



STATUTE

Telecommunications Access Act

63-9F-1. Short title.

Chapter 63, Article 9F NMSA 1978 may be cited as the "Telecommunications Access Act".

63-9F-2. Findings and purpose.

A. The legislature finds that:

- (1) it supports those provisions of the federal Americans with Disabilities Act of 1990 that address the need to provide telecommunications access to all citizens;
- (2) many New Mexicans are hearing or speech impaired and because of their impairment are unable to use traditional telecommunications equipment and services without assistance; and
- (3) the state's hearing or speech impaired citizens are a substantial and valuable resource and their participation as contributing and productive members of our society would be enhanced substantially if full access to telecommunications service were made available to them.

B. It is the purpose of the Telecommunications Access Act [63-9F-1 NMSA 1978] to provide a statutory framework and funding under which the opportunity for full access to telecommunications services is made available to hearing or speech impaired New Mexicans.

63-9F-3. Definitions.

As used in the Telecommunications Access Act:

- A. "commission" means the commission for deaf and hard-of-hearing persons;
- B. "communications assistant" means an individual who translates conversation from text to voice and from voice to text between two end users of a telecommunications service;

C. "home service provider" means a facilities-based carrier or reseller with which a customer contracts for the provision of wireless communications services;

D. "impaired" means having an impairment of or deficit in the ability to hear or speak, or both;

E. "interconnected voice over internet protocol service" means a service that:

- (1) enables real-time, two-way voice communications;
- (2) requires a broadband connection from the user's location;
- (3) requires internet protocol-compatible customer premises equipment; and
- (4) permits users generally to receive calls that originate on the public-switched telephone network and to terminate calls to the public-switched telephone network;

F. "intrastate telecommunications service":

- (1) means the provision of access lines, special services and intrastate toll services, including for telephone calls originating and terminating in the state; and
- (2) does not include interconnected voice over internet protocol service or wireless communications service;

G. "place of primary use" means the street address representative of where a customer's use of a wireless communications service primarily occurs and that is:

- (1) the residential street address or the primary business street address **of** the customer; and
- (2) within the licensed service area of the home service provider;

H. "prepaid consumer" means a person who purchases prepaid wireless communications service in a retail transaction;

I. "prepaid wireless communications service" means a wireless communications service that must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount;

J. "retail transaction" means the purchase of prepaid wireless communications service from a seller for any purpose other than for resale;

- K. "seller" means a person who sells prepaid wireless communications service to another person;
- L. "specialized telecommunications equipment" means devices that enable or assist an impaired individual to communicate with another individual using the telephone network;
- M. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section [63-9B-3](#) NMSA 1978;
- N. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person; and
- O. "wireless communications service" means a commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended, but excludes internet access service.

63-9F-5. Repealed.

63-9F-6. Telecommunications relay system.

- A. The commission shall administer a telecommunications relay system that enables impaired individuals to communicate with unimpaired individuals.
- B. The commission shall invite proposals or bids, or both, from telecommunications companies to design and implement a telecommunications relay system. The commission shall comply with the provisions of the Procurement Code [[13-1-28](#) NMSA 1978] in contracting for the services and property required. The commission shall consider the factors of price and the interest of the community of impaired individuals in having access to a high quality and technologically advanced system. New Mexico residency shall be given a weight of five percent of the total weight of all evaluation factors in a

proposal evaluation. Any business that qualifies as a "resident business" as defined in Section [13-1-21 NMSA 1978](#) shall receive a five percent preference. In the procurement process, the commission shall request and consider the recommendations of the communications assistants who have provided the voice relay service used in the state.

C. If the commission determines that no proposal or bid is acceptable after review, the commission may provide the telecommunications relay system.

D. The telecommunications relay system shall:

- (1) be available statewide for operation twenty-four hours a day every day of the year;
- (2) relay all messages promptly and accurately;
- (3) protect and maintain the privacy of individuals using the system;
- (4) preserve the confidentiality of all telephone communications; and
- (5) conform to all applicable standards established by state and federal laws and regulations adopted pursuant to those laws.

63-9F-7. Repealed.

63-9F-8. Commission duties; power to audit.

