

**For Immediate Release:**

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**Federal Judge Orders NMDoT to Issue Permits For Areas with Little or No Broadband Internet Access**

The Federal District Court of New Mexico has issued a preliminary injunction against NMDoT, ordering them to issue two right-of-way permits to NMSurf, Inc., a local Telecom and Fixed Wireless Provider. NMSurf applied for two public right-of-way permits within NMDoT’s jurisdiction for the placement of two utility poles for the purpose of providing broadband and telecom services in areas where there is little or no broadband. These specific areas are the East Mountains and south of the City of Santa Fe.

NMDoT wrongfully and hastily denied NMSurf’s, applications for access on the public right of way, on the basis that it is not a regulated public utility company within the state of New Mexico. The NMDoT also violated the Telecommunications Act in its denial as there was no ‘substantial evidence’ or basis to the original denial, as NMSurf is in fact a public utility company regulated by the PRC and FCC. As a Competitive Local Exchange Carrier, NMSurf is subject to the Telecommunications Act, specifically subsection 47 USC 332(c)(7), which essentially states that local governments may regulate ‘the placement, construction, and modification of personal wireless service facilities,’ such regulation cannot ‘**prohibit or have the effect of prohibiting the provision of personal wireless services.**’”AT&T Mobility Services, LLC v. Vill. of Corrales, 127 F. Supp. 3d 1169, 1172–73 (D.N.M. 2015), aff’d, AT & T Mobility Services, LLC v. Vill. Of Corrales, 642 Fed. Appx. 886 (10th Cir. 2016); 47 U.S.C. § 332(c)(7). See link to order below.

The Federal District Court of New Mexico stated in the order, “The Court feels it can reasonably concur with Plaintiff’s (NMSurf) position and the premise that access to wireless services is beneficial to the community at large, particularly in an areas with little or no fixed broadband service now available. Certainly, the Court more readily finds that issuance of the injunction would not be adverse to the public interest, nor is it unreasonable to expect Defendant to adhere to statutory provisions regarding the appropriate steps for denying permit applications.”

The NMDoT has prevented the expansion of broadband Internet service in areas that have desperately needed it since the onset of the pandemic. NMSurf originally filed an application to NMDoT for access to the public right-of-way to install two 40 ft utility poles to expand broadband access in November of 2020. Residents in areas where the local news has been reporting on the lack of broadband access were not aware that the NMDoT had in fact been blocking broadband access for several months. The NMDoT also violated the Federal Telecommunications Act, with it’s unsound basis of denial and the failure to provide substantial evidence of its denial. With the order, NMSurf can now proceed with its plans to expand rural broadband access in rural New Mexico, specifically in the East Mountains and South Santa Fe, areas that have lacking for months.

NMSurf is a locally owned and operated fixed wireless and fiber Internet service provider headquartered in Santa Fe, New Mexico. NMSurf Inc. has been an Internet service provider since 1997, originally as a dial up, then DSL, Fixed wireless, and now Fiber. NMSurf provides Telecommunications services as a Competitive Local Exchange Carrier, CLEC. NMSurf provides broadband services to thousands of customers in New Mexico.

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