

1 **CHANGES TO TELECOMMUNICATIONS LAWS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Susan J. Koehn**

5 AN ACT RELATING TO PUBLIC UTILITIES; PROVIDING DEFINITIONS; CLARIFYING
6 CONDITIONS FOR PRICING FLEXIBILITY FOR INCUMBENT TELEPHONE
7 CORPORATIONS; LIMITING APPLICATION OF THE PRICE INDEX FOR TARIFFED
8 PUBLIC TELECOMMUNICATION SERVICE RELATIVE TO THE PRICE FLOOR;
9 REPEALING OUTDATED UNIVERSAL SERVICE FUND; ENACTING PROVISIONS
10 RELATING TO QUALITY OF SERVICE; AND MAKING TECHNICAL AMENDMENTS.

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

12 AMENDS:

13 **54-8b-2**, as last amended by Chapter 122, Laws of Utah 1997

14 **54-8b-2.3**, as last amended by Chapter 88, Laws of Utah 1997

15 **54-8b-2.4**, as last amended by Chapter 226, Laws of Utah 1997

16 **54-8b-3.3**, as last amended by Chapter 269, Laws of Utah 1995

17 REPEALS:

18 **54-8b-12**, as last amended by Chapter 122, Laws of Utah 1997

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

20 Section 1. Section **54-8b-2** is amended to read:

21 **54-8b-2. Definitions.**

22 As used in this chapter:

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

24 (i) is not a telecommunications corporation;

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

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

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

34 (2) "Certificate" means a certificate of public convenience and necessity issued by the
35 commission authorizing a telecommunications corporation to provide specified public
36 telecommunications services within a defined geographic service territory in the state.

37 (3) "Division" means the Division of Public Utilities established in Section 54-4a-1.

38 [~~3~~] (4) "Essential facility or service" means any portion, component, or function of the
39 network or service offered by a provider of local exchange services:

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

44 [~~4~~] (5) "Federal Telecommunications Act" means the Federal Telecommunications Act
45 of 1996, Pub. L. No. 104-104, 110 Stat. 56.

46 [~~5~~] (6) "Incumbent telephone corporation" means a telephone corporation, its successors
47 or assigns, which, as of May 1, 1995, held a certificate to provide local exchange services in a
48 defined geographic service territory in the state.

49 [~~6~~] (7) "Intrastate telecommunications service" means any public telecommunications
50 service in which the information transmitted originates and terminates within the boundaries of
51 this state.

52 [~~7~~] (8) "Local exchange service" means the provision of telephone lines to customers
53 with the associated transmission of two-way interactive, switched voice communication within the
54 geographic area encompassing one or more local communities as described in maps, tariffs, or rate
55 schedules filed with and approved by the commission.

56 [~~8~~] (9) (a) "New public telecommunications service" means a service offered by a
57 telecommunications corporation which that corporation has never offered before.

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

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

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

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

64 (A) a fully regulated service;

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

66 (C) an essential facility or an essential service as defined in ~~[Subsection]~~ Section

67 54-8b-2~~(3)~~.

68 ~~(9)~~ (10) "Operator assisted services" means services which assist callers in the placement
69 or charging of a telephone call, either through live intervention or automated intervention.

70 ~~(10)~~ (11) "Operator service provider" means any person or entity that provides, for a fee
71 to a caller, operator assisted services.

72 ~~(11)~~ (12) "Price-regulated service" means any public telecommunications service
73 governed by Section 54-8b-2.3.

74 ~~(12)~~ (13) "Public telecommunications service" means the two-way transmission of signs,
75 signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio,
76 lightwaves, or other electromagnetic means offered to the public generally.

77 (14) "Same or substitutable" with reference to a public telecommunications service means
78 that the service is comparable to another service in terms of function, price, and quality to an end
79 user customer.

80 (15) "Substantial compliance" with reference to a rule or order of the commission means
81 satisfaction of all material obligations in a manner consistent with the rule or order.

82 ~~(13)~~ (16) "Telecommunications corporation" means any corporation or person, and their
83 lessees, trustees, receivers, or trustees appointed by any court, owning, controlling, operating,
84 managing, or reselling a public telecommunications service.

85 ~~(14)~~ (17) "Total service long-run incremental cost" means the forward-looking
86 incremental cost to a telecommunications corporation caused by providing the entire quantity of
87 a public telecommunications service, network function, or group of public telecommunications
88 services or network functions, by using forward-looking technology, reasonably available, without
89 assuming relocation of existing plant and equipment. The "long-run" means a period of time long

90 enough so that cost estimates are based on the assumption that all inputs are variable.

91 Section 2. Section **54-8b-2.3** is amended to read:

92 **54-8b-2.3. Pricing flexibility.**

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

97 (b) Before the telecommunications corporation begins providing any authorized public
98 telecommunications service, it shall notify the commission of its intent to begin providing the
99 service and the defined geographic area in which it will provide the service.

100 (2) (a) Notwithstanding other requirements of this chapter relating to pricing flexibility,
101 an incumbent telephone corporation may offer retail end user public telecommunications services
102 by means of a price list or competitive contract as provided in Subsections (2)(b) and (c).

103 (b) (i) An incumbent telephone corporation may petition the commission for pricing
104 flexibility in:

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

108 (B) an independent proceeding after the other telecommunications corporation has been
109 certificated to provide specified public telecommunications services in a defined geographic area
110 that is within the incumbent telephone corporation's service territory.

111 (ii) In the proceeding, the commission shall, by order, grant pricing flexibility to the
112 incumbent telephone corporation for the same or substitutable public telecommunications services
113 in the same defined geographic area.

114 (iii) Pricing flexibility for any public telecommunications service shall become effective
115 in accordance with the procedure in Subsection (2)(b)(iv) when the following conditions are met:

116 (A) the commission has issued a certificate to the competing telecommunications
117 corporation;

118 (B) the competing telecommunications corporation has begun providing the authorized
119 public telecommunications service in the defined geographic area;

120 (C) the incumbent telephone corporation, by written agreement, stipulation, or pursuant

121 to an order of the commission, has allowed the competing telecommunications corporation to
122 interconnect with the essential facilities and to purchase essential services of the incumbent
123 telephone corporation; and

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

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

129 (B) If the commission has not entered an order within 90 days of the date the petition is
130 filed, the petition shall be considered granted.

131 (C) Pricing flexibility shall be effective 45 days following the granting of a petition for
132 pricing flexibility under Subsection (2)(b) unless the commission orders an earlier effective date.

133 (c) An incumbent telephone corporation may price any new public telecommunications
134 service by means of a price list or competitive contract.

135 (3) The commission may review any new public telecommunications service offered by
136 an incumbent telephone corporation after the applicable tariff, price list, or competitive contract
137 has taken effect.

138 (4) Each price list shall:

139 (a) be filed with the commission;

140 (b) describe the public telecommunications service;

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

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

145 (5) Prices, terms, and conditions offered under price lists or competitive contracts that are
146 different from tariff prices, terms, and conditions for the same services are not considered
147 discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).

148 (6) A price list filed with the commission under this section shall take effect five days after
149 it is filed with the commission.

150 (7) The prices, terms, and conditions of a public telecommunications service offered by
151 a telecommunications corporation pursuant to a competitive contract with a retail customer shall

152 be filed with the commission.

153 (8) The commission may, as determined necessary to protect the public interest, set an
154 upper limit on the price that may be charged by telecommunications corporations for public
155 telecommunications services that may be priced by means of a price list or competitive contract.

156 (9) (a) The commission may revoke the authority of a telecommunications corporation to
157 offer a public telecommunications service pursuant to a price list or competitive contract if the
158 commission finds:

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

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

162 (C) competition has not developed; and

163 (ii) revocation is in the public interest.

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

165 (10) The commission shall establish rules or procedures to protect confidential,
166 proprietary, and competitively sensitive information provided to the commission or the division
167 pursuant to this section.

168 Section 3. Section **54-8b-2.4** is amended to read:

169 **54-8b-2.4. Price regulation -- Price index -- Maximum prices.**

170 (1) The Legislature finds that:

171 (a) traditional rate of return regulation cannot guarantee that customers who do not have
172 the choice of alternative providers will be protected from the economic responsibility for making
173 up for an incumbent telephone corporation's competitive losses or from providing for the recovery
174 of past, regulated investments;

175 (b) the method of regulation set forth in this section will provide better protection to
176 customers who lack competitive choices than does traditional rate of return regulation; and

177 (c) before moving from traditional rate of return regulation, it is essential the commission
178 address issues relating to the movement of prices towards cost and removing subsidies in the
179 existing price structure of incumbent telephone corporations to encourage competition for all
180 telecommunications services.

181 (2) (a) Effective May 1, 1997, any incumbent telephone corporation with more than 30,000
182 access lines in the state shall be regulated pursuant to this section and may not be regulated on the

183 basis of rate of return or any similar method of regulation that is based on the earnings of the
184 incumbent telephone corporation, except as provided in this section.

185 (b) Any incumbent telephone corporation serving fewer than 30,000 access lines in the
186 state may petition the commission to be regulated under price regulation rather than traditional rate
187 of return regulation. In adopting price regulation for incumbent telephone corporations with fewer
188 than 30,000 access lines, the commission may modify the provisions of this section taking into
189 consideration the individual circumstances of the incumbent telephone corporation seeking price
190 regulation.

191 (3) ~~[(a)]~~ Any general rate proceeding for an incumbent telephone corporation with more
192 than 30,000 access lines in the state initiated before May 1, 1997, shall be based on a 1996 test
193 period and shall be conducted under the principles of traditional rate of return regulation, even
194 though the final order in the case is not issued until May 1, 1997, or thereafter.

195 ~~[(b) A rate proceeding for an incumbent telephone corporation with more than 30,000
196 access lines in the state may be initiated after April 30, 1997, and before March 1, 1998.]~~

197 ~~[(i) The rate proceeding shall be revenue neutral relative to the last proceeding filed
198 pursuant to Subsection (3)(a), except that the commission may increase or decrease the revenue
199 anticipated from all rates to account for changes in the following factors which are known and
200 measurable at the time of hearings in the case:]~~

201 ~~[(A) any removal of subsidies in the existing price structure of the incumbent telephone
202 corporation required by federal or state law or approval by the commission;]~~

203 ~~[(B) changes in rules of the Federal Communications Commission, including rules with
204 regard to the separation of interstate and intrastate revenues, expenses, or investments;]~~

205 ~~[(C) changes in tax rates applied to the incumbent telephone corporation;]~~

206 ~~[(D) any other change external to the business operations of the incumbent telephone
207 corporation resulting from:]~~

208 ~~[(F) accounting rules adopted by the Financial Accounting Standards Board and approved
209 by the commission; or]~~

210 ~~[(H) laws or rules enacted or adopted by a governmental entity having jurisdiction; or]~~

211 ~~[(E) any other extraordinary events not reasonably foreseeable as of April 30, 1997.]~~

212 ~~[(ii) In the rate proceeding, the commission may also rebalance rates of particular services
213 to move rates of those services toward cost.]~~

214 (4) (a) The prices of tariffed telecommunications services offered by an incumbent
215 telephone corporation with more than 30,000 access lines in the state may not increase during the
216 three-year period commencing with the date of the final order in the last rate case initiated before
217 May 1, 1997. The prices of services offered pursuant to a price list or competitive contract shall
218 be governed by Section 54-8b-2.3.

219 (b) Notwithstanding Subsection (4)(a), prices may increase pursuant to any prices
220 established in a final order of the commission for a rate proceeding initiated before [~~March 1,~~
221 ~~1998,~~] May 1, 1997, or the adjustment of those prices as a result of an appeal or remand of the final
222 order.

223 (5) (a) Effective at the end of the three-year period specified in Subsection (4), the
224 commission shall [~~regulate~~] adjust the maximum prices for the tariffed public telecommunications
225 services of the incumbent telephone corporation according to an aggregate price index or price
226 indices associated with groups of services. The aggregate price index or price indices shall be
227 adjusted annually to reflect the effects of inflation, productivity, and exogenous factors and to
228 maintain an appropriate level of service quality. The precise manner of annual adjustment of the
229 aggregate price index or price indices shall be developed by the commission after notice and a
230 hearing and before the end of the three-year period.

231 (b) Factors in the price index or price indices may also include the following:

232 (i) any removal of subsidies in the existing price structure of the incumbent telephone
233 corporation required by federal or state law or approved by the commission;

234 (ii) the impact of alteration in asset lives to better reflect changes in the economic lives of
235 plant and equipment approved by the commission consistent with Section 54-7-12.1;

236 (iii) changes in rules of the Federal Communications Commission, including rules with
237 regard to the separation of interstate and intrastate revenues, expenses, or investments adopted by
238 the commission;

239 (iv) changes in tax rates applied to the incumbent telephone corporation;

240 (v) any other change external to the business operations of the incumbent telephone
241 corporation resulting from:

242 (A) accounting rules adopted by the Financial Accounting Standards Board and approved
243 by the commission; or

244 (B) laws or rules enacted or adopted by a governmental entity having jurisdiction; or

245 (vi) any other extraordinary events not reasonably foreseeable as of April 30, 1997.

246 (c) If the maximum price of any tariffed public telecommunications service, including
247 residential telephone service:

248 (i) is equal to or below the price floor for the service as determined under Subsection
249 54-8b-3.3(3), the maximum price may not be lowered through application of any price index
250 determined under this Subsection (5); or

251 (ii) is above the price floor for the service as determined under Subsection 54-8b-3.3(3),
252 the maximum price may not be lowered below the price floor through application of any price
253 index determined under this Subsection (5).

254 (d) The price floor for a service shall be determined in the same manner for purposes of
255 Subsection (5)(c) as it is for other purposes under Subsection 54-8b-3.3(3).

