

Representative Martin R. Stephens proposes to substitute the following bill:

TELECOMMUNICATIONS AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Martin R. Stephens

AN ACT RELATING TO PUBLIC UTILITIES; ENACTING PROVISIONS FOR THE ENFORCEMENT OF INTERCONNECTION SERVICE QUALITY STANDARDS AND INTERCONNECTION AGREEMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

54-8b-16, Utah Code Annotated 1953

54-8b-17, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **54-8b-16** is enacted to read:

54-8b-16. Public Service Commission authority to enforce interconnection service quality standards and interconnection agreements.

(1) For purposes of this section, "interconnection service quality standards" means specific, measurable criteria that shall be applied to a telecommunications corporation, including **performance** obligations pursuant to Section 251 of the Federal Telecommunications Act, regarding the **TELECOMMUNICATIONS** corporation's provision of **OR REQUEST FOR** :

(a) interconnection services;

(b) services for resale;

(c) unbundled network elements; and

(d) the ACCESS TO operations support systems that support those services and elements, including standards for the forecasting of the volume of telecommunications traffic, provisioning intervals, and network capacity.

1 (2) To serve the public interest and to enable the development and growth of competition
2 within the telecommunications market in the state the commission shall, by order when considered
3 necessary by the commission, enforce:

4 (a) rules regarding interconnection service quality standards adopted by the commission
5 under authority of this chapter;

6 (b) a commission approved interconnection agreement pursuant to Sections 251 and 252
7 of the Federal Telecommunications Act;

8 (c) a statement of generally available terms under Section 252(f) of the Federal
9 Telecommunications Act; and

10 (d) an interconnection tariff.

11 (3) An aggrieved party may file a complaint under Subsection 54-8b-2.2(1)(e) with the
12 commission for a violation of:

12a h (a) THE TERMS OF THE COMMISSION'S INTERCONNECTION SERVICE QUALITY RULES; h

13 h [(a)] (b) h the terms or conditions of an interconnection agreement;

14 h [(b)] (c) h a statement of h GENERALLY AVAILABLE h terms h [and conditions] , h or an
14a interconnection tariff; or

15 h [(c)] (d) h a telecommunications corporations' obligations under the Federal
15a Telecommunications
16 Act.

17 (4) In a proceeding described in Subsection (3), the commission shall have the power to
18 enforce:

19 (a) the terms of the interconnection agreement;

20 (b) the commission's interconnection service quality rules;

21 (c) the statement of generally available terms;

22 (d) the interconnection tariff; or

23 (e) the telecommunications corporation's obligations pursuant to the Federal
24 Telecommunications Act.

25 Section 2. Section **54-8b-17** is enacted to read:

26 **54-8b-17. Procedures for enforcement of interconnection service quality -- Penalties**
27 **for violation.**

28 (1) Proceedings under Subsection 54-8b-2.2(1)(e) shall be conducted in accordance with
29 the following procedure:

30 (a) The complaint shall be served upon the defendant telecommunications corporation and
31 filed with the commission. A copy of the complaint shall also be served upon the Division of

1 Public Utilities.

2 (b) An answer or other responsive pleading to the complaint shall be filed with the
3 commission not more than ten days after receipt of service of the complaint. Copies of the answer
4 or responsive pleading shall be served on the complainant and the Division of Public Utilities.

5 (c) A prehearing conference shall be held not later than ten days after the complaint is
6 filed.

7 (d) (i) The commission shall commence a hearing on the complaint not later than
7a h [20] 25 h days
8 after the complaint is filed, unless the commission finds that extraordinary conditions exist that
9 warrant postponing the hearing date h , IN WHICH CASE THE COMMISSION SHALL COMMENCE THE
9a HEARING AS SOON AS PRACTICABLE h .

10 (ii) Parties shall be entitled to present evidence as provided by the commission's rules.

11 (e) The commission shall take final action on a complaint not more than 45 days after the
12 complaint is filed unless:

13 (i) the commission finds that extraordinary conditions exist that warrant extending final
14 action h , IN WHICH CASE THE COMMISSION SHALL TAKE FINAL ACTION AS SOON AS
14a PRACTICABLE h ; or

15 (ii) the parties agree to an extension of final action by the commission.

