

This rule was filed as 17 NMAC 13.5.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 5 REGISTRATION REQUIREMENTS FOR LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW MEXICO

17.11.5.1 ISSUING AGENCY: New Mexico State Corporation Commission [New Mexico Public Regulation Commission].
[11-15-96; Recompiled 12/31/01]

17.11.5.2 SCOPE: This rule applies to all persons or entities that provide local exchange telecommunications services within the State of New Mexico.
[11-15-96; Recompiled 12/31/01]

17.11.5.3 AUTHORITY: Authority for this rule derives from Article 11 of the New Mexico Constitution and the federal Telecommunications Act of 1996.
[11-15-96; Recompiled 12/31/01]

17.11.5.4 DURATION: Permanent.
[11-15-96; Recompiled 12/31/01]

17.11.5.5 EFFECTIVE DATE: This rule shall take effect November 15, 1996.
[11-15-96; Recompiled 12/31/01]

17.11.5.6 OBJECTIVES: The objectives of this rule are to impose requirements, on a competitively neutral basis, necessary to ensure the continued quality of telecommunications services and to safeguard consumer interests, and to protect the public health, safety and welfare. Furthermore, the rule provides appropriate regulations for the preservation and advancement of universal service.
[11-15-96; Recompiled 12/31/01]

17.11.5.7 DEFINITIONS: As used in this rule, the following terms have the meanings given here:

- A.** Act means the New Mexico Telecommunications Act, NMSA 1978, 63-9A-1 et seq.
- B.** Certificate of operating authority means a certificate issued by the commission for the provision of local exchange telecommunications services within the State of New Mexico.
- C.** Certificate of financial and technical competency means a certification that an applicant is capable of providing service.
- D.** Commission means the New Mexico State Corporation Commission.
- E.** LEC means any person or entity that provides local exchange services.
- F.** Local exchange service means the transmission of public two-way switched communications furnished by a telecommunications company within a local exchange area, i.e., 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.
- G.** 911 services means a basic or enhanced 911 system, as that term is defined in the Enhanced 911 Act, NMSA 1978, 63-9D-1 et seq., which consists of a telephone service that automatically connects a person dialing the single three-digit number 911 to an established public safety answering point through normal telephone service facilities.
- H.** 1996 Act means the federal Telecommunications Act of 1996, 47 U.S.C. 151, et seq.
- I.** Notice of proposed agency action means a legally sufficient notification of action proposed to be taken by the commission.
- J.** Universal service means the definition of that term and associated principles of universal service as contained in the 1996 Act and as further defined in any rules and regulations promulgated by the Federal Communications Commission pursuant to the 1996 Act and by the commission.
[11-15-96; Recompiled 12/31/01]

17.11.5.8 CERTIFICATE REQUIRED

A. No local exchange service shall be offered in this state without a certificate of financial and technical competency and a certificate of operating authority.

B. No certificate of operating authority will be issued by the commission unless the commission determines that an applicant's provision of telecommunications services under this rule is consistent with ensuring continuous quality of telecommunications services, safeguarding consumer interests, protecting the public health, safety and welfare and preserving and advancing universal service.

[11-15-96; Recompiled 12/31/01]

17.11.5.9 EXISTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY: All certificates of public convenience and necessity issued by the commission previous to the effective date of this rule shall continue in full force and will have the same force and effect as the certificates of operating authority described herein. Holders of certificates of public convenience and necessity who wish to stop providing continuous and adequate service to the public must first comply with this rule before discontinuing the provision of telecommunications services.

[11-15-96; Recompiled 12/31/01]

17.11.5.10 PROCEDURES AND APPLICATION REQUIREMENTS FOR A CERTIFICATE OF FINANCIAL AND TECHNICAL COMPETENCY

A. Any person, corporation, municipal corporation, partnership or association proposing to operate as a LEC within this state shall first make application to the commission for a certificate of financial and technical competency. Such application shall conform to the provisions of this rule.

B. Any application for a certificate of financial and technical competency to provide local exchange telecommunications services must contain the following:

(1) Financial information detailing the applicant's financial resources that will support provision of local exchange services in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interests. This includes the filing of: (1) monthly balance sheets and monthly income statements of the applicant, or any affiliated entity of the applicant if that entity will provide the financial support for the local exchange services, covering the most recent twelve-month period available. If the company, or entity providing financial support to the applicant, does not keep monthly financial documentation as described above, then quarterly financial documents covering the most recent twelve-month period shall be provided to the commission in lieu thereof; (2) the most recent audited year-end financial statement available. If the applicant does not maintain audited year-end financial statements, the applicant may provide an unaudited year-end financial statement together with a notarized verification from the applicant's chief financial officer, or person charged with financial responsibility for the company, attesting that the financial statement provided is a true and correct representation of the company's year-end financial position; (3) a detailed description of what the financial information submitted signifies in terms of the applicant's ability to provide local exchange services within this state properly and continuously. This description shall detail applicant's current financial position and describe the financial trend of the applicant over the last twelve-month period and should be supported by specific references to the financial documents which were provided in conformance with subsections (1) and (2) above.

