UNANNOTATED

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

63-1-41. Annual report.

Every railroad corporation shall make an annual report to the department of transportation of the operations of the year ending on December 31. The president or general superintendent and the secretary and treasurer of the corporation shall verify the report. A railroad corporation shall file the report with the department of transportation on or before March 1 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; and

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; 1978 Comp., § 63-1-41; 2023, ch. 100, § 20.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

63-2-11. Repealed.

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.

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.

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.

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.

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.

63-2-17. Repealed.

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.

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.

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.

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

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.

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.

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.

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

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.

63-3-24. Repealed.

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.

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.

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.

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.

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

63-3-33. Repealed.

History: Laws 1915, ch. 37, § 5; C.S. 1929, § 116-325; 1941 Comp., § 74-334; 1953 Comp., § 69-3-36; 1978 Comp., § 63-3-33, repealed by Laws 2023, ch. 100, § 82.

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.

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

The following words and phrases when used in this act [63-3-35 to 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.

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.

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.

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.

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.

ARTICLE 3A
Railroad Planning and Projects

63-3A-1. Short title.

This act [63-3A-1 to 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.

ARTICLE 4
Discontinuance of Operations

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

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.

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.

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.

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.

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.

ARTICLE 6
Dissolution of Railroad Companies (Repealed.)

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

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.

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

A. With respect to transmission companies, the commission shall:

(1) fix, determine, supervise, regulate and control all charges and rates of telegraph, telephone and other transmission companies 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) change, amend and rescind rates;

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

(5) 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; 2023, ch. 100, § 21.

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

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.

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

63-7-20. Utility inspection; fee.

A. Each utility doing business in this state that 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 utilities shall not exceed five hundred ninety thousandths percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. This sum shall be payable annually on July 31 in each year. No similar fee shall be imposed upon the utility. In the case of utilities engaged in interstate business, the fees shall be measured by the gross receipts of the utilities from intrastate business only for the preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. Prior to July 1, 2031, the fees established pursuant to this section may be adjusted annually by the commission; provided that any increase shall not be greater than the prior year's increase in the employment cost index for state and local government, as published by the federal bureau of labor statistics. As used in this section, "utility" includes telephone companies and transmission companies but does not include public utilities subject to the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 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 commission 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; 1978 Comp., § 63-7-20; Laws 1989, ch. 233, § 1; 1993, ch. 311, § 11; 2003, ch. 14, § 20; 2005, ch. 339, § 7; 2023, ch. 100, § 22; 2025, ch. 84, § 4.

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

All moneys collected under the provisions of Chapter 194, Laws of 1951 [63-7-20 to 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.

63-7-22. Exemptions.

The provisions of Sections 63-7-20 through 63-7-22 NMSA 1978 shall not apply to pipelines that are used for the transportation of oil, natural gas or the products thereof.

History: 1941 Comp., § 74-724, enacted by Laws 1951, ch. 194, § 3; 1953 Comp., § 69-7-24; 2023, ch. 100, § 23.

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.

ARTICLE 8
Health and Safety of Railroad Employees (Repealed.)

63-8-1 to 63-8-7. Repealed.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 to 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.

63-9-12 to 63-9-14. Repealed.

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 to 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.

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.

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

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.

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.

63-9A-2. Repealed.

History: Laws 1985, ch. 242, § 2; 1987, ch. 21, § 1; 2000, ch. 100, § 3; 2000, ch. 102, § 3; repealed by Laws 2023, ch. 92, § 5.

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. "alternate provider" means a person that provides voice services, regardless of the technology used. Such providers are not limited to telecommunications companies and include cellular service companies, satellite companies and companies that provide service using an interconnected voice-over-internet protocol;

C. "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;

D. "commission" means the public regulation commission;

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

F. "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;

G. "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;

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

I. "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;

J. "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;

K. "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;

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

M. "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;

N. "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;

O. "person" means a natural person, individual, corporation, association, partnership or any other legal entity;

P. "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;

Q. "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;

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

S. "voice services" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, light waves or other electromagnetic means, including those voice services provided by incumbent local exchange carriers, competitive telecommunications service providers, mobile wireless providers and interconnected voice-over-internet protocol service providers;

T. "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

U. "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; 2023, ch. 92, § 1.

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.

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. Except in cases regarding the fixing of rates pursuant to Section 63-7-1.1 NMSA 1978, the commission has exclusive jurisdiction to regulate incumbent local exchange carriers that serve fifty thousand or more access lines within the state to the extent authorized by the New Mexico Telecommunications Act; provided that:

(1) 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]; and

(2) incumbent local exchange carriers regulated pursuant to this section shall be regulated in the same manner as incumbent rural telecommunications carriers are regulated pursuant to the Rural Telecommunications Act [Chapter 63, Article 9H NMSA 1978] of New Mexico.

C. Any rules adopted by the commission for the regulation of incumbent local exchange carriers pursuant to the New Mexico Telecommunications Act shall preserve and not alter:

(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 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 [63-9D-1 through 63-9D-11.1 NMSA 1978]; 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.

