

**Representative J. Brent Haymond** proposes to substitute the following bill:

**REMOVAL OF DIRECTORY SUBSIDY**

**AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: J. Brent Haymond**

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6 AN ACT RELATING TO PUBLIC UTILITIES; MODIFYING PROVISIONS RELATED TO  
7 PRICE REGULATION; PROVIDING FOR THE REMOVAL OF SUBSIDIES RELATED TO  
8 PRINTED DIRECTORIES FROM THE RATE STRUCTURE OF THE INCUMBENT  
9 TELEPHONE CORPORATION; DIRECTING THE PUBLIC SERVICE COMMISSION TO  
10 MAKE THE RATE ADJUSTMENT THROUGH A RATE HEARING; ESTABLISHING AN  
11 EFFECTIVE DATE FOR THE RATE ADJUSTMENT; AND MAKING TECHNICAL  
12 CORRECTIONS.

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

14 AMENDS:

15 **54-8b-2.4**, as last amended by Chapter 226, Laws of Utah 1997

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

17 Section 1. Section **54-8b-2.4** is amended to read:

18 **54-8b-2.4. Price regulation -- Maximum prices.**

19 (1) The Legislature finds that:

20 (a) traditional rate of return regulation cannot guarantee that customers who do not have  
21 the choice of alternative providers will be protected from the economic responsibility for making  
22 up for an incumbent telephone corporation's competitive losses or from providing for the recovery  
23 of past, regulated investments;

24 (b) the method of regulation set forth in this section will provide better protection to  
25 customers who lack competitive choices than does traditional rate of return regulation; and

**\*HB0263S1\***

1 (c) before moving from traditional rate of return regulation, it is essential the commission  
2 address issues relating to the movement of prices towards cost and removing subsidies in the  
3 existing price structure of incumbent telephone corporations to encourage competition for all  
4 telecommunications services.

5 (2) (a) Effective May 1, 1997, any incumbent telephone corporation with more than 30,000  
6 access lines in the state shall be regulated pursuant to this section and may not be regulated on the  
7 basis of rate of return or any similar method of regulation that is based on the earnings of the  
8 incumbent telephone corporation, except as provided in this section.

9 (b) Any incumbent telephone corporation serving fewer than 30,000 access lines in the  
10 state may petition the commission to be regulated under price regulation rather than traditional rate  
11 of return regulation. In adopting price regulation for incumbent telephone corporations with fewer  
12 than 30,000 access lines, the commission may modify the provisions of this section taking into  
13 consideration the individual circumstances of the incumbent telephone corporation seeking price  
14 regulation.

15 (3) (a) Any general rate proceeding for an incumbent telephone corporation with more than  
16 30,000 access lines in the state initiated before May 1, 1997, shall be based on a 1996 test period  
17 and shall be conducted under the principles of traditional rate of return regulation, even though the  
18 final order in the case is not issued until May 1, 1997, or thereafter.

19 (b) A rate proceeding for an incumbent telephone corporation with more than 30,000  
20 access lines in the state may be initiated after April 30, 1997, and before March 1, 1998.

21 (i) The rate proceeding shall be revenue neutral relative to the last proceeding filed  
22 pursuant to Subsection (3)(a), except that the commission may increase or decrease the revenue  
23 anticipated from all rates to account for changes in the following factors which are known and  
24 measurable at the time of hearings in the case:

25 (A) any removal of subsidies in the existing price structure of the incumbent telephone  
26 corporation required by federal or state law or [approval] approved by the commission;

27 (B) changes in rules of the Federal Communications Commission, including rules with  
28 regard to the separation of interstate and intrastate revenues, expenses, or investments;

29 (C) changes in tax rates applied to the incumbent telephone corporation;

30 (D) any other change external to the business operations of the incumbent telephone  
31 corporation resulting from:

1 (I) accounting rules adopted by the Financial Accounting Standards Board and approved  
2 by the commission; or

3 (II) laws or rules enacted or adopted by a governmental entity having jurisdiction; or

4 (E) any other extraordinary events not reasonably foreseeable as of April 30, 1997.

5 (ii) In the rate proceeding, the commission may also rebalance rates of particular services  
6 to move rates of those services toward cost.

7 (4) (a) The prices of tariffed telecommunications services offered by an incumbent  
8 telephone corporation with more than 30,000 access lines in the state may not increase during the  
9 three-year period commencing with the date of the final order in the last rate case initiated before  
10 May 1, 1997. The prices of services offered pursuant to a price list or competitive contract shall  
11 be governed by Section 54-8b-2.3.

12 (b) Notwithstanding Subsection (4)(a), prices may increase pursuant to any prices  
13 established in a final order of the commission for a rate proceeding initiated before March 1, 1998,  
14 or the adjustment of those prices as a result of an appeal or remand of the final order, or as a result  
15 of the adjustment provided in Subsection (7).

16 (5) (a) Effective at the end of the three-year period specified in Subsection (4), the  
17 commission shall regulate the maximum prices for the tariffed public telecommunications services  
18 of the incumbent telephone corporation according to an aggregate price index or price indices  
19 associated with groups of services. The aggregate price index or price indices shall be adjusted  
20 annually to reflect the effects of inflation, productivity, and exogenous factors and to maintain an  
21 appropriate level of service quality. The precise manner of annual adjustment shall be developed  
22 by the commission after notice and a hearing and before the end of the three-year period.

23 (b) Factors in the price index or price indices may also include the following:

24 (i) any removal of subsidies in the existing price structure of the incumbent telephone  
25 corporation required by federal or state law or approved by the commission;

26 (ii) the impact of alteration in asset lives to better reflect changes in the economic lives of  
27 plant and equipment approved by the commission consistent with Section 54-7-12.1;

28 (iii) changes in rules of the Federal Communications Commission, including rules with  
29 regard to the separation of interstate and intrastate revenues, expenses, or investments adopted by  
30 the commission;

31 (iv) changes in tax rates applied to the incumbent telephone corporation;

1 (v) any other change external to the business operations of the incumbent telephone  
2 corporation resulting from:

3 (A) accounting rules adopted by the Financial Accounting Standards Board and approved  
4 by the commission; or

5 (B) laws or rules enacted or adopted by a governmental entity having jurisdiction; or

6 (vi) any other extraordinary events not reasonably foreseeable as of April 30, 1997.

7 (6) (a) The incumbent telephone corporation may decrease the price of a tariffed  
8 telecommunications service subject to the limitation in Section 54-8b-3.3.

9 (b) Any decrease in price shall be made by filing a tariff with the commission. The  
10 decrease shall become effective 30 days after filing.

11 (7) (a) Notwithstanding any other provision of this section or of Section 54-2-1, 54-4-1,  
12 54-4-4, 54-4-26, or 54-7-12, as part of the removal of subsidies from the rate structure of the  
13 incumbent telephone corporation to encourage competition for all telecommunications services,  
14 the commission shall adjust rates to reflect the removal of the amount imputed in the last rate case  
15 of the incumbent telephone corporation initiated before May 1, 1997, related to the publication of  
16 printed directories by an affiliate corporation.

17 (b) The commission shall accomplish the rate adjustment in Subsection (7)(a) by:

18 (i) initiating a proceeding to adjust rates of services to which directory revenues are  
19 allocated based upon the allocation of directory revenue to those services in the embedded cost of  
20 service study of the Division of Public Utilities used by the commission in its decision in the last  
21 rate case of the incumbent telephone corporation initiated before May 1, 1997; and

22 (ii) using the aggregate amount included in the rates of the incumbent telephone  
23 corporation related to the publication of printed directories by an affiliate corporation in the last  
24 rate case of the incumbent telephone corporation initiated before May 1, 1997, and the most  
25 current actual number of access lines in service at the time the commission makes the adjustment.

26 (c) (i) One-fifth of the rate adjustment in Subsection (7)(a) shall be effective not later than  
27 January 1, 1999;

28 (ii) one-fifth of the rate adjustment in Subsection (7)(a) shall be effective not later than  
29 January 1, 2000;

30 (iii) one-fifth of the rate adjustment in Subsection (7)(a) shall be effective not later than  
31 January 1, 2001;

1 (iv) one-fifth of the rate adjustment in Subsection (7)(a) shall be effective not later than  
2 January 1, 2002; and

3 (v) one-fifth of the rate adjustment in Subsection (7)(a) shall be effective not later than  
4 January 1, 2003.

5 (d) (i) In the year 1999 or thereafter, as directed by the committee described in Subsection  
6 (7)(e), the incumbent telephone corporation shall invest 1/2 of the annual amount removed from  
7 rates pursuant to Subsection (7)(c)(i).

8 (ii) In the year 2000 or thereafter, as directed by the committee described in Subsection  
9 (7)(e), the incumbent telephone corporation shall invest 1/2 of the annual amount removed from  
10 rates pursuant to Subsections (7)(c)(i) and (ii).

11 (iii) In the year 2001 or thereafter, as directed by the committee described in Subsection  
12 (7)(e), the incumbent telephone corporation shall invest 1/2 of the annual amount removed from  
13 rates pursuant to Subsections (7)(c)(i), (ii), and (iii).

14 (iv) In the year 2002 or thereafter, as directed by the committee described in Subsection  
15 (7)(e), the incumbent telephone corporation shall invest 1/2 of the annual amount removed from  
16 rates pursuant to Subsections (7)(c)(i), (ii), (iii), and (iv).

17 (v) In the year 2003 or thereafter, as directed by the committee described in Subsection  
18 (7)(e), the incumbent telephone corporation shall invest 1/2 of the annual amount removed from  
19 rates pursuant to Subsections (7)(c)(i), (ii), (iii), (iv), and (v).

20 (e) The investments provided in Subsection (7)(d) shall be made under the direction of a  
21 committee composed of the Chief Information Officer, the Director of the Utah Education  
22 Network, and the Legislative Fiscal Analyst to support telecommunications infrastructure for the  
23 purpose of providing advanced telecommunications services for the benefit of the citizens of the  
24 state of Utah through projects such as:

25 (i) additions to the core network to enable broad access to advanced telecommunications  
26 services, including electronic commerce applications;

27 (ii) deployment of high speed data and video services; and

28 (iii) deployment of technology to support telecommuting, remote video education, and  
29 other education initiatives.

30 (f) The incumbent telephone corporation shall not be required to make investments under  
31 Subsection (7)(d) prior to receiving the funds resulting from the rate adjustments under Subsection

1 (7)(c).

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**Legislative Review Note**  
**as of 2-11-98 4:30 PM**

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

If this bill were challenged as unconstitutional, a court's determination of its constitutionality would probably depend upon whether or not a court finds that the ratepayers have an interest in the printed directories, and if so, whether or not the ratepayers have been adequately compensated for that interest. There is no Utah case law directly on point, therefore it is difficult to predict how the court would rule on this issue. See generally Board of Public Utility Commissioners et al v. New York Telephone Co., 271 U.S. 23, 46 S.Ct. 363 (1926); US West Communications, Inc. v. Washington Utilities and Transportation Commission, 1997 Wash. LEXIS 824 (Dec. 24, 1997).

**Office of Legislative Research and General Counsel**