(2) A detailed demonstration of the technical competence of the applicant to provide the local exchange services addressed in the application including a detailed description of the qualifications and experience of the applicant's management personnel who will oversee provision of the proposed local exchange services.

(3) A detailed description of the proposed market to be served by the applicant with reference to both the geographic market (e.g., Albuquerque, New Mexico) and the customer class (e.g., residential customers).

(4) A detailed description of the local exchange services or other telecommunications service or services the applicant proposes to provide.

(5) A demonstration that the applicant is authorized to do business in New Mexico and that the applicant is in good corporate standing in New Mexico.

(6) A listing of all states in which the applicant is authorized to provide telecommunications services and a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in each of those states, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable.

(7) A listing of any state in which the applicant has been denied a certificate of authority or has had its pre-existing certification revoked, if applicable, and a detailed explanation of why the applicant's application for

authority to provide telecommunications services in another state was rejected or its authority to provide such services revoked, if applicable.

(8) A listing of any state in which a formal complaint or enforcement proceeding against the applicant has been initiated and a detailed description of the subject matter of such proceedings and of the outcome, or, if still pending, the status of such proceeding.

C. Additional Information. In addition to providing the information required in Subsections 10.1 and 10.2 above, an applicant applying to provide local exchange services must also submit the following information:

(1) A description of any certificates it holds in the State of New Mexico to provide telecommunications services other than local exchange services. The applicant should refer to the relevant commission docket number wherein any certificate(s) was (were) granted.

(2) The method by which the applicant proposes to provide local exchange service, for example, whether it proposes to resell the local exchange services of existing LECs.

(3) A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers.

D. Interconnection. With its application, the applicant must furnish information detailing the following matters associated with interconnection to provide proposed local exchange services:

(1) The identity of all LECs with which the applicant plans to interconnect;

(2) The likely timing of initiation of interconnection service and a statement as to when negotiations for interconnection started or when they are likely to start.

(3) The applicant must also furnish the commission a copy of any request for interconnection made by the applicant to any LEC.

E. Billing and Collection. With its application, the applicant must furnish information detailing how it plans to bill for and collect monies from customers who subscribe to its proposed local exchange service.

F. 911 Services. With its application, the applicant must furnish information that details arrangements it plans to make for providing 911 services from each customer's premises. It must also explain in detail terms and provisions associated with the assessment of 911 service surcharges.

G. Designation as Essential Telecommunications Carrier. With its application, the applicant must state whether or not it intends to be designated as an essential telecommunications carrier pursuant to the provisions of the 1996 Act. If the applicant states that it intends to be designated as an essential telecommunications carrier, the applicant must describe the territory in which it proposes to provide the essential telecommunications services.

H. Commission Review of Application. Upon the applicant's filing of a completed application for a certificate of financial and technical competency, the commission shall expeditiously review the application. After this review, the commission shall either: (1) request further information from applicant; (2) issue a notice of proposed agency action; or (3) issue a notice of inquiry concerning the applicant's financial and technical competency. Notices of inquiry may result in a hearing subject to the commission's notice and hearing requirements contained in the commission's rules of procedure.

[11-15-96; Recompiled 12/31/01]

17.11.5.11 NOTICE OF PROPOSED AGENCY ACTION: The Commission shall set aside a certain day each month to hear a trailing docket which will contain items included in the notice of proposed agency action. The notice of proposed agency action shall be issued at least thirty days prior to the hearing. The commission's chief clerk shall cause the notice of proposed agency action to be published in a newspaper of general circulation and to be sent to a service list designated for that purpose. A person contesting the proposed agency action must file a written objection to the proposed agency action specifying the basis for such objection with the commission's chief clerk within ten business days of the issuance of the notice of proposed agency action. An original and five copies of the objection must be filed with the commission's chief clerk and the objection must also be served upon the applicant seeking a certificate of financial and technical competency. The person contesting the issuance of the certificate of financial and technical competency must state with particularity the basis for the objection. The hearing officer shall determine whether there is probable cause for further commission consideration of the applicant's financial and technical competency to provide local exchange services or if the objection should be dismissed, and the certificate of financial and technical competence issued. Upon a showing of probable cause and at the discretion of the hearing officer, a separate docket subject to notice and hearing requirements contained in the commission's rules of procedure may be established for further commission consideration of the contested matter.

[11-15-96; Recompiled 12/31/01]

17.11.5.12 PROCEDURES AND STANDARDS FOR CERTIFICATE OF OPERATING AUTHORITY: The applicant initiates the procedure for a certificate of operating authority by filing its proposed tariffs with rates, terms and conditions.

A. No applicant will have operating authority to provide local exchange services unless the commission determines, after notice and hearing, that the applicant's proposed services will: (1) ensure continued quality of service; (2) preserve and advance universal service; (3) safeguard the rights of consumers; (4) protect the public health, safety and welfare; (5) protect the public interest; and (6) provide service at rates that are just and reasonable.

