

LFC Requester:	Armstrong, Jonas
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the Bill no. in the email subject line, e.g., HB2, and only attach one Bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original Bill, amendment, substitute or a correction of a previous Bill}

Check all that apply:

Original xx **Amendment** _____
Correction _____ **Substitute** _____

Date Feb. 4th, 2014
Bill No: HB242-305 Feb 4

Sponsor: Rep. [Georgene Louis](#) **Reviewing** Attorney General's Office
Short Deregulation of CenturyLink **Person Writing** Brian Harris
Title: and Windstream **Phone:** 7-7479 **Email** BHarris@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: This is the same legislation as SB 152.

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis: As a practical matter, this Bill grants legislative relief that CenturyLink was unable to obtain from the New Mexico Public Regulation Commission (PRC) after a two year process and a fully developed factual record, as required by current law. After examining whether “effective” competition would make most regulation unnecessary, the PRC found that CenturyLink’s extensive and on-going dominance in the telecommunications market still required some effective measures of regulatory oversight. This Bill appears to be a response to CenturyLink’s inability to obtain the requested relief from the PRC.

Section One: Declares an additional purpose of the act is to “extend [...] the benefits of the regulatory flexibility previously provided only to incumbent rural telecommunications carriers.”

Section Two: Amends NMSA Section 63-9A-3 by deleting language defining the terms “competitive telecommunications service,” “effective competition,” and “mid-sized carrier.” Whereas previously there was a “large”, “mid-sized” and “rural” definition of telecom carriers, this Bill uses 50,000 access lines as a demarcation. This would place Windstream in the same classification as CenturyLink and leave the other 16 carriers as the only “incumbent rural telecommunications carriers.”

Section Three: Amends NMSA Section 63-9A-5 to require the PRC to “adopt relaxed filing requirements” for both CenturyLink and Windstream and creates a lower burden of proof to raise rates and requires the PRC to give “expedited consideration in all proceedings.”

Section Four: Amends NMSA Section 63-9A-8 by deleting language granting PRC authority to examine rate increases and other matters within its jurisdiction, and raises the threshold to initiate an examination concerning rate increases to require a petition by 2.5% of “affected subscribers” (an undefined term). Further, it allows CenturyLink and Windstream to raise most rates simply by filing a tariff and waiting 10 days. In the case of an increase for “residential local exchange rates” (AKA local phone service), it must wait 60 days. Eliminates PRC ability to inquire into whether rates are “just and reasonable.”

Requires at least one “public informational meeting” in each PRC Commissioner’s district prior to a local rate increase. New language also eliminates PRC authority to review and approve potentially anti-competitive “special offers.”

Section Five: New language in NMSA Section 63-9A-9 provides that if CenturyLink or Windstream file an application for approval of a contract to provide service, it would automatically be deemed approved, thereby eliminating a large portion of PRC authority and duty.

Section Six: Repeals the following additional statutory language:

NMSA §63-9A-5.1 Mid-sized carriers; separate regulation.

By repealing this provision, Windstream, the only “mid-sized carrier”, would be regulated the same as CenturyLink under this Bill.

NMSA §63-9A-5.2 Transition of Regulation; report to legislature.

This section would become superfluous, and is thus deleted. As a result, no required report on the effectiveness of PRC rules would be submitted to the Legislature, as current law provides.

NMSA §63-9A-8.1 Change in rates.

Since this Bill would essentially eliminate PRC jurisdiction over rate increases, this section is deleted.

NMSA §63-9A-8.2 Identifying Subsidies; rules; price caps.

This section mandates rules for quality of service, which would be repealed under this Bill since the PRC would no longer have authority to implement and oversee service quality rules as a way of protecting consumer and business telecom customers. Also eliminated under this Bill is the current requirement for an “alternative form of regulation” that was supposed to usher in a fully and effectively competitive marketplace for telecommunications services. Also repealed is the current avenue for additional deregulation through a finding of “effective competition” (see discussion below). The PRC would no longer be able to prevent anti-competitive cross-subsidization of various services.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

This Bill could impact PRC workload and staffing requirements, however a more detailed examination of the precise fiscal impact is beyond the scope of this analysis.

SIGNIFICANT LEGAL ISSUES

It is unclear how this Bill would advance the public interest and the statute’s purpose to

create a robust and affordable telecommunications infrastructure accessible to all New Mexicans. The Bill provides for deregulation that appears to raise legal questions as to whether it is anti-competitive and in violation of constitutional and statutory antitrust protections. See, e.g., Art. IV, Sec. 38 of the NM Constitution: “The legislature shall enact laws to prevent . . . monopolies and combinations in restraint of trade.” See also NM Antitrust Act, Sec. 57-1-1.1 et seq., NMSA 1978.

Enacting this Bill would essentially cast the Legislature in the role of the PRC. Query: Is that a proper role for the Legislature? In future years, because the PRC would no longer be required to report to the Legislature, there would be far fewer facts upon which to base sound telecom policy decisions. In fact, in the recently completed “Effective Competition” case, the PRC examined CenturyLink’s claims that competition was so robust as to necessitate eliminating many public interest regulations. The PRC refused to do so, finding instead that “CenturyLink has failed to show the existence of effective competition for other residential services [...] and for business services that it offers under its New Mexico Exchange and Network Services Tariff.” Phase One Recommended Decision, *Findings of Fact Nos. 5 & 6*. PRC Case No. 11-00340-UT.

Only for residential packaged and bundled offerings was “effective competition” found to exist, (*Id. at FoF 4 & 7*). The PRC even allowed CenturyLink to submit additional evidence if it wished to challenge this conclusion, yet the company chose not to do so. Despite this unchallenged finding of only limited “effective competition”, with this Bill CenturyLink has instead apparently decided to seek legislative relief and skirt the entire administrative and appellate court process of current law. Passage of this Bill would allow the company to obtain legislative relief without having to prove its case in a full, factually developed adjudicatory proceeding where the normal protections of discovery, cross-examination and rules of evidence apply. Therefore, passage of the Bill might be viewed as effectively eliminating PRC jurisdiction over telecommunications, which could be deemed unconstitutional by NM Courts as being contrary to the requirement that the PRC “shall have responsibility for regulating public utilities, including . . . telephone . . . companies . . .” Art. XI, Sec. 2 of the NM Constitution.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

This Bill will significantly reduce the workload of both PRC Commissioners and its advocacy staff. The PRC was created precisely to handle most of the issues summarily addressed in this Bill. For example, the complex and detailed factual inquiries required under current regulation to support a request for further deregulation would be replaced by simple affirmation from the regulated entity seeking relief. Under this Bill, the PRC would have no ability to independently ascertain most factual claims made by either CenturyLink or Windstream.

The Bill is also highly duplicative of the current regulatory process. For example, under a rulemaking to reform how rural telecommunications carriers receive state subsidies (both wireless and wireline) currently taking place at the PRC, the New Mexico Attorney General has made a proposal that would achieve the goal of streamlining reporting requirements and reducing

the regulatory burden on carriers. (*In the Matter of Possible Changes to the State Rural Universal Service Fund*, Case No. 12-00380-UT). Thus far, participants in this rulemaking have expressed support for the AG's proposal. Yet this Bill can usurp that process.

Under this Bill it is likely that a variety of rates for a wide range of telecommunications services would increase. Additionally, if history is any guide, infrastructure investment will languish and broadband internet access may be slowed.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

TECHNICAL ISSUES OR DRAFTING ERROR

The Bill contains drafting redundancies and contradictions. For example, after defining "incumbent rural telecommunications carriers" as firms with less than 50,000 access lines, it refers repeatedly to "An incumbent local exchange carrier that serves more than fifty thousand access lines within the state." This is directly contrary to the definition of the term "incumbent local exchange carrier" and the Bill is thus internally contradictory.

The undefined statutory terms "benefits of regulatory flexibility" is vague and imprecise.

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

1. The alternative to enacting this Bill is to allow the PRC to do the job it was created to do under existing NM constitutional and statutory law.

2. A memorial, seeking a report from both the PRC and the Attorney General detailing to the Legislature both 1) how deregulation would impact the public interest, convenience and necessity and the need for a robust, ubiquitous telecommunications infrastructure throughout the State; and 2) how this would impact PRC functions, staffing and workload.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PRC will continue to regulate telecommunications rates and services as it is charged by current law to do.

AMENDMENTS NEEDED TO IMPROVE THIS BILL