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HOUSE BILL 14-1331

BY REPRESENTATIVE(S) Williams and Murray, Coram, Hullinghorst, Labuda, Pabon;
also SENATOR(S) Nicholson and Kerr, Crowder, Guzman, Heath, Hodge, Scheffel, Tochtrop.

CONCERNING THE REGULATION OF BASIC LOCAL EXCHANGE SERVICE AS IT AFFECTS EFFECTIVE COMPETITION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 40-15-102, **amend** (3) and (29); and **add** (9.3) as follows:

40-15-102. Definitions. As used in this article, unless the context otherwise requires:

(3) "Basic local exchange service" or "basic service" means the telecommunications service ~~which~~ THAT provides:

(a) A local dial tone; ~~time~~ and

(b) Local usage necessary to place or receive a call within an

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

exchange area. ~~and any other services or features that may be added by the commission under section 40-15-502 (2).~~

(9.3) "INCUMBENT LOCAL EXCHANGE CARRIER" OR "ILEC" HAS THE MEANING SET FORTH IN 47 U.S.C. SEC. 251 (h).

(29) "Telecommunications service" ~~means the electronic or optical transmission of information between separate points by prearranged means~~ AND "TELECOMMUNICATIONS" HAVE THE SAME MEANING AS SET FORTH IN 47 U.S.C. SEC. 153.

SECTION 2. In Colorado Revised Statutes, **amend** 40-15-201 as follows:

40-15-201. Regulation by commission. (1) For purposes of this part 2, except as otherwise provided in this title, each provider of basic local exchange service is declared to be affected with a public interest and a public utility subject to the provisions of articles 1 to 7 of this title, so far as applicable, including the regulation of all rates and charges pertaining to local exchange companies; except that, if a provider applies for and receives commission approval of an alternative form of regulation, or if a provider is a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2) (d), the commission shall not consider the provider's overall rate of return or overall revenue requirements when determining the just and reasonable rate for a particular product or service. ~~For a rural telecommunications provider subject to simplified regulatory treatment under section 40-15-203.5 or 40-15-503 (2) (d), basic local exchange service shall be regulated as provided in subsection (2) of this section.~~ The commission may promulgate such rules as are necessary for the purpose of implementing the provisions of TO IMPLEMENT this part 2.

(2) ~~The following products, services, and providers are~~ BASIC EMERGENCY SERVICE IS declared to be subject to regulation ~~pursuant to~~ UNDER this part 2 and subject to potential reclassification under section 40-15-207.

(a) ~~Basic local exchange service;~~

(b) ~~Basic emergency service;~~

~~(c) (Deleted by amendment, L. 99, p. 185, § 3, effective March 31, 1999.)~~

~~(d) White page directory listing;~~

~~(e) Local exchange listed telephone number service;~~

~~(f) New products and services included in the definition of basic local exchange service;~~

~~(g) Dual tone multifrequency signaling;~~

~~(h) Operator services necessary for the provision of basic local exchange service.~~

SECTION 3. In Colorado Revised Statutes, 40-15-203, **repeal** (2), (3), (4), and (5) as follows:

40-15-203. Manner of regulation - refraining from regulation.

~~(2) In accordance with the provisions of this part 2, upon its own motion or application of a local exchange provider, the commission may refrain from regulation for competitive purposes, and authorize a local exchange provider to provide all or a portion of a private telecommunications network service under stated or negotiated terms to any person or entity that has acquired, is contemplating the acquisition of, or is operating a private telecommunications network.~~

~~(3) (a) At any time, the local exchange provider may file or the commission on its own motion may request that the provider file a verified application with the commission for refraining from regulation for competitive purposes. The application shall contain at least the following information:~~

~~(I) The name and address of the local exchange provider;~~

~~(H) The name and address of the person or entity that has acquired, is contemplating the acquisition of, or is operating a private telecommunications network;~~

~~(HH) A statement of what products or services of the local exchange~~

~~provider are offered or are being provided by such private telecommunications network;~~

~~(IV) A statement that the local exchange provider intends to provide a competitive alternative proposal to its existing regulated tariffs for such person or entity;~~

~~(V) A statement of what products and services of the local exchange provider will or may be subject to the competitive alternative.~~

~~(b) For the purpose of evaluating said application, the commission may require such additional information as it deems proper for the processing of the application.~~

~~(c) The local exchange provider's application for refraining from regulation for competitive purposes and all information contained therein shall remain confidential.~~

~~(d) The commission shall approve or deny any such application for refraining from regulation for competitive purposes within ten days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one additional period of five days. If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.~~

