

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 19 EXPEDITED PROCEDURES FOR COMPETITIVE LOCAL EXCHANGE CARRIERS

17.11.19.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.11.19.1 NMAC – N, 1-1-01]

17.11.19.2 SCOPE: This rule applies to all competitive local exchange carriers and all persons seeking to provide competitive local exchange services in New Mexico.
[17.11.19.2 NMAC – N, 1-1-01]

17.11.19.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4, 8-8-15, and 63-9A-8.2.
[17.11.19.3 NMAC – N, 1-1-01]

17.11.19.4 DURATION: Permanent.
[17.11.19.4 NMAC – N, 1-1-01]

17.11.19.5 EFFECTIVE DATE: January 1, 2001, unless a later date is cited at the end of a section.
[17.11.19.5 NMAC – N, 1-1-01]

17.11.19.6 OBJECTIVE: The purpose of this rule is to establish expedited procedures for registration, tariff changes, promotions, and new services, and contracts for competitive local exchange carriers.
[17.11.19.6 NMAC – N, 1-1-01]

17.11.19.7 DEFINITIONS: In addition to the definitions in NMSA 1978 Section 63-9A-3, as used in this rule:

- A. affiliate** has the meaning given in 47 U.S.C Section 153(33);
- B. carrier** means any person that furnishes telecommunications service to the public subject to the jurisdiction of the commission, regardless of the facilities used and regardless of whether the person relies in part or entirely on another carrier's facilities;
- C. certificate of registration** means the operating authority issued by the commission for the provision of local exchange services in New Mexico;
- D. competitive local exchange carrier (CLEC)** means a carrier that provides competitive local exchange service in its service area and is not an ILEC, but shall not include an ILEC affiliate unless the ILEC executes an affidavit stating that the ILEC does not and will not confer benefits on its affiliate that are not conferred on equal, non-discriminatory terms on non-affiliates and that the ILEC will abide by all commission rules and orders governing affiliate transactions;
- E. contract** means an agreement to provide specific services to an individual customer for a specified period of time;
- F. incumbent local exchange carrier (ILEC)** means person, or an affiliate of a person, that was authorized to provide local exchange service in New Mexico on February 8, 1996, or a successor or assignee of the person or affiliate; a carrier will also be treated as an ILEC if the federal communications commission determines that such provider, or class or category of carrier, shall be treated as an ILEC pursuant to 47 U.S.C. Section 251(h)(2);
- G. promotion** means a special rate for a service provided by a CLEC which is available for a limited period of time, and may include rebates, price reductions or waivers of charges in conjunction with market trials or other sales-related activities.

[17.11.19.7 NMAC – N, 1-1-01]

17.11.19.8 CERTIFICATE OF REGISTRATION REQUIRED:

- A.** No person shall offer competitive local exchange services in New Mexico without having first obtained from the commission a certificate of registration to provide such service.
- B.** Any person seeking to provide competitive local exchange services in New Mexico shall file an application with the commission for a certificate of registration in accordance with the provisions of this rule.
- C.** All certificates of public convenience and necessity issued by the commission prior to January 1, 2001 shall be continued and shall have the same force and effect as certificates of registration issued pursuant to this rule.

D. A holder of a certificate of public convenience and necessity that intends to cease providing continuous and adequate service to the public must comply with the provisions of this rule regarding discontinuance of service.

[17.11.19.8 NMAC – N, 1-1-01]

17.11.19.9 PENDING APPLICATIONS: All applications for certificates of financial and technical competency or certificates of operating authority to provide telecommunications services as a CLEC filed and pending as of January 1, 2001 shall be deemed applications for certificates of registration to provide such services pursuant to this rule.

