 911 equipment" means the public safety answering point equipment directly related to the operation of an enhanced 911 system, including automatic number identification or automatic location identification controllers and display units, printers, logging recorders and software associated with call detail recording, call center work stations, training, latitude and longitude base station or cell site location data and GIS equipment necessary to obtain and process locational map and emergency service zone data for landline and wireless callers;

O. "equipment supplier" means a person who provides or offers to provide communications equipment necessary for the establishment of enhanced 911 services;

P. "ESInet" means emergency services internet protocol network, an internet-protocol-based, multipurpose inter-network supporting local, regional, state and national public safety communications services in addition to 911;

Q. "fiscal agent" means the local governing body that administers grants from the fund for a given locality or region by agreement;

R. "fund" means the enhanced 911 fund;

S. "local governing body" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipal Code [Chapter 3 NMSA 1978, except Article 66];

T. "NG-911" means a next generation 911 system consisting of network, hardware, software, data and operational policies and procedures that:

(1) provides standardized interfaces from call and message services;

(2) processes all types of emergency calls, including non-voice (multimedia) messages;

(3) acquires and integrates additional data useful to call routing and handling;

(4) delivers the calls, messages and data to appropriate public safety answering points and other appropriate emergency entities;

(5) supports data and communications needs for coordinated incident response and management; and

(6) provides a secure environment for emergency communications;

U. "proprietary information" means customer lists, customer counts, technology descriptions or trade secrets, including the actual or development costs of individual components of an enhanced 911 system; provided that such information is designated as proprietary by the communications service provider; and provided further that "proprietary information" does not include individual payments made by the division or any list of names and identifying information of subscribers who have not paid the surcharge;

V. "public safety answering point" means a twenty-four-hour local communications facility that receives 911 service communications and directly dispatches emergency response services or that relays communications to the appropriate public or private safety agency;

W. "subscriber" means a person who purchases communication services at retail from a communications service provider that are capable of originating a 911 communication;

X. "surcharge" means the 911 emergency surcharge;

Y. "surcharge collected" means the amount of enhanced 911 surcharge billed or received or deemed to have been received by the seller or provider, consistent with the seller's or provider's method of accounting, including accrual or cash;

Z. "telecommunications company" means a person who provides wire telecommunications services that are capable of originating a 911 communication;

AA. "vendor" means a person that provides 911 equipment, service or network support;

BB. "VoIP" means "interconnected voice-over- internet protocol service" as defined in the Code of Federal Regulations, Title 47, Part 9, Section 9.3, as amended; and

CC. "VoIP service provider" or "interconnected voice-over-internet protocol service provider" means an entity that provides interconnected voice-over-internet protocol service to end users.

History: Laws 1989, ch. 25, § 3; 1993, ch. 48, § 4; 1998, ch. 108, § 73; 2001, ch. 110, § 1; 2005, ch. 203, § 1; 2017, ch. 122, § 1.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, defined "communication service", "communications service provider", "enhanced 911 surcharge", "ESInet", "NG-911", "surcharge collected", "VoIP", and "VoIP service provider", and revised the definitions of certain terms, as used in the Enhanced 911 Act; in Subsection A, after "911", deleted "emergency surcharge' means the monthly uniform charge assessed on each access line in the state and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico" and added the remainder of the subsection; added new Subsections G and H and redesignated former Subsections G through I as Subsections I through K, respectively; added a new Subsection L and redesignated former Subsections J through L as Subsections M through O, respectively; in Subsection M, in the introductory clause, after "means", added "regardless of the technology used", after "landline", deleted "or", after "wireless", added "NG-911 or ESInet", and after "on premises equipment", added ", or the functional equivalent thereof", in Paragraph M(3), after "designed for voice", added "text", after "data, or", deleted "both" and added "any combination of these", in Paragraph M(4), added Paragraph M(5); in Subsection O, after "provide", deleted "telecommunications" and added "communications"; added a new Subsection P and redesignated former Subsections M through O as Subsections Q through S, respectively; added a new Subsection T and redesignated former Subsections P through S as Subsections U through X, respectively; in Subsection U, after "proprietary by the", deleted "commercial mobile radio" and added "communications", and after "service provider", deleted "or telecommunications company"; in Subsection V, after "911 service", deleted "calls" and added "communications", and after "relays", deleted "calls" and added "communications"; in Subsection W, after "person who", deleted "is a retail purchaser of telecommunications" and added "purchases communication", after "services", added "at retail from a communications service provider", and after "911", deleted "call" and added "communication"; added a new Subsection Y and redesignated former Subsections T

and U as Subsections Z and AA, respectively; in Subsection Z, after "911", deleted "call" and added "communication"; and added Subsections BB and CC.

The 2005 amendment, effective July 1, 2005, added each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico as a category on which the 911 emergency surcharge may be assessed in Subsection A; deleted the former reference to the area within a local governing body's jurisdiction as a 911 service area and added the area designated by the fiscal agent in Subsection B; deleted the former definition of "911 system" in Subsection C; defined "access line" in Subsection C as a line that can reach local public safety agencies by dialing 911; deleted the definition of "basic 911 system" in former Subsection E; added the definition of "database" in Subsection G; defined "enhanced 911 system" in Subsection J to mean a landline or wireless system consisting of network switching equipment and mapping; added Subsection J(3) and (4); provided in Subsection K that "enhanced 911 equipment" includes logging recorders, call center work stations, training, latitude and longitude base station or cell cite location data and GIS equipment necessary to obtain and process locational map and emergency service zone data for landline and wireless callers; deleted the definition of "enhanced 911 wireless service" in former Subsection M; added the definition of "fiscal agent" in Subsection M; added the definition of "fund" in Subsection N; deleted the definition of "network" in former Subsection P; deleted the definition of "network and database surcharge" in former Subsection Q; provided in Subsection Q that "proprietary information" includes cost information that is designated as proprietary by the telecommunications company; added the definition of "surcharge" in Subsection S; deleted the definition of "wireless enhanced 911 surcharge" in former Subsection V; and added the definition of "vendor" in Subsection U.

The 2001 amendment, effective July 1, 2001, added present Subsections D, F, G, M, R, T, U and V and deleted former Subsections K, L, M, N and O, which defined "local 911 surcharge", "local exchange access line", "local exchange area", "local exchange service", and "local exchange telephone company" respectively, and renumbered the remaining subsections accordingly; in Subsection A, rewrote the definition for "911 emergency surcharge" which formerly defined the term as "the monthly uniform charge assessed on each local exchange access line to pay for the purchase, lease, installation and maintenance of equipment necessary for the establishment of a 911 system, including the repayment of bonds issued pursuant to the Enhanced 911 Bond Act"; in Subsection E, substituted "a designated" for "an established" and deleted "through normal telephone service facilities"; in Subsection K, deleted "telephone" preceding "system" and substituted "a caller" for "the users of a public telephone system"; substituted "public safety answering point" for "customer premises" in Subsection L; and deleted "local exchange service customer in the state for each local exchange" preceding "access line" in Subsection Q.

The 1998 amendment, effective January 1, 1999, substituted "public regulation" for "state corporation" in Subsection E; substituted "uses" for "utilizes" near the middle of Subsection H; deleted "but not limited to" preceding "911 system, including" near the middle of Subsection I; and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, inserted current Subsections C, D, E, Q, and R, deleted former Subsection G, defining "fund", and redesignated former Subsections C through F, H through N, and O as current Subsections F through P, and S; added the language beginning "for each local exchange" at the end of Subsection A; deleted "New Mexico state corporation" preceding "commission" in Subsection M; substituted "local exchange telephone" for "telecommunications" in Subsection N; deleted "city council or other" following "county or the" and "or of a town, village or special district" at the end of Subsection P; and made minor stylistic changes.

63-9D-4. Provision for enhanced 911 services by local governing bodies; enhanced 911 system costs; payment of costs; joint powers agreements; aid outside jurisdictional boundaries.

A. A local governing body or a consortium of local governing bodies may incur costs for the purchase, lease, installation or maintenance of enhanced 911 equipment and training necessary for the establishment of an enhanced 911 system and may pay such costs through disbursements from the fund; provided that the local governing body has employed properly trained staff in its public safety answering point pursuant to the Public Safety Telecommunicator Training Act [29-7C-1 through 29-7C-9 NMSA 1978].

B. If the enhanced 911 system is to be provided for territory that is included in whole or in part in the jurisdiction of the local governing bodies of two or more public agencies that are the primary providers of emergency firefighting, law enforcement, ambulance, emergency medical or other emergency services, the agreement for the procurement of the enhanced 911 system shall be entered into by the fiscal agent designated by the local governing bodies. A local governing body may expressly exclude itself from the agreement. Nothing in this subsection shall be construed to prevent two or more local governing bodies from entering into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 through 11-1-7 NMSA 1978] to establish a separate legal entity that can enter into an agreement as the enhanced 911 system customer.

C. A public agency in an enhanced 911 service area shall provide that, once an emergency unit is dispatched in response to a request for aid through the enhanced 911 system, the emergency unit shall render services to the requester without regard to whether the unit is operating outside its normal jurisdictional boundaries.

D. A local governing body in an enhanced 911 service area shall provide GIS addressing and digital mapping data to the public safety answering point that provides the enhanced 911 service to the local governing body.

History: Laws 1989, ch. 25, § 4; 1993, ch. 48, § 5; 2001, ch. 110, § 2; 2005, ch. 203, § 2.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, in Subsection A, provided that a consortium of local governing bodies may acquire enhanced 911 equipment and training; deleted former provisions relating to the recovery and distribution of necessary network and database costs; and provided that the costs of enhanced 911 equipment may be paid from the enhanced 911 fund provided that the local governing body has employed properly trained staff in its public safety answering point pursuant to the Public Safety Telecommunicator Training Act; provided in Subsection B that an agreement for procurement of an enhanced 911 system shall be entered into by the fiscal agent designated by the local governing bodies and deleted the former provision that the agreement shall provide that each local governing body not excluded from the agreement shall make payment for the enhanced 911 system from general revenues; and added Subsection D.

The 2001 amendment, effective July 1, 2001 in Subsection A, added the Paragraph (1) designation, inserted "surcharge" in that paragraph and added Paragraph (2); in Subsection B, substituted "the enhanced 911 system" for "a 911 system", substituted "entering into a joint powers agreement pursuant to the Joint Powers Agreements Act" for "entering into a contract", and substituted "that can enter" for "that is, separate governing body, and thereunder to enter".

The 1993 amendment, effective July 1, 1993, rewrote the catchline which read "Provision for Enhanced 911 Services by Local Governing Bodies - Payment of Costs - Joint Powers Agreements"; substituted "a 911 system" for "an enhanced 911 system" and inserted "enhanced 911" near the end of the first sentence of Subsection A; substituted the current second sentence in Subsection A for language authorizing communities to incur costs for development of network capability and enhanced 911 system database; substituted "procurement of the necessary equipment for a 911 system" for "necessary equipment" in the first sentence of Subsection B; added Subsection C; and made stylistic changes.

63-9D-4.1. Repealed.

History: Laws 2003, ch. 339, § 1; repealed by Laws 2017, ch. 122, § 11.

ANNOTATIONS

Repeals. — Laws 2017, ch. 122, § 11 repealed 63-9D-4.1 NMSA 1978, as enacted by Laws 2003, ch. 339, § 1, relating to email notification, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

63-9D-5. Imposition of surcharge.

A. There is imposed a 911 emergency surcharge in the amount of fifty-one cents ($.51) to be billed to each subscriber access line by a communications service provider, on each active number for a commercial mobile radio service subscriber and on the number of VoIP lines for which the VoIP service provider enables the capacity for

simultaneous calls, regardless of actual usage, to be connected to the public switched telephone network during the period for which the fixed charge is imposed. The surcharge is imposed on all subscribers whose place of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, is in New Mexico; provided, however, that the surcharge shall not be imposed upon subscribers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act [Chapter 63, Article 9C NMSA 1978]; and provided further that the surcharge shall not apply to prepaid wireless communication service; and provided further that a 911 emergency surcharge shall not be assessed on the provision of broadband internet access service.

B. All communications service providers shall be required to bill and collect the surcharge from their subscribers whose places of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, are in New Mexico. The surcharge required to be collected by the communications service provider shall be added to and stated clearly and separately in the billings to the subscriber. The surcharge collected by the communications service provider shall not be considered revenue of the communications service provider.

C. A billed subscriber is liable for payment of the 911 emergency surcharge until it has been paid to the communications service provider.

D. A communications service provider has no obligation to take legal action to enforce the collection of the surcharge; an action may be brought by or on behalf of the department. A communications service provider, upon request and not more than once a year, shall provide to the department a list of the surcharge amounts uncollected, along with the names and addresses of subscribers who carry a balance that can be determined by the communications service provider to be nonpayment of the surcharge. The communications service provider shall not be held liable for uncollected surcharge amounts.