~~(4) (a) Upon approval of an application for refraining from regulation for competitive purposes, the local exchange provider may thereafter negotiate with the person or entity that intends to acquire, is contemplating the acquisition of, or is operating a private telecommunications network without regard to its obligations as a public utility under articles 1 to 7 of this title, including any tariffs of such company on file and approved by the commission.~~

~~(b) Within ten days after the conclusion of such negotiations between the local exchange provider and the entity which intends to acquire, is contemplating the acquisition of, or is operating a private telecommunications network, such provider shall file with the commission the final contract or other evidence of what basic local exchange service will be provided to such person or entity and what will be the charges and costs for such service. The final contracts or other evidence and all~~

~~information contained therein shall remain confidential. Thereafter, for any basic local exchange service actually furnished through a private telecommunications network to a person or entity that is a party to a contract or other arrangement that has been filed with the commission pursuant to this section, such provider may also furnish or offer to furnish similar basic local exchange service to such person or entity operating such private telecommunications network without regard to its obligations as a public utility under articles 1 to 7 of this title, including any tariffs of such provider on file and approved by the commission. The commission shall not have the power to approve or disapprove services provided or the charges therefor, but this limitation shall not prevent the commission from considering and evaluating the same, and the costs associated therewith, for general regulatory purposes.~~

~~(5) The provisions of articles 3 and 6 of this title shall not apply to proceedings related to an application for refraining from regulation for competitive purposes submitted pursuant to subsection (2) of this section.~~

SECTION 4. In Colorado Revised Statutes, **repeal** 40-15-206.

SECTION 5. In Colorado Revised Statutes, 40-15-208, **amend** (2) (a) (I) as follows:

40-15-208. High cost support mechanism - Colorado high cost administration fund - creation - purpose - operation - rules.

(2) (a) (I) The commission is hereby authorized to establish a mechanism for the support of universal service, also referred to in this section as the "high cost support mechanism", which ~~shall~~ **MUST** operate in accordance with rules adopted by the commission. The primary purpose of the high cost support mechanism is to provide financial assistance as a support mechanism to local exchange providers **IN AREAS WITHOUT EFFECTIVE COMPETITION** to help make basic local exchange service affordable and allow ~~such~~ **THE** providers to be fully reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high cost geographic support area and ~~the price charged for such service~~ **A REASONABLE BENCHMARK RATE FOR BASIC SERVICE, AS DETERMINED BY THE COMMISSION, after taking into account any amounts received by such providers under price support mechanisms established by the federal government and by this state, REGARDLESS OF THE CLASSIFICATION OF BASIC SERVICE UNDER PART 2, 3, OR 4 OF THIS**

ARTICLE.

SECTION 6. In Colorado Revised Statutes, 40-15-301, **amend** (2) as follows:

40-15-301. Regulation by the commission. (2) ~~The following telecommunications products, services, and providers are SWITCHED ACCESS IS declared to be initially subject to regulation pursuant to UNDER this part 3, SUBJECT TO SECTION 40-15-307. and subject to potential deregulation under section 40-15-305:~~

~~(a) Advanced features offered and provided to residential customers and nonresidential customers with no more than five lines;~~

~~(b) Premium services except as provided in section 40-15-401 (1) (f), (1) (g), (1) (h), and (1) (i);~~

~~(c) InterLATA toll;~~

~~(d) IntraLATA toll, subject to the provisions of section 40-15-306;~~

~~(e) Switched access, subject to the provisions of section 40-15-307;~~

~~(f) Private line service with a capacity of less than twenty-four voice grade circuits;~~

~~(g) Nonoptional operator services.~~

SECTION 7. In Colorado Revised Statutes, 40-15-302, **repeal** (3) as follows:

40-15-302. Manner of regulation - rules. (3) ~~The provisions of section 40-15-206 pertaining to regulation of the discontinuation or rearrangement of basic local exchange service shall apply to all services and products regulated pursuant to this section.~~

SECTION 8. In Colorado Revised Statutes, **repeal** 40-15-306 as follows:

40-15-306. IntraLATA interexchange services. ~~IntraLATA~~

~~interexchange telecommunications services shall be regulated in accordance with the provisions of this part 3; except that such services shall not automatically be deregulated as part 4 services pursuant to section 40-15-305 except upon application of the provider of such services. No interexchange provider shall market intraLATA interexchange telecommunications services without obtaining prior approval of the commission. An interexchange provider shall not be required to compensate a local exchange provider for incidental telecommunications services that occur after July 2, 1987.~~

SECTION 9. In Colorado Revised Statutes, 40-15-401, **amend** (1) (b); and **add** (1) (p.5), (2), (3), (4), and (5) as follows:

40-15-401. Services, products, and providers exempt from regulation - definition. (1) The following products, services, and providers are exempt from regulation under this article or under the "Public Utilities Law" of the state of Colorado:

