

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE COLLECTION )  
OF GROSS RECEIPTS TAXES FOR )  
TELECOMMUNICATIONS SERVICES )  
PROVIDED TO NEW MEXICO INDIAN )  
TRIBES AND MEMBERS OF NEW )  
MEXICO INDIAN TRIBES )  
\_\_\_\_\_ )**

**Utility Case No. 3588**

**NOTICE OF INQUIRY**

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission (“Commission”) is commencing an inquiry into the policies and procedures of New Mexico’s telecommunications providers with respect to the collection of state and local government taxes, including the New Mexico gross receipts tax, on telecommunications services provided to New Mexico Indian Tribes and members of New Mexico Indian Tribes. This matter comes before the Commission upon its own Motion. The Commission **FINDS AND CONCLUDES:**

1. The federal Indian Trader regulations<sup>1</sup> preempt the State of New Mexico from collecting gross receipts tax<sup>2</sup> on receipts for non-Indian services rendered to an Indian tribal entity or members of an Indian tribe on a reservation. *Warren Trading Post Co. v. Arizona Tax Commission*, 380 U. S. 685, 85 S. Ct. 1242, 14 L.Ed.2d 165 (1965); *Central Machinery Co. v. Arizona State Tax Commission*, 448 U.S. 160, 100 S.Ct. 2592, 65 L.Ed.2d 684 (1980). *See also New Mexico Taxation and Revenue Department v. Laguna Industries, Inc.* 115 N.M. 553, 855 P.2d 127 (1993)(federal Indian Trader regulations bar state taxation of transactions with Indians on their own tribal land); 3 NMAC 2.4.9.6 (“Receipts from selling telecommunications services to an Indian tribe or member thereof on that tribe’s territory are not subject to gross receipts tax if taxation of such receipts is prohibited by federal law.”)

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<sup>1</sup> 25 U.S.C. §§ 261 to 264 (1988).

<sup>2</sup> NMSA 1978, §§ 7-9-1 to – 82 (1992).

2. It has come to the Commission's attention that notwithstanding the provisions of federal and state law prohibiting the collection of state gross receipts tax from Indian tribes and their members for telecommunications services, it appears that some telecommunications providers in New Mexico may be collecting gross receipts taxes from New Mexico tribes and tribal members.

3. The Commission is aware that New Mexico Taxation and Revenue Department Regulations require a seller of telecommunications services to demonstrate that the telecommunications service is being sold to an Indian tribe or member before being relieved of the requirement to collect gross receipts tax. *See* 3 NMAC 9.6.2. Telecommunications service occurs on a tribe's territory when "calls originate or terminate through an instrument on the tribe's territory" and "the service is billed to the Indian tribe or a member thereof." 3 NMAC 9.6.1 (1).

In addition, 3 NMAC 9.6.2.1 requires that a seller of telecommunications service demonstrate that the service is provided to an Indian tribe or tribal member. This requirement is met by the telecommunications provider obtaining a signed statement from the purchaser that "the purchaser is an Indian tribe or member thereof." 3 NMAC 9.6.2.1. A tribal official must "attest" to the statement in the case of an Indian tribe. Individual tribal members are required to provide a signed statement identifying their official tribal or BIA census number, or submit other attestation by a tribal official. 3 NMAC 9.6.2.1. It appears that telecommunications providers in New Mexico may be charging gross receipts taxes to Indian tribes and their members when such documentation is not provided to them.

4. The Commission is concerned that many otherwise exempt Indian tribes or their members may be paying state gross receipts tax unnecessarily. The requirements of 3 NMAC 9.6.2.1 may place too great of a burden on Indian tribes and their members; telecommunications

providers may not be informing tribal members of their legal exemption from state gross receipt taxes; privacy issues may impede the ability to identify tribal members. For whatever reasons, the Commission seeks to remedy, to the extent possible, any unlawful or unnecessary collection of gross receipts tax from Indian tribes and their members.

5. It has also come to the attention of the Commission that some telecommunications providers may be charging local government taxes to Indian tribes and tribal members in connection with the provision of telecommunications services. Consequently, the Commission is interested in exploring the lawfulness of such practices.

6. Accordingly, the Commission believes it is in the public interest to commence an inquiry into the policies and procedures by which telecommunications providers collect state gross receipts tax from Indian tribes and their members for telecommunications services. In addition, the Commission is interested in learning about the reasons why state gross receipts tax is collected from Indian tribes and tribal members, and what methods and actions would best ensure that such taxes are not charged to exempt Indian tribes and their members. The Commission seeks to assure that a uniform, fair and effective process exists by which telecommunications providers satisfy the requirements of 3 NMAC 9.6.2 and that otherwise exempt Indian tribes and tribal members do not pay New Mexico gross receipts tax. This inquiry should proceed as set out in this *Notice of Inquiry*.

7. Similarly, the Commission desires to investigate the lawfulness of telecommunications providers collecting local government taxes from Indian tribes and tribal members in connection with the provision of telecommunications services.

8. The Commission has jurisdiction over telecommunications services provided in this state, and is specifically empowered to regulate billing and collection services. NMSA

1978, §§ 63-9A-1 to 20 (1998); *Mountain States Tel. & Tel. Co. v. New Mexico*, 107 N.M. 745, 764 P.2d 876 (1988).

9. The Commission will require reports to be filed with the Commission by all New Mexico telecommunications companies that provide public telecommunications services to Indian tribes, pueblos, or tribal members. These reports shall address the following questions:

a. What policies and/or procedures does the subject telecommunications provider have in place to determine the eligibility of an Indian tribe or member for a state gross receipts tax exemption?

b. What efforts has the subject telecommunications provider taken to educate eligible Indian tribes or tribal members regarding their exemption from paying state gross receipts tax?

c. What methods has the subject telecommunications provider found to be effective in obtaining the information required pursuant to 3 NMAC 9.6.2?

d. What methods have proven ineffective in obtaining the information required in 3 NMAC 9.6.2?

e. What recommendations does the subject telecommunications provider have on educating Indian tribes and tribal members regarding the applicability of 3 NMAC 9.6.2?

f. What recommendations does the subject telecommunications provider have for the Commission in implementing uniform, fair and effective methods to ensure that gross receipts tax is not collected from New Mexico Indian tribes and tribal members?

10. The Commission furthermore will require all telecommunications providers that provide public telecommunications services to Indian tribes, pueblos and members to respond to the following questions:

a. Explain why the exemption for gross receipts tax that is applicable to Indian tribes and tribal members should not extend as well to the collection of local government taxes from Indian tribes and tribal members. Provide citations to all authority supporting your conclusions.

b. If the subject telecommunications provider does collect local government taxes on telecommunications services provided to Indian tribes and tribal members, what policies and procedures does the provider utilize in identifying Indian tribes and tribal members for purposes of collecting such local government taxes?

c. What recommendations to the Commission does the subject telecommunications provider have with respect to the collection of local government taxes from Indian tribes and tribal members on delivered telecommunications services?

11. In addition, the Commission invites comments from Indian tribes and tribal members, as well as any other interest persons, with respect to the following questions:

a. Are the Indian tribes or tribal members aware of their exemption from gross receipt taxes in connection with the provision of telecommunications services?

b. What concerns do the Indian tribes or tribal members have with respect to the requirements of 3 NMAC 9.6.2?

c. Are the requirements of 3 NMAC 9.6.2 too burdensome or too invasive?

d. What recommendations do the Indian tribes or tribal members, or other interested persons, have for the Commission in implementing uniform, fair and effective

methods to ensure that gross receipts tax is not paid by New Mexico Indian tribes and tribal members for telecommunications services?

e. Under what circumstances does an Indian tribe or tribal member pay local government taxes for services provided on Indian reservations?

f. What recommendations do the Indian tribes or tribal members, or other interested persons, have for the Commission with respect to the collection of local government taxes on telecommunications services provided to Indian tribes and tribal members?

12. All New Mexico telecommunications providers that provide telecommunications services to any New Mexico Indian tribe, pueblo or tribal members, as well as any interested person, shall file written reports or comments with the Commission on these and other pertinent issues by no later than April 20, 2001. Any person wishing to respond to reports or comments shall file written response comments no later than May 4, 2001. All comments and pleadings shall bear the caption and docket number contained at the top of this *Notice of Inquiry*.

13. Reports and comments submitted in this case shall be sent to:

Pam Payne  
New Mexico Public Regulation Commission  
P. O. Box 1269  
Santa Fe, NM 87504-1269  
Telephone: (505) 827-6940

14. The Commission will review all timely submitted written reports and comments and may hold a workshop or public hearing to take oral comment. In the event the Commission schedules a workshop or public hearing, further notice will be issued regarding the time and location thereof.

15. Copies of this *Notice of Inquiry* should be sent to all persons and entities on the telecommunications mailing list, to the Governors or Presidents of the Pueblo of Acoma, the

Pueblo of Santa Ana, the Pueblo of Cochiti, the Pueblo of Santa Clara, the Pueblo of Isleta, the Pueblo of Santo Domingo, the Pueblo of Jemez, the Pueblo of Taos, the Jicarilla Apache Tribe, the Pueblo of Laguna, the Pueblo of Tesuque, the Mescalero Apache Tribe, the Pueblo of Nambe, the Pueblo of Zia, the Pueblo of Picuris, the Pueblo of Zuni, the Pueblo of Pojoaque, the Pueblo of Sandia, the Pueblo of San Felipe, the Pueblo of San Ildefonso, the Pueblo of San Juan, the Navajo Nation, to the New Mexico Taxation and Revenue Department, to any other person requesting service, and should be published in the *Albuquerque Journal*, the *Santa Fe New Mexican*, the *Las Cruces Sun News*, the *Farmington Daily Times*, the *Alamogordo Daily News*, the *Sangre de Christo Chronicle*, and in the *New Mexico Register*. In addition, this *Notice of Inquiry* shall be published on the Commission's web site.

**IT IS THEREFORE ORDERED:**

A. An inquiry regarding the policies and procedures governing the collection of state and local government taxes, including gross receipts tax, by telecommunications providers in New Mexico from Indian tribes and tribal members who purchase telecommunications services is hereby commenced as provided by this *Notice of Inquiry*.

B. Telecommunications companies that provide telecommunications services to Indian tribes, pueblos or tribal members shall fill written reports as provided in this *Notice of Inquiry*. Indian tribes, pueblos, or tribal members, along with interested persons, shall file their written comments as provided in this *Notice of Inquiry*.

C. If a workshop or public hearing is scheduled at a later time, the time and place will be announced by further notice.

D. Within five business days from the date of this *Notice of Inquiry*, Staff of the Utility Division shall mail a copy of this *Notice of Inquiry* to all persons on the telecommunications mailing list, to the Governors or Presidents of the Pueblo of Acoma, the

Pueblo of Santa Ana, the Pueblo of Cochiti, the Pueblo of Santa Clara, the Pueblo of Isleta, the Pueblo of Santo Domingo, the Pueblo of Jemez, the Pueblo of Taos, the Jicarilla Apache Tribe, the Pueblo of Laguna, the Pueblo of Tesuque, the Mescalero Apache Tribe, the Pueblo of Nambe, the Pueblo of Zia, the Pueblo of Picuris, the Pueblo of Zuni, the Pueblo of Pojoaque, the Pueblo of Sandia, the Pueblo of San Felipe, the Pueblo of San Ildefonso, the Pueblo of San Juan, the Navajo Nation and to the New Mexico Taxation and Revenue Department. In addition, Staff shall cause this *Notice of Inquiry* to be published in the *Albuquerque Journal*, the *Santa Fe New Mexican*, the *Las Cruces Sun News*, the *Farmington Daily Times*, the *Alamogordo Daily News*, the *Sangre de Cristo Chronicle*, and in the *New Mexico Register*. Furthermore, Staff shall provide this *Notice of Inquiry* by e-mail or by facsimile transmission to any persons who have so requested. Staff shall also publish this *Notice of Inquiry* on the Commission's Web site. Affidavits attesting to the publication of this *Notice of Inquiry* as described above shall be filed in this docket.

E. This *Notice of Inquiry* is effective immediately.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 27<sup>th</sup> day  
of March, 2001.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

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**TONY SCHAEFER, CHAIRMAN**

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**HERB H. HUGHES, VICE CHAIRMAN**

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**JEROME D. BLOCK, COMMISSIONER**

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**LYNDA M. LOVEJOY, COMMISSIONER**