D. 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; 2023, ch. 92, § 2.

63-9A-5.1. Repealed.

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

63-9A-5.2. Repealed.

History: Laws 2004, ch. 3, § 5; repealed by Laws 2017, ch. 71, § 8.

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.

63-9A-6.1. Repealed.

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.

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.

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, determine if a wire center serving area is subject to effective competition. When the commission has made a determination that a wire center serving area is subject to effective competition, the commission shall, consistent with the purposes of the New Mexico Telecommunications Act, eliminate rules, regulations and other requirements applicable to the provision of telecommunications services within that wire center serving area. The commission's action shall include the detariffing of service and may include the establishment of minimum rates that will cover the costs for the service. Such action shall be consistent with the maintenance of the availability of access to local exchange service and message telecommunications service at affordable rates comparable in both urban and rural markets as established by the commission, except that volume discounts or other discounts based on reasonable business purposes shall be permitted. The commission shall also 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. Effective competition pursuant to the New Mexico Telecommunications Act shall exist in a wire center serving area when voice services are available to business customers from two or more alternate providers not affiliated with the incumbent local exchange carrier in the wire center serving area and are available to residential customers from two or more alternate providers not affiliated with the incumbent local exchange carrier in the wire center serving area, regardless of:

(1) the technology used to provide the voice services;

(2) whether the voice services are regulated or unregulated; or

(3) whether the voice services are provided by alternate providers that receive state or federal funding assistance.

C. In addition to establishment of effective competition pursuant to Subsection B of this section and upon notice to the commission, when an alternate provider other than the incumbent local exchange carrier has been awarded funding to provide broadband service within a wire center serving area pursuant to a state or federal broadband

assistance or deployment program, effective competition for all regulated telecommunications services in that wire center serving area shall exist.

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

History: Laws 1985, ch. 242, § 8; 1987, ch. 21, § 6; 2017, ch. 71, § 3; 2023, ch. 92, § 3.

63-9A-8.1. Change in rates.

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

B. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state shall file tariffs for all retail public telecommunications services that, other than residential local exchange service, shall be effective after ten days' notice to its customers and the commission. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state shall remain subject to complaint by an interested party subject to Section 63-9A-11 NMSA 1978.

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

D. Except as provided in Subsection C of this section, rates for residential local exchange service may be increased by an incumbent local exchange carrier that serves fifty thousand or more access lines within the state only after sixty days' notice to all affected subscribers. The notice of increase shall include:

(1) the reasons for the rate increase;

(2) a description of the affected service;

(3) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase;

(4) a list of local exchange areas that are affected by the proposed rate increase; and

(5) the dates, times and places for the public informational meetings required by this section.

E. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state that proposes to increase its rates for residential local exchange service pursuant to Subsection D of this section shall hold at least one public informational meeting in each public regulation commission district as established by the Public Regulation Commission Apportionment Act [8-7-1 to 8-7-5 NMSA 1978] in which there is a local exchange area affected by the rate change.

F. Residential local exchange service rates increased by an incumbent local exchange carrier that serves fifty thousand or more access lines within the state pursuant to Subsections D and E of this section shall be reviewed by the commission only upon written protest signed by at least one hundred affected subscribers or upon the commission staff's own motion for good cause. The protest shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review and the relief that the persons protesting desire. If a proper protest is presented to the commission within sixty days from the date that notice of the rate change was sent to affected subscribers of an incumbent local exchange carrier, the commission may accept and file the complaint and, upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the intrastate

cost of providing the service. In the order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing, which may be paid as a credit against billings for future services. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates shall be deemed approved. For purposes of this section, cost shall also include a reasonable amount of joint and common costs incurred by the incumbent local exchange carrier that serves fifty thousand or more access lines within the state in its operations and may include other accounting adjustments authorized by the commission.

G. Rates for local exchange, vertical and long-distance service to retail residential and business end-user customers charged by incumbent local exchange carriers that serve fifty thousand or more access lines may be reduced to a level equal to, but not below, the intrastate cost. The rate for a service, excluding basic service, must cover the cost of the service, including the imputed rate of wholesale service elements as may be required by the commission. The cost of long-distance service shall also include any interexchange access rates charged to another telecommunications company for the service.

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

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

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.

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.

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.

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.

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.

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.

63-9A-13. Repealed.

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.

63-9A-15. Repealed.

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.

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

63-9A-19. Repealed.

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.

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

A. 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:

(1) 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;

(2) report on the 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; and

(3) specify the steps the commission has taken to implement parity of regulation among all incumbent local exchange carriers consistent with the provisions of the New Mexico Telecommunications Act.

B. 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, 2023, the commission shall regulate basic local exchange service pursuant to the New Mexico Telecommunications Act.

History: Laws 2017, ch. 71, § 7; 2023, ch. 92, § 4.

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.

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.

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.

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.

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 to 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.

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.

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.

63-9B-7. Repealed.

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.

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.

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.

63-9B-11 to 63-9B-13. Repealed.

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.

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.

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 [health care authority 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.

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.

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 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.

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.

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 to 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 to 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.

63-9D-4.1. Repealed.