(b) ~~Cellular telecommunications services~~ BASIC SERVICE; EXCEPT THAT:

(I) THE HIGH COST SUPPORT MECHANISM, AS DESCRIBED IN SECTIONS 40-15-208 AND 40-15-502, REMAINS EFFECTIVE TO SUPPORT BASIC SERVICE REGARDLESS OF THE CLASSIFICATION OF BASIC SERVICE OR VOICE-OVER-INTERNET PROTOCOL SERVICE IN THIS PART 4;

(II) (A) UNTIL JULY 1, 2016, EACH INCUMBENT LOCAL EXCHANGE CARRIER SHALL CHARGE A UNIFORM PRICE FOR BASIC SERVICE THROUGHOUT ITS SERVICE TERRITORY; EXCEPT THAT AN INCUMBENT LOCAL EXCHANGE CARRIER SHALL NOT CHARGE A PRICE FOR BASIC SERVICE THAT IS MORE THAN THE PRICE THAT THE CARRIER CHARGED ON DECEMBER 31, 2013, UNLESS THE PRICE CHARGED IS LOWER THAN THE URBAN RATE FLOOR PRESCRIBED BY THE FEDERAL COMMUNICATIONS COMMISSION. IF A CARRIER CHARGES LESS THAN THE URBAN RATE FLOOR, THE CARRIER MAY INCREASE THE PRICE TO EQUAL BUT NOT EXCEED THE URBAN RATE FLOOR; EXCEPT THAT, IF THE COMMISSION ORDERS REDUCTIONS IN INTERCARRIER COMPENSATION RATES, AN INCUMBENT LOCAL EXCHANGE CARRIER MAY INCREASE LOCAL RATES TO RECOVER SOME OR ALL OF THE LOST REVENUES ASSOCIATED WITH THE COMMISSION'S ACTION.

(B) AS USED IN THIS SUBPARAGRAPH (II), "URBAN RATE FLOOR" MEANS THE BASIC LOCAL EXCHANGE SERVICE RATE REQUIRED TO BE CHARGED IN ORDER TO PREVENT A REDUCTION IN FEDERAL HIGH COST SUPPORT.

(III) UNTIL JULY 1, 2016, EACH INCUMBENT LOCAL EXCHANGE CARRIER REMAINS SUBJECT TO ANY OBLIGATIONS AS PROVIDER OF LAST RESORT, AS ESTABLISHED BY THE COMMISSION UNDER SECTION 40-15-502 (6), THROUGHOUT ITS SERVICE TERRITORY;

(IV) ON AND AFTER JULY 1, 2016, THROUGHOUT EACH GEOGRAPHIC AREA FOR WHICH THE COMMISSION PROVIDES HIGH COST SUPPORT MECHANISM DISTRIBUTIONS FOR BASIC SERVICE UNDER SECTIONS 40-15-208 AND 40-15-502 (5), THE COMMISSION RETAINS THE AUTHORITY TO:

(A) DESIGNATE PROVIDERS OF LAST RESORT UNDER SECTION 40-15-502 (6);

(B) DETERMINE A MAXIMUM PRICE FOR BASIC SERVICE UNDER SECTION 40-15-502 (3) (b);

(C) PROHIBIT PROVIDERS FROM DISCONTINUING BASIC SERVICE, NOTWITHSTANDING SECTION 40-15-111; AND

(D) AUDIT, INVESTIGATE, AND ENFORCE COMPLIANCE WITH REGULATION PERMITTED IN SECTIONS 40-15-208, 40-15-401, AND 40-15-502 (5);

(V) PROVIDERS OF BASIC SERVICE REMAIN SUBJECT TO THE FOLLOWING FEES AND SURCHARGES:

(A) HIGH COST SUPPORT MECHANISM ASSESSMENTS CALCULATED UNDER SECTION 40-15-502 (5) (a);

(B) EMERGENCY SERVICE SURCHARGES ASSESSED UNDER PART 1 OF ARTICLE 11 OF TITLE 29, C.R.S., TO SUPPORT 911 SERVICE; AND

(C) TELECOMMUNICATIONS RELAY SERVICE CHARGES ASSESSED UNDER ARTICLE 17 OF THIS TITLE; AND

(VI) IF, AFTER JULY 1, 2018, THE COMMISSION FINDS THAT RE-REGULATION OF BASIC LOCAL EXCHANGE SERVICE IS NECESSARY TO PROTECT THE PUBLIC INTEREST FOLLOWING A HEARING AND UPON FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION MAY REGULATE BASIC LOCAL EXCHANGE SERVICE UNDER PART 3 OF THIS ARTICLE.