A. The commission shall perform all actions necessary to carry out the provisions of the Telecommunications Access Act [[63-9F-1 NMSA 1978](#)], including;

- (1) promulgating and administering such policies, procedures and rules as are necessary to comply with the purpose of that act and to ensure that the specialized telecommunications equipment program and the relay system are in compliance with the applicable state and federal laws and rules adopted pursuant to those laws;
- (2) obtaining certification from the federal communications commission that the telecommunications relay system is in compliance with applicable federal rules;
- (3) making expenditures for the specialized telecommunications equipment program and the telecommunications relay system;

- (4) ensuring the quality of the telecommunications relay system and the satisfaction of its users;
- (5) identifying the need for specialized telecommunications equipment by impaired individuals;
- (6) identifying the problems that impaired individuals have in acquiring specialized telecommunications equipment; and
- (7) providing funding for the specialized telecommunications equipment program.

B. The commission may require an annual audit of each telecommunications company participating in the telecommunications relay system to account for all surcharges billed and collected pursuant to the Telecommunications Access Act. Audits conducted pursuant to this subsection shall be at the expense of the requesting agency.

63-9F-9. Limit on liability.

The commission and the provider of the telecommunications relay system and their employees shall not be liable for any claims, actions, damages or causes of action arising out of or resulting from the establishment, participation in or operation of the telecommunications relay system except for gross negligence or intentional acts.

63-9F-10. Complaints.

All complaints, including complaints about the service provided by the telecommunications relay system, the provider of the telecommunications relay system or the operation and administration of the telecommunications relay system, shall be made directly to the commission.

63-9F-11. Imposition of surcharge.

A. A telecommunications relay service surcharge of thirty-three hundredths percent is imposed on the gross amount paid:

- (1) by customers, except customers whose telephone service rates are reduced as authorized by the Low Income Telephone Service Assistance Act [Chapter 63, Article 9C NMSA 1978], for intrastate telecommunications services provided in this state;

- (2) by customers for the intrastate portion of interconnected voice over internet protocol service;
- (3) by customers for intrastate mobile telecommunications services that originate and terminate in the same state, regardless of where the mobile telecommunications services originate, terminate or pass through, provided by home service providers to customers whose place of primary use is in New Mexico; and
- (4) by a prepaid consumer in a retail transaction.

B. The telecommunications relay service surcharge shall be included on the monthly bill of each customer of a local exchange company or other telecommunications company providing intrastate telecommunications services, interconnected voice over internet protocol services or intrastate mobile telecommunications services and paid at the time of payment of the monthly bill. Receipts from selling a service to any other telecommunications company or provider for resale shall not be subject to the surcharge. The customer shall be liable for the payment of this surcharge to the provider of intrastate mobile telecommunications services, the provider of interconnected voice over internet protocol services or the local exchange company or other telecommunications company providing intrastate telephone services to the customer.

C. For the purposes of the surcharge imposed on a retail transaction pursuant to Paragraph (4) of Subsection A of this section:

- (1) the surcharge shall be collected by the seller from the prepaid consumer with respect to each retail transaction occurring in the state. The amount of the surcharge shall be either separately stated on an invoice, receipt or other similar document that is provided to the prepaid consumer by the seller or otherwise disclosed to the prepaid consumer;
- (2) for the purposes of Paragraph (1) of this subsection, a retail transaction that is effected in person by a prepaid consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction is treated as occurring in this state if the retail transaction is treated as occurring in

this state for purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

(3) the surcharge is the liability of the prepaid consumer and not of the seller or any provider, except that the seller shall be liable to remit all surcharges collected from the prepaid consumer as provided in this subsection, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt or other similar document provided to the prepaid consumer by the seller;

(4) the amount of the surcharge that is collected by a seller from a prepaid consumer, if such amount is separately stated on an invoice, receipt or other similar document provide to the prepaid consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency;

(5) when prepaid wireless communications service is sold with one or more other products or services for a single, no-itemized price, the percentage specified in Subsection A of this section shall apply to the entire non-itemized price unless the seller elects to apply such percentage to:

