

CHANGES TO TELECOMMUNICATIONS LAWS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Susan J. Koehn

AN ACT RELATING TO PUBLIC UTILITIES; PROVIDING DEFINITIONS; CLARIFYING CONDITIONS FOR PRICING FLEXIBILITY FOR INCUMBENT TELEPHONE CORPORATIONS; LIMITING APPLICATION OF THE PRICE INDEX FOR TARIFFED PUBLIC TELECOMMUNICATION SERVICE RELATIVE TO THE PRICE FLOOR; REPEALING OUTDATED UNIVERSAL SERVICE FUND; ENACTING PROVISIONS RELATING TO QUALITY OF SERVICE; AND MAKING TECHNICAL AMENDMENTS.

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

AMENDS:

54-8b-2, as last amended by Chapter 122, Laws of Utah 1997

54-8b-2.3, as last amended by Chapter 88, Laws of Utah 1997

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

54-8b-3.3, as last amended by Chapter 269, Laws of Utah 1995

REPEALS:

54-8b-12, as last amended by Chapter 122, Laws of Utah 1997

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

Section 1. Section **54-8b-2** is amended to read:

54-8b-2. Definitions.

As used in this chapter:

(1) (a) "Aggregator" means any person or entity that:

(i) is not a telecommunications corporation;

(ii) in the ordinary course of its business makes operator assisted services available to the public or to customers and transient users of its business or property through an operator service provider; and

(iii) receives from an operator service provider by contract, tariff, or otherwise, commissions or compensation for calls delivered from the aggregator's location to the operator

service provider.

(b) "Aggregator" may include any hotel, motel, hospital, educational institution, government agency, or coin or coinless telephone service provider so long as that entity qualifies under Subsection (1)(a).

(2) "Certificate" means a certificate of public convenience and necessity issued by the commission authorizing a telecommunications corporation to provide specified public telecommunications services within a defined geographic service territory in the state.

(3) "Division" means the Division of Public Utilities established in Section 54-4a-1.

~~[(3)]~~ (4) "Essential facility or service" means any portion, component, or function of the network or service offered by a provider of local exchange services:

- (a) that is necessary for a competitor to provide a public telecommunications service;
- (b) that cannot be reasonably duplicated; and
- (c) for which there is no adequate economic alternative to the competitor in terms of quality, quantity, and price.

~~[(4)]~~ (5) "Federal Telecommunications Act" means the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

~~[(5)]~~ (6) "Incumbent telephone corporation" means a telephone corporation, its successors or assigns, which, as of May 1, 1995, held a certificate to provide local exchange services in a defined geographic service territory in the state.

~~[(6)]~~ (7) "Intrastate telecommunications service" means any public telecommunications service in which the information transmitted originates and terminates within the boundaries of this state.

~~[(7)]~~ (8) "Local exchange service" means the provision of telephone lines to customers with the associated transmission of two-way interactive, switched voice communication within the geographic area encompassing one or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

~~[(8)]~~ (9) (a) "New public telecommunications service" means a service offered by a telecommunications corporation which that corporation has never offered before.

(b) "New public telecommunications service" does not include:

(i) a tariff, price list, or competitive contract that involves a new method of pricing any existing public telecommunications service;

(ii) a package of public telecommunications services that includes an existing public telecommunications service; or

(iii) a public telecommunications service that is a direct replacement for:

(A) a fully regulated service;

(B) an existing service offered pursuant to a tariff, price list, or competitive contract; or

(C) an essential facility or an essential service as defined in ~~[Subsection]~~ Section 54-8b-2~~(3)~~.

~~(9)~~ (10) "Operator assisted services" means services which assist callers in the placement or charging of a telephone call, either through live intervention or automated intervention.

~~(10)~~ (11) "Operator service provider" means any person or entity that provides, for a fee to a caller, operator assisted services.

~~(11)~~ (12) "Price-regulated service" means any public telecommunications service governed by Section 54-8b-2.3.

~~(12)~~ (13) "Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

(14) "Same or substitutable" with reference to a public telecommunications service means that the service is comparable to another service in terms of function, price, and quality to an end user customer.

(15) "Substantial compliance" with reference to a rule or order of the commission means satisfaction of all material obligations in a manner consistent with the rule or order.

~~(13)~~ (16) "Telecommunications corporation" means any corporation or person, and their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling, operating, managing, or reselling a public telecommunications service.

~~(14)~~ (17) "Total service long-run incremental cost" means the forward-looking incremental cost to a telecommunications corporation caused by providing the entire quantity of a public

telecommunications service, network function, or group of public telecommunications services or network functions, by using forward-looking technology, reasonably available, without assuming relocation of existing plant and equipment. The "long-run" means a period of time long enough so that cost estimates are based on the assumption that all inputs are variable.

Section 2. Section **54-8b-2.3** is amended to read:

54-8b-2.3. Pricing flexibility.

(1) (a) A telecommunications corporation that obtains a certificate to compete with the incumbent telephone corporation in a defined geographic area pursuant to Section 54-8b-2.1 may price any public telecommunications services it is authorized to offer, or any new public telecommunications service, by means of a price list or competitive contract.

(b) Before the telecommunications corporation begins providing any authorized public telecommunications service, it shall notify the commission of its intent to begin providing the service and the defined geographic area in which it will provide the service.

(2) (a) Notwithstanding other requirements of this chapter relating to pricing flexibility, an incumbent telephone corporation may offer retail end user public telecommunications services by means of a price list or competitive contract as provided in Subsections (2)(b) and (c).

(b) (i) An incumbent telephone corporation may petition the commission for pricing flexibility in:

(A) any proceeding in which another telecommunications corporation has petitioned the commission for a certificate to provide specified public telecommunications services in a defined geographic area that is within the incumbent telephone corporation's service territory[-]; or

(B) an independent proceeding after the other telecommunications corporation has been certificated to provide specified public telecommunications services in a defined geographic area that is within the incumbent telephone corporation's service territory.

(ii) In the proceeding, the commission shall, by order, grant pricing flexibility to the incumbent telephone corporation for the same or substitutable public telecommunications services in the same defined geographic area.

(iii) Pricing flexibility for any public telecommunications service shall become effective in

accordance with the procedure in Subsection (2)(b)(iv) when the following conditions are met:

(A) the commission has issued a certificate to the competing telecommunications corporation;
(B) the competing telecommunications corporation has begun providing the authorized public telecommunications service in the defined geographic area;

(C) the incumbent telephone corporation, by written agreement, stipulation, or pursuant to an order of the commission, has allowed the competing telecommunications corporation to interconnect with the essential facilities and to purchase essential services of the incumbent telephone corporation; and

(D) the incumbent telephone corporation is in substantial compliance with the rules and orders of the commission adopted or issued under Section 54-8b-2.2.

(iv) (A) The commission shall enter its final order either granting or denying a petition for pricing flexibility under Subsection (2)(b) within 90 days of the date the incumbent telephone corporation files its petition seeking pricing flexibility.

(B) If the commission has not entered an order within 90 days of the date the petition is filed, the petition shall be considered granted.

(C) Pricing flexibility shall be effective 45 days following the granting of a petition for pricing flexibility under Subsection (2)(b) unless the commission orders an earlier effective date.

(c) An incumbent telephone corporation may price any new public telecommunications service by means of a price list or competitive contract.

(3) The commission may review any new public telecommunications service offered by an incumbent telephone corporation after the applicable tariff, price list, or competitive contract has taken effect.

(4) Each price list shall:

- (a) be filed with the commission;
- (b) describe the public telecommunications service;
- (c) set forth the basic terms and conditions upon which the public telecommunications service is offered; and
- (d) list the prices to be charged for the public telecommunications service or the basis on

which the services will be priced.

(5) Prices, terms, and conditions offered under price lists or competitive contracts that are different from tariff prices, terms, and conditions for the same services are not considered discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).

(6) A price list filed with the commission under this section shall take effect five days after it is filed with the commission.

(7) The prices, terms, and conditions of a public telecommunications service offered by a telecommunications corporation pursuant to a competitive contract with a retail customer shall be filed with the commission.

(8) The commission may, as determined necessary to protect the public interest, set an upper limit on the price that may be charged by telecommunications corporations for public telecommunications services that may be priced by means of a price list or competitive contract.

(9) (a) The commission may revoke the authority of a telecommunications corporation to offer a public telecommunications service pursuant to a price list or competitive contract if the commission finds:

(i) (A) the telecommunications corporation has violated statutes or rules applicable to the specific service;

(B) there has been a material and substantial change in the level of competition; or

(C) competition has not developed; and

(ii) revocation is in the public interest.

(b) The party asserting that revocation should occur shall bear the burden of proof.

(10) The commission shall establish rules or procedures to protect confidential, proprietary, and competitively sensitive information provided to the commission or the division pursuant to this section.

Section 3. Section **54-8b-2.4** is amended to read:

54-8b-2.4. Price regulation -- Price index -- Maximum prices.

(1) The Legislature finds that:

(a) traditional rate of return regulation cannot guarantee that customers who do not have the

choice of alternative providers will be protected from the economic responsibility for making up for an incumbent telephone corporation's competitive losses or from providing for the recovery of past, regulated investments;

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

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

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

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

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

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

~~[(i) The rate proceeding shall be revenue neutral relative to the last proceeding filed pursuant to Subsection (3)(a), except that the commission may increase or decrease the revenue anticipated from all rates to account for changes in the following factors which are known and measurable at the~~

time of hearings in the case:]

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

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

~~[(C) changes in tax rates applied to the incumbent telephone corporation;]~~

~~[(D) any other change external to the business operations of the incumbent telephone corporation resulting from:]~~

~~[(F) accounting rules adopted by the Financial Accounting Standards Board and approved by the commission; or]~~

~~[(H) laws or rules enacted or adopted by a governmental entity having jurisdiction; or]~~

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

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

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

(b) Notwithstanding Subsection (4)(a), prices may increase pursuant to any prices established in a final order of the commission for a rate proceeding initiated before ~~[March 1, 1998;]~~ May 1, 1997, or the adjustment of those prices as a result of an appeal or remand of the final order.

(5) (a) Effective at the end of the three-year period specified in Subsection (4), the commission shall ~~[regulate]~~ adjust the maximum prices for the tariffed public telecommunications services of the incumbent telephone corporation according to an aggregate price index or price indices associated with groups of services. The aggregate price index or price indices shall be adjusted annually to reflect the effects of inflation, productivity, and exogenous factors and to maintain an appropriate level of service quality. The precise manner of annual adjustment of the

aggregate price index or price indices shall be developed by the commission after notice and a hearing and before the end of the three-year period.

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

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

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

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

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

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

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

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

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

(c) If the maximum price of any tariffed public telecommunications service, including residential telephone service:

(i) is equal to or below the price floor for the service as determined under Subsection 54-8b-3.3(3), the maximum price may not be lowered through application of any price index determined under this Subsection (5); or

(ii) is above the price floor for the service as determined under Subsection 54-8b-3.3(3), the maximum price may not be lowered below the price floor through application of any price index determined under this Subsection (5).

(d) The price floor for a service shall be determined in the same manner for purposes of Subsection (5)(c) as it is for other purposes under Subsection 54-8b-3.3(3).

(6) (a) The incumbent telephone corporation may decrease the price of a tariffed

telecommunications service subject to the limitation in Section 54-8b-3.3.

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

Section 4. Section **54-8b-3.3** is amended to read:

54-8b-3.3. Services which must be offered on a nondiscriminatory basis -- Tariffed public telecommunications services and price-regulated services to be cost-based -- Packaged services -- Price floor for all services -- Quality of service standards.

(1) As used in this section, "cost-based" means that the prices for the telecommunications services shall be established after taking into consideration the total service long-run incremental cost of providing the service. The term "cost-based" does not prevent the establishment of prices that promote the universal availability of service in the state.

(2) Notwithstanding any other provision of this chapter:

(a) no telecommunications corporation with more than 30,000 access lines in the state and which provides a tariffed public telecommunications service or a price-regulated service shall:

(i) as to the pricing and provisioning of the tariffed public telecommunications service or price-regulated service, make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality; or

(ii) in providing services which utilize the local exchange network:

(A) make or give any undue or unreasonable preference or advantage to any person, corporation, or locality; or

(B) subject any person, corporation, or locality to any undue or unreasonable prejudice or disadvantage;

(b) tariffed public telecommunications services and price-regulated services provided by a telecommunications corporation with more than 30,000 access lines in the state shall be nondiscriminatory, cost-based, and subject to resale as determined by the commission; and

(c) tariffed public telecommunications services and price-regulated services may be packaged with other services, so long as they are also offered on a separate, unbundled basis.

(3) An incumbent telephone corporation may not price any public telecommunications service

at a level which is less than the sum of:

(a) the total service long-run incremental cost of nonessential facilities used to provide the public telecommunications service in a particular geographic area; and

(b) the price of essential facilities used to provide the public telecommunications service in a particular defined geographic area.

(4) Subsection (3) does not ~~[apply to]~~ require that the price of residential telephone service which is priced below its total service long-run incremental cost on May 1, 1995, be increased. ~~[The]~~ However, the price of any service that is below its total service long-run incremental cost may be increased annually as provided in Section 54-8b-2.4.

(5) The commission shall examine the total service long-run incremental cost studies of an incumbent telephone corporation's public telecommunications services as needed to insure compliance with this section.

(6) (a) In order to promote continued investment in the public telecommunications network by incumbent telephone corporations and to improve the quality of service for end users in areas where competition has not developed, by September 30, 2000, the commission shall adopt rules governing service quality standards to end users for all tariffed public telecommunications services.

(b) The commission shall have the authority to enforce the rules adopted under this Subsection (6) by granting billing credits to the affected end user where the noncompliance is for reasons within the incumbent telephone corporation's control.

(c) The commission shall report annually to the Legislature concerning investment by incumbent telephone corporations in the public telecommunications network in their service areas and the quality of service to end users of tariffed public telecommunications services.

(d) An incumbent telephone corporation with less than 30,000 access lines in the state is exempt from this Subsection (6).

Section 5. Repealer.

This act repeals:

Section 54-8b-12, Trust fund established -- Requirements -- Expiration -- Transfer of balance.

