

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), 37-15-404(a) (i), 37-15-405 by creating new
8 subsections (a) through (d), 37-15-406(b),
9 37-15-407(a) (intro), 37-15-408, 37-15-501(b) and
10 37-15-502(a) (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 and~~

1 ~~business~~retail voice service within a local exchange area.

2 Essential telecommunications services are limited to:

3

4 (B) Single line flat-rate or single line
5 measured ~~residence or business~~retail voice 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 (v) "Interexchange telecommunications company"
15 means a person providing telecommunications service to
16 connect end users located in different local exchange
17 areas, but excluding companies which also provide
18 ~~noncompetitive~~essential local exchange services;

19

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

24

1 (A) The services designated for support
2 are:

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

20
21 (xvii) "Relevant market" means a geographically
22 defined area encompassing or within the serving area of a
23 telecommunications provider, as defined by the incumbent
24 provider in an application in a regulatory proceeding, for

1 the purpose of describing an area where commercial
2 competition may exist for a given product or service.

3
4 **** Staff note: The definition requires the area**
5 **to be defined in a 202 application, but the new amendments**
6 **to 202 provide for competitive designation without an**
7 **application or hearing in many instances. ****
8

9 **37-15-104. Services not regulated by this title.**

10
11 (a) Except for contributions to the universal service
12 fund required pursuant to W.S. 37-15-501 and the assessment
13 levied pursuant to W.S. 37-2-106 through 37-2-109,
14 telecommunications service does not include, and the
15 provisions of this title do not apply to:

16
17 (ii) ~~Except as provided in this paragraph, Home~~
18 ~~and business and coinless, or coin operated public or~~
19 ~~semipublic telephone terminal equipment, and the use,~~
20 ~~location and charges for the use of such equipment;.~~ ~~The~~
21 ~~commission may regulate the location of and charges for~~
22 ~~coinless or coin operated public or semipublic telephone~~
23 ~~terminal equipment in areas of the state which the~~
24 ~~commission finds are not subject to competition for such~~
25 ~~equipment;~~

26

1 (vi) Telecommunications services using radio
2 spectrum, cellular, or other wireless technology to provide
3 mobile service except as set forth in subparagraphs (A),
4 (B) and (C) of this paragraph:
5

6 ARTICLE 2

7 REGULATION OF COMPETITIVE AND ESSENTIAL SERVICE MARKETS
8

9 **37-15-201. Regulation of local exchange services;**
10 **certificates of public convenience and necessity;**
11 **concurrent certificates.**
12

13 (a) ~~Except for those telecommunications companies~~
14 ~~that as of January 1, 1995, have a valid certificate of~~
15 ~~public convenience and necessity previously issued by the~~
16 ~~commission to provide local exchange services in the state,~~
17 All telecommunications companies seeking to offer and
18 provide local exchange service shall obtain a certificate
19 of public convenience and necessity from the commission
20 prior to providing that service in this state.
21

22 (b) The commission shall grant a ~~concurrent~~
23 certificate or certificates of public convenience and
24 necessity to provide local exchange service ~~in the service~~

1 ~~territory of a local exchange company with more than thirty~~
2 ~~thousand (30,000) access lines in the state~~ if it finds,
3 after notice and opportunity for hearing, that the
4 applicant possesses sufficient technical, financial and
5 managerial resources to provide safe, adequate and reliable
6 local exchange services within the identified geographic
7 area.

8
9 **37-15-202. Determination of competitive services.**

10
11 (a) Except as provided in subsection (d) of this
12 section, upon petition by any telecommunications company,
13 the commission may, after notice and opportunity for
14 hearing, find and conclude that a telecommunications
15 service in the relevant market is subject to competition.
16 Any service found to be effectively competitive shall not
17 be subject to regulation of prices by the commission. The
18 commission shall consider only the following factors in
19 determining whether a telecommunications service in the
20 relevant market is subject to effective competition:

21
22 (i) The extent to which ~~the same or equivalent~~
23 telecommunications services are available from alternative
24 providers including, but not limited to, wireless providers

1 who provide at least one thousand (1,000) anytime minutes
2 per customer per month, cable providers offering voice
3 services, voice over internet protocol or any other
4 providers utilizing telephone numbers to provide voice
5 services in the relevant market;

6
7 (ii) The extent to which telecommunications
8 services of alternative providers are functionally
9 equivalent, for equivalent service or in combination with
10 other services, and may be substituted at reasonably
11 comparable prices, terms and conditions;

12
13 (c) Local exchange services provided by resale,
14 telecommunications services provided by interexchange
15 telecommunications companies, and telecommunications
16 services other than local exchange service, switched
17 access, ~~and~~ interexchange telecommunications services
18 provided by a local exchange company and telecommunications
19 service provided by new entrants to a relevant market that
20 are not an affiliated telecommunications company with the
21 incumbent provider shall be considered subject to
22 competition for purpose of regulation under this title.

23

1 (d) Notwithstanding subsection (a) of this section,
2 effective July 1, 2007, in the relevant market as defined
3 by the incumbent local exchange carrier, local exchange
4 service shall be defined as competitive if one (1) of the
5 conditions specified in paragraphs (i) or (ii) of this
6 subsection exist. Evidence of the following shall
7 accompany the initial tariff change submitted by an
8 incumbent local exchange carrier, is subject to
9 verification by the commission and shall be updated or
10 resubmitted with the incumbent local exchange carrier's
11 annual report until deemed no longer necessary by the
12 commission:

13
14 (i) At least two (2) effective local service
15 interconnection agreements with local service providers
16 that are not affiliated telecommunications companies exist,
17 pursuant to 47 U.S.C. § 251, are on file with the
18 commission and are operational as evidenced by invoices and
19 details of payment demonstrating the exchange of funds for
20 interconnection services or by central office records
21 reflecting the interchange of voice communications minutes;
22 or

23

1 (ii) At least two (2) additional local service
2 providers that are not affiliated telecommunications
3 companies have applied for and received eligible
4 telecommunications carrier status and are receiving federal
5 universal service funds for the support of local exchange
6 services.

7

8 **37-15-203. Price regulation of essential services.**

9

10 (a) Prices for telecommunications services which have
11 ~~not~~ been determined by the legislature or the commission to
12 be ~~competitive~~ essential telecommunications services shall
13 be regulated by the commission in accordance with this
14 section. The prices for essential telecommunications
15 services of any local exchange company may be adjusted
16 downward at the company's discretion. Except as provided
17 in subsections (e) and (f) of this section, prices for
18 essential telecommunications services shall be subject to a
19 maximum determined by the commission. The initial maximum
20 shall be the local exchange company's price of essential
21 telecommunications services as of July 1, 2006. A local
22 exchange carrier may increase its price for essential
23 telecommunications services to the level of the maximum set
24 under this subsection without approval of the commission as

1 required under subsections (f) and (g) of this section.
2 Except as provided in subsection (j) of this section, the
3 initial maximum set as of July 1, 2006, shall remain in
4 effect until July 1, 2010, after which any single line flat
5 rate or single line measured residence and business voice
6 grade service shall be deemed competitive.

7
8 (e) A local exchange company may seek approval to
9 make revenue neutral adjustments to the price of essential
10 telecommunications services to reduce or eliminate
11 differences in the price of essential telecommunications
12 services in different portions of its service area.

13
14 (f) A local exchange company may seek approval to
15 increase the price of essential telecommunications services
16 based on:

17
18 (i) Changes in the local calling area as
19 approved by the commission;

20
21 (ii) Changes in access charges as approved by
22 the commission; or

23

1 (iii) Other changes affecting essential
2 telecommunications services.

3
4 (g) Any requested price change under subsections (b)
5 through (f) of this section, including revenue neutral
6 changes, that may result in an increase in the price of
7 essential telecommunications services is subject to review
8 and determination by the commission, after notice and
9 opportunity for hearing.

10
11 (h) The prices of any local exchange company may
12 contain provisions for incentives for improvement of the
13 company's performance or efficiency, lowering of operating
14 costs, control of expenses or improvement and upgrading or
15 modernization of its services or facilities. Any local
16 exchange company may apply to the commission for incentives
17 and innovative or nontraditional price regulation,
18 including price indexing. The commission shall issue a
19 final order approving, modifying or rejecting any
20 application made under this subsection within one hundred
21 eighty (180) days of the filing date of the application
22 with the commission. If no order is issued by the
23 commission within the one hundred eighty (180) day period,
24 the application shall be deemed approved as filed. If

1 during consideration of an application for regulation under
2 this subsection, the commission materially alters the plan
3 as filed in the application, the applying local exchange
4 company may notify the commission in writing, at any time,
5 but not later than sixty (60) days after any final
6 commission order on the application, that it elects not to
7 be price regulated as approved by the order. The local
8 exchange company's prices shall then be regulated as they
9 were prior to the application until such time as a new
10 application is filed, approved and accepted.

11

12 (j) Notwithstanding subsection (a) of this section,
13 after July 1, 2015, the maximum prices for essential
14 telecommunications services shall be one hundred twenty-
15 five percent (125%) of the national average price of
16 essential telecommunications services on June 30, 2014. On
17 June 30 of each year, the commission shall determine the
18 national average price of essential telecommunications
19 services for the previous year and the maximum prices
20 charged by any telecommunications company for essential
21 services shall not exceed one hundred twenty-five percent
22 (125%) of that amount.

23

24 **37-15-204. Price schedules filed with the commission.**

1

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

1 accordance with its price schedule unless a separate
2 contract is negotiated. Prices for generally offered
3 competitive services shall be publicly available on a
4 company's website through the internet, the world wide web
5 or a similar proprietary or common carrier or provided to
6 the commission. Price schedules may be filed in electronic
7 format at the option of the company. For purposes of this
8 subsection, the rules, regulations, policies, practices and
9 other requirements relating to services shall be filed with
10 the commission in such form and detail as the commission
11 may require. Rules, regulations, policies, practices and
12 other requirements relating to competitive services shall
13 be subject to the same requirements under this chapter as
14 the prices of competitive services. Those relating to
15 noncompetitive services shall be subject to the same
16 requirements under this chapter as the prices of
17 noncompetitive services.

18

19 **37-15-401. Commission powers.**

20

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

24

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

3
4 **37-15-404. Protection of telecommunications**
5 **consumers.**

6
7 (a) No telecommunications company shall unreasonably
8 discriminate as to customers in prices, terms or conditions
9 of service, or in connection to or with other
10 telecommunications companies. Nothing in this chapter
11 shall be construed to prohibit any telecommunications
12 company from:

13
14 (i) Providing volume or other price discounts
15 based on reasonable, nonpredatory business practices,
16 including introductory promotional offerings, special
17 incentives, competitive discounts and price waivers;

18
19 **37-15-405. Complaint against prices.**

20
21 (a) Any person, and the commission on its own motion,
22 may complain to the commission concerning the
23 reasonableness of the price of any noncompetitive
24 telecommunications service. Any notice and hearing of any

1 complaint shall be in accordance with the Wyoming
2 Administrative Procedure Act and this chapter. The
3 commission shall only set aside any price it finds after
4 notice and hearing to be unreasonable or unreasonably
5 discriminatory. If the commission sets aside a price as
6 unreasonable or unreasonably discriminatory, the
7 telecommunications company shall have sixty (60) days to
8 file a new price which is reasonable. The company shall
9 refund any charges found to be unreasonable as ordered by
10 the commission. ~~Any price set in compliance with the~~
11 ~~provisions of W.S. 37-15-402 is presumed to be fair and~~
12 ~~reasonable, subject to rebuttal by the commission or any~~
13 ~~party to the hearing.~~ Rates or prices in effect as of July
14 1, 2006 are deemed to be fair and reasonable. The
15 reasonableness of prices subject to the complaint shall be
16 evaluated with consideration of whether the prices
17 complained of are below an appropriate measure of a
18 potential competitor's prices and whether a competitor has
19 a reasonable prospect of recouping its investment in below-
20 cost prices. The complaint shall specify facts
21 demonstrating the manner in which the price that is the
22 subject of the complaint is significantly inconsistent with
23 the prices for the same or similar services of any
24 telecommunications company including competitive local

1 exchange carriers, cable provider, wireless providers and
2 any other provider including providers using internet
3 protocol transmission providing services in similar
4 markets.

5
6 ***** Staff note: The standard in the section (a) could**
7 **be considered vague and I am unclear how a court would**
8 **adequately review a claim under that section. Also, do you**
9 **also want to include the "subject to rebuttal by the**
10 **commission" language that is in section (b)? *****
11

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

1 less than the price charged on July 1, 2006 for the same
2 service is presumed to be fair and reasonable, subject to
3 rebuttal by the commission or any party to the hearing.
4 The reasonableness of the price subject to the complaint
5 shall be evaluated solely upon the facts related to
6 prevailing market prices. The complaint shall specify
7 facts demonstrating the manner in which the price that is
8 the subject of the complaint is significantly inconsistent
9 with the same or similar prices of any non-affiliated
10 telecommunications company including competitive local
11 exchange carriers, cable providers, wireless providers and
12 any other provider including providers using internet
13 protocol transmission.

14
15 (c) Any person, and the commission on its own motion,
16 may complain to the commission concerning the
17 reasonableness of the price of wholesale telecommunications
18 service. Any notice and hearing of any complaint shall be
19 in accordance with the Wyoming Administrative Procedure Act
20 and this chapter. The commission shall only set aside any
21 price for wholesale telecommunications service it finds
22 after notice and hearing to be unreasonable or unreasonably
23 discriminatory. If the commission sets aside a price as
24 unreasonable or unreasonably discriminatory, the

1 telecommunications company shall have sixty (60) days to
2 negotiate a new price that is reasonable. The company
3 shall refund any charges found to be unreasonable as
4 ordered by the commission. Any price for wholesale
5 telecommunications service that is eighty-five percent
6 (85%) or less than the price charged by the
7 telecommunications company for the same service to its
8 retail customers is presumed to be fair and reasonable,
9 subject to rebuttal by the commission or any party to the
10 hearing.

11
12 **37-15-406. Quality of service.**

13
14 (b) Any customer, and the commission on its own
15 motion, may complain concerning the quality of service
16 provided by a telecommunications company. A complaint shall
17 be noticed and heard as provided for in the Wyoming
18 Administrative Procedure Act. The commission, after notice
19 and hearing, may direct the telecommunications company to
20 take whatever remedial action is technically feasible and
21 economically reasonable to provide reasonably adequate
22 service. The commission shall authorize a
23 telecommunications provider to recover the cost of

1 compliance ~~with~~ as determined by any commission order under
 2 this section.

3

4 **37-15-407. Annual report.**

5

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

14

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

16

17 W.S. ~~37-1-104 through 37-1-106,~~ 37-2-102, 37-2-104,
 18 37-2-106 through 37-2-109, 37-2-113, 37-2-115 through
 19 37-2-118, 37-2-124, 37-2-125, 37-2-130, 37-2-203,
 20 37-2-205(a), 37-2-209, 37-2-214 through 37-2-216, 37-2-218,
 21 37-2-301 through 37-2-306, 37-3-114, 37-4-101 through
 22 37-4-104, 37-12-120 through 37-12-130, 37-12-201,
 23 37-12-202, 37-12-204 through ~~37-12-209, 37-12-211 through~~
 24 37-12-213, 37-12-301 through 37-12-304 and 37-13-101

1 through 37-13-137, inclusive, unless in conflict with other
2 provisions of this chapter, are applicable to
3 telecommunications companies and telecommunication
4 companies shall be considered public utilities for the
5 purposes of those provisions. ~~For purposes of this chapter~~
6 ~~W.S. 37-3-106(b) and (c) shall apply to telecommunications~~
7 ~~companies which are rate of return regulated.~~

8

9 **37-15-501. Universal service fund created;**
10 **contributions; administration.**

11

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

1 Telecommunications Sourcing Act shall apply to this
2 subsection.

3

4 **37-15-502. Universal service fund eligibility and**
5 **distribution to carriers.**

6

7 (a) Telecommunications companies which use cellular,
8 radio spectrum or other wireless technology to provide
9 supported services to customers who are otherwise eligible
10 to receive universal service support pursuant to W.S.
11 37-15-501, may establish eligibility to receive universal
12 service fund distributions in an amount to be determined by
13 the commission, provided that:

14

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

23

1 **Section 2.** W.S. 37-15-102, 37-15-103(a)(vi) and (b),
2 37-15-201(c) through (h), 37-15-203(b) through (d),
3 37-15-204(b) and (c), 37-15-301(e), 37-15-402, 37-15-403,
4 37-15-406(a), 37-15-407(a)(i) through (iv), 37-15-410 and
5 37-15-411 are repealed.

6

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

8

9

(END)