

This rule was filed as 17 NMAC 13.6.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 6 REGISTRATION REQUIREMENTS FOR INTRASTATE COMPETITIVE ACCESS
PROVIDER TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW
MEXICO

17.11.6.1 ISSUING AGENCY: New Mexico State Corporation Commission [New Mexico Public Regulation Commission].

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

17.11.6.2 SCOPE: This rule applies to all competitive access providers of intrastate telecommunications services within the State of New Mexico.

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

17.11.6.3 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]

17.11.6.4 DURATION: Permanent.

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

17.11.6.5 EFFECTIVE DATE: This rule shall take effect November 15, 1996.

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

17.11.6.6 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 and public interests.

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

17.11.6.7 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 registration means a certificate of registration issued by the commission for the provision of competitive access services within the State of New Mexico.
- C.** Commission means the New Mexico State Corporation Commission.
- D.** CAP means competitive access provider which is an entity that provides telecommunications services to customers over its own facilities but does not provide switched local exchange service.
- E.** 1996 Act means the federal Telecommunications Act of 1996, 47 U.S.C. 151, et seq.
- F.** Notice of proposed agency action means a legally sufficient notification of action proposed to be taken by the commission.
- G.** Staff means the staff of the telecommunications department of the commission.

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

17.11.6.8 CERTIFICATE OF REGISTRATION REQUIRED

A. No telecommunications service shall be offered in this state except in accordance with the provisions of this rule.

B. No CAPservices shall be offered in this state without the provider thereof first having obtained a certificate of registration to provide such services from the commission.

C. No certificate of registration will be issued by the commission unless the commission determines that an applicant's provision of CAPservices under this rule is consistent with ensuring continuous quality of telecommunications services and safeguarding consumer interests.

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

17.11.6.9 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 registration 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 telecommunications services.
[11-15-96; Recompiled 12/31/01]

17.11.6.10 PROCEDURES FOR APPLICATION FOR A CERTIFICATE OF REGISTRATION TO PROVIDE CAPINTRASTATE TELECOMMUNICATIONS SERVICES

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

B. Any application for a certificate of registration to provide CAP telecommunications services must contain the following:

(1) Financial information detailing the applicant's financial resources that will support provision of CAP 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 resold 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 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 posture; (3) a detailed description of what the financial information submitted signifies in terms of the applicant's ability to provide CAP services within this state properly and continuously. This description shall detail the applicant's current financial posture 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 CAP 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 CAP services.

(3) A precise 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 precise description of the exact and particular CAP services and other services the applicant proposes to provide.

(5) The proposed tariff to be used by the applicant detailing all rates, charges, rules and regulations governing the provision of intrastate telecommunications services and the proposed ratemaking methodology used in determining the tariff's proposed rates.

(6) 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.

(7) 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 in each of those states, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable.

(8) 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.

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

C. Upon the applicant's filing of a completed application for registration to provide CAP services, the commission will expeditiously review the application. After this review, the commission will either: issue a notice of

proposed agency action; request further information from the applicant; or issue a notice of inquiry regarding the application. Notices of inquiry regarding an application 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]

17.11.6.11 PROVISION AND/OR USE OF FACILITIES: An applicant must furnish information with its application describing in detail the facilities that it will furnish and use to provide the proposed CAPservices. If an applicant plans to use the facilities of an underlying carrier, it must identify such facilities by type and underlying carrier.

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

17.11.6.12 PENDING APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE CAPSERVICES: Applications for certificates of public convenience and necessity to provide intrastate CAPservices within the State of New Mexico still pending as of the effective date of this rule will be deemed applications for certificates of registration to provide such services.

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

17.11.6.13 TRANSFER OF CERTIFICATE: An application for transfer of a certificate shall be approved after a hearing pursuant to a notice of proposed agency action, upon a showing of continued financial and technical competency and the filing, in a format approved by the commission, of the proposed tariff that will be in place after the transfer.

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

17.11.6.14 NOTIFICATION OF CHANGE(S) IN CIRCUMSTANCES: Any entity holding a certificate of public convenience and necessity or a certificate of registration for the provision of CAPservices shall immediately notify the commission in writing of any change(s) in circumstances, including, but not limited to, the following: (1) change in the entity's name, (2) 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 the entity's certificate or a significant portion of the entity's assets to another entity.

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

17.11.6.15 DISCONTINUANCE OF SERVICE: Any entity holding a certificate of public convenience and necessity or a certificate of registration to provide CAPservices 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 ninety days prior to discontinuing its service, the entity shall file with the commission a notice of 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) Any outstanding debts to carriers whose facilities and services are used to provide CAPservices.
- (4) The arrangement for satisfying such debts prior to and after discontinuance of service.

B. No later than sixty days prior to the date the entity proposes to discontinue its service, the entity shall notify all of its customers of its pending notice of discontinuance with the commission and of the proposed date and time of the discontinuance of service and any provisions it has made for continuation of its service, if applicable.

C. No later than thirty days prior to the date the entity proposes to discontinue its service, the commission shall issue either: (1) a request for further information from the entity, or; (2) a certificate of approval for discontinuing 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]

17.11.6.16 TARIFF CHANGES AND NEW SERVICES

A. Should an entity propose to change any of the rates, charges, terms and conditions contained in its tariff, it must file an original and five copies of the proposed modified tariff, in a format approved by the commission including a brief description of the changes, and their likely impact on the entity and its customers. The most recent rate approved by the commission after notice and hearing will be deemed the "base index rate" for each service on a

going forward basis. Changes in rates that fall within a range of fifty percent below to twenty percent above the base index rate shall not require further notice and hearing for approval. The base index rate may be changed after a hearing pursuant to a notice of proposed agency action.

B. The rates, charges, terms and conditions for new services shall be reviewed expeditiously by staff. Following this review staff will either: (1) request that a notice of proposed agency action be issued; (2) request further information regarding the proposed changes; or (3) issue a notice of inquiry regarding the proposed changes. [11-15-96; Recompiled 12/31/01]

17.11.6.17 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 CAP seeking a certificate of registration. The person contesting the certification of the CAP shall have the burden of showing why the proposed agency action is not in the public interest. The hearing officer shall determine whether there is good cause for further commission consideration of the contested matter or if the objection should be dismissed and the certificate of registration issued. Upon a showing of good 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]

17.11.6.18 SEVERABILITY: If any Section of this rule, or the applicability of any Section to any person, telecommunications provider, CAP 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, CAPs or circumstances, shall not be affected. [11-15-96; Recompiled 12/31/01]

History of 17.11.6 NMAC: [RESERVED]