

ENROLLED SENATE  
BILL NO. 376

By: Hooper of the Senate

and

Williams of the House

An Act relating to the Corporation Commission; amending 17 O.S. 1991, Sections 131 and 137, which relate to telephone company certificates and rates; allowing Commission to require existing facilities to provide access to certain providers; providing exception; deleting duplicative language; requiring Commission at certain time to examine alternatives for certain service providers; providing for implementation of alternative forms of regulation; authorizing Commission to adopt and exercise policies and enter orders; specifying trial period for certain regulation; allowing continuance of certain regulation; providing for monitoring of competition; requiring report of results; providing for adoption of revenue sharing plan; providing for protection from certain behavior; allowing return to any regulatory system; providing for consideration and adoption of certain policies and rules; stating intent to amend certain sections of the Oklahoma Constitution; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 17 O.S. 1991, Section 131, is amended to read as follows:

Section 131. (a) It shall be unlawful for any person, firm, association, corporation or cooperative to construct, build or equip any public telephone, toll or long-distance line or lines or any public telephone exchange or exchanges or commence operations of such toll or long-distance line or exchange without having first obtained from the Corporation Commission of the State of Oklahoma a certificate that the present or future public convenience and necessity require or will require the operation of such business or extension. This section shall not be construed to require any telephone company to secure such a certificate for any extension within or to any territory already served by it or for any extension into a territory contiguous to a territory already served by it on which it has heretofore filed with the Commission an exchange area map showing the territory professed to be served by such telephone company.

(b) The Commission shall not grant a certificate for a proposed plant, line or system, or extension thereof, which will be in competition with or duplication of any other plant, line or system,

unless it shall first determine that the existing facilities are inadequate to meet the reasonable needs of the public, or that the person operating the same is unable to or refuses or neglects, after hearing, on reasonable notice, to provide reasonably adequate service. Provided, in exercising its authority to implement alternative regulation pursuant to Section 3 of this act, the Commission may require the person or entity operating the existing facilities to provide access to such facilities to alternative service providers, where appropriate, on such terms and conditions as the Commission shall deem just, reasonable and in the public interest.

(c) Any person obtaining a certificate hereunder for any territory shall exercise said authority within a reasonable time. If such person fails or refuses to provide reasonably adequate service to such territory or any part thereof, after notice and a reasonable opportunity to do so, the Commission, in addition to other powers provided by law, shall have the power to vacate and declare open any or all of said telephone company's territory.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 137, is amended to read as follows:

Section 137. A. ~~It~~ Except as otherwise hereafter provided, any proceeding under Section 136 of this title and in any other proceeding to regulate the rates of a telephone utility subject to the jurisdiction of the Corporation Commission, said Commission shall prescribe and enforce rates to provide a fair return on the fair value of the property devoted to public service in this state.

B. Telephone companies which serve less than fifteen thousand subscribers within the state and telephone cooperatives shall not be subject to local exchange rate regulation by the Corporation Commission unless:

1. The company elects by action of its board of directors to be subject to such local exchange rate regulation by the Commission;

2. The proposed local exchange rate increase exceeds Two Dollars (\$2.00) per access line per month in any one (1) year;

3. Fifteen percent (15%) of the subscribers petition the Commission to regulate local exchange rates pursuant to subsections C, D and E of this section; or

4. The Commission declares that the company shall be subject to local exchange rate regulation by the Commission pursuant to subsection F of this section.

C. Each such telephone company not subject to local exchange rate regulations, at least sixty (60) days before the effective date of any proposed rate change, shall notify the Commission and each of the subscribers of such company of the proposed local exchange rate change. Notice to the Commission shall include a list of the published subscribers of such company. Notice by the company to all subscribers shall:

1. Be in a form prescribed by the Commission;

2. Be by regular mail and may be included in regular subscriber billings; and

3. Include a schedule of the proposed local exchange rates, the effective date of the said rates, and the procedure necessary for the subscribers to petition the Commission to examine and determine the reasonableness of the proposed rates. If the telephone directory published by the company for its subscribers sets forth the procedure for petitioning the Commission, a reference to the location in the directory shall be adequate notice of the procedure.

D. The subscribers of a telephone company not subject to the Commission's local exchange rate regulation may petition the Commission to examine and determine the reasonableness of the local

exchange rate change proposed by the company pursuant to subsection C of this section. The Commission shall adopt and promulgate rules and regulations governing the form of such petitions. A petition substantially in compliance with such rules and regulations shall not be deemed invalid due to minor errors in its form.

E. If, by the effective date of the proposed local exchange rate change, the Commission has received petitions from fewer than fifteen percent (15%) of the subscribers requesting that the Commission examine the proposed local exchange rate change, the Commission shall immediately certify such fact to the company and the proposed local exchange rates shall become effective as published in the notice to subscribers. If, on or before the effective date of the proposed local exchange rate change, the Commission has received petitions from fifteen percent (15%) or more of the subscribers requesting that the Commission examine and determine the reasonableness of the proposed local exchange rates, the Commission shall notify the company that it will examine and determine the reasonableness of the proposed local exchange rate change. Local exchange rates and charges established by the Commission or by a telephone company pursuant to this subsection and subsection C of this section shall be in force for not less than one (1) year.

