

TELECOMMUNICATIONS REVISIONS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Curtis S. Bramble

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;
- ▶ addresses the methods of filing price lists;
- ▶ 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 corporation from basic residential service provisions if comparable services exist at

comparable prices;

- ▶ provides for certain disclosures of competitive contracts;
- ▶ allows small incumbent telephone corporations to petition the Public Service

Commission for regulation by price, rather than traditional rate of return regulation;

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

▶ allows the Public Service Commission to adjust rates for telephone corporations not subject to price regulation; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

54-3-7, Utah Code Annotated 1953

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

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

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

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

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

REPEALS:

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

54-8b-2.5, as last amended by Chapter 279, Laws of Utah 2004

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

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

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

Exceptions.

Except as provided in this chapter [~~otherwise provided~~] or Chapter 8b, Public Telecommunications Law, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time; nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified; nor extend to any person any form of contract or agreement, or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the commission may, by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to any public utility.

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

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

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

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

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

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

Section 3. 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) "Basic residential service" means a local exchange service for a residential customer consisting of:

(a) a single line with access to the public switched network;

(b) touch-tone or the functional equivalent;

(c) local flat-rate unlimited usage, exclusive of extended area service;

(d) single-party service;

(e) a free phone number listing in directories received for free;

(f) access to operator services;

(g) access to directory assistance;

(h) access to lifeline and telephone relay assistance;

(i) access to 911 and E911 emergency services;

(j) access to long-distance carriers;

(k) access to toll limitations services;

(l) other services as may be determined by the commission; and

(m) no feature.

~~[(2)]~~ (3) "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)]~~ (4) "Division" means the Division of Public Utilities established in Section 54-4a-1.

~~[(4)]~~ (5) "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.

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

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

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

~~[(6)]~~ (8) "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.

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

~~[(8)]~~ (10) "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.

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

(a) that is defined as a mobile telecommunications service in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124; and

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

~~[(10)]~~ (12) (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.

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

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

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

~~[(14)]~~ (16) "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.

~~[(15)] "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.]~~

~~[(16)]~~ (17) "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.

~~[(17)]~~ (18) "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.

~~[(18)]~~ (19) (a) "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.

(b) 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 4. 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:

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

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

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

Subsection (1):

(i) if the incumbent telephone corporation:

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

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

(ii) except as provided in Subsection (2)(b).

~~[(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.]~~

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

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

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

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

(v) The incumbent telephone corporation may increase the price of basic residential service based:

(A) on changes in local calling areas approved by the commission;

(B) on changes in access charges approved by the commission; or

(C) on other changes affecting basic residential service approved by the commission.

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

(ii) If, under Subsection (2)(c)(i), the commission determines that any person is offering a service that includes the essential components of basic residential service at a price comparable to the incumbent telephone corporation's price for basic residential service in the area served by a central office of the incumbent telephone corporation, Subsection (2)(b) does not apply in the area served by that central office.

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

(a) be filed with the commission~~;~~:

(i) electronically; or

(ii) by paper copies only if permitted by commission rule;

(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)]~~ (4) 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)]~~ (5) A price list filed with the commission under this section shall take effect five days after it is filed with the commission.

~~[(7)]~~ (6) (a) ~~[The]~~ Except as provided in Subsection (6)(b), 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]~~ need not be filed with the commission.

(b) Notwithstanding Subsection (6)(a), a copy of a competitive contract shall be provided to the commission or division of public utilities if the commission or division of public utilities, pursuant to general investigatory powers, requests a copy of the competitive contract.

~~[(8)]~~ (7) (a) ~~[The]~~ Subject to Subsection (7)(b), 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 in a defined geographic area.

(b) The upper limit on price imposed under Subsection (7)(a) shall be applied to all telecommunications corporations holding a certificate to provide the public telecommunications services in the defined geographic area in a competitively neutral manner.

~~[(9)]~~ (8) (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 or the commission may adopt conditions or restrictions on the telecommunications corporation's pricing flexibility if the commission finds:

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

(B) there has been or there is an imminent threat of a material and substantial ~~[change]~~ diminution in the level of competition; or

(C) competition has not developed; and

(ii) revocation or conditions or restrictions on the telecommunications corporation's pricing flexibility is in the public interest.

(b) The party asserting that revocation or conditions or restrictions on the telecommunications corporation's pricing flexibility should ~~[occur]~~ be imposed shall bear the burden of proof.

~~[(10)]~~ (9) 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.

(10) (a) An 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.

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

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

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

(1) (a) 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.

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

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

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

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

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

(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]~~ that 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 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. 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) (3) (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] may 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) (3)] by granting billing credits to the affected end user where the noncompliance is for reasons within the [incumbent telephone] telecommunications 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.]~~

~~(c) Rules adopted under this Subsection (3) on or after January 1, 2005, shall impose no greater requirements or obligations on any telecommunications corporation:~~

~~(i) than were applicable to that telecommunications corporation under rules adopted~~

before January 1, 2005; or

(ii) than were imposed on telecommunications corporations that were not incumbent telephone corporations, if the telecommunications corporation is not an incumbent telephone corporation.

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

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

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

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

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

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

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

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

(ii) If the commission begins adjudicative proceedings, the contract is effective when the commission orders that it is effective.

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

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

(i) complies with [~~Subsection~~] Section 54-8b-3.3~~(3)~~;

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

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

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

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

(e) Subsection (3) does not apply to an incumbent telephone corporation subject to price regulation for public telecommunications services under Section 54-8b-2.3.

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

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

Section 7. Repealer.

This bill repeals:

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

Section 54-8b-2.5, Report to governor and Legislature.