

LEGISLATIVE BILL 835

Approved by the Governor April 18, 1986

Introduced by DeCamp, 40

AN ACT relating to telecommunications; to amend sections 75-109 and 75-604, Reissue Revised Statutes of Nebraska, 1943, and section 75-609, Revised Statutes Supplement, 1984; to state intent; to define terms; to provide for the deregulation of telecommunications; to provide procedures; to provide powers and duties; to provide for the limitation of rate increases as prescribed; to provide for the joint provision of service as prescribed; to limit jurisdiction as prescribed; to provide preemption; to provide for the billing of certain taxes and fees; to provide for equitable relief; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature declares that it is the policy of the state to:

- (1) Preserve affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Ensure that consumers pay only reasonable charges for telecommunications services; and
- (4) Promote diversity in the supply of telecommunications services and products throughout the state.

Sec. 2. For purposes of sections 1 to 11 of this act and sections 75-109, 75-604, and 75-609, unless the context otherwise requires:

- (1) Basic local exchange rate shall mean the flat monthly charge for an access line, whether the service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service, but shall not include any charges resulting from action by a federal agency or taxes imposed by a governmental body which are billed by a telecommunications company to its customers;
- (2) Basic local exchange service shall mean

the access and transmission of two-way switched voice communications within a local exchange area;

(3) Business service shall mean telecommunications service which is used for occupational, professional, or institutional purposes;

(4) Commission shall mean the Public Service Commission;

(5) Extended service area shall mean a grouping of two or more exchanges which allows subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge;

(6) Interexchange service shall mean the access and transmission of communications between two or more local exchange areas, except for two-way switched communications between local exchanges that are included in the same extended service area;

(7) Inter-LATA interexchange services shall mean interexchange telecommunications services originating and terminating in different LATAs;

(8) Intra-LATA interexchange services shall mean interexchange telecommunications services that originate and terminate within the same LATA;

(9) LATA shall mean local access transport area as defined by applicable federal law, rules, or regulations;

(10) Local exchange area shall mean a territorial unit established by a telecommunications company for the administration of communications services within a specific area generally encompassing a city, town, or village and its environs as described in maps filed with and approved by the Public Service Commission;

(11) Residence service shall mean telecommunications service which is furnished to a dwelling and which is used for personal or domestic purposes and not for business, professional, or institutional purposes; and

(12) Telecommunications company shall mean any person, firm, partnership, corporation, association, or governmental entity offering communications services to the public for hire in Nebraska intrastate commerce.

Sec. 3. (1) Except as provided in sections 1 to 11 of this act, telecommunications companies shall be subject to regulation by the commission. Telecommunications companies shall not, however, be subject to any rate regulation by the commission and shall not be subject to provisions as to rates and

charges prescribed in Chapter 75, articles 1 and 6. Telecommunications companies shall, instead, file rate lists for their telecommunications services which shall be effective after ten days' notice to the commission with the exception of monthly rates for basic local exchange services.

(2) Except as provided in subsection (4) of this section, monthly basic local exchange rates may be changed by a telecommunications company effective after sixty days' notice to all affected subscribers. Such notice shall include (a) the reasons for the rate increase, (b) a description of the affected service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times, and places for the public informational meetings required by this section. A telecommunications company which proposes to increase its basic local exchange rate shall hold at least one public informational meeting in each commission district as established by section 5-107 in which it provides basic local exchange service prior to the effective date of the rate increase. If the telecommunications company presently charges different rates for residential or business basic service among various exchanges, increases or decreases in basic local exchange rates need not be uniform for all exchanges until all residential basic local exchange rates are fully equalized and all business basic local exchange rates are fully equalized. Thereafter, the amount of any increase or decrease in a business basic local exchange rate or residential basic local exchange rate made pursuant to this section shall be the same for all business service subscribers or for all residential service subscribers within the local service area of the telecommunications company making such increase or decrease. For purposes of this section, local service area shall mean the total area within the state for which a basic local exchange service is provided by a telecommunications company.

(3) The commission shall review basic local exchange rates set by any telecommunications company only upon formal complaint signed by (a) five per cent of all affected subscribers if the telecommunications company has up to fifty thousand access lines in service, (b) three per cent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines in service, or (c) two per cent of all affected subscribers

if the telecommunications company has more than two hundred fifty thousand access lines in service. The complaint shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review, and the relief which the complainants desire. If a proper complaint is presented to the commission within sixty days from the date notice of the rate change was sent to subscribers, the commission shall accept and file the complaint and, upon proper 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 days after filing to determine if the rates as proposed are fair, 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 actual cost of providing such service as established by the 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. A telecommunications company shall not increase its rates without the approval of the commission for six months from 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 complaint shall be deemed denied and the rates and charges shall be deemed approved for all purposes including for purposes of appeal. For purposes of this section, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs. This subsection shall terminate on August 31, 1991.

