

This rule was filed as SCC Rule 85-9.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 13 RULES AND REGULATIONS FOR COMPETITIVE TELECOMMUNICATIONS SERVICES

17.11.13.1 ISSUING AGENCY: New Mexico State Corporation Commission [New Mexico Public Regulation Commission].
[Recompiled 12/30/01]

17.11.13.2 SCOPE:
[Recompiled 12/30/01]

17.11.13.3 STATUTORY AUTHORITY:
[Recompiled 12/30/01]

17.11.13.4 DURATION:
[Recompiled 12/30/01]

17.11.13.5 EFFECTIVE DATE:
[Recompiled 12/30/01]

17.11.13.6 OBJECTIVE: It is the purpose of these regulations together with the Commission's Rules of Procedure, other rules and regulations of the Commission relating to telecommunications heretofore or hereafter promulgated by the Commission and orders of the Commission heretofore or hereafter issued by the Commission to administer the Act pursuant to Section 13 thereof.
[Recompiled 12/30/01]

17.11.13.7 DEFINITIONS: As used in the Telecommunications Act Regulations:

- A. "Commission" means the New Mexico State Corporation Commission [New Mexico Public Regulation Commission];
- B. "Act" means the New Mexico Telecommunications Act, Laws 1985, Chapter 242;
- C. "Public Telecommunications Service" refers to that definition of the term as set forth in Section 3.B of the Act;
- D. "certificate" means a certificate of public convenience and necessity issued by the Commission for the provision of public telecommunications service within the State of New Mexico.

[Recompiled 12/30/01]

17.11.13.8 RULES AND REGULATIONS FOR COMPETITIVE TELECOMMUNICATIONS SERVICES:

- A. On January 24, 1985, the New Mexico State Corporation Commission [New Mexico Public Regulation Commission] ("Commission") issued an Order establishing the above-entitled Docket for purposes of adopting regulations for competitive telecommunications services. The Order directed any person or entity to submit comments or alternatives to the Commission regarding the proposal for regulation filed by the Commission by Mountain States Telephone and Telegraph Company (Mountain Bell) proposal for regulations on or before February 20, 1985. After review of the proposals for regulation, the Commission prepared, issued and delivered its proposed set of rules concerning the subject of this docket to all parties listed on Exhibit A attached to the January 24, 1985 Order. Publication of this proceeding was made in the Albuquerque Journal on January 28, 1985. A public hearing was held before the Commission on March 8, 1985 at which time comments were received addressing the proposed regulations issued by the Commission.
- B. On April 11, 1985 Staff for the Commission submitted a Motion for Leave to File Further Proposed Regulations. Staff's motion cited the April 5, 1985 signing into law by the Governor of New Mexico of the New Mexico Telecommunications Act (House Bills 271 and 559), as the rationale for the filing of further proposed regulations. The Commission, finding good cause in Staff's Motion ordered that further proposed regulations be

submitted by May 20, 1985.

C. The Commission, having reviewed all proposals submitted for regulations for competitive services, and having reviewed and considered the testimony during the March 8, 1985 hearing hereby adopts the following regulations for competitive telecommunications services in New Mexico.

[Recompiled 12/30/01]

17.11.13.9 TITLE: These regulations may be cited as the Telecommunications Act Regulations.

[Recompiled 12/30/01]

17.11.13.10 CERTIFICATE REQUIRED:

A. No public telecommunications service shall be offered in this state except in accordance with the provisions of the Act and these regulations.

B. No public telecommunications service shall be offered in this state without the provider thereof first having obtained a certificate to provide such service from the Commission.

[Recompiled 12/30/01]

17.11.13.11 EXISTING CERTIFICATES:

A. All certificates heretofore issued by the Commission shall continue in full force provided the holder thereof has fully complied with the applicable provisions relating to continuous and adequate service to the public imposed by statute or the Commission at the time of issuance of the certificate or subsequent amendment.

B. The holder of any existing certificate shall continue to render continuous and adequate service to the public as required by statute or the Commission at the time of issuance thereof or by any subsequent amendment. Such holder shall not discontinue, reduce or impair service to a certificated area as established by the certificate, or part of a certificated area, except for ordinary discontinuance or service for nonpayment of charges, nonuse, or similar reasons in the ordinary 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 provision of this section.

C. Nothing in this section shall be construed as requiring the authorization of 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.