B. All tariffs related to the provision of local exchange services are subject to the notice and hearings requirements as provided in Article XI, 7 and 8 of the New Mexico Constitution and the commission's rules of procedure. The commission may require the filing of pre-filed direct testimony and any other information that it deems necessary to carrying out its obligations under the New Mexico Constitution, New Mexico statutes, the commission's rules of procedures, other applicable rules, and the 1996 Act.

[11-15-96; Recompiled 12/31/01]

17.11.5.13 TARIFF CHANGES AND NEW SERVICES: Applications for changes of rates, charges, terms and conditions contained in a LEC's tariff, and applications to provide new services must be filed in the manner and format required by the commission and must have the approval of the commission prior to use.

[11-15-96; Recompiled 12/31/01]

17.11.5.14 TRANSFER OF CERTIFICATE: A transfer of a certificate of operating authority shall be approved after a hearing upon a showing of continued financial and technical competency if the transfer is approved. An application for a transfer of a certificate of operating authority must contain the proposed tariff (in the format approved by the commission) that will be in place after the transfer and include a statement that the LEC will meet the requirements set forth in section 12 of this rule.

[11-15-96; Recompiled 12/31/01]

17.11.5.15 ASSIGNABILITY OF CERTIFICATES OF OPERATING AUTHORITY: Any certificate of operating authority or rights obtained under any such certificate held, owned, or obtained by any entity, may be sold, assigned, leased, or otherwise transferred only after the purchaser, assignee, or lessee has complied with this rule.

[11-15-96; Recompiled 12/31/01]

17.11.5.16 NOTIFICATION OF CHANGE(S) IN CIRCUMSTANCES: Any entity holding a certificate of public convenience and necessity or a certificate of operating authority for the provision of local exchange services shall immediately notify the commission in writing of any change(s) in circumstances, including, but not limited to, any of the following: (1) a change in the entity's name; (2) a merger of the entity with another entity; (3) acquisition of the entity by another entity; (4) acquisition by the entity of another entity; and (5) transfer of a significant portion of the entity's assets to another entity. [11-15-96; Recompiled 12/31/01]

17.11.5.17 DISCONTINUANCE OF SERVICE: An entity holding a certificate of public convenience and necessity or a certificate of operating authority to provide local exchange telecommunications services shall do the following prior to discontinuing any service in order to ensure continued quality of service and to protect consumer interests:

A. No later than 90 days prior to discontinuing its service, the entity shall file with the commission a notice of proposed discontinuance of service containing the following information:

(1) The number of customers affected.
(2) The form of notification to be given to each customer.
(3) The total amount of deposits due to customers and the availability of such payment from the entity's escrow account for such deposits.

(4) Any outstanding debts to local exchange carriers or other carriers whose facilities and services are used to provide local exchange services.

(5) The arrangement for satisfying such debts to local exchange carriers or other carriers prior to and after discontinuance of service.

(6) The arrangements made for alternative LECs to serve the entity's local exchange service customers.

B. No later than sixty days prior to the proposed date of discontinuance of service, the entity shall notify all of its customers of the exact date and time of the proposed discontinuance of service, the deposit amounts owed to each customer, if any, and the provisions the entity has made for continuation of local exchange service to its customers and the manner in which deposits will be returned to customers.

C. No later than thirty days prior to the proposed date of discontinuance of service, the commission shall issue either: (1) a request for further information from the entity; (2) a notice of proposed agency action proposing approval of discontinuance of the service; or (3) a notice of inquiry into the discontinuance which may be subject to the notice and hearing requirements set forth in the commission's rules of procedure.
[11-15-96; Recompiled 12/31/01]

17.11.5.18 TERRITORY UNDER THREAT OF DISCONTINUANCE OF SERVICE: In the event that the commission determines that a given territory in the State of New Mexico previously served by a LEC is likely to lose local exchange service, the commission shall conduct a hearing to determine what further steps should be taken to insure continuance of local exchange service to the affected area. [11-15-96; Recompiled 12/31/01]

17.11.5.19 FILING OF ANNUAL REPORTS: Subsequent to receipt of a certificate of operating authority from the commission, each certificated LEC shall file with the commission annual reports of its local exchange service operating results within the State of New Mexico by April 1st of each year. Such reports shall be based on Generally Accepted Accounting Principles. Annual reports to be filed by LECs shall contain all pertinent financial data of their operations as detailed in this rule.
[11-15-96; Recompiled 12/31/01]

17.11.5.20 SEVERABILITY: If any section of this rule, or the applicability of any section to any person, telecommunications provider, LEC or circumstance, is for any reason held invalid by a court, the remainder of the rule, or the applicability of such provisions to other persons, telecommunications providers, LECs or circumstances, shall not be affected.
[11-15-96; Recompiled 12/31/01]

History of 17.11.5 NMAC: [RESERVED]