History: Laws 1989, ch. 25, § 5; 1993, ch. 48, § 6; 2001, ch. 110, § 3; 2005, ch. 203, § 3; 2017, ch. 122, § 2.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, imposed a 911 emergency surcharge on certain VoIP lines, clarified that the emergency surcharge is imposed on all subscribers whose place of primary use is in New Mexico, and provided that the surcharge does not apply to prepaid wireless communication service and shall not be assessed on the provision of broadband internet access service; in Subsection A, after "subscriber access line by a", deleted "telecommunications company and" and added "communications service provider", after "radio service subscriber", deleted "whose billing address" and added "and on the number of VoIP lines for which the VoIP service provider enables the capacity for simultaneous calls, regardless of actual usage, to be connected to the public switched telephone network during the period for which the fixed charge is imposed. The surcharge is imposed on all subscribers whose place of

primary use, as defined in the federal Mobile Telecommunications Sourcing Act", and after the semicolon, added the remainder of the subsection; in Subsection B, deleted "Commercial mobile radio" and added "All communications", deleted "Telecommunications companies shall be required to bill and collect the surcharge from their subscribers", in two places, after "The surcharge required to be collected by the", deleted "commercial mobile radio service provider or telecommunications company" and added "communications service provider", after "revenue of the", deleted "commercial mobile radio" and added "communications", after the next occurrence of "service provider", deleted "or telecommunications company"; in Subsection C, after "paid to the", deleted "commercial mobile radio" and added "communications", and after "service provider", deleted "or telecommunications company"; in Subsection D, replaced "commercial mobile radio" with "communications" throughout the subsection, and after each occurrence of "service provider", added "or telecommunications company"; and deleted former Subsection E, which provided a former commencement period for the emergency surcharge.

The 2005 amendment, effective July 1, 2005, increased the surcharge and included each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico as a category upon which the surcharge is assessed; deleted reference to the network and database surcharge; and deleted the former provisions that related to the commencement of the 911 emergency surcharge and the network and database surcharge, the requirement that the local governing body notify the division and the telecommunications company providing local exchange service of the boundaries of the 911 service area and the cost to acquire the 911 emergency service equipment; and required a local governing body that seeks funding for the 911 system to file an application with the division; added Subsection B to provide for the collection of the surcharge by commercial mobile radio service providers and telecommunications companies; added Subsection C to provide that subscribers are liable for the surcharge billed; added Subsection D to provide that commercial mobile radio service providers and telecommunications companies are not liable for payment of the uncollected surcharge and have no obligation to enforce collection and to require them to provide the department with information about uncollected amounts and delinquent subscribers; and added Subsection E to provide that the surcharge shall commence with the first billing period of each subscriber on or after July 1, 2005.

The 2001 amendment, effective July 1, 2001, substituted "to be billed to each subscriber access line by a telecommunications company" for "to be billed by local exchange telephone companies on all local exchange access lines in the state"; substituted "imposed upon subscribers" for "imposed upon local exchange service customers"; substituted "subscriber" for "customer" in two places; and substituted "telecommunications company" for "local exchange telephone company".

The 1993 amendment, effective July 1, 1993, deleted "Additional Local Surcharge" following "Notification" in the catchline and rewrote this section to the extent that a detailed comparison is impracticable.

63-9D-5.1. Prepaid wireless enhanced 911 surcharge; collection and administration of surcharge; liability of sellers; exclusivity of surcharge.

A. As used in this section:

(1) "consumer" means a person who purchases prepaid wireless communication service in a retail transaction;

(2) "prepaid wireless communication service" means a wireless communication service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount;

(3) "prepaid wireless enhanced 911 surcharge" means the charge that is required to be collected by a seller from a consumer in the amount established under Subsection B of this section;

(4) "provider" means a person that provides prepaid wireless communication service pursuant to a license issued by the federal communications commission;

(5) "retail transaction" means the purchase of prepaid wireless communication service from a seller for any purpose other than resale;

(6) "seller" means a person who sells prepaid wireless communication service to another person; and

(7) "wireless communication service" means commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended.

B. A prepaid wireless enhanced 911 surcharge of one and thirty-eight hundredths percent is imposed on the gross value of each retail transaction. The prepaid wireless enhanced 911 surcharge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless enhanced 911 surcharge shall be either separately stated on an invoice, receipt or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

C. For purposes of Subsection B of this section, a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

D. The prepaid wireless enhanced 911 surcharge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless enhanced 911 surcharges that the seller collects from consumers as provided in this section, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt or other similar document provided to the consumer by the seller.

E. The amount of the prepaid wireless enhanced 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

F. When prepaid wireless communication service is sold with one or more other products or services for a single, non-itemized price, the percentage specified in Subsection B of this section shall apply to the entire non-itemized price unless the seller elects to apply such percentage to:

(1) if the amount of the prepaid wireless communication service is disclosed to the consumer as a dollar amount, such dollar amount; or

(2) if the seller can identify the portion of the price that is attributable to the prepaid wireless communication service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including non-tax purposes, such portion.

G. However, if a minimal amount of prepaid wireless communication service is sold with a prepaid wireless device for a single, non-itemized price, the seller may elect not to apply the percentage specified in Subsection B of this section to such transaction. For purposes of this subsection, an amount of service denominated as ten minutes or less, or five dollars ($5.00) or less, is minimal.

H. Prepaid wireless enhanced 911 surcharges collected by sellers shall be remitted to the department at the times and in the manner provided with respect to the Gross Receipts and Compensating Tax Act. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the Gross Receipts and Compensating Tax Act. A seller shall be permitted to deduct and retain three percent of prepaid wireless enhanced 911 surcharges that are collected by the seller from the consumer.

I. The audit and appeal procedures applicable to the Gross Receipts and Compensating Tax Act shall apply to prepaid wireless enhanced 911 surcharges.

J. The department shall establish procedures by which a seller of prepaid wireless communication services may document that a sale is not a retail transaction, which

procedures shall substantially coincide with the procedures for documenting sale for resale transactions for the Gross Receipts and Compensating Tax Act.

K. No provider or seller of prepaid wireless communication services shall be liable for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 911 or enhanced 911 service, or for identifying, or failing to identify, the telephone number, address, location or name associated with any person or device that is accessing or attempting to access 911 or enhanced 911 service.

L. No provider or seller of prepaid wireless communication services shall be liable for damages to any person resulting from or incurred in connection with the provision of any assistance to any investigative or law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state, in connection with any investigation or other law enforcement activity by such law enforcement officer.

M. In addition to the protection from liability provided by Subsections K and L of this section, each provider and seller shall be entitled to the further protection from liability as provided pursuant to Section 63-9D-10 NMSA 1978.

N. The prepaid wireless enhanced 911 surcharge applies to retail transactions occurring on or after July 1, 2017.

History: Laws 2017, ch. 122, § 10.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 122 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.

63-9D-6. Repealed.

History: Laws 1989, ch. 25, § 6; 1990, ch. 87, § 1; 1993, ch. 48, § 7; 2001, ch. 110, § 4; repealed Laws 2005, ch. 203, § 15.

ANNOTATIONS

Repeals. — Laws 2005, ch. 203, § 15 repealed 63-9D-6 NMSA 1978, as enacted by Laws 1989, ch. 25, § 6, relating to subscriber liability for payment of the 911 emergency surcharge and the network and database surcharge, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

63-9D-7. Remittance of charges; administrative fee.

A. The surcharge collected shall be remitted monthly to the department, which shall administer and enforce collection of the surcharge in accordance with the Tax

Administration Act [Chapter 7, Article 1 NMSA 1978]. The surcharge shall be remitted to the department no later than the twenty-fifth day of the month following the month in which the surcharge was imposed. At that time, a return for the preceding month shall be filed with the department in such form as the department and communications service provider shall agree upon. A communications service provider required to file a return shall deliver the return together with a remittance of the amount of the surcharge payable to the department. The communications service provider shall maintain a record of the amount of each surcharge collected pursuant to the Enhanced 911 Act. The record shall be maintained for a period of three years after the time the surcharges were collected.

B. From a remittance to the department made on or before the date it becomes due, a telecommunications company or commercial mobile radio service provider required to make a remittance shall be entitled to deduct and retain one percent of the collected amount or fifty dollars ($50.00), whichever is greater, as the administrative cost for collecting the surcharge.

History: Laws 1989, ch. 25, § 7; 1993, ch. 48, § 8; 2001, ch. 110, § 5; 2005, ch. 203, § 4; 2017, ch. 122, § 3.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, changed references to "telecommunications company or commercial mobile radio service provider" to "communications service provider"; in Subsection A, replaced "telecommunications company or commercial mobile radio" with "communications" throughout the subsection.

The 2005 amendment, effective July 1, 2005, deleted references to the 911 emergency surcharge and the network and database surcharge; and changed "telecommunications company" to "telecommunications company or commercial mobile radio services provider".

The 2001 amendment, effective July 1, 2001, substituted "telecommunications company" for "local exchange telephone company" and "surcharge" for "charge" throughout the section and made stylistic changes.

The 1993 amendment, effective July 1, 1993, inserted "and the network and database surcharge" in the first and second sentences of Subsection A and at the end of Subsection B; rewrote the second sentence of Subsection A which read "The amount of the charge collected in one month by the local exchange telephone company shall be remitted to the department no later than sixty days after the end of the month"; substituted "three years" for "one year" and "charges were" for "charge was" in the final sentence of Subsection A; and deleted former Subsections C through F, relating to audits of local exchange telephone companies and the collection and remittance of local 911 surcharge amounts.

63-9D-8. Enhanced 911 fund; creation; administration; disbursement; reports to legislature.

A. There is created in the state treasury a fund that shall be known as the "enhanced 911 fund". The fund shall be administered by the division.

B. All surcharges collected and remitted to the department shall be deposited in the fund.

C. Money deposited in the fund and income earned by investment of the fund are appropriated for expenditure in accordance with the Enhanced 911 Act and shall not revert to the general fund.

D. Payments shall be made from the fund to, or on behalf of, participating local governing bodies or their fiscal agents upon vouchers signed by the director of the division solely for the purpose of reimbursing local governing bodies or their fiscal agents and communications service providers for their costs of providing enhanced 911 service. A person who purchases communication services from a communications service provider for the purpose of reselling that service is not eligible for reimbursement from the fund. Money in the fund may be used for the payment of bonds issued pursuant to the Enhanced 911 Bond Act [63-9D-12 through 63-9D-20 NMSA 1978].

E. Annually, the division may expend no more than five percent of all money deposited annually in the fund for administering and coordinating activities associated with implementation of the Enhanced 911 Act.

F. Money in the fund may be awarded as grant assistance to provide enhanced 911 service and equipment upon application of local governing bodies or their fiscal agents to the division and upon approval by the state board of finance. If it is anticipated that the funds available to pay all requests for grants will be insufficient, the state board of finance may reduce the percentage of assistance to be awarded. In the event of such reduction, the state board of finance may award supplemental grants to local governing bodies that demonstrate financial hardship.

G. After requesting enhanced 911 service from a communications service provider, a local governing body may, by ordinance or resolution, recover from the fund an amount necessary to recover the costs of providing the enhanced 911 system in its designated 911 service area. The division, on behalf of local governing bodies, shall directly pay or reimburse communications service providers for their costs of providing enhanced 911 service. If a communications service provider does not receive payment or reimbursement for the costs of providing enhanced 911 service, the provider is not obligated to provide that service.

H. The division shall report to the legislature each session the status of the fund and whether the current level of the 911 emergency surcharge is sufficient, excessive or insufficient to fund the anticipated needs for the next year.

History: Laws 1989, ch. 25, § 8; 1990, ch. 86, § 10; 1990, ch. 87, § 2; 1993, ch. 48, § 9; 2001, ch. 110, § 6; 2005, ch. 203, § 5; 2017, ch. 122, § 4.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, changed references to "telecommunications company or commercial mobile radio service provider" to "communications service provider"; in Subsections D and G, replaced "commercial mobile radio" with "communications" and deleted all references to "telecommunications companies" throughout the subsections.

The 2005 amendment, effective July 1, 2005, provided in Subsection D that payments shall be made from the fund to the fiscal agents of local governing bodies solely for the purpose of reimbursing local governing bodies or their agents, commercial mobile radio service providers or telecommunications companies for the cost of providing enhanced 911 service, that the purchase of service for the purpose of reselling it does not qualify for reimbursement and that money in the fund may be used to pay bonds pursuant to the Enhanced 911 Bond Act; deleted the provision in former Subsection E that money in the fund may be used to acquire or maintain 911 system equipment, including repayment of bonds; added Subsection F to provide that money in the fund may be awarded as grant assistance to provide enhanced 911 service and equipment; and added Subsection G.

Temporary provision. — Laws 2005, ch. 203, § 14, provided that all money in the wireless enhanced 911 fund and network and database surcharge fund is transferred to the enhanced 911 fund.

The 2001 amendment, effective July 1, 2001, inserted "or on behalf of" in Subsection D; substituted "sufficient" for "adequate" in Subsection F; and made stylistic changes.

The 1993 amendment, effective July 1, 1993, inserted "are hereby appropriated for expenditure in accordance with the Enhanced 911 Act and" in Subsection C; added the first sentence of Subsection E; and made stylistic changes throughout the section.

The 1990 amendment, effective March 2, 1990, added present Subsections C and E and redesignated former Subsections C and D as present Subsections D and F.

63-9D-8.1. Division powers.