256 (6) (a) The incumbent telephone corporation may decrease the price of a tariffed
257 telecommunications service subject to the limitation in Section 54-8b-3.3.

258 (b) Any decrease in price shall be made by filing a tariff with the commission. The
259 decrease shall become effective 30 days after filing.

260 Section 4. Section **54-8b-3.3** is amended to read:

261 **54-8b-3.3. Services which must be offered on a nondiscriminatory basis -- Tariffed**
262 **public telecommunications services and price-regulated services to be cost-based -- Packaged**
263 **services -- Price floor for all services -- Quality of service standards.**

264 (1) As used in this section, "cost-based" means that the prices for the telecommunications
265 services shall be established after taking into consideration the total service long-run incremental
266 cost of providing the service. The term "cost-based" does not prevent the establishment of prices
267 that promote the universal availability of service in the state.

268 (2) Notwithstanding any other provision of this chapter:

269 (a) no telecommunications corporation with more than 30,000 access lines in the state and
270 which provides a tariffed public telecommunications service or a price-regulated service shall:

271 (i) as to the pricing and provisioning of the tariffed public telecommunications service or
272 price-regulated service, make or grant any undue or unreasonable preference or advantage to any
273 person, corporation, or locality; or

274 (ii) in providing services which utilize the local exchange network:

275 (A) make or give any undue or unreasonable preference or advantage to any person,

276 corporation, or locality; or

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

279 (b) tariffed public telecommunications services and price-regulated services provided by
280 a telecommunications corporation with more than 30,000 access lines in the state shall be
281 nondiscriminatory, cost-based, and subject to resale as determined by the commission; and

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

284 (3) An incumbent telephone corporation may not price any public telecommunications
285 service at a level which is less than the sum of:

286 (a) the total service long-run incremental cost of nonessential facilities used to provide the
287 public telecommunications service in a particular geographic area; and

288 (b) the price of essential facilities used to provide the public telecommunications service
289 in a particular defined geographic area.

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

294 (5) The commission shall examine the total service long-run incremental cost studies of
295 an incumbent telephone corporation's public telecommunications services as needed to insure
296 compliance with this section.

297 (6) (a) In order to promote continued investment in the public telecommunications network
298 by incumbent telephone corporations and to improve the quality of service for end users in areas
299 where competition has not developed, by September 30, 2000, the commission shall adopt rules
300 governing service quality standards to end users for all tariffed public telecommunications
301 services.

302 (b) The commission shall have the authority to enforce the rules adopted under this
303 Subsection (6) by granting billing credits to the affected end user where the noncompliance is for
304 reasons within the incumbent telephone corporation's control.

305 (c) The commission shall report annually to the Legislature concerning investment by
306 incumbent telephone corporations in the public telecommunications network in their service areas

307 and the quality of service to end users of tariffed public telecommunications services.

307a h (d) AN INCUMBENT TELEPHONE CORPORATION WITH LESS THAN 30,000 ACCESS LINES

307b IN THE STATE IS EXEMPT FROM THIS SUBSECTION (6). h

308 Section 5. **Repealer.**

309 This act repeals:

310 Section **54-8b-12, Trust fund established -- Requirements -- Expiration -- Transfer of**

311 **balance.**

Legislative Review Note

as of 2-15-00 9:48 AM

This legislation raises the following constitutional or statutory concerns:

As the state moves toward a deregulated utility market, it is unclear how a court would apply any previous caselaw decided in a rate regulated monopoly utility market to situations that will occur under the price index regulation to take effect December 2000. For example, one issue for which the answer is unknown, is whether, through this bill, elimination of imputation of directory publishing operations (yellow page assets) to ratepayers or customers of US West would be an unconstitutional taking of a property interest without just compensation.

The Utah Supreme Court in US West Communications, Inc., v. Public Service Commission of Utah, 386 Utah Adv. Rep. 4 decided January 7, 2000, found that US West ratepayers had an "investment or proprietary interest in the yellow pages asset and specifically rejected US West's "argument that directory imputation may not continue indefinitely" to ratepayers' rates. The problem becomes that in December 2000, US West will no longer be under rate of return regulation and US West customers will no longer be called "ratepayers." In US West, the court was not asked to address whether the interest would continue when "ratepayers" become just "customers" of the company. The court did say that imputation could continue indefinitely and it is conceivable that the court intended the imputation to continue to "customers" after December 2000 under price regulation. However, another interpretation of the court's findings could be that only "ratepayers" are entitled to the imputation and since no ratepayers will exist after December 2000, the asset could accrue only to the company and not to customers.

Office of Legislative Research and General Counsel