[Recompiled 12/30/01]

17.11.13.12 ADDITIONAL CERTIFICATES:

A. Any person, corporation, municipal corporation, partnership or association proposing to construct or operate any plant or equipment for the provision of public telecommunications service shall first make application to the Commission for a certificate to construct or operate such plant or equipment. Such application shall conform to the Commission's Rules of Procedure relating to pleadings then in effect and shall contain a verified statement reflecting how the public convenience and necessity requires the plant, equipment and service or services applied for.

B. The application for a certificate shall contain sufficient information to demonstrate that,

- (1) it is economically feasible to operate the proposed plant or equipment successfully and continuously for the furnishing of public telecommunications service;
- (2) the applicant has sufficient financial resources to provide the proposed public telecommunications service properly and continuously;
- (3) the applicant has competent and experienced management and personnel to provide the proposed public telecommunications service;
- (4) the applicant is willing and able to conform to the constitution and laws of the State of New Mexico and to the rules and regulations of the Commission; and
- (5) the applicant is in every respect willing and able to provide public telecommunications service properly and continuously.

C. The application for a certificate shall include:

- (1) a precise description of the exact and particular public telecommunications service or services the applicant proposes to provide;

- (2) a precise description of the geographical area that the applicant proposes to service and obtain a certificate for together with an accurate map thereof;
- (3) the names of all entities certificated by the Commission to provide public telecommunications service of a similar nature or functional equivalent of that applied for within the geographical area that the applicant proposes to serve; and
- (4) if applicable, the manner in which the issuance of the certificate applied for will promote competition in the provision of public telecommunications service within the geographical area for which the proposed service or services are to be provided;
- (5) proposed tariffs containing the rates and ratemaking methodology to be used in providing the proposed service.

[Recompiled 12/30/01]

17.11.13.13 NOTICE OF APPLICATIONS FOR CERTIFICATES:

- A. The Commission, upon filing of an application for a certificate, shall set the time and place for a hearing thereon and such other and further procedural dates and requirements as the Commission shall deem proper.
- B. The Commission will require the applicant to serve notice of the application together with all procedural and hearing dates on all known interested parties and shall require the applicant to cause similar notice of the application and the procedural and hearing dates to be published in a newspaper of general circulation in the geographical area where the proposed service is to be offered at least ten days prior to the hearing on the application.
- C. The Commission may entertain intervention in a proceeding involving an application for a certificate by any interested person and may require the filing of written testimony concerning the application at any time the Commission sees fit.

[Recompiled 12/30/01]

17.11.13.14 HEARINGS-CERTIFICATES:

- A. All hearings conducted pursuant to an application for a certificate shall be conducted pursuant to the Commission's Rules of Procedure unless otherwise provided herein or by order of the Commission.
- B. The burden of establishing that the issuance of a certificate is in the public interest and that all requirements for the issuance of a certificate have been met shall rest with the applicant for such certificate.
- C. The Commission shall determine when and upon what conditions plant, equipment or services may be provided and shall determine such terms and conditions that will attach to the exercise of the rights afforded by certificates. Unless otherwise provided by the Commission, all certificates issued by the Commission shall carry the requirements set forth in Section 5.B [Subsection B of 17.11.13.11 NMAC] of these regulations for the holders of existing certificates.

[Recompiled 12/30/01]

17.11.13.15 ASSIGNABILITY-CERTIFICATES: Any certificate or rights obtained under any such certificate held, owned or obtained by any entity, may be sold, assigned or leased only after a determination by the Commission that the purchaser, assignee or lessee is capable of rendering adequate and continuous public telecommunications service.

[Recompiled 12/30/01]

17.11.13.16 MANNER OF REGULATION-COMPETITIVE SERVICES:

- A. Commission regulation of a public telecommunications service that is subject to competition shall be obtained through the filing of a "Petition for Determination" by any interested party or entity including the Commission's staff.
- B. A petition for determination (hereafter sometimes referred to as "petition") shall contain at least the following information:
 - (1) relevant facts regarding the nature of the public telecommunications service or services for which a determination is sought including the names of competitor(s) by location providing or ready and willing to provide the same or similar service or services or a functionally equivalent alternative or substitute service within the same market area which meets the same general customer needs within that area;
 - (2) the minimum rate or charge proposed to be charged for the service that is the subject of the petition or the proposed range of charges for such service or services;

(3) a cost study demonstrating that the minimum rate proposed to be charged for the service that is the subject of the petition is not less than the true cost of providing such service;

(4) a full and adequate description of the market area for which the proposed minimum rate or range of rates is to apply;

(5) the type of customer affected by the competitive service together with an estimate of the number of customers so affected;

(6) if an applicant provides regulated telecommunications services in New Mexico, the applicant shall specify the loss, if any, in net contribution expected, due to competition in the competitive service and how the applicant proposes to adjust rates in their non-competitive services, to compensate for the loss of contribution.