F. In addition to the procedure for petition prior to any proposed local exchange rate change pursuant to subsections C through E of this section, the subscribers of a telephone company not subject to the Commission's local exchange rate regulation may at any time petition the Commission to declare the company be subject to such rate regulation. If the Commission determines that at least fifty-one percent (51%) of the subscribers of a company have properly petitioned that the company be subject to the Commission's rate regulation, the Commission shall certify such fact to the company and thereafter the company shall be subject to rate regulation by the Commission until at least fifty-one percent (51%) of the subscribers of the company properly petition that the company no longer shall be subject to the Commission's local exchange rate regulation. The Commission shall adopt and promulgate rules and regulations governing the petition procedure ~~and the form of such petitions and a petition procedure~~ and the form of such petitions and a petition substantially in compliance with such rules and regulations shall not be deemed invalid due to minor errors in its form.

G. Subsections A through F of this section apply only to local exchange rates and charges and shall have no effect on the Oklahoma Corporation Commission's jurisdiction over, and regulation of, intrastate toll and access rates and charges.

H. The Commission shall have the right to investigate and determine the reasonableness of the increase in local exchange rates and charges of each telephone company or cooperative not subject to local exchange rate regulation within one (1) year of the time local exchange rates or charges are increased. If the Commission determines such rate or charge increases are unreasonable, the Commission shall have the authority to order a rate hearing and, after such hearing, shall have the authority to rescind all or any portion of the increases found to be unreasonable.

I. It is the intention of the Legislature that this entire section is an amendment to, and alteration of ~~Section~~ Sections 18 through 34, inclusive, of Article IX of the Constitution of the State of Oklahoma, as authorized by Section 35, Article IX of said Constitution.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 137.1 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Within ten (10) days from the resolution of Oklahoma Corporation Commission Cause No. PUD 89000662, the Commission shall initiate proceedings to examine alternatives within or to existing regulation for telecommunication service providers by category. The Commission may implement alternative forms of regulation in order to establish just and reasonable rates for telecommunications services. The Commission is authorized to adopt and exercise policies and enter orders that provide for regulatory flexibility and recognize the competitive characteristics of different telecommunications providers and their services and market areas.

B. Any alternative form of regulation shall initially be for a trial period of three (3) years. Following the expiration of such initial three-year trial, the Commission may continue the alternative regulation plan in effect for an additional prescribed period of time, or modify the plan and continue the plan, as modified, in effect for a prescribed period of time or revert to the regulatory status prior to the three-year trial. During the duration of an alternative regulation plan, the Commission shall monitor the level of competition among providers of such services and the impact of the plan on the public interest. The Commission shall report the results of any alternative plan to the Legislature and the Governor after the trial period.

C. For purposes of approving any form of alternative regulation, the Commission may adopt a revenue-sharing plan which benefits consumers through accelerated telecommunications investment in infrastructure or technology. Revenues generated under such plan shall be shared with the ratepayers, consistent with criteria established by the Commission. Such revenue sharing with the ratepayer shall include, but is not limited to, the options of reduced rates, refunds to ratepayers and enhancing existing services.

D. In regulating telecommunication services and providers, whether through any form of alternative regulation or through traditional rate base, rate of return regulation, the Commission shall consider and may adopt policies and rules to protect against anticompetitive behavior and the abuse of monopoly power, including but not limited to:

1. Preserving the concept of universal service;
2. Imposing safeguards against predatory, anticompetitive, or discriminatory pricing and provisioning;
3. Imposing safeguards against subsidizing competitive services with revenues from noncompetitive services; and
4. Requiring a return to the regulatory status in existence prior to the three-year trial if harm to consumers may be shown.

E. Nothing herein shall prohibit the Commission, after adopting an alternative form of regulation for a three-year trial or subsequent period, from returning to any regulatory system which existed prior to the trial period, including rate-based, rate of return regulation.

F. As a part of any alternative regulation plan, the Commission shall consider and may adopt policies and rules requiring certificated telecommunications service providers of local exchange service to interconnect in a manner that facilitates efficient, reliable, just and reasonable interchange of traffic among certificated telecommunications service providers.

SECTION 4. It is the intent of the Legislature that Sections 1 through 3 of this act are amendments to, and alterations of,

Sections 18 through 34, inclusive, of Article IX of the Constitution of the State of Oklahoma, as authorized by Section 35, Article IX of the Constitution of the State of Oklahoma.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 21st day of May, 1993.

President of the Senate

Passed the House of Representatives the 25th day of May, 1993.

Speaker of the House of Representatives