

**TELECOMMUNICATIONS AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Stephen H. Urquhart**

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**LONG TITLE**

**General Description:**

This bill amends and repeals portions of Title 54, Public Utilities, relevant to pricing and competition by telecommunications corporations.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ exempts certain activities of telecommunications corporations from compliance with rate schedules;
- ▶ exempts certain activities of telecommunications corporations from prohibitions on rate or service preferences;
- ▶ expands pricing flexibility for certain telecommunications corporations and services;
- ▶ eliminates the requirement that a telecommunications corporation petition the Public Service Commission for pricing flexibility;
- ▶ requires an incumbent telephone corporation to provide basic residential service throughout its service area;
- ▶ requires an incumbent telephone corporation to maintain basic residential service rates at July 1, 2004 levels, except under certain circumstances;
- ▶ allows the Public Service Commission to review basic residential service by an incumbent and others;
- ▶ allows the Public Service Commission to exempt an incumbent telephone



28 corporation from basic residential service provisions if comparable services exist at  
29 comparable prices;

30 ▶ allows small incumbent telephone corporations to petition the Public Service  
31 Commission for regulation by price, rather than traditional rate of return regulation;

32 ▶ allows the Public Service Commission to exempt small incumbent telephone  
33 corporations from certain pricing provisions under certain circumstances; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **54-3-7**, Utah Code Annotated 1953

42 **54-3-8**, as last amended by Chapter 265, Laws of Utah 1998

43 **54-8b-2**, as last amended by Chapter 320, Laws of Utah 2002

44 **54-8b-2.3**, as last amended by Chapter 291, Laws of Utah 2000

45 **54-8b-3.3**, as last amended by Chapter 291, Laws of Utah 2000

46 **54-8b-4.5**, as enacted by Chapter 88, Laws of Utah 1997

47 REPEALS:

48 **54-8b-2.4**, as last amended by Chapter 291, Laws of Utah 2000



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

51 Section 1. Section **54-3-7** is amended to read:

52 **54-3-7. Charges not to vary from schedules -- Refunds and rebates forbidden --**

53 **Exceptions.**

54 Except as provided in this chapter [~~otherwise provided~~] or Chapter 8b, Public  
55 Telecommunications Law, no public utility shall charge, demand, collect or receive a greater or  
56 less or different compensation for any product or commodity furnished or to be furnished, or  
57 for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to  
58 such products or commodity or service as specified in its schedules on file and in effect at the

59 time; nor shall any such public utility refund or remit, directly or indirectly, in any manner or  
60 by any device, any portion of the rates, tolls, rentals and charges so specified; nor extend to any  
61 person any form of contract or agreement, or any rule or regulation, or any facility or privilege  
62 except such as are regularly and uniformly extended to all corporations and persons; provided,  
63 that the commission may, by rule or order, establish such exceptions from the operation of this  
64 prohibition as it may consider just and reasonable as to any public utility.

65 Section 2. Section **54-3-8** is amended to read:

66 **54-3-8. Preferences forbidden -- Power of commission to determine facts.**

67 (1) ~~[No]~~ Except as provided in Chapter 8b, Public Telecommunications Law, a public  
68 utility [shall,] may not:

69 (a) as to rates, charges, service, facilities or in any other respect, make or grant any  
70 preference or advantage to any person, or subject any person to any prejudice or disadvantage[  
71 ~~No public utility shall]; and~~

72 (b) establish or maintain any unreasonable difference as to rates, charges, service or  
73 facilities, or in any other respect, either as between localities or as between classes of service.

74 (2) The commission shall have power to determine any question of fact arising under  
75 this section.

76 Section 3. Section **54-8b-2** is amended to read:

77 **54-8b-2. Definitions.**

78 As used in this chapter:

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

80 (i) is not a telecommunications corporation;

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

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

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

90           (2) "Basic residential service" means local exchange service for a residential customer  
91 consisting of a single line with no feature.

92           ~~[(2)]~~ (3) "Certificate" means a certificate of public convenience and necessity issued by  
93 the commission authorizing a telecommunications corporation to provide specified public  
94 telecommunications services within a defined geographic service territory in the state.

95           ~~[(3)]~~ (4) "Division" means the Division of Public Utilities established in Section  
96 54-4a-1.

97           ~~[(4)]~~ (5) "Essential facility or service" means any portion, component, or function of  
98 the network or service offered by a provider of local exchange services:

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

103           (6) (a) "Feature" means a custom calling service available from the central office  
104 switch, including call waiting, call forwarding, three-way calling, and similar services.

105           (b) "Feature" does not include long distance calling.