History: Laws 2003, ch. 339, § 1; repealed by Laws 2017, ch. 122, § 11.

63-9D-5. Imposition of surcharge.

A. A 911 emergency surcharge is imposed in the amount of one dollar ($1.00) 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. A communications service provider shall bill and collect the surcharge from 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; 2025, ch. 84, § 5.

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.

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.

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.

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.

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.

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.

63-9D-8.2. Repealed.

History: Laws 1993, ch. 48, § 11; 2001, ch. 110, § 8; repealed Laws 2005, ch. 203, § 15.

63-9D-9. Repealed.

History: Laws 1989, ch. 25, § 9; 1993, ch. 48, § 12; 2001, ch. 110, § 9; repealed Laws 2005, ch. 203, § 15.

63-9D-9.1. Repealed.

History: Laws 2001, ch. 110, § 12; repealed Laws 2005, ch. 203, § 15.

63-9D-9.2. Repealed.

History: Laws 2001, ch. 110, § 13; 2002, ch. 18, § 6; repealed Laws 2005, ch. 203, § 15.

63-9D-9.3. Repealed.

History: Laws 2001, ch. 110, § 14; repealed Laws 2005, ch. 203, § 15.

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.

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.

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.

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.

63-9D-13. Definitions.

As used in the Enhanced 911 Bond Act:

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.

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 [63-9D-12 to 63-9D-20 NMSA 1978] 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.

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 to 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 to 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.

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.

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 to 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 to 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.

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.

63-9E-2. Repealed.

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.

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.

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.

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.

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.

63-9F-5. Repealed.

History: Laws 1993, ch. 54, § 5; 1995, ch. 39, § 2; repealed by Laws 2004, ch. 106, §10.

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 to 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.

63-9F-7. Repealed.

History: Laws 1993, ch. 54, § 7; repealed by Laws 2004, ch. 106, §10.

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.

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.

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 one and sixty-six 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 [63-9D-1 to 63-9D-11.1 NMSA 1978], 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 to 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 the following amounts of the net receipts of the telecommunications relay service surcharge collected, less any amount deducted in accordance with Subsection F of this section, within the month following the month in which the surcharge is collected:

(1) twenty percent to the telecommunications access fund; and

(2) eighty percent to the 988 lifeline fund.

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 and the health care authority 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 and the 988 lifeline fund;

(2) the amount and category of expenditures from the funds; and

(3) the balance of the funds 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; 2025, ch. 84, § 6.

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 up to one hundred 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; 2025, ch. 84, § 7.

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 to 63-9G-9 NMSA 1978] of this act may be cited as the "Cramming and Slamming Act".

History: Laws 1999, ch. 138, § 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 and were not authorized by the customer; 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; 2023, ch. 186, § 1.

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.

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.

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.

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.

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.

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.

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.

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.

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.

63-9H-3. Definitions.

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

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

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

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

E. "commission" means the public regulation commission;

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

G. "digital equity" means information technology needed for civic and cultural participation, employment, education, business and economic development, lifelong

learning and access to essential services generally available to residents regardless of their racial grouping, socioeconomic status or cultural identity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Laws 1999, ch. 295, § 3; 2013, ch. 194, § 2; 2021, ch. 118, § 1; 2021, ch. 120, § 8.

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.

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.

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, M or N 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. Notwithstanding the provisions of Subsection K of this section, the annual amount of access reduction support payments for an eligible incumbent local exchange carrier in 2024, 2025 and 2026 shall be equal to the annual access reduction support payments for that eligible incumbent local exchange carrier for the year 2023. Access reduction support payments shall be terminated after December 31, 2026.

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

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

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

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

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

N. 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.

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

and maintenance of broadband infrastructure. Each year, an amount equal to forty million dollars ($40,000,000) less the amounts expended pursuant to Subsections K, L, M and N of this section shall be dedicated to the broadband program.

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

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

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

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

Q. 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 forty million dollars ($40,000,000) per year.

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

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

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

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

S. The 2025 annual report made pursuant to Subsection R of this section shall include an assessment of the state rural universal service fund that addresses:

(1) whether to repurpose the access reduction support funds into the commission's broadband support program;

(2) a methodology for determining broadband support levels that is consistent with the requirements of Subsection C of this section and accounts, at a minimum, for broadband costs, potential revenues from deployed infrastructure and existing federal support mechanisms;

(3) the appropriate size of the fund;

(4) criteria for awarding funding;

(5) the impact of proposed changes on per- connection assessments; and

(6) whether all sellers of prepaid telecommunications services should be required to collect state rural universal service fund assessments at the point of sale, similar to the methodology for collecting 911 emergency surcharges pursuant to Section 63-9D-5 NMSA 1978.

History: Laws 1999, ch. 295, § 6; 2005, ch. 335, § 1; 2013, ch. 194, § 4; 2017, ch. 89, § 1; 2021, ch. 118, § 2; 2021, ch. 120, § 9; 2023, ch. 37, § 1; 2025, ch. 117, § 1.

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.

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.

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.

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.

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.

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.

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.

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.

