

476.101 Local exchange competition.

1. A certificate of public convenience and necessity to provide local telephone service shall not be interpreted as conveying a monopoly, exclusive privilege, or franchise. A competitive local exchange service provider shall not be subject to the requirements of this chapter, except that a competitive local exchange service provider shall obtain a certificate of public convenience and necessity pursuant to section 476.29, file tariffs, notify affected customers prior to any rate increase, file reports, information, and pay assessments pursuant to section 476.2, subsection 4, and sections 476.9, 476.10, 476.16, 476.102, and 477C.7, and shall be subject to the board's authority with respect to adequacy of service, interconnection, discontinuation of service, civil penalties, and complaints. If, after notice and opportunity for hearing, the board determines that a competitive local exchange service provider possesses market power in its local exchange market or markets, the board may apply such other provisions of this chapter to a competitive local exchange service provider as it deems appropriate.

2. The duty of a local exchange carrier includes the duty, in accordance with requirements prescribed by the board pursuant to subsection 3 and other laws, to provide equal access to, and interconnection with, its facilities so that its network is fully interoperable with the telecommunications services and information services of other providers, and to offer unbundled essential facilities.

3. a. A local exchange carrier shall provide reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier to which reasonable access is necessary to a competitive local exchange service provider in order for a competitive local exchange service provider to provide service and is feasible for the local exchange carrier.

b. Upon application of a local exchange carrier or a competitive local exchange service provider, the board shall determine any matters concerning reasonable access to ducts, conduits, rights-of-way, and other pathways owned or controlled by the local exchange carrier upon which agreement cannot be reached, including but not limited to, matters regarding valuation, space, and capacity restraints, and compensation for access.

4. a. Prior to September 1, 1995, the board shall initiate a rulemaking proceeding to adopt rules that satisfy the requirements enumerated in subparagraphs (1) through (4). The rulemaking proceeding shall be completed as promptly as possible. The board, upon petition or on its own motion, may conduct a separate evidentiary hearing on the same or related subjects. The evidence from a hearing may be considered by the board during the rulemaking proceeding, provided that the board announces its intention to do so prior to the oral presentation in the rulemaking proceeding. The rules shall do the following:

(1) Require a local exchange carrier to provide unbundled essential facilities of its network, and allow reasonable and nondiscriminatory equal access to, use of, and interconnection with, those unbundled essential facilities on reasonable, cost-based, and tariffed terms and conditions. The board's rules must require a local exchange carrier, including those operating under a plan of price regulation, to file tariffs implementing the unbundled essential facilities within ninety days of the board's final order adopting such rules, except for local exchange carriers with less than seventy-five thousand access lines which must file such tariffs within two years of July 1, 1995. Such access, use, and interconnection shall be on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates for the provision of local exchange, access, and toll services. This subsection shall not be construed to establish a presumption as to the level of interconnection charges, if any, to be determined by the board pursuant to subparagraph (2).

(2) Establish reciprocal cost-based compensation for termination of telecommunications services between local exchange carriers and competitive local exchange service providers.

(3) Require local exchange carriers to make interim number portability available on request of a competitive local exchange service provider, and to implement provider number portability as soon as the availability of necessary technology makes provider number portability economically and technically feasible, as determined by the board. The rules

shall also devise a reasonable and nondiscriminatory mechanism for the recovery of all recurring and nonrecurring costs of interim and provider number portability.

(4) Develop the cost methodology appropriate for a competitive telecommunications environment.

b. The rules adopted in paragraph “a”, subparagraphs (2) and (3), do not apply to local exchange carriers with less than seventy-five thousand access lines until a competitive local exchange service provider has filed for a certificate to provide basic communications services in an exchange or exchanges of the local exchange carrier, or the board determines that competitive necessity requires the implementation of the rules in paragraph “a”, subparagraphs (2) and (3), by the local exchange carrier.

5. Local exchange carriers shall file tariffs or price lists in accordance with board rules with respect to the services, features, functions, and capabilities offered to comply with board rules on unbundling of essential facilities and interconnection. Local exchange carriers shall submit with the tariffs or price lists for basic communications services and toll services supporting information that is sufficient for the board to determine the relationship between the proposed charges and the costs of providing such services, features, functions, or capabilities, including the imputed cost of intrastate access service rates in toll service rates pursuant to existing board orders. The board shall review the tariffs or price lists to ensure that the charges are cost-based and that the terms and conditions contained in the tariffs or price lists unbundle any essential facilities in accordance with the board’s rules and any other applicable laws.

6. This section shall not be construed to prohibit the board from enforcing rules or orders entered in contested cases pending on July 1, 1995, to the extent that such rules and orders are consistent with the provisions of this section.

7. Except as provided under section 476.29, subsection 2, and this section, the board shall not impose or allow a local exchange carrier to impose restrictions on the resale of local exchange services, functions, or capabilities. The board may prohibit residential service from being resold as a different class of service.

8. Any person may file a written complaint with the board requesting the board to determine compliance by a local exchange carrier with the provisions of sections 476.96 through 476.100, 476.102, and this section, or any board rules implementing those sections. Upon the filing of such complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written complaint was filed.

9. A telecommunications carrier, as defined in the federal Telecommunications Act of 1996, shall not do any of the following:

- a. Use customer information in a manner which is not in compliance with 47 U.S.C. § 222.
- b. Disparage the services offered by another telecommunications carrier through false or misleading statements.
- c. Take any action that disadvantages a customer who has chosen to receive services from another telecommunications carrier.

10. In a proceeding associated with the granting of a certificate under section 476.29, approving maps and tariffs for competitive local exchange providers provided for in this section, or in resolving a complaint filed pursuant to subsection 8 and proceedings under 47 U.S.C. § 251 – 254, the board shall allocate the costs and expenses of the proceedings to persons identified as parties in the proceeding who are engaged in or who seek to engage in providing telecommunications services or other persons identified as participants in the proceeding. The funds received for the costs and the expenses shall be remitted to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

95 Acts, ch 199, §12; 98 Acts, ch 1151, §5; 99 Acts, ch 20, §4, 6; 2009 Acts, ch 181, §50

[T] 2011 repeal of 2009 Acts, ch 181, §50, amendment to subsection 10 stricken pursuant to 2011 Acts, ch 127, §57, 89

[T] Section not amended; footnote revised