

Senator Lyle W. Hillyard proposes to substitute the following bill:

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 a telecommunications corporation, including obligations pursuant to Section 251 of the Federal Telecommunications Act, regarding the telecommunications corporation's provision of or request for:

(a) interconnection services;

(b) services for resale;

(c) unbundled network elements; and

(d) access to operations support systems that support those services and elements.

(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

1 necessary by the commission, enforce:

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

4 (b) a commission approved interconnection agreement pursuant to Sections 251 and 252
5 of the Federal Telecommunications Act; and

6 (c) a statement of generally available terms under Section 252(f) of the Federal
7 Telecommunications Act.

8 (3) An aggrieved party may file a complaint under Subsection 54-8b-2.2(1)(e) with the
9 commission for a violation of:

10 (a) the terms of the commission's interconnection service quality rules;

11 (b) the terms or conditions of an interconnection agreement;

12 (c) a statement of generally available terms; or

13 (d) a telecommunications corporations' obligations under the Federal Telecommunications
14 Act.

15 (4) In a proceeding described in Subsection (3), the commission shall have the power to
16 enforce:

17 (a) the terms of the interconnection agreement;

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

19 (c) the statement of generally available terms; or

20 (d) the telecommunications corporation's obligations pursuant to the Federal
21 Telecommunications Act.

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

23 **54-8b-17. Procedures for enforcement of interconnection service quality -- Penalties**
24 **for violation.**

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

27 (a) The complaint shall be served upon the defendant telecommunications corporation and
28 filed with the commission. A copy of the complaint shall also be served upon the Division of
29 Public Utilities.

30 (b) An answer or other responsive pleading to the complaint shall be filed with the
31 commission not more than ten days after receipt of service of the complaint. Copies of the answer

1 or responsive pleading shall be served on the complainant and the Division of Public Utilities.

2 (c) A prehearing conference shall be held not later than ten days after the complaint is
3 filed.

4 (d) (i) The commission shall commence a hearing on the complaint not later than 25 days
5 after the complaint is filed, unless the commission finds that extraordinary conditions exist that
6 warrant postponing the hearing date, in which case the commission shall commence the hearing
7 as soon as practicable.

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

9 (e) The commission shall take final action on a complaint not more than 45 days after the
10 complaint is filed unless:

11 (i) the commission finds that extraordinary conditions exist that warrant extending final
12 action, in which case the commission shall take final action as soon as practicable; or

13 (ii) the parties agree to an extension of final action by the commission.

14 (2) The commission shall have the enforcement powers listed in Subsection (3) if, in the
15 proceeding, the commission finds that:

16 (a) the telecommunications corporation has violated the terms of the commission's
17 interconnection service quality rules;

18 (b) the telecommunications corporation has breached its obligations under the provisions
19 of the Federal Telecommunications Act;

20 (c) either party to an approved interconnection agreement has violated the terms of the
21 agreement; or

22 (d) either party has violated the terms of a statement of generally available terms.

23 (3) If the commission makes any of the findings described in Subsection (2), the
24 commission shall:

25 (a) order the telecommunications corporation to:

26 (i) remedy the violation; and

27 (ii) comply, as applicable, with the terms of the commission's interconnection service
28 quality rules, the interconnection agreement, or statement of generally available terms;

29 (b) if considered appropriate by the commission, prescribe the specific actions that the
30 telecommunications corporation must take to remedy its violation, including a time frame for
31 compliance and the submission of a plan to prevent future violations;

1 (c) if considered appropriate by the commission, impose a penalty on the defendant
2 telecommunications corporation subject to the following:

3 (i) if the violation is of the duties imposed under Section 54-8b-2.2 or 54-8b-16, the
4 commission may impose a penalty for such violation as § [provide] PROVIDED § in Section
4a 54-7-25; or

5 (ii) if the violating telecommunications corporation is other than an incumbent telephone
6 corporation with fewer than 50,000 access lines in this state, and the violation is of a duty imposed
7 under an interconnection agreement, a statement of generally available terms, or the obligations
8 of Section 251 of the Federal Telecommunications Act, the commission § [shall] MAY § impose a
8a penalty

9 subject to the following:

10 (A) if the commission finds that the violation was willful or intentional, the penalty may
11 be in an amount of up to \$5,000 per day and the period for which the penalty is levied shall
12 commence on the date the commission finds the violation to have first occurred through and
13 including the date the violation is corrected; or

14 (B) if the commission finds that the violation was not willful or intentional, the penalty
15 may be in an amount prescribed by Section 54-7-25 and the period for which the penalty is levied
16 shall commence on the day after the deadline for compliance in the commission's order.

17 (4) (a) The commission shall have the authority, on its own or at the request of the injured
18 telecommunications corporation, to investigate a party's compliance with the commission's order
19 under Subsection (3)(c)(ii).

20 (b) If corrective or remedial action acceptable to the commission is not completed:

21 (i) 45 days after the deadline set by the commission, the commission may increase the
22 penalty up to \$10,000 per violation per day for a willful or intentional violation; or

23 (ii) 90 days after the deadline set by the commission, the commission may increase the
24 penalty up to \$4,000 per violation per day for a violation that is not willful or intentional.

25 (5) (a) The penalty under Subsection (3)(c) shall be in addition to, and not in lieu of, civil
26 damages or other remedies that may be available to the injured party.

27 (b) In determining the amount of the penalty or the amount agreed to in compromise, the
28 commission shall consider:

29 (i) the appropriateness of the penalty to the size of the violating party;

30 (ii) the gravity of the violation;

31 (iii) the good faith of the defendant telecommunications corporation in attempting to

- 1 achieve compliance after notification of the violation;
- 2 (iv) the impact of the violation to the establishment of competition; and
- 3 (v) the actual economic harm incurred by the plaintiff telecommunications corporation.
- 4 (c) Each day of a continuing violation or a failure to comply is a separate offense for
- 5 purposes of levying a penalty under this section.
- 6 (6) All funds collected under this section shall go into the Universal Public
- 7 Telecommunications Service Support Fund established under Section 54-8b-15, and shall be in
- 8 addition to any contributions required of a telecommunications corporation under that section.

Legislative Review Note
as of 2-24-98 2:06 PM

A limited legal review of this bill raises the following constitutional or statutory concerns:

If this bill were challenged as unconstitutional under the uniform operation of laws provision of the Utah Constitution or its federal corollary, equal protection, a limited legal review suggests that a court's determination would probably depend upon whether the classification is reasonable, whether the objectives of the law are legitimate, and whether there is a reasonable relationship between the classification and the law's purposes. The classifications in this law are based on economic distinctions -- rural incumbent telecommunications corporation versus nonrural telecommunications corporation -- distinctions that currently exist in the Federal Telecommunications Act of 1996. The Utah Supreme Court has said that "when matters of economic regulation are involved . . . both federal and state constitutional provisions have been applied so as to give broad deference to legislative classifications." Mountain Fuel, 752 P.2d 884 (Utah 1988)(finding unequal tax burdens did not violate constitution). Although this case is not definitive because this bill is not a case of unequal tax burden, it does indicate that the Utah Supreme Court is likely to be deferential to the Legislature on this issue.

Office of Legislative Research and General Counsel