ARTICLE 9I
Wireless Consumer Advanced Infrastructure Investment

63-9I-1. Short title.

This act [63-9I-1 to 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.

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.

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.

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.

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.

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.

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 [63-9I-6 NMSA 1978] of that act 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 [63-9I-5 NMSA 1978] of that act, 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 [63-9I-9 NMSA 1978] of that act, 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.

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.

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.

ARTICLE 9J
Broadband Access and Expansion

63-9J-1. Short title.

Chapter 63, Article 9J NMSA 1978 may be cited as the "Broadband Access and Expansion Act".

History: Laws 2021, ch. 123, § 1; 2025, ch. 82, § 5.

63-9J-2. Definitions.

As used in the Broadband Access and Expansion Act:

A. "broadband infrastructure" means facilities and equipment used to provide internet service, excluding telecommunications equipment owned, controlled or operated by a public or private end user;

B. "broadband office" means the office of broadband access and expansion;

C. "constitutional special schools" means the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf;

D. "department", unless otherwise specified, means the department of information technology;

E. "director" means the director of the broadband office;

F. "education technology infrastructure" means the physical hardware and services used to interconnect students, teachers, school districts and school buildings necessary to support broadband connectivity and remote learning as determined by the broadband office;

G. "end user" means an individual, business, institution or governmental entity that subscribes to an internet service and does not resell that service to other individuals or entities;

H. "facilities-based provider" means a provider of internet service to end users in New Mexico using facilities that satisfy any of the following criteria:

(1) physical facilities that the entity owns and that terminate at the end user premises;

(2) facilities that the entity has obtained the right to use from other entities, such as dark fiber or satellite transponder capacity as part of its own network, or has obtained;

(3) unbundled network element loops, special access lines or other leased facilities that the entity uses to complete terminations to the end user premises;

(4) wireless spectrum for which the entity holds a license or that the entity manages or has obtained the right to use via a spectrum leasing arrangement or comparable arrangement pursuant to federal regulations promulgated pursuant to the federal Communications Act of 1934, as amended, or upon subsequent amendment or repeal of that act, by the broadband office by rule; or

(5) unlicensed spectrum;

I. "fund" means the education technology infrastructure fund;

J. "internet" means a global set of computing and electronic devices interconnected through networking infrastructures to provide data and information sharing and communication facilities;

K. "local government" means the government of a municipality, county or political subdivision of the state;

L. "open access" means equal nondiscriminatory access to the state-owned broadband network by eligible entities on a technologically and competitively neutral basis, regardless of whether the entity is privately or publicly owned;

M. "public educational institution" means a public school, a school district, a public post-secondary educational institution, a tribal school or an agency that provides administrative, funding or technical support to public schools, school districts and public post-secondary educational institutions;

N. "quality of service" means the standards established by the federal communications commission;

O. "school district" includes the constitutional special schools and state-chartered charter schools;

P. "school district population density" means the population density on a per-square-mile basis of a school district as estimated by the broadband office based on the most current tract level population estimates published by the United States census bureau;

Q. "state-owned broadband network" means the state-owned broadband infrastructure that is owned, leased or operated by the department;

R. "statewide broadband plan" means a plan, including recommended statutory changes and implementation procedures, for the development and expansion of broadband infrastructure and services throughout the state to meet the needs:

(1) for the delivery of internet-based educational, medical and emergency services;

(2) for local and tribal communities to foster and recruit internet-reliant business and industry and to promote economic development and job creation; and

(3) to support internet-reliant state, local and tribal government functions and facilitate the delivery of governmental services in a manner that is competitive with similar government agencies in neighboring states;

S. "underserved" means an area or property that does not have access to internet service offering speeds greater than one hundred megabits downstream and twenty megabits upstream; and

T. "unserved" means an area or property that either does not have access to internet service at all or only has access to internet service offering speeds below twenty-five megabits per second downstream or three megabits per second upstream.

History: Laws 2021, ch. 123, § 2; 2023, ch. 132, § 7; 2025, ch. 82, § 6.

63-9J-3. Office of broadband access and expansion created; director; standards; data collection; statewide broadband plan; assistance for political subdivisions.

A. The "office of broadband access and expansion" is created and is administratively attached to the department.

B. The broadband office shall be managed by the director, who shall be appointed by the governor. The director may hire staff as needed to meet the responsibilities of the broadband office.

C. The broadband office shall:

(1) establish by rule standards for quality of service for homes, businesses and public institutions;

(2) create and maintain an official, publicly accessible online New Mexico broadband access map showing broadband availability and quality of service for homes, businesses and public institutions on a county-by-county basis; and

(3) create and maintain a repository for broadband data and information in New Mexico on a county-by-county basis, including:

(a) the number of homes and businesses that do not have access to broadband service;

(b) the number of homes and businesses that have broadband service that falls below the quality of service standards established by the broadband office; and

(c) the locations of broadband infrastructure currently owned or projected for construction by the state or local governments on a county-by-county basis.

D. On or before January 1, 2022, the broadband office shall develop and provide to the governor and the legislature a three-year statewide broadband plan.

