

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; redefining when a
2 competitive market exists; recognizing competition from
3 wireless providers; limiting access lines supported under
4 the universal service fund; requiring certificates of
5 public convenience and necessity from all
6 telecommunications providers; limiting cost based pricing
7 to companies with switched access services priced above a
8 minimum; providing for downward pricing flexibility for
9 telecommunications services; providing a limitation on
10 increasing prices for essential telecommunications
11 services; limiting annual reports by the public service
12 commission; repealing anachronistic provisions; eliminating
13 mandatory quality of service studies; and providing for an
14 effective date.

15

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

2

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

10

11 **37-15-101. Short title.**

12

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

15

16 **37-15-103. Definitions.**

17

18 (a) As used in this chapter:

19

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

1 business voice service within a local exchange area.

2 Essential telecommunications services are limited to:

3

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

6

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

13

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

18

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

21

22 (V) Access to emergency services.

23 "Access to emergency services" includes access to services,
24 such as 911 and enhanced 911, provided by local governments

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

14

15 (xvii) "Consumer choice" means the ability for a
16 consumer to choose an alternate provider of voice service
17 due to the presence of at least one (1) additional carrier
18 in the market.

19

20 **37-15-104. Services not regulated by this title.**

21

22 (a) Except for contributions to the universal service
23 fund required pursuant to W.S. 37-15-501 and the assessment
24 levied pursuant to W.S. 37-2-106 through 37-2-109,

1 telecommunications service does not include, and the
2 provisions of this title do not apply to:

3

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

13

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

16

17 **37-15-201. Regulation of local exchange services;**
18 **certificates of public convenience and necessity;**
19 **concurrent certificates.**

20

21 (a) ~~Except for those telecommunications companies~~
22 ~~that as of January 1, 1995, have a valid certificate of~~
23 ~~public convenience and necessity previously issued by the~~
24 ~~commission to provide local exchange services in the state,~~

1 All telecommunications companies seeking to offer and
2 provide local exchange service shall obtain a certificate
3 of public convenience and necessity from the commission
4 prior to providing that service in this state.

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

16

17 **37-15-202. Determination of consumer choice.**

18

19 (a) Upon petition by any telecommunications company,
20 the commission may, after notice and opportunity for
21 hearing, find and conclude that a consumer choice for an
22 essential telecommunications service ~~is subject to~~
23 ~~competition. Any service found to be effectively~~
24 ~~competitive shall not be subject to regulation of prices by~~

1 ~~the commission~~ exists in a market and such services are
2 competitive and are no longer subject to price restrictions
3 established under W.S. 37-15-203. A determination by the
4 commission that consumer choice for essential
5 telecommunications service exists in a market shall not be
6 a company specific determination, but applies to all
7 essential telecommunications services provided in that
8 market by any local exchange carrier. The commission shall
9 consider only the following factors in determining whether
10 ~~a~~ consumer choice for an essential telecommunications
11 service ~~is subject to effective competition~~ exists in a
12 market:

13
14 (i) The extent to which ~~the same or equivalent~~
15 voice telecommunications services are available from
16 alternative providers including, but not limited to,
17 wireless providers who provide at least one thousand
18 (1,000) minutes per month, cable providers offering voice
19 services, voice over internet protocol or any other
20 providers utilizing telephone numbers to provide voice
21 services in the relevant market;

22
23 (ii) The extent to which telecommunications
24 services of alternative providers are ~~functionally~~

1 ~~equivalent or may be substituted at comparable prices,~~
2 ~~terms and conditions~~ available at an equal or lesser price;

3
4 (b) Upon the commission's own motion or the petition
5 of any person, the commission may, after notice and the
6 opportunity for a hearing in accordance with the Wyoming
7 Administrative Procedure Act, find and conclude that ~~a~~
8 ~~telecommunications service~~ the presence of consumer choice
9 in a market found ~~to be competitive~~ under subsection (a) of
10 this section ~~is~~ no longer ~~subject to competition~~ exists,
11 and therefore those essential telecommunications services
12 are not subject to treatment as a competitive service under
13 this chapter. All hearings conducted pursuant to this
14 subsection shall place the burden of proof upon the
15 commission or the petitioner of establishing that a
16 telecommunications service is no longer subject to
17 competition.