16 h [(f)] (2) h The commission shall have the enforcement powers listed in Subsection
16a h [(1)(g)] (3) h if, in
17 the proceeding, the commission finds that:

17a h (a) THE TELECOMMUNICATIONS CORPORATION HAS VIOLATED THE TERMS OF THE
17b COMMISSION'S INTERCONNECTION SERVICE QUALITY RULES; h

18 h [(i)] (b) h the telecommunications corporation has breached its obligations under the
18a provisions
19 of the Federal Telecommunications Act;

20 h [(ii)] (c) h either party to an approved interconnection agreement has violated the terms of the
21 agreement; or

22 h [(iii) a telecommunications corporation] (d) EITHER PARTY h has violated the terms of
22a h [its] A STATEMENT OF h generally available
23 terms or tariff regarding interconnection.

24 h [(g)] (3) h If the commission makes any of the findings described in Subsection
24a h [(1)(f)] (2) h , the

25 commission shall:

26 ~~h~~ [(i)] (a) ~~h~~ order the telecommunications corporation to:
27 ~~h~~ [(A)] (i) ~~h~~ remedy the violation; and
28 ~~h~~ [(B)] (ii) ~~h~~ comply, as applicable, with the terms of the ~~h~~ COMMISSION'S
INTERCONNECTION
28a SERVICE QUALITY RULES, THE ~~h~~ interconnection agreement, statement of
29 generally available terms, or interconnection tariff;
30 ~~h~~ [(ii)] (b) ~~h~~ if considered appropriate by the commission, prescribe the specific actions that the
31 telecommunications corporation must take to remedy its violation, including ~~h~~ A TIME FRAME FOR
31a COMPLIANCE AND ~~h~~ the submission of a

1 plan to prevent future violations;

2 h [(iii) impose a penalty on the party or the incumbent telephone corporation, if the
3 incumbent telephone corporation has 50,000 or more access lines in this state, for violations of the
4 duties imposed under this section of not more than \$10,000 per day; and

5 _____ (v) if the incumbent telephone corporation has fewer than 50,000 access lines in this state,
6 impose a penalty on the incumbent telephone corporation for violations of the duties imposed
7 under this section as provided in Section 54-7-25.

8 _____ (2) The commission shall have the authority to investigate a party's compliance with the
9 commission's order under Subsection (1)(g). If a party fails to comply with the commission's
10 order, the commission may double the daily penalty amount specified in Subsection (1)(g)(iii)
11 every 30 days until corrective or remedial action acceptable to the commission has been
12 completed.]

12a (c) IF CONSIDERED APPROPRIATE BY THE COMMISSION, IMPOSE A PENALTY ON THE
12b DEFENDANT TELECOMMUNICATIONS CORPORATION SUBJECT TO THE FOLLOWING:

12c (i) IF THE VIOLATION IS OF THE DUTIES IMPOSED UNDER SECTION 54-8b-2.2 OR 54-8b-16,
THE
12d COMMISSION MAY IMPOSE A PENALTY FOR SUCH VIOLATION AS PROVIDED IN SECTION 54-7-25;

12e AND

12f (ii) IN ADDITION, IF THE VIOLATING TELECOMMUNICATIONS CORPORATION IS OTHER THAN
12g AN INCUMBENT TELEPHONE CORPORATION WITH FEWER THAN 50,000 ACCESS LINES IN THIS
12h STATE, AND THE VIOLATION IS OF A DUTY IMPOSED UNDER AN INTERCONNECTION AGREEMENT,
A

12i STATEMENT OF GENERALLY AVAILABLE TERMS, OR AN INTERCONNECTION TARIFF, THE
12j COMMISSION SHALL ALSO IMPOSE A PENALTY SUBJECT TO THE FOLLOWING:

12k (A) THE PENALTY MAY BE IN AN AMOUNT OF UP TO \$10,000 PER DAY;

12l (B) IF THE COMMISSION FINDS THAT THE VIOLATION WAS WILLFUL OR INTENTIONAL, THE
12m PERIOD FOR WHICH THE PENALTY IS LEVIED SHALL COMMENCE ON THE DATE THE COMMISSION
12n FINDS THE VIOLATION TO HAVE FIRST OCCURRED THROUGH AND INCLUDING THE DATE THE
12o VIOLATION IS CORRECTED; AND

12p (C) IF THE COMMISSION FINDS THAT THE VIOLATION WAS NOT WILLFUL OR INTENTIONAL,
12q THE PERIOD FOR WHICH THE PENALTY IS LEVIED SHALL COMMENCE ON THE DAY AFTER THE
12r h DEADLINE FOR COMPLIANCE IN THE h COMMISSION'S ORDER h [, OR SUCH LATER DATE AS
THE

12s COMMISSION IN ITS DISCRETION MAY ESTABLISH, THROUGH AND INCLUDING THE DATE THE
12t VIOLATION IS CORRECTED] h .

12u (4)(a) THE COMMISSION SHALL HAVE THE AUTHORITY, ON ITS OWN OR AT THE REQUEST
OF
12v THE INJURED TELECOMMUNICATIONS CORPORATION, TO INVESTIGATE A PARTY'S COMPLIANCE

12w WITH THE COMMISSION'S ORDER UNDER SUBSECTION (3)(c)(ii). ~~h~~

12x ~~h~~ (b) IF CORRECTIVE OR REMEDIAL ACTION ACCEPTABLE TO THE COMMISSION IS NOT
12y COMPLETED:

12z (i) WITHIN 45 DAYS AFTER THE DEADLINE SET BY THE COMMISSION, THE COMMISSION MAY
12aa INCREASE THE PENALTY IMPOSED UNDER (3)(c)(ii) TO UP TO \$20,000 PER VIOLATION PER DAY;
AND

12ab (ii) WITHIN 90 DAYS AFTER THE DEADLINE SET BY THE COMMISSION, THE COMMISSION
MAY

12ac INCREASE THE PENALTY IMPOSED UNDER (3)(c)(ii) TO UP TO \$40,000 PER VIOLATION PER DAY. ~~h~~

13 ~~h~~ [(3) (5) h (a) The penalty under Subsection h [(1)(g)(iii)] (3)(c) h shall be in addition to, and
13a not in lieu of,

14 civil damages or other remedies that may be available to the injured party.

15 (b) In determining the amount of the penalty or the amount agreed to in compromise, the
16 commission shall consider h :

16a (i) h the appropriateness of the penalty to the size of the violating party h [;] ;

16b (ii) h the
17 gravity of the violation h [;] ;

17a (iii) h the good faith of the h [telephone] DEFENDANT TELECOMMUNICATIONS h corporation
17b in attempting to achieve

18 compliance after notification of the violation h [;] ; h and

18a h (iv) h the impact of the violation to the establishment
19 of competition.

20 (c) Each day of a continuing violation or a failure to comply is a separate offense for
21 purposes of levying a penalty under this section.

22 ~~h [(d) The period for which the penalty is to be levied commences on the day that the~~
23 ~~commission finds the violation to first have occurred.~~

24 ~~——(e)] (6) h All funds collected under this section shall go into the Universal Public~~
25 ~~Telecommunications Service Support Fund established under Section 54-8b-15 h , AND SHALL BE~~
25a ~~IN ADDITION TO ANY CONTRIBUTIONS REQUIRED OF A TELECOMMUNICATIONS CORPORATION~~
25b ~~UNDER THAT SECTION h .~~

02-24-98 3:39 PM

2nd Sub. (Gray) H.B. 115

- 4a -

Legislative Review Note
as of 2-24-98 2:06 PM

A limited legal review of this bill raises the following constitutional or statutory concerns:

If this bill were challenged as unconstitutional under the uniform operation of laws provision of the Utah Constitution or its federal corollary, equal protection, a limited legal review suggests that a court's determination would probably depend upon whether the classification is reasonable, whether the objectives of the law are legitimate, and whether there is a reasonable relationship between the classification and the law's purposes. The classifications in this law are based on economic distinctions -- rural incumbent telecommunications corporation versus nonrural telecommunications corporation -- distinctions that currently exist in the Federal Telecommunications Act of 1996. The Utah Supreme Court has said that "when matters of economic regulation are involved . . . both federal and state constitutional provisions have been applied so as to give broad deference to legislative classifications." Mountain Fuel, 752 P.2d 884 (Utah 1988)(finding unequal tax burdens did not violate constitution). Although this case is not definitive because this bill is not a case of unequal tax burden, it does indicate that the Utah Supreme Court is likely to be deferential to the Legislature on this issue.

Office of Legislative Research and General Counsel