

WORKING DRAFT

HOUSE BILL NO. _____

Telecommunications.

Sponsored by: Joint Corporations, Elections and Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to and providing for an effective date.

2

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

4

5 Section 1. W.S. 37-15-101, 37-15-103(a),
6 37-15-104(a)(ii), (ix), 37-15-201(a) through (b),
7 37-15-202, 37-15-203, 37-15-204, 37-15-401(a)(iv), (vi),
8 37-15-402, 37-15-403(a), 37-15-404(a)(i), 37-15-405,
9 37-15-406(b), 37-15-407(a)(i), by creating a new
10 subsection (c), 37-15-408, 37-15-501 and 37-15-502 are
11 amended to read:

12

13 **37-15-101. Short title.**

14

15 This chapter shall be known as the "Wyoming
16 Telecommunications Act of 1995."

17

18 **37-15-103. Definitions.**

19

20 (a) As used in this chapter:

21

22 (iv) "Consumer choice" means the ability for a
23 consumer to choose an alternate provider of voice service
24 due to the presence of at least one additional carrier in
25 the market;

1

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

8

9 (B) A single line flat-rate or a single
10 line measured residence or business service;

11

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

18

19 ~~(v)~~(vii) "Interexchange telecommunications
20 company" means a person providing telecommunications
21 service to connect end users located in different local
22 exchange areas, but excluding companies which also provide
23 noncompetitive local exchange services;

24

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

28

29 ~~(viii)~~(ix) "Local exchange service" means the
30 provision of essential telecommunications service within a
31 local exchange area;

32

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

37

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

43

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

47

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

5
6 ~~(xiii)~~(xiv) "Total service long-run incremental
7 cost" means the total forward-looking cost, using least
8 cost technology, for a telecommunications service or basic
9 network function that the telecommunications provider would
10 incur if it were to initially offer such telecommunications
11 service or basic network function;

12
13 ~~(xiv)~~(xv) "Universal service" means the general
14 availability of essential telecommunications service at an
15 affordable and reasonable price;

16
17 ~~(xv)~~(xvi) "Video dial tone service" means the
18 transmission of entertainment video programming and other
19 forms of two-way, interactive video programming using a
20 common video dial tone platform;

21
22 ~~(xvi)~~(xvii) "Supported services" means the
23 services or functionalities which shall be supported by the
24 state universal service fund pursuant to W.S. 37-15-502, as
25 described in subparagraphs (A) and (B) of this paragraph:

26
27 (A) The services designated for support
28 are:

29
30 (V) Access to emergency services.
31 "Access to emergency services" includes access to services,
32 such as 911 and enhanced 911, provided by local governments
33 or other public safety organizations. 911 is defined as a
34 service that permits a telecommunications user, by dialing
35 the three-digit code "911," to call emergency services
36 through a public ~~service access~~safety answering point
37 operated by the local government. "Enhanced 911" is
38 defined as 911 service that includes the ability to provide
39 automatic numbering information, which enables the public
40 ~~service access~~safety answering point to call back if the
41 call is disconnected, and automatic location information,
42 which permits emergency service providers to identify the
43 geographic location of the calling party. "Access to
44 emergency services" includes access to 911 and enhanced 911
45 services in accordance with applicable governing authority;

46
47 **37-15-104. Services not regulated by this title.**

1

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

7

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

17

18 (ix) Nonvoice data services; ~~not operated by a~~
19 ~~company providing local exchange service;~~

20

21 **37-15-201. Regulation of local exchange services;**
22 **certificates of public convenience and necessity;**
23 **concurrent certificates.**

24

25 (a) ~~Except for those telecommunications companies~~
26 ~~that as of January 1, 1995, have a valid certificate of~~
27 ~~public convenience and necessity previously issued by the~~
28 ~~commission to provide local exchange services in the state,~~
29 All telecommunications companies seeking to offer and
30 provide local exchange service shall obtain a certificate
31 of public convenience and necessity from the commission
32 prior to providing that service in this state.