E. On or before January 1, 2023, and on or before January 1 of each year thereafter, the broadband office shall update and revise the statewide broadband plan developed pursuant to this section for the ensuing three years and report the updated and revised statewide broadband plan to the governor and the legislature. In its initial plan pursuant to Subsection D of this section and in its annual revised and updated plan pursuant to this subsection, the broadband office shall provide an assessment of broadband service across the state compared to the standards established by the various federal broadband regulatory and assistance programs.

F. In the development of the statewide broadband plan, the broadband office shall request advice and provide opportunities for meaningful input from each local and tribal government within New Mexico, and all state agencies and public educational institutions shall cooperate with and provide relevant broadband-related information collected or developed by the agencies as requested by the broadband office.

G. The broadband office shall implement the statewide broadband plan.

H. The broadband office shall provide technical and planning assistance to local governments, public educational institutions and state agencies in the design, development or implementation of their own plans for the development of broadband service. When providing planning and technical assistance, the broadband office shall encourage the use of regional planning and may provide planning and technical assistance to tribal government agencies and schools when those entities are participants in a joint powers agreement with a county, municipality, political subdivision, public educational institution or agency or memorandum of understanding for the design, development or implementation of a regional broadband plan.

I. The broadband office may form an advisory committee comprising representatives of state, local and tribal government agencies and the general public to facilitate the collection of information and the development of proposals for the statewide broadband plan; provided that if an advisory committee is formed, at least three different tribal agencies shall be represented on the committee.

J. In furtherance of statewide broadband planning, all facilities-based providers shall report semiannually to the broadband office the same data in the same format that is reported to the federal communications commission pursuant to federal law governing data submitted for broadband mapping. The reports shall be submitted each year on or before April 1, with regard to data existing as of December 31 of the prior year, and on or before October 1, with regard to data existing as of June 30 of the then current year. All information reported by a facilities-based provider pursuant to this subsection shall be maintained as confidential information by the broadband office in accordance with applicable state or federal law.

K. The reporting requirements set forth in Subsection J of this section do not apply to tribal corporations federally chartered by the bureau of Indian affairs.

L. The broadband office may adopt rules requiring facilities-based providers to report data in addition to the data required pursuant to Subsection J of this section; provided that no such rule shall require a facilities-based provider to report any such data more frequently than twice per year.

History: Laws 2021, ch. 123, § 3; 2023, ch. 132, § 8.

63-9J-4. Coordination of state and local government broadband efforts.

A. The broadband office shall identify federal and nongovernmental broadband funding assistance opportunities for local governments, public educational institutions, state agencies and tribal governments and shall publish a list of those opportunities in a manner that can be searched on a county-by-county basis.

B. The broadband office may be the applicant for such funding assistance for all state agencies except the department of transportation.

C. State agencies and public educational institutions shall coordinate with the broadband office concerning the purchase of broadband infrastructure and services with the goal of obtaining best-value or bulk pricing agreements where practicable.

D. The broadband office shall coordinate with and may enter into memoranda of understanding with federal, local government, state and tribal government agencies to create an integrated system of permits, licenses and rules for broadband infrastructure across all governmental jurisdictions within each region of the state, including the creation of a centralized repository, and an expedited review process for rights of way use applications, with the goal of creating uniform coordinated permitting and licensing requirements statewide. The broadband office shall develop proposals for government agencies at the local, county and state levels to build and pay for broadband networks, upon request for such assistance.

E. The broadband office shall advise and make recommendations to the department regarding proposals to use the state-owned broadband network for the purpose of connecting unserved and underserved populations of the state to internet service on the basis of open access that supports objectives of the state broadband plan; provided that:

(1) the department may lease a portion of the state-owned broadband network or provide internet service to a facilities-based provider that offers fixed wire broadband to end users in the state pursuant to the following conditions:

(a) the lease or internet service agreement shall allow the deployment of internet service to an area in which at least fifty percent of the residential and business locations are underserved or unserved;

(b) the broadband office shall post a notice on its website at least forty-five days prior to the execution of the lease or internet service agreement. The notice shall include: 1) the name of the facilities-based provider with which the department intends to enter into the lease or internet service agreement; 2) a statement describing the boundaries of the geographical area that will be served under the terms of the lease or internet service agreement; 3) the specifications of the broadband infrastructure or internet service that will be the subject of the lease or internet service agreement; and 4) the price upon which the lease or internet service agreement shall be offered by the department;

(c) within the forty-five-day posting period required by Subparagraph (b) of this paragraph, no private facilities-based provider has notified the broadband office in writing that it can provide the same broadband infrastructure or internet service identified in the notice, as applicable, at a price that does not exceed one hundred ten percent of the price being offered by the department; and

(d) if the lease exceeds ten years, the lease is first approved by the state board of finance;

(2) the department may sell or otherwise transfer ownership of a portion of the state-owned broadband network pursuant to existing state law regarding the sale or disposition of such property; provided that the department and any successor in interest shall not transfer ownership of any portion of the state-owned broadband network to any wholly private entity for at least twenty years after construction of the broadband infrastructure to be sold was completed;

(3) the department shall not sell or otherwise deliver internet service directly to a nongovernmental end user; and

(4) the department shall adopt and implement rules to govern the lease or sale of state-owned broadband network capacity to the private sector. The rules shall include processes that will enable a facilities-based provider to challenge a determination that an area is eligible to receive state-owned broadband network capacity.

