

WORKING DRAFT

HOUSE BILL NO. _____

Telecommunications.

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

A BILL

for

1 AN ACT relating to telecommunications; recognizing
2 competition from alternate providers; requiring
3 certificates of public convenience and necessity for all
4 telecommunications providers; repealing cost based pricing;
5 providing for downward pricing flexibility for
6 telecommunications services; providing a limitation on
7 increasing prices for essential telecommunications
8 services; limiting annual reports by the public service
9 commission; repealing anachronistic provisions; providing
10 for hearings on unreasonable or discriminatory competitive,
11 wholesale and switched access pricing; eliminating
12 mandatory quality of service studies; and providing for an
13 effective date.

14

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

1

2 **Section 1.** W.S. 37-15-101, 37-15-103(a) (iv) (intro),
3 (B), (C) and (xvi) (A) (V), 37-15-104(a) (ii) and (ix),
4 37-15-201(a) and (b), 37-15-202(a) (intro), (i) and (ii),
5 37-15-203(a) and by creating new subsections (e) through
6 (h), 37-15-204(a), 37-15-401(a) by creating a new paragraph
7 (vii), 37-15-403(a), 37-15-404(a) (i), 37-15-405 by creating
8 new subsections (a) through (d), 37-15-406(b),
9 37-15-407(a) (intro), 37-15-408, 37-15-501(a), (b) and (e)
10 and 37-15-502(a) (intro) and (iv) are amended to read:

11

12 **37-15-101. Short title.**

13

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

16

17 **37-15-103. Definitions.**

18

19 (a) As used in this chapter:

20

21 (iv) "Essential telecommunications service"
22 means a customer's access to service that is necessary for
23 the origination or termination, or both, of two-way,
24 switched telecommunications for both residential voice

1 grade and business voice grade service within a local
2 exchange area. Essential telecommunications services are
3 limited to:

4

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

7

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

14

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

19

20 (A) The services designated for support
21 are:

22

23 (V) Access to emergency services.

24 "Access to emergency services" includes access to services,

1 such as 911 and enhanced 911, provided by local governments
2 or other public safety organizations. 911 is defined as a
3 service that permits a telecommunications user, by dialing
4 the three-digit code "911," to call emergency services
5 through a public ~~service access~~ safety answering point
6 operated by the local government. "Enhanced 911" is
7 defined as 911 service that includes the ability to provide
8 automatic numbering information, which enables the public
9 ~~service access~~ safety answering point to call back if the
10 call is disconnected, and automatic location information,
11 which permits emergency service providers to identify the
12 geographic location of the calling party. "Access to
13 emergency services" includes access to 911 and enhanced 911
14 services in accordance with applicable governing authority;

15

16 **37-15-104. Services not regulated by this title.**

17

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

23

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

10

11 (ix) Retail nonvoice data services; ~~not operated~~
12 ~~by a company providing local exchange service;~~

13

14 **37-15-201. Regulation of local exchange services;**
15 **certificates of public convenience and necessity;**
16 **concurrent certificates.**

17

18 (a) ~~Except for those telecommunications companies~~
19 ~~that as of January 1, 1995, have a valid certificate of~~
20 ~~public convenience and necessity previously issued by the~~
21 ~~commission to provide local exchange services in the state,~~
22 All telecommunications companies seeking to offer and
23 provide local exchange service shall obtain a certificate

1 of public convenience and necessity from the commission
2 prior to providing that service in this state.

3

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

14

15 **37-15-202. Determination of competitive services.**

16

17 (a) Upon petition by any telecommunications company,
18 the commission may, after notice and opportunity for
19 hearing, find and conclude that a telecommunications
20 service in the relevant market is subject to competition.
21 Any service found to be effectively competitive shall not
22 be subject to regulation of prices by the commission except
23 as provided by W.S. 37-15-201(b). The commission shall
24 consider only the following factors in determining whether

1 a telecommunications service in the relevant market is
2 subject to effective competition:

3
4 (i) The extent to which ~~the same or equivalent~~
5 telecommunications services are available from alternative
6 providers including, but not limited to, wireless providers
7 who provide at least one thousand (1,000) anytime minutes
8 per customer per month, cable providers offering voice
9 services, voice over internet protocol or any other
10 providers utilizing telephone numbers to provide voice
11 services in the relevant market;

12
13 (ii) The extent to which telecommunications
14 services of alternative providers are functionally
15 equivalent ~~or~~ and may be substituted at reasonably
16 comparable prices, terms and conditions for the same
17 service or in combination with other services;

