



The Telecommunications Association

EX PARTE OR LATE FILED

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Direct Dial

March 11, 1997

MAR 11 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKETED COPY ORIGINAL

EX PARTE

Re: CC Docket No. 96-98; and CCB Pol 96-14

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to notify you that Jim Baller representing the American Public Power Association (APPA), and Jeffrey Sheldon and Sean Stokes, representing UTC, met on March 10, 1997, with Richard Welch, Lisa Gelb, Claudia Pabo, Robert Tanner, Steven Teplitz, and Raelynn Tibayan of the FCC's Common Carrier Bureau.

The substance of the APPA/UTC presentation concerned points raised in their separate "petitions for clarification" regarding the definition of telecommunications service in CC Docket No. 96-98. The attached paper outlines the focus of the presentation. In addition, APPA/UTC discussed the pending petitions for declaratory ruling and/or preemption of portions of the Texas Telecommunications law, CCB Pol 96-14. The substance of the discussion concerned issues raised in the separate comments of APPA and UTC on the petitions. The attached documents were provided as background material.

The original and one copy of this notice are being filed for inclusion in this docket. Should any questions arise concerning this notification, please communicate with the undersigned.

Cordially yours,

Sean A. Stokes
Associate General Counsel

cc: Richard Welch
Lisa Gelb
Claudia Pabo
Robert Tanner
Steven Teplitz
Raelynn Tibayan

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The Telecommunications Association

Ex Parte CC Docket 96-98

The FCC should clarify that in stating that the provision of private telecommunications capacity to the public constitutes a “telecommunications service” the Commission did not intend to eliminate the initial determination as to whether the service was a common carrier service subject to Title II regulation under NARUC I¹

I. First R&O Inaccurately Implies That Private Carriage Is Eliminated

The Telecommunications Act of 1996 defines “telecommunications service” as: *The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.*

In the last sentence of paragraph 994 of Section IX.C of the *FR&O* the FCC implied that it will henceforth treat infrastructure leasing arrangements (*e.g.*, the lease of dark fiber) or “private carrier” arrangements as common carrier telecommunications service offerings. Subsequently the FCC released an *Errata* revising paragraph 994 to eliminate reference to “the furnishing of infrastructure” as a regulated common carrier activity. The new sentence reads as follows:

“Providing to the public telecommunications (e.g., selling excess capacity on private fiber or wireless networks), constitutes a telecommunications service and thus subjects the operator of such a network to the duties of section 251(a) to that extent.”

However, despite the revision the sentence still could be misconstrued as meaning that the provision of telecommunications or capacity constitutes a “telecommunications service,” regardless of the manner in which it is offered.

II. First R&O Runs Counter To Congressional Intent and FCC Precedent

Under FCC and court precedents, regulated “common carriers” have been distinguished from unregulated “private carriers” based on their indiscriminate holding-out to the public.

- By defining “telecommunications service” in the Telecommunications Act by reference to the “offering of telecommunications for a fee directly to the public,” Congress carried forward *NARUC I*’s concept of an indiscriminate holding out to the general public.²
- The Telecommunications Act of 1996, did not alter the statutory definition of a “common carrier,” which was further explained in *NARUC I*.

¹ See, *NARUC v. FCC (NARUC I)*, 525 F 2d 630 (1976).

² The “effectively available” clause is not intended to capture services that are indirectly offered to the general public, but instead the language is aimed at distinguishing between services that are directly offered to a discrete class of users and direct offerings of service to a sufficient size and class of end-users so as to effectively constitute service to the “public.”

III. Ambiguities In The First R&O Hamper Build-Out Of Telecommunications Infrastructure

Implications of the FCC's interpretation are very real for a large number of utilities, pipelines and other entities that have provided, or intend to provide, telecommunications capacity or facilities under long-term leasing agreements with third-party telecommunications service providers.

- These facilities are provided pursuant to privately negotiated, individualized contracts, under the assumption that the underlying facility provider will not be regulated as a common carrier.
- Faced with common carrier regulations many utilities and others will elect not to make telecommunications capacity available, which will result in a dramatic cut-back in the amount of facilities based competition in telecommunications. (Over 100,000 miles of utility fiber was leased to IXC's as of 1992.)
- Many local, state and Federal utilities that currently lease fiber capacity are prohibited as a matter of law from acting as common carriers.

IV. Clarification Is Consistent With The FCC's Continued Application of the NARUC I Criteria In The Months Since The Passage Of The Act

- The International Bureau continues to rely on the *NARUC I* standard in authorizing cable landing licenses on a non-common carrier basis.³
- In August 1996, the Wireless Telecommunications Bureau used *NARUC I*⁴ in authorizing Shell Offshore Services Company to operate a digital microwave station on a common carrier basis.
- New Section 101.135, adopted in February 1996, explicitly carries forward the ability of entities to be licensed as private carriers.
- In its recent *Order* on shared network facilities the FCC undertook a *NARUC I* analysis to determine whether agreements between AT&T and BOCs for shared use of former Bell System property are common carrier service offerings (CC Docket No. 85-155).

³ E.g., see *FiberCaribe, Inc.*, File No. S-C-L-95-007, DA 96-857, 11 FCC Rcd 6898 (June 1996).

⁴ *Shell Offshore Services, Order and Authorization*, Application File Nos. 9602964 through 9603061, DA - 1458.

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February 18, 1997

The Honorable Reed Hundt, Chairman
The Honorable James Quello, Commissioner
The Honorable Rachele Chong, Commissioner
The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W.
Eighth Floor
Washington, D.C. 20554

Regina M. Keeney, Bureau Chief
Dr. Kathleen Levitz, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
2033 M Street, N.W.
Suite 500
Washington, D.C. 20554

Re: Preemption of State and Local Barriers

Dear Mr. Chairman, Commissioners, Ms. Keeney and Dr. Levitz:

On behalf of the Nation's 2000 publicly-owned electric utilities, the American Public Power Association wishes to underscore the urgency of its requests for prompt and forceful decisions in the preemption proceedings currently before the Commission, particularly in CCBPol Dockets 96-14 and 96-19 involving the Texas Public Utility Regulatory Act of 1996.

Across the Nation, state legislatures are currently in session. The sessions generally run for one or two months. Many of these legislatures are now considering bills proposed by influential telephone companies to undermine or significantly delay realization of the pro-competitive goals of the Telecommunications Act. For example, in Florida, BellSouth has introduced a bill intended to shut down the City of Gainesville's popular telecommunications service program. Similarly, in Missouri, Southwestern Bell has introduced a bill intended to forestall competition from publicly-owned utilities such as the City of Springfield's and to prevent them from making their telecommunications facilities available to other entities that could compete with Southwestern Bell.

Similar bills have been introduced in other states, and in some cases, they have already become law. For example, Arkansas and Oklahoma have recently enacted measures that would largely limit publicly-owned electric utilities to using their telecommunications facilities for their own core businesses and would effectively remove these facilities from use by potential competitors of Southwestern Bell.

The Commission has a small window of opportunity to take effective preventative action. In colloquial terms, "an ounce of prevention now can be worth a pound of cure" in the years ahead. APPA therefore strongly urges the Commission to act immediately to preempt the Texas statute, through an opinion that would make clear to state legislators across the Nation that the Commission will act vigorously to eliminate unlawful state and local barriers to entry. If the Commission hesitates or issues an equivocal decision, the result could well be years of time-consuming, costly and wasteful delays from which only incumbent telephone companies would benefit. That is surely not what Congress intended when it *mandated* in Section 253 of the Act that the Commission preempt unlawful state and local barriers to entry.

If you have questions or would like additional information, I would be glad to provide promptly.

Respectfully submitted,



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Attorneys for the
American Public Power Association and the
City of Gainesville, Florida

cc: Thomas Boasberg, Legal Advisor to Chairman Hundt
James Coltharp, Senior Advisor to Commissioner Quello
Anita Walgren, Legal Advisor to Commissioner Ness
Daniel Gonzalez, Legal Advisor to Commissioner Chong
William F. Caton, Secretary of the Commission

ed from 4:30 to 8 p.m. today in Parkview High School cafe-

The \$3 dinner includes chili, a drink and dessert. The money will go toward the school band's spring trip to a petition in Orlando, Fla.

EENE COUNTY

sentee ballots ready April 1 election

bsentee ballots are ready for ne County registered voters will be unable to go to their reg- polling place April 1. bsentee ballots may be cast in ty Clerk Richard Struckhoff's on the first floor of the court- at Boonville Avenue and Cen- treet. Hours are 8 a.m. to 5 p.m. lays. e deadline for voting absentee m. March 31. r more information, call thoff's office at 868-4055.

irrections

The News-Leader strives accuracy and fairness. We correct any errors or misun- standings created by sto- headlines or photographs. leaders may request a cor- ion by calling the assign- it desk at 836-1258, day or il.

Committee votes to lock CU out of telecommunications

By Terri Gleich
News-Leader

JEFFERSON CITY — A bill to keep Springfield City Utilities out of the telecommunications business won swift and unanimous approval Thursday by the House Utility Regulation Committee.

