

SENATE BILL NO. 403
INTRODUCED BY T. BECK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING TELECOMMUNICATIONS COMPANIES; EXEMPTING A LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY FROM RATE REGULATION IF THE COMPANY ELECTS TO ACCEPT PRICE CAP REGULATION; ESTABLISHING PERMANENT RATES FOR AN ELECTING LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY; PROVIDING FOR PRICE CAP EXCEPTIONS; PROVIDING FOR PRICING FLEXIBILITY TO CHARGE LOWER PRICES UNDER PRICE CAP REGULATION; REQUIRING AN ELECTING LOCAL EXCHANGE TELECOMMUNICATIONS COMPANY TO FILE A PRICE LIST WITH THE PUBLIC SERVICE COMMISSION; ESTABLISHING PRICE FLOORS; PROVIDING FOR NEW SERVICES AND WITHDRAWAL OF SERVICES; ESTABLISHING A PROCESS FOR COMPLAINTS OF NONCOMPLIANCE; CLARIFYING THE DEFINITION OF "REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTION 69-3-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Access services" means switched or special access to the network of a local exchange telecommunications company for the purpose of originating or terminating interexchange telecommunications.

(2) "Basic local exchange telecommunications service" means:

(a) single line voice-grade residential and business local exchange service limited to the following:

(i) flat rate and measured rate service for residential lines; and

(ii) flat rate and measured rate service for business lines;

(b) local usage necessary to place calls within a local exchange area;

(c) dual tone multifrequency dialing;

(d) access to emergency services such as 9-1-1, locally available interexchange companies, directory assistance, operator services, and relay services;

(e) an alphabetical directory listing; or

(f) extended area service in existence or ordered by the commission on or before [the effective date of

this section].

(3) "Extended area service" means a geographic area composed of more than one local exchange area in which traffic between the exchanges is classified as local traffic.

(4) "Local exchange telecommunications company" means a company registered with the commission to provide basic local exchange telecommunications service in Montana through the use of its own telecommunications facilities, unbundled network elements, or some combination of the two.

NEW SECTION. Section 2. Election of price cap regulation -- exemption from rate regulation. (1) Except as provided for in [sections 10 and 11], a local exchange telecommunications company is exempt from rate regulation under Title 69, chapter 3, parts 2 and 3, for basic local exchange telecommunications service and access services and is exempt from regulation under Title 69, chapter 3, parts 2 and 3, for all other telecommunications services if the local exchange telecommunications company files an election with the commission to accept price cap regulation under this section.

(2) A local exchange telecommunications company's election to accept price cap regulation must be in writing and must be signed by a person authorized to make the election on behalf of the electing local exchange telecommunications company.

(3) A local exchange telecommunications company's election to accept price cap regulation is:

(a) effective on the date that the local exchange telecommunications company files the election with the commission; and

(b) irrevocable for any reason or purpose, except as may be provided by subsequent legislative enactment.

NEW SECTION. Section 3. Effect of price cap election. (1) Except as provided in [section 4], upon the filing of an election to accept price cap regulation pursuant to [section 2], the permanent rates last authorized by the commission for the electing local exchange telecommunications company prior to its election for basic local exchange telecommunications service and access services become the highest lawful rates for those services.

(2) On or after the filing date of a local exchange telecommunications company's election to accept price cap regulation, the basic local exchange telecommunications service and access services provided by the electing local exchange telecommunications company are subject to those conditions of service, including quality of service, that the commission may by rule prescribe for all providers of basic local exchange telecommunications service that are subject to its jurisdiction.

(3) After a local exchange telecommunications company's filing of an election to accept price cap regulation, the commission may not regulate the services provided by the electing local exchange telecommunications company, other than basic local exchange telecommunications service and access services, except as expressly provided in [sections 1 through 9].

NEW SECTION. Section 4. Price cap exceptions. (1) The commission may not change the price caps established under [sections 2 and 3] except for the following reasons:

(a) to reflect a new tax or fee or a change in an existing tax or fee imposed on a provider of basic local exchange telecommunications service or access services by a federal or state law or by a local government ordinance;

(b) to recover the additional cost of providing a new telecommunications service or the expense of a new or expanded program, including but not limited to the creation or expansion of an extended area service region, either of which is mandated by a provision of federal or state law and is binding upon a provider of basic local exchange telecommunications service and access services; or

(c) to geographically depart from average prices for basic local exchange telecommunications service in compliance with the provisions of 69-3-848(3).

(2) If a local exchange telecommunications company files an application with the commission to change a price cap under this section, the application is considered granted unless the commission determines, within 60 days of the filing of the application, that the applicant has failed to prove that the application complies with this section. An application under this section is subject to a contested case proceeding under the Montana Administrative Procedure Act.

NEW SECTION. Section 5. Pricing flexibility under price cap regulation. (1) Except as provided in [section 4], the prices charged for basic local exchange telecommunications service and access services by an electing local exchange telecommunications company may not exceed the price caps established in [section 3(1)].

(2) The electing local exchange telecommunications company may, in its discretion, charge less than the applicable price cap by filing a price list with the commission that establishes a lesser price. If an electing local exchange telecommunications company has filed a price list with the commission that establishes a price less than the applicable price cap, it may subsequently file a new price list that establishes a higher price for the service as long as the higher price does not exceed the applicable price cap.

NEW SECTION. Section 6. Price lists. (1) A local exchange telecommunications company that has elected to accept price cap regulation under [section 2] shall file with the commission a list of its current prices for basic local exchange telecommunications service and access services and its current prices for its other telecommunications services.

(2) A price list:

- (a) is immediately effective on the date the price list is filed with the commission;
- (b) must specify the lawful price that can be charged for the services;
- (c) may not unfairly discriminate between similarly situated customers; and
- (d) may not establish a price that is below the price floor.

(3) This section does not prohibit an electing local exchange telecommunications company from establishing different prices by geographic area, provided that all similarly situated customers within that geographic area are treated in a fair and nondiscriminatory manner.

(4) Telecommunications services, other than basic local exchange telecommunications service or access services, may be priced on an individual contract basis in response to a bona fide request for a bid proposal or in any other circumstance under which it is either impractical to apply uniform pricing or it is customary in the telecommunications industry to price on an individual contract basis.

(5) A price list filed to establish either a new telecommunications service or a lower price for an existing telecommunications service must be accompanied by a demonstration that the price for the new service or lower price for the existing service does not violate the price floor provided in [section 7].

(6) An electing local exchange telecommunications company may file price lists for combinations of any services, including but not limited to basic local exchange telecommunications services, but the price for those combined services must equal or exceed the sum of the price floors for the services being combined.

NEW SECTION. Section 7. Price floors. Total service long-term incremental cost constitutes a price floor for the telecommunications services provided under [sections 1 through 9]. An electing local exchange telecommunications company may not file a price list that establishes a price below the price floor.

NEW SECTION. Section 8. New services and withdrawal of services. A new service offered after January 1, 2001, may not be treated as a basic local exchange telecommunications service or as access services. An electing local exchange telecommunications company under [sections 1 through 9] may withdraw its offering of a telecommunications service if either:

(1) the service is a basic local exchange telecommunications service or access services, in which case it may only be withdrawn upon application to the commission for authority to withdraw the service. The commission shall either grant or deny the application within 180 days. The application is subject to a contested case proceeding under the Montana Administrative Procedure Act.

(2) the service is not a basic local exchange telecommunications service or access services, in which case it may be withdrawn by filing a notice with the commission that the service is withdrawn in 30 days. The electing local exchange telecommunications company shall mail, by first-class mail, a copy of the notice to the billing address of each customer of the service on the same day that the notice is filed with the commission.

NEW SECTION. Section 9. Complaints of noncompliance. (1) (a) Either the consumer counsel or a customer of a basic local telecommunications company that has elected to accept price cap regulation under [section 2] may file a complaint with the commission that alleges that the electing local exchange telecommunications company has violated a provision of [sections 1 through 9].

(b) If the commission finds that the electing local exchange telecommunications company has violated a provision of [sections 1 through 9], the commission may order the electing local exchange telecommunications company to take action to comply with the provisions of [sections 1 through 9].

(2) (a) A telecommunications carrier competing against an electing local exchange telecommunications company may only file a complaint with the commission that alleges that the electing local exchange telecommunications company has filed a price list that violates the price floor required in [section 7].

(b) If the commission finds that the electing local exchange telecommunications company has filed a price list that violates a price floor required in [section 7], the commission may order the electing local exchange telecommunications company to file a new price list that does not violate the applicable price floor.

(3) A complaint filed under this section is subject to a contested case proceeding pursuant to the Montana Administrative Procedure Act.

NEW SECTION. Section 10. Exemption from part. (1) Except as provided in subsection (2), the provisions of this part do not apply to a local exchange telecommunications company that has elected to accept price cap regulation under [section 2].

(2) A local exchange telecommunications company is subject to:

(a) the fees provided in 69-3-204;

(b) a commissioner's power of investigation under 69-3-206;

- (c) a company's obligations to the commission under 69-3-208 and 69-3-209; and
- (d) the statute of limitation specified in 69-3-221.

NEW SECTION. Section 11. Exemption from part. (1) Except as provided in subsection (2), the provisions of this part do not apply to a local exchange telecommunications company that has elected to accept price cap regulation under [section 2].

(2) The basic local exchange telecommunications service and access services of the electing local exchange telecommunications company are subject to the commission's complaint jurisdiction provided in 69-3-321 through 69-3-330, except that the commission's jurisdiction to establish new lawful rates under those sections no longer applies.

NEW SECTION. Section 12. Exemption from part. (1) Except as provided in subsection (2), the provisions of this part do not apply to a local exchange telecommunications company that has elected to accept price cap regulation under [section 2].

(2) A local exchange telecommunications company that has elected to accept price cap regulation under [section 2] is subject to the provisions of 69-3-805, 69-3-824, 69-3-831 through 69-3-849, 69-3-856 through 69-3-859, and 69-3-861.

Section 13. Section 69-3-803, MCA, is amended to read:

"69-3-803. Definitions. As used in this part, the following definitions apply:

- (1) "Commission" means the public service commission.
- (2) "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under 69-3-840.
- (3) "Fund" means the universal service fund established in 69-3-842.
- (4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:
 - (a) on February 8, 1996, provided telephone exchange service in the area; and
 - (b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.
- (5) "Private telecommunications service" means a system, including the construction, maintenance, or operation of the system, for the provision of telecommunications service or any portion of the service, by a person

or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

(6) (a) "Regulated telecommunications service" means:

(i) two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport; or

(ii) if a telecommunications company has elected to accept price cap regulation under [section 2], basic local exchange telecommunications service and access services.

(b) The term does not include the provision of terminal equipment used to originate or terminate the regulated service, private telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

(7) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana and are billed for a service address in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

(8) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

(9) "Telecommunications" means the transmission, between or among points specified by the user, of

information of the user's choosing without a change in the form or content of the information upon receipt.

(10) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

NEW SECTION. **Section 14. Codification instruction.** (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 through 9].

(2) [Section 10] is intended to be codified as an integral part of Title 69, chapter 3, part 2, and the provisions of Title 69, chapter 3, part 2, apply to [section 10].

(3) [Section 11] is intended to be codified as an integral part of Title 69, chapter 3, part 3, and the provisions of Title 69, chapter 3, part 3, apply to [section 11].

(4) [Section 12] is intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [section 12].

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

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