33

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

44

45 **37-15-202. Determination of consumer choice.**

46

1 (a) Upon petition by any telecommunications company,
2 the commission may, after notice and opportunity for
3 hearing, find and conclude that ~~a consumer choice for an~~
4 essential telecommunications service ~~is subject to~~
5 ~~competition.~~ ~~Any service found to be effectively~~
6 ~~competitive shall not be subject to regulation of prices by~~
7 ~~the commission~~ exists in a market and such services are
8 competitive and are no longer subject to price caps
9 established under W.S. 37-15-203. A determination by the
10 commission that consumer choice for essential
11 telecommunications service exists in a market is not a
12 company specific determination, but applies to all
13 essential telecommunications services provided in that
14 market by any local exchange carrier. The commission shall
15 consider only the following factors in determining whether
16 ~~a consumer choice for an essential~~ telecommunications
17 service ~~is subject to effective competition~~ exists in a
18 market:

19
20 (i) The extent to which ~~the same or equivalent~~
21 voice telecommunications services are available from
22 alternative providers including, but not limited to,
23 wireless providers who provide at least one thousand
24 (1,000) minutes per month, cable provider offering voice
25 services, Voice over Internet Protocol (VoIP) or any other
26 providers utilizing telephone numbers to provide voice
27 services in the relevant market;

28
29 (ii) The extent to which telecommunications
30 services of alternative providers are functionally
31 ~~equivalent or may be substituted at comparable prices,~~
32 ~~terms and conditions~~ available at an equal or lesser price;

33
34 (iii) Existing economic, regulatory or
35 technological barriers to entry.

36
37 (b) Upon the commission's own motion or the petition
38 of any person, the commission may, after notice and the
39 opportunity for a hearing in accordance with the Wyoming
40 Administrative Procedure Act, find and conclude that ~~a~~
41 ~~telecommunications service~~ the presence of consumer choice
42 in a market found ~~to be competitive~~ under subsection (a) of
43 this section ~~is no longer subject to competition~~ exists,
44 and therefore those essential services are not subject to
45 treatment as a competitive service under this chapter. All
46 hearings conducted pursuant to this subsection shall place
47 the burden of proof upon the commission or the petitioner

1 of establishing that a telecommunications service is no
2 longer subject to competition.

3
4 (c) ~~Local exchange services provided by resale,~~
5 ~~telecommunications services provided by interexchange~~
6 ~~telecommunications companies, and telecommunications~~
7 ~~services other than local exchange service, Except as~~
8 ~~otherwise provided in this section, all other services~~
9 ~~except~~ switched access and ~~interexchange telecommunications~~
10 ~~wholesale~~ services ~~provided by a local exchange company~~
11 shall be considered ~~subject to competition~~ competitive for
12 purpose of regulation under this title.

13
14 **37-15-203. Price regulation of noncompetitive**
15 **services.**

16
17 (a) Prices for telecommunications services which have
18 not been determined by the legislature or the commission to
19 be competitive telecommunications services shall be
20 regulated by the commission in accordance with this
21 section. The prices of any local exchange company are
22 subject to downward pricing flexibility, at the company's
23 discretion. Except as provided in subsections (d) and (e)
24 of this section, upward pricing flexibility shall be
25 subject to an annual cap as determined by the commission.
26 The initial cap is the local exchange company's price of
27 essential telecommunications service as of July 1, 2006.

28
29 (d) A local exchange company may seek approval to
30 make revenue neutral adjustments to the price of essential
31 telecommunications service to reduce or eliminate
32 differences in the price of essential telecommunications
33 service in different portions of its service area.

34
35 (e) A local exchange company may seek approval to
36 increase the price of essential telecommunications service
37 based on:

38
39 (i) Changes in the local calling area as
40 approved by the commission;

41
42 (ii) Changes in access charges as approved by
43 the commission; or

44
45 (iii) Other changes affecting essential
46 telecommunications service.

47

1 (f) Any requested price change under subsections (a)
2 through (e) of this section, including revenue neutral
3 changes, that would result in an increase in the price of
4 essential services is subject to review and determination
5 by the commission, after notice and opportunity for
6 hearing.

7
8 ~~(b)~~(g) The prices of any local exchange company may
9 contain provisions for incentives for improvement of the
10 company's performance or efficiency, lowering of operating
11 costs, control of expenses or improvement and upgrading or
12 modernization of its services or facilities. Any local
13 exchange company may apply to the commission for incentives
14 and innovative or nontraditional price regulation,
15 including price indexing. The commission shall issue a
16 final order approving, modifying or rejecting any
17 application made under this subsection within one hundred
18 eighty (180) days of the filing date of the application
19 with the commission. If no order is issued by the
20 commission within the one hundred eighty (180) day period,
21 the application shall be deemed approved as filed. If
22 during consideration of an application for regulation under
23 this subsection, the commission materially alters the plan
24 as filed in the application, the applying local exchange
25 company may notify the commission in writing, at any time,
26 but not later than sixty (60) days after any final
27 commission order on the application, that it elects not to
28 be price regulated as approved by the order. The local
29 exchange company's prices shall then be regulated as they
30 were prior to the application until such time as a new
31 application is filed, approved and accepted.