History: Laws 2021, ch. 123, § 4; 2023, ch. 132, § 9.

63-9J-5. Education technology infrastructure fund created; use.

A. The "education technology infrastructure fund" is created in the state treasury. The fund consists of:

(1) appropriations, gifts, grants and donations; and

(2) the proceeds of supplemental severance tax bonds appropriated to the fund pursuant to Section 7-27-12.6 NMSA 1978 for education technology projects.

B. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director.

C. The fund may be expended annually by the broadband office for education technology infrastructure projects that are in conformance with the standards and guidelines developed pursuant to this 2025 act and grants to school districts for education technology projects, including expenses for management of such projects; provided that the total amount of project management expense assistance from the fund per project shall not exceed five percent of the project grant.

D. The broadband office shall promulgate rules necessary to administer the education technology infrastructure fund.

History: Laws 2025, ch. 82, § 7.

63-9J-6. Education technology infrastructure deficiency corrections.

A. No later than January 1, 2026, the broadband office shall, in collaboration with the public school capital outlay council and the public school facilities authority, define and develop:

(1) minimum adequacy standards for education technology infrastructure;

(2) a methodology to determine reasonable costs for:

(a) correcting education technology infrastructure deficiencies in or affecting school districts; and

(b) reasonable costs for a school district's share of the project costs; and

(3) a methodology for prioritizing projects to correct education technology infrastructure deficiencies in or affecting school districts.

B. The broadband office shall develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and the installation and maintenance of equipment. The broadband office may fund education technology infrastructure projects or items that the broadband office determines are in accordance with the guidelines and necessary to education for:

(1) students;

(2) school buses;

(3) internet connectivity within a school district;

(4) a multi-district regional education network; and

(5) a statewide education network.

History: Laws 2025, ch. 82, § 8.

63-9J-7. Education technology infrastructure projects; application; grant assistance.

A. Applications for grant assistance, approval of applications, prioritization of projects and grant awards for education technology infrastructure shall be conducted pursuant to the provisions of this section.

B. The broadband office shall establish project funding requirements and priority standards for school districts by rule based on the following factors:

(1) school district geographic size and population;

(2) school district population density;

(3) local property tax base;

(4) the current condition of education technology infrastructure relative to the adequacy standards established in collaboration with the public school capital outlay council and public school facilities authority; and

(5) whether the broadband office has designated the school district as a high-growth area pursuant to Subsection C of this section.

C. The broadband office may designate an area that equals a contiguous attendance area of one or more existing schools as a high-growth area if it determines that within five years of the grant allocation decision, the estimated use of the proposed education technology infrastructure project will exceed the functional capacity of the project as determined by the broadband office by rule.

D. The broadband office shall apply the adequacy standards to state-chartered charter schools to the same extent that they are applied to other public schools.

E. The broadband office shall adopt and apply adequacy standards appropriate to the unique needs of the constitutional special schools.

F. In an emergency in which the health or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage, the broadband office may award grant assistance for a project using criteria other than the adequacy standards.

G. The broadband office shall, in collaboration with the public school capital outlay council and the public school facilities authority, establish criteria to be used in education technology infrastructure projects that receive grant assistance pursuant to the Broadband Access and Expansion Act. In establishing the criteria, the broadband office shall consider:

(1) the feasibility of using design, build and finance arrangements for education technology infrastructure projects;

(2) the potential use of more durable construction materials that may reduce long-term operating costs;

(3) concepts that promote efficient but flexible use of space; and

(4) any other financing or construction concept that may maximize the dollar effect of the state grant assistance.

H. No application for grant assistance from the fund shall be approved unless the broadband office determines that:

(1) the education technology infrastructure project is needed and included in the school district's five-year facilities plan among its top priorities;

(2) the school district has used its capital resources in a prudent manner;

(3) the school district has provided insurance for the district's education technology infrastructure in accordance with insurance requirements established by the broadband office by rule;

(4) the school district has submitted an education technology infrastructure plan that includes:

(a) enrollment projections;

(b) a current preventive maintenance plan that has been approved by the broadband office and that is followed by each public school in the district; and

(c) the education technology infrastructure needs of charter schools located in the school district;

(5) the school district is willing and able to pay any portion of the total cost of the education technology infrastructure project that is not funded with grant assistance from the fund;

(6) the application includes the education technology infrastructure needs of any charter school located in the school district, or the school district has shown that the education technology infrastructure needs of the charter school have a smaller deviation from the statewide adequacy standards than other district education technology infrastructure included in the application; and

(7) the school district has agreed, in writing, to comply with any reporting requirements or conditions imposed by the broadband office pursuant to the Broadband Access and Expansion Act.

I. After consulting with the public school facilities authority and other experts, the broadband office shall regularly review and update statewide adequacy standards applicable to all school districts. Except as otherwise provided in the Broadband Access and Expansion Act, the amount of outstanding deviation from the standards shall be used by the broadband office in evaluating and prioritizing education technology infrastructure projects.

J. No later than November 1 of each year, the broadband office shall prepare a report summarizing its education technology infrastructure activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund projects and all other broadband office actions. The report shall be submitted to the public education commission, the governor, the legislative finance committee, the legislative education study committee and the legislature.

History: Laws 2025, ch. 82, § 9.

ARTICLE 9K
Connect New Mexico

63-9K-1. Short title.

Sections 1 through 7 [63-9K-1 to 63-9K-7 NMSA 1978] of this act may be cited as the "Connect New Mexico Act".

History: Laws 2021, ch. 120, § 1.

63-9K-2. Definitions.

As used in the Connect New Mexico Act:

A. "2020 broadband plan" means the *State of New Mexico Broadband Strategic Plan and Rural Broadband Assessment* published by the department of information technology in June 2020;

B. "broadband infrastructure" means any facilities and equipment used to provide internet service, excluding telecommunications equipment owned, controlled or operated by a public or private end-user;

C. "broadband office" means the office of broadband access and expansion;

D. "council" means the connect New Mexico council;

E. "department" means the department of information technology;

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

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

H. "end-user" means an individual, business, institution or governmental entity that subscribes to an internet service and does not resell that service to other individuals or entities;

I. "federal assistance funding" means federal grant and loan programs that provide full or matching funding for the development or maintenance of broadband infrastructure, training in the use or administration of internet-based services or the purchase of computers or other devices that access the internet;

J. "internet" means a global set of computing and electronic devices interconnected through networking infrastructures to provide data and information sharing and communication facilities;

K. "local government" means the government of a municipality, county or political subdivision of the state or an entity operating pursuant to a joint powers agreement pursuant to the Planning District Act [4-58-1 to 4-58-6 NMSA 1978] or the Regional Planning Act [3-56-1 to 3-56-9 NMSA 1978];

L. "public educational institution" means a public school that receives state funding for its operations, a school district, a public post-secondary educational institution or a state agency that provides administrative services, funding or technical support to public schools, school districts and public post-secondary educational institutions;

M. "quality of service" means the standards for broadband service established by the broadband office that meet or exceed the baseline standards established by the federal communications commission;

N. "statewide broadband plan" means a plan developed by the broadband office that may be an updated revision of the 2020 broadband plan; provided that, upon Senate Bill 93 of the first session of the fifty-fifth legislature becoming law, "statewide broadband plan" means the statewide broadband plan developed pursuant to that law;

O. "tribal government" means the government of a federally or state-recognized Indian nation, pueblo or tribe;

P. "underserved" means an area or property that does not have access to internet service offering speeds greater than one hundred megabits downstream and twenty megabits upstream; and

Q. "unserved" means an area or property that either does not have access to internet service at all or only has access to internet service offering speeds below twenty-five megabits per second downstream or three megabits per second upstream.

History: Laws 2021, ch. 120, § 2; 2023, ch. 155, § 1.

63-9K-3. Council created; powers.

A. The "connect New Mexico council" is created and administratively attached to the department.

B. The council is composed of the following fifteen members:

(1) the secretary of transportation or the secretary's designee;

(2) the secretary of economic development or the secretary's designee;

(3) the secretary of cultural affairs or the secretary's designee;

(4) the secretary of information technology or the secretary's designee;

(5) the executive director of the New Mexico mortgage finance authority or the executive director's designee;

(6) the secretary of higher education or the secretary's designee;

(7) the director of the public school facilities authority or the director's designee;

(8) five members of the public who have experience with broadband access and connectivity challenges for either private business or public institutions, appointed as follows:

(a) one member appointed by the speaker of the house of representatives;

(b) one member appointed by the minority floor leader of the house of representatives;

(c) one member appointed by the president pro tempore of the senate;

(d) one member appointed by the minority floor leader of the senate; and

(e) one member appointed by the governor; and

(9) three members appointed by the secretary of Indian affairs: one representative of the Navajo Nation, one representative of Apache tribal governments and one representative of Indian pueblo tribal governments, who are experienced with broadband access and connectivity issues.

C. The chair of the council shall be elected by a quorum of the council members. The council shall meet monthly or at the call of the chair. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum present shall be necessary for an action to be taken by the council.

D. Each member of the council appointed pursuant to Paragraph (8) or (9) of Subsection B of this section shall be appointed to a four-year term; provided that to provide for staggered terms:

(1) two of the members initially appointed pursuant to Paragraph (8) of Subsection B of this section shall be appointed for a term of two years by lot; and

(2) one member initially appointed pursuant to Paragraph (9) of Subsection B of this section shall be initially appointed for a term of two years by lot.

E. Public members of the council shall be reimbursed for attending meetings of the council as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. Public members of the council are appointed public officials of the state while carrying out their duties and activities under the Connect New Mexico Act.

G. Council members shall be governed by the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978].

H. The council shall be staffed by the department.

History: Laws 2021, ch. 120, § 3; 2023, ch. 155, § 2.

63-9K-4. Council; duties.

The council shall:

A. advise and make recommendations to the broadband office regarding the coordination of broadband programs and broadband projects in accordance with the statewide broadband plan;

B. advise the broadband office concerning the development of a grant program and make recommendations for grant awards from the connect New Mexico fund; and

C. adopt rules regarding the administration of grants from the connect New Mexico fund. The rules shall include the application procedure, the required qualifications for projects and the purposes for which the grants may be used.

History: Laws 2021, ch. 120, § 4; 2023, ch. 155, § 3.

63-9K-5. Broadband knowledge and digital equity analysis and plan; report; inclusion in statewide broadband plan.

A. The council shall consult local and tribal governments, public educational institutions and state agencies to develop a digital equity analysis and plan to address:

(1) the challenges to digital inclusion that are posed by the lack of affordable quality service, broadband-enabled devices or the knowledge of how to use the devices effectively in different age, cultural or geographic populations across the state;

(2) the federal and private sector programs that could be applied to by state agencies or local or tribal governments to address the challenges identified in Paragraph (1) of this subsection; and

(3) existing state programs or state programs that could be established that address or could leverage federal and private sector programs to address the challenges identified in Paragraph (1) of this subsection.

B. On or before August 1, 2023, the council shall report on the digital equity analysis and plan to the broadband office and appropriate interim legislative committees.

C. On or before January 1, 2024, the broadband office shall incorporate the digital equity analysis and plan and its recommendations into the statewide broadband plan.

D. The broadband office shall cooperate with and provide relevant broadband-related information it collects or develops with the council.

History: Laws 2021, ch. 120, § 5; 2023, ch. 155, § 4.

63-9K-6. Connect New Mexico fund created.

A. The "connect New Mexico fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations. Money in the fund is subject to appropriation by the legislature to the council for the purpose of administering the broadband grant program. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chair of the council. Any unexpended or unencumbered balance in the fund remaining at the end of any fiscal year shall not revert to the general fund.

B. The broadband office shall implement a grant program to develop and expand broadband infrastructure and services and support digital inclusion; provided that the broadband office shall each year seek to award grants for proposals submitted by the following entities throughout the state:

(1) local governments;

(2) state agencies;

(3) public educational institutions;

(4) tribal governments;

(5) entities created by a joint powers agreement pursuant to the Joint Powers Agreements Act; and

(6) private entities for broadband infrastructure to provide service primarily for residential purposes.

C. When approving grants from the connect New Mexico fund, the broadband office shall give consideration to:

(1) the extent to which the project connects unserved and underserved populations of New Mexico, with priority given to projects that will connect unserved populations;

(2) the extent to which the project meets or exceeds the baseline standards established by the federal communications commission;

(3) the extent to which the project leverages existing infrastructure;

(4) the extent to which the project complements or coordinates with the statewide broadband plan;

(5) the extent to which the project leverages regional collaboration;

(6) the degree to which the project fosters digital inclusion;

(7) the extent to which the project stimulates in-state economic development, including the creation of jobs and apprenticeships;

(8) the extent to which the project leverages in-kind or financial support from local agencies or entities, federal assistance funding or federal Coronavirus Aid, Relief, and Economic Security Act, federal Consolidated Appropriations Act, 2021 or federal American Rescue Plan Act of 2021 funding; and

(9) for a grant award to a private entity, the extent to which the grantee contributes matching funds or in-kind support for the project, the number of existing residences to which internet services would be made available as a percentage of the total number of existing locations to which internet services would be made available by the project and the extent to which the project fosters digital equity.

History: Laws 2021, ch. 120, § 6; Laws 2023, ch. 155, § 5.

63-9K-7. Data collection; annual report.

A. By October 1 of each year, the broadband office, in coordination with the council, shall provide to the appropriate legislative interim committees a report on the access to and quality of service of broadband across the state. Information shall be provided on a county-by-county basis.

B. The report shall contain the following information:

(1) progress achieved toward digital equity and digital inclusion as identified in the digital equity analysis and plan;

(2) progress achieved on implementation of the statewide broadband plan;

(3) identified obstacles to an integrated system of permits, licenses and rules for broadband infrastructure across the state, including an expedited review process for rights of way use applications;

(4) recommended statutory, regulatory or policy changes and budget recommendations for the development and expansion of broadband infrastructure and digital equity and digital inclusion; and

(5) information on the broadband grant program, including:

(a) a list of grant recipients;

(b) the amount and date of each grant;

(c) a description of each project funded; and

(d) a description of how each project contributes to the statewide broadband plan and demonstrates increased access and quality of service for the unserved and underserved populations of New Mexico.

History: Laws 2021, ch. 120, § 7; Laws 2023, ch. 155, § 6.

ARTICLE 10
Cable Television Service Facilities (Repealed.)

63-10-1 to 63-10-3. Repealed.

ARTICLE 11
Excavation Damage to Cable Television Lines

63-11-1. Purpose and intent.

The purpose of this act [63-11-1 to 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 to 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 to 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 to 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.