

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 11 TELECOMMUNICATIONS
PART 10 STATE RURAL UNIVERSAL SERVICE FUND

17.11.10.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.11.10.1 NMAC - Rp, 17.11.10.1 NMAC, 01-01-15]

17.11.10.2 SCOPE: This rule applies to all entities that provide intrastate retail public telecommunication services and comparable retail alternative services in New Mexico.
[17.11.10.2 NMAC - Rp, 17.11.10.2 NMAC, 01-01-15]

17.11.10.3 STATUTORY AUTHORITY: Sections 8-8-4 and 63-9H-6 NMSA 1978.
[17.11.10.3 NMAC - Rp, 17.11.10.3 NMAC, 01-01-15]

17.11.10.4 DURATION: Permanent.
[17.11.10.4 NMAC - Rp, 17.11.10.4 NMAC, 01-01-15]

17.11.10.5 EFFECTIVE DATE: January 1, 2015, unless a later date is cited within a section.
[17.11.10.5 NMAC - Rp, 17.11.10.5 NMAC, 01-01-15]

17.11.10.6 OBJECTIVE: The purpose of this rule is to provide procedures for administering and implementing the New Mexico state rural universal service fund to maintain and support at affordable rates those public telecommunications services and comparable retail alternative services provided by telecommunications carriers that have been designated as eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission.
[17.11.10.6 NMAC - Rp, 17.11.10.6 NMAC, 01-01-15]

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

A. “access line” means the connection of the end-user customer to the public switched network, and is not limited to wireline or any other technology;

B. “administrator” means the person designated by the commission to administer the fund;

C. “basic local exchange rate” means an incumbent local exchange carrier’s tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service; for the purposes of this rule, the “residential” and “business” basic local exchange rates shall include any commission-mandated subscriber line charges or extended area service charges;

D. “carrier” means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico;

E. “commercial mobile radio service (CMRS)” means a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit;

F. “commission” means the New Mexico public regulation commission;

G. “contributing company” means any carrier that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico;

H. “eligible telecommunications carrier (ETC)” means an entity with New Mexico operations that provides retail telecommunications services that has been designated by the commission as eligible to receive disbursements from the fund or from the federal universal service fund;

I. “exempt customer” means an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico;

J. “FCC” means the federal communications commission;

K. “Form 481” means the FCC’s Form 481, 54.313/54.422 Data Collection Form, which is an annual report containing a carrier’s financial and operational data used by the FCC to validate the support, if any, that a recipient company is eligible to receive from the high-cost support mechanism and/or the Lifeline and Link

Up support mechanism; carriers that receive federal high-cost support must complete the 54.313 portion of Form 481, and carriers that receive Lifeline and Link Up must complete the 54.422 portion of the form;

L. “fund” or “State Rural Universal Service Fund (SRUSF)” means the state of New Mexico universal service fund established pursuant to Section 63-9H-6 NMSA 1978 and this rule;

M. “historical access rate” means the composite per-minute intrastate switched access charge in effect for a carrier as of July 1, 2005;

N. “historical collection factor” means the ratio, for calendar year 2004, of intrastate switched access charge revenue collected by a carrier to its gross charges for intrastate switched access, except that the historical collection factor may not exceed 1.0;

O. “imputed benchmark revenue” means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier’s current basic local exchange residential and business rates, multiplied by the number of basic local exchange residential and business lines served by the carrier as of December 31 of the year that corresponds to the applicable intrastate access minutes used to derive the revenue requirement pursuant to subparagraph E of 17.11.10.19 NMAC; imputed benchmark revenue shall not be less than zero;

P. “interexchange carrier (IXC)” means an entity that provides intrastate toll services in New Mexico;

Q. “intrastate retail telecommunications revenue” means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico;

R. “intrastate retail telecommunications services” means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller ID; listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS) or toll; CENTREX, Centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services;

S. “intrastate switched access charge” means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission;

T. “local exchange carrier (LEC)” means an entity that provides local exchange service in New Mexico;

U. “New Mexico operations” means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico;

V. “New Mexico telephone number” means a North American numbering plan (NANP) number that provides the ability to receive calls from the public switched telephone network; and is within an area code designated to New Mexico or is a non-geographic numbering plan area (NPA) (e.g. 900) number associated with a New Mexico physical address;

W. “rural area” means a local exchange carrier’s study area that (1) does not include either: (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the bureau of the census; or (b) any territory, incorporated or unincorporated, included in an urbanized area as defined by the bureau of census; (2) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (3) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (4) has less than 15 percent of its access lines in communities of more than 50,000;