32
33 **37-15-204. Price schedules filed with the commission.**

34
35 ~~(a) A local exchange company~~ All [telecommunications
36 ?] companies shall file with the commission or provide
37 through an official company website, in such form and
38 detail as the commission may require, schedules showing all
39 competitive and noncompetitive telecommunications services
40 terms, conditions and prices, including prices set by
41 contract, currently in effect and charged to customers by
42 the company in this state. ~~All prices for new~~
43 ~~noncompetitive telecommunications services, and any change~~
44 ~~in prices for noncompetitive telecommunications services,~~
45 ~~shall be filed thirty (30) days prior to the proposed~~
46 ~~effective date unless a shorter filing period is authorized~~
47 ~~by the commission. No price increase for a noncompetitive~~

1 ~~service shall be effective unless the customer has been~~
2 ~~given notice by the provider at least one (1) full billing~~
3 ~~cycle prior to the proposed increase. All price changes~~
4 ~~for competitive services shall be effective as provided for~~
5 ~~in the company's price schedule. No price or price change~~
6 ~~is effective until filed in accordance with this section.~~
7 Prices charged for competitive services shall be in
8 accordance with its price schedule unless a separate
9 contract is negotiated. For purposes of this subsection,
10 the rules, regulations, policies, practices and other
11 requirements relating to services shall be filed with the
12 commission in such form and detail as the commission may
13 require. Rules, regulations, policies, practices and other
14 requirements relating to competitive services shall be
15 subject to the same requirements under this chapter as the
16 prices of competitive services. Those relating to
17 noncompetitive services shall be subject to the same
18 requirements under this chapter as the prices of
19 noncompetitive services.

20

21 (b) ~~A local exchange company may by contract or by~~
22 ~~price schedule provide telecommunications services which~~
23 ~~are found to be competitive at prices and under terms and~~
24 ~~conditions that are specific to a particular customer or~~
25 ~~group of customers.~~ Copies of contracts and price
26 schedules shall be filed with the commission in the same
27 manner as price schedules. ~~Contract prices shall equal or~~
28 ~~exceed long-run incremental costs.~~ Contracts and price
29 schedules filed under this section shall be given
30 confidential status if requested by the filing party.

31

32 **37-15-401. Commission powers.**

33

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

37

38 (iv) Require reports and studies as to prices
39 and terms and conditions of service, necessary and relevant
40 for the commission's exercise of its authority pursuant to
41 W.S. 37-15-202(a) and (b) and W.S. 37-15-203(a) and (c),
42 including those protected as trade secret or confidential
43 based on legitimate competitive or other operational
44 concerns;

45

1 (vii) Unless otherwise provided by state law,
2 exercise authorities as delegated under federal law [Should
3 cite Federal Telecommunications law].

4
5 **37-15-402. Cost based pricing.**

6
7 (a) For telecommunications companies with switched
8 access charges greater than two cents (\$.02) per minute,
9 the following shall apply:

10
11 (i) Services provided by a telecommunications
12 company that provides noncompetitive services shall be
13 priced to ensure that the service's revenues from sale of
14 the service recover the total service long-run incremental
15 cost of providing that service, except as provided in this
16 section. Total service long-run incremental cost studies
17 used by a telecommunications company shall be filed with
18 the commission every three (3) years unless required by the
19 commission more frequently. All total service long-run
20 incremental cost studies required pursuant to this section
21 shall be filed in the form required by commission rule and
22 under protective order as a trade secret and shall be
23 subject to commission review and approval.
24 Telecommunications companies having fewer than thirty
25 thousand (30,000) access lines in the state are exempt from
26 the requirement to file cost studies every three (3) years,
27 but do remain subject to the commission powers in W.S.
28 37-15-401(a)(iv). A telecommunications company having fewer
29 than thirty thousand (30,000) access lines in the state may
30 utilize a reasonable total service long-run incremental
31 cost study surrogate, in lieu of conducting its own study,
32 based on cost studies as are available for comparable,
33 including nonregulated, telecommunications companies in
34 this state or other states.

35
36 ~~(b)~~(ii) For those existing prices for essential
37 and noncompetitive telecommunications service below the
38 service's total service long-run incremental cost as of the
39 effective date of this act, notwithstanding the provisions
40 of W.S. 37-15-403(a), and to avoid significant one-time
41 price increases to customers, essential and noncompetitive
42 telecommunications service prices which are below total
43 service long-run incremental costs may move over a thirty-
44 six (36) month period to a level, so that at the end of
45 that period the price of each noncompetitive
46 telecommunications service covers its required cost.