106           ~~[(5)]~~ (7) "Federal Telecommunications Act" means the Federal Telecommunications  
107 Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

108           ~~[(6)]~~ (8) "Incumbent telephone corporation" means a telephone corporation, its  
109 successors or assigns, which, as of May 1, 1995, held a certificate to provide local exchange  
110 services in a defined geographic service territory in the state.

111           ~~[(7)]~~ (9) "Intrastate telecommunications service" means any public telecommunications  
112 service in which the information transmitted originates and terminates within the boundaries of  
113 this state.

114           ~~[(8)]~~ (10) "Local exchange service" means the provision of telephone lines to  
115 customers with the associated transmission of two-way interactive, switched voice  
116 communication within the geographic area encompassing one or more local communities as  
117 described in maps, tariffs, or rate schedules filed with and approved by the commission.

118           ~~[(9)]~~ (11) "Mobile telecommunications service" means a mobile telecommunications  
119 service:

120           (a) that is defined as a mobile telecommunications service in the Mobile

121 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124; and

122 (b) in which the information transmitted originates and terminates in one state.

123 ~~[(10)]~~ (12) (a) "New public telecommunications service" means a service offered by a  
124 telecommunications corporation which that corporation has never offered before.

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

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

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

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

131 (A) a fully regulated service;

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

133 (C) an essential facility or an essential service.

134 ~~[(11)]~~ (13) "Operator assisted services" means services which assist callers in the  
135 placement or charging of a telephone call, either through live intervention or automated  
136 intervention.

137 ~~[(12)]~~ (14) "Operator service provider" means any person or entity that provides, for a  
138 fee to a caller, operator assisted services.

139 ~~[(13)]~~ (15) "Price-regulated service" means any public telecommunications service  
140 governed by Section 54-8b-2.3.

141 (16) "Provider of public telecommunications service" means any telecommunications  
142 corporation or other person offering a public telecommunications service in a defined  
143 geographic area, whether or not the provider is required to obtain a certificate of public  
144 convenience.

145 ~~[(14)]~~ (17) "Public telecommunications service" means the two-way transmission of  
146 signs, signals, writing, images, sounds, messages, data, or other information of any nature by  
147 wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

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

151 ~~[(16)]~~ (18) "Substantial compliance" with reference to a rule or order of the

152 commission means satisfaction of all material obligations in a manner consistent with the rule  
153 or order.

154 [(+17)] (19) "Telecommunications corporation" means any corporation or person, and  
155 their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling,  
156 operating, managing, or reselling a public telecommunications service.

157 [(+18)] (20) (a) "Total service long-run incremental cost" means the forward-looking  
158 incremental cost to a telecommunications corporation caused by providing the entire quantity  
159 of a public telecommunications service, network function, or group of public  
160 telecommunications services or network functions, by using forward-looking technology,  
161 reasonably available, without assuming relocation of existing plant and equipment.

162 (b) The "long-run" means a period of time long enough so that cost estimates are based  
163 on the assumption that all inputs are variable.

164 Section 4. Section **54-8b-2.3** is amended to read:

165 **54-8b-2.3. Pricing flexibility.**

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

170 (b) Before the telecommunications corporation begins providing any authorized public  
171 telecommunications service, it shall notify the commission of:

172 (i) its intent to begin providing the service; and

173 (ii) the defined geographic area in which it will provide the service.

174 (2) (a) Notwithstanding other requirements of this chapter relating to pricing flexibility,  
175 beginning on May 2, 2005, an incumbent telephone corporation may offer retail end user public  
176 telecommunications services by means of a price list or competitive contract in the same  
177 manner as a competing telecommunications corporation as provided in [~~Subsections (2)(b) and~~  
178 ~~(c).~~] Subsection (1):

179 (i) if the incumbent telephone corporation:

180 (A) is in substantial compliance with rules and orders of the commission issued under  
181 Section 54-8b-2.2; and

182 (B) has more than 30,000 access lines; and

183 (ii) except as provided in Subsection (2)(c).

184 ~~[(b) (i) An incumbent telephone corporation may petition the commission for pricing~~  
185 ~~flexibility in:]~~

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

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

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

196 ~~[(iii) Pricing flexibility for any public telecommunications service shall become~~  
197 ~~effective in accordance with the procedure in Subsection (2)(b)(iv) when the following~~  
198 ~~conditions are met:]~~

199 ~~[(A) the commission has issued a certificate to the competing telecommunications~~  
200 ~~corporation;]~~

201 ~~[(B) the competing telecommunications corporation has begun providing the~~  
202 ~~authorized public telecommunications service in the defined geographic area;]~~

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

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

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

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

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

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

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

222 (b) Nothing in this Subsection (2) diminishes any pricing flexibility granted to the  
223 incumbent telephone corporation before May 2, 2005.