X. “service area” means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

[17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, 01-01-15]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES: The commission may, upon motion of a carrier or the administrator, or upon the commission's own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier's tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.
[17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, 01-01-15]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. Effective July 1, 2015, the residential and business affordability benchmark rates to be utilized in determining the level of support available from the fund are as follows:

- (1) the residential benchmark rate shall be equal to the rate required by the FCC to maintain federal high cost support, as such rate may change from time to time;
- (2) the business benchmark rate shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier on July 1, 2015, plus the amount required to increase the carrier's residential basic local exchange rate to match the new residential benchmark rate set forth above, up to a limit of \$35.96;
- (3) each local exchange carrier shall, on or before May 1 of each year, advise the commission and the administrator in writing of its residential and business basic local exchange rates to be in effect on July 1 of that year and how they were determined;
- (4) increases in the residential basic local exchange rates of incumbent rural telecommunications carriers toward the residential benchmark rate established in this section shall be implemented by timely filing of tariff revisions with the commission and shall be effective after ten (10) days' notice to the carrier's customers and the commission;

B. The commission may conduct a proceeding to establish new affordability benchmark rates upon its own motion.
[17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, 01-01-15]

17.11.10.10 SELECTION OF ADMINISTRATOR: The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

A. Criteria for selection: the commission will issue a request for proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

- (1) is able to be neutral and impartial;
- (2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;
- (3) is an affiliate of any contributing company;
- (4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and
- (5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

B. Termination of administrator's contract: the commission may terminate the administrator's contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.
[17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, 01-01-15]

17.11.10.11 EXPENDITURE AUTHORIZATION: The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.
[17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, 01-01-15]

17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR: The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

- A.** fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight;
- B.** establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions;
- C.** ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes;
- D.** establish procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule;
- E.** report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require;
- F.** prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time;
- G.** propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies;
- H.** create and maintain the databases necessary to administer the program and account for the funds;
- I.** develop appropriate forms for use in collecting information from contributing companies and ETCs;
- J.** pay administrative expenses out of the fund in accordance with the budget approved by the commission;
- K.** petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law;
- L.** conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, 01-01-15]

17.11.10.13 DISPUTE RESOLUTION: The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

- A.** Mediation:
 - (1)** if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;
 - (2)** the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;
 - (3)** the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;
 - (4)** the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions

and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;

(5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

B. Arbitration:

(1) a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within ten (10) days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

C. Arbitration Procedures:

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within sixty (60) days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least ten (10) days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp, 17.11.10.13 NMAC, 01-01-15]

17.11.10.14 VARIANCES AND WAIVERS: Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

A. General requirements:

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

B. Contents of the petition. A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp, 17.11.10.14 NMAC, 01-01-15]

17.11.10.15 GENERAL REPORTING REQUIREMENTS:

A. Reports require declaration: all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

B. Time for reporting: where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

C. Reporting forms: contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

D. Electronic filing: the administrator shall accept electronic reporting when practicable.

E. Confidentiality: the commission shall have access to all information reported to the administrator. Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information

submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

F. The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, or to delete information that is not necessary.

[17.11.10.15 NMAC - Rp, 17.11.10.15 NMAC, 01-01-15]

17.11.10.16 REVENUE REPORTS: Each ETC and contributing company shall submit on or before April 1 of each year a revenue report on the form prescribed by the administrator detailing its intrastate retail public telecommunications revenues for the prior calendar year.

[17.11.10.16 NMAC - Rp, 17.11.10.16 NMAC, 01-01-15]

17.11.10.17 OTHER REPORTS: ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, on or before May 1 of each year, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

A. contributing companies, including ETCs, shall report the number and type of access lines or New Mexico telephone numbers subscribed to in total and within rural areas;

B. ETCs that are local exchange carriers shall report their number of intrastate switched access minutes;

C. contributing companies shall report the cost of collecting universal service fund (USF) surcharges, fulfilling reporting requirements, and other administrative costs of complying with this rule;

D. ETCs shall report:

(1) all revenues, compensation, payments, or subsidies received from all sources, including, but not limited to end-user customers, the state, and the federal government;

(2) all dividends or equivalents paid to shareholders, cooperative members, or others holding an ownership interest in the ETC; and

(3) compensation, including value of benefits, paid to the five highest-compensated employees of the carrier.

E. Concurrently with the annual federal ETC reporting deadline, ETCs (other than those receiving only support pursuant to 17.11.11 NMAC) shall file with the commission a report that includes information supplied by Form 481 plus New Mexico-specific Form 481 information if the Form 481 is consolidated, modified to demonstrate whether the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. The report shall also include maintenance and build-out plans showing how the payments were used for the purpose stated in Subsection A of 17.11.10.27 NMAC and how they were used in conjunction with federal high cost support.