[17.11.19.9 NMAC – N, 1-1-01]

17.11.19.10 CONTENTS OF APPLICATION: An application for a certificate of registration shall contain:

- A.** the name, address, and telephone number of the applicant;
- B.** the name, address and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the applicant;
- C.** a description of the applicant's existing operations and general service and operating areas in any other jurisdictions;
- D.** a list of the applicant's parent, subsidiary, and affiliated companies that act as carriers in New Mexico, together with the principal addresses and telephone numbers of each;
- E.** a general description of the facilities and equipment that will be used to provide services, including whether the service will be offered on a facilities basis, a resale basis, or a combination of both;
- F.** evidence of the applicant's managerial and technical resources and ability to provide service. The applicant may submit resumes of key personnel, a narrative, or a combination of both.
- G.** the applicant's most current income statement and balance sheet, or other appropriate documentation of applicant's financial resources and ability to provide service;
- H.** a statement that the applicant is aware of and will comply with commission rules governing the provision of basic local exchange service by a CLEC;
- I.** the disclosure of any formal actions against the applicant by any court or state or federal regulatory agency that resulted in any type of penalty or sanction within the five (5) years preceding the date the application is filed;
- J.** if the applicant is a corporation, evidence that the applicant is authorized by the corporations bureau of the commission to do business in New Mexico and that it is in good corporate standing in New Mexico;
- K.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners, managers (as defined in NMSA 1978 Section 53-19-2), and the applicant's agent for service of process in New Mexico, and the date the business entity was created;
- L.** initial tariffs or price lists for regulated telecommunications services, including a narrative description of the regulated telecommunications services to be offered and the geographic area and markets to be served;
- M.** a statement of whether the applicant is drawing from the federal or state universal service fund or other explicit support funds, including a statement of whether the applicant intends to seek commission designation as an eligible carrier;
- N.** a report of any judgment, penalty, or sanction entered in any other jurisdiction that could adversely affect the applicant's ability to provide telecommunications services in New Mexico; and
- O.** if the applicant is a regulated carrier, any other information the commission may reasonably require to accomplish the purposes of this rule.

[17.11.19.10 NMAC – N, 1-1-01]

17.11.19.11 COMMISSION PROCEDURE: Staff shall review an application for a certificate of registration within thirty (30) calendar days to determine whether it is complete. If the application is incomplete, staff will return it to the applicant. If the application is complete, staff shall present it to the commission for issuance of a certificate of registration. The commission shall issue a certificate of registration if it finds that the applicant possesses adequate financial resources and technical competency to provide competitive local exchange service and that issuance of the certificate of registration is in the public interest.

[17.11.19.11 NMAC – N, 1-1-01]

17.11.19.12 REPORTING REQUIREMENTS: Every CLEC shall file an annual report with the

commission by April 1 of each year, unless a different date is ordered by the commission, updating the information described in Subsections A, B, D, E, J, and M of 17.11.19.10 NMAC in the time, manner and form prescribed by the commission.

[17.11.19.12 NMAC – N, 1-1-01]

17.11.19.13 TRANSFER OF A CERTIFICATE OF REGISTRATION:

A. Any holder of a certificate of registration to provide competitive local exchange service in New Mexico seeking to transfer the certificate to another person shall first apply to the commission for approval of the transfer.

B. The commission shall approve an application for transfer of a certificate of registration upon receipt of a completed application and a copy of the tariff proposed to take effect upon approval of the transfer.

[17.11.19.13 NMAC – N, 1-1-01]

17.11.19.14 NOTICE OF CHANGE IN CIRCUMSTANCES: A CLEC shall notify the commission in writing prior to any change in circumstances, including, but not limited to:

A. a change in the carrier 's name, phone number or address;

B. a change in the name, phone number or address of the person responsible for regulatory contacts and customer dispute resolution;

C. merger of the carrier with another carrier;

D. acquisition of the carrier by another carrier;

E. acquisition by the carrier of another carrier;

F. transfer of the carrier 's certificate;

G. transfer of a significant portion of the carrier 's assets to another carrier; and

H. any other change in control of the carrier.

[17.11.19.14 NMAC – N, 1-1-01]

17.11.19.15 DISCONTINUANCE OF SERVICE:

A. Prior to discontinuing service, a CLEC shall:

(1) no later than thirty days prior to discontinuing service, file with the commission a notice of discontinuance of service showing:

(a) the number of customers affected; and

(b) the form of notice to be given to each customer.