224 (c) (i) The incumbent telephone corporation's pricing flexibility shall be the same as a  
225 competing telecommunications corporation's pricing flexibility for all public  
226 telecommunications services except basic residential service.

227 (ii) The incumbent telephone corporation shall offer basic residential service  
228 throughout the area in which the incumbent telephone corporation is authorized by certificate  
229 to provide basic residential service.

230 (iii) Except as provided in Subsections (2)(c)(iv) and (2)(d), the incumbent telephone  
231 corporation may not increase the price of basic residential service above the price as of July 1,  
232 2004.

233 (iv) The incumbent telephone corporation may make revenue neutral adjustments to  
234 the price of basic residential service to reduce or eliminate differences in the price of basic  
235 residential service in different portions of its service area.

236 (d) (i) Upon request by the incumbent telephone corporation, but in any event no later  
237 than May 2, 2007, the commission shall review whether any provider of public  
238 telecommunications service is offering a service that includes the essential components of basic  
239 residential service at a price comparable to the incumbent telephone corporation's price for  
240 basic residential service in the area served by a central office of the incumbent telephone  
241 corporation.

242 (ii) If under Subsection (2)(d)(i) the commission determines that any provider of public  
243 telecommunications service is offering a service that includes the essential components of basic  
244 residential service at a price comparable to the incumbent telephone corporation's price for

245 basic residential service in the area served by a central office of the incumbent telephone  
246 corporation, Subsection (2)(c) does not apply in the area served by that central office.

247 [~~4~~] (3) Each price list shall:

248 (a) be filed with the commission;

249 (b) describe the public telecommunications service;

250 (c) set forth the basic terms and conditions upon which the public telecommunications  
251 service is offered; and

252 (d) list the prices to be charged for the public telecommunications service or the basis  
253 on which the services will be priced.

254 [~~5~~] (4) Prices, terms, and conditions offered under price lists or competitive contracts  
255 that are different from tariff prices, terms, and conditions for the same services are not  
256 considered discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).

257 [~~6~~] (5) A price list filed with the commission under this section shall take effect five  
258 days after it is filed with the commission.

259 [~~7~~] (6) The prices, terms, and conditions of a public telecommunications service  
260 offered by a telecommunications corporation pursuant to a competitive contract with a retail  
261 customer shall be filed with the commission.

262 [~~8~~] (7) (a) [~~The~~] Subject to Subsection (7)(b), the commission may, as determined  
263 necessary to protect the public interest, set an upper limit on the price that may be charged by  
264 telecommunications corporations for public telecommunications services that may be priced by  
265 means of a price list or competitive contract in a defined geographic area.

266 (b) The upper limit on price imposed under Subsection (7)(a) shall be applied to all  
267 telecommunications corporations in the defined geographic area in a competitively neutral  
268 manner.

269 [~~9~~] (8) (a) The commission may revoke the authority of a telecommunications  
270 corporation to offer a public telecommunications service pursuant to a price list or competitive  
271 contract if the commission finds:

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

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

275 (C) competition has not developed; and

276 (ii) revocation is in the public interest.

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

278 ~~[(10)]~~ (9) The commission shall establish rules or procedures to protect confidential,  
279 proprietary, and competitively sensitive information provided to the commission or the division  
280 pursuant to this section.

281 (10) (a) An incumbent telephone corporation serving fewer than 30,000 access lines in  
282 the state may petition the commission to be regulated under price regulation rather than  
283 traditional rate of return regulation.

284 (b) In implementing price regulation for an incumbent telephone corporation serving  
285 fewer than 30,000 access lines, the commission may modify the requirements of any provision  
286 of this section if necessary to the individual circumstances of the incumbent telephone  
287 corporation.

288 Section 5. Section **54-8b-3.3** is amended to read:

289 **54-8b-3.3. Services that must be offered on a nondiscriminatory basis -- Public**  
290 **telecommunications to be cost-based -- Packaged services -- Quality of service standards.**

291 (1) (a) As used in this section, "cost-based" means that the prices for the  
292 telecommunications services shall be established after taking into consideration the total  
293 service long-run incremental cost of providing the service.

294 (b) The term "cost-based" does not prevent the establishment of prices;

295 (i) that promote the universal availability of service in the state~~[-];~~ or

296 (ii) offered by a telecommunications corporation for a public telecommunications  
297 service in a promotional offer, or market trial, or to meet competition.

298 (2) ~~[Notwithstanding]~~ Except with respect to a price regulated service offered in a  
299 promotional offer, or market trial, or to meet competition and notwithstanding any other  
300 provision of this chapter:

301 (a) ~~[no]~~ a telecommunications corporation with more than 30,000 access lines in the  
302 state ~~[and which]~~ that provides a [tariffed] public telecommunications service [or a  
303 price-regulated service shall] may not:

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

307 (ii) in providing services [~~which~~] that utilize the local exchange network:

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

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

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

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

318 [~~(3) An incumbent telephone corporation may not price any public telecommunications~~  
319 ~~service at a level which is less than the sum of:]~~

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

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

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

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

331 [~~(6)~~] (3) (a) In order to promote continued investment in the public  
332 telecommunications network [~~by incumbent telephone corporations~~] and to improve the quality  
333 of service for end users [~~in areas where competition has not developed, by September 30,~~  
334 ~~2000], the commission [~~shall~~] may adopt rules governing service quality standards to end users  
335 for all [~~tariffed~~] public telecommunications services.~~

336 (b) The commission shall have the authority to enforce the rules adopted under this  
337 Subsection [~~(6)~~] (3) by granting billing credits to the affected end user where the

338 noncompliance is for reasons within the [~~incumbent telephone~~] telecommunications  
339 corporation's control.

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

343 (d) An incumbent telephone corporation with less than 30,000 access lines in the state  
344 is exempt from this Subsection [~~(6)~~] (3).

345 Section 6. Section **54-8b-4.5** is amended to read:

346 **54-8b-4.5. Commission order -- Negotiated provisions of services -- Contracts**  
347 **under this section.**

348 (1) (a) The commission may enter an order partially or wholly exempting any public  
349 telecommunications service from any requirement of this title relating to rates, tariffs, or fares.

350 (b) The commission may authorize the provision of all or any portion of a public  
351 telecommunications service under stated or negotiated terms to any person that is committed to  
352 the acquisition of comparable telecommunications services from an alternative source of  
353 supply through construction, lease, or any other form of acquisition.

354 (2) An incumbent telephone corporation may negotiate with the person or entity within  
355 the incumbent telephone corporation's service territory for the provision of retail end user  
356 public telecommunications services without regard to the provisions of any tariffs on file and  
357 approved by the commission, or any price list or competitive contract filed under Section  
358 54-8b-2.3 with the commission but any rate, toll, fare, rental, charge, or classification of service  
359 in such contracts shall comply with Subsection 54-8b-3.3(3).

360 (3) (a) Within ten days after the conclusion of the negotiations and prior to the  
361 execution of a contract under this section, the incumbent telephone corporation shall file with  
362 the commission the proposed final agreements and other evidence of the public  
363 telecommunications services to be provided, together with the charges and other conditions of  
364 the service.

365 (b) (i) The commission may approve or deny an application, or begin adjudicative  
366 proceedings to consider approval of a contract under this section within 30 days of the filing of  
367 the application by the incumbent telephone corporation.

368 (ii) If the commission begins adjudicative proceedings, the contract is effective when

369 the commission orders that it is effective.

370 (iii) If the commission fails to approve a contract under this section, or fails to begin  
371 adjudicative proceedings within 30 days, the final contract is effective.

372 (c) In determining whether or not to approve a contract under this section, the  
373 commission shall consider all relevant factors, including, whether or not the contract for any  
374 rate, toll, fare, rental, charge, or classification of service:

375 (i) complies with Subsection 54-8b-3.3(3);

376 (ii) provides for adequate service at just and reasonable rates.

377 (d) After a contract under this section has become effective, if the incumbent telephone  
378 corporation [~~is not subject to maximum price regulation for tariffed public telecommunications~~  
379 ~~services under Section 54-8b-2.4]~~ serves fewer than 30,000 access lines, the commission shall  
380 in the next general rate case for that incumbent telephone corporation:

381 (i) review the contract for consistency with the factors stated in this Subsection (3); and

382 (ii) make any adjustment in its rate order, including retroactive adjustments, that are  
383 necessary to avoid cross subsidization from other regulated intrastate telecommunications  
384 services.

385 (4) Any incumbent telephone corporation that provides public telecommunications  
386 services pursuant to a contract under this section may not offer the services under contract in a  
387 manner that unfairly discriminates between similarly situated customers.

388 (5) Subject to Subsection (4), terms and conditions offered in contracts under this  
389 section that are different from tariff terms and conditions for the same services are not  
390 considered discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).

391 **Section 7. Repealer.**

392 This bill repeals:

393 Section **54-8b-2.4, Price regulation -- Price index -- Maximum prices.**

**Legislative Review Note**  
as of **12-7-04 8:44 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
as of **12-08-04 3:08 PM**

The Public Utilities and Technology Interim Committee recommended this bill.