(a) if the amount of the prepaid wireless communications service is disclosed to the prepaid consumer as a dollar amount, such dollar amount; or

(b) if the seller can identify the portion of the price that is attributable to the prepaid wireless communications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including non-tax purposes, such portion;

(6) if a minimal amount of prepaid wireless communications service is sold with a prepaid wireless device for a single, non-itemized price, the seller may elect not to apply the percentage specified in Subsection A of

this section to such transaction. For the purposes of this paragraph, an amount of service denominated as ten minutes or less, or five dollars (\$5.00) or less, is minimal;

(7) surcharges collected by sellers shall be remitted to the taxation and revenue department at the times and in the manner provided with respect to the Gross Receipts and Compensating Tax Act. The department shall establish registration and payment procedures that substantially coincide with registration and payment procedures that apply to the Gross Receipts and Compensating Tax Act. A seller shall be permitted to deduct and retain three percent of surcharges that are collected by the seller from the prepaid consumer;

(8) the audit and appeal procedures applicable to the Gross Receipts and Compensating Tax Act shall apply to the surcharge;

(9) the taxation and revenue department shall establish procedures by which a seller of prepaid wireless communications services may document that a sale is not a retail transaction which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for the Gross Receipts and Compensating Tax Act; and

(10) notwithstanding Paragraph (1) of this subsection, if a 911 surcharge is imposed on prepaid wireless communications service pursuant to the Enhanced 911 Act, the taxation and revenue department shall promulgate rules to permit sellers to combine the surcharge imposed pursuant to this section and the surcharge imposed pursuant the Enhanced 911 Act into a single surcharge on the invoice, receipt or other similar document that is provided to the prepaid consumer. The department shall ensure that appropriate surcharge revenues are directed proportionately to the respective 911 and telecommunications relay service funds.

D. A telecommunications company providing intrastate telecommunications services, a home service provider providing intrastate mobile telecommunications services and a seller of interconnected voice over internet protocol services shall, on sales subject to the telecommunications relay service surcharge, assess and

collect the surcharge and remit the surcharge collected monthly to the taxation and revenue department on or before the twenty-fifth day of the month following collection. The department shall administer and enforce the collection of the surcharge in accordance with the Tax Administration Act.

E. The taxation and revenue department shall transfer to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted in accordance with Subsection F of this section. Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the months in which the surcharge is collected.

F. The taxation and revenue department may deduct an amount not to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection and shall remit that amount to the state treasurer for deposit in the general fund each month.

G. The commission shall report to the revenue stabilization and tax policy committee annually by September 30 the following information with respect to the prior fiscal year:

- (1) the amount and source of revenue received by the telecommunications access fund;
- (2) the amount and category of expenditures from the fund; and
- (3) the balance of the fund on that June 30.

63-9F-12. Telecommunications access fund; established.

There is created in the state treasury the "telecommunications access fund". Money appropriated to the fund or accruing to it through gifts, grants, fees, surcharges, penalties or bequests shall be delivered to the state treasurer for deposit in the fund. The fund shall be invested as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission. The commission shall administer the fund. Money in the fund is appropriated to the commission for the purpose of carrying out the provisions of the

Telecommunications Access Act [[63-9F-1 NMSA 1978](#)]. The commission may request the state budget division of the department of finance and administration to approve the expenditure of funds deposited in the telecommunications access fund for the purpose of defraying salary and other necessary expenses incurred by the commission in the administration of the provisions of the Telecommunications Access Act. The state budget division may approve the expenditure of not more than ten percent of the amount deposited in the telecommunications access fund during any fiscal year for expenses incurred by the commission in administering that act. In addition, money in the fund shall be available for appropriation by the legislature to the commission for the performance of its duties pursuant to Chapter 28, Article 11B NMSA 1978. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

63-9F-13. Confidentiality of translated or relayed conversations; penalty for breach of confidentiality.

- A. A communications assistant who is employed to translate or relay a conversation to or from an impaired individual is a conduit for the conversation and shall not disclose, or be compelled to disclose in any nonjudicial proceeding, the contents of the conversation.
- B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of [Section 31-19-1 NMSA 1978](#).