

IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE: TARIFF FILING BY UNITED  
TELEPHONE-SOUTHEAST, INC. TO  
REFLECT ANNUAL PRICE CAP  
ADJUSTMENT (TARIFF NO.96-201)

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DOCKET NO. 96-07224-12

**OFFICIAL FILE**

SECRETARY

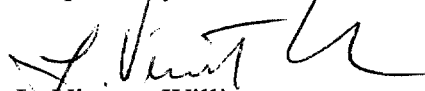
**PLEASE**

NOTICE OF PROFFER

**DO NOT REMOVE**

Comes the Consumer Advocate Division (ConAd) to respectfully proffer the "Amended Copy" of Senate Bill 891, Amendment 2 which struck and the legislative action sheet. Both public documents came from the State Library and Archives. ConAd was prevented by the agency from placing the documents in either the public record or to mark them for identification at the May 13, 1997 hearing.

Respectfully submitted,

  
L. Vincent Williams

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Notice of Proffer has been transmitted by facsimile and mailed postage prepaid to the parties listed below this 14<sup>th</sup> day of May, 1997.

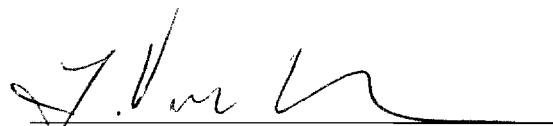
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L. Vincent Williams

AMENDED COPY

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 4, Parts 1 and 2 and Title 65, Chapter 5, Part 2, relative to the regulation of telecommunications service providers by the public service commission.

WHEREAS, it is in the public interest and the interest of Tennessee consumers to permit competition in the telecommunications services market; and

WHEREAS, competition among providers should be made fair by requiring that all regulation be applied impartially and without discrimination to each; and

WHEREAS, just and reasonable rates can be assured without use of cumbersome rate base-rate of return methods; and

WHEREAS, universally affordable basic telephone service should be preserved; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Section 65-4-101(a), is amended by adding the following new language as subsection (c):

(c) "Telecommunications service provider" is a public utility that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services.

SECTION 2. Tennessee Code Annotated, Section 65-4-201, is amended by designating the existing language as subsection (a) and by adding a new subsection (b) as follows:

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(b) In awarding certificates to telecommunications service providers, the commission shall impose impartially and without discrimination the same requirements on each telecommunications service provider, and the commission shall not impose any requirement, grant any privilege, or establish any condition for one provider that is not also impartially imposed, granted or established for all other providers.

SECTION 3. Tennessee Code Annotated, Section 65-4-203, is amended by adding the following new subsection (c):

(c) The provisions of this section shall not apply to telecommunications service providers.

SECTION 4. Tennessee Code Annotated, Section 65-4-207, is amended by designating the existing language as subsection (a) and by adding the following new subsection (b):

(b) The provisions of this section shall not apply to telecommunications service providers.

SECTION 5. Tennessee Code Annotated, Section 65-5-202, is amended by designating the existing language as subsection (a) and by adding the following new subsection (b):

(b) In exercising its powers under subsection (a), the commission shall not impose on a telecommunications service provider any requirement that is not also imposed impartially and without discrimination on every other telecommunications service provider.

SECTION 6. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as Section 65-5-207:

(a) Just and reasonable rates for telecommunications services may be set without use of traditional rate base-rate of return principles.

(b) The commission shall prescribe for telecommunications service providers a formula for setting just and reasonable rates that is based on a general measurement

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of inflation for the United State economy and that establishes the maximum rates a telecommunications service provider may charge for its services. For purposes of establishing the formula, all existing rates, terms and conditions for the services provided on February 1, 1995, by telecommunications service providers, are deemed just and reasonable, and those rates shall be the initial rates on which the formula is based. The formula shall be adjusted annually to reflect the rate of inflation for the United States. A telecommunications service provider may adjust its prices only so long as its aggregate prices do not exceed the maximum established by the formula. The formula shall be applied impartially and without discrimination to each telecommunications service provider, unless a telecommunications service provider elects to have its rates set using traditional rate base-rate of return principles.

(c) Nothing in this part shall be construed to prevent a public utility from electing to have its rates set using traditional rate base-rate of return principles.

SECTION 7. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as Section 65-5-208:

(a) The commission, after notice and opportunity for hearing, may find that the public interest is served by exempting a telecommunications service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the commission may exempt telecommunications service providers from such requirements as appropriate.

(b) Any order issued pursuant to subsection (a) shall apply impartially and without discrimination to each telecommunications service provider who provides the subject service or a functionally equivalent service.

SECTION 8. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as Section 65-5-209:

Except as provided in Section 65-5-208 and as may be necessary to fund universally affordable basic telephone service, the commission, in exercising its powers

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have jurisdiction to investigate and hear all disputes arising under Sections 65-4-201(b), 65-4-203(b), 65-4-207(b), 65-5-207, 65-5-208, and 65-5-209.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the following as a new appropriately designated section:

65-4-\_\_\_\_. **Declaration Of Telecommunications Services Policy.** The General Assembly declares that it is in the public interest and the interest of Tennessee consumers to permit and foster competition in telecommunications service markets without unreasonable prejudice or disadvantage to any provider and to provide for alternative forms of regulation to accomplish these purposes. In facilitating the change to a competitive telecommunications service market, the General Assembly finds that universal Basic Local Exchange Telephone Service shall be preserved and rates charged to residential customers for essential telecommunications services shall remain affordable.

SECTION 2. Tennessee Code Annotated, Section 65-4-101 is amended by adding the words and punctuation "telecommunications services," between the comma following the word "telegraph" and the words "or any other like system."

SECTION 3. Tennessee Code Annotated, Section 65-4-101, is amended by adding the following new language as Subsections (c), (d), (e), (f), (g), and (h):

(c) "Telecommunications Service Provider" means any certificated individual, entity, or Incumbent Local Exchange Telephone Company that offers or provides for hire any telecommunications service, telephone service, telegraph service, paging service, or

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(e) "Competing Telecommunications Service Provider" means any individual or entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services and is certificated as a provider of such services after the effective date of this Act unless otherwise exempted from this definition by state or federal law.

(f) "Interconnection Services" means telecommunications services, including intrastate switched access service, that allow a Telecommunications Service Provider to interconnect with the networks of all other Telecommunications Service Providers.

(g) "Current Authorized Fair Rate of Return" means:

(1) for an Incumbent Local Exchange Telephone Company operating pursuant to a regulatory reform plan ordered by the Commission under TPSC Rule 1220-4-2-.55, any return within the range contemplated by Section 1220-4-2-.55 (1)(c)(1) or 1220-4-2-.55 (d);

(2) for any other Incumbent Local Exchange Telephone Company, the rate of return on rate base most recently used by the Commission in an order evaluating its rates.

(h) "Gross Domestic Product-Price Index (GDP-PI)" used to determine limits on rate changes means the final estimate of the Chain-Weighted Gross Domestic Product-Price Index as prepared by the U.S. Department of Commerce and published in the Survey of Current Business, or its successor.

SECTION 4. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language:

Section 65-5-207: **Universal Service.**

(a) Universal service, consisting of residential Basic Local Exchange Telephone Service at affordable rates and carrier-of-last-resort obligations must be maintained after the local telecommunications markets are opened to competition. In order to insure the availability of affordable residential Basic Local Exchange Telephone Service, the

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amounts, identify and assess alternative universal service support mechanisms, and determine the need and timetable for modifying current universal service support mechanisms and implementing alternative universal service support mechanisms. The Commission shall issue its decision in the universal service proceeding prior to January 1, 1996.

(c) The Commission shall create an alternative universal service support mechanism that replaces current sources of universal service support only if it determines that the alternative will preserve universal service, protect consumer welfare, be fair to all Telecommunications Service Providers, and prevent the unwarranted subsidization of any Telecommunications Service Provider's rates by consumers or by another Telecommunications Service Provider. To accomplish these objectives, the Commission, if it creates or subsequently modifies an alternative universal service support mechanism, shall:

- (1) restrict recovery from the mechanism by any Telecommunications Service Provider to an amount equal to the support necessary to provide universal service;
- (2) consider provision of universal service by Incumbent Local Exchange Telephone Companies and by other Telecommunications Service Providers;
- (3) order only such contributions to the universal service support mechanism as are necessary to support universal service and fund administration of the mechanism;
- (4) administer the universal service support mechanism in a competitively neutral manner, and in accordance with established Commission rules and federal statutes;
- (5) determine the financial effect on each universal service provider caused by the creation or a modification of the universal service support mechanism, and rebalance the effect through a one-time adjustment of equal amount to the rates of that provider;
- (6) when ordering a modification, include changes in the cost of providing universal service in the rebalancing required by subsection (5);

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cost of the carrier for last resort longation, for both high and low-density service areas;

(ii) the extent to which rates for residential Basic Local Exchange Telephone Service should be required to meet the standards of Section 65-5-208(c);

(iii) intrastate access rates and the appropriateness of such rates as a significant source of universal service support.

SECTION 5. Tennessee Code Annotated, Section 65-4-203, is amended by adding the following new Subsection (c):

(c) The provisions of this Section shall not apply to Telecommunications Service Providers.