18
19 ***** Staff note: the language in the**
20 **following section was changed to**
21 **clarify the intent of section (a) that**
22 **a petition must be filed by the**
23 **provider and a determination made by**
24 **the commission for essential telecom**
25 **services. *****
26

1 (c) ~~Local exchange services provided by resale,~~
2 ~~telecommunications services provided by interexchange~~
3 ~~telecommunications companies, and telecommunications~~
4 ~~services other than local exchange service, Essential~~
5 ~~telecommunications services are not competitive unless~~
6 ~~found to be competitive under this section. All other~~
7 ~~services except~~ switched access and ~~interexchange~~
8 ~~telecommunications wholesale services provided by a local~~
9 ~~exchange company~~ shall be considered ~~subject to competition~~
10 ~~competitive~~ for purpose of regulation under this title.

11

12 **37-15-203. Price regulation of noncompetitive**
13 **services.**

14

15 *** Staff note: please review this
16 section carefully - language was
17 changed from the working group draft to
18 remove ambiguity. The working group
19 draft referred to upward and downward
20 "pricing flexibility" which is not
21 succinct language for a statute. Also,
22 in the working group draft, the price
23 maximum (cap) was set only for
24 "essential telecommunications services"
25 which is only a subset of the non-
26 competitive services. If the intention
27 is only to set a cap for essential
28 services, then there is no control
29 mechanism for prices of other non-
30 competitive services such as switched
31 access and wholesale. ***

32

1 (a) Prices for telecommunications services which have
2 not been determined by the legislature or the commission to
3 be competitive telecommunications services shall be
4 regulated by the commission in accordance with this
5 section. The prices for non-competitive telecommunications
6 services of any local exchange company may be adjusted
7 downward at the company's discretion. Except as provided
8 in subsections (d) and (e) of this section, prices for non-
9 competitive telecommunications services shall be subject to
10 an maximum determined annually by the commission. The
11 initial maximum shall be the local exchange company's price
12 of non-competitive telecommunications services as of July
13 1, 2006.

14

15 (d) A local exchange company may seek approval to
16 make revenue neutral adjustments to the price of essential
17 telecommunications service to reduce or eliminate
18 differences in the price of essential telecommunications
19 service in different portions of its service area.

20

21 (e) A local exchange company may seek approval to
22 increase the price of essential telecommunications service
23 based on:

24

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

3
4 (ii) Changes in access charges as approved by
5 the commission; or

6
7 (iii) Other changes affecting essential
8 telecommunications service.

9
10 (f) Any requested price change under subsections (a)
11 through (e) of this section, including revenue neutral
12 changes, that would result in an increase in the price of
13 essential telecommunications services is subject to review
14 and determination by the commission, after notice and
15 opportunity for hearing.

16
17 ~~(f)~~(g) The prices of any local exchange company may
18 contain provisions for incentives for improvement of the
19 company's performance or efficiency, lowering of operating
20 costs, control of expenses or improvement and upgrading or
21 modernization of its services or facilities. Any local
22 exchange company may apply to the commission for incentives
23 and innovative or nontraditional price regulation,
24 including price indexing. The commission shall issue a

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

17

18 **37-15-204. Price schedules filed with the commission.**

19

20 **** Staff note: It was unclear from the**
21 **working group draft whether these**
22 **filings are to be required of all**
23 **telecommunications companies, or some**
24 **subset thereof. ****
25

1 (a) ~~A local exchange company~~ All telecommunications
2 companies shall file with the commission or provide through
3 an official company website through the Internet, the World
4 Wide Web or a similar proprietary or common carrier
5 electronic system, in such form and detail as the
6 commission may require, schedules showing all competitive
7 and noncompetitive telecommunications services terms,
8 conditions and prices, including prices set by contract,
9 currently in effect and charged to customers by the company
10 in this state. ~~All prices for new noncompetitive~~
11 ~~telecommunications services, and any change in prices for~~
12 ~~noncompetitive telecommunications services, shall be filed~~
13 ~~thirty (30) days prior to the proposed effective date~~
14 ~~unless a shorter filing period is authorized by the~~
15 ~~commission. No price increase for a noncompetitive service~~
16 ~~shall be effective unless the customer has been given~~
17 ~~notice by the provider at least one (1) full billing cycle~~
18 ~~prior to the proposed increase. All price changes for~~
19 ~~competitive services shall be effective as provided for in~~
20 ~~the company's price schedule. No price or price change is~~
21 ~~effective until filed in accordance with this section.~~
22 Prices charged for competitive services shall be in
23 accordance with its price schedule unless a separate
24 contract is negotiated. For purposes of this subsection,

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

11

12 (b) ~~A local exchange company may by contract or by~~
13 ~~price schedule provide telecommunications services which~~
14 ~~are found to be competitive at prices and under terms and~~
15 ~~conditions that are specific to a particular customer or~~
16 ~~group of customers.~~ Copies of contracts and price
17 schedules shall be filed with the commission in the same
18 manner as price schedules. ~~Contract prices shall equal or~~
19 ~~exceed long-run incremental costs.~~ Contracts and price
20 schedules filed under this section shall be given
21 confidential status if requested by the filing party.

22

23 **37-15-401. Commission powers.**

24

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

4
5 (iv) Require reports and studies as to prices
6 and terms and conditions of service, necessary and relevant
7 for the commission's exercise of its authority pursuant to
8 W.S. 37-15-202 and W.S. 37-15-203, including those
9 protected as trade secret or confidential based on
10 legitimate competitive or other operational concerns;

11
12 (vii) Unless otherwise provided by state law,
13 exercise authorities as delegated under 47 U.S.C. 609.

14
15 **37-15-402. Cost based pricing.**

16
17 *** Staff note: For ease of reference
18 I have placed the current language
19 under a new section (a), however,
20 depending on which of the previous
21 sections continue to be viable, the
22 final bill will require a repeal of the
23 current sections (a) through (d) and
24 inclusion under a new section (e). ***
25

26 (a) For telecommunications companies with switched
27 access charges greater than two cents (\$.02) per minute,
28 the following shall apply:

1
2 (i) Services provided by a telecommunications
3 company that provides noncompetitive services shall be
4 priced to ensure that the service's revenues from sale of
5 the service recover the total service long-run incremental
6 cost of providing that service, except as provided in this
7 section. Total service long-run incremental cost studies
8 used by a telecommunications company shall be filed with
9 the commission every three (3) years unless required by the
10 commission more frequently. All total service long-run
11 incremental cost studies required pursuant to this section
12 shall be filed in the form required by commission rule and
13 under protective order as a trade secret and shall be
14 subject to commission review and approval.
15 Telecommunications companies having fewer than thirty
16 thousand (30,000) access lines in the state are exempt from
17 the requirement to file cost studies every three (3) years,
18 but do remain subject to the commission powers in W.S.
19 37-15-401(a)(iv). A telecommunications company having
20 fewer than thirty thousand (30,000) access lines in the
21 state may utilize a reasonable total service long-run
22 incremental cost study surrogate, in lieu of conducting its
23 own study, based on cost studies as are available for

1 comparable, including nonregulated, telecommunications
2 companies in this state or other states.

3

4 **** Staff note: The following two**
5 **provisions do not appear necessary any**
6 **more given the changes in the previous**
7 **sections. Also, the reference to "the**
8 **date of this act" needs to be**
9 **considered - the 1995 date or 2006?*****
10

11 ~~(b)~~(ii) For those existing prices for essential
12 and noncompetitive telecommunications service below the
13 service's total service long-run incremental cost as of the
14 effective date of this act, notwithstanding the provisions
15 of W.S. 37-15-403(a), and to avoid significant one-time
16 price increases to customers, essential and noncompetitive
17 telecommunications service prices which are below total
18 service long-run incremental costs may move over a thirty-
19 six (36) month period to a level, so that at the end of
20 that period the price of each noncompetitive
21 telecommunications service covers its required cost.

22

23 ~~(e)~~(iii) A telecommunications company having
24 fewer than thirty thousand (30,000) access lines in the
25 state may, in the interest of preserving essential
26 telecommunications services and subject to the provisions
27 of the universal service fund created under W.S. 37-15-501,

1 or other like compensation, apply to the commission for
2 authority to allow a price for a noncompetitive
3 telecommunications service to remain below that service's
4 total service long-run incremental cost. As of January 1,
5 2005 this subsection is repealed.

6
7 ~~(d)~~(iv) A telecommunications company providing
8 both noncompetitive switched access service and message
9 toll service shall include in the amount recovered from
10 message toll service the price it charges others for those
11 elements of switched access which cannot be economically
12 duplicated by competitors. Nothing in this subsection
13 shall require such inclusion in local exchange areas where
14 a telecommunications company does not also provide switched
15 access service.

