

ENROLLED ACT NO. 57, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

AN ACT relating to telecommunications; recognizing competition from alternate providers; requiring certificates of public convenience and necessity for all telecommunications providers; providing definitions; repealing cost based pricing; providing for downward pricing flexibility for telecommunications services; providing a limitation on increasing prices for essential telecommunications services; limiting annual reports by the public service commission; repealing anachronistic provisions; providing for hearings on unreasonable or discriminatory competitive, wholesale and switched access pricing; eliminating mandatory quality of service studies; providing a delayed repeal date; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 37-15-101, 37-15-103(a)(iv)(B), (C) and (xvi)(A)(V) and by creating a new paragraph (xvii), 37-15-104(a)(ii), 37-15-201(a) and (b), 37-15-202(a)(i), (ii), (c) and by creating new subsections (d) through (g), 37-15-203(a) and by creating new subsections (e) through (j), 37-15-204(a), 37-15-401(a)(v), (vi) and by creating a new paragraph (vii), 37-15-404 by creating a new subsection (f), 37-15-405, 37-15-406(b), 37-15-407(a)(intro), 37-15-408, 37-15-501(b) and (d) and 37-15-502(a)(iv) are amended to read:

37-15-101. Short title; sunset.

(a) This chapter shall be known as the "Wyoming Telecommunications Act." ~~of 1995."~~

(b) This chapter is repealed effective July 1, 2015.

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37-15-103. Definitions.

(a) As used in this chapter:

(iv) "Essential telecommunications service" means a customer's access to service that is necessary for the origination or termination, or both, of two-way, switched telecommunications for both residential and business service within a local exchange area. Essential telecommunications services are limited to:

(B) Single line flat-rate or single line measured residence or business voice service;

(C) Transmission service and facilities necessary for the connection between the end user's or customer's premises ~~or location~~ and ~~the~~ local network switching facility including the necessary signaling service used by customers to access essential telecommunications services;

(xvi) "Supported services" means the services or functionalities which shall be supported by the state universal service fund pursuant to W.S. 37-15-502, as described in subparagraphs (A) and (B) of this paragraph:

(A) The services designated for support are:

(V) Access to emergency services. "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a public ~~service access~~ safety answering point

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operated by the local government. "Enhanced 911" is defined as 911 service that includes the ability to provide automatic numbering information, which enables the public ~~service access~~ safety answering point to call back if the call is disconnected, and automatic location information, which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services in accordance with applicable governing authority;

(xvii) "Landline carrier" means a telecommunications company providing local exchange service, or its functional equivalent, to retail end users by means primarily of its own fiber, copper, electric lines or coaxial cable facilities.

37-15-104. Services not regulated by this title.

(a) Except for contributions to the universal service fund required pursuant to W.S. 37-15-501 and the assessment levied pursuant to W.S. 37-2-106 through 37-2-109, telecommunications service does not include, and the provisions of this title do not apply to:

(ii) ~~Except as provided in this paragraph, Home and business and coinless, or coin operated public or semipublic telephone terminal equipment, and the use, location and charges for the use of such equipment; . The commission may regulate the location of and charges for coinless or coin operated public or semipublic telephone terminal equipment in areas of the state which the commission finds are not subject to competition for such equipment;~~

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37-15-201. Regulation of local exchange services; certificates of public convenience and necessity; concurrent certificates.

(a) Except for those telecommunications companies that as of ~~January 1, 1995~~ July 1, 2007, have a valid certificate of public convenience and necessity previously issued by the commission to provide local exchange services in the state, all telecommunications companies seeking to offer and provide local exchange service shall obtain a certificate of public convenience and necessity from the commission prior to providing that service in this state.

(b) The commission shall grant a ~~concurrent~~ certificate or certificates of public convenience and necessity to provide local exchange service ~~in the service territory of a local exchange company with more than thirty thousand (30,000) access lines in the state~~ if it finds, after notice and opportunity for hearing, that the applicant possesses sufficient technical, financial and managerial resources to provide safe, adequate and reliable local exchange services within the identified geographic area.

37-15-202. Determination of competitive services.

(a) Upon petition by any telecommunications company, the commission may, after notice and opportunity for hearing, find and conclude that a telecommunications service is subject to competition. Any service found to be effectively competitive shall not be subject to regulation of prices by the commission. The commission shall consider only the following factors in determining whether a telecommunications service is subject to effective competition:

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(i) The extent to which ~~the same or equivalent~~ telecommunications services are available from alternative providers including, but not limited to, wireless providers, cable providers offering voice services, voice over internet protocol or any other providers utilizing telephone numbers to provide voice services in the relevant market;

(ii) The extent to which telecommunications services of alternative providers are functionally equivalent, for equivalent service or in combination with other services, and may be substituted at reasonably comparable prices, terms and conditions;

(c) Telecommunications service provided by new entrants, local exchange services provided by resale, telecommunications services provided by interexchange telecommunications companies, interexchange telecommunications services and telecommunications services other than local exchange service, ~~and~~ switched access ~~and interexchange telecommunications services~~ provided by a local exchange company shall be considered subject to competition for purpose of regulation under this title.

(d) Notwithstanding subsection (a) of this section the commission shall, in an area defined by an applicant, find retail telecommunications services other than switched access are competitive provided:

(i) At least seventy-five percent (75%) of the class of customers in the area have access to at least one (1) landline carrier unaffiliated with the applicant providing telecommunications service that includes local voice telecommunications service. The local voice telecommunications service may be provided in combination with other services. If a company does not differentiate

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between residential and business classes of service in its application, the requirement shall be that at least sixty percent (60%), considering residential and business customers as one (1) class of customers, have access to at least one (1) landline carrier unaffiliated with the applicant;

(ii) At least seventy-five percent (75%) of the class of customers in the area have access to at least one (1) wireless provider unaffiliated with the applicant. If a company does not differentiate between residential and business classes of service in its application, the requirement shall be that at least sixty percent (60%), considering residential and business customers as one (1) class of customers, have access to at least one (1) wireless provider unaffiliated with the applicant;

(iii) The applicant specifies in the application whether or not the class of customers whose service is to be determined competitive are residential, business or both;

(iv) The applicant agrees to provide throughout the area prices which do not vary by geographic location or access to competitors;

(v) The applicant agrees, if residential services are involved and subject to the provisions of subsections (e) and (f) of this section, to continue to provide stand alone basic residential local exchange service at a price less than the price for the stand alone basic residential local exchange service bundled with any other service; and

(vi) The applicant agrees for a transition period ending July 1, 2009 to provide stand alone basic

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residential service at a price that does not exceed the price in effect July 1, 2006 and agrees after July 1, 2009 that it will not increase the price for the stand alone basic residential local exchange service by an amount that exceeds the price in effect July 1, 2008, by more than the cumulative increase in the federal gross domestic product price index since July 1, 2008. For the purpose of this subsection the prices in effect July 1, 2006 and July 1, 2009 shall be modified only to reflect changes in access charges as approved by the commission pursuant to W.S. 37-15-203(f)(ii) and (j) to the extent those changes are not reflected in the rates.

(e) If the price for stand alone basic residential local exchange service is restricted pursuant to subsection (d) of this section, the commission may, upon application and after notice and opportunity for hearing, authorize an increase in the price for the service if the applicant demonstrates that the maximum price allowed pursuant to subsection (d) of this section would not allow the applicant a reasonable opportunity to recover its prudently incurred costs related to the proportion of the property used in providing the essential telecommunications service.

(f) If a company is required to continue to offer stand alone basic residential local exchange service pursuant to subsection (d) of this section, it may apply to the commission for permission to stop offering the service. The commission shall, after notice and opportunity for hearing approve the application if:

(i) A successor agrees to continue the obligation; or

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(ii) The company establishes to the satisfaction of the commission that the service has become obsolete due to a lack of customers subscribing to the service.

(g) The commission may, on its own motion or upon application by the office of consumer advocate or by any interested party, find retail telecommunications services are not competitive in any area where it has previously found them to be competitive pursuant to subsection (d) of this section if, after notice and opportunity for hearing, it finds that:

(i) Due to merger, acquisition, predatory pricing or marketing practices or withdrawal of offerings, the degree of competition required by subsection (d) of this section no longer exists; or

(ii) The local exchange telecommunications provider has not complied with the conditions it agreed to pursuant to subsection (d) of this section.

37-15-203. Price regulation of noncompetitive essential services.

(a) Prices for telecommunications services which have ~~not~~ been determined by the legislature or the commission to be ~~competitive~~ noncompetitive essential telecommunications services shall be regulated by the commission in accordance with this section. The prices for noncompetitive essential telecommunications services of any local exchange company may be adjusted downward at the company's discretion. Except as provided in subsections (e), (f), (h) and (j) of this section, prices for noncompetitive essential telecommunications services shall be subject to a maximum determined by the commission. The initial maximum shall be the local exchange company's price of noncompetitive

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essential telecommunications services as of July 1, 2006. A local exchange carrier may increase its price for noncompetitive essential telecommunications services to the level of the maximum set under this subsection without approval of the commission as required under subsections (f) and (g) of this section.

(e) A local exchange company may seek approval to make revenue neutral adjustments, considering only revenue from noncompetitive essential telecommunications services, to the price of noncompetitive essential telecommunications services to reduce or eliminate differences in the price of noncompetitive essential telecommunications services in different portions of its service area. A local exchange company shall not use adjustments under this section to increase receipt of state universal service funds.

(f) A local exchange company may seek approval to increase the price of noncompetitive essential telecommunications services based on:

(i) Changes in the local calling area as approved by the commission;

(ii) Changes in access charges as approved by the commission;

(iii) Other changes affecting noncompetitive essential telecommunications services; or

(iv) Increases in the cost of providing telecommunications services. The increases shall be judged on the overall federal gross domestic product price index published by the United States department of labor, bureau of labor statistics unless the applicant demonstrates that

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specific cost increases are disproportionably affecting the cost of providing their noncompetitive essential services.

(g) Any requested price change under subsections (b) through (f) of this section, including revenue neutral changes, that may result in an increase in the price of noncompetitive essential telecommunications services is subject to review and determination by the commission, after notice and opportunity for hearing.

(h) The prices of any local exchange company may contain provisions for incentives for improvement of the company's performance or efficiency, lowering of operating costs, control of expenses or improvement and upgrading or modernization of its services or facilities. Any local exchange company may apply to the commission for incentives and innovative or nontraditional price regulation, including price indexing. The commission shall issue a final order approving, modifying or rejecting any application made under this subsection within one hundred eighty (180) days of the filing date of the application with the commission. If no order is issued by the commission within the one hundred eighty (180) day period, the application shall be deemed approved as filed. If during consideration of an application for regulation under this subsection, the commission materially alters the plan as filed in the application, the applying local exchange company may notify the commission in writing, at any time, but not later than sixty (60) days after any final commission order on the application, that it elects not to be price regulated as approved by the order. The local exchange company's prices shall then be regulated as they were prior to the application until such time as a new application is filed, approved and accepted.

