

1                                   **TELECOMMUNICATION PRICING**  
2                                   **FLEXIBILITY AMENDMENTS**

3                                   2009 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Fred R Hunsaker**

6                                   Senate Sponsor: Peter C. Knudson

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8   **LONG TITLE**

9   **General Description:**

10           This bill amends certain telecommunication pricing flexibility provisions.

11   **Highlighted Provisions:**

12           This bill:

- 13           ▶ amends certain telecommunication pricing flexibility provisions; and
- 14           ▶ makes technical corrections.

15   **Monies Appropriated in this Bill:**

16           None

17   **Other Special Clauses:**

18           None

19   **Utah Code Sections Affected:**

20   AMENDS:

21           **54-8b-2.3**, as last amended by Laws of Utah 2005, Chapter 5

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

24           Section 1. Section **54-8b-2.3** is amended to read:

25           **54-8b-2.3. Pricing flexibility.**

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

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

- 32 (i) its intent to begin providing the service; and
- 33 (ii) the defined geographic area in which it will provide the service.

34 (2) (a) Notwithstanding other requirements of this chapter relating to pricing  
35 flexibility, beginning on May 2, 2005, an incumbent telephone corporation may offer retail  
36 end user public telecommunications services by means of a price list or competitive contract in  
37 the same manner as a competing telecommunications corporation as provided in Subsection  
38 (1):

- 39 (i) if the incumbent telephone corporation:
  - 40 (A) is in substantial compliance with rules and orders of the commission issued under
  - 41 Section 54-8b-2.2; and
  - 42 (B) has more than 30,000 access lines; and
- 43 (ii) except as provided in Subsection (2)(b).

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

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

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

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

56 [~~(v) The incumbent telephone corporation may increase the price of basic residential~~  
57 ~~service based.~~]

58           ~~[(A) on changes in local calling areas approved by the commission;]~~  
59           ~~[(B) on changes in access charges approved by the commission; or]~~  
60           ~~[(C) on other changes affecting basic residential service approved by the commission.]~~  
61           ~~[(e) (i) Upon request by the incumbent telephone corporation, but in any event no later~~  
62 ~~than May 2, 2007, the commission shall review whether any person is offering a service that~~  
63 ~~includes the essential components of basic residential service at a price comparable to the~~  
64 ~~incumbent telephone corporation's price for basic residential service in the area served by a~~  
65 ~~central office of the incumbent telephone corporation.]~~  
66           ~~[(ii) If, under Subsection (2)(c)(i), the commission determines that any person is~~  
67 ~~offering a service that includes the essential components of basic residential service at a price~~  
68 ~~comparable to the incumbent telephone corporation's price for basic residential service in the~~  
69 ~~area served by a central office of the incumbent telephone corporation, Subsection (2)(b) does~~  
70 ~~not apply in the area served by that central office.]~~  
71           (3) Each price list shall:  
72           (a) be filed with the commission:  
73           (i) electronically; or  
74           (ii) by paper copies only if permitted by commission rule;  
75           (b) describe the public telecommunications service;  
76           (c) set forth the basic terms and conditions upon which the public telecommunications  
77 service is offered; and  
78           (d) list the prices to be charged for the public telecommunications service or the basis  
79 on which the services will be priced.  
80           (4) Prices, terms, and conditions offered under price lists or competitive contracts that  
81 are different from tariff prices, terms, and conditions for the same services are not considered  
82 discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).  
83           (5) A price list filed with the commission under this section shall take effect five days  
84 after it is filed with the commission.  
85           (6) (a) Except as provided in Subsection (6)(b), the prices, terms, and conditions of a

86 public telecommunications service offered by a telecommunications corporation pursuant to a  
87 competitive contract with a retail customer need not be filed with the commission.

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

92 (7) (a) Subject to Subsection (7)(b), the commission may, as determined necessary to  
93 protect the public interest, set an upper limit on the price that may be charged by  
94 telecommunications corporations for public telecommunications services that may be priced  
95 by means of a price list or competitive contract in a defined geographic area.

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

99 (8) (a) The commission may revoke the authority of a telecommunications corporation  
100 to offer a public telecommunications service pursuant to a price list or competitive contract or  
101 the commission may adopt conditions or restrictions on the telecommunications corporation's  
102 pricing flexibility if the commission finds:

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

105 (B) there has been or there is an imminent threat of a material and substantial  
106 diminution in the level of competition; or

107 (C) competition has not developed; and

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

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

113 (9) The commission shall establish rules or procedures to protect confidential,

114 proprietary, and competitively sensitive information provided to the commission or the  
115 division pursuant to this section.

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

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