(4) A telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair and reasonable rates for the company or such telecommunications company may elect to proceed, if eligible, under section 75-609.01. Such proceedings shall be governed by Chapter 75, articles 1 and 6, and shall not be limited by subsection (2) of this section. Any rate so set may thereafter be adjusted as provided in subsections (1) and (2) of this section.

(5) In setting rates for interexchange services, telecommunications companies that provide such

services shall continue to average their rates for all such services on a statewide basis until August 31, 1991, unless the commission, upon application and hearing, orders otherwise. This subsection shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange telecommunications services, nothing in sections 1 to 11 of this act shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

(6) The commission shall retain quality of service regulation over the services provided by all telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of service. If such complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing and may by order render its decision granting or denying in whole or in part the subscriber's petition or provide such other relief as is reasonable based on the evidence presented to the commission at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-145 and may be appealed.

(7) Except as provided in subsection (4) of this section, the commission may, on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten per cent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, 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 actual cost of providing such service as established by the 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. For purposes of this subsection, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(8) The commission may order that flat rate services shall be available whenever measured service is implemented and that for such services the price restrictions prescribed in sections 1 to 11 of this act shall be retained. Measured service shall mean basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of call, distance, and time of day.

(9) Rates being charged by telecommunications companies on the operative date of this act shall be deemed to be the effective rates until changed or altered pursuant to sections 1 to 11 of this act.

(10) No telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to subsections (3), (4), and (7) of this section.

(11) Any order of the commission entered pursuant to authority granted in sections 1 to 11 of this act may be appealed by any party to the proceeding in accordance with sections 75-136 to 75-139.

Sec. 4. The commission shall provide the Legislature with an annual report on or before January 5 of each year on the status of the Nebraska telecommunications industry. The report shall describe: (1) The quality of telecommunications services being provided to the citizens of Nebraska; (2) the availability of diverse and affordable telecommunications services to all of the people of Nebraska; and (3) the level of rates of local exchange companies and interexchange telecommunications companies. The report also shall address the question of the need for further legislation to achieve the purposes of sections 1 to 11 of this act.

Sec. 5. (1) The commission may issue a certificate authorizing any telecommunications company which so applies to the commission to offer and provide inter-LATA interexchange services, which application shall include such information as may be required by the commission under duly adopted and promulgated rules and regulations. The commission may as a precondition to certification: (a) Require the procurement of a performance bond sufficient to cover amounts due or to

become due to other telecommunications companies providing access to the local exchange networks for the applicant; and (b) require the procurement of a performance bond sufficient to protect any advances or deposits the telecommunications company may collect from its customers or order that such advances or deposits be held in escrow or trust.

(2) The commission may deny certification to any telecommunications company which:

(a) Does not provide the information required by the commission;

(b) Fails to provide a performance bond, if required;

(c) Does not possess adequate financial resources to provide the proposed service; or

(d) Does not possess adequate technical competency to provide the proposed service.

(3) The commission shall take action to approve or issue a notice of hearing concerning any application for certification within thirty days after receiving the application. The commission may approve an application with or without a hearing. The commission may deny an application only after a hearing.

(4) Any telecommunications company or an affiliate thereof that has been authorized by the commission to offer an interexchange service prior to the operative date of this act shall continue to have such authority, and it shall not be necessary for such telecommunications company to make a new application to provide the service previously authorized by the commission.

Sec. 6. No telecommunications company which provides intrastate interexchange service may abandon or otherwise discontinue such service in or to a local exchange area which it serves unless:

(1) The commission finds upon application and hearing that one or more other telecommunications companies are furnishing comparable service to the subscribers in such local exchange area at the time of abandonment; and

(2) The telecommunications company discontinuing service to such local exchange area:

(a) Notifies its subscribers in the local exchange area in writing of the abandonment, which notice shall be sent at least thirty days prior to the effective date of such abandonment;

(b) Refunds any unused prepaid subscription charges or other unused prepaid charges to each customer in the local exchange area prior to the effective date

of the abandonment; and

(c) Prior to the effective date of the abandonment, reimburses its customers in the local exchange area for service charges which its customers incur in obtaining substitute service from another telecommunications company or, in lieu thereof, pays other telecommunications companies directly for such service charges on behalf of its customers making changes in their services as a result of the abandonment.

Sec. 7. (1) Except for requirements established by statute, the commission may limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may revoke any waivers it grants or reinstate regulations if such revocation or reinstatement would protect the public interest upon a finding that the telecommunications company is restricting market output, impairing customer interest, or engaging in unlawful anticompetitive activity.

(2) A telecommunications company shall at a minimum:

(a) Keep its accounts according to rules and regulations adopted and promulgated by the commission;

(b) File financial reports with the commission as required by and in a form and at times prescribed by the commission;

(c) Keep on file at the commission such current price lists and service standards as the commission may require; and

(d) Cooperate with commission investigations of customer complaints.

Sec. 8. The commission shall not regulate the following:

(1) One-way broadcast or cable television transmission of television or radio signals; and

(2) Mobile radio services, radio paging services, and cellular services.

Sec. 9. Sections 1 to 11 of this act and sections 75-109, 75-604, and 75-609 shall preempt and prohibit any regulation of a telecommunications company by counties, cities, villages, townships, or any other local governmental entity.

Sec. 10. Whenever any municipality or any other local governmental entity imposes upon a telecommunications company any tax or fee, such tax or fee shall, insofar as practicable, be billed pro rata to

the telecommunications company's customers receiving communications services within the territorial limits of such municipality or other local governmental entity.

Sec. 11. If any telecommunications company violates any provision of sections 1 to 11 of this act or sections 75-109, 75-604, and 75-609, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of sections 1 to 10 of this act or sections 75-109, 75-604, and 75-609 has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors, officers, employees, or agents from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Supreme Court under the rules provided by law for appeals to the Supreme Court.

Sec. 12. That section 75-109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-109. The Except as provided in sections 3 and 8 of this act, the commission shall have the power to regulate the rates and services of, and to exercise a general control over, all common carriers, which term is hereby defined as all carriers, including contract carriers, engaged in the transportation of freight or passengers for hire, or furnishing communication services for hire in Nebraska intrastate commerce.

Sec. 13. That section 75-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

75-604. (1) Except as provided in section 5 of this act, no No person, firm, partnership, corporation, cooperative, or association shall offer telephone service any telecommunications service or shall construct a new telephone line telecommunications facilities in or extend an existing telephone line telecommunications facilities into the territory of another telephone telecommunications company for the purpose of providing any telecommunications service without first making an application for and receiving from the commission a certificate of convenience and necessity, after due notice and hearing under the rules and regulations of the commission. Before granting a certificate of convenience and necessity, the commission must shall find that: (a) The {i} the territory in which the applicant proposes to offer telephone telecommunications service is not receiving reasonably

adequate telephone telecommunications service; (b) 7 (2) that the portion of the territory of another telephone telecommunications company in which or into which the applicant proposes to construct new lines facilities or extend its existing lines facilities is not and will not within a reasonable time receive reasonably adequate telephone telecommunications service from the telephone telecommunications company already serving the territory; 7 or (c) (3) the application is agreeable to the subscriber or subscribers and to both telephone all telecommunications companies involved in the matter, will not create a duplication of facilities, and is in the interest of the public and the party or parties requiring telephone telecommunications service.

(2) Two years after the operative date of this act, the commission may waive applicability of subsection (1) of this section as to the provision of intra-LATA interexchange services by duly adopted and promulgated rules and regulations applicable to all telecommunications companies providing such services, and after such waiver, certification for and provision of intra-LATA interexchange services shall be governed by the statutes, rules, and regulations for certification for and provision of inter-LATA interexchange services.

Sec. 14. That section 75-609, Revised Statutes Supplement, 1984, be amended to read as follows:

75-609. Except as provided in section 75-609-01, all rates for local telephone service and for intrastate long distance telephone service shall be prescribed by the commission. In determining the valuation of telephone property for the purpose of fixing fair and reasonable rates, the commission shall give consideration to the current value of such property and to such other factors as may be just and reasonable.

(1) Where two or more telephone companies jointly furnish such local or long distance interexchange service or extended area service, the revenues revenue from such jointly furnished service shall be divided in such manner as may be agreed upon between by the companies furnishing such service. In the event of inability to agree, any one of the companies jointly furnishing such local or long distance service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenues revenue from such jointly furnished service. The order entered pursuant to such application may be appealed from by any party to the proceeding in

the same manner as from other orders of the commission.

(2) Access charges imposed by telecommunications companies for access to a local exchange network for the purposes of provision of interexchange services shall be as agreed to by the telecommunications companies involved. Any affected telecommunications company may, by application, cause review of such charges by the commission. Upon such application and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within sixty days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange telecommunications company but may order discounts where there is not available access of equal type and quality for all interexchange telecommunications companies, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange telecommunications company from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange telecommunications company in providing such access services.

Sec. 15. This act shall become operative on January 1, 1987.

Sec. 16. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 17. That original sections 75-109 and 75-604, Reissue Revised Statutes of Nebraska, 1943, and section 75-609, Revised Statutes Supplement, 1984, are repealed.