47

1 ~~(e)~~(iii) A telecommunications company having
2 fewer than thirty thousand (30,000) access lines in the
3 state may, in the interest of preserving essential
4 telecommunications services and subject to the provisions
5 of the universal service fund created under W.S. 37-15-501,
6 or other like compensation, apply to the commission for
7 authority to allow a price for a noncompetitive
8 telecommunications service to remain below that service's
9 total service long-run incremental cost. As of January 1,
10 2005 this subsection is repealed.

11
12 ~~(d)~~(iv) A telecommunications company providing
13 both noncompetitive switched access service and message
14 toll service shall include in the amount recovered from
15 message toll service the price it charges others for those
16 elements of switched access which cannot be economically
17 duplicated by competitors. Nothing in this subsection
18 shall require such inclusion in local exchange areas where
19 a telecommunications company does not also provide switched
20 access service.

21
22 **37-15-403. Cross-subsidies prohibited; enforcement.**
23

24 (a) No telecommunications company shall use revenues
25 earned from or allocate expenses to noncompetitive services
26 to subsidize competitive services. ~~determined by the~~
27 ~~commission to be subject to competition.~~ The commission
28 shall not require revenues or expenses from competitive
29 services to be attributed to noncompetitive services.
30 Revenues obtained from noncompetitive telecommunications
31 services may not be used to subsidize competitive services.
32 Revenues from competitive telecommunications services may
33 not be used to subsidize noncompetitive telecommunications
34 services. Nothing in this subsection shall affect the
35 assignment of any revenues received from the universal
36 service fund for the exclusive support of high cost, local
37 exchange services.

38
39 **37-15-404. Protection of telecommunications**
40 **consumers.**

41
42 (a) No telecommunications company shall unreasonably
43 discriminate as to customers in prices, terms or conditions
44 of service, or in connection to or with other
45 telecommunications companies. Nothing in this chapter
46 shall be construed to prohibit any telecommunications
47 company from:

1
2 (i) Providing volume or other price discounts
3 based on reasonable, nonpredatory business practices,
4 including introducing promotional offerings, special
5 incentive, competitive discounts and price waivers;
6

7 **37-15-405. Complaint against prices.**
8

9 Any person, and the commission on its own motion, may
10 complain to the commission concerning the reasonableness of
11 the price of any noncompetitive telecommunications service.
12 Any notice and hearing of any complaint shall be in
13 accordance with the Wyoming Administrative Procedure Act
14 and this chapter. The commission shall only set aside any
15 price it finds after notice and hearing to be unreasonable
16 or unreasonably discriminatory. If the commission sets
17 aside a price as unreasonable or unreasonably
18 discriminatory, the telecommunications company shall have
19 sixty (60) days to file a new price which is reasonable.
20 The company shall refund any charges found to be
21 unreasonable as ordered by the commission. ~~Any price set~~
22 ~~in compliance with the provisions of W.S. 37-15-402 is~~
23 ~~presumed to be fair and reasonable, subject to rebuttal by~~
24 ~~the commission or any party to the hearing.~~
25

26 **37-15-406. Quality of service.**
27

28 (b) Any customer, and the commission on its own
29 motion, may complain concerning the quality of service
30 provided by a telecommunications company. A complaint shall
31 be noticed and heard as provided for in the Wyoming
32 Administrative Procedure Act. The commission, after notice
33 and hearing, may direct the telecommunications company to
34 take whatever remedial action is technically feasible and
35 economically reasonable to provide reasonably adequate
36 service. The commission shall authorize a
37 telecommunications provider to recover the cost of
38 compliance ~~with~~ as determined by any commission order under
39 this section.
40

41 **37-15-407. Annual report.**
42

43 (a) The commission shall with the input and
44 participation of the telecommunications industry and other
45 relevant state departments, boards and agencies prepare and
46 issue an annual report on the status of competition in the
47 telecommunications industry. ~~and Wyoming regulation thereof~~

1 ~~on January 10 of each year beginning in 1996.~~ Such report
2 shall at a minimum include:

3
4 **37-15-408. Applicability of existing law.**

5
6 W.S. ~~37-1-104 through 37-1-106,~~ 37-2-102, 37-2-104, 37-2-
7 106 through 37-2-109, 37-2-113, 37-2-115 through 37-2-118,
8 37-2-124, 37-2-125, 37-2-130, 37-2-203, 37-2-205(a), 37-2-
9 209, 37-2-214 through 37-2-216, 37-2-218, 37-2-301 through
10 37-2-306, 37-3-114, 37-4-101 through 37-4-104, 37-12-120
11 through 37-12-130, 37-12-201, 37-12-202, 37-12-204 through
12 37-12-209, 37-12-211 through 37-12-213, 37-12-301 through
13 37-12-304 and 37-13-101 through 37-13-137, inclusive,
14 unless in conflict with other provisions of this chapter,
15 are applicable to telecommunications companies and
16 telecommunication companies shall be considered public
17 utilities for the purposes of those provisions. ~~For~~
18 ~~purposes of this chapter W.S. 37-3-106(b) and (c) shall~~
19 ~~apply to telecommunications companies which are rate of~~
20 ~~return regulated.~~