16

17 **37-15-403. Cross-subsidies prohibited; enforcement.**

18

19 ***** Staff note: How will this section**
20 **be enforced when a company does not**
21 **file TSLRIC documents, i.e. those with**
22 **switched access below 2 cents? *****
23

24 (a) No telecommunications company shall use revenues
25 earned from or allocate expenses to noncompetitive services
26 to subsidize competitive services. ~~by the~~

1 ~~commission to be subject to competition.~~ The commission
2 shall not require revenues or expenses from competitive
3 services to be attributed to noncompetitive services.
4 Revenues obtained from noncompetitive telecommunications
5 services may not be used to subsidize competitive services.
6 Revenues from competitive telecommunications services may
7 not be used to subsidize noncompetitive telecommunications
8 services. Nothing in this subsection shall affect the
9 assignment of any revenues received from the universal
10 service fund for the exclusive support of high cost, local
11 exchange services.

12

13 **37-15-404. Protection of telecommunications**
14 **consumers.**

15

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

22

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

1 including introducing promotional offerings, special
2 incentives, competitive discounts and price waivers;

3
4 **37-15-405. Complaint against prices.**

5
6 Any person, and the commission on its own motion, may
7 complain to the commission concerning the reasonableness of
8 the price of any noncompetitive telecommunications service.

9 Any notice and hearing of any complaint shall be in
10 accordance with the Wyoming Administrative Procedure Act
11 and this chapter. The commission shall only set aside any
12 price it finds after notice and hearing to be unreasonable
13 or unreasonably discriminatory. If the commission sets
14 aside a price as unreasonable or unreasonably
15 discriminatory, the telecommunications company shall have
16 sixty (60) days to file a new price which is reasonable.

17 The company shall refund any charges found to be
18 unreasonable as ordered by the commission. ~~Any price set~~
19 ~~in compliance with the provisions of W.S. 37-15-402 is~~
20 ~~presumed to be fair and reasonable, subject to rebuttal by~~
21 ~~the commission or any party to the hearing.~~

22
23 **37-15-406. Quality of service.**

24

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

13

14 **37-15-407. Annual report.**

15

16 (a) The commission shall with the input and
17 participation of the telecommunications industry and other
18 relevant state departments, boards and agencies prepare and
19 issue an annual report on the status of competition in the
20 telecommunications industry. ~~and Wyoming regulation thereof~~
21 ~~on January 10 of each year beginning in 1996.~~ Such report
22 shall at a minimum include:

23

24 **37-15-408. Applicability of existing law.**

1

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

17

18 ***** Staff note: While the working**
19 **group did not recommend any changes to**
20 **the following section, the cross**
21 **reference to W.S. 37-15-102**
22 **"Legislative intent" needs to be**
23 **stricken if that section is repealed.**
24 *******
25

26 **37-15-501. Universal service fund created;**
27 **contributions; administration.**

1

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

16

17 **37-15-502. Universal service fund eligibility and**
18 **distribution to carriers using wireless technology.**

19

20 (a) Telecommunications companies which use wireline,
21 cellular, radio spectrum, ~~or other~~ wireless or other
22 technology to provide supported services to customers who
23 are otherwise eligible to receive universal service support
24 pursuant to W.S. 37-15-501, may establish eligibility to

1 receive universal service fund distributions in an amount
2 to be determined by the commission, provided that:

3

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

7

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

11

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

17

18 ***** The following paragraph is not**
19 **enforceable if W.S. 37-15-102**
20 **"Legislative intent" is repealed. *****

21

22 (iv) The company and services meet such
23 additional criteria, if any, the commission determines are
24 necessary to further the stated intent of W.S. 37-15-102.
25 During its consideration and determination, the commission

1 shall consider technological and competitive neutrality.
2 ~~The commission shall adopt rules setting forth any such~~
3 ~~criteria on or before December 31, 2001.~~

4

5 **Section 2.** W.S. 37-15-102, 37-15-103(a)(i), (vi),
6 (b), 37-15-201(c) through (h), 37-15-203(c) and (d),
7 37-15-204(c), 37-15-301(e), 37-15-406(a), 37-15-407(a)(i),
8 (iii) and (iv), 37-15-410 and 37-15-411 are repealed.

9

10 **Section 3.** This act is effective July 1, 2006.

11

12

(END)