A. The division may adopt reasonable rules necessary to carry out the provisions of the Enhanced 911 Act.

B. The division may fund enhanced 911 systems pursuant to the provisions of the Enhanced 911 Act.

C. Division powers are limited and do not include power to intervene between two vendors or restrict marketing efforts of vendors.

D. The division and the local governing body may establish 911 service areas.

E. Unless otherwise provided by law, no rule affecting any person, agency, local governing body or communications service provider shall be adopted, amended or repealed without a public hearing on the proposed action before the director of the division or a hearing officer designated by the director. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons or agencies who have made a written request for advance notice of the hearing and to all local governing bodies and communications service providers.

F. All rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1978 Comp., § 63-9D-8.1, enacted by Laws 1990, ch. 87, § 3; 1993, ch. 48, § 10; 2001, ch. 110, § 7; 2005, ch. 203, § 6; 2017, ch. 122, § 5.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, changed references to "telecommunications company or commercial mobile radio service provider" to "communications service provider"; in Subsection E, replaced "commercial mobile radio" with "communications" and deleted all references to "telecommunications companies" throughout the subsection.

The 2005 amendment, effective July 1, 2005, added Subsection C and relettered the succeeding subsections accordingly.

The 2001 amendment, effective July 1, 2001, substituted "may" for "should have the authority to" in Subsections B and C; in Subsection D, substituted "commercial mobile radio service provider or telecommunications company" for "or local exchange telephone company" at the beginning and substituted "telecommunications companies and commercial mobile radio service providers" for "and local exchange telephone companies" and made stylistic changes.

The 1993 amendment, effective July 1, 1993, added current Subsections B and C and redesignated former Subsections B and C as Subsections D and E.

63-9D-8.2. Repealed.

History: Laws 1993, ch. 48, § 11; 2001, ch. 110, § 8; repealed Laws 2005, ch. 203, § 15.

ANNOTATIONS

Repeals. — Laws 2005, ch. 203, § 15 repealed 63-9D-8.2 NMSA 1978, as enacted by Laws 1993, ch. 48, § 11, relating to network and database surcharge fund, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

63-9D-9. Repealed.

History: Laws 1989, ch. 25, § 9; 1993, ch. 48, § 12; 2001, ch. 110, § 9; repealed Laws 2005, ch. 203, § 15.

ANNOTATIONS

Repeals. — Laws 2005, ch. 203, § 15 repealed 63-9D-9 NMSA 1978, as enacted by Laws 1989, ch. 25, § 9, relating to use of funds collected, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

63-9D-9.1. Repealed.

History: Laws 2001, ch. 110, § 12; repealed Laws 2005, ch. 203, § 15.

ANNOTATIONS

Repeals. — Laws 2005, ch. 203, § 15 repealed 63-9D-9.1 NMSA 1978, as enacted by Laws 2001, ch. 110, § 12, relating to wireless enhanced 911 fund, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

63-9D-9.2. Repealed.

History: Laws 2001, ch. 110, § 13; 2002, ch. 18, § 6; repealed Laws 2005, ch. 203, § 15.

ANNOTATIONS

Repeals. — Laws 2005, ch. 203, § 15 repealed 63-9D-9.2 NMSA 1978, as enacted by Laws 2001, ch. 110, § 13, relating to imposition of enhanced wireless 911 surcharge, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

63-9D-9.3. Repealed.

History: Laws 2001, ch. 110, § 14; repealed Laws 2005, ch. 203, § 15.

ANNOTATIONS

Repeals. — Laws 2005, ch. 203, § 15 repealed 63-9D-9.3 NMSA 1978, as enacted by Laws 2001, ch. 110, § 14, relating to remittance of surcharges to the taxation and revenue department, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

63-9D-10. Immunity.

Enhanced 911 systems are within the governmental powers and authorities of the local governing body or state agency in the provision of services for the public health, welfare and safety. In contracting for such services or the provisioning of an enhanced 911 system, except for intentional acts, the local governing body, public agency, equipment supplier, communications service provider and their officers, directors, vendors, employees and agents are not liable for damages resulting from installing, maintaining or providing enhanced 911 systems or transmitting 911 calls.

History: Laws 1989, ch. 25, § 10; 2001, ch. 110, § 10; 2005, ch. 203, § 7; 2017, ch. 122, § 6.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, removed negligent acts as exceptions to the immunity provision, and changed references to "telecommunications company or commercial mobile radio service provider" to "communications service provider"; after "except for", deleted "willful or wanton negligence or", after "equipment supplier,", deleted "telecommunications company, commercial mobile radio" and added "communications", and after "provider and their", added "officers, directors, vendors".

The 2005 amendment, effective July 1, 2005, changed "911 systems" to "enhanced 911 systems" throughout the section.

The 2001 amendment, effective July 1, 2001, substituted "telecommunications company, commercial mobile radio service provider, and" for "local exchange telephone company and mobile telephone company, including a cellular service company as defined in Subsection B of Section 63-9B-3 NMSA 1978"; substituted "are not liable for damages resulting from" for "shall be immune from litigation or the payment of any

damages in the performance of"; and substituted "or transmitting 911 calls" for "and transmitting 911 calls".

63-9D-11. Private listing subscribers and 911 service.

A. Private listing subscribers waive the privacy afforded by nonlisted or nonpublished numbers only to the extent that the name and address associated with the telephone number may be furnished to the enhanced 911 system for call routing or for automatic retrieval of location information in response to a call initiated to 911.

B. Information regarding the identity of private listing subscribers provided by a communications service provider, including names, addresses, telephone numbers or other identifying information, is not a public record and is not available for inspection.

C. Proprietary information provided by a communications service provider is not public information and may not be released to any person without the express permission of the submitting provider, except that information may be released or published as aggregated data that does not identify the number of subscribers or identify enhanced 911 system costs attributable to an individual communications service provider.

History: Laws 1989, ch. 25, § 11; 2001, ch. 110, § 11; 2005, ch. 203, § 8; 2017, ch. 122, § 7.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, provided that information regarding the identity of private listing subscribers provided by communications service providers is not a public record and that proprietary information provided by a communications service provider is not public information, and changed references to "telecommunications company or commercial mobile radio service provider" to "communications service provider"; in Subsection B, after "private listing subscribers", added "provided by a communications service provider"; and in Subsection C, replaced "commercial mobile radio" with "communications" and deleted references to "telecommunications companies" throughout the subsection.

The 2005 amendment, effective July 1, 2005, changed "mobile radio service provider" to "mobile radio service provider or telecommunications company" in two places in Subsection C.

The 2001 amendment, effective July 1, 2001, added the Subsection A designation and inserted "only" following "nonpublished numbers"; and added Subsections B and C.

63-9D-11.1. Violation; penalties.

A. Any person who knowingly dials 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency is guilty of a petty misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or imprisonment for a term not to exceed six months, or both.

B. A municipality or a county may adopt an ordinance making it a violation for any person to knowingly dial 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency. The municipality may adopt and enforce the ordinance pursuant to the authority provided in Section 3-17-1 NMSA 1978. The county may adopt and enforce the ordinance pursuant to the authority provided in Section 4-37-1 NMSA 1978.

History: Laws 1993, ch. 48, § 13; 2017, ch. 122, § 8.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, authorized counties to adopt an ordinance making it a violation for any person to knowingly dial 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency; and in Subsection B, after "municipality", added "or a county", and added the last sentence of the subsection.

63-9D-12. Short title.

Sections 63-9D-12 through 63-9D-20 NMSA 1978 may be cited as the "Enhanced 911 Bond Act".

History: Laws 1990, ch. 61, § 1; 1992, ch. 102, § 1.

ANNOTATIONS

The 1992 amendment, effective March 10, 1992, substituted "Sections 63-9D-12 through 63-9D-20 NMSA 1978" for "Sections 1 through 8 of this act".

63-9D-13. Definitions.

As used in the Enhanced 911 Bond Act [63-9D-12 through 63-9D-20 NMSA 1978]:

A. "board" means the state board of finance;

B. "division" means the local government division of the department of finance and administration;

C. "enhanced 911 bonds" means the bonds authorized in the Enhanced 911 Bond Act;

D. "enhanced 911 project" means actions authorized under Section 63-9D-14 NMSA 1978 that pertain to a specific component of the enhanced 911 system; and

E. "enhanced 911 revenue" means the revenue to and the income of the enhanced 911 fund that are pledged to the payment of enhanced 911 bonds under the Enhanced 911 Bond Act.

History: Laws 1990, ch. 61, § 2; 1992, ch. 102, § 2; 2001, ch. 110, § 15; 2005, ch. 203, § 9.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deleted former Subsection F, which defined "network and data base surcharge revenue"; and deleted former Subsection G, which defined "wireless enhanced 911 revenue".

The 2001 amendment, effective July 1, 2001, substituted "enhanced 911 revenue" for "pledged revenue" in Subsection E; and added Subsections F and G.

The 1992 amendment, effective March 10, 1992, substituted "Section 63-9D-14 NMSA 1978" for "Section 3 of the Enhanced 911 Bond Act" in Subsection D.

63-9D-14. Enhanced 911 bonds; authority to issue; pledge of revenues; limitation on issuance.

A. In addition to any other law authorizing the board to issue revenue bonds, the board may issue enhanced 911 bonds pursuant to the Enhanced 911 Bond Act for the purposes specified in this section.

B. Enhanced 911 bonds may be issued for:

(1) acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating the enhanced 911 system, the payment of which shall be secured by enhanced 911 revenues;

(2) reimbursing a communications service provider for its reasonable costs of providing enhanced 911 service, the payment of which shall be secured by enhanced 911 revenues; or

(3) reimbursing a local governing body or its fiscal agent for its reasonable costs of providing the enhanced 911 system, the payment of which shall be secured by enhanced 911 revenues.

C. The board may pledge irrevocably enhanced 911 revenues in the manner set forth in Subsection B of this section to the payment of the interest on and principal of enhanced 911 bonds. Any general determination by the board that expenditures are

reasonably related to and constitute a part of a specified enhanced 911 project shall be conclusive if set forth in the proceedings authorizing the enhanced 911 bonds.

History: Laws 1990, ch. 61, § 3; 1992, ch. 102, § 3; 2001, ch. 110, § 16; 2005, ch. 203, § 10; 2017, ch. 122, § 9.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, changed references to "telecommunications company or commercial mobile radio service provider" to "communications service provider"; in Subsection B, Paragraph B(2), after "reimbursing a", deleted "commercial mobile radio" and added "communications", and after "service provider", deleted "or telecommunications company".

The 2005 amendment, effective July 1, 2005, deleted references to "wireless enhanced 911 revenues", "wireless 911 service" and "network and data base surcharge revenues"; provided in Subsection B(2) that bonds may be issued to reimburse telecommunications companies for reasonable costs; and provided in Subsection C that any general determination by the board that expenditures are reasonably related to an enhanced 911 project shall be conclusive.

The 2001 amendment, effective July 1, 2001, added the designations for Paragraph B(1) and for Subsection C; added the last clause in Paragraph B(1) beginning with "the payment of which shall"; added Paragraphs B(2) and (3); in present Subsection C, substituted "enhanced 911 revenues, network and database surcharge revenues and wireless enhanced 911 revenues in the manner set forth in Subsection B of this section" for "any or all of the projected revenues of the enhanced 911 fund, specifically including the 911 emergency surcharge authorized under the Enhanced 911 Act" and substituted "principal of enhanced 911 bonds" for "principal of such bonds".

The 1992 amendment, effective March 10, 1992, substituted "or" for "and" near the end of the first sentence of Subsection B.

63-9D-15. Use of proceeds of bond issue.

It is unlawful to divert, use or expend any money received from the issuance of enhanced 911 bonds for any purpose other than the purposes for which the bonds were issued.

History: Laws 1990, ch. 61, § 4.

63-9D-16. Enhanced 911 bonds; terms.

Enhanced 911 bonds:

A. shall bear interest at a coupon rate or coupon rates not exceeding the maximum coupon rate which is permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978]; provided that interest shall be payable annually or semiannually and may or may not be evidenced by coupons; and provided further that the first interest payment date may be for interest accruing for any period not exceeding one year;

B. may be subject to a prior redemption at the board's option at such time or times and upon such terms and conditions, with or without the payment of such premium or premiums, as may be provided by action of the board;

C. may mature at any time or times not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments;

E. shall be sold for cash at, above or below par and at a price which results in a net effective interest rate which does not exceed the maximum permitted by the Public Securities Act; and

F. may be sold at public or private sale.

History: Laws 1990, ch. 61, § 5.

63-9D-17. Bond authorization.

The board may issue and sell enhanced 911 bonds in compliance with the Enhanced 911 Bond Act [63-9D-12 through 63-9D-20 NMSA 1978]. The board shall schedule the issuance and sale of the bonds in the most expeditious and economical manner upon a finding by the board that the division has certified that the need exists for the issuance of bonds and upon an action by the board designating the enhanced 911 fund to be the source of pledged revenues.

History: Laws 1990, ch. 61, § 6; 2001, ch. 110, § 17; 2005, ch. 203, § 11.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deleted references to the "network and data base surcharge fund" and the "wireless enhanced 911 fund".

The 2001 amendment, effective July 1, 2001, inserted "the network and database surcharge fund or the wireless enhanced 911 fund" towards the end of the section.