C. Notice by publication of the filing of a petition shall be given to concerned parties in the form directed by the Commission and such notice shall be further served on such persons and entities by the petitioner as directed by the Commission.

D. Unless otherwise ordered by the Commission, a petition will be treated as a rate filing request pursuant to Article XI of the New Mexico Constitution.

E. Except as provided in the regulations or the Commission, the Commission's Rules of Procedure shall apply to all proceedings instituted pursuant to a petition.

F. The burden of establishing that a service is subject to competition and that it is in the best public interest for the Commission to establish a minimum rate or range of rates shall rest with the petitioner.

G. In ruling on a petition, the Commission will determine, based on the evidence presented, if it is in the public interest to establish a minimum rate or range of rates for a particular service. The Commission may attach such terms and conditions on the provision of a service by a minimum rate or range of rates as the Commission determines to be in the public interest.

[Recompiled 12/30/01]

17.11.13.17 MINIMUM PRICING POLICY:

A. Unless otherwise ordered by the Commission upon specific request by the applicant containing ample justification for the request and why none of the pricing methodologies discussed below are applicable to the petition, the information provided with or contained in a petition shall be such that it will provide the Commission with the minimum price or the range of prices for a competitive public telecommunications service developed through one of the following pricing methodologies:

(1) Direct Cost Pricing:

(a) This methodology shall start with the total current cost of the investments involved with the competitive service and develop the broad categories of service, including interstate if applicable, that are using that investment.

(b) It shall further develop for the categories of service, current maintenance expenses using maintenance to investment ratios, current overhead administrative expenses using overhead administrative expenses to investment ratios and current ad valorem taxes using ad valorem taxes to investment ratios.

(c) Where investment is shared with non-competitive service or services, it shall in the calculation of separate [separate] competitive service costs develop the dollar amount of usage sensitive investment to be used by the competitive service through allocations based on usage by the board categories of service, and apply the factors from subparagraph A.2 [1 (b)] of this section to obtain a reasonable allocation of shared costs and allocated costs of the competitive service.

(2) Fully Allocated Cost Pricing: This methodology shall utilize a "Stand Alone Cost Study" which uses a basic building block approach to develop the investments for competitive services. It shall develop, for the competitive service, expenses for maintenance activities, installation activities and other support activities as applicable. It shall reflect current labor rates, all expenses common to the investment shared between competitive and non-competitive services fairly prorated between such services, apply an expected return to investments, and utilize an appropriate tax factor applied to return.

(3) Incremental Cost Pricing: This methodology identifies the incremental forward-looking cost caused by placing one or more additional units in service. The general categories or direct costs included in an incremental cost study include annual capital costs and operating expenses. The capital costs are the annual costs of depreciation, cost of money, and income taxes. The operating expenses are the annual costs of maintenance, administration, ad valorem and other taxes.

(4) Avoidable Cost Pricing: This methodology is applicable to services associated with items of

equipment that are restricted. The avoidable cost study identifies the costs which can be avoided if the equipment is eliminated or removed from service.

B. After filing of a petition, the Commission may order that the applicant file another cost study utilizing a pricing methodology of the Commission's choice if the Commission decides that the cost study originally filed does not meet the circumstances of the petition. The applicant shall continue to have the burden of establishing that a service is subject to competition and that it is in the public interest for the Commission to establish a minimum rate or range of rates.

C. Upon request by the Commission, prior to or during hearing upon the petition, applicant shall submit such additional data, information, or exhibits, as may be specified by the Commission.

D. If an applicant files with the Commission in its petition a cost methodology which differs from the cost methodology employed to allocate costs for the same or similar service in a prior proceeding, the applicant shall file with the petition a summary description of how the costing methodology differs and why it differs from the cost methodology employed to allocate costs for the same or similar service in the prior proceeding.

[Recompiled 12/30/01]

17.11.13.18 EFFECT OF DETERMINATION: In granting a petition for determination, the Commission will:

A. Make a finding that multiple persons or entities are providing or ready to provide the same or similar service or services or a functionally equivalent alternative or substitute service and that such persons or entities are making such service or services reasonably available in the same market area which generally meets the same customer needs;

B. Identify the market area wherein the particular service is subject to competition;

C. Establish a minimum rate or range of rates to be charged for such competitive service within the particular market area which shall not be less than the cost of providing such service unless the Commission finds that the service should be priced above cost for a specific reason;

D. Give its approval to and authorize the petitioner to change from time to time the rates and charges for such service; provided that the Commission shall be notified within ten days prior to any such change in rates and charges and that such change in rates and charges shall not be set below the approved minimum rate;

E. Authorize the removal of the price of any such competitive service from any public tariff which is on file with the Commission;

F. Authorize, if the Commission deems it necessary, an open docket solely for the filing and disposition of further matters pertaining to a competitive service; and

G. Provide for filing of the minimum price or range prices with the Commission as proprietary information.

[Recompiled 12/30/01]

17.11.13.19 GENERAL POLICIES:

A. A finding that a particular service is subject to competition within a particular market area of the state does not mean that the Commission has found that the service is competitive in other market areas or statewide.

B. After making a determination that a service is competitive, the Commission may reverse such finding if it is subsequently established that the Commission cannot then make the affirmative findings for a competitive service of Section 12.A [Subsection A of 17.11.13.18 NMAC] hereof.

[Recompiled 12/30/01]

17.11.13.20 CONFIDENTIALITY OF INFORMATION: A petitioner may request that the Commission designate information contained in its Petition for Determination and any proceedings in connection therewith as confidential, including but not limited to cost analysis for such services. In ruling on any such request for confidentiality, the Commission will take into account the interests of the petitioner, the competitors, and the public interest.

[Recompiled 12/30/01]

17.11.13.21 REGULATION OF INDIVIDUAL CONTRACTS:

A. In accordance with the provisions of this section, the Commission may regulate the rates, charges, and service conditions for individual contracts for public telecommunications services in a manner which facilitates competition.

B. At any time, the provider of public telecommunications service may file a verified application with the Commission to provide a public telecommunications service or a combination of services on an individual contract basis. The application shall:

- (1) Describe the telecommunications services to be offered.
- (2) Describe the party to be served by the service(s) and the parties offering the service(s).
- (3) If the individual contract would be for the provision of a combination of services, the application shall identify such services as have been determined to be competitive by the Commission pursuant to a Petition for Determination and which services the applicant offers as non-competitive and the price therefore which has been set by the Commission.
- (4) Contain such additional information as shall be reasonably related to the determination of the existence of competition for the service or services that are the subject of the individual contract.
- (5) Contain such additional information as shall reasonably reflect that the applicant's proposal to provide the services meets the minimum price authorized by the Commission for the competitive services and the price set forth in tariffs approved by the Commission for the non-competitive services.
- (6) Contain any additional information which demonstrates that the individual contract will meet or exceed the cost of the applicant in providing the services thereunder.

C. The Commission shall approve or deny the application within ten days of the filing or such longer period as the Commission shall order. The Commission may deny the application upon a finding that the application fails to set forth prescribed information, that the subject matter or comparable services are not being offered to customers by parties other than the applicant, or that applicant's proposal to provide service does not meet the applicant's cost of providing the service.

D. After Commission approval of the application, the provider shall file with the Commission the final contract or other evidence of the service to be provided within ten days after the conclusion of negotiations therefore, together with the charges and other conditions of the service which shall be maintained by the Commission as confidential subject to an appropriate protective order.

[Recompiled 12/30/01]

17.11.13.22 SEVERABILITY: If any part or application of these regulations is held invalid the remainder or its application to other situations or persons shall not be affected.

[Recompiled 12/30/01]

HISTORY OF 17.11.13 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed the Commission of Public Records-State Records Center and Archives.

SCC Rule 85-4, In The Matter Of Proposed Rule-Making To Adopt Regulations For Competitive Telecommunications Services, 7/1/85.

SCC Rule 85-9, Rules And Regulations For Competitive Telecommunications Services, 9/19/85.

History of Repealed Material: [RESERVED]