

Senator Lorin V. Jones proposes to substitute the following bill:

TELEPHONE CORPORATION DEFINITION AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Lorin V. Jones

AN ACT RELATING TO PUBLIC UTILITIES; AMENDING THE DEFINITION OF
TELEPHONE CORPORATION.

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

AMENDS:

54-2-1, as last amended by Chapter 170, Laws of Utah 1996

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

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

54-2-1. Definitions.

[~~When~~] As used in this title:

(1) "Avoided costs" means the incremental costs to an electrical corporation of electric energy or capacity or both which, due to the purchase of electric energy or capacity or both from small power production or cogeneration facilities, the electrical corporation would not have to generate itself or purchase from another electrical corporation.

(2) "Cogeneration facility":

(a) means a facility which produces:

(i) electric energy; and

(ii) steam or forms of useful energy, including heat, which are used for industrial, commercial, heating, or cooling purposes; and

(b) is a qualifying cogeneration facility under federal law.

(3) "Commission" means the Public Service Commission of the state of Utah.

(4) "Commissioner" means a member of the commission.

26 (5) "Corporation" includes an association, and a joint stock company having any powers
27 or privileges not possessed by individuals or partnerships. It does not include towns, cities,
28 counties, conservancy districts, improvement districts, or other governmental units created or
29 organized under any general or special law of this state.

30 (6) "Electrical corporation" includes every corporation, cooperative association, and
31 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
32 electric plant, or in any way furnishing electric power for public service or to its consumers or
33 members for domestic, commercial, or industrial use, within this state, except independent energy
34 producers, and except where electricity is generated on or distributed by the producer solely for
35 his own use, or the use of his tenants, or for the use of members of an association of unit owners
36 formed under Title 57, Chapter 8, Condominium Ownership Act, and not for sale to the public
37 generally.

38 (7) "Electric plant" includes all real estate, fixtures, and personal property owned,
39 controlled, operated, or managed in connection with or to facilitate the production, generation,
40 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts,
41 or other devices, materials, apparatus, or property for containing, holding, or carrying conductors
42 used or to be used for the transmission of electricity for light, heat, or power.

43 (8) "Gas corporation" includes every corporation and person, their lessees, trustees, and
44 receivers, owning, controlling, operating, or managing any gas plant for public service within this
45 state or for the selling or furnishing of natural gas to any consumer or consumers within the state
46 for domestic, commercial, or industrial use, except in the situation that:

47 (a) gas is made or produced on, and distributed by the maker or producer through, private
48 property, solely for his own use or the use of his tenants and not for sale to others;

49 (b) gas is compressed on private property solely for the owner's own use or the use of his
50 employees as a motor vehicle fuel; or

51 (c) gas is compressed by a retailer of motor vehicle fuel on his property solely for sale as
52 a motor vehicle fuel.

53 (9) "Gas plant" includes all real estate, fixtures, and personal property owned, controlled,
54 operated, or managed in connection with or to facilitate the production, generation, transmission,
55 delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

56 (10) "Heat corporation" includes every corporation and person, their lessees, trustees, and

57 receivers, owning, controlling, operating, or managing any heating plant for public service within
58 this state.

59 (11) "Heating plant" includes all real estate, fixtures, machinery, appliances, and personal
60 property controlled, operated, or managed in connection with or to facilitate the production,
61 generation, transmission, delivery, or furnishing of artificial heat. Heating plant does not include
62 either small power production facilities or cogeneration facilities.

63 (12) "Independent energy producer" means every electrical corporation, person,
64 corporation, or government entity, their lessees, trustees, or receivers, that own, operate, control,
65 or manage a small power production or cogeneration facility.

66 (13) "Private telecommunications system" includes all facilities for the transmission of
67 signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire,
68 radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that are
69 owned, controlled, operated, or managed by a corporation or person, including their lessees,
70 trustees, receivers, or trustees appointed by any court, for the use of that corporation or person and
71 not for the shared use with or resale to any other corporation or person on a regular basis.

72 (14) (a) "Public utility" includes every railroad corporation, gas corporation, electrical
73 corporation, wholesale electrical cooperative, telephone corporation, telegraph corporation, water
74 corporation, sewerage corporation, heat corporation, and independent energy producer not
75 described in Subsection (d), where the service is performed for, or the commodity delivered to, the
76 public generally, or in the case of a gas corporation or electrical corporation where the gas or
77 electricity is sold or furnished to any member or consumers within the state for domestic,
78 commercial, or industrial use.

79 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
80 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, or
81 independent energy producer not described in Subsection (d), performs a service for or delivers
82 a commodity to the public, it is considered to be a public utility, subject to the jurisdiction and
83 regulation of the commission and this title.

84 (ii) If a gas corporation, independent energy producer not described in Subsection (d), or
85 electrical corporation sells or furnishes gas or electricity to any member or consumers within the
86 state, for domestic, commercial, or industrial use, for which any compensation or payment is
87 received, it is considered to be a public utility, subject to the jurisdiction and regulation of the

88 commission and this title.

89 (c) Any corporation or person not engaged in business exclusively as a public utility as
90 defined in this section is governed by this title in respect only to the public utility owned,
91 controlled, operated, or managed by it or by him, and not in respect to any other business or
92 pursuit.

93 (d) An independent energy producer is exempt from the jurisdiction and regulations of the
94 commission if it meets the requirements of (i), (ii), or (iii), or any combination of these:

95 (i) the commodity or service is produced or delivered, or both, by an independent energy
96 producer solely for the uses exempted in Subsection (6) or for the use of state-owned facilities;

97 (ii) the commodity or service is sold by an independent energy producer to an electrical
98 corporation; or

99 (iii) (A) the commodity or service delivered by the independent energy producer is
100 delivered to an entity which controls, is controlled by, or affiliated with the independent energy
101 producer or to a user located on real property managed by the independent energy producer; and

102 (B) the real property on which the service or commodity is used is contiguous to real
103 property which is owned or controlled by the independent energy producer. Parcels of real
104 property separated solely by public roads or easements for public roads shall be considered as
105 contiguous for purposes of this subsection.

106 (e) Any person or corporation defined as an electrical corporation or public utility under
107 this section may continue to serve its existing customers subject to any order or future
108 determination of the commission in reference to the right to serve those customers.

109 (f) (i) "Public utility" does not include any person that is otherwise considered a public
110 utility under the provisions of Subsection (16) solely because of its ownership of an interest in an
111 electric plant, cogeneration facility, or small power production facility in this state if all of the
112 following conditions are met:

113 (A) the ownership interest in the electric plant, cogeneration facility, or small power
114 production facility is leased to:

115 (I) a public utility, and that lease has been approved by the commission;

116 (II) a person or government entity that is exempt from commission regulation as a public
117 utility; or

118 (III) a combination of Subsections (16)(f)(i)(A)(I) and (II);

119 (B) the lessor of the ownership interest identified in Subsection (16)(f)(i)(A) is:

120 (I) primarily engaged in a business other than the business of a public utility; or

121 (II) a person whose total equity or beneficial ownership is held directly or indirectly by
122 another person engaged in a business other than the business of a public utility; and

123 (C) the rent reserved under the lease does not include any amount based on or determined
124 by revenues or income of the lessee.

125 (ii) Any person that is exempt from classification as a public utility under Subsection
126 (16)(f)(i) shall continue to be so exempt from classification following termination of the lessee's
127 right to possession or use of the electric plant for so long as the former lessor does not operate the
128 electric plant or sell electricity from the electric plant. If the former lessor operates the electric
129 plant or sells electricity, the former lessor shall continue to be so exempt for a period of 90 days
130 following termination, or for a longer period that is ordered by the commission. This period may
131 not exceed one year. No change in rates that would otherwise require commission approval may
132 be effective during the 90-day or extended period without commission approval.

133 (g) "Public utility" does not include any person that provides financing for, but has no
134 ownership interest in an electric plant, small power production facility, or cogeneration facility.
135 In the event of a foreclosure in which an ownership interest in an electric plant, small power
136 production facility, or cogeneration facility is transferred to a third-party financier of an electric
137 plant, small power production facility, or cogeneration facility, then that third-party financier is
138 exempt from classification as a public utility for 90 days following the foreclosure, or for a longer
139 period that is ordered by the commission. This period may not exceed one year.

140 (h) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel does
141 not cause the distributor or transporter to be a "public utility," unless the commission, after notice
142 and a public hearing, determines by rule that it is in the public interest to regulate the distributors
143 or transporters, but the retail sale alone of compressed natural gas as a motor vehicle fuel may not
144 cause the seller to be a "public utility."

145 (ii) In determining whether it is in the public interest to regulate the distributors or
146 transporters, the commission shall consider, among other things, the impact of the regulation on
147 the availability and price of natural gas for use as a motor fuel.

148 (15) "Purchasing utility" means any electrical corporation that is required to purchase
149 electricity from small power production or cogeneration facilities pursuant to the Public Utility

150 Regulatory Policies Act, 16 U.S.C. Section 824a-3.

151 (16) "Railroad" includes every commercial, interurban, and other railway, other than a
152 street railway, and each branch or extension of a railway, by any power operated, together with all
153 tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, yards,
154 grounds, terminals, terminal facilities, structures, and equipment, and all other real estate, fixtures,
155 and personal property of every kind used in connection with a railway owned, controlled, operated,
156 or managed for public service in the transportation of persons or property.

157 (17) "Railroad corporation" includes every corporation and person, their lessees, trustees,
158 and receivers, owning, controlling, operating, or managing any railroad for public service within
159 this state.

160 (18) "Sewerage corporation" includes every corporation and person, their lessees, trustees,
161 and receivers, owning, controlling, operating, or managing any sewerage system for public service
162 within this state. It does not include private sewerage companies engaged in disposing of sewage
163 only for their stockholders, or towns, cities, counties, conservancy districts, improvement districts,
164 or other governmental units created or organized under any general or special law of this state.

165 (19) "Small power production facility" means a facility which:

166 (a) produces electric energy solely by the use, as a primary energy source, of biomass,
167 waste, renewable resources, geothermal resources, or any combination of them;

168 (b) has a power production capacity which, together with any other facilities located at the
169 same site, is not greater than 80 megawatts; and

170 (c) is a qualifying small power production facility under federal law.

171 (20) "Telegraph corporation" includes every corporation and person, their lessees, trustees,
172 and receivers, owning, controlling, operating, or managing any telegraph line for public service
173 within this state.

174 (21) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments, and
175 appliances, and all other real estate, fixtures, and personal property owned, controlled, operated,
176 or managed in connection with or to facilitate communication by telegraph, whether that
177 communication be had with or without the use of transmission wires.

178 (22) (a) "Telephone corporation" [~~includes every corporation and person, their lessees,~~
179 ~~trustees, and receivers, owning, controlling, operating, or managing any telephone line for public~~
180 ~~service within this state, provided, however, that all corporations, partnerships, or firms providing~~

181 ~~intrastate cellular telephone service shall cease to be "telephone corporations" nine months after~~
 182 ~~both the wire-line and the nonwire-line cellular service providers have been issued covering~~
 183 ~~licenses by the Federal Communications Commission. It does not include any person which~~
 184 ~~provides, on a resale basis, any telephone or telecommunication service which is purchased from~~
 185 ~~a telephone corporation.] means any corporation or person, and their lessees, trustee, receivers, or~~
 186 ~~trustees appointed by any court, who owns, controls, operates, manages, or resells a public~~
 187 ~~telecommunications service as defined in Section 54-86-2.~~

188 (b) "Telephone corporation" does not mean a corporation, partnership, or firm providing:

189 (i) intrastate h [cellular] h telephone service h OFFERED BY A PROVIDER OF CELLULAR,
 189a PERSONAL COMMUNICATION SYSTEMS (PCS), OR OTHER COMMERCIAL MOBILE RADIO SERVICE
 189b AS DEFINED IN 47 U.S.C. SEC. 332(d)(i) h that has been issued a covering license by the
 190 Federal Communications Commission; § [or] §

191 (ii) Internet § [access] SERVICE; OR § .
 191a § (iii) RESOLD INTRASTATE TOLL SERVICE. §

192 (23) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and
 193 appliances, and all other real estate, fixtures, and personal property owned, controlled, operated,
 194 or managed in connection with or to facilitate communication by telephone whether that
 195 communication is had with or without the use of transmission wires.

196 (24) "Transportation of persons" includes every service in connection with or incidental
 197 to the safety, comfort, or convenience of the person transported, and the receipt, carriage, and
 198 delivery of that person and his baggage.

199 (25) "Transportation of property" includes every service in connection with or incidental
 200 to the transportation of property, including in particular its receipt, delivery, elevation, transfer,
 201 switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and hauling, and the
 202 transmission of credit by express companies.

203 (26) "Water corporation" includes every corporation and person, their lessees, trustees, and
 204 receivers, owning, controlling, operating, or managing any water system for public service within
 205 this state. It does not include private irrigation companies engaged in distributing water only to
 206 their stockholders, or towns, cities, counties, water conservancy districts, improvement districts,
 207 or other governmental units created or organized under any general or special law of this state.

208 (27) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes,
 209 flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property
 210 owned, controlled, operated, or managed in connection with or to facilitate the diversion,
 211 development, storage, supply, distribution, sale, furnishing, carriage, appointment, apportionment,

212 or measurement of water for power, fire protection, irrigation, reclamation, or manufacturing, or
213 for municipal, domestic, or other beneficial use. It does not include private irrigation companies
214 engaged in distributing water only to their stockholders.

215 (28) "Wholesale electrical cooperative" includes every electrical corporation:

216 (a) which is in the business of the wholesale distribution of electricity it has purchased or
217 generated to its members and the public; and

218 (b) which is required to distribute or allocate savings in excess of additions to reserves and
219 surplus to members or patrons on the basis of patronage.