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HOUSE BILL 442

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

INTRODUCED BY

Alonzo Baldonado

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, incorporated

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1 counties and H class counties;

2 C. "subscriber" means a person that lawfully  
3 receives or purchases, as an end user, video,  
4 telecommunications or broadband services;

5 D. "telecommunications service" means the two-way  
6 transmission of signs, signals, writing, images, sounds,  
7 messages, data or other information of any nature by wire,  
8 radio, light waves or other electromagnetic means, offered to  
9 the public generally;

10 E. "unserved area" means one or more contiguous  
11 census blocks within the legal boundaries of a municipality  
12 seeking to provide the unserved area with video,  
13 telecommunications or broadband service, where at least nine  
14 out of ten households lack access to facilities-based,  
15 terrestrial broadband service, either fixed or mobile, or  
16 satellite broadband service, at the minimum broadband  
17 transmission speed; and

18 F. "video service" means video programming services  
19 provided through wireline facilities located at least in part  
20 in the public rights of way without regard to delivery  
21 technology.

22 SECTION 3. [NEW MATERIAL] LIMITATION ON MUNICIPAL VIDEO  
23 SERVICE, TELECOMMUNICATIONS SERVICE AND BROADBAND SERVICE.--

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

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1 (1) offer or provide to one or more  
2 subscribers video service, telecommunications service or  
3 broadband service; or

4 (2) purchase, lease, construct, maintain or  
5 operate any facility for the purpose of enabling a private  
6 business or entity to offer, provide, carry or deliver video  
7 service, telecommunications service or broadband service to one  
8 or more subscribers.

9 B. For purposes of the Telecommunications  
10 Safeguards Act, a municipality offers or provides video  
11 service, telecommunications service or broadband service if the  
12 municipality offers or provides the service:

13 (1) directly or indirectly, including through  
14 an authority or instrumentality:

15 (a) acting on behalf of the  
16 municipality; or

17 (b) for the benefit of the municipality;

18 (2) by itself;

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

21 (4) by contract, resale or otherwise.

22 C. Nothing in the Telecommunications Safeguards Act  
23 shall prohibit a municipality from purchasing, leasing,  
24 constructing or equipping facilities:

25 (1) that are designed to provide video

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1 service, telecommunications service or broadband service within  
2 the municipality that the municipality uses exclusively for  
3 internal government purposes, including communications between  
4 and among government buildings and other public buildings, such  
5 as public schools, public safety and public library facilities;  
6 or

7 (2) that are designed to provide video  
8 service, telecommunications service or broadband service to an  
9 unserved area.

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

12 A. A municipality shall not exercise its power of  
13 eminent domain to condemn a plant and equipment of a private  
14 provider of video service, telecommunications service or  
15 broadband service for the purpose of offering or providing to  
16 one or more subscribers video service, telecommunications  
17 service or broadband service, or to utilize such plant and  
18 equipment for the purpose of enabling a private business or  
19 entity to offer, provide, carry or deliver video service,  
20 telecommunications service or broadband service to one or more  
21 subscribers.

22 B. Except with regard to providing video service,  
23 telecommunications service or broadband service to unserved  
24 areas, a municipality shall not exercise its power of eminent  
25 domain to condemn any real property, whether in whole or in

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1 part, to obtain an easement for the purpose of offering or  
2 providing to one or more subscribers video service,  
3 telecommunications service or broadband service, or to  
4 facilitate the construction of a facility for the purpose of  
5 enabling a private business or entity to offer, provide, carry  
6 or deliver video service, telecommunications service or  
7 broadband service to one or more subscribers.

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

15 SECTION 6. [NEW MATERIAL] SEVERABILITY.--If any part or  
16 application of the provisions of the Telecommunications  
17 Safeguards Act is held invalid, the remainder or its  
18 application to other situations or persons shall not be  
19 affected.

20 SECTION 7. [NEW MATERIAL] APPLICABILITY.--The  
21 Telecommunications Safeguards Act shall not affect a  
22 municipality that is providing video service,  
23 telecommunications service or broadband service to subscribers  
24 via a municipally owned video, telecommunications or broadband  
25 system existing on the effective date of this act.

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SECTION 8. EMERGENCY.--It is necessary for the public  
peace, health and safety that this act take effect immediately.