(2) no later than thirty days prior to discontinuing service, notify its customers of its intent to discontinue service, the proposed date and time of discontinuance, and any provisions it has made for continuation of service, if applicable.

B. This section does not apply to the withdrawal by a CLEC of a specific service offering, as long as the CLEC continues to offer local exchange service through other service offerings generally available in the affected service area.

[17.11.19.15 NMAC – N, 1-1-01]

17.11.19.16 TARIFF CHANGES, PROMOTIONS, AND NEW SERVICES:

A. Filing requirements. Whenever a CLEC proposes to change its tariff to include a new service or promotion, or to change any of the rates, charges, terms and conditions in its tariff, it shall file with the commission an original and five (5) copies of the proposed tariff changes at least ten (10) business days prior to their implementation. A CLEC shall include in its filing a sequentially numbered transmittal letter (e.g., 2000-1, 2000-2, etc.) containing a description of the proposed tariff changes. The proposed tariff changes shall comply with all applicable commission rules. The tariff changes may go into effect after ten (10) business days, unless staff notifies the CLEC within ten (10) business days of its concerns regarding the proposed tariff changes. If staff and the CLEC are able to resolve staff's concerns, the proposed tariff changes may go into effect and no public hearing shall be required.

B. Staff protests. If staff and the CLEC are unable to resolve staff's concerns, staff shall file a protest with the records management bureau of the administrative services division, and the proposed tariff change shall not go into effect. The records management bureau shall assign a docket number to staff's protest. Staff's protest shall include a case caption and a heading that states "staff protest." The protest shall include as an attachment the proposed tariff changes filed by the CLEC and any additional information furnished to staff by the CLEC. The CLEC shall have the burden of showing, after notice and a public hearing, why the proposed new

service, promotion, or tariff change is in the public interest.

C. Electronic filing requirements. On the same day it files paper copies of the proposed tariff changes with the commission, the CLEC shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The commission may prescribe additional form, content, manner of filing, or other requirements.

D. Notice to customers. The CLEC shall provide notice of a rate change to affected customers in the first bill mailed to the customer following the effective date of the change.

[17.11.19.16 NMAC – N, 1-1-01]

17.11.19.17 CONTRACT FILING REQUIREMENTS:

A. A CLEC that offers intrastate telecommunications services under contract shall file a notice of contract with the commission within ten (10) calendar days of concluding contract negotiations. The notice shall include:

- (1) the name of the CLEC offering the service;
- (2) the name and address of the customer;
- (3) a summary of the contract containing a description of the services to be offered and the prices, terms and conditions for the offered services; and
- (4) a statement confirming that the prices to be charged for the regulated telecommunications services cover the commission-defined cost of providing the service and represent a competitive offer.

B. A CLEC may file standard contract forms with the commission and may thereafter reference a standard form in its notice of contract in lieu of providing a contract summary.

C. A CLEC may note in a notice of contract a customer's request for confidentiality of the customer's name and address.

D. Any carrier or other interested person may, within ten (10) business days of the date the notice of contract is filed, petition the commission for access to any notice of contract. The commission shall grant access, subject to any protective orders and to a customer's request for confidentiality of its name and address.

E. A contract shall be deemed effective ten (10) business days after the notice of contract is filed unless expressly suspended by order of the commission for good cause. If the commission suspends the contract, the commission shall issue its final order on the merits of any disputed matter within sixty (60) days of the initial filing of the notice of contract.

F. The commission may disapprove a contract based on the notice of contract:

(1) for failure of the CLEC to show that the prices to be charged for the regulated telecommunications service cover the commission-defined cost of providing the service, including the imputed price of wholesale service elements if required by the commission;

(2) for failure to show a competitive offer, consistent with NMSA 1978 Section 63-9A-9; or

(3) upon a showing that the contract is otherwise unlawful.

[17.11.19.17 NMAC – N, 1-1-01]

History of 17.11.19 NMAC: [RESERVED]