

HOUSE BUSINESS AND EMPLOYMENT COMMITTEE SUBSTITUTE FOR
HOUSE BILL 442

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE TELECOMMUNICATIONS
SAFEGUARDS ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Telecommunications Safeguards Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Telecommunications Safeguards Act:

A. "minimum broadband transmission speed" means
high-speed internet access capability as measured by a download
speed of seven megabytes per second and an upload speed of one
megabyte per second;

B. "municipal" or "municipality" means any
incorporated city, town or village, whether incorporated under
general act, special act or special charter;

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underscored material = new
[bracketed material] = delete

1 C. "municipal-owned telecommunications service
2 provider" means a municipality that provides telecommunications
3 service using a telecommunications network, whether directly,
4 indirectly or through an interlocal agreement or a joint
5 agency;

6 D. "subscriber" means a person that lawfully
7 receives or purchases, as an end user, video,
8 telecommunications or broadband services;

9 E. "telecommunications network" means a wired or
10 wireless network for the provision of telecommunications
11 service;

12 F. "telecommunications service" means the two-way
13 transmission of signs, signals, writing, images, sounds,
14 messages, data or other information of any nature by wire,
15 radio, light waves or other electromagnetic means, offered to
16 the public generally;

17 G. "unserved area" means one or more contiguous
18 census blocks within the legal boundaries of a municipality
19 seeking to provide the unserved area with video,
20 telecommunications or broadband service, where at least nine
21 out of ten households lack access to facilities-based,
22 terrestrial broadband service, either fixed or mobile, or
23 satellite broadband service, at the minimum broadband
24 transmission speed; and

25 H. "video service" means video programming services

1 provided through wireline facilities located at least in part
2 in the public rights of way without regard to delivery
3 technology.

4 SECTION 3. [NEW MATERIAL] REQUIREMENTS FOR MUNICIPAL-
5 OWNED TELECOMMUNICATIONS SERVICE PROVIDER.--

6 A. A municipal-owned telecommunications service
7 provider shall:

8 (1) comply with all local, state and federal
9 laws, regulations or other requirements applicable to the
10 provision of the telecommunications service if provided by a
11 private telecommunications service provider;

12 (2) limit the provision of telecommunications
13 service to the corporate limits of the municipality providing
14 the telecommunications service;

15 (3) provide nondiscriminatory access to
16 private telecommunications service providers on a first-come,
17 first-served basis to rights of way, poles or conduits owned,
18 leased or operated by the municipality, unless the facilities
19 have insufficient capacity for the access and additional
20 capacity cannot reasonably be added to the facilities. For
21 purposes of this paragraph, the term "nondiscriminatory access"
22 means that access shall be granted on the same terms and
23 conditions as that given to a municipal-owned
24 telecommunications service provider; and

25 (4) annually remit to the general fund of the

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1 municipality an amount equivalent to all taxes or fees that a
2 private telecommunications service provider would be required
3 to pay to the municipality or county in which the municipality
4 is located, including any applicable tax refunds received by
5 the municipal-owned telecommunications service provider because
6 of its government status, and a sum equal to the amount of
7 property tax that would have been due if the municipal-owned
8 telecommunications service provider were a private
9 telecommunications service provider.

10 B. A municipal-owned telecommunications service
11 provider shall not:

12 (1) directly or indirectly, under the powers
13 of a municipality, exercise power or authority in any area,
14 including zoning or land-use regulation, to require any person,
15 including residents of a particular development, to use or
16 subscribe to any telecommunications service provided by the
17 municipal-owned telecommunications service provider;

18 (2) air advertisements or other promotions for
19 the municipal-owned telecommunications service provider on a
20 public, educational or governmental access channel if the
21 municipality requires another telecommunications service
22 provider to carry the channel;

23 (3) use municipal resources that are not
24 allocated for cost accounting purposes to the municipal-owned
25 telecommunications service provider to promote municipal-owned

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1 telecommunications service in comparison to private services
2 or, directly or indirectly, require municipal employees,
3 officers or contractors to purchase municipal-owned
4 telecommunications services;

5 (4) subsidize the provision of municipal-owned
6 telecommunications service with funds from any other non-
7 communications service, operation or other revenue source,
8 including any funds or revenue generated from electric, gas,
9 water, sewer or garbage services; or

10 (5) price any telecommunications service below
11 the cost of providing the service, including any direct or
12 indirect subsidies received by the municipal-owned
13 telecommunications service provider and allocation of costs
14 associated with any shared use of buildings, equipment,
15 vehicles and personnel with other municipal departments.

16 SECTION 4. [NEW MATERIAL] LIMITATION ON MUNICIPAL VIDEO
17 SERVICE, TELECOMMUNICATIONS SERVICE AND BROADBAND SERVICE.--

18 A. Except with regard to unserved areas, a
19 municipality shall not, directly or indirectly:

20 (1) offer or provide to one or more
21 subscribers video service, telecommunications service or
22 broadband service; or

23 (2) purchase, lease, construct, maintain or
24 operate any facility for the purpose of enabling a private
25 business or entity to offer, provide, carry or deliver video

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1 service, telecommunications service or broadband service to one
2 or more subscribers.

3 B. For purposes of the Telecommunications
4 Safeguards Act, a municipality offers or provides video
5 service, telecommunications service or broadband service if the
6 municipality offers or provides the service:

7 (1) directly or indirectly, including through
8 an authority or instrumentality:

9 (a) acting on behalf of the
10 municipality; or

11 (b) for the benefit of the municipality;

12 (2) by itself;

13 (3) through a partnership, joint venture or
14 other entity in which the municipality participates; or

15 (4) by contract, resale or otherwise.

16 C. Nothing in the Telecommunications Safeguards Act
17 shall prohibit a municipality from purchasing, leasing,
18 constructing or equipping facilities:

19 (1) that are designed to provide video
20 service, telecommunications service or broadband service within
21 the municipality that the municipality uses exclusively for
22 internal government purposes, including communications between
23 and among government buildings and other public buildings, such
24 as public schools, public safety and public library facilities;
25 or

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1 (2) that are designed to provide video
2 service, telecommunications service or broadband service to an
3 unserved area.

4 SECTION 5. [NEW MATERIAL] LIMITATION ON MUNICIPAL EMINENT
5 DOMAIN POWER.--

6 A. A municipality shall not exercise its power of
7 eminent domain to condemn a plant and equipment of a private
8 provider of video service, telecommunications service or
9 broadband service for the purpose of offering or providing to
10 one or more subscribers video service, telecommunications
11 service or broadband service, or to utilize such plant and
12 equipment for the purpose of enabling a private business or
13 entity to offer, provide, carry or deliver video service,
14 telecommunications service or broadband service to one or more
15 subscribers.

16 B. Except with regard to providing video service,
17 telecommunications service or broadband service to unserved
18 areas, a municipality shall not exercise its power of eminent
19 domain to condemn any real property, whether in whole or in
20 part, to obtain an easement for the purpose of offering or
21 providing to one or more subscribers video service,
22 telecommunications service or broadband service, or to
23 facilitate the construction of a facility for the purpose of
24 enabling a private business or entity to offer, provide, carry
25 or deliver video service, telecommunications service or

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1 broadband service to one or more subscribers.

2 SECTION 6. [NEW MATERIAL] ANTITRUST PROVISIONS.--When a
3 municipality is offering or providing a video service,
4 telecommunications service or broadband service to one or more
5 subscribers, any immunity from antitrust liability afforded to
6 municipalities pursuant to Section 57-1-16 NMSA 1978 shall not
7 apply to the municipality with respect to the offering or
8 provision of those services.

9 SECTION 7. [NEW MATERIAL] SEVERABILITY.--If any part or
10 application of the provisions of the Telecommunications
11 Safeguards Act is held invalid, the remainder or its
12 application to other situations or persons shall not be
13 affected.

14 SECTION 8. [NEW MATERIAL] APPLICABILITY.--

15 A. The Telecommunications Safeguards Act shall not
16 affect a municipality that is providing video service,
17 telecommunications service or broadband service to subscribers
18 via a municipally owned video, telecommunications or broadband
19 system existing on the effective date of this act.

20 B. The Telecommunications Safeguards Act shall
21 apply only to municipalities located in class A counties.

22 SECTION 9. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect immediately.