18
19 **37-15-203. Price regulation of noncompetitive**
20 **services.**

21
22 (a) Prices for telecommunications services which have
23 not been determined by the legislature or the commission to
24 be competitive telecommunications services shall be

1 regulated by the commission in accordance with this
2 section. The prices for noncompetitive telecommunications
3 services of any local exchange company may be adjusted
4 downward at the company's discretion. Except as provided
5 in subsections (e) and (f) of this section, prices for
6 noncompetitive telecommunications services shall be subject
7 to a maximum determined by the commission. The initial
8 maximum shall be the local exchange company's price of
9 noncompetitive telecommunications services as of July 1,
10 2006. A local exchange carrier may increase its price for
11 noncompetitive telecommunications service to the level of
12 the maximum set under this subsection without approval of
13 the commission as required under subsections (f) and (g) of
14 this section.

15

16 *****Staff note: Was the switch to**
17 **"essential telecommunications service"**
18 **in the following sections from "non-**
19 **competitive services" in the previous**
20 **sections intentional?*****
21

22 (e) A local exchange company may seek approval to
23 make revenue neutral adjustments to the price of essential
24 telecommunications service to reduce or eliminate
25 differences in the price of essential telecommunications
26 service in different portions of its service area.

1

2 (f) A local exchange company may seek approval to
3 increase the price of essential telecommunications service
4 based on:

5

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

8

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

11

12 (iii) Other changes affecting essential
13 telecommunications service.

14

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

21

22 (h) The prices of any local exchange company may
23 contain provisions for incentives for improvement of the
24 company's performance or efficiency, lowering of operating

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

22

23 **37-15-204. Price schedules filed with the commission.**

24

1 (a) ~~A local exchange company~~ All telecommunications
2 companies shall file with the commission, in such form and
3 detail as the commission may require, schedules showing all
4 ~~competitive and noncompetitive~~ telecommunications services
5 terms, conditions and prices, ~~including prices set by~~
6 ~~contract~~, currently in effect and charged to customers by
7 the company in this state. All prices for new
8 ~~noncompetitive~~ telecommunications services, and any change
9 decrease in prices for ~~noncompetitive~~ telecommunications
10 services, shall be filed ~~thirty (30) days~~ prior to or
11 concurrent with the proposed effective date. ~~unless a~~
12 ~~shorter filing period is authorized by the commission.~~ Any
13 increase in price for competitive services shall be filed
14 ten (10) days prior to the proposed effective date. No
15 price increase for a noncompetitive service shall be
16 effective unless the customer has been given notice by the
17 provider at least one (1) full billing cycle prior to the
18 proposed increase and the increase has been approved by the
19 commission if required by W.S. 37-15-203. ~~All price~~
20 ~~changes for competitive services shall be effective as~~
21 ~~provided for in the company's price schedule.~~ No price or
22 price change is effective until filed in accordance with
23 this section. Prices charged for competitive services
24 shall be in accordance with its price schedule unless a

1 separate contract is negotiated. For purposes of this
2 subsection, the rules, regulations, policies, practices and
3 other requirements relating to services shall be filed with
4 the commission in such form and detail as the commission
5 may require. Rules, regulations, policies, practices and
6 other requirements relating to competitive services shall
7 be subject to the same requirements under this chapter as
8 the prices of competitive services. Those relating to
9 noncompetitive services shall be subject to the same
10 requirements under this chapter as the prices of
11 noncompetitive services.

12

13 **37-15-401. Commission powers.**

14

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

18

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

21

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

23

1 (a) No telecommunications company shall use revenues
2 earned from or allocate expenses to noncompetitive
3 telecommunications services to subsidize competitive
4 telecommunications services. ~~determined by the commission~~
5 ~~to be subject to competition.~~ The commission shall not
6 require revenues or expenses from competitive
7 telecommunications services to be attributed to
8 noncompetitive telecommunications services. Revenues
9 obtained from noncompetitive telecommunications services
10 may not be used to subsidize competitive telecommunications
11 services. Revenues from competitive telecommunications
12 services may not be used to subsidize noncompetitive
13 telecommunications services. Nothing in this subsection
14 shall affect the assignment of any revenues received from
15 the universal service fund for the exclusive support of
16 high cost, local exchange services.

17

18 **37-15-404. Protection of telecommunications**
19 **consumers.**

20

21 (a) No telecommunications company shall unreasonably
22 discriminate as to customers in prices, terms or conditions
23 of service, or in connection to or with other
24 telecommunications companies. Nothing in this chapter

1 shall be construed to prohibit any telecommunications
2 company from:

3

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

8

9 **37-15-405. Complaint against prices.**

10

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

1 ~~provisions of W.S. 37-15-402 is presumed to be fair and~~
2 ~~reasonable, subject to rebuttal by the commission or any~~
3 ~~party to the hearing.~~ The reasonableness of prices subject
4 to the complaint shall be evaluated with consideration of
5 whether the prices complained of are below an appropriate
6 measure of a potential competitor's costs and whether a
7 competitor has a reasonable prospect of recouping its
8 investment in below-cost prices. The complaint shall
9 specify facts demonstrating the manner in which the price
10 that is the subject of the complaint is significantly
11 inconsistent with the same or similar prices of any
12 telecommunications company including competitive local
13 exchange carriers, cable provider, wireless providers and
14 any other provider including providers using internet
15 protocol transmission providing services in similar
16 markets.

17

18 (b) Any person, and the commission on its own motion,
19 may complain to the commission concerning the
20 reasonableness of the price of competitive
21 telecommunications service. Any notice and hearing of any
22 complaint shall be in accordance with the Wyoming
23 Administrative Procedures Act and this chapter. The
24 commission shall only set aside any price for competitive

1 telecommunications service it finds after notice and
2 hearing to be unreasonable or unreasonably discriminatory.
3 If the commission sets aside a price as unreasonable or
4 unreasonably discriminatory, the telecommunications company
5 shall have sixty (60) days to negotiate a new price that is
6 reasonable. The company shall refund any charges found to
7 be unreasonable as ordered by the commission. Any price
8 for competitive telecommunications service that is at or
9 less than the price charged on July 1, 2006 for the same
10 service is presumed to be fair and reasonable, subject to
11 rebuttal by the commission or any party to the hearing.
12 The reasonableness of the price subject to the complaint
13 shall be evaluated solely upon the facts related to
14 prevailing market prices. The complaint shall specify
15 facts demonstrating the manner in which the price that is
16 the subject of the complaint is significantly inconsistent
17 with the same or similar prices of any non-related
18 telecommunications company including competitive local
19 exchange carriers, cable providers, wireless providers and
20 any other provider including providers using internet
21 protocol transmission.

22
23 (c) Any person, and the commission on its own motion,
24 may complain to the commission concerning the

1 reasonableness of the price of wholesale telecommunications
2 service. Any notice and hearing of any complaint shall be
3 in accordance with the Wyoming Administrative Procedures
4 Act and this chapter. The commission shall only set aside
5 any price for wholesale telecommunications service it finds
6 after notice and hearing to be unreasonable or unreasonably
7 discriminatory. If the commission sets aside a price as
8 unreasonable or unreasonably discriminatory, the
9 telecommunications company shall have sixty (60) days to
10 negotiate a new price that is reasonable. The company
11 shall refund any charges found to be unreasonable as
12 ordered by the commission. Any price for wholesale
13 telecommunications service that is eighty-five percent
14 (85%) or less than the price charged by the
15 telecommunications company for the same service to its
16 retail customers is presumed to be fair and reasonable,
17 subject to rebuttal by the commission or any party to the
18 hearing.

19

20 (d) Any person, and the commission on its own motion,
21 may complain to the commission concerning the
22 reasonableness of the price of switched access
23 telecommunications service. Any notice and hearing of any
24 complaint shall be in accordance with the Wyoming

1 Administrative Procedures Act and this chapter. The
2 commission shall only set aside any price for switched
3 access telecommunications service it finds after notice and
4 hearing to be unreasonable or unreasonably discriminatory.
5 If the commission sets aside a price as unreasonable or
6 unreasonably discriminatory, the telecommunications company
7 shall have sixty (60) days to negotiate a new price that is
8 reasonable. The company shall refund any charges found to
9 be unreasonable as ordered by the commission. Any price
10 for switched access telecommunications service that is
11 higher than one cent (\$.01) per minute and less than three
12 cents (\$.03) per minute is presumed to be fair and
13 reasonable, subject to rebuttal by the commission or any
14 party to the hearing.

15

16 **37-15-406. Quality of service.**

17

18 (b) Any customer, and the commission on its own
19 motion, may complain concerning the quality of service
20 provided by a telecommunications company. A complaint shall
21 be noticed and heard as provided for in the Wyoming
22 Administrative Procedure Act. The commission, after notice
23 and hearing, may direct the telecommunications company to
24 take whatever remedial action is technically feasible and

1 economically reasonable to provide reasonably adequate
2 service. The commission shall authorize a
3 telecommunications provider to recover the cost of
4 compliance ~~with~~ as determined by any commission order under
5 this section.

6

7 **37-15-407. Annual report.**

8

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

17

18 **37-15-408. Applicability of existing law.**

19

20 W.S. ~~37-1-104 through 37-1-106,~~ 37-2-102, 37-2-104,
21 37-2-106 through 37-2-109, 37-2-113, 37-2-115 through
22 37-2-118, 37-2-124, 37-2-125, 37-2-130, 37-2-203,
23 37-2-205(a), 37-2-209, 37-2-214 through 37-2-216, 37-2-218,
24 37-2-301 through 37-2-306, 37-3-114, 37-4-101 through

1 37-4-104, 37-12-120 through 37-12-130, 37-12-201,
2 37-12-202, 37-12-204 through ~~37-12-209, 37-12-211 through~~
3 37-12-213, 37-12-301 through 37-12-304 and 37-13-101
4 through 37-13-137, inclusive, unless in conflict with other
5 provisions of this chapter, are applicable to
6 telecommunications companies and telecommunication
7 companies shall be considered public utilities for the
8 purposes of those provisions. ~~For purposes of this chapter~~
9 ~~W.S. 37-3-106(b) and (c) shall apply to telecommunications~~
10 ~~companies which are rate of return regulated.~~

11

12 **37-15-501. Universal service fund created;**
13 **contributions; administration.**

14

15 (a) There is hereby established the universal service
16 fund to be administered in accordance with this section.
17 The fund shall be administered by the commission. All
18 telecommunications companies and companies drawing from the
19 universal service fund shall contribute to the universal
20 service fund. The dates for contributions to the fund and
21 disbursements from the fund shall be set by the commission,
22 after notice and opportunity for hearing, as necessary to
23 accomplish the objectives of the fund as specified in
24 subsections (c) and (d) of this section. The costs of

1 administering the fund may be included in determining
2 required contributions.

3

4 (b) The commission shall after notice and opportunity
5 for hearing, designate the method by which the
6 contributions shall be calculated, collected and
7 distributed. ~~in order to achieve the goals set forth in~~
8 ~~W.S. 37-15-102.~~ The commission shall authorize an
9 additional monthly charge to customers, in the amount
10 specified by the commission, to recover each contributor's
11 required payment to the universal service fund. Any charge
12 related to mobile telecommunications service shall only
13 apply if the customer's place of primary use is in this
14 state as provided by the Mobile Telecommunications Sourcing
15 Act, 4 U.S.C. §§ 116 to 126. The provisions of the Mobile
16 Telecommunications Sourcing Act shall apply to this
17 subsection.

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

1 statewide average local exchange rates, however, in no
2 event shall a telecommunications company receive funds
3 exceeding the amounts received or that it could have
4 received on a per line basis as of July 1, 2006.

5

6 ***** Staff note: The following section**
7 **dealing with phase out of the USF is**
8 **too broad and probably constitutes an**
9 **unlawful delegation of authority. The**
10 **committee needs more guidance from the**
11 **PSC with respect to the process and**
12 **goals of the phase out, including**
13 **information on the criteria and timing**
14 **that should be included. *****
15

16 (e) The operation of the universal service fund may
17 be suspended by the commission, based upon a public
18 interest finding, after notice and an opportunity for a
19 hearing, that the fund is not then serving its intended
20 purpose. The commission shall establish a procedure
21 through rule and regulation by which the operation of the
22 universal service fund shall be phased out by July 1, 2017.

23

24 **37-15-502. Universal service fund eligibility and**
25 **distribution to carriers.**

26

27 ***** Staff note: It is unclear why**
28 **"wireline" is being included here since**
29 **wireline is already covered under**
30 **section 501.*****

1

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

9

10 (iv) The company and services meet such
11 additional criteria, if any, the commission, after notice
12 and opportunity for hearing, determines are necessary. ~~to~~
13 ~~further the stated intent of W.S. 37-15-102.~~ During its
14 consideration and determination, the commission shall
15 consider technological and competitive neutrality. ~~The~~
16 ~~commission shall adopt rules setting forth any such~~
17 ~~criteria on or before December 31, 2001.~~

18

19 **Section 2.** W.S. 37-15-102, 37-15-103(a) (i), (vi) and
20 (b), 37-15-201(c) through (h), 37-15-203(b) through (d),
21 37-15-204(b) and (c), 37-15-301(e), 37-15-402,
22 37-15-406(a), 37-15-407(a) (i) through (iv), 37-15-410 and
23 37-15-411 are repealed.

24

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

2

3

(END)