

This rule was filed as SCC 69-8.

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 698 ORDER NO. 2681, REGULATIONS PROVIDING FOR THE INTERCHANGE OF TELEPHONE AND TELEGRAPH MESSAGES AND THE INTERCONNECTION OF TELEPHONE AND TELEGRAPH LINES

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

17.11.698.2 SCOPE:
[Recompiled 12/30/01]

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

17.11.698.4 DURATION:
[Recompiled 12/30/01]

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

17.11.698.6 OBJECTIVE:
[Recompiled 12/30/01]

17.11.698.7 DEFINITIONS:
[Recompiled 12/30/01]

17.11.698.8 IN THE MATTER OF REGULATIONS PROVIDING FOR THE INTERCHANGE OF TELEPHONE AND TELEGRAPH MESSAGES AND THE INTERCONNECTION OF TELEPHONE AND TELEGRAPH LINES, ORDER NO. 2681:

A. WHEREAS, Article XI, Section 16, of the Constitution of the State of New Mexico provides: "All telephone and telegraph lines, operated for hire, shall receive and transmit each other's messages without delay or discrimination, and make and maintain connections with each other's lines, under such rules and regulations as may be prescribed by the Commission," and

B. WHEREAS, no such rules and regulations have ever been prescribed by the Commission; and

C. WHEREAS, it appears certain the facts and conditions that may be involved in each case of transmitting messages of other carriers without delay or discrimination, or making connections with the lines of other carriers, will to a large extent vary from case to case depending upon the advantages to the public and the reasonableness of the means and costs that may be involved; and

D. WHEREAS, the Commission now deems it necessary and advisable to promulgate rules and regulations pursuant to the aforesaid constitutional provision, IT IS THEREFORE ORDERED:

(1) Upon the petition of any telephone or telegraph company operating intrastate in New Mexico, or upon the petition of twenty-five (25) of the customers of any such carrier, or upon the Commission's own motion, the Commission upon the filing of such a petition shall fix a time and place for hearing thereon. All parties shall be given ten (10) days' notice of such time and place for hearing by the Commission. The Commission shall cause notice of such hearing to be served at least five (5) days before the hearing upon any officer or owner of the telephone or telegraph company involved in the proposed interchange of messages or interconnection of lines and facilities and on other interested parties as determined by the Commission, and any such telephone or telegraph company is hereby declared to be an interested party in such proceedings and may offer testimony for or against the granting of the relief requested in such petition. Any other interested person may offer testimony at such hearing. The Commission shall fix the time and place for any such hearing. If the Commission, after investigation and hearing,

finds from the evidence that an interchange of messages or the interconnection of lines and facilities will be of advantage to the public and best serve the public interest or public convenience and necessity, it may issue an order requiring the interchange or interconnection upon such terms and conditions as, in its judgment, the public convenience and necessity may require; otherwise the relief requested in such petition shall be denied. In making any such order the Commission shall take into consideration the matters and things set forth in the following paragraphs of these rules.

(2) It is not intended these rules shall apply to the interconnection or interchange of messages with so-called "service station" lines where the carrier provides the switching, directory and rental of equipment service, nor to situations where the purpose of the connection primarily involves interchange of local messages within an exchange or interconnection of lines and facilities for local calls only, as distinguished from long distance calls.

(3) No order affecting such interchange of messages or interconnection of lines and facilities shall be entered by the Commission without notice and a hearing. All parties shall be entitled to be heard, through themselves or their counsel, and shall have process to enforce the attendance of witnesses. At the hearing held pursuant to such notice, the Commission may take such testimony as may be offered or as it may desire, and may make such other and further investigation as, in its opinion, is desirable.

(4) Each witness who shall appear before the Commission, by its order, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the State out of the State Corporation Commission [Public Regulation Commission] fund upon the presentation of proper vouchers; but no witnesses subpoenaed at the instance of parties other than the Commission shall be entitled to compensation from the State for attendance and travel.

(5) No person shall be excused from attending and testifying or from producing books and papers before the Commission, or in obedience to the subpoena of the said Commission, whether such subpoena be signed or issued by one (1) or more of the members of the said Commission, in any investigation held by or before the said Commission or in any cause or proceeding in any court by or against the said Commission, relative to matters provided for in these rules, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained shall be construed as requiring any person to produce any books or papers, or to testify in response to any inquiry, not pertinent to some question lawfully before such Commission or court for determination. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or in any such cause or proceedings; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(6) In case of failure or refusal on the part of any person to comply with any subpoena issued by said Commission or any member thereof, or on the refusal of any witness to testify or answer as to any matters regarding which he may be lawfully interrogated, any district court in this State, or any judge thereof, on application of a member of said Commission may issue an attachment for such person and compel him to comply with such subpoena and to attend before the Commission and produce such documents and give his testimony upon such matters as may be lawfully required and such court or judge shall have the power to punish for contempt as in cases of disobedience of a like subpoena issued by or from such court, or a refusal to testify therein.

(7) Whenever the Commission shall make any order or determination, or issue any subpoena, notice or writ, notice thereof may be served on the person affected thereby, by delivering a copy of such order, subpoena, notice or writ, signed by or in the name of the chairman of said Commission to any such person or an officer or agent of such person, as in the case of civil process, which service may be executed by any member of said Commission, the secretary or any employee thereof, or by any sheriff in this State. A copy of such order, subpoena, notice or writ, with the service endorsed thereon, must be returned to the said Commission and entered of record as a part of the proceedings and such endorsement and return shall be prima facie evidence that such order, subpoena, notice or writ has been duly served.

(8) Any order issued by the Commission after completion of its investigation and hearing shall be a final order within the meaning of these rules.

(9) If it be determined such an interchange or interconnection is needed and if the telephone companies involved cannot agree upon the method of interchange or point of interconnection or other conditions including the proration or other adjustment of construction costs that may be incurred in making the physical arrangements of the facilities of either or both or all carriers involved, then the Commission on the basis of the evidence presented to it upon such matters will determine the proper method of interchange or point of interconnection which will be

reasonable and just to the two or more telephone or telegraph companies involved and will determine the obligations of each of the telephone or telegraph companies.

(10) In any proceeding in which a proper point of interconnection is in question, the Commission will give consideration to costs that may be required of each of the carriers and, where possible, will avoid circuitous routing. Substantial consideration will be given to the nearest point at which a connection may be made with established or proposed toll routes capable of handling the toll messages offered at the point of interconnection.

(11) The Commission will consider and determine whether an undue burden will be placed upon any one or more of such telephone and telegraph companies involved in the interconnection; whether the facilities of the carriers involved in the proposed interconnection or interchange of messages are properly qualified; whether the facilities and equipment of the carriers whose lines are proposed to be interconnected meet the normal construction standards; and particularly the communication requirements and community of interest of the public.

(12) In order to better meet and carry out the provisions of the constitution as stated above the Commission may provide the arrangement for the interchange or interconnection which shall be for a limited trial period pending further proceedings before the Commission.

(13) The Commission shall arrange for the service of all interim and final orders upon each and all of the parties to such proceedings before the Commission.

(14)

(a) Any telephone or telegraph company, or any other person in interest, being dissatisfied with any order or determination of the Commission, not removable to the supreme court of the State of New Mexico under the provisions of Section 7, Article XI of the Constitution of the State of New Mexico, may commence an action in the district court for Santa Fe County against the Commission as defendant, to vacate and set aside such order or determination, on the ground that it is unlawful, unreasonable or confiscates the property of the dissatisfied telephone or telegraph carrier. In any such proceeding, the court may grant relief by injunction, mandamus or other extraordinary remedy. In such action the Complaint shall be served with the Summons.

(b) The answer of the Commission to the complaint shall be served and filed within twenty (20) days after service of the complaint, whereupon said action shall be at issue without further pleading and stand ready for trial upon ten (10) days' notice.

(c) Any person not a party to the action, but having an interest in the subject thereof, may be made a party.

(d) All such actions shall have precedence over any civil cause of a different nature, and the district court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions without a jury.

(15) Every action to vacate or amend any determination or order of the Commission or to enjoin the enforcement thereof or to prevent such order or determination from becoming effective shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised within ninety (90) days after the entry or rendition of such order or determination, the right to commence any such action, or to take or exercise any such appeal or right of recourse to the courts, shall terminate absolutely at the end of such ninety (90) days.

(16) Any party to said action, within thirty (30) days after service of a copy of the said order or judgment of the district court, may appeal to the Supreme Court, and the cause shall be placed on the calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

(17) In such actions and proceedings in court all processes shall be served and the practice and rules of evidence shall be the same as in civil actions, except as otherwise provided.

(18) A copy of these rules will be mailed to each telephone and telegraph carrier in the State of New Mexico subject to the jurisdiction of this Commission.

(19) DONE at Santa Fe, New Mexico, this 19th day of September, 1963. STATE CORPORATION COMMISSION OF NEW MEXICO, G.W. Fails, Chairman, M.E. Morgan, Commissioner, Columbus Ferguson, Commissioner, ATTEST R. C. Cybert, Director, Traffic and Rate Division.

[Recompiled 12/30/01]

HISTORY OF 17.11.698 NMAC:

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

SCC 69-8, Order No. 2681, Regulations Providing For The Interchange Of Telephone And Telegraph Messages And The Interconnection Of Telephone And Telegraph Lines, 2/17/69.

History of Repealed Material: [RESERVED]