

**TELECOMMUNICATIONS AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Martin R. Stephens**

AN ACT RELATING TO PUBLIC UTILITIES; ENACTING PROVISIONS FOR THE ENFORCEMENT OF INTERCONNECTION SERVICE QUALITY STANDARDS AND INTERCONNECTION AGREEMENTS.

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

ENACTS:

**54-8b-16**, Utah Code Annotated 1953

**54-8b-17**, Utah Code Annotated 1953

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

Section 1. Section **54-8b-16** is enacted to read:

**54-8b-16. Public Service Commission authority to enforce interconnection service quality standards and interconnection agreements.**

(1) For purposes of this section, "interconnection service quality standards" means specific, measurable criteria that shall be applied to <sup>h</sup> [an incumbent telephone] A

TELECOMMUNICATIONS CORPORATION, INCLUDING PERFORMANCE OBLIGATIONS PURSUANT TO SECTION 251 OF THE FEDERAL TELECOMMUNICATIONS ACT, REGARDING THE <sup>h</sup> corporation's provision of:

(a) interconnection services;

(b) services for resale;

(c) unbundled network elements; and

(d) the operations support systems that support those services and elements, including standards for the forecasting of the volume of telecommunications traffic, provisioning intervals, and network capacity.

(2) To serve the public interest and to enable the development and growth of competition within the telecommunications market in the state the commission shall, by order when considered necessary by the commission, enforce:

1 (a) rules regarding interconnection service quality standards adopted by the commission  
2 under authority of this chapter; and

3 (b) commission approved interconnection arrangements entered into pursuant to Sections  
4 251 and 252 of the Federal Telecommunications Act, whether by:

5 (i) means of a commission approved interconnection agreement;

6 (ii) a statement of generally available terms under Section 252(f) of the Federal  
7 Telecommunications Act; or

8 (iii) an interconnection tariff.

9 (3) Whenever a party to an approved interconnection agreement or a person aggrieved by  
10 a violation of the commission's interconnection service quality rules, a statement of generally  
11 available terms, or an interconnection tariff files a complaint with the commission, under  
12 Subsection 54-8b-2.2(1)(e), the commission shall have the power to enforce:

13 (a) the terms of the interconnection agreement;

14 (b) the commission's interconnection service quality rules;

15 (c) the statement of generally available terms; <sup>h</sup> [or] <sup>h</sup>

16 (d) the interconnection tariff <sup>h</sup> ; OR

16a (e) THE TELECOMMUNICATIONS CARRIER'S OBLIGATIONS PURSUANT TO SECTION 251 OF  
16b THE FEDERAL TELECOMMUNICATIONS ACT <sup>h</sup> .

17 Section 2. Section **54-8b-17** is enacted to read:

18 **54-8b-17. Procedures for enforcement of interconnection service quality -- Penalties**  
19 **for violation.**

20 (1) Proceedings under Subsection 54-8b-2.2(1)(e) shall be conducted in accordance with  
21 the following procedure:

22 (a) The complaint shall be served upon the <sup>h</sup> [incumbent telephone]

22a DEFENDANT TELECOMMUNICATIONS <sup>h</sup> corporation and filed with

23 the commission. A copy of the complaint shall also be served upon the Division of Public  
24 Utilities.

25 (b) An answer or other responsive pleading to the complaint shall be filed with the  
26 commission not more than ten days after receipt of service of the complaint. Copies of the answer  
27 or responsive pleading shall be served on the complainant and the Division of Public Utilities.

28            (c) A prehearing conference shall be held not later than seven days after the complaint is  
29 filed.

30            (d) (i) The commission shall commence a hearing on the complaint not later than 20 days  
31 after the complaint is filed h , UNLESS THE COMMISSION FINDS THAT EXTRAORDINARY  
31a CONDITIONS EXIST THAT WARRANT POSTPONING THE HEARING DATE h .

1 (ii) Parties shall be entitled to present evidence as provided by the commission's rules.

2 (e) ~~h [Unless the parties otherwise agree, the] THE h~~ commission shall take final action on a  
3 complaint not more than 45 days after the complaint is filed h UNLESS:

3a (i) THE COMMISSION FINDS THAT EXTRAORDINARY CONDITIONS EXIST THAT WARRANT  
3b EXTENDING FINAL ACTION; OR

3c (ii) THE PARTIES AGREE TO AN EXTENSION OF FINAL ACTION BY THE COMMISSION h .

4 (f) The commission shall have the enforcement powers listed in Subsection (1)(g) if, in  
5 the proceeding, the commission finds that:

6 (i) the incumbent telephone corporation has breached its duty to interconnect as described  
7 in this chapter and in the Federal Telecommunications Act;

8 (ii) either party to an approved interconnection agreement has violated the terms of the  
9 agreement; or

10 (iii) the h [incumbent telephone] TELECOMMUNICATIONS h corporation has violated:

11 (A) the commission's rules regarding interconnection service quality standards; or

12 (B) its obligations under the terms of its statement of generally available terms or tariff  
13 regarding interconnection.

14 (g) If the commission makes any of the findings described in Subsection (1)(f), the  
15 commission h [shall] MAY h :

16 (i) order the h [party or the incumbent telephone] TELECOMMUNICATIONS h corporation to:

17 (A) if applicable, interconnect its network with a requesting telecommunications  
18 corporation's network on a nondiscriminatory and reasonably unbundled basis;

19 (B) remedy the violation; and

20 (C) comply, as applicable, with the terms of the interconnection agreement, statement of  
21 generally available terms, or interconnection tariff and with the commission's rules regarding  
22 interconnection service quality standards;

23 (ii) if considered appropriate by the commission, prescribe the specific actions that the

24 h [party or incumbent telephone] TELECOMMUNICATIONS h corporation must take to remedy its violation,

24a including the

25 submission of a plan to prevent future violations;

26           ~~h [(iii) if considered appropriate by the commission, assess the incumbent telephone~~  
27 ~~corporation for the attorney's fees and costs of the party if the incumbent telephone corporation~~  
28 ~~is found in violation of the requirements of the Federal Telecommunications Act, this chapter, or~~  
29 ~~applicable rules or orders of the commission;~~  
30           ~~——(iv)] (iii) h~~ impose a penalty on the party or the incumbent telephone corporation, if the  
31 ~~incumbent telephone corporation has 30,000 or more access liens in this state, for violations of the~~

1 duties imposed under this section of not more than ~~h~~ [\$1,000,000] \$10,000 ~~h~~ per ~~h~~ [offense; and] DAY. ~~h~~  
 2 ~~h~~ [(v) if the incumbent telephone corporation has fewer than 30,000 access lines in this state,  
 3 impose a penalty on the incumbent telephone corporation for violations of the duties imposed  
 4 under this section as provided in Section 54-7-25.] ~~h~~

5 (2) (a) The penalty under Subsection (1)(g)(iv) shall be in addition to, and not in lieu of,  
 6 damages that may be available to the injured party.

7 (b) ~~h~~ [In determining the amount of the penalty or the amount agreed to in compromise, the  
 8 commission shall consider the appropriateness of the penalty to the size of the business of the  
 9 injured party and the incumbent telephone corporation, the gravity of the violation, and the good  
 10 faith of the incumbent telephone corporation in attempting to achieve compliance after notification  
 11 of the violation.] IN DETERMINING THE AMOUNT OF THE PENALTY OR THE AMOUNT AGREED TO IN  
 11a COMPROMISE, THE COMMISSION SHALL CONSIDER THE APPROPRIATENESS OF THE PENALTY TO THE  
 11b SIZE OF THE VIOLATING PARTY, THE GRAVITY OF THE VIOLATION, THE GOOD FAITH OF THE  
 11c TELEPHONE CORPORATION IN ATTEMPTING TO ACHIEVE COMPLIANCE AFTER NOTIFICATION OF THE  
 11d VIOLATION, AND THE IMPACT OF THE VIOLATION TO THE ESTABLISHMENT OF COMPETITION. ~~h~~

12 (c) Each day of a continuing violation or a failure to comply is a separate offense for  
 13 purposes of levying a penalty under this section.

14 (d) The period for which the penalty is to be levied commences on the day that the  
 15 commission finds the violation to first have occurred.

16 (e) All funds collected under this section shall go into the Universal Public  
 17 Telecommunications Service Support Fund established under Section 54-8b-15.

18 ~~h~~ [(3) (a) In addition to the penalties and other remedies described in this section, a  
 19 telecommunications corporation may bring a civil action in a court of competent jurisdiction for  
 20 actual and punitive damages, or seek such other recourse as is provided by law for harm caused  
 21 by another telecommunications corporation's violation of:

22 —— (i) the terms of the commission's rules regarding interconnection service quality standards;

23 —— (ii) an approved interconnection agreement;

24 —— (iii) a statement of generally available terms; or

25 —— (iv) an interconnection tariff.

26 —— (b) In any civil action brought under Subsection (3)(a), the court may award attorneys' fees  
 27 and costs to the injured telecommunications corporation if the incumbent telephone corporation's  
 28 violation is found to have caused damage to another telecommunications corporation.] ~~h~~

**Legislative Review Note**  
**as of 1-23-98 12:48 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**