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(j) Unless as otherwise directed under federal law, noncompetitive switched access shall not be priced above three cents (\$.03) per minute after January 1, 2010. Prices for noncompetitive switched access which exceed three cents (\$.03) per originating and terminating minute shall be reduced to three cents (\$.03) per minute on or before January 1, 2010. Any telecommunications company which must reduce noncompetitive switched access prices under this subsection shall, on or before January 1, 2010, submit a proposed plan to the commission, identifying the amount of intrastate switched access revenues and access lines in the years until the date of filing, to reduce switched access prices in annual increments to meet the requirements of this subsection, and a request for corresponding annual revenue neutral incremental increases to noncompetitive essential service prices to offset the anticipated loss in revenue from a reduction in switched access prices. The commission shall review the proposal and the facts set forth in the proposed plan to ensure that it is accurate and consistent with this section. The telecommunications company shall satisfy any requests for information by the commission, and shall modify the plan as necessary to conform to the facts the commission finds after investigation to be accurate. Once the commission approves the proposed plan, the noncompetitive switched access and noncompetitive essential service prices proposed in the plan shall go into effect after compliance with W.S. 37-15-204. The commission may authorize noncompetitive switched access prices above three cents (\$.03) per minute for an additional transition period not to exceed two (2) years ending January 1, 2012, only upon a showing that access prices are supported by a current total long-run incremental cost study as defined by W.S. 37-15-103(a)(xiii) based upon data after January 1, 2008. A telecommunications company increasing rates pursuant to this subsection may utilize the universal service fund for

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eligible access lines as provided in W.S. 37-15-501 and 37-15-502 and commission rule and regulation.

37-15-204. Price schedules.

(a) A local exchange company shall file with the commission, in such form and detail as the commission may require, schedules showing all ~~competitive and~~ noncompetitive telecommunications services terms, conditions and prices, ~~including prices set by contract,~~ currently in effect and charged to customers by the company in this state. All prices for new noncompetitive telecommunications services, and any ~~change~~ increase in prices for noncompetitive telecommunications services as authorized by the commission pursuant to W.S. 37-15-203, shall be filed thirty (30) days prior to the proposed effective date. ~~unless a shorter filing period is authorized by the commission.~~ No price increase for a noncompetitive service shall be effective unless the customer has been given notice by the provider at least one (1) full billing cycle prior to the proposed increase and the increase has been approved by the commission as required by W.S. 37-15-203. ~~All price changes for competitive services shall be effective as provided for in the company's price schedule.~~ No price or price change is effective until filed in accordance with this section. Prices charged for competitive services shall be in accordance with its price schedule unless a separate contract is negotiated. Prices for generally offered competitive services shall be publicly available on a company's website through the internet, the world wide web or a similar proprietary or common carrier or provided to the commission. Price schedules may be filed in electronic format at the option of the company. For purposes of this subsection, the rules, regulations, policies, practices and other requirements relating to services shall be filed with

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the commission in such form and detail as the commission may require. Rules, regulations, policies, practices and other requirements relating to competitive services shall be subject to the same requirements under this chapter as the prices of competitive services. Those relating to noncompetitive services shall be subject to the same requirements under this chapter as the prices of noncompetitive services.

37-15-401. Commission powers.

(a) In addition to the powers exercised pursuant to the provisions of W.S. 37-15-408, the commission has the power to:

(v) Hold hearings on complaints, or for good cause, upon notice and subject to the provisions of the Wyoming Administrative Procedure Act; ~~and~~

(vi) Regulate telecommunications companies only as provided for in this chapter; ~~and~~

(vii) Exercise authority as expressly delegated under the Federal Communications Act of 1934, as amended.

37-15-404. Protection of telecommunications consumers.

(f) No telecommunications company shall engage in anti-competitive behavior, including, but not limited to, discrimination in favor of its affiliates.

37-15-405. Complaint against prices.

Any person, and the commission on its own motion, may complain to the commission concerning the reasonableness of

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the price of any noncompetitive telecommunications service or any violation of W.S. 37-15-404. Any notice and hearing of any complaint shall be in accordance with the Wyoming Administrative Procedure Act and this chapter. The commission shall only set aside any price it finds after notice and hearing to be unreasonable or unreasonably discriminatory. If the commission sets aside a price as unreasonable or unreasonably discriminatory, the telecommunications company shall have sixty (60) days to file a new price which is reasonable. The company shall refund any charges found to be unreasonable as ordered by the commission. ~~Any price set in compliance with the provisions of W.S. 37-15-402 is presumed to be fair and reasonable, subject to rebuttal by the commission or any party to the hearing~~ Rates or prices for noncompetitive essential services in effect as of July 1, 2006, are deemed to be fair and reasonable.

37-15-406. Quality of service.

(b) Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company. A complaint shall be noticed and heard as provided for in the Wyoming Administrative Procedure Act. The commission, after notice and hearing, may direct the telecommunications company to take whatever remedial action is technically feasible and economically reasonable to provide reasonably adequate service. The commission shall authorize a telecommunications provider to recover the cost of compliance ~~with~~ as reasonably determined by any commission order under this section.

37-15-407. Annual report.

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(a) The commission shall with the input and participation of the telecommunications industry and other relevant state departments, boards and agencies prepare and issue an annual report on the status of the telecommunications industry. ~~and Wyoming regulation thereof on January 10 of each year beginning in 1996. Such~~ The report shall be based on information provided to the commission and shall include:

37-15-408. Applicability of existing law.

W.S. ~~37-1-104 through 37-1-106,~~ 37-2-102, 37-2-104, 37-2-106 through 37-2-109, 37-2-113, 37-2-115 through 37-2-118, 37-2-124, 37-2-125, 37-2-130, 37-2-203, 37-2-205(a), 37-2-209, 37-2-214 through 37-2-216, 37-2-218, 37-2-301 through 37-2-306, 37-3-114, 37-4-101 through 37-4-104, 37-12-120 through 37-12-130, 37-12-201, 37-12-202, 37-12-204 through ~~37-12-209, 37-12-211 through~~ 37-12-213, 37-12-301 through 37-12-304 and 37-13-101 through 37-13-137, inclusive, unless in conflict with other provisions of this chapter, are applicable to telecommunications companies and telecommunication companies shall be considered public utilities for the purposes of those provisions. ~~For purposes of this chapter W.S. 37-3-106(b) and (c) shall apply to telecommunications companies which are rate of return regulated.~~

37-15-501. Universal service fund created; contributions; administration.

(b) The commission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. ~~in order to achieve the goals set forth in W.S. 37-15-102.~~ The commission shall authorize an additional monthly charge to customers, in the amount

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specified by the commission, to recover each contributor's required payment to the universal service fund. Any charge related to mobile telecommunications service shall only apply if the customer's place of primary use is in this state as provided by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 to 126. The provisions of the Mobile Telecommunications Sourcing Act shall apply to this subsection.

(d) In accordance with the method of distribution determined by the commission, a telecommunications company shall receive funds under this section to the extent that its essential local exchange ~~rates—service prices~~, after consideration of any contributions from the federal universal service fund, exceed one hundred thirty percent (130%) of the weighted statewide average essential local exchange ~~rates—service prices~~.

37-15-502. Universal service fund eligibility and distribution to carriers.

(a) Telecommunications companies which use cellular, radio spectrum or other wireless technology to provide supported services to customers who are otherwise eligible to receive universal service support pursuant to W.S. 37-15-501, may establish eligibility to receive universal service fund distributions in an amount to be determined by the commission, provided that:

(iv) The company and services meet such additional criteria, if any, the commission, after notice and opportunity for hearing, determines are necessary. ~~to further the stated intent of W.S. 37-15-102.~~ During its consideration and determination, the commission shall consider technological and competitive neutrality. ~~The~~

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~~commission shall adopt rules setting forth any such
criteria on or before December 31, 2001.~~

Section 2. W.S. 37-15-102, 37-15-103(a)(vi) and (b),
37-15-201(c) through (h), 37-15-203(b) through (d),
37-15-204(b) and (c), 37-15-301(c) through (e), 37-15-402,
37-15-403, 37-15-406(a), 37-15-407(a)(i) through (iv),
37-15-410 and 37-15-411 are repealed.

Section 3. This act is effective July 1, 2007.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk