

CHAPTER 15 - TELECOMMUNICATIONS

ARTICLE 1 - GENERAL PROVISIONS

37-15-101. Short title; sunset.

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

(b) This chapter is repealed effective July 1, 2019.

37-15-102. Repealed By Laws 2007, Ch. 142, 2.

37-15-103. Definitions.

(a) As used in this chapter:

(ii) "Commission" means the public service commission of Wyoming;

(iii) "Competitive telecommunications services" means those services found by the legislature or the commission to be competitive in accordance with W.S. 37-15-202;

(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 service within a local exchange area. Essential telecommunications services are limited to:

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

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

(D) Services necessary to connect 911 emergency services to the local network;

(E) Switched access, which for the purposes of this chapter shall mean the switching and transport necessary to connect an interexchange telecommunications company with the local exchange central office for the purpose of originating or terminating, or both, the interexchange telecommunications company's switched telecommunications service.

(vi) Repealed By Laws 2007, Ch. 142, 2.

(vii) "Local exchange area" means a geographic territorial unit established by the commission for providing telecommunications services;

(ix) "Noncompetitive essential telecommunications services" means those services which have not been found by the legislature or the commission to be competitive in accordance with W.S. 37-15-202;

(x) "Price" means any rate or charge set and published in accordance with this chapter and collected by the telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies;

(xi) "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state;

(xii) "Telecommunications service" means the offering or transmitting for hire of telecommunications by means of telecommunications facilities using wire, radio, lightwave or other means;

(xiv) "Universal service" means the general availability of essential telecommunications service at an affordable and reasonable price, provided through a single line at a specific location;

(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 limited to a single line at a specific location:

(I) Voice grade access to the public switched network. "Voice grade access" is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

(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.

(b) Repealed By Laws 2007, Ch. 142, 2.

37-15-105. VoIP and internet protocol enabled services.

(a) As used in this section:

(i) "Internet protocol enabled service" or "IP enabled service" means any service, capability, functionality or application, other than "voice over internet protocol service," (VoIP) using existing internet protocol, or any successor internet protocol, that enables an end user to send or receive a communication in existing internet protocol format, or any successor internet protocol format, utilizing a broadband connection at the end user's location, regardless of whether the communication is voice, data or video;

(ii) "Voice over internet protocol service" means any service that:

(A) Enables real time, two-way voice communication originating from or terminating at the user's location in internet protocol or a successor protocol;

(B) Utilizes a broadband connection at the user's location; and

(C) Permits a user to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(b) The commission shall not regulate IP enabled service or voice over internet protocol service. Nothing in this section affects or modifies:

(i) Any applicable wholesale tariff or any commission authority to implement or enforce any rights, duties or obligations of any party related to wholesale services;

(ii) Any entity's obligations or rights or commission authority under sections 251 and 252 of the Federal Communications Act of 1934, 47 U.S.C. 251 and 252;

(iii) Any commission jurisdiction over intrastate switched access rates, terms and conditions, including the implementation of federal law with respect to intercarrier compensation;

(iv) Any obligation for the provision of video or cable service by any entity under applicable law;

(v) Any commission jurisdiction or authority pursuant to W.S. 37-15-401(a)(vii), including but not limited to commission jurisdiction or authority to address federal high cost fund or federal universal service fund issues;

(vi) Any obligation to offer essential telecommunications service as regulated by the commission in other sections of this chapter.

(c) If a service provider voluntarily chooses to receive Wyoming universal service funds to support voice over internet protocol service that otherwise qualifies for support pursuant to W.S. 37-15-501 or 37-15-502, then that supported voice over internet protocol service shall be subject to all laws and rules governing the receipt of such funds, and the support provided to those services shall not exceed the support that would be provided to eligible noncompetitive essential local exchange services on a per-access-line basis.

ARTICLE 2 - REGULATION OF COMPETITIVE AND NONCOMPETITIVE MARKETS

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 July 1, 2015, 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 essential telecommunications 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 certificate or certificates of public convenience and necessity to provide essential telecommunications service if it finds, after notice and opportunity for hearing, that the applicant is capable of providing service.(c) Repealed By Laws 2007, Ch. 142, 2.

(d) Repealed By Laws 2007, Ch. 142, 2.

(e) Repealed By Laws 2007, Ch. 142, 2.

(f) Repealed By Laws 2007, Ch. 142, 2.

(g) Repealed By Laws 2007, Ch. 142, 2.

(h) Repealed By Laws 2007, Ch. 142, 2.

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 competitive shall not be subject to regulation by the commission and shall not be eligible for support under Chapter 5 of this title. The commission shall consider only the following factors in determining whether a telecommunications service is subject to competition:

(i) The extent to which 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;

(c) Telecommunications service other than essential telecommunications service and switched access shall be considered subject to competition for purpose of regulation under this title.

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

(a) Prices for noncompetitive essential telecommunications services shall be regulated by the commission in accordance with this section. The prices for noncompetitive essential telecommunications services 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. A Prices for noncompetitive essential telecommunications services may be increased 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.

(b) Repealed By Laws 2007, Ch. 142, 2.

(c) Repealed By Laws 2007, Ch. 142, 2.

(d) Repealed By Laws 2007, Ch. 142, 2.

(e) A provider of noncompetitive essential telecommunications service 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 provider of noncompetitive essential telecommunications service shall not use adjustments under this section to increase receipt of state universal service funds or increase switched access prices. (f) A provider of noncompetitive essential telecommunications service may seek approval to increase the price of noncompetitive essential telecommunications services, including switched access charges, 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 commerce, bureau of economic analysis unless the applicant demonstrates that specific cost increases are disproportionately 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 noncompetitive essential telecommunications service 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 provider of noncompetitive essential telecommunications service 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 provider of noncompetitive essential telecommunications service 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. Prices of noncompetitive essential telecommunications services shall then be regulated as they were prior to the application until such time as a new application is filed, approved and accepted.

37-15-204. Price schedules.

(a) A provider of noncompetitive essential telecommunications service shall file with the commission, in such form and detail as the commission may require, schedules showing all noncompetitive essential telecommunications services terms, conditions and prices currently in effect and charged to customers by the company in this state.

(b) Repealed By Laws 2007, Ch. 142, 2.

(c) Repealed By Laws 2007, Ch. 142, 2.

ARTICLE 3 - INTEREXCHANGE COMPANIES

(c) Repealed By Laws 2007, Ch. 142, 2.

(d) Repealed By Laws 2007, Ch. 142, 2.

(e) Repealed By Laws 2007, Ch. 142, 2.

ARTICLE 4 - REGULATION OF TELECOMMUNICATIONS SERVICES GENERALLY

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:

(i) Investigate the methods and practices of any telecommunications company;

(ii) Require any telecommunications company to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law;

(iii) Make any rules and regulations, in accordance with the Wyoming Administrative Procedure Act, necessary for the commission to carry out its powers in this chapter, including rules objectively established and consistent with commonly accepted industry standards, where applicable standards exist;

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

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.

37-15-402. Repealed By Laws 2007, Ch. 142, 2.

37-15-403. Repealed By Laws 2007, Ch. 142, 2.

37-15-404. Protection of telecommunications consumers.

(a) No telecommunications company shall unreasonably discriminate as to customers in prices, terms or conditions of service, or in connection to or with other telecommunications companies. Nothing in this chapter shall be construed to prohibit any telecommunications company from:

(i) Providing volume or other price discounts based on reasonable, nonpredatory business practices;

(ii) Passing through any state, municipal or local taxes to the customers in the area where the tax is levied; or

(iii) Furnishing free or reduced price service to its current or pensioned employees and dependent members of their families, as defined in the applicable price schedules on file with the commission.

(b) The commission shall not give unreasonably discriminatory or preferential treatment in its regulation of any telecommunications company.

(c) A telecommunications company providing a noncompetitive essential telecommunications service shall not discontinue providing the service without the commission's approval. The commission shall not deny a petition to withdraw service when the service is provided at extraordinary cost or the service can be provided with alternative technology at a lower cost.

(e) The commission may adopt rules and regulations to provide for:

(i) The interconnection of telecommunications companies' networks at nondiscriminatory and reasonable rates, terms and conditions;

(ii) The effective and efficient interoperability of telecommunications companies' networks;

(iii) The unbundling of services into reasonable basic network features;

(iv) The administration and allocation of phone numbers to the extent technically and economically feasible;

Comment [JA1]: Is it possible to delete this section because it is already addressed under federal law?

(v) Telephone number portability to the full extent technically feasible; and

(vi) The resale and sharing of services and functions at reasonable and nondiscriminatory rates.

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

Comment [JA2]:

Comment [JA3]: Strike if possible

37-15-405. Complaint against prices.

Any person, and the commission on its own motion, may complain to the commission concerning the reasonableness of the price of any noncompetitive essential 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. 37-15-406. Quality of service.

(a) Repealed By Laws 2007, Ch. 142, 2.

(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 as reasonably determined by any commission order under this section.

37-15-407. Annual report.

(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. The report shall be based on information provided to the commission and shall include:

(i) Repealed By Laws 2007, Ch. 142, 2.

(ii) Repealed By Laws 2007, Ch. 142, 2.

(iii) Repealed By Laws 2007, Ch. 142, 2.

(iv) Repealed By Laws 2007, Ch. 142, 2.

(v) Any recommendations for legislative change which are adopted by the commission and which the commission believes are in the interest of Wyoming telecommunications customers; and

(vi) Any other information or analysis which the commission is required to provide by this title or deems necessary to provide.

(b) The commission's report shall be filed with the legislature and the governor.

37-15-409. Construction with other laws.

If the provisions of this chapter conflict with any other statutes, the provisions of this chapter shall control.

37-15-410. Repealed By Laws 2007, Ch. 142, 2.

37-15-411. Repealed By Laws 2007, Ch. 142, 2.

37-15-412. Unauthorized change of telecommunications company; unauthorized services; prohibited practices; penalties.

Comment [JA4]: Is this necessary or has it been handled by FCC or federal law

(a) No person shall engage in any practice which has the effect of changing any Wyoming consumer's telecommunications company if the change is willfully made without the knowledge and consent of that consumer. No person shall willfully charge or attempt to collect charges from any Wyoming consumer for any product or service not provided to the consumer or not authorized by the consumer. The public service commission shall provide upon request of a Wyoming consumer, information or technical assistance regarding appropriate action for the consumer to take in order not to receive telecommunication companies solicitations.

(b) Any change in a Wyoming consumer's telecommunications company shall be effective only if it is in compliance with any method of authorization permitted under federal law, rule or regulation, except that no negative option marketing technique shall be permitted to be used.

(c) If the chosen method is a letter of agency it shall be maintained by the new service provider. No letter of agency under subsection (b) of this section shall be effective if it is physically attached to or part of any inducement, premium, coupon or other promotional material. No letter of agency shall be effective until it is in the actual possession of the new service provider.

(d) Any consumer whose telecommunications company has been willfully changed in violation of subsection (a) of this section is not liable for payment of any unauthorized charge unless the commission determines, after conducting a public hearing on any complaint brought on the matter, that the consumer engaged in any fraudulent or deceptive practice which avoids payment for telecommunications services in connection with the unauthorized charge.

(e) A consumer is not liable for an amount charged for any unauthorized product provided or service initiated by a telecommunications company or its billing agent without the consent of the consumer. No consumer shall be liable to pay for any product not delivered or service not furnished.

(f) Restitution for violation of this section shall be as follows:

(i) The unauthorized telecommunications company shall pay all recurring and nonrecurring fees and charges necessary for the consumer to promptly reinstate service from the original telecommunications company and shall pay that company an amount equal to that which would have been due had the consumer remained with the original telecommunications company;

(ii) In addition to paragraph (f)(i) of this section, the unauthorized telecommunications company shall pay to any consumer any amount the consumer has paid to the unauthorized company for which the consumer is not liable under subsection (d) of this section.

(g) If the commission shall determine by a preponderance of the evidence in a hearing that any person willfully has engaged in any practice which has the effect of changing any Wyoming consumer's telecommunications company without complying with the applicable provisions of this section, has charged or attempted to collect a charge for unauthorized service, or has solicited a Wyoming consumer in violation of this section:

(i) The commission may impose for each change or charge made in violation of this section an administrative penalty not to exceed one thousand dollars (\$1,000.00); and

(ii) If the commission finds that the person has violated this section with such frequency as to indicate a general business practice it may also permanently revoke the authority of the company involved to provide intrastate interexchange or other telecommunications services in this state.

(h) The following are not subject to the provisions of this section:

(i) Changes in a consumer's telecommunications company or other services effected through a consolidation or merger of the consumer's current telecommunications company;

(ii) Services and corresponding charges required by law or order of the commission.

37-15-413. Limitation on authority of political subdivision to enter exclusive agreement for provision of telecommunications service.

(a) Except as provided in subsections (b) through (d) of this section, before the governing body of any city or town or other political subdivision of this state shall provide for the construction, maintenance or operation of any telecommunications service by entering into an exclusive franchise, partnership, joint venture, contract, resale agreement or any other exclusive agreement with any party regarding telecommunications service, the city, town or other political subdivision shall:

(i) Determine, after notice and opportunity for a public hearing, that no private provider of telecommunications services is currently providing substantially the same or similar service anywhere within the boundaries of the city, town or political subdivision;

(ii) Have submitted a written request to all private providers of telecommunications services within the boundaries of the city, town or political subdivision for provision of the same quality

and grade of telecommunications service within the same time frame and at the same consumer prices proposed under the exclusive contract;

(iii) Determine, after notice and opportunity for a public hearing that the private telecommunications service providers have not agreed within ninety (90) days of the receipt of the request submitted pursuant to paragraph (ii) of this subsection to provide the same quality and grade of service within the same time frame and at the same consumer prices as proposed under the exclusive contract, or if the provider has agreed, that the provider has not commenced providing or constructing facilities to provide the service in the manner agreed upon; and

(iv) Limit the term of any exclusive agreement under this section to not more than six (6) years.

(b) The governing body of a city or town or other political subdivision shall allow the nondiscriminatory, nonexclusive and competitively neutral use of its rights-of-way including its poles, conduits, ducts or similar support structures by any telecommunications company and nothing in this section shall be construed to the contrary.

(c) Nothing in this section shall restrict the governing body of a city or town, or other political subdivision, from providing a telecommunications service or facility:

(i) For its own use;

(ii) For 911, E-911 or other emergency services;

(iii) For medical or educational purposes; or

(iv) To students by an educational institution.

(d) Nothing in this section shall be construed to restrict the governing body of a city or town or other political subdivision, from providing a telecommunications service to a party within the geographic area in which the city, town or political subdivision operates as a telecommunications utility. Any city, town or political subdivision providing a telecommunications service under this subsection shall:

(i) Provide the telecommunications service on a nondiscriminatory, nonexclusive and competitively neutral basis; and

(ii) Provide the telecommunications service at a price which covers cost, including imputed costs that the city, town or political subdivision would incur if it were a for-profit telecommunications company.

(e) Any person may complain to the commission, and the commission may on its own motion initiate an investigation, concerning any alleged violation of this section by a city, town or political subdivision, subject to the following:

(i) If the commission finds that a city, town or political subdivision has violated this section, or finds that any rule, action or order of a city, town or political subdivision is anticompetitive or otherwise violates this section, the commission shall notify the city, town or political subdivision of the violation. The city, town or political subdivision shall cure the anticompetitive behavior within ninety (90) days following mailing of notice by the commission; and

(ii) If the city, town or political subdivision does not cure the anticompetitive behavior within ninety (90) days, the commission shall commence a contested case hearing on the complaint, governed by the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq. If, following the hearing, the commission finds that the city, town or political subdivision has violated this section, the commission shall prohibit the city, town or political subdivision from providing any telecommunications service until the violation of this section is remedied.

(f) This section does not apply to any contract entered into prior to July 1, 2007.

ARTICLE 5 - UNIVERSAL SERVICE FUND

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

(a) There is hereby established the universal service fund to be administered in accordance with this section. The fund shall be administered by the commission. All telecommunications companies shall contribute to the universal service fund. The dates for contributions to the fund and disbursements from the fund shall be set by the commission, after notice and opportunity for hearing, as necessary to accomplish the objectives of the fund as specified in subsections (c) and (d) of this section. The costs of administering the fund may be included in determining required contributions.

(b) The commission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed. The commission shall authorize an additional monthly charge to customers, in the amount 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.

(c) The commission shall administer the monies in the universal service fund to assist only those customers of telecommunications companies located in rural high cost areas of this state with relatively high rates for noncompetitive essential telecommunications services provided that support is limited to a single line at a single location. The commission, after notice and opportunity for hearing, shall determine a reasonable amount and a fair method of distributing monies. The commission may authorize a credit to customer bills, in the amount specified by the commission, to reflect distributions received by the local exchange company from the universal service fund. The commission shall ensure that the method shall promote the emergence of competition in providing local exchange service.

(d) Distributions to eligible telecommunications companies are based upon a benchmark established by the commission. Total distributions under this section shall be reduced to seventy-five percent (75%) of the July 1, 2015 amount on July 1, 2016, fifty percent (50%) of the July 1, 2015 amount on July 1 2017, twenty five (25%) of the July 1, 2105 amount on July 1, 2018 and zero percent (0%) of the July 1, 2015 amount on July 1, 2019. The benchmark is the rate the commission determines to be a reasonable amount customers should pay for local exchange service but shall be no less than forty dollars (\$40.00) per month.

(e) The universal service fund shall terminate on July 1, 2019 and no distributions may be made after that date. The commission shall determine a method that ensures all monies in the fund are distributed by July 1, 2019. The operation of the universal service fund may be suspended by the commission, prior to July 1, 2019, based upon a public interest finding, after notice and an opportunity for a hearing, that the fund is not then serving its intended purpose.

(f) The commission's decisions under this section shall be subject to the provisions of the Wyoming Administrative Procedure Act.

Comment [JA5]: Address applicability of APA under Section 408?

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:

(i) The telecommunications company will offer and advertise all universal service fund supported services throughout the entire local exchange area;

(ii) The telecommunications company will provide unlimited local calling throughout an entire local exchange area for a flat fee;

(iii) The telecommunications company's bill to the customer reflects a credit for the amount of distribution the company receives from the state universal service fund for providing universal service fund supported services to that customer; and

(iv) The company and services meet such additional criteria, if any, the commission, after notice and opportunity for hearing, determines are necessary. During its consideration and determination, the commission shall consider technological and competitive neutrality.