[17.11.10.17 NMAC - Rp, 17.11.10.17 NMAC, 01-01-15]

17.11.10.18 CONTACT PERSONS: All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp, 17.11.10.18 NMAC, 01-01-15]

17.11.10.19 ANNUAL DETERMINATION OF FUND:

A. The administrator shall determine the amount of the fund annually, subject to commission approval, on or before October 1 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate.

B. In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund size greater than that which the commission has previously established, the commission may order an adjustment to the size of the fund.

C. The amount of the fund shall be equal to the sum of each ETC's revenue requirements, calculated pursuant to this section, plus any other support requirements determined by the commission pursuant to 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance.

D. Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

E. Except where the commission has established support based on need pursuant to 17.11.10.25 NMAC, the revenue requirement for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's applicable intrastate access minutes multiplied by the difference between the allowable intrastate access rate established by Section 63-9H-6(I) NMSA 1978 and the carrier's historical intrastate access rate, with the product of this computation multiplied by the carrier's historical collection factor, and then reduced by the carrier's imputed benchmark revenue. The applicable intrastate access minutes to be used for 2015 and 2016 shall be the ETC's 2004 minutes adjusted by 50% of the total increase or decrease in the ETC's minutes between 2004 and 2012. For subsequent years, the applicable access minutes shall be the ETC's intrastate access minutes for the calendar year that is two years prior to the year for which the calculation is made. The formula stated arithmetically is as follows: ((Historical Rate Minus Allowable Rate) Times applicable minutes Times Collection Factor) Minus Imputed Benchmark Revenue.

F. The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.
[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, 01-01-15]

17.11.10.20 SRUSF SURCHARGE CAP AND DETERMINATION OF RATE AND CONTRIBUTION:

A. Effective as of January 1, 2015, the SRUSF surcharge rate is capped at 3.0%. The administrator shall recommend the amount of the SRUSF surcharge rate annually, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies and any other pertinent and reliable information available to the administrator or the commission, and applying the cap.

B. The rate recommended by the administrator shall go into effect unless modified or disapproved by the commission.

C. The surcharge rate shall be equal to the annual fund requirement determined by the commission divided by the sum of intrastate retail telecommunications revenue for all contributing carriers in New Mexico, and may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year, subject to the cap.

D. Each contributing company's monthly contribution shall equal the state USF surcharge rate multiplied by its intrastate retail telecommunications revenues in New Mexico for the month.

E. If, for any month the administrator finds that the fund balance is insufficient to meet the sum of all ETCs' revenue requirements (including support pursuant to 17.11.10.25 NMAC) and 17.11.11 NMAC plus administrative expenses and maintain a prudent fund balance, the administrator shall prorate all payments to each ETC. Any reduction in payments to ETCs resulting from prorated disbursements shall be paid out only during the calendar year when such insufficiency occurred and only if sufficient monies have been paid into the fund in that calendar year. If the fund accumulates a surplus beyond what the administrator and the commission believes is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

F. Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator.

G. The cap shall remain in effect for three years. The commission shall evaluate and redetermine the cap in an appropriate proceeding to be completed two and one-half years following the effective date. The commission shall notify all contributing companies, ETCs, and the administrator of any adjustment to the cap at least three months prior to expiration of the three-year effective period, and the new SRUSF surcharge rate cap shall be in effect for a three-year period commencing upon expiration of the prior three-year effective period. Each succeeding evaluation and redetermination shall occur in the same manner as described above.

[17.11.10.20 NMAC - Rp, 17.11.10.20 NMAC, 01-01-15]

17.11.10.21 RECOVERY OF CONTRIBUTIONS:

A. A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

B. A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

C. The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers.

[17.11.10.21 NMAC - Rp, 17.11.10.21 NMAC, 01-01-15]

17.11.10.22 FUND DISBURSEMENTS:

A. The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator.

B. The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC, subject to proration as provided in Subsection E of 17.11.10.20 NMAC.

C. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

D. The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

[17.11.10.22 NMAC - Rp, 17.11.10.22 NMAC, 01-01-15]

17.11.10.23 DESIGNATION OF ETCs:

A. Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

B. Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

C. On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

D. Upon approval of a carrier for ETC status under these rules, the commission may, if requested, establish the carrier's support rate in accordance with the requirements of 17.11.10.25 NMAC. In determining a just and reasonable support rate for an ETC, the commission shall:

(1) consider the cost of efficiently providing services to the proposed service area, including a rate of return determined by the commission to be reasonable, using the most cost-effective technologies, but also taking into consideration existing infrastructure;

(2) consider the amount of support available to the ETC through the federal universal service funds;

(3) ensure that the support rate for a competitive carrier not exceed the equivalent support received through these rules by the incumbent carrier or carriers serving the proposed service area.

E. On its own motion or in response to a petition, the commission may modify an ETC's support rate to reflect more current cost information or changes in service volumes.

[17.11.10.23 NMAC - Rp, 17.11.10.23 NMAC, 01-01-15]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND SUPPORT RATES:

A. Any entity seeking designation as a state or federal ETC must file a petition with the commission. In the case of a petition for ETC designation and support rate, the petition shall:

(1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in 47 C.F.R. Section 54.207;

(2) demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e)) to be designated as a federal ETC;

(3) demonstrate that the proposed designation is in the public interest;

(4) include the information required by 17.11.10.25 NMAC;

(5) provide a five-year plan demonstrating how support from the fund will be used to improve the petitioner's coverage, service quality or capacity throughout the service area for which it seeks designation;

(6) demonstrate the petitioner's ability to remain functional in emergency situations;

- (7) demonstrate that the petitioner will satisfy consumer protection and service quality standards;
- (8) offer local usage plans comparable to those offered by incumbent local exchange carriers in the areas for which the petitioner seeks designation;
- (9) acknowledge that the petitioner may be required to provide equal access if all other ETCs in the designated area relinquish their designations;
- (10) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;
- (11) address the impact of designation of the petitioner on the size of the fund;
- (12) address the unique advantages and disadvantages of the petitioner's service offering;
- (13) demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame; and
- (14) provide such other information as the commission or the administrator may find appropriate.

B. A petition by an existing ETC for a support rate shall demonstrate that granting the proposed support rate is in the public interest and shall include the information required by 17.11.10.25 NMAC.

C. Consideration of the public interest will apply in all ETC designation and support rate proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

D. The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company's petition. An order approving a petition for ETC designation shall specify the service area for which designation is made and an order approving either a petition for ETC designation or a petition for a support rate shall state the approved support rate.

E. The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

F. The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the fund.

[17.11.10.24 NMAC - Rp, 17.11.10.24 NMAC, 01-01-15]

17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:

A. An ETC serving in a high-cost area of the state may petition the commission for support from the fund when such payments are needed to ensure the widespread availability and affordability of residential local exchange service in the high-cost area of the state served by the ETC.

B. In addition to establishing need as described in Subsection A of this section, a petition for support based on need shall demonstrate with particularity how the proposed payments from the fund will be used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27 NMAC.

C. In support of the petition, the ETC must make available to the commission all information supplied by Form 481 (or a similar abbreviated form) for the four quarters prior to the petition filing date, plus New Mexico-specific Form 481 information if the Form 481 information is consolidated. The commission may also require additional information from the ETC that it deems necessary, including but not limited to information relating to the ETC's revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of residential local exchange service in the ETC's high cost area in the state.

D. The commission shall resolve each petition for support based on need with or without a hearing no later than six (6) months following the filing date of the petition, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

[17.11.10.25 NMAC - Rp, 17.11.10.25 NMAC, 01-01-15]

17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:

A. If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

B. The contributing company shall pay the requested amount within twenty-one (21) days of the date of the notice or seek dispute resolution as provided in this rule.

C. If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

D. Upon request by the administrator, a complaint filed by an interested party, or on its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

E. The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1 et seq. NMSA 1978.
[17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, 01-01-15]

17.11.10.27 USE OF FUND SUPPORT:

A. An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 et seq. NMSA 1978, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to preserve and advance universal service, that is, to provide, at reasonable and affordable rates, access by consumers in all regions, including low-income consumers and those in rural, insular and high cost areas, to quality telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to services provided in other areas.

B. If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support for purposes other than to preserve and advance universal service, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund.
[17.11.10.27 NMAC - Rp, 17.11.10.27 NMAC, 01-01-15]

17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:

A. The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

B. In the normal course of business, the administrator will give at least three (3) days' notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.
[17.11.10.28 NMAC - Rp, 17.11.10.28 NMAC, 01-01-15]

17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND: The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.
[17.11.10.29 NMAC - Rp, 17.11.10.29 NMAC, 01-01-15]

17.11.10.30 ADVISORY BOARD:

A. The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one (1) or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one (1) representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: rural incumbent telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; interexchange carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The commission shall resolve any dispute among the

carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three (3) years. Members of the board may be reappointed to subsequent terms with the approval of the commission. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

B. The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

C. The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for one (1) year, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum.

[17.11.10.30 NMAC - Rp, 17.11.10.30 NMAC, 01-01-15]

HISTORY OF 17.11.10 NMAC: [RESERVED]

Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 13.10, State Rural Universal Service Fund (filed 11/15/2005) repealed effective 01/01/15.

Other History:

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 01/01/15.