SECTION 6. Tennessee Code Annotated, Section 65-4-207, is amended by designating the existing language as Subsection (a) and by adding the following new Subsection (b):

(b) The provisions of this section shall not apply to Telecommunications Service Providers; provided, however, this section shall continue to apply with respect to any ordinance adopted, and any franchise granted pursuant to such an ordinance, prior to the effective date of this Act.

SECTION 7. Tennessee Code Annotated, Section 65-4-201, is amended by designating the existing language as subsection (a) and by adding new subsections (b), (c) and (d) as follows:

(b) No individual or entity shall offer or provide any individual or group of telecommunications services, or extend its territorial area of operations without first obtaining from the Commission a certificate of convenience and necessity for such service or territory; provided, however, an Incumbent Local Exchange Telephone Company shall not be required to obtain such certificate to continue to offer services being provided as of the effective date of this Act.

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(ii) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a Competing Telecommunications Service Provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) shall not be applicable to areas served by an Incumbent Local Exchange Telephone Company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a Competing Telecommunications Service Provider or unless such Incumbent Local Exchange Telephone Company applies for a certificate to provide telecommunications services in an area outside its service area existing on the effective date of this Act.

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SECTION 8. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the following as a new appropriately designated section:

65-4-\_\_\_\_\_. **Administrative Rules.**

(a) Prior to January 1, 1996, the Commission shall, at a minimum, promulgate rules and issue such orders necessary to implement reasonable terms and conditions providing for non-discriminatory interconnection among the networks of all Telecommunications Service Providers, unbundling of service elements and functions, terms for resale, interLATA presubscription, packaging of a Basic Local Exchange Telephone Service or unbundled features or functions with services of other providers and number portability.

(b) All Telecommunications Service Providers shall, to the extent that it is technically and financially feasible, be provided desired features, functions, and service promptly, and on an unbundled and non-discriminatory basis from all other Telecommunications Service Providers.

by adding the following new language as:

**Section 65-5-208. Competitive Rules**

(a) Services of Incumbent Local Exchange Telephone Companies who apply for price regulation under Section 65-5-209 shall be classified as follows:

1. "Basic Local Exchange Telephone Services" are telecommunications services which are comprised of an access line, dial tone, touchtone and usage provided to the premises of residential customers or business customers for the provision of high quality, two way switched voice transmission, within a local calling area, or other services required by state or federal statute.

2. "Non-Basic Services" are telecommunications services which are not defined as Basic Local Exchange Telephone Services and are not exempted under subsection (b).

(b) The Commission, after notice and opportunity for hearing, may find that the public interest is served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the Commission may exempt Telecommunications Service Providers from such requirements as appropriate. The Commission shall in any event exempt a telecommunications service for which existing and potential competition is an effective regulator of the price of those services.

(c) Effective January 1, 1996, an Incumbent Local Exchange Telephone Company shall adhere to a price floor for its competitive services subject to such determination as the Commission shall make pursuant to Section 65-5-207. The price floor shall equal the Incumbent Local Exchange Telephone Company's tariffed rates for essential elements utilized by Competing Telecommunications Service Providers plus the total long-run incremental cost of the competitive elements of the service. When shown to be in the public interest, the Commission shall exempt a service or group of services provided by an

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effective date of this Act shall not exceed the stand alone cost of the service.

SECTION 10. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

Section 65-5-209. Price Regulation Plan

(a) Rates for telecommunications services are just and reasonable when they are determined to be affordable as set forth in this Section. Using the procedures established in this Section, the Commission shall insure that rates for all Basic Local Exchange Telephone Services and Non-Basic Services are affordable on the effective date of price regulation for each Incumbent Local Exchange Telephone Company.

(b) An Incumbent Local Exchange Telephone Company shall, upon approval of its application under Subsection (c), be empowered to, and shall charge and collect only such rates that are less than or equal to the maximum permitted by this Section and subject to the safeguards in Section 65-5-208 (c) and (d) and the non-discrimination provisions of this Title.

(c) The Commission shall enter an order within ninety (90) days of the application of an Incumbent Local Exchange Telephone Company implementing a price regulation plan for such company. With the implementation of a price regulation plan, the rates existing on the effective date of this Act for all Basic Local Exchange Telephone Services and Non-Basic Services as defined in Section 65-5-208 are deemed affordable if the Incumbent Local Exchange Telephone Company's earned rate of return on its most recent ~~Commission staff audited~~ TPSC 3.01 report *as audited by the Commission staff pursuant to subsection (j)*

is equal to or less than the Company's Current Authorized Fair Rate of Return existing at the time of the Company's application. If the Incumbent Local Exchange Telephone Company's earned rate of return on its most recent ~~Commission staff audited~~ TPSC 3.01 report *as audited by the Commission staff pursuant to subsection (j)*

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Company's most recent Commission staff advised that the Commission staff pursuant to subsection (j).

the Commission staff pursuant to subsection (j).

If the Incumbent

Local Exchange Telephone Company's earned rate of return is less than its Current

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Authorized Fair Rate of Return, the Company may request the Commission to initiate a

proceeding to establish the initial rates upon which the price regulation plan is based.

Upon request by the Incumbent Local Exchange Telephone Company, the Commission shall

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initiate such a proceeding using the same rate-setting procedures described above. Rates

established pursuant to the above process shall be the initial rates on which a price

regulation plan is based, subject to such further adjustment as may be made by the

Commission pursuant to Section 65-5-207.

(d) If not resolved by agreement, the Commission shall establish initial rates for new Interconnection Services provided by an Incumbent Local Exchange Telephone Company subsequent to the effective date of this Act.

(e) A price regulation plan shall maintain affordable Basic and Non-Basic rates by permitting a maximum annual adjustment that is capped at one-half the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation. An Incumbent Local Exchange Telephone Company may adjust its rates for Basic Local Exchange Telephone Services or Non-Basic Services only so long as its aggregate revenues for Basic Local Exchange Telephone Services or Non-Basic Services generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan.

(f) Notwithstanding the annual adjustments permitted in subsection (e), the initial Basic Local Exchange Telephone Service rates of an Incumbent Local Exchange Telephone Company subject to price regulation shall not increase for a period of four years from the date the Incumbent Local Exchange Telephone Company becomes subject to such

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the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation.

(g) Notwithstanding any other provision of this Act, a price regulation plan shall permit a maximum annual adjustment in the rates for Interconnection Services that is capped at one-half the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation. An Incumbent Local Exchange Telephone Company may adjust its rates for Interconnection Services only so long as its aggregate revenues generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by this subsection, provided that each new rate must comply with the requirements of Section 65-5-208 and the non-discrimination provisions of this Title. Upon filing by a Competing Telecommunications Service Provider of a notice of objection, such rate adjustment shall become subject to Commission review of the adjustment's compliance with the provisions of this Act and rules promulgated under this Act. The Commission shall enter a final order approving, modifying or rejecting such adjustment within thirty (30) days of the notice of objection.

(h) Incumbent Local Exchange Telephone Companies subject to price regulation may set rates for Non-Basic Services as the company deems appropriate, subject to the limitations set forth in subsections (e) and (g), the non-discrimination provisions of this Title and any rules or orders issued by the Commission pursuant to Section 65-5-208(c).

(i) Incumbent Local Exchange Telephone Companies subject to price regulation shall not be required to seek regulatory approval of their depreciation rates or schedules.

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of Accounts, and the ratemaking adjustments to operating revenues, expenses and rate base used in the commission's most recent order applicable to the incumbent local exchange telephone company. Nothing herein is to be construed to diminish ~~or expand~~ the audit powers of the commission.

SECTION 11. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

Section 65-5-210. Commission Jurisdiction

In addition to any other jurisdiction conferred, the Commission shall have the original jurisdiction to investigate, hear and enter appropriate orders to resolve all contested issues of fact or law arising as a result of the application of this Act.

Section 12. Nothing in this act shall be construed to affect the assessment for ad valorem taxation of property used to provide telecommunications services, and to that end it is declared that the fifty-five percent (55%) level of assessments shall remain applicable to property used in whole or part to provide telecommunications services other than cellular telephone services, radio common carrier services, or long distance telephone services.

SECTION 13. This Act shall take effect upon becoming a law, the public welfare requiring it.

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the following as a new appropriately designated section:

-65-4-\_\_\_\_\_. Declaration Of Telecommunications Services Policy. The General Assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative

SECTION 2. Tennessee Code Annotated, Section 65-4-101 is amended by adding the words and punctuation "telecommunications services," between the comma following the word "telegraph" and the words "or any other like system."

SECTION 3. Tennessee Code Annotated, Section 65-4-101, is amended by adding the following new language as Subsections (c), (d), (e), (f), (g), and (h):

(c) "Telecommunications Service Provider" means any Incumbent Local Exchange Telephone Company or certificated individual or entity, or individual or entity operating pursuant to the approval by the commission of a franchise within Section 6 of this Act, authorized by law to provide, and offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law.

(d) "Incumbent Local Exchange Telephone Company" means a public utility offering and providing Basic Local Exchange Telephone Service as defined by Section 65-5-208 pursuant to tariffs approved by the Commission prior to the effective date of this Act.

(e) "Competing Telecommunications Service Provider" means any individual or entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services and is certificated as a provider of such services after the effective date of this Act unless otherwise exempted from this definition by state or federal law.

(f) "Interconnection Services" means telecommunications services, including intrastate switched access service, that allow a Telecommunications Service Provider to interconnect with the networks of all other Telecommunications Service Providers.

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(2) for any other Incumbent Local Exchange Telephone Company, the rate of return on rate base most recently used by the Commission in an order evaluating its rates.

(h) "Gross Domestic Product-Price Index (GDP-PI)" used to determine limits on rate changes means the final estimate of the Chain-Weighted Gross Domestic Product-Price Index as prepared by the U.S. Department of Commerce and published in the Survey of Current Business, or its successor.

SECTION 4. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language:

**Section 65-5-207: Universal Service.**

(a) Universal service, consisting of residential Basic Local Exchange Telephone Service at affordable rates and carrier-of-last-resort obligations must be maintained after the local telecommunications markets are opened to competition. In order to ensure the availability of affordable residential Basic Local Exchange Telephone Service, the Commission shall formulate policies, promulgate rules and issue orders which require all Telecommunications Service Providers to contribute to the support of universal service.

(b) The Commission shall, within thirty (30) days of the effective date of this Act, initiate a generic contested case proceeding to determine the cost of providing universal service, determine all current sources of support for universal service and their associated amounts, identify and assess alternative universal service support mechanisms, and determine the need and timetable for modifying current universal service support mechanisms and implementing alternative universal service support mechanisms. The Commission shall issue its decision in the universal service proceeding prior to January 1, 1996.

(c) The Commission shall create an alternative universal service support mechanism that replaces current sources of universal service support only if it determines that the alternative will preserve universal service, protect consumer welfare, be fair to all



- (1) restrict recovery from the mechanism by any Telecommunications Service Provider to an amount equal to the support necessary to provide universal service;
- (2) consider provision of universal service by Incumbent Local Exchange Telephone Companies and by other Telecommunications Service Providers;
- (3) order only such contributions to the universal service support mechanism as are necessary to support universal service and fund administration of the mechanism;
- (4) administer the universal service support mechanism in a competitively neutral manner, and in accordance with established Commission rules and federal statutes;
- (5) determine the financial effect on each universal service provider caused by the creation or a modification of the universal service support mechanism, and rebalance the effect through a one-time adjustment of equal amount to the rates of that provider;
- (6) when ordering a modification, include changes in the cost of providing universal service in the rebalancing required by subsection (5);
- (7) when performing its duties under subsections (5) and (6), order no increase in the rates for any Interconnection Services; and
- (8) consider, at a minimum:
- (i) the amount by which the embedded cost of providing residential Basic Local Exchange Telephone Service exceeds the revenue received from the service, including the cost of the carrier-of-last-resort obligation, for both high- and low-density service areas;
  - (ii) the extent to which rates for residential Basic Local Exchange Telephone Service should be required to meet the standards of Section 65-5-208(c);
  - (iii) intrastate access rates and the appropriateness of such rates as a significant source of universal service support.
- (d) The commission shall monitor the continued functioning of universal service mechanisms and shall conduct investigations, issue show cause orders, entertain petitions

the following new Subsection (c):

(c) The provisions of this Section shall not apply to Telecommunications Service Providers.

SECTION 6. Tennessee Code Annotated, Section 65-4-207, is amended by designating the existing language as Subsection (a) and by adding the following new Subsection (b):

(b) The provisions of this section shall not apply to Telecommunications Service Providers; provided, however, this section shall continue to apply with respect to any ordinance adopted, and any franchise granted pursuant to such an ordinance, prior to the effective date of this Act.

SECTION 7. Tennessee Code Annotated, Section 65-4-201, is amended by designating the existing language as subsection (a) and by adding new subsections (b), (c) and (d) as follows:

(b) Except as exempted by provisions of state or federal law, no individual or entity shall offer or provide any individual or group of telecommunications services, or extend its territorial areas of operations without first obtaining from the Commission a certificate of convenience and necessity for such service or territory; provided, however, that no Telecommunications Services Provider offering and providing a Telecommunications Service under the authority of the Commission on the effective date of this Act shall be required to obtain additional authority in order to continue to offer and provide such Telecommunications Services as it offers and provides as of such effective date.

(c) After notice to the Incumbent Local Exchange Telephone Company and other interested parties and following a hearing, the Commission shall grant a certificate of convenience and necessity to a Competing Telecommunications Service Provider if after examining the evidence presented, the Commission finds:

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denying or approving, with or without modification, an application for certification of a Competing Telecommunications Service Provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) shall not be applicable to areas served by an Incumbent Local Exchange Telephone Company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a Competing Telecommunications Service Provider or unless such Incumbent Local Exchange Telephone Company applies for a certificate to provide telecommunications services in an area outside its service area existing on the effective date of this Act.

SECTION 8. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the following as a new appropriately designated section:

65-4-\_\_\_\_\_. **Administrative Rules.**

(a) All Telecommunications Services Providers shall provide non-discriminatory interconnection to their public networks under reasonable terms and conditions; and all Telecommunications Services Providers shall, to the extent that it is technically and financially feasible, be provided desired features, functions and services promptly, and on an unbundled and non-discriminatory basis from all other Telecommunications Services Providers.

(b) Prior to January 1, 1996, the Commission shall, at a minimum, promulgate rules and issue such orders as necessary to implement the requirements of subsection (a) and to provide for unbundling of service elements and functions, terms for resale, interLATA presubscription, number portability, and packaging of a Basic Local Exchange Telephone Service or unbundled features or functions with services of other providers.

These rules shall also ensure that all Telecommunications Services Providers who provide Basic Local Exchange Telephone Service or its equivalent provide each customer a basic White Pages directory listing, provide access to 911 Emergency Services, provide

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for incumbent Local Exchange Telephone Companies shall not be dependent upon the promulgation of these rules.

SECTION 9. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

**Section 65-5-208. Competitive Rules**

(a) Services of Incumbent Local Exchange Telephone Companies who apply for price regulation under Section 65-5-209 shall be classified as follows:

1. "Basic Local Exchange Telephone Services" are telecommunications services which are comprised of an access line, dial tone, touch-tone and usage provided to the premises for the provision of two way switched voice or data transmission over voice grade facilities of residential customers or business customers within a local calling area, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on the effective date of this act or other services required by state or federal statute. These services shall, at a minimum, be provided at the same level of quality as is being provided on the effective date of this act. Rates for these services shall include both recurring and nonrecurring charges.

2. "Non-Basic Services" are telecommunications services which are not defined as Basic Local Exchange Telephone Services and are not exempted under subsection (b). Rates for these services shall include both recurring and nonrecurring charges.

(b) The Commission, after notice and opportunity for hearing, may find that the public interest and the policies set forth herein are served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the Commission may exempt Telecommunications Service Providers from such requirements as appropriate. The Commission shall in any event exempt a telecommunications service for which existing and potential competition is an effective regulator of the price of those services.

public interest, the Commission shall exempt a service or group of services provided by an Incumbent Local Exchange Telephone Company from the requirement of the price floor. The Commission shall, as appropriate, also adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.

(d) The maximum rate for any new Non-Basic Service first offered after the effective date of this Act shall not exceed the stand alone cost of the service.

SECTION 10. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

**Section 65-5-209. Price Regulation Plan**

(a) Rates for telecommunications services are just and reasonable when they are determined to be affordable as set forth in this Section. Using the procedures established in this Section, the Commission shall ensure that rates for all Basic Local Exchange Telephone Services and Non-Basic Services are affordable on the effective date of price regulation for each Incumbent Local Exchange Telephone Company.

(b) An Incumbent Local Exchange Telephone Company shall, upon approval of its application under Subsection (c), be empowered to, and shall charge and collect only such rates that are less than or equal to the maximum permitted by this Section and subject to the safeguards in Section 65-5-208 (c) and (d) and the non-discrimination provisions of this Title.

(c) The Commission shall enter an order within ninety (90) days of the application of an Incumbent Local Exchange Telephone Company implementing a price regulation plan for such company. With the implementation of a price regulation plan, the rates existing on the effective date of this Act for all Basic Local Exchange Telephone Services and Non-Basic Services as defined in Section 65-5-208 are deemed affordable if the Incumbent Local Exchange Telephone Company's earned rate of return on its most recent TPSC 3.01

Return, the Commission shall initiate a contested, evidentiary proceeding to establish the initial rates on which the price regulation plan is based. The Commission shall initiate such a rate-setting proceeding to determine a fair rate of return on the Company's rate base using the actual intrastate operating revenues, expenses, rate base and capital structure from the Company's most recent TPSC 3.01 report as audited by the Commission staff pursuant to subsection (j). If the Incumbent Local Exchange Telephone Company's earned rate of return is less than its Current Authorized Fair Rate of Return, the Company may request the Commission to initiate a contested, evidentiary proceeding to establish the initial rates upon which the price regulation plan is based. Upon request by the Incumbent Local Exchange Telephone Company, the Commission shall initiate such a contested, evidentiary proceeding using the same rate-setting procedures described above. Rates established pursuant to the above process shall be the initial rates on which a price regulation plan is based, subject to such further adjustment as may be made by the Commission pursuant to Section 65-5-207.

(d) If not resolved by agreement, the Commission shall, on petition of the Competing Telecommunications Services Provider, hold a contested case proceeding within thirty (30) days to establish initial rates for new interconnection services provided by an Incumbent Local Exchange Telephone Company subsequent to the effective date of this Act, which rates shall be set in accordance with the provisions set forth in this Act. The Commission shall issue a final order within twenty (20) days of the proceeding.

(e) A price regulation plan shall maintain affordable Basic and Non-Basic rates by permitting a maximum annual adjustment that is capped at the lesser of one-half (1/2) the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation, or the GDP-PI from the preceding year minus two (2) percentage points. An Incumbent Local Exchange Telephone Company may adjust its rates for Basic Local Exchange Telephone Services or Non-Basic Services only so long as its aggregate revenues for Basic Local Exchange

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Company subject to price regulation shall not increase for a period of four (4) years from

the date the Incumbent Local Exchange Telephone Company becomes subject to such regulation. At the expiration of the four (4) year period, an Incumbent Local Exchange Telephone Company shall be permitted to adjust annually its rates for Basic Local Exchange Telephone Services in accordance with the method set forth in subsection (e) provided that in no event shall the rate for residential Basic Local Exchange Telephone Service be increased in any one (1) year by more than the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation.

(g) Notwithstanding any other provision of this Act, a price regulation plan shall permit a maximum annual adjustment in the rates for Interconnection Services that is capped at the lesser of one-half (1/2) the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation, or the GDP-PI from the preceding year minus two (2) percentage points. An Incumbent Local Exchange Telephone Company may adjust its rates for Interconnection Services only so long as its aggregate revenues generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by this subsection, provided that each new rate must comply with the requirements of Section 65-5-208 and the non-discrimination provisions of this Title. Upon filing by a Competing Telecommunications Service Provider of a complaint, such rate adjustment shall become subject to Commission review of the adjustment's compliance with the provisions of this Act and rules promulgated under this Act. The Commission shall stay the adjustment of rates and enter a final order approving, modifying or rejecting such adjustment within thirty (30) days of the complaint.

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Incumbent Local Exchange Telephone Company subject to price regulation shall not exceed, for a period of four (4) years from the date the company becomes subject to such regulation, the maximum rate in effect in the state for such service on the effective date of this act.

(i) Incumbent Local Exchange Telephone Companies subject to price regulation shall not be required to seek regulatory approval of their depreciation rates or schedules.

(j) For any Incumbent Local Exchange Telephone Company electing price regulation under Section 65-5-209(c), the Commission shall conduct an audit to assure that the TPSC 3.01 Report accurately reflects, in all material respects, the Incumbent Local Exchange Telephone Company's achieved results in accordance with Generally Accepted Accounting Principles as adopted in Part 32 of the Uniform System of Accounts, and the ratemaking adjustments to operating revenues, expenses and rate base used in the Commission's most recent order applicable to the Incumbent Local Exchange Telephone Company. Nothing herein is to be construed to diminish the audit powers of the Commission.

(k) Incumbent Local Exchange Telephone Companies subject to price regulation shall maintain their commitment to the FYI Tennessee Master Plan to the completion of the funded requirements with any alterations to the plan to be approved by the Commission.

SECTION 11. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

Section 65-5-210. Commission Jurisdiction

(a) In addition to any other jurisdiction conferred, the Commission shall have the original jurisdiction to investigate, hear and enter appropriate orders to resolve all contested issues of fact or law arising as a result of the application of this Act.

(b) The Consumer Advocate shall retain all powers with respect to this Act as is provided in Tennessee Code Annotated, Section 65-4-118, or any future legislation.



valorem taxation of property used to provide telecommunications services, and to that end it is declared that the fifty-five percent (55%) level of assessments shall remain applicable to property used in whole or in part to provide telecommunications services other than cellular telephone services, radio common carrier services, or long distance telephone services.

SECTION 15. The General Assembly shall evaluate the implementation of the provisions of this Act every two (2) years for not less than the next six (6) years by requiring the submission of a report prepared by the Commission consisting of the following information:

- (a) The compliance of market participants with the provisions of this Act;
- (b) The status of universal service in Tennessee;
- (c) The availability of service capabilities and service offerings, subdivided by facilities-based and non-facilities-based, for each Telecommunications Services Provider;
- (d) The number of customers, access lines served, and revenues, subdivided by residential and business, for each Telecommunications Services Provider;
- (e) The impact of federal telecommunications initiatives;
- (f) The degree of technological change in the marketplace;
- (g) The technical compatibility between providers;
- (h) The service performance of providers; and,
- (i) Any other information the Commission considers necessary to proper oversight and evaluation.

SECTION 16. Each Telecommunications Service Provider shall file with the commission a small and minority owned telecommunications business participation plan within sixty (60) days of the effective date of this act. Competing Telecommunications Service Providers shall file such plan with the commission with their application for a certificate. Such plan shall contain such entity's plan for purchasing goods and services

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controls the daily operations of such business, and who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin and such business has annual gross receipts of less than four million dollars (\$4,000,000). For purposes of this act, the term "small business" means a business with annual gross receipts of less than four million dollars (\$4,000,000).

SECTION 17. (a) The Department of Economic and Community Development, with assistance from the Comptroller of the Treasury relative to loan guarantees, shall develop by rule an assistance program for small and minority telecommunications businesses no later than January 1, 1996. Such plan shall require Telecommunications Service Providers and Competing Telecommunications Service Providers to contribute a total of two million dollars (\$2,000,000) each year for five (5) years for a total amount of ten million dollars (\$10,000,000) to fund the small and minority telecommunications business assistance program. The Commission shall by rule determine the contribution to be made each year by each Telecommunications Service Provider and each Competing Telecommunications Service Provider to such program. The contribution of each such entity shall be determined in accordance with the process used to determine universal service support contributions in accordance with the provisions of Section 4(a). The small and minority telecommunications business assistance program shall provide for loan guarantees, technical assistance and services, and consulting and education services. The Department of Economic and Community Development shall administer the small and minority telecommunications business assistance program except that the Comptroller of the Treasury shall administer any loan guarantees provided pursuant to such program. It is the legislative intent that such program be designed with consideration of fair distribution of program assistance among the geographic areas of the state with no more than forty

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to the House Commerce and Senate Commerce, Labor and Agriculture Committee no later than September 1, 1995. Such committees shall report its comments and recommendations on such report to the department within thirty (30) days of receiving such report.

(c) The small and minority telecommunications business assistance program developed by the Department of Economic and Community Development shall take effect on March 1, 1996, unless modified or repealed by legislation enacted prior to such date.

(d) There is established a general fund reserve to be allocated in accordance with the small and minority telecommunications business assistance program created by this Act which shall be known as the small and minority telecommunications business assistance program fund. Moneys from the fund may be expended in accordance with such program. Any moneys deposited in the fund shall remain in the reserve until expended for purposes consistent with such program and shall not revert to the general fund on any June 30. Any interest earned by deposits in the reserve shall not revert to the general fund on any June 30 but shall remain available for expenditure in subsequent fiscal years.

SECTION 18. 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 the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 19. This Act shall take effect upon becoming a law, the public welfare requiring it.

BILL NO. 891

COMMITTEE VOTE RECORD

SENATE  
STATE AND LOCAL GOVERNMENT  
COMMITTEE

Motion Rochelle

Seconded Koella

Date 4-25-95

W. / A.

Committee Member	Aye	No	PNV	Absent
1. Gilbert, Bud		1		
2. Harper, Thelma	1			
3. Haun, Tommy	2			
4. Haynes, Joe		2		
5. Koella, Carl	3			
6. Miller, Jeff	4			
7. Rochelle, Robert	5			
8. Womack, Andy	6			
9. Cohen, Steve (C)		3		

AMENDMENT \_\_\_\_\_

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ACTION TAKEN:

Comments \_\_\_\_\_

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Passed \_\_\_\_\_ Passed with amendment/s ✓

Referred to Committee \_\_\_\_\_ Failed \_\_\_\_\_

SENATE ACTION  
(continued)

☒ SENATE CONCURRED IN HOUSE AMENDMENTS # 12

☐ SENATE NONCONCURRED IN HOUSE AMENDMENTS

5-25-8  
DATE

CHIEF CLERK, SENATE

CONFERENCE COMMITTEE ACTION

☐ SENATE REQUESTED A CONFERENCE COMMITTEE TO CONFER WITH LIKE COMMITTEE FROM THE HOUSE. SPEAKER APPOINTED THE FOLLOWING MEMBERS:

DATE

CHIEF CLERK, SENATE

☐ SENATE ADOPTED CONFERENCE COMMITTEE REPORT AND MADE IT THE ACTION OF THE SENATE

DATE

CHIEF CLERK, SENATE

HOUSE ACTION  
(continued)

☐ HOUSE REFUSED TO RECEDE FROM ITS ACTION IN ADOPTING AMENDMENTS

DATE

CHIEF CLERK, HOUSE

CONFERENCE COMMITTEE ACTION

☐ HOUSE ACCEDED TO REQUEST OF THE SENATE FOR APPOINTMENT OF CONFERENCE COMMITTEE. SPEAKER APPOINTED THE FOLLOWING MEMBERS

DATE

CHIEF CLERK, HOUSE

☐ HOUSE ADOPTED CONFERENCE COMMITTEE REPORT AND MADE IT THE ACTION OF THE HOUSE

DATE

CHIEF CLERK, HOUSE