63-9D-18. Authority to refund bonds.

The board may issue and sell at public or private sale enhanced 911 bonds to refund outstanding enhanced 911 bonds and other bonds payable from the enhanced 911 fund by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof, when, in its opinion, such action will be beneficial to the state.

History: Laws 1990, ch. 61, § 7; 1992, ch. 102, § 4; 2001, ch. 110, § 18; 2005, ch. 203, § 12.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deleted former Subsection B, which provided that no enhanced 911 bonds that are secured by enhanced 911 revenues or database surcharge revenues shall be refunded by enhanced 911 bonds and that no enhanced 911 bonds that are secured by wireless enhanced 911 revenues shall be refunded by enhanced 911 bonds that are secured by enhanced 911 revenues or network and database surcharge revenues.

The 2001 amendment, effective July 1, 2001, substituted the present Subsection B for former Subsections B and C, which contained provisions for the use of the level savings method of advance refunding when performing advanced refunds, and prohibiting the refund of bonds past their maturity dates, respectively.

The 1992 amendment, effective March 10, 1992, substituted "board" for "state board of finance" near the beginning of Subsections A and B; and substituted "enhanced 911 fund" for "enhanced 911 bond fund" near the middle of Subsection A.

63-9D-19. Enhanced 911 bonds not general obligations; authentication.

A. Enhanced 911 bonds or refunding bonds issued as authorized by the Enhanced 911 Bond Act [63-9D-12 through 63-9D-20 NMSA 1978] are:

(1) not general obligations of the state; and

(2) collectible only from the proper pledged revenues, and each bond shall state that it is payable solely from the pledged revenues, and that the bondholders may not look to any other state fund for the payment of the interest and principal of the bonds.

B. The bonds and coupons shall be signed and sealed as provided by the resolution of the board issuing the bond, and the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978] shall be applicable.

History: Laws 1990, ch. 61, § 8.

63-9D-20. Amount of surcharge; security for bonds.

A. The legislature shall provide for the continued imposition, collection and deposit of the 911 emergency surcharge into the enhanced 911 fund in amounts that, together with other amounts deposited into the fund, will be sufficient to produce an amount necessary to meet annual debt service charges on all respective outstanding enhanced 911 bonds.

B. The legislature shall not repeal, amend or otherwise modify any law that affects the 911 emergency surcharge in a manner that impairs any outstanding enhanced 911 bonds secured by a pledge of the 911 emergency surcharge unless:

(1) the outstanding enhanced 911 bonds to which the revenues from the surcharge are pledged have been discharged in full; or

(2) provision has been made to discharge fully the outstanding enhanced 911 bonds to which the revenues from the surcharge are pledged.

C. Nothing in this section shall require any increase in the 911 emergency surcharge.

History: 1978 Comp., § 63-9D-20, enacted by Laws 1992, ch. 102, § 5; 2001, ch. 110, § 19; 2005, ch. 203, § 13.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deleted references to the "network and database surcharge", the "wireless enhanced 911 surcharge" the "network and database surcharge fund", and the "wireless enhanced 911 surcharge fund".

The 2001 amendment, effective July 1, 2001, expanded the provisions of the section to provide for the network and database surcharge and fund and the wireless enhanced 911 surcharge and fund; deleted "Notwithstanding the amount of the 911 emergency surcharge set forth in Subsection A of Section 63-9D-5 NMSA 1978" from the beginning of Subsection A; inserted "to which the revenues from such surcharges are pledged" in Paragraphs B(1) and (2); deleted former Subsection C regarding bonds issued after the effective date of the section; and substituted "the network and database surcharge or the wireless enhanced 911 surcharge" for "set forth in Subsection A of Section 63-9D-5 NMSA 1978" in present Subsection C.

ARTICLE 9E
Private Pay Telephone Services

63-9E-1. Pay telephones; credit cards for intrastate telephone calls.

Every privately owned, instrument implemented coin or coinless telephone capable of reselling public telecommunications services in New Mexico must be able to accept for intrastate telephone calls the same credit card accounts accepted for such calls at any pay telephone owned by a local exchange company operating in the same area.

History: Laws 1989, ch. 229, § 1.

ANNOTATIONS

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

63-9E-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 175, § 2, repealed 63-9E-2 NMSA 1978, as enacted by Laws 1989, ch. 229, § 2, relating to penalties for violation of state corporation commission regulations governing the use of private pay telephones, 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.

63-9E-3. [Calls to operator at no charge.]

The caller using a pay phone shall be allowed to reach the operator at no charge.

History: Laws 1989, ch. 229, § 3.

ANNOTATIONS

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

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

ARTICLE 9F
Telecommunications Access Act

63-9F-1. Short title.

Chapter 63, Article 9F NMSA 1978 may be cited as the "Telecommunications Access Act".

History: Laws 1993, ch. 54, § 1; 2004, ch. 106, § 1.

ANNOTATIONS

The 2004 amendment, effective July 1, 2005, changed "This act" to "Chapter 63, Article 9F NMSA 1978".

Compiler's notes. — Laws 2004, ch. 106, § 9, effective July 1, 2005, provided that all records, equipment, supplies and other property of the general services department relating to the department's duties pursuant to the Telecommunications Access Act shall be transferred to the commission for deaf and hard-of-hearing persons; and all contracts of the general services department relating to the department's duties pursuant to the Telecommunications Access Act shall be binding on the commission for deaf and hard-of-hearing persons.

63-9F-2. Findings and purpose.

A. The legislature finds that:

(1) it supports those provisions of the federal Americans with Disabilities Act of 1990 that address the need to provide telecommunications access to all citizens;

(2) many New Mexicans are hearing or speech impaired and because of their impairment are unable to use traditional telecommunications equipment and services without assistance; and

(3) the state's hearing or speech impaired citizens are a substantial and valuable resource and their participation as contributing and productive members of our society would be enhanced substantially if full access to telecommunications service were made available to them.

B. It is the purpose of the Telecommunications Access Act to provide a statutory framework and funding under which the opportunity for full access to telecommunications services is made available to hearing or speech impaired New Mexicans.

History: Laws 1993, ch. 54, § 2.

ANNOTATIONS

Cross references. — For the federal Americans with Disabilities Act of 1990, *see* Titles 29, 42, and 47 of the United States Code.

63-9F-3. Definitions.

As used in the Telecommunications Access Act:

A. "commission" means the commission for deaf and hard-of-hearing persons;

B. "communications assistant" means an individual who translates conversation from text to voice and from voice to text between two end users of a telecommunications service;

C. "home service provider" means a facilities-based carrier or reseller with which a customer contracts for the provision of wireless communications services;

D. "impaired" means having an impairment of or deficit in the ability to hear or speak, or both;

E. "interconnected voice over internet protocol service" means a service that:

(1) enables real-time, two-way voice communications;

(2) requires a broadband connection from the user's location;

(3) requires internet protocol-compatible customer premises equipment; and

(4) permits users generally to receive calls that originate on the public-switched telephone network and to terminate calls to the public-switched telephone network;

F. "intrastate telecommunications service":

(1) means the provision of access lines, special services and intrastate toll services, including for telephone calls originating and terminating in the state; and

(2) does not include interconnected voice over internet protocol service or wireless communications service;

G. "place of primary use" means the street address representative of where a customer's use of a wireless communications service primarily occurs and that is:

(1) the residential street address or the primary business street address of the customer; and

(2) within the licensed service area of the home service provider;

H. "prepaid consumer" means a person who purchases prepaid wireless communications service in a retail transaction;

I. "prepaid wireless communications service" means a wireless communications service that must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount;

J. "retail transaction" means the purchase of prepaid wireless communications service from a seller for any purpose other than for resale;

K. "seller" means a person who sells prepaid wireless communications service to another person;

L. "specialized telecommunications equipment" means devices that enable or assist an impaired individual to communicate with another individual using the telephone network;

M. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section 63-9B-3 NMSA 1978;

N. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person; and

O. "wireless communications service" means a commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended, but excludes internet access service.

History: Laws 1993, ch. 54, § 3; 1996, ch. 48, § 1; 1997, ch. 65, § 1; 2004, ch. 106, § 2; 2017, ch. 96, § 1.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, added and revised certain definitions as used in the Telecommunications Access Act; added a new Subsection C and redesignated former Subsection C as Subsection D; added a new Subsection E and redesignated former Subsection D as Subsection F; in Subsection F, in the introductory clause, after "intrastate", deleted "telephone services means all charges for" and added "telecommunications service", added paragraph designation "(1)", and in Paragraph F(1), added "means the provision of", after "including", deleted "all" and added "for telephone", and added Paragraph F(2); added new Subsections G and H and redesignated former Subsections E through G as Subsections L through N, respectively; and added Subsection O.

The 2004 amendment, effective July 1, 2005, deleted Subsection C, redesignated Subsections C to H as Subsections B to G, and amended Subsection E to delete "when connected to a telephone".

The 1997 amendment, effective July 1, 1997, in Subsection E, made a minor stylistic change.

The 1996 amendment, effective July 1, 1996, inserted ", including all calls originating and terminating in the state," in two places in Subsection E and deleted "but does not include radio paging service" from the end of Subsection G.

63-9F-4. Specialized telecommunications equipment program established.

The commission shall design, establish and administer a program for providing specialized telecommunications equipment to impaired individuals. The commission shall adopt regulations for the program that:

A. shall include eligibility requirements for participation in the program, which requirements:

(1) shall provide financial eligibility conditions; and

(2) shall include provisions for determining eligibility thresholds based on:

(a) the quality and severity of the individual's impairment;

(b) the availability of current telecommunications services at the individual's place of residence;

(c) New Mexico residency; and

(d) minimum age;

B. establish detailed procedures and forms to be used by impaired individuals wishing to apply for participation in the program;

C. establish minimum training requirements for all applicants receiving telecommunications equipment regarding etiquette and use of telecommunications equipment;

D. include a statewide survey and information gathering component to identify the extent of the hearing and speech impairment problem in the state, the number of impaired individuals in the state and the existence and availability of any specialized telecommunications equipment; and

E. include an outreach component designed to provide information about and facilitate access to the program for impaired individuals.

History: Laws 1993, ch. 54, § 4; 1995, ch. 39, § 1.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, deleted former Paragraph A(2), which read "may include provisions for participation by impaired individuals in the cost of acquiring specialized telecommunications equipment"; designated former Paragraph A(3) as Paragraph A(2); inserted the subparagraph designation (a) in Paragraph A(2) and added Subparagraphs A(2)(b) through A(2)(d); added Subsection C; and redesignated former Subsections C and D as Subsections D and E.

63-9F-5. Repealed.

History: Laws 1993, ch. 54, § 5; 1995, ch. 39, § 2; 2004, ch. 106, §10.

ANNOTATIONS

Repeals. — Laws 2004, ch. 106, § 10, repealed 63-9F-5 NMSA 1978, as enacted by Laws 1993, ch. 54, § 5, relating to implementation of a specialized telecommunications program, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

63-9F-6. Telecommunications relay system.

A. The commission shall administer a telecommunications relay system that enables impaired individuals to communicate with unimpaired individuals.

B. The commission shall invite proposals or bids, or both, from telecommunications companies to design and implement a telecommunications relay system. The commission shall comply with the provisions of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978] in contracting for the services and property required. The commission shall consider the factors of price and the interest of the community of impaired individuals in having access to a high quality and technologically advanced system. New Mexico residency shall be given a weight of five percent of the total weight of all evaluation factors in a proposal evaluation. Any business that qualifies as a "resident business" as defined in Section 13-1-21 NMSA 1978 shall receive a five percent preference. In the procurement process, the commission shall request and consider the recommendations of the communications assistants who have provided the voice relay service used in the state.

C. If the commission determines that no proposal or bid is acceptable after review, the commission may provide the telecommunications relay system.

D. The telecommunications relay system shall:

(1) be available statewide for operation twenty-four hours a day every day of the year;

(2) relay all messages promptly and accurately;

(3) protect and maintain the privacy of individuals using the system;

(4) preserve the confidentiality of all telephone communications; and

(5) conform to all applicable standards established by state and federal laws and regulations adopted pursuant to those laws.

History: Laws 1993, ch. 54, § 6; 2004, ch. 106, § 3.

ANNOTATIONS

The 2004 amendment, effective July 1, 2005, in Subsection A, deleted "department, in consultation with the" and deleted the last sentence; and in Subsections B and C, deleted "department, after consultation with" and changed "department" to "commission".

63-9F-7. Repealed.

History: Laws 1993, ch. 54, § 7; 2004, Ch. 106, §10.

ANNOTATIONS

Repeals. — Laws 2004, ch. 106, § 10, repealed 63-9F-7 NMSA 1978, as enacted by Laws 1993, ch. 54, § 7, relating to the duties of the general services department pursuant to the Telecommunications Access Act, effective July 1, 2005. For provisions of the former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

63-9F-8. Commission duties; power to audit.

A. The commission shall perform all actions necessary to carry out the provisions of the Telecommunications Access Act, including;

(1) promulgating and administering such policies, procedures and rules as are necessary to comply with the purpose of that act and to ensure that the specialized telecommunications equipment program and the relay system are in compliance with the applicable state and federal laws and rules adopted pursuant to those laws;

(2) obtaining certification from the federal communications commission that the telecommunications relay system is in compliance with applicable federal rules;

(3) making expenditures for the specialized telecommunications equipment program and the telecommunications relay system;

(4) ensuring the quality of the telecommunications relay system and the satisfaction of its users;

(5) identifying the need for specialized telecommunications equipment by impaired individuals;

(6) identifying the problems that impaired individuals have in acquiring specialized telecommunications equipment; and

(7) providing funding for the specialized telecommunications equipment program.

B. The commission may require an annual audit of each telecommunications company participating in the telecommunications relay system to account for all surcharges billed and collected pursuant to the Telecommunications Access Act. Audits conducted pursuant to this subsection shall be at the expense of the requesting agency.

History: Laws 1993, ch. 54, § 8; 1995, ch. 39, § 3; 2004, ch. 106, § 4.

ANNOTATIONS

The 2004 amendment, effective July 1, 2005, rewrote this section to the extent that a detailed comparison was impracticable.

The 1995 amendment, effective June 16, 1995, in Subsection A, substituted "create" for "review and recommend" at the beginning and inserted "review and recommend policies, procedures and regulations governing the administration of", and rewrote Subsection H which read "identify funding sources available to provide specialized telecommunications equipment needed by impaired individuals".

ANNOTATIONS

63-9F-9. Limit on liability.

The commission and the provider of the telecommunications relay system and their employees shall not be liable for any claims, actions, damages or causes of action arising out of or resulting from the establishment, participation in or operation of the telecommunications relay system except for gross negligence or intentional acts.

History: Laws 1993, ch. 54, § 9; 2004, ch. 106, § 5.

ANNOTATIONS

The 2004 amendment, effective July 1, 2005, after "the commission", deleted "the department".

63-9F-10. Complaints.

All complaints, including complaints about the service provided by the telecommunications relay system, the provider of the telecommunications relay system or the operation and administration of the telecommunications relay system, shall be made directly to the commission.

History: Laws 1993, ch. 54, § 10.

63-9F-11. Imposition of surcharge.

A. A telecommunications relay service surcharge of thirty-three hundredths percent is imposed on the gross amount paid:

(1) by customers, except customers whose telephone service rates are reduced as authorized by the Low Income Telephone Service Assistance Act [Chapter 63, Article 9C NMSA 1978], for intrastate telecommunications services provided in this state;

(2) by customers for the intrastate portion of interconnected voice over internet protocol service;

(3) by customers for intrastate mobile telecommunications services that originate and terminate in the same state, regardless of where the mobile telecommunications services originate, terminate or pass through, provided by home service providers to customers whose place of primary use is in New Mexico; and

(4) by a prepaid consumer in a retail transaction.

B. The telecommunications relay service surcharge shall be included on the monthly bill of each customer of a local exchange company or other telecommunications company providing intrastate telecommunications services, interconnected voice over internet protocol services or intrastate mobile telecommunications services and paid at the time of payment of the monthly bill. Receipts from selling those services to any other telecommunications company or provider for resale are not subject to the surcharge. The customer is liable for the payment of the surcharge to the provider of intrastate mobile telecommunications services, the provider of interconnected voice over internet protocol services or the local exchange company or other telecommunications company providing intrastate telecommunications services to the customer.

C. For the purposes of the surcharge imposed on a retail transaction pursuant to Paragraph (4) of Subsection A of this section:

(1) the surcharge shall be collected by the seller from the prepaid consumer with respect to each retail transaction occurring in this state. The amount of the

surcharge shall be either separately stated on an invoice, receipt or other similar document that is provided to the prepaid consumer by the seller or otherwise disclosed to the prepaid consumer;

(2) for the purposes of Paragraph (1) of this subsection, a retail transaction that is effected in person by a prepaid consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction is treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

(3) the surcharge is the liability of the prepaid consumer and not of the seller or any provider, except that the seller shall be liable to remit all surcharges collected from the prepaid consumer as provided in this subsection, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt or other similar document provided to the prepaid consumer by the seller;

(4) the amount of the surcharge that is collected by a seller from a prepaid consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the prepaid consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency;

(5) when prepaid wireless communications service is sold with one or more other products or services for a single, non-itemized price, the percentage specified in Subsection A of this section shall apply to the entire non-itemized price unless the seller elects to apply such percentage to:

(a) if the amount of the prepaid wireless communications service is disclosed to the prepaid consumer as a dollar amount, such dollar amount; or

(b) if the seller can identify the portion of the price that is attributable to the prepaid wireless communications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including non-tax purposes, such portion;

(6) if a minimal amount of prepaid wireless communications service is sold with a prepaid wireless device for a single, non-itemized price, the seller may elect not to apply the percentage specified in Subsection A of this section to such transaction. For the purposes of this paragraph, an amount of service denominated as ten minutes or less, or five dollars ($5.00) or less, is minimal;

(7) surcharges collected by sellers shall be remitted to the taxation and revenue department at the times and in the manner provided with respect to the Gross Receipts and Compensating Tax Act. The department shall establish registration and

payment procedures that substantially coincide with the registration and payment procedures that apply to the Gross Receipts and Compensating Tax Act. A seller shall be permitted to deduct and retain three percent of surcharges that are collected by the seller from the prepaid consumer;

(8) the audit and appeal procedures applicable to the Gross Receipts and Compensating Tax Act shall apply to the surcharge;

(9) the taxation and revenue department shall establish procedures by which a seller of prepaid wireless communications services may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for the Gross Receipts and Compensating Tax Act; and

(10) notwithstanding Paragraph (1) of this subsection, if a 911 surcharge is imposed on prepaid wireless communications service pursuant to the Enhanced 911 Act, the taxation and revenue department shall promulgate rules to permit sellers to combine the surcharge imposed pursuant to this section and the surcharge imposed pursuant the Enhanced 911 Act into a single surcharge on the invoice, receipt or other similar document that is provided to the prepaid consumer. The department shall ensure that appropriate surcharge revenues are directed proportionately to the respective 911 and telecommunications relay service funds.

D. A telecommunications company providing intrastate telecommunications services, a home service provider providing intrastate mobile telecommunications services and a seller of interconnected voice over internet protocol services shall, on sales subject to the telecommunications relay service surcharge, assess and collect the surcharge and remit the surcharge collected monthly to the taxation and revenue department on or before the twenty-fifth day of the month following collection. The department shall administer and enforce the collection of the surcharge in accordance with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

E. The taxation and revenue department shall transfer to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted in accordance with Subsection F of this section. Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the month in which the surcharge is collected.

F. The taxation and revenue department may deduct an amount not to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection and shall remit that amount to the state treasurer for deposit in the general fund each month.

G. The commission shall report to the revenue stabilization and tax policy committee annually by September 30 the following information with respect to the prior fiscal year:

(1) the amount and source of revenue received by the telecommunications access fund;

(2) the amount and category of expenditures from the fund; and

(3) the balance of the fund on that June 30.

History: Laws 1993, ch. 54, § 11; 1996, ch. 48, § 2; 2002, ch. 18, § 7; 2004, ch. 106, § 6; 2017, ch. 96, § 2.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, expanded the application of the telecommunications relay service surcharge to include modern telecommunications technologies, exempted certain telecommunications services customers from the surcharge, clarified certain provisions of the Telecommunications Access Act, and deleted "telephone" and added "telecommunications" throughout the section; in Subsection A, after "paid:", added new paragraph designation "(1)", in Paragraph A(1), added "except customers whose telephone service rates are reduced as authorized by the Low Income Telephone Service Assistance Act", after "for", deleted former paragraph designation "(1)", after "services", deleted "other than mobile telecommunications services", added a new Paragraph A(2) and redesignated former Paragraph A(2) as Paragraph A(3), in Paragraph A(3), added "by customers for", and added Paragraph A(4); in Subsection B, after "services", added "interconnected voice over internet protocol services", after "selling", deleted "a service" and added "those services", after "resale", deleted "shall" and added "are", after "not", deleted "be", after "The customer", deleted "shall be" and added "is", after "surcharge to", added "the provider of intrastate mobile telecommunications services, the provider of interconnected voice over internet protocol services or", and deleted the last sentence of the subsection, which defined "home service provider", "mobile telecommunications services" and "place of primary use"; added a new Subsections C and redesignated former Subsections C through F as Subsections D through G, respectively; in Subsection D, after "services", added "a home service provider providing intrastate mobile telecommunications services and a seller of interconnected voice over internet protocol services", after "shall", deleted "be responsible for assessing, collecting and remitting" and added "on sales subject to", after "service surcharge", deleted "to the taxation and revenue department. The amount of the telecommunications relay service" and added "assess and collect the surcharge and remit the", after "surcharge collected", deleted "by a telecommunications company shall be remitted", after "twenty-fifth", added "day", after "following collection", deleted "which", in the last sentence, added "The department", and after "collection of the surcharge", deleted "pursuant to the provisions of" and added "in accordance with"; in Subsection E, after "shall", deleted "remit" and added "transfer", after "amount deducted", deleted "pursuant to the provisions of" and added "in accordance with", and after "Subsection", deleted "E" and added "F"; and in Subsection F, after "costs of collection", deleted "which" and added "and shall remit that", and after "amount", deleted "shall be remitted".

The 2004 amendment, effective July 1, 2005, revised Subsection A to delete "of one" before "percent", designated the last paragraph of Subsection A as Subsection B, redesignated Subsections B to E as Subsections C to F and amended Subsection F to delete "general services department" and insert "commission".

The 2002 amendment, effective August 1, 2002, made a minor stylistic change in Subsection A; added the Paragraph A(1) designation and inserted "other than mobile telecommunication services"; added Paragraph A(2); in the following paragraph inserted "or intrastate mobile telecommunications services" in the first sentence, and added the last sentence.

The 1996 amendment, effective July 1, 1996, inserted "providing intrastate telephone services" in the second sentence of Subsection A, substituted "providing intrastate telephone services" for "except a company contributing to the intrastate relay service" in the first sentence in Subsection B, and added Subsection E.

63-9F-12. Telecommunications access fund; established.

There is created in the state treasury the "telecommunications access fund". Money appropriated to the fund or accruing to it through gifts, grants, fees, surcharges, penalties or bequests shall be delivered to the state treasurer for deposit in the fund. The fund shall be invested as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission. The commission shall administer the fund. Money in the fund is appropriated to the commission for the purpose of carrying out the provisions of the Telecommunications Access Act. The commission may request the state budget division of the department of finance and administration to approve the expenditure of funds deposited in the telecommunications access fund for the purpose of defraying salary and other necessary expenses incurred by the commission in the administration of the provisions of the Telecommunications Access Act. The state budget division may approve the expenditure of not more than ten percent of the amount deposited in the telecommunications access fund during any fiscal year for expenses incurred by the commission in administering that act. In addition, money in the fund is subject to appropriation by the legislature to the commission for the performance of its duties pursuant to Chapter 28, Article 11B NMSA 1978 and to the signed language interpreting practices fund for the purpose of defraying salary and other necessary expenses incurred by the signed language interpreting practices board. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

History: Laws 1993, ch. 54, § 12; 2004, ch. 106, § 7; 2007, ch. 248, § 18.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, provided that money in the telecommunications access fund is subject to appropriation to the signed language interpreting practices fund to defray salary and necessary expenses incurred by the signed language interpreting practices board.

The 2004 amendment, effective July 1, 2005, replaced "secretary of general services" and "department" with "executive director of the commission" and added: "incurred by the commission in the administration of the provisions of the Telecommunications Access Act. The state budget division may approve the expenditure of not more than ten percent of the amount deposited in the telecommunications access fund during any fiscal year for expenses incurred by the commission in administering that act. In addition, money in the fund shall be available for appropriation by the legislature to the commission for the performance of its duties pursuant to Chapter 28, Article 11B NMSA 1978".

63-9F-13. Confidentiality of translated or relayed conversations; penalty for breach of confidentiality.

A. A communications assistant who is employed to translate or relay a conversation to or from an impaired individual is a conduit for the conversation and shall not disclose, or be compelled to disclose in any nonjudicial proceeding, the contents of the conversation.

B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1993, ch. 54, § 13.

ARTICLE 9G
Cramming and Slamming

63-9G-1. Short title.

Sections 1 through 9 [63-9G-1 through 63-9G-9 NMSA 1978] of this act may be cited as the "Cramming and Slamming Act".

History: Laws 1999, ch. 138, § 1.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

Am. Jur. 2d, A.L.R. and C.J.S. references. — State regulation of telephone "slamming", 92 A.L.R.5th 1.

63-9G-2. Definitions.

As used in the Cramming and Slamming Act:

A. "billing aggregator" means a person that bills customers for goods or services provided by others and that uses a local exchange company as a billing agent;

B. "commission" means the public regulation commission;

C. "cramming" means:

(1) charging a customer for telecommunications services that were not authorized by the customer;

(2) charging a customer for goods or services that are not telecommunications services; or

(3) using a sweepstakes, contest or drawing entry form as authorization to change or add telecommunications services to a customer's telephone bill;

D. "customer" means the person whose name appears on the telephone bill or the person responsible for payment of the telephone bill;

E. "local exchange company" means a provider that provides local exchange services;

F. "local exchange services" means the transmission of two-way interactive communications within a local exchange area described in maps, tariffs or rate schedules filed with the commission where local exchange rates apply;

G. "provider" means a telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular or other wireless telecommunications service company, cable television service, telecommunications reseller, billing aggregator or other person that bills directly or has a billing contract with a local exchange company;

H. "slamming" means:

(1) changing a customer's provider without the customer's authorization; or

(2) using a sweepstakes, contest or drawing entry form as authorization to change a customer's provider; and

I. "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 or goods and services related to the transmission of information that are provided by the provider; provided that a good or service that does not meet the definition of "telecommunications service" does not become a telecommunications service merely because it is bundled with a telecommunications service for marketing or billing purposes.

History: Laws 1999, ch. 138, § 2.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

63-9G-3. Commission powers and duties.

A. The commission has jurisdiction over a billing aggregator to the extent of the billing aggregator's participation in billing for telecommunications services or other goods or services through a customer's telephone bill. Billing aggregators are subject to the provisions of the Cramming and Slamming Act.

B. The commission shall enforce the provisions of the Cramming and Slamming Act against anyone regulated in whole or in part by the commission or over whom the commission is given regulatory authority by state or federal law.

C. The commission may hold a provider liable for the actions of its employees, officers, affiliates and agents.

History: Laws 1999, ch. 138, § 3.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

63-9G-4. Rules to implement act.

The commission shall promulgate:

A. rules on what constitutes authorization of a change or addition to telecommunications services or change in provider for the purposes of determining cramming or slamming, including consideration of the rules on authorization adopted by the federal communications commission;

B. rules and standards on responsibilities of parties in cramming and slamming;

C. rules to establish an expedited consideration process for resolution of complaints filed with the commission, including the filing and investigation of complaints; and

D. other rules needed to implement the provisions of the Cramming and Slamming Act.

History: Laws 1999, ch. 138, § 4.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

Temporary provisions. — Laws 1999, ch. 138, § 10, effective June 18, 1999, provided that it is the intent of the legislature that the public regulation commission begin its rulemaking process in time to have rules required by 63-9G-4 NMSA 1978 adopted and promulgated by July 1, 1999.

63-9G-5. Complaints filed with commission; rules; administrative penalties.

A. The following acts are prohibited:

(1) cramming or slamming; and

(2) disconnecting or threatening to disconnect a customer's local exchange service because the customer refuses to pay charges resulting from cramming or slamming and the local exchange company has been notified of the cramming or slamming.

B. A customer or provider may file a complaint with the commission alleging cramming or slamming. A customer may file a complaint alleging disconnection or threats of disconnection to local exchange service. The commission may combine complaints.

C. If the commission finds after investigation and hearing that a provider engaged in cramming or slamming or disconnected or threatened to disconnect a customer's local exchange service, it may:

(1) assess an administrative penalty not to exceed ten thousand dollars ($10,000) for each occurrence of cramming or slamming or for each disconnection or threat to disconnect; or

(2) after other sanctions have failed, suspend or revoke the provider's certificate of authority or certificate of public convenience and necessity for a deliberate pattern of cramming or slamming or disconnection or threat of disconnection.

D. A person aggrieved by an order of the commission pursuant to this section may appeal to the district court as provided in Section 39-3-1.1 NMSA 1978.

E. The remedies and penalties provided for in the Cramming and Slamming Act are in addition to any other penalties that may be imposed pursuant to any other state law or any other remedies available to consumers.

History: Laws 1999, ch. 138, § 5.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

63-9G-6. Cramming or slamming; customer absolution.

A. A customer who is crammed or slammed is absolved of liability for charges resulting from the cramming or slamming during the first ninety days after the cramming or slamming appeared on the customer's telephone bill. Nothing in this subsection affects the local exchange company or other billing agent from collecting credited amounts from the provider that crammed or slammed.

B. The customer may contact his local exchange company, his authorized provider or the unauthorized provider to report a cramming or slamming. The contacted provider shall notify the local exchange company promptly about the customer's allegation of cramming or slamming.

C. The commission shall promulgate rules that govern procedures for how disputed charges or changes are investigated and paid to the proper provider.

History: Laws 1999, ch. 138, § 6.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

63-9G-7. Change in service or provider; telephone bills.

A. A new charge for telecommunications service or a change in telecommunications provider shall be conspicuously indicated on the customer's telephone bill in clear, unambiguous language and easily legible type. Charges for local exchange service shall be itemized separately from charges for other telecommunications services.

B. The local exchange company that serves as the billing agent shall not allocate a customer's payment to a disputed charge or change until the charge or change has been verified.

History: Laws 1999, ch. 138, § 7.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

63-9G-8. Sales to be in clear language; false or misleading information; verification; unauthorized charge or change; written notification.

A. As used in this section, "seller" means a provider or other person that sells telecommunications services.

B. The provider shall approve all sales scripts and written materials used by its sellers, including contract sellers.

C. A seller that attempts to persuade a customer to purchase telecommunications services or change his provider shall make adequate inquiry to reasonably ensure that he is talking to the customer. The seller shall also, at a minimum, clearly and unambiguously:

(1) identify himself and the company for which he works;

(2) identify the provider that he is asking the customer to use or the telecommunications service he is asking the customer to purchase; and

(3) explain the material terms and price of the purchase or change in provider.

D. A seller shall not use false or misleading information or tactics that would be considered by a prudent person to be pressure tactics to convince the customer to purchase a telecommunications service or change a provider.

E. The commission shall prescribe by rule the requirements for clearly and unambiguously selling and verifying the sale of telecommunications services or providers.

History: Laws 1999, ch. 138, § 8.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

63-9G-9. Cramming or slamming; damage to credit; penalty; civil action barred.

A. A person shall not injure or threaten to injure a customer's credit because the customer refuses to pay charges resulting from cramming or slamming. A person who violates the provisions of this section is guilty of a fourth degree felony and shall be sentenced as follows:

(1) for threatening to injure a customer's credit, a fine not to exceed one thousand dollars ($1,000) per occurrence; and

(2) for injuring a customer's credit by providing a false, misleading or negative report about the customer to a credit reporting agency, a fine not to exceed ten thousand dollars ($10,000) per occurrence.

B. A person is barred from bringing a civil action against a customer to collect for charges resulting from cramming or slamming.

History: Laws 1999, ch. 138, § 9.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 138, § 12 made the Cramming and Slamming Act effective July 1, 1999.

Applicability. — Laws 1999, ch. 138, § 11, effective June 18, 1999, made the Cramming and Slamming Act applicable to telecommunications services provided to customers on or after July 1, 1999.

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.

As used in the Rural Telecommunications Act of New Mexico:

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. "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;

D. "commission" means the public regulation commission;

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

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

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 this state 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 carrier by the state corporation commission or the public regulations [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 carrier within a local exchange area;

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

M. "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;

N. "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; and

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

History: Laws 1999, ch. 295, § 3; 2013, ch. 194, § 2.

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.

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, however, that 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 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. Each year, a minimum of five million dollars ($5,000,000) of the fund shall be dedicated to the broadband program.

O. 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.

P. By December 31, 2019, the commission shall make a report to the legislature regarding the status of the fund, including relevant data relating to implementation of the broadband program and expansion of broadband internet access services in rural areas of the state. The report shall also make recommendations for any changes to the structure, size and purposes of the fund and whether the cap on the fund provided for in Subsection O of this section should be modified, maintained or eliminated.

History: Laws 1999, ch. 295, § 6; 2005, ch. 335, § 1; 2013, ch. 194, § 4; 2017, ch. 89, § 1.

ANNOTATIONS

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 that 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 reminder 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.

ARTICLE 9I
Wireless Consumer Advanced Infrastructure Investment

63-9I-1. Short title.

This act [63-9I-1 through 63-9I-9 NMSA 1978] may be cited as the "Wireless Consumer Advanced Infrastructure Investment Act".

History: Laws 2018, ch. 17, § 1 and Laws 2018, ch. 69, § 1.

ANNOTATIONS

Duplicate laws. — Laws 2018, ch. 17, § 1 and Laws 2018, ch. 69, § 1, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 1. *See* 12-1-8 NMSA 1978.

63-9I-2. Definitions.

As used in the Wireless Consumer Advanced Infrastructure Investment Act:

A. "antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used to provide wireless services;

B. "applicable codes" means uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization and enacted by the authority, including the local amendments to those codes enacted by the authority solely to address imminent threats of destruction of property or injury to persons, to the extent that those amendments are consistent with the Wireless Consumer Advanced Infrastructure Investment Act;

C. "applicant" means a wireless provider that submits an application;

D. "application" means a request submitted by an applicant to an authority for a permit to collocate one or more small wireless facilities or to approve the installation, modification or replacement of a utility pole or wireless support structure;

E. "authority" means a municipality or county;

F. "authority utility pole" means a utility pole, owned or operated by an authority, in a right of way;

G. "collocate" means to install, mount, maintain, modify, operate or replace one or more wireless facilities on, in or adjacent to a wireless support structure or utility pole;

H. "communications service" means cable service as defined in 47 U.S.C. Section 522(6), information service as defined in 47 U.S.C. Section 153(24), mobile service as defined in 47 U.S.C. Section 153(33), telecommunications service as defined in 47 U.S.C. Section 153(53) or wireless service other than mobile service;

I. "fee" means a one-time charge;

J. "law" includes federal, state or local law;

K. "permit" means the written permission of an authority for a wireless provider to install, mount, maintain, modify, operate or replace a utility pole or to collocate a small wireless facility on a utility pole or wireless support structure;

L. "person":

(1) means an individual, corporation, limited liability company, partnership, association, trust or other entity or organization; and

(2) includes an authority;

M. "private easement" means an easement or other real property right given for the benefit of the grantee of the easement and the grantee's successors and assigns;

N. "rate" means a recurring charge;

O. "right of way":

(1) means the area on, below or above a public roadway, highway, street, sidewalk, alley or utility easement; and

(2) does not include the area on, below or above:

(a) a federal interstate highway;

(b) a state highway or route under the jurisdiction of the department of transportation;

(c) a private easement; or

(d) a utility easement that does not authorize the deployment sought by a wireless provider;

P. "small wireless facility" means a wireless facility whose:

(1) antennas are, or could fit, inside an enclosure with a volume of six or fewer cubic feet; and

(2) other ground- or pole-mounted wireless equipment, not including the following, is twenty-eight or fewer cubic feet in volume:

(a) electric meter;

(b) concealment elements;

(c) telecommunications demarcation box;

(d) grounding equipment;

(e) power transfer switch;

(f) cutoff switch;

(g) vertical cable runs for the connection of power and other services; and

(h) elements required by an authority in accordance with Subsection H of Section 3 [63-9I-3 NMSA 1978] of the Wireless Consumer Advanced Infrastructure Investment Act ;

Q. "utility pole":

(1) means a pole or similar structure used in whole or in part for communications services, electricity distribution, lighting or traffic signals; and

(2) does not include a wireless support structure or electric transmission structure;

R. "wireless facility":

(1) means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(a) equipment associated with wireless communications; and

(b) radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration;

(2) includes a small wireless facility; and

(3) does not include:

(a) the structure or improvements on, under or within which the equipment is collocated;

(b) a wireline backhaul facility, coaxial cable or fiber-optic cable between wireless support structures or utility poles; or

(c) coaxial or fiber-optic cable otherwise not immediately adjacent to, or directly associated with, an antenna;

S. "wireless infrastructure provider" means a person, other than a wireless services provider, that may provide telecommunications service in New Mexico and that builds or installs wireless communications transmission equipment, wireless facilities' utility poles or wireless support structures;

T. "wireless provider" means a wireless infrastructure provider or wireless services provider;

U. "wireless services" means services provided to the public that use licensed or unlicensed spectrum, either mobile or at a fixed location, through wireless facilities;

V. "wireless services provider" means a person that provides wireless services;

W. "wireless support structure" means a freestanding structure, including a monopole or guyed or self-supporting tower, but not including a utility pole; and

X. "wireline backhaul facility" means a facility used to transport services by wire from a wireless facility to a network.

History: Laws 2018, ch. 17, § 2 and Laws 2018, ch. 69, § 2.

ANNOTATIONS

Duplicate laws. — Laws 2018, ch. 17, § 2 and Laws 2018, ch. 69, § 2, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 2. *See* 12-1-8 NMSA 1978.

63-9I-3. Wireless provider; use of right of way; rates, fees and terms; right to access; damage and repair.

A. This section applies to the activities of a wireless provider within a right of way.

B. An authority shall not enter into an exclusive agreement with a wireless provider for the use of a right of way in:

(1) constructing, installing, maintaining, modifying, operating or replacing a utility pole; or

(2) collocating a small wireless facility on a utility pole or wireless support structure.

C. An authority may charge a wireless provider a rate or fee for the provider's use of a right of way in constructing, installing, maintaining, modifying, operating or replacing a utility pole, or in collocating a small wireless facility, in the right of way only if:

(1) the authority otherwise may, under law, charge the rate or fee;

(2) the authority charges other communications service providers for their use, if any, of the right of way; and

(3) the rate or fee:

(a) is competitively neutral as compared to other users, if any, of the right of way, unless the other users are exempt under law from paying a rate or fee for their use of the right of way;

(b) is not in the form of a franchise or other fee based on revenue or customer counts;

(c) is reasonable and nondiscriminatory; and

(d) annually, does not exceed an amount equal to two hundred fifty dollars ($250) multiplied by the number of small wireless facilities placed by the wireless provider in the right of way and in the authority's jurisdiction.

D. An authority may adjust the rate it charges for the use of a right of way, but no more often than once a year and by no more than an amount equal to one-half the annual change, if any, in the most recent consumer price index for all urban consumers for New Mexico, as published by the United States department of labor. An authority that adjusts that rate shall notify all wireless providers charged the pre-adjusted rate of the prospective adjustment and shall make the adjustment effective sixty days or more following that notice.

E. Except as otherwise provided in the Wireless Consumer Advanced Infrastructure Investment Act, and subject to the approval of an application as provided in Section 4 of that act [63-9I-4 NMSA 1978], a wireless provider may collocate small wireless facilities and construct, install, modify, mount, maintain, operate and replace utility poles associated with the collocation of a small wireless facility along, across, on or under the right of way.

F. If a wireless provider or the provider's contractor causes damage to the authority's property or right of way while the provider or contractor occupies, installs, repairs or maintains a small wireless facility, wireless support structure or utility pole in the right of way, the authority may require the provider to return the property to its pre-damage condition according to the authority's requirements and specifications if the requirements and specifications are competitively neutral and reasonable and upon written notice of the requirement to the provider. If the provider does not, within a

reasonable period after receiving the notice, repair the property as required by the authority, the authority may make the repairs and charge the provider the reasonable, documented cost of the repairs.

G. A wireless provider that deploys a utility pole or small wireless facility in a right of way shall construct, maintain and locate it so as not to obstruct or hinder the usual travel on, or endanger the public in, the right of way, damage or interfere with another utility facility in the right of way or interfere with another utility's use of its facility in the right of way. In constructing and maintaining its utility pole or small wireless facility, the wireless provider shall comply with the national electrical safety code and all applicable laws for the protection of underground and overhead utility facilities. An authority shall treat a wireless provider's utility poles and small wireless facilities in a right of way as it does the facilities, if any, of other utilities in the right of way; however, the authority may adopt reasonable regulations concerning the separation of the wireless provider's utility poles and small wireless facilities from other utility facilities in the right of way to prevent damage to, or interference with, the facilities or to prevent interference with a utility's use of its facility or facilities in, or to be placed in, the right of way.

H. Subject to Subsection E of Section 4 of the Wireless Consumer Advanced Infrastructure Investment Act, an authority may require, as they pertain to small wireless facilities located in design districts or historic districts, reasonable, technically feasible, non-discriminatory and technologically neutral design or concealment measures and reasonable measures for conforming to the design aesthetics of design districts or historic districts, as long as the measures do not have the effect of prohibiting a wireless provider's technology. As used in this subsection:

(1) "design district" means an area zoned or otherwise designated by municipal ordinance and for which a municipality maintains and uniformly enforces unique design and aesthetic standards; and

(2) "historic district" means a group of buildings, properties or sites that fall within the category defined in 47 C.F.R. 1.1307(a)(4) and are:

(a) listed in the national register of historic places or formally determined eligible for listing in that register by the keeper of the register in accordance with the nationwide programmatic agreement found in 47 C.F.R. Part 1, Appendix C; or

(b) designated as a historic district in accordance with the Historic District and Landmark Act [Chapter 3, Article 22 NMSA 1978].

I. Without the authority's discretionary and written consent, which the authority shall give in a nondiscriminatory way, a wireless provider shall not install a new utility pole in a right of way adjacent to a street or thoroughfare that is:

(1) fifty feet wide or less; and

(2) adjacent to single-family residential lots or other multifamily residences or to undeveloped land designated for residential use by zoning or deed restrictions.

J. A wireless provider that installs a new utility pole or small wireless facility in a right of way as described in Subsection H of this section shall comply with applicable private deed restrictions and other private restrictions affecting the area.

K. A wireless provider shall notify an authority in writing of its intention to discontinue its use of a small wireless facility or utility pole. The notice shall inform the authority of the time and the way in which the wireless provider intends to remove the small wireless facility or utility pole. The wireless provider is responsible for the costs of the removal. The authority may require the wireless provider to return the property to its pre-installation condition according to the authority's reasonable and nondiscriminatory requirements and specifications. If the wireless provider does not complete the removal within forty-five days after the notice, the authority may complete the removal and assess the costs of removal against the wireless provider. The permit for the small wireless facility or utility pole expires upon removal.

History: Laws 2018, ch. 17, § 3 and Laws 2018, ch. 69, § 3.

ANNOTATIONS

Duplicate laws. — Laws 2018, ch. 17, § 3 and Laws 2018, ch. 69, § 3, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 3. *See* 12-1-8 NMSA 1978.

63-9I-4. Collocation of a small wireless facility; permits; application; fee.

A. This section applies to a wireless provider's collocation activities within a right of way.

B. An authority may prohibit, regulate or charge for the collocation of a small wireless facility only as provided in this section and Sections 3 [63-9I-3 NMSA 1978], 6 [63-9I-6 NMSA 1978] and 7 [63-9I-7 NMSA 1978] of the Wireless Consumer Advanced Infrastructure Investment Act.

C. A small wireless facility collocated on a utility pole or wireless support structure that extends ten or fewer feet above the pole or structure in a right of way in any zone is classified as a permitted use and is not subject to zoning review or approval.

D. An authority may require an applicant to obtain one or more permits to collocate a small wireless facility in a right of way if the requirement is of general applicability to users of the right of way. An applicant seeking to collocate, within an authority's jurisdiction, up to twenty-five small wireless facilities, all of which are substantially the same type, on substantially the same types of structures may file a consolidated

application for the collocation of the facilities. An applicant shall not file with an authority more than one consolidated application in any five-business-day period. The applicant shall include in a consolidated application an attestation that, unless a delay in collocation is caused by the lack of commercial power or fiber at the site, the collocation will begin within one hundred eighty days after the permit issuance date. The authority and the provider may subsequently agree to extend that period.

E. An authority shall:

(1) without bias, accept and process applications and issue permits to collocate small wireless facilities;

(2) within thirty days after receiving an application, determine and notify the applicant of whether the application is complete and:

(a) for an incomplete application, specifically identify the information missing from it; and

(b) deem the application complete if the applicant is not notified within the thirty-day period;

(3) within ninety days after receiving a completed application, approve or deny it and deem the application approved if that approval or denial is not given within the ninety-day period. The authority may request an extension of the ninety-day period, and the authority and applicant may agree to extend that period. An applicant shall not unreasonably deny an authority's request to extend the period;

(4) approve a completed application unless the application does not conform with:

(a) applicable codes or local laws concerning: 1) public safety; 2) design for utility poles, but only to the extent that the standards the codes or laws impose are objective; 3) stealth and concealment, but only to the extent that the restrictions the codes or laws impose are reasonable; and 4) the spacing of ground-mounted equipment in a right of way; and

(b) requirements imposed by the authority in accordance with Subsection H of Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act; and

(5) if it denies an application, document the basis for the denial, including the specific code or law on which the denial was based, and send that documentation to the applicant on or before the date the application is denied.

F. In the ninety-day period after an authority receives an application to collocate a small wireless facility, the authority may:

(1) provide public notice of the application and an opportunity for written public comment on the application; and

(2) submit the written public comment to the applicant and request that the applicant respond to it.

G. If an authority determines that applicable codes or laws require that a utility pole or wireless support structure be replaced before an application for collocation is approved, the authority may condition approval of the application on that replacement. That replacement is subject to Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act.

H. An applicant whose application is denied may cure the deficiencies identified by the authority and submit a revised application within thirty days after the denial for no additional fee. The authority shall base its review of the revised application only on the deficiencies cited in the denial and shall approve or deny the revised application within thirty days after receiving it.

I. If an application is for the collocation of multiple small wireless facilities, the authority may:

(1) treat as separate those for which incomplete information has been provided, that do not qualify for consolidated treatment or that are denied; and

(2) issue separate permits for the collocations that it approves.

J. An authority shall not:

(1) directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as the making of in-kind contributions to the authority of reserving fiber, conduit or pole space on the wireless provider's utility pole;

(2) require an applicant to provide more information to obtain a permit than the authority requires of a communications service provider that is not a wireless provider and that requests a permit to attach facilities to a structure; however, the authority may require the applicant to certify that the small wireless facilities to be collocated conform with the federal communications commission's regulations concerning radio frequency emissions;

(3) institute, either expressly or de facto, a moratorium on the acceptance or processing of applications or on the issuance of permits or other approvals, if any, for the collocation of small wireless facilities; or

(4) except as otherwise provided in Subsection K of this section, require an application, approval or permit or impose a fee, rate or other charge for:

(a) the routine maintenance of a small wireless facility;

(b) the replacement of a small wireless facility with one that is substantially similar in size to, the same size as or smaller than it, as long as the wireless provider that owns the wireless facility notifies the authority of the replacement at least ten days before the replacement; or

(c) the installation, maintenance, operation, placement or replacement of a micro wireless facility that is, in accordance with applicable codes, suspended on cables strung between utility poles or wireless structures. As used in this subparagraph, "micro wireless facility" means a small wireless facility less than twenty-four inches long, fifteen inches wide and twelve inches high whose exterior antenna, if any, is less than eleven inches long.

K. An authority may require a permit to engage, within rights of way, in activities that are identified in Paragraph (4) of Subsection J of this section and that affect traffic patterns or require lane closures.

L. The collocation for which a permit is issued shall begin within one hundred eighty days after the permit issuance date, unless the authority and the wireless provider agree to extend that period or a delay in collocation is caused by the lack of commercial power or fiber at the site. The permit gives the wireless provider the right to:

(1) collocate the small wireless facility; and

(2) subject to applicable relocation requirements, the requirements imposed on the authority by Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act and to the wireless provider's right to terminate collocation at any time:

(a) operate and maintain the small wireless facility for at least ten years; and

(b) renew the permit for the same period, unless the authority finds that the small wireless facility does not conform with the applicable codes and local laws set forth in Paragraph (4) of Subsection E of this section.

M. An authority may charge an applicant an application fee in the amount of one hundred dollars ($100) or less for each of up to five small wireless facilities and fifty dollars ($50.00) or less for each additional small wireless facility whose collocation is requested in a single application.

N. The approval of an application under the Wireless Consumer Advanced Infrastructure Investment Act does not authorize the provision of a service or authorize the installation, placement, maintenance or operation of a wireline backhaul facility in a right of way.

O. The Wireless Consumer Advanced Infrastructure Investment Act shall not be deemed to allow a person, without the consent of the property owner, to collocate a small wireless facility on a privately owned utility pole, a privately owned wireless support structure or private property.

History: Laws 2018, ch. 17, § 4 and Laws 2018, ch. 69, § 4.

ANNOTATIONS

Duplicate laws. — Laws 2018, ch. 17, § 4 and Laws 2018, ch. 69, § 4, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 4. *See* 12-1-8 NMSA 1978.

63-9I-5. Installation, replacement or modification of a utility pole; permits; application; fee.

A. This section applies to the activities of a wireless provider in installing a new, replacement or modified utility pole associated with the collocation of a small wireless facility in a right of way.

B. A new, replacement or modified utility pole associated with the collocation of a small wireless facility and installed in a right of way is not subject to zoning review and approval, except for that which pertains to the under-grounding prohibitions described in Subparagraph (c) of Paragraph (1) of Subsection C of this section, unless the utility pole, as measured from the ground level, is higher than whichever of the following is greater:

(1) ten feet plus the height in feet of the tallest existing utility pole, other than a utility pole supporting only one or more wireless facilities, that is:

(a) in place on the effective date of the Wireless Consumer Advanced Infrastructure Investment Act;

(b) located within five hundred feet of the new, replacement or modified utility pole;

(c) in the same right of way and within the jurisdictional boundary of the authority; and

(d) fifty or fewer feet above ground level; or

(2) fifty feet.

C. An authority may require an application for the installation of a new, replacement or modified utility pole associated with the collocation of a small wireless facility in a

right of way. An authority shall approve such an application unless the authority finds that the installation of the utility pole does not conform with:

(1) applicable codes or local laws concerning:

(a) public safety;

(b) design for utility poles, but only to the extent that the standards the codes or laws impose are objective; and

(c) under-grounding prohibitions on the installation of new, or the modification of existing, utility poles in a right of way without prior approval, if those regulations: 1) require that all cable and public utility facilities be placed underground by a date certain within one year after the application; 2) include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles; and 3) allow the replacement of utility poles;

(2) the federal Americans with Disabilities Act of 1990 or similar federal or state standards for pedestrian access or movement;

(3) requirements imposed by the authority in accordance with Subsection H of Section 3 [63-9I-3 NMSA 1978] of the Wireless Consumer Advanced Infrastructure Investment Act;

(4) requirements imposed by contract between an authority and a private property owner concerning the design of utility poles in the right of way; or

(5) the authority's laws concerning public safety and imposing minimum spacing requirements, if reasonable, for new utility poles in rights of way.

D. An authority shall process an application for a permit to install a new, replacement or modified utility pole associated with the collocation of a small wireless facility within one hundred fifty days after receiving the application. If the authority fails to approve or deny the application within that period, the authority shall deem the application approved. The application fee, if any, imposed by the authority for such an application shall conform with the requirements of Subsection M of Section 4 [63-9I-4 NMSA 1978] of the Wireless Consumer Advanced Infrastructure Investment Act and shall not exceed seven hundred fifty dollars ($750).

E. The installation, modification or replacement for which a permit is issued under this section shall begin within one hundred eighty days after the permit issuance date, unless the authority and wireless provider agree to extend that period or a delay in the installation, modification or replacement is caused by the lack of commercial power or fiber at the site. The permit gives the wireless provider the right to:

(1) undertake the requested deployment; and

(2) subject to applicable relocation requirements, to the requirements imposed on the authority by this section and to the provider's right to terminate the installation at any time:

(a) operate and maintain the new, modified or replacement utility pole for a period of at least ten years; and

(b) renew the permit for that same period, unless the authority finds that the new or modified utility pole does not conform with the restrictions set forth in Subsection C of this section.

History: Laws 2018, ch. 17, § 5 and Laws 2018, ch. 69, § 5.

ANNOTATIONS

Cross references.— For the federal Americans with Disabilities Act of 1990, *see* titles 29, 42 and 47 of the U.S. Code.

Duplicate laws. — Laws 2018, ch. 17, § 5 and Laws 2018, ch. 69, § 5, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 5. *See* 12-1-8 NMSA 1978.

63-9I-6. Access to authority utility poles; rates and fees; collocations for other commercial projects or uses.

A. An authority shall not enter into an exclusive agreement with a person for the right to attach a small wireless facility to an authority utility pole.

B. The rates and fees an authority imposes for the collocation of a small wireless facility on an authority utility pole shall not vary according to the services provided by the collocating person.

C. The rate to collocate a small wireless facility on an authority utility pole shall not exceed twenty dollars ($20.00) per utility pole per year.

D. An authority shall process an application for a permit to collocate a small wireless facility on an authority utility pole in accordance with Section 4 [63-9I-4 NMSA 1978] of the Wireless Consumer Advanced Infrastructure Investment Act. The authority may condition the issuance of the permit on the wireless provider's replacement of the authority utility pole if the authority determines that applicable codes or local laws concerning public safety require that replacement. The authority shall process an application for a permit to install a replacement authority utility pole in accordance with Section 5 [63-9I-5 NMSA 1978] of the Wireless Consumer Advanced Infrastructure Investment Act. The authority shall retain ownership of the replacement utility pole.

E. An authority may prohibit, regulate and charge for the collocation of a small wireless facility on a wireless support structure owned by the authority.

History: Laws 2018, ch. 17, § 6 and Laws 2018, ch. 69, § 6.

ANNOTATIONS

Duplicate laws. — Laws 2018, ch. 17, § 6 and Laws 2018, ch. 69, § 6, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 6. *See* 12-1-8 NMSA 1978.

63-9I-7. Establishment of rates, fees and terms; extension of term to fulfill duties.

A. An authority may adopt an ordinance setting forth the rates, fees and terms for implementing the Wireless Consumer Advanced Infrastructure Investment Act. In the absence of such an ordinance, an authority and a wireless provider may enter into an agreement setting forth those rates, fees and terms. Documents showing the rates, fees and terms agreed to by an authority and a wireless provider are public records.

B. The rates, fees and terms for a wireless provider's use of a right of way as set forth in Section 3 [63-9I-3 NMSA 1978] of the Wireless Consumer Advanced Infrastructure Investment Act and for access to authority utility poles as set forth in Section 6 of that act [63-9I-6 NMSA 1978] shall accord with that act, and the terms:

(1) shall be reasonable and nondiscriminatory;

(2) may include requirements that the authority has previously applied to other users of the right of way;

(3) may require that the wireless provider's operation of a small wireless facility in the right of way not interfere with the authority's public safety communications;

(4) except as otherwise provided in Subsection C of Section 5 of that act [63-9I-5 NMSA 1978], shall not:

(a) require the placement of a small wireless facility on a specific utility pole or category of poles or require multiple antenna systems on a single utility pole; or

(b) restrict the placement of small wireless facilities by imposing minimum horizontal spacing requirements; and

(5) subject to Section 9 of that act [63-9I-9 NMSA 1978], shall provide for the reasonable accommodation of a power supply to, and electric metering of, the small wireless facility.

C. An agreement between an authority and a wireless provider in effect on the effective date of the Wireless Consumer Advanced Infrastructure Investment Act and that concerns the collocation of one or more small wireless facilities in a right of way, including that collocation on authority utility poles, remains in effect subject to applicable termination provisions. A wireless provider in such an agreement may, after they become effective, accept the rates, fees and terms established in accordance with Subsection B of this section for the small wireless facilities and utility poles that are the subject of an application.

D. If the federal government, the state or an authority declares a disaster and that disaster impedes an authority's or wireless provider's ability to fulfill the duties imposed on it by the Wireless Consumer Advanced Infrastructure Investment Act or by an ordinance adopted in accordance with this section, the term under which those duties must be fulfilled is extended for a reasonable period.

History: Laws 2018, ch. 17, § 7 and Laws 2018, ch. 69, § 7.

ANNOTATIONS

Duplicate laws. — Laws 2018, ch. 17, § 7 and Laws 2018, ch. 69, § 7, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 7. *See* 12-1-8 NMSA 1978.

63-9I-8. Scope of local authority.

A. Except as otherwise provided in the Wireless Consumer Advanced Infrastructure Investment Act, an authority may exercise its zoning, land use, planning and permitting authority and its police power for the installation, modification and replacement of wireless support structures and utility poles.

B. An authority's power to control the design, engineering, construction, installation or operation of a small wireless facility in an interior structure or on the site of a campus, stadium or athletic facility not owned or controlled by the authority is limited to its authority to enforce compliance with applicable codes.

C. The Wireless Consumer Advanced Infrastructure Investment Act does not authorize the state or a political subdivision of the state to require small wireless facility deployment or to regulate wireless services.

D. If an authority determines that a utility pole or the wireless support structure of a wireless provider must be relocated to accommodate a public project, the provider shall assume the costs of relocating the wireless facilities deployed on the pole or structure.

History: Laws 2018, ch. 17, § 8 and Laws 2018, ch. 69, § 8.

ANNOTATIONS

Duplicate laws. — Laws 2018, ch. 17, § 8 and Laws 2018, ch. 69, § 8, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 8. *See* 12-1-8 NMSA 1978.

63-9I-9. Applicability.

The Wireless Consumer Advanced Infrastructure Investment Act does not:

A. affect the authority, under state or federal law, of an investor-owned electric utility or electric cooperative that owns, controls or operates utility poles or wireless support structures to deny, limit, restrict or determine the rates, fees, terms and conditions for the use of, or attachment to, those poles or structures by a wireless provider;

B. confer on an authority any zoning, land use, planning, permitting or other regulatory authority over the utility poles, wireless support structures or small wireless facilities owned, controlled or operated by an investor-owned electric utility or electric cooperative or the installation of those poles, structures or facilities by an investor-owned electric utility or electric cooperative;

C. impose a duty, liability or restriction on any investor-owned electric utility or electric cooperative;

D. amend, modify or otherwise affect the provisions affecting a private easement; or

E. authorize an authority to:

(1) require of a public telecommunications company that provides telecommunications services under a certificate of public convenience and necessity issued by the state an additional grant of authority to provide those services; or

(2) discriminate against such a company in its use of rights of way.

History: Laws 2018, ch. 17, § 9 and Laws 2018, ch. 69, § 9.

ANNOTATIONS

Duplicate laws. — Laws 2018, ch. 17, § 9 and Laws 2018, ch. 69, § 9, both effective September 1, 2018, enacted identical new sections. The section was set out as enacted Laws 2018, ch. 69, § 9. *See* 12-1-8 NMSA 1978.

ARTICLE 10
Cable Television Service Facilities

(Repealed by Laws 1997, ch. 50, § 6.)

63-10-1 to 63-10-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 50, § 6 repealed 63-10-1 to 63-10-3 NMSA 1978, as enacted and amended by Laws 1985, ch. 74, §§ 1 to 3, relating to cable television service facilities and related unlawful acts, effective June 20, 1997. For provisions of former sections, *see* the 1996 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* Chapter 30, Article 33A NMSA 1978.

ARTICLE 11
Excavation Damage to Cable Television Lines

63-11-1. Purpose and intent.

The purpose of this act [63-11-1 through 63-11-8 NMSA 1978] is to prevent injury to persons and damage to property from accidents resulting from damage to cable television lines and related facilities by excavating and blasting.

History: 1953 Comp., § 69-14-1, enacted by Laws 1977, ch. 328, § 1.

63-11-2. Definitions.

For the purposes of this act [63-11-1 through 63-11-8 NMSA 1978]:

A. "blasting" means the use of an explosive to excavate;

B. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes augering, backfilling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling;

C. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and shall include trenchers, bulldozers, back hoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

D. "cable television lines and related facilities" means the facilities of any cable television system or closed circuit coaxial cable communications system or similar §1 transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system; and

E. "person" means any individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state, association or any legal representative thereof.

History: 1953 Comp., § 69-14-2, enacted by Laws 1977, ch. 328, § 2.

63-11-3. Excavation.

Every person who prepares engineering plans for excavation or who engages in excavation shall:

A. make reasonable efforts to inform himself of the location of any cable television lines and related facilities in or near the area where the excavation is to be conducted;

B. plan the excavation to avoid or minimize interference or damage to any cable television lines and related facilities in or near the excavation area;

C. provide reasonable advance notice of the commencement, extent and duration of the excavation work to the owners of the cable television lines and related facilities in and near the excavation area, so that such owners may locate and mark the location of the cable television lines and related facilities in the excavation area;

D. maintain at least an estimated clearance of eighteen inches between any non-exposed cable television lines and related facilities and the cutting edge or point of any mechanical excavating equipment utilized in such excavation;

E. provide such support for existing cable television lines and related facilities in or near the excavation area as may be reasonably necessary to prevent damage to such cable television lines and related facilities;

F. backfill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities for preexisting cable television lines and related facilities in or near the excavation area; and

G. notify as promptly as possible the owner of any cable television lines and related facilities which may have been damaged or dislocated during the excavation work.

History: 1953 Comp., § 69-14-3, enacted by Laws 1977, ch. 328, § 3.

63-11-4. Emergency excavation.

Every person who shall engage in emergency excavation shall take all necessary and reasonable precaution to avoid or minimize interference with or damage to existing cable television lines and related facilities in and near the construction area and shall notify as promptly as possible the owners of the cable television lines and related facilities located in or near the emergency excavation area. In the event of any damage to or dislocation of any cable television lines and related facilities caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner thereof.

History: 1953 Comp., § 69-14-4, enacted by Laws 1977, ch. 328, § 4.

63-11-5. Marking of facilities.

Every person owning or operating cable television lines and related facilities shall upon the request of a person intending to commence an excavation and upon reasonable advance notice, mark by some reasonable and customary means the location and, if known, the depth of cable television lines and related facilities in or near the area of the excavation so as to enable the person engaged in excavation work to locate the cable television lines and related facilities in advance of and during the excavation work.

History: 1953 Comp., § 69-14-5, enacted by Laws 1977, ch. 328, § 5.

63-11-6. Liability for damage from failure to make reasonable efforts to obtain information.

A. If any cable television lines and related facilities are damaged by any person who has failed to make reasonable efforts to inform himself as to their location as provided in Chapter 63, Article 11 NMSA 1978 then such person shall be liable to the owner of the cable television lines and related facilities for the entire cost of the repair of the cable television lines and related facilities plus reasonable attorney's fees. It is not the intent of Chapter 63, Article 11 NMSA 1978 to impose civil liability to any person beyond that provided in this section.

B. If any utility or homeowner improvements are damaged by the cable television service, who has failed to make reasonable efforts to inform himself as to their location as provided in Chapter 63, Article 11 NMSA 1978 then such person shall be liable to the homeowner for the entire cost of the utilities or improvements plus reasonable attorney's fees.

History: 1953 Comp., § 69-14-6, enacted by Laws 1977, ch. 328, § 6; 1985, ch. 74, § 4.

63-11-7. Liability for negligence notwithstanding information obtained.

The act of obtaining or making reasonable efforts to obtain information as required by this act [63-11-1 through 63-11-8 NMSA 1978] shall not excuse any person making any excavation from doing so in a careful and prudent manner nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

History: 1953 Comp., § 69-14-7, enacted by Laws 1977, ch. 328, § 7.

63-11-8. Penalties.

In addition to any other liability imposed by law, any person who willfully fails to comply with this act [63-11-1 through 63-11-8 NMSA 1978] and whose failure proximately contributes to the damage of any cable television lines and related facilities shall be subject to damages not to exceed triple the actual amount of damages to the cable television lines and related facilities.

History: 1953 Comp., § 69-14-8, enacted by Laws 1977, ch. 328, § 8.