(p.5) PRIVATE TELECOMMUNICATIONS NETWORKS;

(2) NOTHING IN THIS SECTION AFFECTS, MODIFIES, OR EXPANDS:

(a) AN ENTITY'S OBLIGATIONS UNDER SECTIONS 251 AND 252 OF THE FEDERAL "COMMUNICATIONS ACT OF 1934", AS AMENDED, AND CODIFIED IN 47 U.S.C. SECS. 251 AND 252;

(b) ANY COMMISSION AUTHORITY OVER WHOLESALE TELECOMMUNICATIONS RATES, SERVICES, AGREEMENTS, PROVIDERS, OR TARIFFS;

(c) ANY COMMISSION AUTHORITY ADDRESSING OR AFFECTING THE RESOLUTION OF DISPUTES REGARDING INTERCARRIER COMPENSATION; OR

(d) THE REQUIREMENTS FOR THE RECEIPT OF STATE OR FEDERAL FINANCIAL ASSISTANCE THROUGH A HIGH COST SUPPORT MECHANISM.

(3) IF A TELECOMMUNICATIONS SERVICE OR PRODUCT IS NOT DEFINED IN PART 1 OF THIS ARTICLE AND IS NOT CLASSIFIED UNDER PART 2 OR 3 OF THIS ARTICLE, THE TELECOMMUNICATIONS SERVICE OR PRODUCT IS CLASSIFIED AS A DEREGULATED TELECOMMUNICATIONS SERVICE UNDER THIS PART 4.

(4) NOTHING IN THIS PART 4 SHALL BE CONSTRUED TO AFFECT, MODIFY, LIMIT, OR EXPAND THE COMMISSION'S AUTHORITY TO REGULATE BASIC EMERGENCY SERVICE.

(5) THIS SECTION DOES NOT AFFECT THE ESTABLISHMENT OR ENFORCEMENT OF STANDARDS, REQUIREMENTS, PROCEDURES, OR PROCUREMENT POLICIES, APPLICABLE TO ANY DEPARTMENT, AGENCY, COMMISSION, OR POLITICAL SUBDIVISION OF THE STATE, OR TO THE EMPLOYEES, AGENTS, OR CONTRACTORS OF A DEPARTMENT, AGENCY, COMMISSION, OR POLITICAL SUBDIVISION OF THE STATE, RELATING TO THE

PROTECTION OF INTELLECTUAL PROPERTY.

SECTION 10. In Colorado Revised Statutes, 40-15-501, **amend** (3) (c) as follows:

40-15-501. Legislative declaration - purpose and scope of part. (3) This part 5 is enacted for the following purposes:

(c) To adapt the regulatory structure of parts 2, 3, and 4 of this article to accommodate multiple providers of ~~local-exchange service~~ TELECOMMUNICATIONS SERVICES and to permit alternate forms of regulation for providers of local exchange service.

SECTION 11. In Colorado Revised Statutes, 40-15-502, **amend** (5) (a) as follows:

40-15-502. Expressions of state policy. (5) Universal service support mechanisms. (a) In order to accomplish the goals of universal basic service, universal access to advanced service, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of ~~such services~~ BASIC SERVICE in high-cost areas THAT ARE WITHOUT EFFECTIVE COMPETITION FOR BASIC SERVICE, APPLYING THE FACTORS STATED IN SECTION 40-15-207; EXCEPT THAT SUPPORT PROVIDED IN A PARTICULAR GEOGRAPHIC SUPPORT AREA IS NOT AFFECTED UNTIL THE COMMISSION MAKES A FINDING APPLYING THE FACTORS LISTED IN SECTION 40-15-207. These support mechanisms shall be funded equitably and on a nondiscriminatory, competitively neutral basis through assessments, which may include a rate element, on all telecommunications service providers in Colorado and shall be distributed equitably and on a nondiscriminatory, competitively neutral basis. For purposes of administering ~~such~~ THE support mechanisms, the commission shall divide the state into reasonably compact, competitively neutral geographic support areas. A provider's eligibility to receive support under the support mechanisms shall be conditioned upon the provider's offering basic service throughout an entire support area. The commission shall review the costs of basic service and shall administer ~~such~~ THE support mechanisms.

SECTION 12. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the public

utilities commission fixed utility fund created in section 40-2-114, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2014, the sum of \$270,335 and 2.0 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$153,376 and 2.0 FTE to the public utilities commission for personal services;

(b) \$11,306 to the public utilities commission for operating expenses and capital outlay; and

(c) \$105,653 to the executive director's office and administrative services for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2014, the sum of \$105,653 and 0.6 FTE, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in paragraph (c) of subsection (1) of this section.

SECTION 13. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Morgan Carroll
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO