

JAN 19 1995

COMMERCE - REGULATION

HOUSE FILE 53
BY METCALF

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to telecommunications and the regulation of
2 telecommunications providers and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 476.95 DEFINITIONS.

2 As used in this division, unless the context otherwise
3 requires:

4 1. "Access service" means the provision of switched or
5 dedicated access to a local exchange network for the purpose
6 of enabling a telecommunications provider to originate or
7 terminate telecommunications service. "Access service"
8 includes unbundled local service provided to
9 telecommunications providers.

10 2. "Alternative telecommunications utility" means any of
11 the following:

- 12 a. Cable television telecommunications service provider.
- 13 b. Commercial radio mobile service provider.
- 14 c. Pay station telephone service provider.
- 15 d. Telecommunications reseller.
- 16 e. Radio common carrier.

17 3. "Basic local exchange services" means dial tone access,
18 for the transmission of two-way switched voice communications
19 within a local exchange area, or services allowing access to
20 two-way switched voice communications between exchange areas,
21 or services essential to the public safety. Basic local
22 exchange services include, but are not limited to, the
23 following:

24 a. Single party residence service, which is furnished to a
25 dwelling and which is used for personal or domestic purposes
26 and not for business, professional, or institutional purposes.

27 b. Business service, which is used for business,
28 professional, or institutional purposes. This includes single
29 line service and service for switched business communications
30 systems.

31 c. Dual party relay service established under chapter
32 477C.

33 d. 911 and E911 services established under chapters 34 and
34 34A.

35 4. "Basic message telecommunications service" means long

1 distance toll service as provided on January 1, 1995, on a
2 direct-dialed, single-message, dial-1 basis between local
3 exchanges in this state at tariff rates. "Basic message
4 telecommunications service" does not include any wide-area
5 telecommunications service; 800-prefix service; volume,
6 dedicated, discounted, or other interoffice services; or
7 individually negotiated contracts for telecommunications
8 services.

9 5. "Basic network function" means the smallest
10 disaggregation of local exchange transport, switching, and
11 loop functions that is capable of being separately listed in a
12 tariff and offered for sale.

13 6. "Broadcast service" means the one-way transmission to
14 the public of video or audio programming regulated under 47
15 U.S.C. § 301 et seq. that is provided by a broadcast station,
16 as defined in 47 U.S.C. § 153(dd), including any interaction
17 with a recipient of the programming as part of the video or
18 audio programming offered to the public.

19 7. "Cable television telecommunications service provider"
20 means a person who provides one or more telecommunications
21 services but who, during the previous taxable year, received
22 at least ninety percent of the person's gross income in the
23 particular television franchise area in which
24 telecommunications services are provided from the operation of
25 a cable television system subject in whole or in part to 47
26 U.S.C. § 521 et seq.

27 8. "Commercial radio mobile service provider" means a
28 radio communications service provider pursuant to sections
29 3(n) and 322 of the federal communications commission rules,
30 the Communications Act, and the Omnibus Budget Reconciliation
31 Act of 1993. A commercial radio mobile service provider
32 includes all mobile service providers utilizing mobile radio
33 or wireless facilities to serve the public for compensation,
34 including personal communication service, cellular, improved
35 mobile telephone service, specialized mobile radio, and other

1 similar services.

2 9. "Local exchange area" means a territorial unit
3 established by a telecommunications provider within which
4 basic local exchange services are provided and which is
5 described in maps filed with and approved by the board.

6 10. "Nonbasic local exchange services" means all
7 telecommunications services other than basic local exchange
8 services.

9 11. "Pay station telephone service provider" means a
10 person who owns or leases a pay station telephone located on
11 property owned or leased by that person and who otherwise does
12 not offer any telecommunications service directly or
13 indirectly to the public.

14 12. "Personal communications service provider" means a
15 person providing radio telecommunications services within the
16 geographic service area in which it is authorized to operate
17 under the specific spectrum assigned by the federal
18 communications commission.

19 13. "Radio common carrier" means a common carrier in the
20 domestic public land mobile radio service licensed by the
21 federal communications commission under 47 C.F.R. § 21.0 to
22 21.909 or § 22.900 to 22.921 to receive and transmit signals
23 from transmitters within a specified geographic area.

24 14. "Service rate" means the monthly charge imposed by a
25 telecommunications provider for a specific service, but shall
26 not include any charges or taxes imposed by a governmental
27 body which are included on customer billings by the
28 telecommunications provider.

29 15. "Telecommunications carrier" means a person who owns,
30 operates, manages, or controls a facility used to furnish
31 telecommunications services within the state directly or
32 indirectly to the public but does not provide basic local
33 exchange service, except on a resale basis.

34 "Telecommunications carrier" does not include an alternative
35 telecommunications utility.

1 16. "Telecommunications provider" means a person who
2 provides telecommunications services.

3 17. "Telecommunications reseller" or "reseller" means a
4 telecommunications utility which satisfies both of the
5 following:

6 a. Resells message telecommunications services, wide-area
7 telecommunications services, or other telecommunications
8 services which have been approved for reselling by the board.

9 b. Does not own, operate, manage, or control, directly or
10 indirectly, transmission or switching facilities with the
11 technological capability to provide telecommunications
12 services within the state.

13 18. "Telecommunications service" means the offering for
14 sale of the one-way or two-way conveyance of voice, data, or
15 other information at any frequency over any part of the
16 electromagnetic spectrum including the sale of services for
17 collection, storage, forwarding, switching, and delivery
18 incidental to such communications. "Telecommunications
19 services" does not include the one-way transmission to
20 subscribers of video programming provided by, or generally
21 considered comparable to programming provided by, a television
22 broadcast station or other programming service that makes
23 information available to all subscribers generally.

24 19. "Telecommunications utility" means a public utility as
25 defined in section 476.1, but does not include a
26 telecommunications carrier.

27 20. "Wide-area telecommunications service" or "WATS" means
28 the offering of message-based telecommunications service using
29 a single, dedicated access line at the originating end of the
30 call at a significant volume-based discount.

31 Sec. 2. NEW SECTION. 476.96 INCENTIVE REGULATION FOR
32 TELECOMMUNICATIONS UTILITIES.

33 1. The board may suspend any of the provisions in this
34 chapter or may approve a regulatory method alternative to
35 traditional rate-of-return regulation that does not require

1 suspension of any provisions in this chapter for the purpose
2 of providing incentives for telecommunications utilities to
3 achieve the goals identified in subsection 2, paragraph "a".

4 2. After opportunity for hearing, unless the hearing is
5 waived as provided in subsection 3, the board shall determine
6 whether it is in the public interest to suspend any of the
7 provisions in this chapter or to approve an alternative
8 regulatory method. In making this determination, the board
9 shall identify all of the following:

10 a. The goals to be achieved, which may include promoting
11 competition, infrastructure deployment, economic development,
12 consumer choice, productivity, efficiency, quality of life,
13 societal goals, or universal telephone service.

14 b. The proposed incentive and how the incentive is
15 expected to help achieve the identified goals.

16 c. The measurement to be used to evaluate successful
17 attainment of the identified goals.

18 3. If the board suspends the application of any provision
19 of this chapter or approves an alternative regulatory method
20 for a telecommunications utility, the board may waive the
21 hearing opportunity required under subsection 2 for any
22 similarly situated telecommunications utility, if the waiver
23 is in the public interest, and after notice to all known
24 interested parties.

25 4. The board shall regulate telecommunications utilities
26 in order to achieve the goals identified in subsection 2,
27 paragraph "a", through the development of alternative forms of
28 regulation. The board shall develop and approve, by order, an
29 incentive regulatory plan for each telecommunications utility.
30 The board shall not increase the regulation of a
31 telecommunications utility as a result of such plans. The
32 board shall not establish reporting requirements for a
33 telecommunications utility under a plan of incentive
34 regulation which are more onerous than the requirements which
35 applied to the telecommunications utility under rate-of-return

1 regulation.

2 5. Section 476.99, relating to the price regulation of
3 intrastate access services, applies to any alternative
4 regulatory plan approved pursuant to this section for a
5 telecommunications utility with more than fifty thousand
6 access lines in this state.

7 6. This section is not applicable to telephone utilities
8 electing to be price-regulated under section 476.97.

9 Sec. 3. NEW SECTION. 476.97 PRICE REGULATION FOR
10 TELECOMMUNICATIONS UTILITIES.

11 1. a. Notwithstanding contrary provisions of this
12 chapter, this section governs rates for basic local exchange
13 services, standard business access lines and usage by
14 businesses with no more than three access lines, basic message
15 telecommunications service, and any changes in those rates for
16 a telecommunications utility electing to be price-regulated.
17 A telecommunications utility may elect to become a price-
18 regulated utility by giving written notice to the board not
19 less than thirty days prior to the date such regulation is to
20 commence.

21 b. The board, following notice and opportunity for
22 hearing, may include as part of the services subject to price
23 regulation those services and technological features
24 determined by the board to be an essential component of
25 universal service under section 476.107, subsection 2.

26 2. a. A telecommunications utility which elects, within
27 thirty days after July 1, 1995, to become price-regulated
28 under this section, shall set the initial rates to be charged
29 under this section for services identified under subsection 1,
30 paragraph "a", and file the rates with the board. The rates
31 filed by a telecommunications utility shall not be greater
32 than the rates allowed for the telecommunications utility for
33 the same services as of December 31, 1994. The rates shall be
34 effective at the time specified in the filing.

35 b. A telecommunications utility which elects, more than

1 thirty days after July 1, 1995, to become price-regulated
2 under this section, shall set the initial rates to be charged
3 under this section for services identified under subsection 1,
4 paragraph "a", and file the rates with the board no less than
5 forty-five days prior to the effective date of the rates. The
6 rates filed by a telecommunications utility shall not be
7 greater than the rates allowed for the telecommunications
8 utility for the same services as of December 31 immediately
9 preceding the election. The rates shall be effective at the
10 time specified in the filing.

11 3. a. A price-regulated telecommunications utility shall
12 not increase its rates for services identified under
13 subsection 1, other than basic message telecommunications
14 service, for a period of twelve months after electing to
15 become price-regulated. A price-regulated telecommunications
16 utility may increase its rates for services identified under
17 subsection 1 following the initial twelve-month period, and at
18 any time for basic message telecommunications service, to the
19 extent that the change in the aggregate revenue-weighted price
20 indices does not exceed two percentage points less than the
21 most recent annual change in the gross domestic product price
22 index, as published by the federal government. The board
23 shall establish by rule a penalty mechanism for up to a one
24 percentage point increase in the percentage offset for
25 inadequate service provided by, or insufficient investment
26 made by, the telecommunications utility proposing rate
27 increases pursuant to this section. The board shall establish
28 by rule an incentive mechanism for up to a one percentage
29 point decrease in the percentage offset to encourage
30 infrastructure investment by the telecommunications utility
31 proposing rate increases pursuant to this section. For a
32 telecommunications utility with more than five hundred
33 thousand access lines in this state at the time of electing to
34 become price-regulated under this section, the percentage
35 offset to the change in the gross domestic product price index

1 shall be three percentage points and the penalty mechanism and
2 incentive mechanism shall be up to two percentage points.

3 b. Six years after July 1, 1995, and no more frequently
4 than every three years after that time, the board may by rule
5 increase or decrease the gross domestic product price index
6 percentage offset by a maximum of one percentage point in any
7 twelve-month period to reflect any statewide changes in the
8 productivity experience of the telecommunications industry.
9 The board shall adopt rules identifying the factors that the
10 board may consider in determining changes in the productivity
11 experience of the telecommunications industry. If application
12 of the price regulation index formula achieves a negative
13 result, prices shall be reduced so that the cumulative price
14 change for services identified under subsection 1, including
15 prior price reductions in these services, achieves the
16 negative result.

17 c. Annual, permitted aggregate revenue-weighted price
18 increases for services identified under subsection 1 may be
19 deferred and accumulated for a maximum of three years into a
20 single increase. However, the increase in any individual rate
21 element shall not at any time exceed ten percent or the
22 increase in the gross domestic product price index for the
23 period since the last price increase, whichever is greater. A
24 rate change pursuant to this subsection takes effect forty-
25 five days after the date on which notice is received by the
26 board.

27 d. A price-regulated telecommunications utility may reduce
28 the price for any service identified under subsection 1 to an
29 amount not less than the long-run incremental cost for such
30 service on one day's notice filed with the board.

31 e. A price-regulated telecommunications utility may alter
32 the rate structure for any service identified under subsection
33 1 on ten days' prior notice to the board, provided that the
34 preexisting rate structure continues to be offered to
35 customers.

1 4. a. Upon a complaint filed with the board by an
2 affected party or on the board's own motion, the board may
3 initiate an investigation of a proposed rate change under
4 subsection 3 within sixty days after receiving notice of the
5 proposed change. The board shall issue an order approving,
6 modifying, or rejecting the rate change within one hundred
7 twenty days after initiating the investigation. The board may
8 suspend a proposed rate structure alteration or rate increase
9 pending the issuance of an order under this subsection.

10 b. The board, in conducting an investigation under this
11 subsection, shall consider only the following:

12 (1) Allocations of costs outside of the control of the
13 telecommunications utility to services identified in
14 subsection 1.

15 (2) Competition.

16 (3) Network and service quality, improvement, and
17 maintenance.

18 (4) Changes outside the control of the telecommunications
19 utility in the costs of providing services identified in
20 subsection 1.

21 (5) Impact of the proposed change on the public interest.

22 5. A telecommunications utility shall notify customers of
23 a rate change under this section by a bill insert that is
24 included in a customer billing no later than the first billing
25 provided after the notice of the rate change is submitted to
26 the board.

27 6. a. Five years after a telecommunications utility
28 elects to become price-regulated under this section, the board
29 shall conduct a hearing to determine whether it is in the
30 public interest to continue, suspend, or modify the utility's
31 plan of price regulation. The board shall also review the
32 provisions of this chapter related to price regulation and
33 make a written report to the general assembly concerning any
34 recommended changes in those provisions by no later than
35 December 31 of the year in which a hearing is conducted

1 pursuant to this subsection.

2 b. In making a recommendation to the general assembly
3 under paragraph "a", the board shall identify all of the
4 following:

5 (1) The goals to be achieved, which may include promoting
6 competition, infrastructure deployment, economic development,
7 consumer choice, productivity, efficiency, quality of life,
8 societal goals, or universal service.

9 (2) The action to be taken and how that action is expected
10 to assist in achieving the identified goals.

11 (3) The criteria to be used to evaluate success of the
12 change.

13 c. In making a recommendation to the general assembly
14 under paragraph "a", the board shall also consider if the
15 telecommunications utility is adequately serving geographical
16 areas with diverse-income populations.

17 Sec. 4. NEW SECTION. 476.98 PRICING RESTRICTIONS --
18 IMPUTATION TEST.

19 1. A telecommunications utility shall meet the imputation
20 test in this section if all of the following apply:

21 a. The telecommunications utility has a service offering
22 that competes with an offering of another telecommunications
23 provider.

24 b. The other telecommunications provider's offering
25 utilizes a service, including any unbundled service element or
26 basic network function, from the telecommunication utility
27 that is not available within the relevant market or geographic
28 area under reasonably comparable terms and conditions from any
29 other telecommunications provider.

30 c. The telecommunications utility's own offering uses that
31 same noncompetitive service, or its functional equivalent.

32 2. The price of a telecommunications service subject to an
33 imputation test shall be no less than the total of both of the
34 following:

35 a. The lost contribution of special access, switched

1 access, or other service for its use as an essential facility
2 in the provision of toll, WATS, or other service for which it
3 is a component. The imputation shall be in the aggregate.

4 b. The long-run incremental costs of all other components
5 of the telecommunications utility's service offering,
6 including access charges actually paid.

7 3. A telecommunications provider shall impute to itself
8 its internal cost, plus lost contribution of special access,
9 switched access, or other service, for its use as an essential
10 facility in the provision of toll, WATS, or other service for
11 which it is a component. The imputation shall be in the
12 aggregate.

13 All other providers of intrastate special access, switched
14 access services, toll, WATS, or other competitive service
15 shall impute to themselves in the aggregate their individual
16 cost of special or switched access or its equivalent in their
17 pricing. The board shall resolve any dispute that may arise
18 under this section.

19 Telecommunications services that utilize special or
20 switched access shall be made available for resale by the
21 telecommunications provider offering the service.

22 Sec. 5. NEW SECTION. 476.99 PRICE REGULATION OF
23 INTRASTATE ACCESS SERVICES.

24 1. Except as required to enforce this section, the board
25 shall not review or set the rates for intrastate access
26 services offered by a price-regulated telecommunications
27 utility with more than fifty thousand access lines in use in
28 this state.

29 2. Intrastate access service rates of a price-regulated
30 telecommunications utility with more than fifty thousand
31 access lines in use in this state shall not exceed the
32 utility's interstate rates for similar access services. A
33 price-regulated telecommunications utility shall also reduce
34 its intrastate carrier common line charge so as not to exceed
35 the utility's interstate carrier common line charge. A price-

1 regulated telecommunications utility shall have five years
2 from the date of its election to be price-regulated to meet
3 the requirements of this section.

4 3. This section does not limit the imposition of a
5 surcharge on access service rates, including a surcharge on
6 the carrier common line charge or to a substitute rate
7 element, as a means of collecting the share of the charge on
8 an access customer which is ordered pursuant to section
9 476.107.

10 Sec. 6. NEW SECTION. 476.100 NEW TELECOMMUNICATIONS
11 SERVICES -- TARIFF FILING.

12 1. A telecommunications utility shall not offer a new
13 telecommunications service to the public without first filing
14 a tariff for that offering with the board. A proposed tariff
15 offering a new telecommunications service shall be effective
16 on the date specified in the tariff but not earlier than ten
17 days after the date on which the tariff is filed with the
18 board. The board, upon application of the telecommunications
19 utility, may direct that the tariff for a new
20 telecommunications service be made effective earlier than ten
21 days.

22 2. The board, upon complaint or on its own motion, may
23 modify a tariff filed under this section if the board finds,
24 after opportunity for hearing, that the new telecommunications
25 service is offered in a manner which violates section 476.97,
26 476.98, or 476.99, or is otherwise adverse to the quality of
27 basic local exchange service, business access line and usage
28 service within a local calling area, or access service.

29 3. For purposes of this section, "new telecommunications
30 service" means services that are not offered by the
31 telecommunications utility prior to January 1, 1995, and
32 alternative rate structures offered after December 31, 1994,
33 for any telecommunications service that is offered prior to
34 January 1, 1995, if the rate structure continues to be
35 available to new and existing customers. "New

1 telecommunications service" includes additional functions and
2 features on, and technological alternatives to, any
3 telecommunications service offered prior to January 1, 1995.

4 Sec. 7. NEW SECTION. 476.101 INVESTMENT COMMITMENTS.

5 1. Within sixty days after a telecommunications utility
6 elects to become price-regulated under section 476.97, the
7 telecommunications utility shall file with the board a plan
8 outlining the telecommunications utility's commitment to
9 invest in telecommunications infrastructure improvements in
10 this state over a period of not less than six years. An
11 investment plan filed under this section shall include all of
12 the following:

13 a. A description of the level of planned investment in
14 technology and infrastructure.

15 b. A description of the extent to which planned investment
16 will make new telecommunications technology available to
17 customers or expand the availability of current technology.

18 c. A description of the planned deployment of state-of-
19 the-art infrastructure facilities and broadband capabilities.

20 d. Target dates for the deployment of the planned
21 technology and infrastructure improvements.

22 2. A telecommunications utility shall annually provide a
23 written progress report to the board concerning the
24 telecommunications utility's investment in and deployment of
25 infrastructure enhancements. The report shall also include
26 financial data concerning the financial performance of the
27 telecommunications utility. The board shall not establish
28 reporting requirements for a telecommunications utility under
29 a plan of price regulation which are more onerous than the
30 requirements which applied to the telecommunications utility
31 under rate-of-return regulation.

32 Sec. 8. NEW SECTION. 476.102 SERVICE DISCONTINUED BY
33 TELECOMMUNICATIONS UTILITY.

34 A telecommunications utility may discontinue a
35 telecommunication service to a local exchange area if the

1 board finds any of the following:

2 1. The service is optional and not essential to the
3 provision of basic local exchange service, business access
4 line and usage service within a local calling area, or access
5 services.

6 2. The telecommunications utility is furnishing reasonable
7 alternative services to customers in the exchange.

8 3. One or more other telecommunications providers, whether
9 or not the telecommunications providers are telecommunications
10 utilities or otherwise subject to this chapter, are furnishing
11 substantially the same telecommunications service, or
12 reasonable alternative services, to customers in the exchange.

13 Sec. 9. NEW SECTION. 476.103 PROHIBITED ACTS.

14 A telecommunications utility providing basic local exchange
15 service shall not do any of the following:

16 1. Discriminate against another telecommunications utility
17 or long distance carrier by refusing or delaying access to the
18 local exchange.

19 2. Refuse or delay interconnections or provide inferior
20 interconnections to another telecommunications provider to the
21 extent that facilities are available.

22 3. Use basic local exchange service rates, directly or
23 indirectly, to subsidize or offset the costs of other products
24 or services offered by the telecommunications utility. In
25 determining whether a basic local exchange service rate is
26 subsidizing or offsetting the costs of other products or
27 services offered by the telecommunications utility, the board
28 shall consider the long-run incremental cost, as defined in
29 section 476.105, of the service alleged to be subsidized.

30 4. Degrade the quality of access provided to another
31 telecommunications provider.

32 5. Fail to fully disclose in a timely manner, upon request
33 of the board or consumer advocate, all available information
34 necessary for the design of equipment that will meet the
35 specifications of the telecommunications network within the

1 local exchange area.

2 6. Sell services or products, extend credit, or offer
3 other terms and conditions to an affiliate of the
4 telecommunications provider which are more favorable than
5 those offered to others.

6 Sec. 10. NEW SECTION. 476.104 INTERLATA AND INTRALATA
7 CERTIFICATION.

8 1. A telecommunications utility, which is restricted under
9 federal law or any consent decree approved by a federal
10 district court, shall not provide interlata service before the
11 availability of presubscription on an intralata basis in all
12 of its exchanges except those exchanges where it is not
13 technically feasible to offer intralata presubscription due to
14 the action or inaction of a switch vendor. A
15 telecommunications utility which is subsequently allowed to
16 provide interlata service as a result of the removal of any
17 restrictions and the satisfaction of the conditions of this
18 subsection, shall notify the board of its intent to provide
19 such service no less than sixty days prior to offering the
20 service.

21 2. Notwithstanding subsection 1, the board may suspend the
22 telecommunications utility's authority to provide such service
23 after consideration of the following:

24 a. Whether the provision of such service is in the public
25 interest.

26 b. Whether the utility will provide interconnection to its
27 local exchange area under reasonable terms and conditions.

28 c. Whether the utility will permit appropriate resale and
29 sharing of its services.

30 d. Whether the utility will provide unbundled services
31 under reasonable terms and conditions.

32 e. Whether competition in the interlata marketplace will
33 be enhanced or hindered.

34 3. The board may impose terms and conditions upon the
35 telecommunications utility in permitting the offering of such

1 services which are necessary to protect the public interest
2 and promote competition.

3 4. The board shall not authorize a telecommunications
4 provider other than the certificated local exchange
5 telecommunications utility to be presubscribed to handle
6 interexchange calls within local market areas as defined by
7 the board or in local access and transport areas as
8 established under federal court order unless the current
9 certificated local exchange telecommunications utility is
10 authorized, without exception, to complete interexchange calls
11 between all local market areas and local access and transport
12 areas on a presubscribed basis.

13 Sec. 11. NEW SECTION. 476.105 LONG-RUN INCREMENTAL COST.

14 As used in this division, long-run incremental cost is
15 equal to either of the following:

16 1. The total forward-looking costs, using least cost
17 technology that reasonably can be implemented based on
18 currently available technology, of a telecommunications
19 service, relevant group of services, or basic network function
20 that would be avoided if the telecommunications provider had
21 never offered the telecommunications service, group of
22 services, or basic network function.

23 2. The total cost that the telecommunications provider
24 would incur if it were to initially offer the
25 telecommunications service, group of services, or basic
26 network function for the entire current demand, given that the
27 telecommunications provider already produces all of its other
28 services.

29 Sec. 12. NEW SECTION. 476.106 ELECTRONIC PUBLISHING.

30 1. Except for public service information such as time and
31 temperature or directory information, a telecommunications
32 provider shall not provide electronically published news,
33 feature or entertainment material of the type generally
34 published in newspapers, or electronic advertising services,
35 except through an electronic publishing subsidiary or

1 affiliate. A telecommunications provider, without editing
2 content, may resell news, or feature or entertainment material
3 of the type generally published in newspapers, if the news or
4 material is purchased from an unaffiliated entity or from an
5 electronic publishing subsidiary or affiliate that makes the
6 material available to all other persons under the same rates,
7 terms, and conditions.

8 2. This section does not prohibit a telecommunications
9 provider from electronically advertising its own services or
10 from providing tariffed telecommunications services to a
11 subsidiary, affiliate, or unaffiliated entity that provides
12 electronically published news, features or entertainment
13 material, or electronic advertising services.

14 3. Services subject to this section are not subject to any
15 other provision in this chapter.

16 4. The board may adopt rules which establish the elements
17 necessary to demonstrate that an electronic publishing
18 subsidiary or affiliate is sufficiently independent of a
19 telecommunications provider. Elements may include the makeup
20 of the board of directors of the subsidiary or affiliate and
21 the amount of information, facilities, or other resources that
22 are shared by the telecommunications provider and the
23 subsidiary or affiliate.

24 Sec. 13. NEW SECTION. 476.107 UNIVERSAL SERVICE.

25 1. UNIVERSAL SERVICE DEFINED. As used in this chapter,
26 unless the context otherwise requires, "universal service"
27 includes the availability of a basic set of essential
28 telecommunications services and access to advanced service
29 capabilities anywhere in this state.

30 2. ESSENTIAL SERVICES. Before January 1, 1996, and
31 biennially thereafter, the board shall adopt rules that define
32 a basic set of essential telecommunications services that
33 shall be available to all customers at affordable prices and
34 that are a necessary component of universal service. These
35 essential services shall be based on market, social, economic

1 development, and infrastructure development principles rather
2 than on specific technologies or providers. For rules adopted
3 before January 1, 1996, a reasonable time for the availability
4 of the defined set of service capabilities shall be not later
5 than January 1, 2000, and, for rules adopted after January 1,
6 1996, a reasonable time for the availability of additional
7 service capabilities in the defined set shall be no later than
8 seven years after the effective date of the rules.

9 3. ADMINISTRATION OF UNIVERSAL SERVICE FUND.

10 a. The board may hold a hearing on the need for universal
11 service support and upon a finding that a need exists for a
12 universal service fund, the board shall do all of the
13 following:

14 (1) Direct the establishment of the universal service
15 fund.

16 (2) Contract for the administration of the universal
17 service fund.

18 (3) Obtain an annual independent audit of the universal
19 service fund.

20 (4) Require that moneys in the universal service fund be
21 used only for the following purposes:

22 (a) To assist customers located in areas of this state
23 that have relatively high costs of telecommunications
24 services, and low-income customers and disabled customers in
25 obtaining affordable access to a basic set of essential
26 telecommunications services.

27 (b) To assist in the deployment of advanced service
28 capabilities of a modern telecommunications infrastructure
29 throughout the state.

30 (c) To promote affordable access throughout this state to
31 high-quality education, library, and health care information
32 services.

33 (d) To administer the universal service fund.

34 (5) Adopt rules to determine whether a telecommunications
35 provider, the customers of a telecommunications provider, or

1 another person shall be assisted by the universal service fund
2 for any use under paragraph "a". Only a telecommunications
3 provider who has an obligation to serve under their
4 certificate of public convenience and necessity pursuant to
5 section 476.29 shall directly benefit from assistance from the
6 universal service fund.

7 (6) Consider all of the following in establishing the
8 services and equipment which may be assisted by the universal
9 service fund:

10 (a) The impact of the assistance on all members of the
11 public and the telecommunications industry.

12 (b) Eligibility requirements for assistance recipients.

13 (c) The costs of administering the assistance.

14 (d) The extent to which the fund preserves and promotes an
15 available and affordable basic set of essential
16 telecommunications services, encourages access to the advanced
17 service capabilities of a modern telecommunications
18 infrastructure throughout the state, and promotes economic
19 development.

20 b. The board shall not use funds from the universal
21 service fund to subsidize the operation of or a connection to
22 the Iowa communications network.

23 4. CONTRIBUTIONS TO THE FUND.

24 a. (1) The board shall require all telecommunications
25 providers to contribute to the universal service fund
26 beginning on January 1, 1996.

27 (2) The board may require a person other than a
28 telecommunications provider to contribute to the universal
29 service fund if, after notice and opportunity for hearing, the
30 board determines that the person is offering a nontraditional
31 broadcast service in this state that competes with a
32 telecommunications service provided in this state for which a
33 contribution is required under this section.

34 (3) The board shall designate the method by which the
35 contributions under this lettered paragraph "a" shall be

1 calculated and collected. Contributions shall be based only
2 on the gross operating revenues from the retail provision of
3 broadcast services identified by the board under subparagraph
4 (2) and on retail or end-user intrastate telecommunications
5 services in this state of the telecommunications providers
6 subject to the contribution.

7 b. The board shall designate by rule the providers or
8 other persons subject to paragraph "a" and the required rates
9 of contribution.

10 c. In determining the contributions to be assessed under
11 paragraph "a", the board shall consider all of the following:

12 (1) The impact of the contributions on all members of the
13 public and the telecommunications industry.

14 (2) The fairness of the amount of the contributions and
15 the methods of collection.

16 (3) The costs of administering the collection of the
17 contributions.

18 5. RULES REVIEW. At least biennially, the board shall
19 review and revise, as appropriate, rules adopted under this
20 section.

21 6. ANNUAL REPORT. The board shall submit annually a
22 universal service fund report to the general assembly. The
23 report shall include information about all of the following:

24 a. The affordability of and accessibility to a basic set
25 of essential telecommunications services.

26 b. The affordability of and accessibility to high-quality
27 education, library, and health care information services.

28 c. Financial assistance provided under the universal
29 service fund.

30 7. PENALTIES.

31 a. A telecommunications provider who fails or refuses to
32 pay the contribution required under subsection 3 may be
33 assessed an administrative penalty by the board of not less
34 than one hundred dollars nor more than ten thousand dollars.
35 Each day of continued violation constitutes a separate

1 offense.

2 b. The board, in determining the amount of the
3 administrative penalty to be assessed, shall consider all of
4 the following:

5 (1) The appropriateness of the forfeiture to the volume of
6 business of the telecommunications provider.

7 (2) The gravity of the violation.

8 (3) Any good faith attempt to achieve compliance after the
9 telecommunications provider or an officer, agent, or employee
10 of the telecommunications provider receives notice of the
11 violation.

12 (4) The financial gain sought by the telecommunications
13 provider by not paying the contribution required under
14 subsection 4.

15 Sec. 14. NEW SECTION. 476.108 REQUIRED INTERCONNECTION.

16 A telecommunications provider which owns, leases, or
17 otherwise controls facilities used in the provision of basic
18 local exchange or interexchange telephone service and which is
19 certificated by the board to offer these services, shall
20 permit connections to be made between its facilities and those
21 of another certificate holder under terms and conditions which
22 are nondiscriminatory under like conditions. If an agreement
23 on these terms and conditions, including an appropriate
24 interconnection charge, is not reached between the affected
25 telecommunications providers, either provider may apply to the
26 board to resolve the matter.

27 Sec. 15. Section 476.29, Code 1995, is amended to read as
28 follows:

29 476.29 CERTIFICATES FOR PROVIDING LOCAL TELECOMMUNICATIONS
30 SERVICES.

31 1. ~~After-September-30-1992~~-a-utility A
32 telecommunications provider, other than an alternative
33 telecommunications utility, must have a certificate of public
34 convenience and necessity issued by the board before
35 furnishing land-line local telephone service in this state.

1 No lines or equipment shall be constructed, installed, or
2 operated for the purpose of furnishing the service before a
3 certificate has been issued. Alternative telecommunications
4 utilities, other than commercial radio mobile service
5 providers, personal communications service providers, radio
6 common carriers, or other commercial wireless providers
7 regulated by the federal communications commission, must
8 obtain a certificate of authority before furnishing any
9 telecommunications services or products in this state. As
10 used in this section, a certificate refers to both a
11 certificate of public convenience and assembly and a
12 certificate of authority.

13 2. The board shall require an applicant for a certificate
14 of authority to identify its service area, the types of
15 services to be offered, a statement showing proof of financial
16 viability, a statement of compliance with the rules of
17 standardization and operating procedures, and a statement of
18 compliance with the board's requirements for quality of
19 service. The board shall neither deny nor revoke a
20 certificate of authority of any telecommunications provider
21 except for failure to comply with the requirements of this
22 subsection.

23 ~~2. 3. Except as provided in subsection 127, a~~ A certificate
24 shall be issued by the board, after notice and opportunity for
25 hearing, if the board determines that the service proposed to
26 be rendered will promote the public convenience and necessity.
27 The board may establish reasonable conditions or restrictions
28 on the certificate at the time of issuance.

29 ~~3. 4. A certificate is transferable, subject to approval~~
30 ~~of the board pursuant to section 476.20, subsection 17 and for~~
31 ~~purposes of a rate regulated local exchange utility shall be~~
32 ~~treated by the board in the same manner as a reorganization~~
33 ~~pursuant to sections 476.76 and 476.77.~~

34 4. 5. Each A certificate of public convenience and
35 necessity in effect on December 31, 1994, for a

1 telecommunications utility shall remain in effect and the
2 utility shall continue offering or providing service to the
3 extent of the prior authorization. The certificate of public
4 convenience and necessity shall define the service territory
5 in which ~~land-line-local-telephone-service-will-be-provided~~
6 the utility has an obligation to serve, unless explicitly
7 excepted from this requirement by the board. The service
8 territory shall be shown on maps and other documentation as
9 the board may require to be filed with the board. ~~The board~~
10 ~~shall-by-rule-specify-the-style-size-and-kind-of-map-or~~
11 ~~other-documentation-and-the-information-to-be-shown. A~~
12 telecommunications utility holding a certificate of public
13 convenience and necessity may apply for a certificate of
14 authority to provide telecommunications services in areas
15 other than the defined service territory contained in its
16 certificate of public convenience and necessity.

17 ~~5- 6. Each local-exchange-utility-has-an-obligation-to~~
18 ~~serve-all-eligible-customers-within-the-utility's-service~~
19 ~~territory,-unless-explicitly-excepted-from-this-requirement-by~~
20 ~~the-board. The authority of every telecommunications utility~~
21 ~~with a certificate or an amended certificate under this~~
22 ~~section is statewide and nonexclusive. The existence of a~~
23 ~~certificate of authority or amended certificate of authority~~
24 ~~or the issuance of a certificate of authority or amended~~
25 ~~certificate of authority to any telecommunications provider~~
26 ~~shall not preclude the board from authorizing additional~~
27 ~~telecommunications providers to provide the same or equivalent~~
28 ~~service within the same territory.~~

29 ~~6- 7. The certificate and tariffs approved by the board~~
30 ~~are the only authority required for the utility to furnish~~
31 ~~land-line local telephone service. However, to the extent not~~
32 ~~inconsistent with this section, the power to regulate the~~
33 ~~conditions required and manner of use of the highways,~~
34 ~~streets, rights-of-way, and public grounds remains in the~~
35 ~~appropriate public authority.~~

1 7- 8. The inclusion of any facilities or service territory
2 of a ~~local-exchange~~ telecommunications utility within the
3 boundaries of a city does not impair or affect the rights of
4 the utility to provide land-line local telephone service in
5 the utility's service territory.

6 8--~~An-agreement-between-local-exchange-utilities-to~~
7 ~~designate-service-territory-boundaries-and-customers-to-be~~
8 ~~served-by-the-utilities,-or-for-exchange-of-customers-between~~
9 ~~utilities,-when-approved-by-the-board-after-notice-to-affected~~
10 ~~persons-and-opportunity-for-hearing,-is-valid-and-enforceable~~
11 ~~and-shall-be-incorporated-into-the-appropriate-certificates,-~~
12 ~~The-board-shall-approve-an-agreement-if-the-board-finds-the~~
13 ~~agreement-will-result-in-adequate-service-to-all-areas-and~~
14 ~~customers-affected-and-is-in-the-public-interest,-~~

15 9. A certificate may, after notice and opportunity for
16 hearing, may be revoked by the board for failure of a utility
17 telecommunications provider to furnish reasonably adequate
18 telephone service and facilities. The board may also order a
19 revocation affecting less than the entire service territory,
20 or may place appropriate conditions on a utility
21 telecommunications provider to ensure reasonably adequate
22 telephone service. Prior to revocation proceedings, the board
23 shall notify the utility telecommunications provider of any
24 inadequacies in its service and facilities and allow the
25 utility telecommunications provider a reasonable time to
26 eliminate the inadequacies.

27 10. ~~In-the-event-that~~ If eighty percent or more of the
28 subscribers in a community served by a ~~local-exchange-utility~~
29 telecommunications provider sign a petition indicating they
30 are adversely affected by school reorganization or economic
31 dislocation and prefer to have their local telephone service
32 provided by a different ~~local-exchange-utility~~
33 telecommunications provider and file that petition with the
34 board, the board, after notice and opportunity for hearing,
35 shall determine whether the certificate of public convenience

1 and necessity held by the ~~local-exchange-utility~~
2 telecommunications provider shall be revoked or conditioned as
3 provided in subsection 9.

4 11. The board shall assure that all territory in the state
5 is served by a ~~local-exchange-utility~~ telecommunications
6 provider. If at any time due to certificate of public
7 convenience and necessity revocation proceedings,
8 discontinuance of service proceedings, or any other reason, it
9 appears that a particular territory may not be served by any
10 ~~local-exchange-utility~~ telecommunications provider, the board
11 may, after notice to interested persons and opportunity for
12 hearing, include all or part of the territory in the
13 certificate of public convenience and necessity of another
14 ~~local-exchange-utility-or-utilities~~ telecommunications
15 provider or providers. In determining the ~~local-exchange~~
16 ~~utility-or-utilities~~ telecommunications provider or providers
17 to be authorized or required to serve, the board shall
18 consider the willingness and ability of the utilities
19 telecommunications provider or providers to serve, the
20 location of existing service facilities, the community of
21 interest of the customers involved, and any other factors
22 deemed relevant to the public interest.

23 ~~12.--The board, on or prior to September 30, 1992, shall~~
24 ~~issue to each local-exchange-utility in the state, without a~~
25 ~~contested case proceeding, a nonexclusive certificate to serve~~
26 ~~the area included within the utility's service territory~~
27 ~~boundaries as shown by the service territory boundary maps on~~
28 ~~record with the board on January 1, 1992.--The board shall~~
29 ~~adopt rules pursuant to chapter 17A to implement the issuance~~
30 ~~of certificates.~~

31 ~~a.--A customer served by a local-exchange-utility, but~~
32 ~~outside the service territory of that utility when the~~
33 ~~utility's certificate is issued, shall continue to be served~~
34 ~~by that utility for as long as that customer remains eligible~~
35 ~~to receive and requests service.~~

~~1 b. If more than one utility has on file maps indicating~~
~~2 service in the same territory, the board shall request the~~
~~3 involved utilities to resolve the overlap. If the overlap is~~
~~4 not resolved in a reasonable time, the board, after notice to~~
~~5 interested persons and opportunity for hearing, shall~~
~~6 determine the boundary, taking into consideration the criteria~~
~~7 listed in subsection 11.~~

8 ~~13.~~ 12. Whenever the board or the consumer advocate deems
9 it necessary to carry out duties related to the implementation
10 of this section, the board or consumer advocate may contract
11 for necessary services with persons who are not state
12 employees including, but not limited to, cartographers,
13 engineers, and surveyors. The cost of services contracted for
14 shall not be paid from appropriated funds, but shall be
15 assessed pro rata to all utilities telecommunications
16 providers receiving certificates of public convenience and
17 necessity based on the number of each utility's access lines
18 gross operating revenues from the provision of retail or end-
19 user intrastate telecommunications services in this state.

20 ~~14.~~ 13. This section does not prevent the board from
21 adopting rules requiring or allowing ~~local exchange rate-~~
22 regulated telecommunications utilities to provide extended
23 area service or adjacent exchange service.

24 ~~15.~~ 14. The board shall provide a written report to the
25 general assembly no later than January 20, 2005, describing
26 the current status of local telephone service in this state.
27 The report shall include at a minimum the number of
28 certificates of convenience and necessity issued, the number
29 of current providers of local telephone service, and any other
30 information deemed appropriate by the board.

31 Sec. 16. Section 476.74, subsection 5, Code 1995, is
32 amended to read as follows:

33 5. EXEMPTION. The provisions of this section requiring
34 filing of contracts or agreements with the board shall not
35 apply to telecommunications providers regulated under section

1 476.97 or to transactions with an affiliate where the amount
2 of consideration involved is not in excess of fifty thousand
3 dollars or five percent of the capital equity of the utility,
4 whichever is smaller. However, regularly recurring payments
5 under a general or continuing arrangement which aggregate a
6 greater annual amount shall not be broken down into a series
7 of transactions to come within this exemption. In any
8 proceeding involving the rates, charges or practices of the
9 public utility, the board may exclude from the accounts of the
10 public utility any unreasonable payment or compensation made
11 pursuant to any contract or arrangement which is not required
12 to be filed under this subsection.

13 Sec. 17. Section 476.75, Code 1995, is amended to read as
14 follows:

15 476.75 AUDITS REQUIRED.

16 The board may periodically retain a nationally or
17 regionally recognized independent auditing firm to conduct an
18 audit of the transactions between a public utility, other than
19 a telecommunications utility, and its affiliates. An
20 affiliate transaction audit shall not be conducted more
21 frequently than every three years, unless ordered by the board
22 for good cause. The cost of the audit shall be paid by the
23 public utility to the independent auditing firm and shall be
24 included in its regulated rates and charges, unless otherwise
25 ordered by the board for good cause after providing the public
26 utility the opportunity for a hearing on the board's decision.

27 Sec. 18. Section 476.76, Code 1995, is amended to read as
28 follows:

29 476.76 REORGANIZATION DEFINED.

30 For purposes of this division unless the context otherwise
31 requires, "reorganization" means either of the following:

32 1. The acquisition, sale, lease, or any other disposition,
33 directly or indirectly, including by merger or consolidation,
34 of the whole or any substantial part of a public utility's
35 assets.

1 2. The purchase or other acquisition or sale or other
2 disposition of the controlling capital stock of any public
3 utility, other than a telecommunications utility, either
4 directly or indirectly.

5 Sec. 19. DIRECTIONS TO CODE EDITOR. The Code editor shall
6 codify sections 476.95 through 476.108 as a new division in
7 chapter 476 entitled "Alternative Regulation of
8 Telecommunications Utilities".

9

EXPLANATION

10 This bill relates to the regulation of telecommunications
11 by establishing incentive and price regulation for
12 telecommunications providers, price restrictions for certain
13 services, required investment commitments, a universal service
14 fund, and certain other requirements.

15 New section 476.95 establishes definitions used in the
16 bill.

17 New section 476.96 establishes incentive regulation for
18 telecommunications utilities. The board may suspend any of
19 the provisions in chapter 476 or may approve a regulatory
20 method alternative to traditional rate-of-return regulation
21 that does not require suspension of any provisions in chapter
22 476 for the purpose of providing incentives for
23 telecommunications utilities to achieve goals which may
24 include promoting competition, infrastructure deployment,
25 economic development, consumer choice, productivity,
26 efficiency, quality of life, societal goals, or universal
27 telephone service.

28 New section 476.97 provides that a telecommunications
29 utility may elect to become price-regulated under the section.
30 The section provides for the setting of initial rates for
31 services which may be subject to price regulation including
32 basic local exchange service, standard business access lines
33 and usage by businesses with no more than three access lines,
34 and basic message telecommunications service. The section
35 provides that five years after a telecommunications utility

1 elects to become price-regulated under this section, the board
2 is to conduct a hearing to determine whether it is in the
3 public interest to continue, suspend, or modify the plan of
4 price regulation under which the telecommunications utility
5 operates. The board is also to review existing statutory
6 language related to price regulation and file a written report
7 with the general assembly concerning any recommendations of
8 the board relating to that language. The board shall report
9 its recommendations to the general assembly by December 31 of
10 the year in which the initial hearing is held under the
11 section.

12 New section 476.98 establishes an imputation test for
13 establishing a price below which certain services offered by
14 telecommunications utilities may not be priced.

15 New section 476.99 provides for the price regulation of
16 intrastate access services.

17 New section 476.100 provides that a telecommunications
18 utility shall not offer a new telecommunications service to
19 the public without first filing a tariff for that offering
20 with the board.

21 New section 476.101 establishes certain investment
22 requirements for telecommunications utilities electing to be
23 price-regulated.

24 New section 476.102 establishes criteria under which a
25 telecommunications utility may discontinue a service.

26 New section 476.103 establishes certain acts which a
27 telecommunications utility is prohibited from engaging in.

28 New section 476.104 provides that a telecommunications
29 utility, which is restricted under federal law or any consent
30 decree approved by a federal district court, shall not provide
31 interlata service before the availability of presubscription
32 on an intralata basis in all of its exchanges except those
33 exchanges where it is not technically feasible to offer
34 intralata presubscription due to the action or inaction of a
35 switch vendor. Interlata service means toll service that

1 originates and terminates between local access transport area,
2 and intralata service means toll service that originates and
3 terminates within the same local access transport area. The
4 section also provides that a telecommunications utility, which
5 is subsequently allowed to provide interlata service as a
6 result of the removal of any restrictions and the satisfaction
7 of the conditions of this subsection, shall notify the board
8 of its intent to provide such service no less than 60 days
9 prior to offering the service.

10 New section 476.105 creates a definition for long-run
11 incremental cost.

12 New section 476.106 provides that except for public service
13 information such as time and temperature or directory
14 information, a telecommunications provider may not provide
15 electronically published news, feature or entertainment
16 material of the type generally published in newspapers, or
17 electronic advertising services, except through an electronic
18 publishing subsidiary or affiliate. The section provides that
19 a telecommunications provider may without editing content,
20 resell news, or feature or entertainment material of the type
21 generally published in newspapers, if the news or material is
22 purchased from an unaffiliated entity or from an electronic
23 publishing subsidiary or affiliate that makes the material
24 available to all other persons under the same rates, terms,
25 and conditions.

26 New section 476.107 defines universal service and provides
27 for the creation of a universal service fund upon a finding by
28 the board that a need exists for such fund. The fund is to be
29 used to assist customers located in areas of this state that
30 have relatively high costs of telecommunications services, and
31 low-income customers and disabled customers in obtaining
32 affordable access to a basic set of essential
33 telecommunications services; to assist in the deployment of
34 advanced service capabilities of a modern telecommunications
35 infrastructure throughout the state; to promote affordable

1 access throughout this state to high-quality education,
2 library and health care information services; and to
3 administer the universal service fund. Funds from the
4 universal service fund shall not be used to subsidize the
5 operation of or a connection to the Iowa communications
6 network.

7 New section 476.108 provides that a telecommunications
8 provider who owns, leases, or otherwise controls facilities
9 used in the provision of local exchange or interexchange
10 telephone service and is certificated by the board to offer
11 these services must permit connections to be made between its
12 facilities and those of another certificate holder under terms
13 and conditions which are nondiscriminatory under like
14 conditions.

15 Conforming amendments are made to sections 476.29, 476.74,
16 476.75, and 476.76.

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