21
22 **37-15-501. Universal service fund created;**
23 **contributions; administration.**

24
25 (a) There is hereby established the universal service
26 fund to be administered in accordance with this section.
27 The fund shall be administered by the commission. All
28 telecommunications companies shall contribute to the
29 universal service fund. The dates for contributions to the
30 fund and disbursements from the fund shall be set by the
31 commission, after notice and opportunity for hearing, as
32 necessary to accomplish the objectives of the fund as
33 specified in subsections (c) and (d) of this section. The
34 costs of administering the fund may be included in
35 determining required contributions.

36
37 (b) The commission shall after notice and opportunity
38 for hearing, designate the method by which the
39 contributions shall be calculated, collected and
40 distributed in order to achieve the goals set forth in W.S.
41 37-15-102. The commission shall authorize an additional
42 monthly charge to customers, in the amount specified by the
43 commission, to recover each contributor's required payment
44 to the universal service fund. Any charge related to mobile
45 telecommunications service shall only apply if the
46 customer's place of primary use is in this state as
47 provided by the Mobile Telecommunications Sourcing Act, 4

1 U.S.C. §§ 116 to 126. The provisions of the Mobile
2 Telecommunications Sourcing Act shall apply to this
3 subsection.
4

5 (c) The commission shall administer the monies in the
6 universal service fund to assist only those customers of
7 telecommunications companies located in areas of this state
8 with relatively high rates for essential services. The
9 commission, after notice and opportunity for hearing, shall
10 determine a reasonable amount and a fair method of
11 distributing monies. The commission may authorize a credit
12 to customer bills, in the amount specified by the
13 commission, to reflect distributions received by the local
14 exchange company from the universal service fund. The
15 commission shall ensure that the method shall promote the
16 emergence of competition in providing local exchange
17 service.
18

19 (d) In accordance with the method of distribution
20 determined by the commission, a telecommunications company
21 shall receive funds under this section to the extent that
22 its local exchange rates, after consideration of any
23 contributions from the federal universal service fund,
24 exceed one hundred thirty percent (130%) of the weighted
25 statewide average local exchange rates.
26

27 (e) The operation of the universal service fund may
28 be suspended by the commission, based upon a public
29 interest finding, after notice and an opportunity for a
30 hearing, that the fund is not then serving its intended
31 purpose.
32

33 (f) The commission's decisions under this section
34 shall be subject to the provisions of the Wyoming
35 Administrative Procedure Act.
36

37 **37-15-502. Universal service fund eligibility and**
38 **distribution to carriers using wireless technology.**
39

40 (a) Telecommunications companies which use cellular,
41 radio spectrum or other wireless technology to provide
42 supported services to customers who are otherwise eligible
43 to receive universal service support pursuant to W.S.
44 37-15-501, may establish eligibility to receive universal
45 service fund distributions in an amount to be determined by
46 the commission, provided that:
47

1 (i) The telecommunications company will offer
2 and advertise all universal service fund supported services
3 throughout the entire local exchange area;
4

5 (ii) The telecommunications company will provide
6 unlimited local calling throughout an entire local exchange
7 area for a flat fee;
8

9 (iii) The telecommunications company's bill to
10 the customer reflects a credit for the amount of
11 distribution the company receives from the state universal
12 service fund for providing universal service fund supported
13 services to that customer; and
14

15 (iv) The company and services meet such
16 additional criteria, if any, the commission determines are
17 necessary to further the stated intent of W.S. 37-15-102.
18 During its consideration and determination, the commission
19 shall consider technological and competitive neutrality.
20 The commission shall adopt rules setting forth any such
21 criteria on or before December 31, 2001.
22

23 Section 2. W.S. 37-15-102, 37-15-103(a)(i), (vi),
24 (b), 37-15-201(c) through (h), 37-15-203(c) and (d),
25 37-15-204(c), 37-15-301(e), 37-15-406(a), 37-15-407(a)(i),
26 (iii) and (iv), 37-15-410 and 37-15-411 are repealed.
27
28
29
30

(END)