The bill's sponsor, Committee Chairwoman Carol Jean Mays, D-Independence, said the state wants to encourage competition for local telecommunications services, such as telephone, cable television and Internet access. But, she said, cities have an unfair advantage when competing against private industry.

"I do not believe one competitor should be able to tax another," she said. "I do not believe one competitor should be able to tell another competitor where to put their lines or when or how high."

Mays' bill, backed by Southwestern Bell and GTE, prohibits any polit-

"There is no such thing as a level playing field when one competitor has regulatory and taxing authority over another competitor."

— **Rich Taylor**
Southwestern Bell

ical subdivision from providing or selling a telecommunications service or facility. It now heads to the full House for debate.

CU wants to lease unused space on its 150-mile fiber-optics network to companies that would provide local phone service in competition with Southwestern Bell. The bill would prevent that, forcing would-be competitors to lease space from Southwestern Bell or string their own network.

The other city targeted by the measure is Columbia, where GTE is the local telephone provider. But the Columbia City Council this week promised GTE it would not use its fiber-optics system to compete with private providers.

Under the bill, cities could still develop telecommunications networks for their own use, for 911 emergency services and for medical or

See **COMPETITION**, Page 5B

Nixa plans equipment

By Terri Gleich
News-Leader

JEFFERSON CITY — Nixa has received a \$118,568 grant from the Department of Natural Resources to replace playground equipment and buy land for a new park, Rep.

Jim Kreider, D-Nixa, said Thursday.

Nixa Recreation Manager Shawna Flannery said \$90,000 of the award will go toward buy-

ing a 40-acre tract for a new park. The city is still looking for land and no site has been chosen, she said.

Mayor Sharon Whitehill said the city also has set aside \$100,000 for the project and is seeking



Kreider

FOR YOUR INFORMATION

Our city editor is Chick Howland, 836-1170 or fax, 837-1361; pa

Mother and daughter: "What's happening to me? A Mother/Daughter Dialogue" will be presented at 7 p.m. Monday in Foster Auditorium at Cox Medical Center South. To register, call 269-4664 or 886-5239.

Be a clown: Kids in grades three to six can learn about painting faces and the basics of clowning at 4 p.m. Wednesday at the Kearney Branch Library, 630 W. Kearney St. For information or to register, call 837-5080.

Evening stroll: The Sp Center will open and patrol the public to enjoy a winter tration required. Call 888-4

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Page edited by Everett Kennell; call 837-1378 after 11 a.m.

phetamine than any other drug, and Ashcroft wanted to learn more about the problem. In return, officers were able to tell the senator their needs and concerns.

"In my county, it's easier to buy methamphetamine than marijuana," Christian County Sheriff Steve Whitney said.

In Springfield, three meth labs have been busted already this year, Police Chief Lynn Rowe said.

And for the Missouri Highway Patrol, additional money could be used for training on how to spot the stimulant and those who use it, spokesman Terry Moore said.

Competition/Even field wanted

Continued from 1B

educational purposes.

Rich Taylor of Southwestern Bell said the bill allows cities to provide telecommunications services that are in the public's interest, while preventing them from competing with private businesses.

"There is no such thing as a level playing field when one competitor has regulatory and taxing authority over another competitor," he said.

Woody Simmons of GTE said when lawmakers were debating telecommunications deregulation last year, there was no mention of local government competing with business.

"We assumed GTE and Southwestern Bell and Sprint and AT&T and MCI would fight it out in the marketplace and be allowed to do so freely,"

has already recognized Missouri as part of a high-intensity area in the Midwest. With that comes \$8 million in federal money to funnel into enforcement, education and cleanup efforts.

Nearly a third of that — about \$2.5 million — will go to Missouri, second only to California in meth production.

Law enforcement officials and federal prosecutors are still deciding how to spend the money, Ashcroft said. He isn't sure when or how the money will be divided.

"I think this is one of those ASAP situations," Ashcroft said. "Costs are almost unpreponderable here. We are losing lives of young people."

he said. That's not possible, he contends, when one of the players controls access to rights-of-way and permits.

But CU's Duane Galloway said allowing the city to be a "carrier's carrier" would ensure competition throughout Springfield because the fiber optics are in place throughout the city. Otherwise, he said, phone companies will compete solely in the areas that deliver the highest profits, such as business districts.

While CU doesn't pay right-of-way fees or city taxes, Galloway said it did give the city about \$17 million last year in services and payments in lieu of taxes. He said the utility would be willing to pay the same fees as other telecommunications providers.

"We have no objections to being treated like everyone else," he said.

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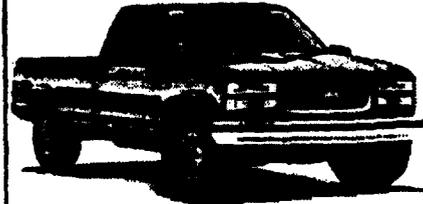
\$252⁰⁰

SMARTLEASE DISCLOSURE

Example is based on a 1997 Sierra SL 4x2. MSRP \$17,635 including destination. W.A.C. Payment based on capitalized cost (sale price) of \$16,093. Customer down payment based on down payment of 0, security deposit of 275, use (sales), personal property tax, extra. 36 payments of 251.54, total of payments are 9055.44. Guaranteed buyout dealer for disclosure of payments with different down payment. Contract is based on year.

97 SIERRA SLE 4

List Price \$24,641



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\$277⁵⁰

SMARTLEASE DISCLOSURE

Example is based on a 1997 Sierra SL 4x4. MSRP \$23,696 including destination. W.A.C. Payment based on capitalized cost (sale price) of \$21,355. Customer down payment based on down payment of 300, use (sales), personal property tax, and license plates extra. 277.55, total of payments are 9,991.80. Guaranteed buyout of 14,928.48. See dealer for disclosure of payments with different down payment. Contract is based on 12000 miles per year.

97 SIERRA SLE 4X4 CREW



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OZARKS / MISSOURI

SENATE SUMMARY

Prohibits a local government from owning a telecommunications company or providing telecommunications services except through a separate business corporation that is subject to all applicable taxes and fees.

19-290-97

SB 214

A bill to be entitled

An act relating to telecommunications; creating ss. 125.421, 166.047, F.S.; prohibiting a local government from owning a telecommunications company or providing telecommunications services except through a business corporation subject to all applicable taxes and fees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 125.421, Florida Statutes is created to read:

+{125.421 Telecommunications companies and services.--A county or other entity of local government may not directly or indirectly, alone or in conjunction with others, own, operate, or control a telecommunications company or provide or resell any telecommunications service that is subject to chapter 364, except through a business corporation organized under the laws of this or another state. Such corporation or service is subject to and is not exempt from the imposition, collection, and remittance of all federal,

state, and local taxes and fees applicable to other telecommunications companies or services.)+

Section 2. Section 166.047, Florida Statutes, is created to read:

+{166.047 Telecommunications companies and services.--A municipality or other entity of local government may not directly or indirectly, alone or in conjunction with others, own, operate, or control a telecommunications company or provide or resell any telecommunications service that is subject to chapter 364, except through a business corporation organized under the laws of this or another state. Such corporation or service is subject to and is not exempt from the imposition, collection, and remittance of all federal, state, and local taxes and fees applicable to other telecommunications companies or services.)+

Section 3. This act shall take effect October 1, 1997.

Senate Bill 6014, Washington State

AN ACT Relating to a city owning or operating a telecommunications system; amending RCW 80.36.370; adding a new section to chapter 35.21 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that the telecommunications industry is experiencing rapid change and technological evolution. The legislature further finds that with this looming uncertainty, local governments pursuing a publicly owned telecommunications system are potentially placing their constituents at a financial risk.

NEW SECTION. Sec. 2. A new section is added to chapter 35.21 RCW to read as follows:

No city may own or operate a telecommunications system, including a cable television system, intended for public use and constructed or purchased after January 1, 1997, unless the financing or operation plan has been approved by the utilities and transportation commission.

Sec. 3. RCW 80.36.370 and 1990 c 118 s 1 are each amended to read as follows:

The commission shall not regulate the following:

(1) One way broadcast or cable television transmission of television or radio signals, except for section 2 of this act;

(2) Private telecommunications systems;

(3) Telegraph services;

(4) Any sale, lease, or use of customer premises equipment except such equipment as is regulated on July 28, 1985;

(5) Private shared telecommunications services, unless the commission finds, upon notice and investigation, that customers of such services have no alternative access to local exchange telecommunications companies. If the commission makes such a finding, it may require the private shared telecommunications services provider to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices;

(6) Radio communications services provided by a regulated telecommunications company, except that when those services are the only voice grade, local exchange telecommunications service available to a customer of the company the commission may regulate the radio communication service of that company.

Stricken language would be deleted from present law. Underlined language would be added to present law.

0114971531.mhf591

SB 54

As Engrossed: 5/22/97

State of Arkansas

As Engrossed: 5/22/97
81st General Assembly

A Bill

Regular Session, 1997
SENATE BILL 54

By: Senators Hopkins, Argue, Bearden, Bell, Canada, Dowd, Edwards, Everett, Fitch, Gordon, Gwatney, Harriman, Hill, Hoofman, Hunter, Jeffries, *Kennedy*, Lewellen, Mahony, Malone, Roebuck, Ross, Smith, Todd, Walker, Walters, Webb, and Wilson

By: Representatives Wagner, Beatty, Thicksten, Capps, Cunningham, Young, Lavery, Purdom, Newman, George, Maddox, Brown, Miller, Fletcher, McKissack, McGee, Malone, Pollan, McGehee, Wilkinson, Willems, Johnson, Rorie, Simon, Broadway, Kidd, Lancaster, Sheppard, Stalnaker, Jones, Bennett, Choate, Davis, Baker, Wood, Northcutt, Simmons, Allison, Flanagan, Horn, Whorton, Cook, Hausam, Jeffress, Hall, Wren, Goodwin, Critcher, McJunkin, Hunton, Harris, French, Joe Hudson, Wallis, Teague, Bond, Shoffner, Ammons, Milum, Booker, Pappas, Walker, Courtway, Roberts, Rodgers, Ange, *and Curran*

For An Act To Be Entitled

"TELECOMMUNICATIONS REGULATORY REFORM ACT OF 1997."

Subtitle

"TELECOMMUNICATIONS REGULATORY REFORM ACT OF 1997."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Title.

This act may be referred to and cited as the "Telecommunications Regulatory Reform Act of 1997".

SECTION 2. Legislative Findings.

It is the intent of the General Assembly in enacting this Act to:

- (1) Provide for a system of regulation of telecommunications services, consistent with the Federal Act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms, modifies outdated regulation, eliminates unnecessary regulation, and preserves and advances universal service.
- (2) Recognize that a telecommunications provider that serves high cost rural areas or exchanges faces unique circumstances that require special consideration and funding to assist in preserving and promoting universal service.
- (3) Recognize differences between the small and large incumbent local exchange carriers, that there are customer-owned telephone cooperatives and small locally-owned investor companies, and that it is appropriate to provide incentives and regulatory flexibility to allow incumbent local exchange carriers that serve the rural areas to provide existing services and to introduce new technology and new services in a prompt, efficient and economical manner. The General Assembly finds that the Commission, when promulgating rules and regulations, should take into consideration the differences in operating conditions in the large and small incumbent local exchange carriers and the burdens placed on small carriers because of regulation.

SECTION 3. Definitions.

As used in this Act:

- (1) "Access line" means communications facility extending from a customer's premises to a serving central office comprising a subscriber line and, if necessary, a trunk facility.
- (2) "Affiliate" means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or which is under common ownership or control with, another entity. Owns or controls, for the purpose of this definition means holding at least a

majority of the outstanding voting power.

(3) "Arkansas IntraLATA Toll Pool" means the unincorporated organization of the Arkansas incumbent local exchange carriers, approved by the Commission, whose purpose is to redistribute the pooled revenues from intraLATA toll telephone service.

(4) "Arkansas Intrastate Carrier Common Line Pool" means the unincorporated organization of the providers of Arkansas telecommunications services, authorized by the Commission, whose purpose is to manage billing, collection, and distribution of the incumbent local exchange carrier's intrastate toll common line service revenue requirements.

(5) "Basic local exchange service" means the service provided to the premises of residential or business customers composed of the following:

(a) voice grade access to the public switched network, with ability to place and receive calls,

(b) touch tone service availability,

(c) flat rate residential local service and business local service,

(d) access to emergency services (911/E911) where provided by local authorities,

(e) access to basic operator services,

(f) a standard white page directory listing,

(g) access to basic local directory assistance,

(h) access to long distance toll service providers, and

(i) the minimum service quality as established and required by the Commission on the effective date of this Act.

(6) "Commercial mobile service" means cellular, Personal Communications Systems and any service regulated pursuant to Part 20 of the rules and regulations of the FCC (47 CFR Part 20) or any successor provisions.

(7) "Commission" means the Arkansas Public Service Commission.

(8) "Competing local exchange carrier" or "CLEC" means a local exchange carrier that is not an incumbent local exchange carrier.

(9) "Electing company" means a local exchange carrier that elects to be regulated pursuant to Sections 6 through Section 8 of this Act.

(10) "Eligible telecommunications carrier" means the local exchange carrier determined in accordance with Section 5.

(11) "Embedded investment" means the amount of investment in telephone plant that has already been made by an incumbent local exchange carrier as of the effective date of this act.

(12) "FCC" means the Federal Communications Commission.

(13) "Facilities" means any of the physical elements of the telephone plant that are needed to provide or support telecommunications services, including switching systems, cables, fiber optic, and microwave radio transmission systems, measuring equipment, billing equipment, operating systems, billing systems, ordering systems, and all other equipment and systems that a telecommunications service provider uses to provide or support telecommunications services.

(14) "Federal act" means the Communications Act of 1934, as amended.

(15) "Government entity" includes all Arkansas state agencies, commissions, boards, authorities, and all Arkansas public educational entities (including school districts), and political subdivisions (including incorporated cities and towns and all institutions, agencies or instrumentalities of municipalities) and county governments.

(16) "Incumbent local exchange carrier" means, with respect to a local exchange area, a local exchange carrier, including successors and assigns, that is certified by the Commission and was providing basic local exchange service on February 8, 1996.

(17) "Interstate access charge pools" means the system, currently administered by the National Exchange Carriers Association, wherein participating local exchange carriers pool billed interstate access revenues.

(18) "Local exchange area" means the geographic area, approved by the Commission, encompassing the area within which a local exchange carrier is authorized to provide basic local exchange services and switched access services.

(19) "Local exchange carrier" means a telecommunications provider of basic local exchange service and switched access service. Such term does not include commercial mobile service providers.

(20) "Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(21) "Resale" means the purchase of services by one local exchange carrier from another local exchange carrier for the purpose of reselling those services directly or indirectly to an end-user customer.

(22) "Rural telephone company" means a local exchange carrier defined as a rural telephone company in the Federal Act as of the effective date of this act.

(23) "Switched access service" means the provision of communications between a customer premise and an interexchange carrier's point of interconnection with a local exchange carrier's network for the completion of end user calls to the public switched network for the origination or termination of interexchange long distance traffic.

(24) "Telecommunications provider" means any person, firm, partnership, corporation, association, or other entity that offers telecommunications services to the public for compensation.

(25) "Telecommunications services" means the offering to the public for compensation the transmission of voice, data, or other

electronic information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities. Such term does not include radio and television broadcast or distribution services, or the provision or publishing of yellow pages, regardless of the entity providing such services, or services to the extent that such services are used in connection with the operation of an electric utility system owned by a government entity.

(26) "Tier One Company" means any incumbent local exchange carrier that, together with its Arkansas affiliates that are also incumbent local exchange carriers, provides basic local exchange services to greater than one hundred fifty thousand (150,000) access lines in the State of Arkansas on the effective date of this Act. Changes in designation of an incumbent local exchange carrier, or portions thereof, as a Tier One Company or non-Tier One Company may be effected by prior approval from the Commission pursuant to Section 11(i).

(27) "Universal service" means those telecommunications services that are defined and listed in the definition of basic local exchange service until changed by the Commission pursuant to Section 4(c)(3) of this Act.

SECTION 4. Preservation and Promotion of Universal Service.

(a) The Arkansas Universal Service Fund (AUSF) is established by this Section in order to promote and assure the availability of universal service at rates that are reasonable and affordable, and to provide for reasonably comparable services and rates between rural and urban areas. The AUSF will provide funding to eligible telecommunications carriers that provide basic local exchange services over facilities owned by the eligible telecommunications carrier. The AUSF shall be designed to provide predictable, sufficient, and sustainable funding to eligible telecommunications carriers serving rural or high cost areas of the State.

(b) The Arkansas Universal Service Fund is to provide a mechanism to restructure the present system of telecommunication service rates in the State as provided herein, and all telecommunications providers, except as prohibited by federal law, shall be charged for the direct and indirect value inherent in the obtaining and preserving of reasonable and comparable access to telecommunications services in the rural or high cost areas. The value and utility of access to and interconnection with the public switched network will be lessened if the rural or high cost areas do not have comparable access and subscribership. This AUSF charge for all telecommunications providers shall be proportionate to each provider's Arkansas intrastate retail telecommunications service revenues. In that the customers of the telecommunications providers that would pay the AUSF charge receive the benefits of a universal network, such telecommunications providers may surcharge their customers to recover such AUSF charges paid by the telecommunications provider. Therefore, the AUSF charge is not a tax, and is not affected by state laws governing taxation.

(c) The Commission shall delegate to a trustee (the "administrator") the administration, collection, and distribution of the AUSF in accordance with the rules and procedures established by the Commission and consistent with this Act. The administrator shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the AUSF. Within sixty days after receipt of a request for AUSF funds, the administrator shall review and determine the accuracy and appropriateness of the request and advise the entity requesting such funds of his determination. The affected parties shall have thirty days to request reconsideration by the Commission of the administrator's determination and the Commission shall after notice and hearing, if requested, issue its opinion on the reconsideration within thirty days after the request of reconsideration. Persons aggrieved by the Commission's opinion shall have the right to appeal such opinion in accordance with law.

(d) The AUSF administrator shall periodically establish and notify each telecommunications provider of the AUSF charge levels required to be paid by the telecommunications provider. Any telecommunications provider that fails, without just cause, to pay the AUSF charge that is due and payable pursuant to this section shall, after notice and opportunity for hearing, have its authority to do business as a telecommunications provider in the State of Arkansas revoked by the Commission. The AUSF charge shall not be subject to any state or local tax or franchise fees. The Commission is authorized to increase the AUSF charge by those amounts necessary to recover the cost of administration of the AUSF.

(e) The Commission shall, after reasonable notice and hearing, establish rules and procedures necessary to implement the AUSF. The Commission shall implement the AUSF and make AUSF funds available to eligible telecommunications carriers no later than 90 days following the later of (i) the effective date of this Act, or (ii) the effective date of an FCC order pursuant to Section 254 of the Federal Act (47 USC 254), that approves, establishes or modifies interstate universal service funding. The Commission shall not, prior to the implementation and availability of funds from the AUSF, require any local exchange carrier to reduce rates for intrastate switched access services or require any local exchange carrier to reduce its net revenue received from the Arkansas IntraLATA Toll Pool (AITP). In establishing and implementing the AUSF, the Commission shall adhere to the following instructions and guidelines:

(1) AUSF funding shall be provided directly to eligible telecommunications carriers.

(2) The Commission may, after reasonable notice and hearing, revise the list of universal services, identified in Section 3 of this Act, that may be supported by the AUSF to establish and maintain end user rates for universal services that are reasonably comparable between urban and rural areas, or to reflect changes in the type and quality of telecommunications services considered essential by the public, as evidenced, for example, by those telecommunication services that are purchased and used by a majority of single line urban customers. The Commission shall determine and approve AUSF funding to eligible telecommunications carriers to recover the cost of additions or revisions to the universal service list concurrent with any such revisions to the list of universal services identified in Section 3 of this Act.

(3) If the Commission establishes or utilizes a minimum or threshold universal service rate (threshold rate), for the purpose of determining the amount of AUSF that an eligible telecommunications carrier may receive, the Commission shall adhere to the

following requirements:

(A) A rate case proceeding or earnings investigation or analysis shall not be required or conducted in connection with the determination or implementation of increases in universal service rates associated with Commission use of a threshold rate, and the increases shall not be included in the calculation of the basic local exchange service rate increase limits specified in Section 7 and Section 12.

(B) The Commission may not require a reduction in universal service rates to a threshold rate unless any associated decrease in revenues are allowed to be concurrently recovered from the AUSE.

(4)(A) In the event of an FCC order, rule or policy, pursuant to Section 254(a)(2) of the Federal Act, (47 USC 254(a)(2)) the effect of which is to change the federal universal service fund revenues of an incumbent local exchange carrier, the Commission shall either increase the rates for basic local exchange service or increase the incumbent local exchange carrier's recovery from the AUSE or a combination thereof to replace the reasonably projected change in revenues. In determining whether to increase basic local exchange service rates or increase AUSE for a Tier One Company pursuant to this Section, the Commission shall take into account that company's rates and consider whether such rates are below the statewide average.

(B) Any rural telephone company, excluding Tier One Companies, that, as a result of changes caused by new or existing federal or state regulatory or statutory directives, experiences a change in intrastate or interstate switched access services revenues, or in net revenue received from the intrastate Carrier Common Line Pool, interstate access charge pools, or the Arkansas IntraLATA Toll Pool, shall be allowed to recover such reductions from the AUSE or through modifications in rates applicable to basic local exchange service. The recovered amounts shall be limited to the net reduction in revenues from all sources of support listed in paragraphs (e)(4)(A) and (e)(4)(B) of this Section.

(C) In connection with the receipt of AUSE funds for these changes referred to in paragraph (e)(4)(A) or (e)(4)(B) of this Section, such shall not be conditioned upon any rate case or earnings investigation by the Commission. The AUSE administrator shall verify the calculations and accuracy of the net revenue reductions, based on a comparison between (i) the total annual revenues received from these sources by the eligible telecommunications carrier during the most recent twelve months preceding the required regulatory or statutory changes, and (ii) a reasonable projection of total test year annual revenue after such changes are implemented.

(D) Except as provided in this paragraph, the intrastate Carrier Common Line (CCL) Pool charges shall continue as effective on December 31, 1996. The Commission is authorized to develop and implement, commencing three (3) years after the effective date of this Act, a phase-in reduction of intrastate CCL pool charges until such charges are equivalent to the interstate CCL charges. Any reduction of intrastate CCL pool charges of incumbent local exchange carriers ordered by the Commission shall provide for concurrent recovery of such revenue loss from the AUSE, basic local exchange rates, or a combination thereof.

(5) All eligible telecommunications carriers may request high cost funding from the AUSE as necessary in the future to maintain rates for universal services that are reasonable, affordable, and comparable between urban and rural areas. Except as otherwise provided in this Act, such funding shall be based on all net investment, including embedded investment, and expenses incurred by the eligible telecommunications carriers in the provision of universal service. High cost funding shall be provided to eligible telecommunications carriers as needed for the following: (A) investments and expenses required to provide, maintain, and support universal services (B) infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory, judicial authority, or governmental entity, and (C) for other purposes deemed necessary by the Commission to preserve and advance the public education and welfare.

(6) In identifying and measuring the costs of providing universal services, exclusively for the purpose of determining high cost funding levels under paragraph (e)(6) of this Section, eligible telecommunications carriers shall have the following options:

(A) The eligible telecommunications carrier may utilize traditional rate case methods and procedures to identify universal service revenue requirements and a residual AUSE funding requirement;

(B) The eligible telecommunications carrier may identify high cost areas within its local exchange area, such area being no smaller than a single exchange or wire center, and perform a fully distributed allocation of cost and identification of associated revenue in order to quantify funding needs for such areas; or

(C) The Commission shall adopt reasonable cost proxies that may be used by an eligible telecommunications carrier for this purpose.

(7) In calculating revenue requirements only for the purpose of establishing high cost funding needs from the AUSE the Commission shall not fix depreciation rates; however, the Commission may make reasonable adjustments to depreciation expense if an eligible telecommunications carrier's composite depreciation annual accrual rate is greater than the weighted average of composite rates for similar plant and equipment of all other telecommunications providers providing comparable services in the State. In such case, the Commission may adjust depreciation expenses of the eligible telecommunications carrier to levels that would not exceed 15% above a composite accrual rate comparable to the statewide weighted average.

(f) On or within thirty days following the fifth anniversary of the effective date of this Act, the Commission and the AUSE administrator shall complete and deliver a report on the status and performance of the AUSE to the Legislative Council.

(g) The current Arkansas Universal Telephone Service Fund established pursuant to Arkansas Code Annotated Sections 23-17-301 through 23-17-307 will continue to exist until the AUSE is funded and operational. At that time any funds remaining in the current fund will be transferred to the AUSE and the current fund will no longer be operational

SECTION 5. Eligible Telecommunications Carrier.

(a) The incumbent local exchange carrier, its successors and assigns, which owns, maintains, and provides facilities for universa

service within a local exchange area upon the effective date of this Act, shall be the eligible telecommunications carrier within such local exchange area.

(b) Where the incumbent local exchange carrier receives AUSF support, except in areas served by rural telephone companies, the Commission, consistent with Section 214(e)(2) of the Federal Act (47 USC 214(e)(2)), after reasonable notice and hearing, may designate other telecommunications providers to be eligible for high cost support pursuant to Section 4 under the following conditions:

(1) The other telecommunications provider accepts the responsibility to provide service to all customers in an incumbent local exchange carrier's local exchange area using its own facilities or a combination of its own facilities and resale of another carrier's services. High cost support under this Section will not begin until the telecommunications provider has facilities in place and offers to serve all customers in its service area:

(2) The telecommunications provider may only receive funding for the portion of its facilities that it owns and maintains;

(3) The telecommunications provider will not receive AUSF funding at a level higher than the level of funding received by the incumbent local exchange carrier in the same area:

(4) The telecommunications provider advertises the availability and the charges of such services, using media of general distribution; and

(5) It is determined by the Commission that the designation is in the public interest.

(c) In exchanges or wire centers where the Commission has designated more than one eligible telecommunications carrier, the Commission shall permit a local exchange carrier to relinquish its designation as an eligible telecommunications carrier, consistent with Section 214(e)(4) of the Federal Act (47 USC 214(e)(4)), upon a finding that at least one eligible telecommunications carrier will continue to serve the area.

(d) For the entire area served by a rural telephone company, excluding Tier One Companies, for the purpose of the AUSF and the federal universal service fund, there shall be only one eligible telecommunications carrier which shall be the incumbent local exchange carrier that is a rural telephone company. The rural telephone company may elect to waive its right to be the only eligible telecommunications carrier within the local exchange area by filing notice with the Commission. If there is more than one eligible telecommunications carrier, an eligible telecommunications carrier may petition the Commission and be granted relief from designation as an eligible telecommunications carrier.

(e) An eligible telecommunications carrier may use commercial mobile services to provide universal services.

SECTION 6. Electing Companies.

(a) Any incumbent local exchange carrier may elect to have the rates, terms, and conditions for its telecommunications services determined pursuant to the provisions of this Section.

(b) An incumbent local exchange carrier shall file a notice of its intent with the Commission to be an electing company and to be regulated pursuant to Sections 6 through Section 8.

(c) Upon such a filing, all rates, terms, and conditions for the services provided by that incumbent local exchange carrier contained in the tariffs and end-user contracts that were in effect on the date twelve months prior to the date of election under this Section shall be deemed just and reasonable. However, nothing herein shall restrict any customer's right to complain to the Commission regarding quality of service or the Commission's right to enforce any quality of service rules and standards which are equally imposed on all telecommunications providers.

(d) A rural telephone company, excluding Tier One Companies, which elects to be regulated pursuant to this Section may terminate that election by filing a notice with the Commission. Upon terminating that election, the rural telephone company may not thereafter, for a period of five years from date of the termination notice under this paragraph, elect to be regulated under this Section.

SECTION 7. Regulation of Rates for Basic Local Exchange Service and Switched Access Service of Electing Companies.

(a) The rates for basic local exchange service and switched access services that were in effect in the date twelve months prior to the date of filing of a notice of election by a local exchange carrier pursuant to Section 6 shall be the maximum that such electing local exchange carrier may charge for such services for a period of three years after the date of filing, excluding rate increases ordered by the Commission pursuant to Section 4. An electing company may decrease or, subsequent to a decrease, increase up to the rate that was effective at the time of election pursuant to this Section. Such rate changes shall be effective immediately, without Commission approval, by filing a tariff or notice with the Commission.

(b) After the expiration of such three year period, the rates for basic local exchange services and switched access services, excluding the intrastate carrier common line charge, may be adjusted by the electing company filing a price list with the Commission, as long as such rates remain at or below the inflation-based rate cap. Inflation shall be measured by the year-over-year percent change in the gross domestic product price index (GDP-PI) calculated by the U.S. Department of Commerce, or any successor to such index. The electing company is authorized to adjust the rate cap for each basic local exchange service and switched access service by seventy-five percent of this inflation measure, adjusted for exogenous changes specified in paragraph (e)

of this Section, and excluding rate increases ordered by the Commission pursuant to Section 4. The rate cap may only be adjusted once each twelve months beginning at the expiration of the three year period after the date of initial filing to be regulated pursuant to Sections 6 through 8.

(c) As long as an electing company is in compliance with paragraphs (a) and (b) of this Section, such rates are deemed just and

reasonable.

(d) Notwithstanding the provisions of this Section, if, at any time following the three year anniversary of the date of election pursuant to this Section, another telecommunications provider is providing basic local exchange service or switched access service within an electing company's local exchange area, the electing company may, within any exchange of the electing company in which another telecommunications provider is providing these services, commence determining its rates for basic local exchange service and switched access services in the same manner that it determines its rates for services other than basic local exchange service and switched access service, pursuant to Section 8(c).

(e) For purposes of this Section, the term exogenous change shall mean a cumulative impact on a local exchange carrier's intrastate regulated revenue, expenses or investment of more than three percent over a twelve month period, that is attributable to changes in federal, state, or local government mandates, rules, regulations or statutes.

SECTION 8. Regulatory Framework for Electing Companies.

(a) The earnings of an electing company shall not be subject to rate of return or rate base monitoring or regulation, and the Commission shall not consider rate of return, rate base, or the earnings of an electing company in connection with rate changes made pursuant to this Section or Section 7.

(b) An electing company is authorized to determine and account for its investments, revenues and expenses, including depreciation expenses, pursuant to generally accepted accounting principles.

(c) An electing company may increase or decrease its rates for telecommunications services other than basic local exchange service and switched access services and establish rates for new services by filing a tariff or a price list with the Commission. Such rates shall not require Commission approval. The tariff or price list shall be effective upon filing or at such future time as the electing company shall designate. So long as rates for services are in accordance with this Section and Section 7, such rates are deemed just and reasonable. Any service that is not a telecommunications service is not subject to Commission regulation, and rates for such services need not be filed with the Commission.

(d) An electing company may package any of its services with any other service it or its affiliates offer, with or without a discount, provided that services whose rates are capped under Section 7 may be purchased separately at the rate which is capped in accordance with that Section.

SECTION 9. Authorization of Competing Local Exchange Carriers.

(a) Consistent with the Federal Act and the provisions of Section 10, the Commission is authorized to grant certificates of convenience and necessity to telecommunications providers authorizing them to provide basic local exchange service and/or switched access service to an incumbent local exchange carrier's local exchange area if and to the extent that such applications otherwise comply with state law, designate the geographic areas proposed to be served by such applicants, and the applicants demonstrate they possess the financial, technical and managerial capacity to provide such competing services. Competing local exchange carriers shall be required to maintain a current tariff or price list with the Commission, and to make prices and terms of service available for public inspection. Retail prices of competing local exchange carriers shall not require prior review or approval by the Commission.

(b) A government entity may not provide, directly or indirectly, basic local exchange service. After reasonable notice to the public and public hearing, a government entity owning an electric utility system or television signal distribution system may make any telecommunications capacity or associated facilities which it now owns, or may hereafter acquire, available to the public upon such terms and conditions as may be established by its governing authority, except such government entity may not use such telecommunications capacity or facilities to provide, directly or indirectly, basic local exchange service. Any restriction contained in this paragraph shall not be applicable to the provision of telecommunications services or facilities to the extent used solely for 911, E911, other emergency services, educational or medical purposes, or for the provision of telecommunications services or facilities by an educational institution to its students.

(c) A government entity which operates an electric utility system may deny any telecommunications provider access to its electric utility poles, ducts, conduits, or rights-of-way, on a nondiscriminatory basis where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

(d) Except to the extent required by the Federal Act and this Act, the Commission shall not require an incumbent local exchange carrier to negotiate resale of its retail telecommunications services, to provide interconnection, or to sell unbundled network elements to a competing local exchange carrier for the purpose of allowing such competing local exchange carrier to compete with the incumbent local exchange carrier in the provision of basic local exchange service. Promotional prices, service packages, trial offerings, or temporary discounts offered by the local exchange carrier to its end-user customers are not required to be available for resale.

(e) The prices for unbundled network elements shall include the actual costs, including an allocation of joint and common costs and a reasonable profit.

(f) As provided in Sections 251 and 252 of the Federal Act (47 USC 251 and 252), the Commission's authority with respect to interconnection, resale, and unbundling is limited to the terms, conditions and agreements pursuant to which an incumbent local exchange carrier will provide interconnection, resale, or unbundling to a CLEC for the purpose of the CLEC competing with the incumbent local exchange carrier in the provision of telecommunications services to end-user customers.

(g) The Commission shall approve, as permitted by the Federal Act, resale restrictions which prohibit resellers from purchasing retail local exchange services offered by a local exchange carrier to residential customers and reselling those retail services to

nonresidential customers, or aggregating the usage of multiple customers on resold local exchange services, or any other reasonable limitation on resale to the extent permitted by the Federal Act. The wholesale rate of any existing retail telecommunications services provided by local exchange carriers that are not exempt from Section 251(c) of the Federal Act (47 USC 251(c)) and that are being sold for the purpose of resale, shall be the retail rate of the service less any net avoided costs due to the resale. The net avoided costs shall be calculated as the total of the costs that will not be incurred by the local exchange carrier due to it selling the service for resale less any additional costs that will be incurred as a result of selling the service for the purpose of resale.

(h) Incumbent local exchange carriers shall provide CLECs, at reasonable rates, nondiscriminatory access to operator services, directory listings and assistance, and 911 service only to the extent required in the Federal Act.

(i) The Commission shall approve any negotiated interconnection agreement or statement of generally available terms filed pursuant to the Federal Act unless it is shown by clear and convincing evidence that the agreement or statement does not meet the minimum requirements of Section 251 of the Federal Act (47 USC 251). In no event shall the Commission impose any interconnection requirements that go beyond those requirements imposed by the Federal Act or any interconnection regulations or standards promulgated under the Federal Act.

(j) In the event the Commission is requested to arbitrate any open issues pursuant to Section 252 of the Federal Act (47 USC 252), the parties to the arbitration proceeding shall be limited to the persons or entities negotiating the agreement.

SECTION 10. Competing Local Exchange Carriers in Service Areas of Rural Telephone Companies.

(a) A rural telephone company shall not have any duty to negotiate terms and conditions of, or to enter into any agreement for the provision to any other telecommunications provider of interconnection with the rural telephone company's network as provided by Section 251(c) and Section 252 of the Federal Act (47 USC 251(c) and 252), including access to its network elements on an unbundled basis, resale of any telecommunications service that such rural telephone company provides at retail to subscribers, or physical collocation, unless and until a telecommunications provider has made a bona fide request to the rural telephone company for such services, and the Commission has determined, in accordance with the Federal Act, that the rural telephone company must fulfill such request.

(b) With regard to a rural telephone company that is not also a Tier One Company, the Commission may only determine that the rural telephone company must fulfill such a request if, after reasonable notice and hearing, it is established by clear and convincing evidence that

(1) the request is not unduly economically burdensome;

(2) the request is technically feasible; and

(3) the request is consistent with the protection of universal service and the public interest, convenience, and necessity.

(c) The Commission shall not conclude that clear and convincing evidence exists, as required in paragraph (b) of this Section, unless the Commission has, among other relevant matters, concluded that granting the requested relief will not result in significant adverse impact on any of the following:

(1) The customers of the incumbent local exchange carrier serving the area;

(2) The incumbent local exchange carrier's continuing ability to provide its customers adequate service at reasonable rates;

(3) The incumbent local exchange carrier's ability to continue to meet eligible carrier obligations;

(4) Statewide average toll rates;

(5) Customers cost of telephone service;

(6) The goals of universal service;

(7) The quality of service provided to customers;

(8) The incumbent local exchange carrier's ability to attract capital and incur debt at reasonable rates and the ability to sustain sufficient revenue stream to pay existing debt;

(9) The ability of the exchange to support more than one local exchange carrier; and

(10) The interest of all ratepayers.

(d) If no order granting the request is entered by the Commission within 120 days after notice of such request has been filed, the request is denied.

SECTION 11. Regulatory Reform.

(a) Regarding the earnings, rates of return, or rate base calculation of any electing company, any incumbent local exchange carrier that has filed notice in accordance with Section 12, or any competing local exchange carrier, and provided that all such companies and carriers otherwise comply with the applicable ratemaking provisions of this Act, the Commission shall not:

(1) require the filing of any financial report, statement, or other document for the purpose of reviewing, monitoring, or regulating rate base, earnings, or rates of return, or

(2) conduct any investigation of rate base, earnings, or rates of return.

(b) Notwithstanding the provisions of this Act, a rate group reclassification of an exchange from one rate group to another occurring as a result of access line growth or loss of exchange access arrangements shall be allowed by the Commission on request of a local exchange carrier.

(c) Consistent with the policy of telecommunications competition that is implemented with this Act, other than the Commission's promulgation of rules and regulations required by this Act, the Commission shall promulgate no new rule or regulation that increases regulatory burdens on telecommunications service providers, except upon a showing that the benefits of such rule

regulation are clear and demonstrable and substantially exceed the cost of compliance by the affected telecommunications service providers.

(d) Not later than 180 days after the effective date of this Act, the Commission shall conduct a rule making proceeding to identify and repeal all rules and regulations relating to the provision of telecommunications service which are inconsistent with, have been rendered unnecessary by, or have been superseded by either this Act or the Federal Act.

(e) Not later than 180 days after the effective date of this Act, the Commission shall revise its rules so that they apply, except as expressly provided in this Act, equally to all providers of basic local exchange service. All future rule changes promulgated by the Commission shall apply equally to all providers of basic local exchange service.

(f) In order to eliminate outdated, unnecessary and burdensome laws and regulations, electing companies, incumbent local exchange carriers filing notice pursuant to Section 12, and competing local exchange carriers shall not be subject to the requirements of Sections 23-2-304(a)(1), 23-2-304(a)(4), 23-2-304(a)(5), 23-2-306, 23-2-307, Sections 23-3-101 through 23-3-107, 23-3-112, 23-3-114, Sections 23-3-118, 23-3-119(a)(2), 23-3-201, 23-3-206, 23-3-301 through 23-3-316, 23-4-101 through 23-4-104, 23-4-107, 23-4-109, 23-4-110, 23-4-201(d), 23-4-401 through 23-4-405, Sections 23-4-407 through 23-4-419, 23-17-234, or the Commission rules and regulations implementing such statutes.

(g) The Commission, except as provided in this Act with respect to universal services, shall have no jurisdiction to regulate commercial mobile services or commercial mobile service providers.

(h) The Commission shall establish reasonable cost proxies, which rural telephone companies, excluding Tier One Companies, may use without producing company specific cost studies, when cost studies would otherwise be required. Use of these proxies or the adoption of approved rates of non rural telephone companies by rural telephone companies, excluding tier one companies, shall be deemed adequate proof of such rural telephone company costs.

(i) The Commission may reclassify an incumbent local exchange carrier as a tier one company or a non tier one company only upon petition by the incumbent local exchange carrier in connection with an increase or decrease in the number of the carrier's access lines in the state.

(j) The unauthorized change of a customer's service to another telecommunications service provider is prohibited. To protect customers from any unauthorized changes in their choice of telecommunications service providers, no local exchange carrier shall honor a request by any person other than the customer to change the provider of intrastate long distance or local exchange service to such customer in the state, except: (1) where the request is placed by a local or long distance company that has provided to the local exchange carrier a letter of agency containing clear and conspicuous disclosure of such change signed by the customer authorizing the change; (2) where the customer affected by the change calls a toll-free number (established by the company requesting the change) to confirm the request for change made in response to a contact initiated by the local exchange or long distance company requesting the change; or (3) where the Commission otherwise expressly authorizes. Any telecommunications carrier that violates the verification procedures described in this subsection and collects charges for telecommunications services from the customer shall be liable to the carrier previously selected by the customer in an amount equal to all charges paid by such subscriber after such violation in accordance with such procedures as the Commission may prescribe. The Commission is also authorized to impose civil penalties, not to exceed five thousand dollars (\$5,000.00) for any such violation.

SECTION 12. Optional Alternative Regulation of Non Tier One Rural Telephone Companies.

(a) Rural telephone companies, excluding Tier One Companies, that file notice with the Commission of an election to be regulated in accordance with the provisions of this Section are authorized to determine and account for their respective revenues and expenses, including depreciation expenses, pursuant to generally accepted accounting principles, and, except as provided in this Section, shall be subject to regulation only in accordance with this Section and shall not be subject to any rate review or rate of return regulation by the Commission. Such companies shall file rate lists for their telecommunications services which rates shall be effective upon filing, except the rates for basic local exchange services and switched access services, which rates shall be effective upon compliance and in accordance with the procedures in this Section. Any service that is not a telecommunications service is not subject to regulation by the Commission, and rates for such services need not be filed with the Commission.

(b) On the effective date of an election pursuant to this Section, the tariffed rates of a company electing to be subject to the provisions of this Section are deemed just and reasonable and shall continue to be deemed just and reasonable as long as any increases in such company's tariffed rates are in accordance with the provisions of this Section.

(c) The company may increase its basic local exchange service rates after sixty (60) days' notice to all affected subscribers. Rates for basic local exchange services may be reduced and be effective immediately upon filing or at such later time specified in such filing. Notice by the company to its subscribers shall be by regular mail and may be included in regular subscriber billings and shall include the following:

(1) A schedule of the proposed basic local exchange service rate change; (2) The effective date of the proposed basic local exchange service rate change; and

(3) An explanation of the right of the subscriber to petition the Commission for a public hearing on the rate increase and the procedure necessary to petition.

(d) The subscriber petitions provided for in this Section shall be prepared as follows:

(1) FORM.

(A) The petition shall be headed by a caption, which shall contain:

(i) The heading, "The Arkansas Public Service Commission"(ii) The name of the company or cooperative seeking a change in basic local exchange service rates.(iii) The relief sought.

(B) A petition substantially in compliance with the form set forth in this subsection shall not be deemed invalid due to minor errors in its form.

(2) BODY. The body of the petition shall consist of three numbered paragraphs, if applicable, as follows:

(A) ALLEGATIONS OF FACTS. The allegations of facts shall be stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations shall be stated in numbered subparagraphs as necessary for clarity.

(B) RELIEF SOUGHT. The petition shall contain a brief statement of the amount of the change in basic local exchange service rates that is objected to or other relief sought.

(C) PETITIONERS. The petition shall contain the name, address, telephone number, and signature of each subscriber signing the petition. Only the subscriber in whose name the telephone service is listed shall be counted as a petitioner. Every signature must be dated and shall have been affixed to the petition within sixty (60) days preceding its filing with the Commission.

(e) Exclusive of basic local exchange service rate changes pursuant to Section 4, the Commission shall have authority to review basic local exchange service rates set by the company only upon a formal petition which complies with subsection (d) of this Section and which is signed by at least fifteen percent (15%) of all affected subscribers. If a proper petition is presented to the Commission within sixty (60) days after the date of notice of the rate change was sent to affected subscribers, the Commission shall accept and file the petition and, upon reasonable notice, may suspend the rates and charges at issue during the pendency of the proceedings and reinstate the rates and charges previously in effect and shall hold and complete a hearing thereon within ninety (90) days after filing to determine if the rates as proposed are just and reasonable. The Commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the Commission may not set any rate or charge below the basic local exchange service rates in effect at the time the new rate at issue was proposed. A company subject to this Section shall not increase its rates without the approval of the Commission for six months after the date the Commission enters such order. If the Commission fails to enter any order within sixty days after the close of the hearing, the petition shall be deemed denied and the rates and charges shall be deemed approved for all purposes, including the purposes of appeal.

(f) Rates for switched access services of companies that are subject to this Section shall be determined pursuant to Section 7, except as provided in Section 12(l) and Section 4.

(g) A company subject to this Section may at any time file an application with the Commission requesting the Commission to prescribe just and reasonable rates for the company. Any rate so set may thereafter be adjusted as provided in this Section.

(h) Nothing herein shall restrict any customer's right to complain to the Commission regarding quality of service or the Commission's authority to enforce quality of service rules and standards which are equally imposed on all telecommunications providers.

(i) The Commission may, on its own motion, review basic local exchange service rates of any company subject to this Section if the company has increased such rates by more than the greater of fifteen percent (15%) or \$2.00 per access line per month within any consecutive twelve-month period, excluding rate increases ordered by the Commission pursuant to Section 4. The Commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the company to determine if the rates as proposed are just and reasonable. The Commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the Commission may not require the company to set any rate or charge below the greater of the rates in effect at the time of the filing of the increase or the actual cost of providing such service as established by evidence received at the hearing. In such order, the Commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. If the Commission fails to enter any order within sixty days after the close of the hearing, the rates and charges shall be deemed approved for all purposes, including for purposes of appeal.

(j) For purposes of this Section, the Commission may not require a company that is subject to this Section, to set its rates below the actual cost of the company providing the service. The actual cost shall, if requested by the company, be determined to include a ratable portion of administrative expenses and overhead incurred by the company in its operations and the appropriate amortization of previously deferred accounting costs.

(k) No rural telephone company subject to this Section may change its basic local exchange service rates within ninety days after entry of a final order adjusting such rate pursuant to paragraphs (g) and (i) of this Section.

(l) Notwithstanding the provisions of this Section, if, at any time following the three year anniversary of the notice provided under this Section, another telecommunications provider is providing basic local exchange service or switched access service within a local exchange area of the company subject to this Section, the company that is subject to this Section, may determine its rates for basic local exchange service and switched access service within any exchange in which another telecommunications provider is providing these services, in the same manner that it determines its rates for other services pursuant to Section 12(a).

(m) A rural telephone company electing to be regulated in accordance with this Section may package any of its services with any other service it or its affiliates offer, with or without a discount, provided that basic local exchange services and switched access services may be purchased separately at the rates which are established in accordance with this Section.

SECTION 13. (a) Arkansas Code 23-17-227(d) is repealed.

~~(d)(1) The commission, in granting any certificate, may allocate areas between telecommunications companies and cooperative~~

~~and charge them with the responsibility of furnishing telecommunications service in the respective areas so allocated:
(2) No area then being furnished with reasonably adequate telecommunications service by a telecommunications company or a cooperative shall be assigned to another cooperative or telecommunications company.
(b) All laws and parts of laws in conflict with this act are hereby repealed.~~

SECTION 14. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 15. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated, and the Arkansas Code Revision shall incorporate the same in the Code.

SECTION 16. EMERGENCY. It is hereby found and determined by the Eighty- first General Assembly that: (I) It is in the public interest to maintain and preserve the commitment of universal availability of reasonably affordable telecommunications services; (II) Competition and growth in the telecommunications industry are affected by demographics and population density. Therefore, telecommunications providers serving high-cost rural areas often have needs that are different from those of telecommunications providers serving only urban areas. Accordingly, the regulatory framework established by this Act seeks to recognize and accommodate the unique factors faced by telecommunications companies serving high-cost rural areas in addition to providing all local exchange carriers with additional regulatory options to assist them in providing telecommunications services and technological advances to their customers; and, (III) It is essential that the State of Arkansas immediately revise its existing regulatory regime for the telecommunications industry to ensure that it is consistent with and complementary to the Federal Telecommunications Act of 1996. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/ Hopkins et al

House Bill 3021

Sponsored by Representative JOHNSON (at the request of U.S. West Communications, GTE Northwest, Monroe Telephone Company, Malheur-Home Telephone Company)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Revises law regulating telecommunications.

A BILL FOR AN ACT

1
2 Relating to telecommunications utility regulation; creating new provisions; amending ORS 94.665,
3 105.185, 133.721, 164.365, 166.630, 192.501, 199.490, 221.420, 221.450, 221.505, 221.510, 221.515,
4 222.005, 227.090, 260.615, 283.510, 354.525, 368.950, 373.020, 377.510, 381.088, 390.968, 401.710,
5 401.720, 401.755, 401.765, 401.790, 411.070, 457.085, 461.055, 479.540, 552.310, 553.110, 634.006,
6 634.116, 646.551, 646.605, 654.715, 697.005, 731.102, 756.010, 756.032, 756.040, 756.060, 756.062,
7 756.070, 756.075, 756.090, 756.105, 756.115, 756.160, 756.180, 756.200, 756.310, 756.320, 756.360,
8 756.500, 756.515, 756.552, 756.568, 756.572, 756.575, 756.990, 757.259, 757.270, 757.273, 757.279,
9 757.282, 757.285, 758.020, 758.035, 758.215, 759.650, 759.655, 759.660, 759.665, 759.670, 759.715,
10 759.720, 801.026, 815.232, 816.350, 818.100 and 836.050 and section 11, chapter 533, Oregon Laws
11 1981, and sections 3, 4, 5, 6, 7 and 14, chapter 290, Oregon Laws 1987; repealing ORS 221.417,
12 759.005, 759.010, 759.015, 759.020, 759.025, 759.030, 759.035, 759.040, 759.045, 759.050, 759.060,
13 759.075, 759.080, 759.100, 759.105, 759.110, 759.115, 759.120, 759.125, 759.130, 759.135, 759.175,
14 759.180, 759.185, 759.190, 759.195, 759.200, 759.205, 759.210, 759.215, 759.220, 759.225, 759.230,
15 759.235, 759.240, 759.245, 759.250, 759.255, 759.260, 759.265, 759.267, 759.270, 759.275, 759.280,
16 759.285, 759.290, 759.300, 759.305, 759.310, 759.315, 759.320, 759.325, 759.330, 759.335, 759.340,
17 759.345, 759.350, 759.355, 759.360, 759.375, 759.380, 759.385, 759.390, 759.394, 759.500, 759.505,
18 759.510, 759.515, 759.520, 759.525, 759.530, 759.535, 759.540, 759.545, 759.550, 759.555, 759.560,
19 759.565, 759.570, 759.580, 759.585, 759.590, 759.595, 759.900 and 759.990; and appropriating money.

20 **Be It Enacted by the People of the State of Oregon:**

TELECOMMUNICATIONS REGULATION

21
22
23
24 **SECTION 1. Sections 2 to 54 of this Act are added to and made a part of ORS chapter**
25 **759.**

26 **SECTION 2. Definitions. As used in this chapter, and unless the context requires other-**
27 **wise, each definition shall be strictly limited:**

28 (1) "Affiliate" means a person that directly or indirectly owns or controls, is owned or
29 controlled by, or is under common ownership or control with, another person.

30 (2) "Basic local exchange service" means the minimum level of local exchange service,
31 as defined by the commission under the universal service provisions of sections 2 to 54 of this

NOTE: Matter in boldfaced type in an amended section is new; matter *(italic and bracketed)* is existing law to be omitted
New sections are in boldfaced type.

1 1997 Act, that must be provided by an eligible communications carrier.

2 (3) "Commission" means the Public Utility Commission of Oregon.

3 (4) "Commissioner" means a member of the Public Utility Commission of Oregon.

4 (5) "Corporation" means any corporation, joint stock company or association.

5 (6) "Cost of service" means the actual costs of providing telecommunications service that
6 are consistent with books of account of the local exchange carrier. "Cost of service" includes
7 a proportional allocation of joint and common costs that shall be allocated between and
8 among wholesale and retail services, proper and adequate depreciation, actual spare capacity
9 factors and a fair return on investment.

10 (7) "Customer premises equipment" means equipment employed on the premises of a
11 person other than a telecommunications carrier to originate, route or terminate telecom-
12 munications.

13 (8) "Eligible telecommunications carrier" means a local exchange carrier that offers
14 basic local exchange service to all customers within an exchange, using either its own facil-
15 ities or predominantly using its own facilities in combination with resale of another carrier's
16 service, that advertises the availability of such service and the charges therefor using media
17 of general distribution, and that has been designated an "eligible communications carrier"
18 by the commission. An eligible telecommunications carrier may also be referred to as a
19 carrier of last resort.

20 (9) "Exchange" means a defined geographic area in which a telecommunications carrier
21 furnishes local exchange service.

22 (10) "Exchange access" means access to local exchange services or facilities for the
23 purpose of the origination or termination of telecommunications services.

24 (11) "Incumbent local exchange carrier" means a local exchange carrier that was engaged
25 in the provision of local exchange services in Oregon as a telecommunications utility prior
26 to the enactment of the federal Telecommunications Act of 1996.

27 (12) "Interexchange telecommunications carrier" means a person providing telecommu-
28 nications service to connect end users located in different exchanges.

29 (13) "Intrastate telecommunications service" means any telecommunications service in
30 which the information transmitted originates and terminates within the boundaries of the
31 State of Oregon.

32 (14) "Local calling area" is an area within the state within which the customer can
33 originate and terminate the customer's access to the network without incurring a toll
34 charge.

35 (15) "Local exchange carrier" means any person that is certified to provide local ex-
36 change services in Oregon. "Local exchange carrier" does not include cooperative telephone
37 companies.

38 (16) "Local exchange service" means the origination or termination of two-way switched
39 voice telecommunications within a local calling area.

40 (17) "Network element" means a facility or equipment used by a telecommunications
41 carrier in the provision of a telecommunications service, excluding customer premises
42 equipment. "Network element" includes features, functions and capabilities that are pro-
43 vided by means of such facility or equipment, including subscriber numbers, databases, sig-
44 naling systems and information sufficient for billing and collection or used in the
45 transmission, routing or other provision of a telecommunications service.

1 (18) "Own" means to own an equity interest or the equivalent thereof of more than 10
 2 percent.

3 (19) "Price floor" means the minimum price at which wholesale telecommunications
 4 services, basic local exchange service and exchange access services may be offered for sale,
 5 and shall be equal to the long run incremental cost of the service.

6 (20) "Rate" means any fare, charge, joint rate, schedule or groups of rates or other
 7 remuneration or compensation for service.

8 (21) "Retail telecommunications service" means a telecommunications service offered by
 9 a person that is generally advertised and available to end users.

10 (22) "Rural telephone company" means an incumbent local exchange carrier or a local
 11 exchange carrier operating entity that:

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

14 (A) Any incorporated place of 10,000 inhabitants or more, or any part thereof, according
 15 to the latest federal decennial census; or

16 (B) Any territory, incorporated or unincorporated, included in an urbanized area, as de-
 17 fined by the Bureau of the Census as of August 10, 1993;

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

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

22 (d) Has less than 15 percent of its access lines in communities of more than 50,000 on the
 23 date of enactment of the Telecommunications Act of 1996.

24 (23) "Telecommunications" means the transmission, between or among points specified
 25 by the user, of information of the user's choosing, without change in the form or content
 26 of the information as sent and received.

27 (24) "Telecommunications carrier" means any provider of telecommunications services.

28 (25) "Telecommunications service" means the offering of telecommunications for a fee
 29 directly to the public, or to such classes of users as to be effectively available directly to the
 30 public, regardless of the facilities used. "Telecommunications service" includes wholesale and
 31 retail telecommunications services.

32 (26) "Telephone exchange service" means:

33 (a) Service within an exchange, or within a connected system of exchanges within the
 34 same exchange area operated to furnish to subscribers intercommunicating service of the
 35 character ordinarily furnished by a single exchange, and that is covered by the exchange
 36 service charge; or

37 (b) Comparable service provided through a system of switches, transmission equipment
 38 or other facilities, or combination thereof, by which a subscriber can originate and terminate
 39 a telecommunications service.

40 (27) "Toll service" means a telecommunications service between different exchange areas
 41 for which there is made a separate charge not included in charges for local exchange service.

42 (28) "Universal service" means the availability of basic local exchange service to all cus-
 43 tomers in this state. "Universal service" may include other telecommunications services for
 44 certain classes of customers consistent with the federal Telecommunications Act of 1996.

45 (29) "Wholesale telecommunications services" means any telecommunications service or

1 network element provided by a telecommunications carrier to a person in order for that
2 person to offer retail telecommunications services.

3 **SECTION 3. General powers and duties of the Public Utility Commission.** (1) The Public
4 Utility Commission shall have authority over and duties associated with telecommunications
5 carriers only to the extent specified in this chapter and in accordance with the commission's
6 responsibilities specified in the federal Telecommunications Act of 1996.

7 (2) Pursuant to section 4 of this 1997 Act, the commission shall certify persons to provide
8 telecommunications services in this state. Each certification shall allow for concurrent
9 telecommunications carriers on a competitively neutral and nondiscriminatory basis. How-
10 ever, the commission may designate one or more telecommunications carriers to be an eli-
11 gible telecommunications carrier as provided in subsection (4) of this section. The
12 commission shall approve a request for certification in accordance with such procedures as
13 the commission may establish.

14 (3) Pursuant to section 11 of this 1997 Act, the commission shall establish and administer
15 a Universal Service Fund. In establishing such a fund, the commission shall take into ac-
16 count the obligation of all telecommunications carriers operating in this state to collect for
17 and pay into the fund and shall ensure that only carriers designated as eligible carriers are
18 entitled to receive funds from the Universal Service Fund.

19 (4) In connection with its responsibility to establish a Universal Service Fund, the com-
20 mission shall have the authority to designate telecommunications carriers operating in this
21 state as eligible telecommunications carriers, also known as carriers of last resort, on an
22 exchange by exchange basis, as provided in section 12 of this 1997 Act. A carrier of last re-
23 sort shall have no service obligation other than basic local exchange service.

24 (5) When persons are unable to negotiate an agreement regarding pricing, terms and
25 conditions of interconnection services, the commission shall have authority to mediate or
26 arbitrate the dispute if requested to do so by one of the parties.

27 (6) The commission has the obligation to ensure against cross-subsidization. To the
28 greatest extent practicable the commission requirements under this subsection shall be
29 consistent with any regulations covering the same subject matter made by the Federal
30 Communications Commission.

31 (7) The commission shall have no jurisdiction over assets, services, equipment, personnel
32 or affiliate relationships used or selected by an incumbent local exchange carrier or a local
33 exchange carrier.

34 (8) The commission shall provide by rule that:

35 (a) Eligible telecommunications carriers shall make available for public inspection and
36 file with the commission a schedule of the companies' rates, terms and conditions for basic
37 local exchange services; and

38 (b) Telecommunications companies may file with the commission schedules of the rates,
39 terms and conditions for other telecommunications services; such schedules shall constitute
40 contracts for the provision of such services to customers thereof.

41 (9) The commission may establish minimum levels of service quality that shall apply on
42 a competitively neutral basis to all telecommunications carriers operating in this state.

43 (10) In accordance with any applicable provision of ORS 183.310 to 183.550, the commis-
44 sion may adopt rules to carry out the provisions of this chapter. To the greatest extent
45 practicable, such rules shall comply with the requirements of federal law regulating tele-

1 communications services.

2 (11) The commission may participate in any proceeding before any public officer, com-
 3 mission or body of the United States or any state for the purpose of representing the public
 4 with respect to the matters for which it has authority and jurisdiction.

5 (12) The commission shall have the authority to handle and resolve complaints from end
 6 user customers regarding the rates, terms and conditions of telecommunications services
 7 proved by telecommunications carriers in this state.

8 (13) Pursuant to section 7 of this 1997 Act, the commission shall approve prices for
 9 wholesale telecommunications services based on cost studies provided by an incumbent local
 10 exchange company and approved by the commission. For other rural companies, upon a bona
 11 fide request in accordance with the federal Telecommunications Act of 1996, the commission
 12 shall approve prices for wholesale telecommunications services based on cost studies pro-
 13 vided by the rural telephone company and approved by the commission.

14 (14) Pursuant to section 7 of this 1997 Act, the commission shall approve prices for basic
 15 local exchange service based on cost studies provided by an incumbent local exchange com-
 16 pany and approved by the commission.

17 (15) Pursuant to section 8 of this 1997 Act, the commission shall have the authority, upon
 18 request from a telecommunications carrier that has been traditionally regulated in this
 19 state, to approve alternative forms of regulation for the telecommunications carrier. The
 20 commission shall give notice of its approval within six months of the application of the
 21 telecommunications carrier or the request will be presumed approved.

22 (16) Pursuant to section 13 of this 1997 Act, the commission shall approve appropriate
 23 rates for capital recovery. A rate for capital recovery shall be deemed appropriate when the
 24 local exchange carrier sets a rate that relies on the methodologies and parameters used by
 25 competitors in the telecommunications industry, including those competitors that are tele-
 26 communications carriers in this state. The commission shall have the authority to require
 27 telecommunications carriers operating in this state to provide to the commission specific and
 28 verifiable information regarding their methodologies and parameters.

29 (17) The commission shall have the authority to approve rates, terms and conditions for
 30 attachments to poles or other facilities owned by an incumbent local exchange carrier. All
 31 rates, terms and conditions required for any attachment shall be just, fair and reasonable.
 32 A just, fair and reasonable rate shall ensure that the person providing the attachment re-
 33 covers not less than all of the additional costs of providing and maintaining pole attachment
 34 space nor more than the actual capital and operating expenses, including a share of the re-
 35 quired support and clearance space in proportion to the space used for pole attachment
 36 above a minimum grade level, as compared to all other uses made of the subject facilities
 37 and uses that remain available to the owner or owners of the subject facilities.

38 **SECTION 4. Telecommunications services: certificates of authority; authority to operate;**
 39 **limited regulation.** (1) No person may provide telecommunications services within Oregon
 40 without obtaining a certificate of authority granted by the Public Utility Commission. An
 41 application for authority to provide telecommunications services shall specify whether the
 42 applicant will provide service exclusively over its own telecommunications facilities, or pre-
 43 dominantly over its own facilities in combination with the resale of telecommunications
 44 services of another person, or will rely solely on the use of resale of another telecommuni-
 45 cations carrier's services. The application shall include a list of telecommunications services

