

*Substituted
for H. 7. 518*

FILED MAR 20 1995

WITHDRAWN *4/28/95
(P. 1520)*

SENATE FILE 411
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 58)

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

A BILL FOR

1 An Act relating to authorization of price regulation for
2 utilities providing communications services.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 411

WITHDRAWN

1 Section 1. Section 476.3, subsection 2, Code 1995, is
2 amended by adding the following new unnumbered paragraph:
3 NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions
4 of this subsection, the consumer advocate shall not file a
5 petition under this subsection which alleges that a utility's
6 rates are excessive while the utility is participating in a
7 price regulation plan approved by the board pursuant to
8 section 476.30B.

9 Sec. 2. NEW SECTION. 476.30 FINDINGS -- STATEMENT OF
10 POLICY.

11 The general assembly finds all of the following:

12 1. Communications services should be available throughout
13 the state at just, reasonable, and affordable rates.

14 2. Regulatory flexibility is appropriate when competition
15 provides consumers with choices in the variety, quality, and
16 pricing of communications services, and when consistent with
17 consumer protection and other relevant public interests.

18 3. The utilities board should respond rapidly and with
19 flexibility to changes in the communications industry.

20 4. Economic development can be fostered by advanced
21 communications networks.

22 Sec. 3. NEW SECTION. 476.30A DEFINITIONS.

23 As used in sections 476.30 through 476.30B, unless the
24 context otherwise requires:

25 1. "Essential communications service" includes at a
26 minimum, basic local telephone service, switched access, 911
27 and E-911 services, and relay service for communications-
28 impaired persons. The board may classify by rule other
29 communications services as essential communications services
30 consistent with community expectations and the public
31 interest.

32 2. "Nonessential communications services" means all
33 communications services subject to the board's jurisdiction
34 not defined or classified either by statute or by rule as
35 essential communications services. Consistent with community

1 expectations and the public interest, the board may reclassify
2 by rule as nonessential those communications services
3 previously classified by rule as essential.

4 Sec. 4. NEW SECTION. 476.30B PRICE REGULATION.

5 1. Notwithstanding contrary provisions of this chapter
6 relating to rate regulation, the board may adopt rules
7 relating to price regulation for rate-regulated utilities
8 furnishing communications services.

9 2. If rules for price regulation are adopted, a rate-
10 regulated utility certified under section 476.29 shall submit
11 a plan for price regulation specific to that utility. The
12 board, after notice and opportunity for hearing, may approve,
13 modify, or reject the plan.

14 3. A price regulation plan shall, at a minimum, include
15 provisions for all of the following:

16 a. Establishing and changing prices, terms, and conditions
17 for essential communications services.

18 b. Establishing and changing prices, terms, and conditions
19 for nonessential communications services.

20 c. Reporting new service offerings to the board.

21 d. Reflecting changes in revenues, expenses, and
22 investment due to exogenous factors beyond the control of the
23 utility in the rates charged by the utility.

24 e. Modernizing the utility's telecommunications
25 infrastructure.

26 4. The board shall consider the extent to which a proposed
27 plan achieves the following:

28 a. Just, nondiscriminatory, and reasonable rates.

29 b. High quality, universally available communications
30 services.

31 c. Investment in communications infrastructure, efficiency
32 improvements, and technological innovation.

33 d. Introduction of new communications products and
34 services.

35 e. Regulatory efficiency, including reduction of

1 regulatory costs and delays.

2 5. The board shall have authority over all of the
3 following:

4 a. The level, extent, and timing of the unbundling of
5 services by the local exchange utility.

6 b. Ensuring against cross subsidization of nonessential
7 services by essential services.

8 6. Any person may file a complaint pursuant to section
9 476.3, subsection 1, regarding a utility's operation under its
10 price regulation plan.

11 7. The consumer advocate may represent consumers before
12 the utilities board regarding any rule, order, or proceeding
13 pertaining to price regulation. The consumer advocate may act
14 as attorney for and represent consumers generally before any
15 state or federal court concerning a utilities board rule,
16 order, or proceeding pertaining to price regulation.

17 8. In implementing price regulation, the board shall
18 consider methods to assist low-income Iowans to secure and
19 retain telephone services.

20 9. The board shall review a utility's operation under its
21 plan, with notice and an opportunity for hearing, prior to the
22 termination of the plan or within five years of the initiation
23 of the plan, whichever comes first.

24 Sec. 5. NEW SECTION. 476.30C PROHIBITED ACTS.

25 A utility under a price regulation plan shall not do any of
26 the following:

27 1. Discriminate against another provider of communications
28 services by refusing or delaying access to regulated services
29 or in the pricing of regulated services.

30 2. Degrade the quality of access or service provided to
31 another provider of communications services.

32 3. Fail to disclose in a timely manner, upon request and
33 pursuant to a protective agreement concerning proprietary
34 information, all information reasonably necessary for the
35 design of network interface equipment or network interface

1 services that will meet the specifications of the
2 participating utility's local exchange network.

3 Sec. 6. REPORT. The utilities board shall submit a report
4 to the general assembly no later than January 15, 1999,
5 concerning the implementation of price regulation for
6 utilities furnishing communications services.

7 EXPLANATION

8 The bill provides the utilities board with the authority to
9 adopt rules to implement price regulation for rate-regulated
10 telephone companies. The bill provides that the board is to
11 consider the extent to which a proposed plan achieves just,
12 nondiscriminatory, and reasonable rates; high quality,
13 universally available communications services; investment in
14 communications infrastructure, efficiency improvements, and
15 technological innovation; the introduction of new
16 communications products and services; and regulatory
17 efficiency, including reduction of regulatory costs and
18 delays. The consumer advocate is authorized to represent
19 consumers before the utilities board regarding any proceeding
20 pertaining to price regulation. In implementing price
21 regulation, the board is directed to consider methods to
22 assist low-income Iowans in securing and retaining telephone
23 services.

24 The bill defines essential communications services to
25 include at a minimum, basic local telephone service, switched
26 access, 911 and E-911 services, and relay service for
27 communications-impaired persons. Nonessential communications
28 services are defined as all communications services subject to
29 the board's jurisdiction not deemed either by statute or by
30 rule as essential communications services.

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SENATE FILE 411

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1 Amend Senate File 411 as follows:
2 1. By striking everything after the enacting
3 clause and inserting the following:
4 "Section 1. Section 476.3, subsection 2, Code
5 1995, is amended by adding the following new
6 unnumbered paragraph:
7 NEW UNNUMBERED PARAGRAPH. Notwithstanding the
8 provisions of this subsection, the consumer advocate
9 shall not file a petition under this subsection that
10 alleges a local exchange carrier's rates are excessive
11 while the local exchange carrier is participating in a
12 price regulation plan approved by the board pursuant
13 to section 476.30B.
14 Sec. 2. Section 476.10, unnumbered paragraph 4,
15 Code 1995, is amended to read as follows:
16 Whenever the board shall deem it necessary in order
17 to carry out the duties imposed upon it in connection
18 with rate regulation under section 476.6,
19 investigations under section 476.3, or review
20 proceedings under section 476.31, the board may employ
21 additional temporary or permanent staff, or may
22 contract with persons who are not state employees for
23 engineering, accounting, or other professional
24 services, or both. The costs of these additional
25 employees and contract services shall be paid by the
26 public utility whose rates are being reviewed in the
27 same manner as other expenses are paid under this
28 section. Beginning on July 1, 1991, there is
29 appropriated out of any funds in the state treasury
30 not otherwise appropriated, such sums as may be
31 necessary to enable the board to hire additional staff
32 and contract for services under this section. The
33 board shall increase quarterly assessments specified
34 in unnumbered paragraph 2, by amounts necessary to
35 enable the board to hire additional staff and contract
36 for services under this section. The authority to
37 hire additional temporary or permanent staff that is
38 granted to the board by this section shall not be
39 subject to limitation by any administrative or
40 executive order or decision that restricts the number
41 of state employees or the filling of employee
42 vacancies, and shall not be subject to limitation by
43 any law of this state that restricts the number of
44 state employees or the filling of employee vacancies
45 unless that law is made applicable to this section by
46 express reference to this section. Before the board
47 expends or encumbers an amount in excess of the funds
48 budgeted for rate regulation and before the board
49 increases quarterly assessments pursuant to this
50 paragraph, the director of the department of

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1 management shall approve the expenditure or
2 encumbrance. Before approval is given, the director
3 of the department of management shall determine that
4 the expenses exceed the funds budgeted by the general
5 assembly to the board for rate regulation and that the
6 board does not have other funds from which the
7 expenses can be paid. Upon approval of the director
8 of the department of management the board may expend
9 and encumber funds for the excess expenses, and
10 increase quarterly assessments to raise the additional
11 funds. The board and the office of consumer advocate
12 may add additional personnel or contract for
13 additional assistance to review and evaluate energy
14 efficiency plans and the implementation of energy
15 efficiency programs including, but not limited to,
16 professionally trained engineers, accountants,
17 attorneys, skilled examiners and inspectors, and
18 secretaries and clerks. The board and the office of
19 consumer advocate may also contract for additional
20 assistance in the evaluation and implementation of
21 issues relating to telecommunication competition. The
22 board and the office of the consumer advocate may
23 expend additional sums beyond those sums appropriated.
24 However, the authority to add additional personnel or
25 contract for additional assistance must first be
26 approved by the department of management. The
27 additional sums for energy efficiency shall be
28 provided to the board and the office of the consumer
29 advocate by the utilities subject to the energy
30 efficiency requirements in this chapter. Telephone
31 companies shall pay any additional sums needed for
32 assistance with telecommunication competition issues.
33 The assessments shall be in addition to and separate
34 from the quarterly assessment.

35 Sec. 3. Section 476.11, Code 1995, is amended by
36 adding the following new unnumbered paragraph:

37 NEW UNNUMBERED PARAGRAPH. The board may resolve
38 complaints, upon notice and hearing, that a utility,
39 operating under section 476.29, has failed to provide
40 just, reasonable, and nondiscriminatory arrangements
41 for interconnection of its telecommunications services
42 with another telecommunications provider.

43 Sec. 4. Section 476.29, subsection 2, Code 1995,
44 is amended to read as follows:

45 2. Except as provided in subsection 12, a
46 certificate shall be issued by the board, after notice
47 and opportunity for hearing, if the board determines
48 that the service proposed to be rendered will promote
49 the public convenience and necessity, provided that an
50 applicant other than a local exchange carrier, as

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1 defined in section 476.30A, shall not be denied a
2 certificate if the board finds that the applicant
3 possesses the technical, financial, and managerial
4 ability to provide the service it proposes to render
5 and the board finds the service is consistent with the
6 public interest. The board shall make a determination
7 within ninety days of the submission by the applicant
8 of evidence of its technical, financial, and
9 managerial ability, unless the board determines that
10 additional time is necessary to consider the
11 application, in which case the board may extend the
12 time for making a determination for an additional
13 sixty days. The board may establish reasonable
14 conditions or restrictions on the certificate at the
15 time of issuance.

16 Sec. 5. NEW SECTION. 476.30 FINDINGS --
17 STATEMENT OF POLICY.

18 The general assembly finds all of the following:

- 19 1. Communications services should be available
20 throughout the state at just, reasonable, and
21 affordable rates from a variety of providers.
- 22 2. In rendering decisions with respect to
23 regulation of telecommunications companies, the board
24 shall consider the effects of its decisions on
25 competition in telecommunications markets and, to the
26 extent reasonable and lawful, shall act to further the
27 development of competition in those markets.
- 28 3. In order to encourage competition for all
29 telecommunications services, the board should address
30 issues relating to the movement of prices toward cost
31 and the removal of subsidies in the existing price
32 structure of the incumbent local exchange carrier.
- 33 4. Regulatory flexibility is appropriate when
34 competition provides customers with competitive
35 choices in the variety, quality, and pricing of
36 communications services, and when consistent with
37 consumer protection and other relevant public
38 interests.

39 5. The board should respond with speed and
40 flexibility to changes in the communications industry.

41 6. Economic development can be fostered by the
42 existence of advanced communications networks.

43 Sec. 6. NEW SECTION. 476.30A DEFINITIONS.

44 As used in section 476.30, this section, and
45 sections 476.30B through 476.30G, unless the context
46 otherwise requires:

- 47 1. "Basic communications service" includes at a
48 minimum, basic local telephone service, switched
49 access, 911 and E-911 services, and dual party relay
50 service. The board is authorized to classify by rule

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1 at any time, any other two-way switched communications
2 services as basic communications services consistent
3 with community expectations and the public interest.

4 2. "Basic local telephone service" means the
5 provision of dial tone access and usage, for the
6 transmission of two-way switched communications within
7 a local exchange area, including, but not limited to,
8 the following:

9 a. Residence service and business services,
10 including flat rate or local measured service, private
11 branch exchange trunks, trunk type hunting services,
12 direct inward dialing, and the network access portion
13 of central office switched exchange service.

14 b. Extended area service.

15 c. Touch tone service when provided separately.

16 d. Call tracing.

17 e. Calling number blocking on either a per call or
18 a per line basis.

19 f. Local exchange white pages directories.

20 g. Installation and repair of local network
21 access.

22 h. Local operator services, excluding directory
23 assistance.

24 i. Toll service blocking and 1-900 and 1-976
25 access blocking.

26 3. "Competitive local exchange service provider"
27 means any person that provides local exchange
28 services, other than a local exchange carrier or a
29 nonrate-regulated wireline provider of local exchange
30 services under an authorized certificate of public
31 convenience and necessity within a specific geographic
32 area described in maps filed with and approved by the
33 board as of September 30, 1992.

34 4. "Interim number portability" means one or more
35 mechanisms by which a local exchange customer at a
36 particular location may change the customer's local
37 exchange services provider without any change in the
38 local exchange customer's telephone number, while
39 experiencing as little loss of functionality as is
40 feasible using available technology.

41 5. "Local exchange carrier" means any person that
42 was the incumbent and historical rate-regulated
43 wireline provider of local exchange services or any
44 successor to such person that provides local exchange
45 services under an authorized certificate of public
46 convenience and necessity within a specific geographic
47 area described in maps filed with and approved by the
48 board as of September 30, 1992.

49 6. "Nonbasic communications services" means all
50 communications services subject to the board's

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1 jurisdiction which are not deemed either by statute or
2 by rule to be basic communications services, including
3 any service offered by the local exchange carrier for
4 the first time after the effective date of this Act.
5 A service is not considered new if it constitutes the
6 bundling, unbundling, or repricing of an already
7 existing service. Consistent with community
8 expectations and the public interest, the board may
9 reclassify by rule as nonbasic those two-way switched
10 communications services previously classified by rule
11 as basic.

12 7. "Provider number portability" means the
13 capability of a local exchange customer to change the
14 customer's local exchange services provider at the
15 customer's same location without any change in the
16 local exchange customer's telephone number, while
17 preserving the full range of functionality that the
18 customer currently experiences. "Provider number
19 portability" includes the equal availability of
20 information concerning the local exchange provider
21 serving the number to all carriers, and the ability to
22 deliver traffic directly to that provider without
23 having first to route traffic to the local exchange
24 carrier or otherwise use the services, facilities, or
25 capabilities of the local exchange carrier to complete
26 the call, and without the dialing of additional digits
27 or access codes.

28 Sec. 7. NEW SECTION. 476.30B PRICE REGULATION.

29 1. Notwithstanding contrary provisions of this
30 chapter relating to rate regulation, the board may
31 approve a plan for price regulation submitted by a
32 rate-regulated local exchange carrier. The plan for
33 price regulation is not effective until the approval
34 by the board of tariffs implementing the unbundling of
35 essential facilities pursuant to section 476.30F,
36 subsection 4, except for a local exchange carrier with
37 less than seventy-five thousand access lines whose
38 plan for price regulation will be effective concurrent
39 with the approval of its plan. The board may approve
40 a plan for price regulation prior to the adoption of
41 rules related to the unbundling of essential
42 facilities or concurrent with a rate proceeding under
43 section 476.3, 476.6, or 476.7. During the term of
44 the plan, the board shall regulate the prices of the
45 local exchange carrier's basic and nonbasic
46 communications services pursuant to the requirements
47 of the price regulation plan approved by the board.
48 The local exchange carrier shall not be subject to
49 rate of return regulation during the term of the plan.

50 2. The board, after notice and opportunity for

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1 hearing, may approve, modify, or reject the plan. The
2 local exchange carrier shall have ten days to accept
3 or reject any board modifications to its plan. If the
4 local exchange carrier rejects a modification to its
5 plan, the board shall reject the plan without
6 prejudice to the local exchange carrier to submit
7 another plan.

8 3. A price regulation plan, at a minimum, shall
9 include provisions, consistent with the provisions of
10 this section and any rules adopted by the board, for
11 the following:

12 a. (1) Establishing and changing prices, terms,
13 and conditions for basic communications services. The
14 initial plan for price regulation must include a
15 proposal, which the board shall approve, for reducing
16 the local exchange carrier's average intrastate access
17 service rates to the local exchange carrier's average
18 interstate access service rates in effect as of the
19 last day of the calendar year immediately preceding
20 the date of filing of the plan, as follows:

21 (a) A local exchange carrier with five hundred
22 thousand or more access lines in this state shall
23 reduce its average intrastate access service rates to
24 its average interstate access service rates as of the
25 date that the plan becomes effective.

26 (b) A local exchange carrier with fewer than five
27 hundred thousand but seventy-five thousand or more
28 access lines in this state shall reduce its average
29 intrastate access service rates to its average
30 interstate access service rates in increments of at
31 least twenty-five percent, with the initial reduction
32 to take effect on approval of the plan and equal
33 annual reductions on each anniversary of the approval
34 during the first three years that its plan is in
35 effect.

36 (c) A local exchange carrier with fewer than
37 seventy-five thousand access lines in this state shall
38 reduce its average intrastate access service rates to
39 its average interstate access service rates with equal
40 annual reductions during a period beginning no more
41 than two years and ending no more than five years from
42 the plan's inception.

43 (2) This section shall not be construed to do
44 either of the following:

45 (a) Prohibit an additional decrease in a carrier's
46 average intrastate access service rate during the term
47 of the plan.

48 (b) Permit any increase in a carrier's average
49 intrastate access service rates during the term of the
50 plan.

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1 (3) The plan shall also provide that the initial
2 prices for basic communications services shall be six
3 percent less than the rates approved and in effect at
4 the time the local exchange carrier files its plan. A
5 local exchange carrier which elects to reduce its
6 rates by six percent shall not, at a later time,
7 increase its rates for basic communications services
8 as a result of the carrier's compliance with the
9 board's rules relating to unbundling. In lieu of the
10 six percent reduction, and prior to the adoption of
11 rules relating to unbundling pursuant to section
12 476.30F, subsection 4, paragraph "a", subparagraph
13 (1), the local exchange carrier may request and the
14 board may establish a regulated revenue requirement in
15 a rate proceeding under section 476.3 or 476.6
16 commenced after the effective date of this Act. After
17 the determination of the local exchange carrier's
18 regulated revenue requirement pursuant to the rate
19 proceeding, the local exchange carrier shall not
20 immediately implement rates designed to recover that
21 regulated revenue requirement. Following the adoption
22 of rules relating to unbundling pursuant to section
23 476.30F, subsection 4, paragraph "a", subparagraph
24 (1), the local exchange carrier shall commence a
25 tariff proceeding for the approval of tariffs
26 implementing such unbundling. The board has six
27 months to complete this tariff proceeding and
28 determine the local exchange carrier's final unbundled
29 rates. The local exchange carrier shall carry forward
30 the regulated revenue requirement determined by the
31 board pursuant to the rate proceeding and design rates
32 that comply with the board's rules relating to
33 unbundling that recover the regulated revenue
34 requirement, and that implement the board's approved
35 rate design established in the tariff proceeding.

36 In lieu of taking the six percent reduction, a
37 local exchange carrier that submits a plan for price
38 regulation after the board adopts rules relating to
39 unbundling may file a rate proceeding under section
40 476.3 or 476.6 and the board may approve rates
41 designed to comply with those rules which allow the
42 carrier to recover the established regulated revenue
43 requirement and that implement the board's approved
44 rate design established in the tariff proceeding.

45 (4) The plan shall provide for both increases and
46 decreases in the prices for basic communications
47 services reflecting annual changes in inflation and
48 productivity. Prior to January 1, 1998, the board
49 shall use the gross domestic product price index, as
50 published by the federal government, for an inflation

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1 measure, and two and six-tenths percentage points for
2 a productivity measure. After January 1, 1998, the
3 board by rule may adopt current measures of inflation
4 and productivity.

5 (5) The plan may provide that price increases for
6 basic communications services which are permitted
7 under this section may be deferred and accumulated for
8 a maximum of three years into a single price increase,
9 provided that a deferred and accumulated price
10 increase under this section shall not at any time
11 exceed six percent. A price decrease for basic
12 communications services shall not be deferred or
13 accumulated, except that price decreases of less than
14 two percent may be deferred by the local exchange
15 carrier for one year. A price decrease required under
16 this section may be offset by a price increase for a
17 basic communications service that would have been
18 permitted under this section in the previous twelve-
19 month period, but which was deferred by the local
20 exchange carrier.

21 b. Establishing and changing prices, terms, and
22 conditions for nonbasic communications services.

23 c. Reporting new service offerings to the board.

24 d. Reflecting in rates any changes in revenues,
25 expenses, and investment due to exogenous factors
26 beyond the control of the local exchange carrier.

27 e. Providing notice to customers, the board, and
28 the consumer advocate of changes in prices, terms, or
29 conditions for basic and nonbasic communications
30 services.

31 4. The board shall consider the extent to which a
32 proposed plan complies with the requirements of
33 subsection 3 and achieves the following:

34 a. Just, nondiscriminatory, and reasonable rates.

35 b. High quality, universally available
36 communications services.

37 c. Encouragement of investment in communications
38 infrastructure, efficiency improvements, and
39 technological innovation.

40 d. The introduction of new communications products
41 and services from a variety of sources.

42 e. Regulatory efficiency including reduction of
43 regulatory costs and delays. A plan shall not provide
44 for waiver of, release from, or delay in implementing
45 the provisions of this section, section 476.30F or
46 476.30G or any rules adopted by the board pursuant to
47 those sections.

48 5. Notwithstanding an approved plan for price
49 regulation, the board shall continue to have
50 regulatory authority over the following:

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1 a. The level, extent, and timing of the unbundling
2 of essential facilities offered by a local exchange
3 carrier.

4 b. Ensuring against cross-subsidization between
5 nonbasic communications services and basic
6 communications services.

7 6. Any person, including the consumer advocate, a
8 body politic, or the board on its own motion, may file
9 a written complaint pursuant to section 476.3,
10 subsection 1, regarding a local exchange carrier's
11 implementation, operation under, or satisfaction of
12 the purposes of its price regulation plan.

13 7. The consumer advocate may represent consumers
14 before the board regarding any rule, order, or
15 proceeding pertaining to price regulation. The
16 consumer advocate may act as attorney for and
17 represent consumers generally before any state or
18 federal court concerning a board rule, order, or
19 proceeding pertaining to price regulation.

20 8. In implementing price regulation, the board
21 shall consider competitively neutral methods to assist
22 lower-income Iowans to secure and retain telephone
23 services.

24 9. The board shall determine the duration of any
25 plan. The board shall review a local exchange
26 carrier's operation under its plan, with notice and an
27 opportunity for hearing, within four years of the
28 initiation of the plan and prior to the termination of
29 the plan. The local exchange carrier, consumer
30 advocate, or any person may propose, and the board may
31 approve, any reasonable modifications to a local
32 exchange carrier's plan as a result of the review,
33 except that such modifications shall not require a
34 reduction in the rates for any basic communications
35 service.

36 10. The board, in determining whether to file a
37 written complaint pursuant to subsection 6 or prior to
38 reviewing a local exchange carrier's operation
39 pursuant to subsection 9, may request that such
40 carrier provide any information which the board deems
41 necessary to make such determination or conduct such
42 review. The carrier shall provide the requested
43 information upon receipt of the request from the
44 board.

45 11. a. Notwithstanding subsections 1 through 10,
46 a local exchange carrier with fewer than five hundred
47 thousand access lines in this state shall have the
48 option to be regulated pursuant to subsections 1
49 through 10 or pursuant to this subsection.

50 b. A local exchange carrier which elects to become

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1 price regulated under this subsection shall give
2 written notice to the board of such election not less
3 than thirty days prior to the date such regulation is
4 to commence.

5 c. Upon election of a local exchange carrier to
6 become price-regulated under this subsection, the
7 carrier shall reduce its rates for basic local
8 telephone service an average of three percent. In
9 lieu of the three percent reduction, the local
10 exchange carrier may establish its rates for basic
11 local telephone service in a rate proceeding under
12 section 476.3 or 476.6 commenced after the effective
13 date of this Act.

14 d. Initial prices for basic communications
15 services, other than basic local telephone service,
16 shall be set at the rates in effect as of the first of
17 July prior to the date such regulation is to commence.

18 e. (1) A price-regulated local exchange carrier
19 shall not increase its rates for basic communications
20 services, for a period of twelve months after electing
21 to become price regulated. To the extent necessary,
22 rates for basic services may be increased to carry out
23 the purpose of any rules that may be adopted by the
24 board relating to the terms and conditions of
25 unbundled services and interconnection. A price-
26 regulated local exchange carrier may increase its
27 rates for basic communications services following the
28 initial twelve-month period, to the extent that the
29 change in rate does not exceed two percentage points
30 less than the most recent annual change in the gross
31 domestic product price index, as published by the
32 federal government. If application of such formula
33 achieves a negative result, prices shall be reduced so
34 that the cumulative price change for basic services,
35 including prior price reductions in these services,
36 achieves the negative result. After January 1, 2000,
37 the board by rule may adopt different measures of
38 inflation and productivity if they are found to be
39 more reflective of the individual price-regulated
40 carriers.

41 (2) Price increases for basic communications
42 services which are permitted under this subsection may
43 be deferred and accumulated for a maximum of three
44 years into a single price increase, provided that a
45 deferred and accumulated price increase under this
46 subsection shall not at any time exceed six percent.
47 A price decrease for basic communications services
48 shall not be deferred or accumulated, except that
49 price decreases of less than two percent may be
50 deferred by the local exchange carrier for one year.

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1 A price decrease required under this section may be
2 offset by a price increase for a basic communications
3 service that would have been permitted under this
4 section in the previous twelve-month period, but which
5 was deferred by the local exchange carrier. A rate
6 change pursuant to this subsection may take effect
7 thirty days after the notification of the board and
8 consumers.

9 (3) A price-regulated local exchange carrier shall
10 not increase its aggregate revenue weighted prices for
11 nonbasic communications services more than six percent
12 in any twelve-month period.

13 (4) A price-regulated local exchange carrier may
14 reduce the price for any basic communications service,
15 to an amount not less than the total service long-run
16 incremental cost for such service on one day's notice
17 filed with the board. For purposes of this
18 subsection, "total service long-run incremental costs"
19 means the difference between the company's total cost
20 and the total cost of the company less the applicable
21 service, feature, or function.

22 (5) A price-regulated local exchange carrier may
23 offer new service alternatives for any basic
24 communications services on thirty days prior notice to
25 the board, provided that the preexisting basic
26 communications service rate structure continues to be
27 offered to customers. New telecommunications services
28 shall be considered nonbasic communications services
29 as defined in section 476.30A, subsection 6.

30 (6) A price-regulated local exchange carrier must
31 reduce the average intrastate access service rates to
32 the carrier's average interstate access service rates.
33 Such carrier shall reduce the average intrastate
34 access service rates by at least twenty-five percent,
35 of the difference of such rates within ninety days of
36 the election to be price-regulated and twenty-five
37 percent each of the next three years.

38 f. A local exchange carrier shall notify customers
39 of a rate change under this subsection at least thirty
40 days prior to the effective date of the rate change.

41 g. The board may review a local exchange carrier's
42 operation under this subsection, with notice and an
43 opportunity for hearing, after four years of the
44 carrier's election to be price-regulated. The local
45 exchange carrier, consumer advocate, or any person may
46 propose, and the board may approve, any reasonable
47 modifications to the price-regulation requirements in
48 this subsection as a result of the specific carrier
49 review, except that such modifications shall not
50 require a reduction in the rates for any basic

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1 communications service or a return to rate-base, rate-
2 of-return regulation.

3 Sec. 8. NEW SECTION. 476.30C EARNINGS

4 CALCULATION AND REPORT.

5 1. The consumer advocate shall calculate an
6 estimate of the return of a local exchange carrier
7 operating under a plan of price regulation pursuant to
8 section 476.30B as if the carrier were subject to
9 rate-of-return regulation. The calculation shall be
10 based upon the annual report of such carrier and other
11 information provided to the consumer advocate by the
12 carrier. The calculation shall be made every two
13 years beginning following the end of the second
14 calendar year after the year in which the plan becomes
15 effective. The consumer advocate shall provide a
16 written report to the general assembly including the
17 results of this calculation on or before July 1 of the
18 year immediately following the two-year period for
19 which a calculation is made. If, after a review of
20 the information used to make the calculation required
21 in this section, the consumer advocate determines that
22 the public interest would be better served by a
23 different form of rate regulation, the consumer
24 advocate shall provide a recommendation that the
25 general assembly direct the utilities board to
26 implement a different form of rate regulation.

27 Sec. 9. NEW SECTION. 476.30D ADDITIONAL PRICE
28 REGULATION PLAN PROVISIONS.

29 In addition to the provisions required in section
30 476.30B to be included in a plan of price regulation,
31 the plan shall include provisions for the following:

32 1. Reflecting in rates any changes due to changes
33 in the average cost of the local exchange carrier
34 resulting from the sale of an exchange in this state.

35 2. Encouraging modernization of the local exchange
36 carrier's telecommunications infrastructure. This
37 provision shall include a requirement that the local
38 exchange carrier develop and file with the board an
39 increased modernization plan.

40 Sec. 10. NEW SECTION. 476.30E PROHIBITED ACTS.

41 A local exchange carrier shall not do any of the
42 following:

43 1. Discriminate against another provider of
44 communications services by refusing or delaying access
45 to the local exchange carrier's services.

46 2. Discriminate against another provider of
47 communications services by refusing or delaying access
48 to essential facilities on terms and conditions no
49 less favorable than those the local exchange carrier
50 provides to itself and its affiliates. An essential

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1 facility is a local telecommunications facility,
2 feature, function, or capability of the local exchange
3 carrier's network that competitors cannot practically
4 or economically duplicate or obtain from other
5 sources, and to which reasonable access is necessary
6 to enable competition.

7 3. Degrade the quality of access or service
8 provided to another provider of communications
9 services.

10 4. Fail to disclose in a timely manner, upon
11 reasonable request and pursuant to a protective
12 agreement concerning proprietary information, all
13 information reasonably necessary for the design of
14 network interface equipment, network interface
15 services, or software that will meet the
16 specifications of the local exchange carrier's local
17 exchange network.

18 5. Unreasonably refuse or delay interconnections
19 or provide inferior interconnections to another
20 provider.

21 6. Use basic exchange service rates, directly or
22 indirectly, to subsidize or offset the costs of other
23 products or services offered by the local exchange
24 carrier.

25 7. Discriminate in favor of itself or an affiliate
26 in the provision and pricing of, or extension of
27 credit for, any telephone service.

28 Sec. 11. NEW SECTION. 476.30F LOCAL EXCHANGE
29 COMPETITION.

30 1. A certificate of public convenience and
31 necessity to provide local telephone service shall not
32 be interpreted as conveying a monopoly, exclusive
33 privilege, or franchise. A competitive local exchange
34 service provider shall not be subject to the
35 requirements of this chapter, except that a
36 competitive local exchange service provider shall
37 obtain a certificate of public convenience and
38 necessity pursuant to section 476.29, file tariffs,
39 notify affected customers prior to any rate increase,
40 file reports, information, and pay assessments
41 pursuant to section 476.2, subsection 4, and sections
42 476.9, 476.10, 476.16, 476.30G, and 477C.7, and shall
43 be subject to the board's authority with respect to
44 adequacy of service, interconnection, discontinuation
45 of service, civil penalties, and complaints. If,
46 after notice and opportunity for hearing, the board
47 determines that a competitive local exchange service
48 provider possesses market power in its local exchange
49 market or markets, the board may apply such other
50 provisions of chapter 476 to a competitive local

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1 exchange service provider as it deems appropriate.

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

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

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

27 4. a. Prior to September 1, 1995, the board shall
28 initiate a rule-making proceeding to adopt rules that
29 satisfy the requirements enumerated in subparagraphs
30 (1) through (4). The rule-making proceeding shall be
31 completed as promptly as possible. The board, upon
32 petition or on its own motion, may conduct a separate
33 evidentiary hearing on the same or related subjects.
34 The evidence from a hearing may be considered by the
35 board during the rule-making proceeding, provided that
36 the board announces its intention to do so prior to
37 the oral presentation in the rule-making proceeding.
38 The rules shall do the following:

39 (1) Require a local exchange carrier to provide
40 unbundled essential facilities of its network, and
41 allow reasonable and nondiscriminatory equal access
42 to, use of, and interconnection with, those unbundled
43 essential facilities on reasonable, cost-based, and
44 tariffed terms and conditions. The board's rules must
45 require a local exchange carrier, including those
46 operating under a plan of price regulation, to file
47 tariffs implementing the unbundled essential
48 facilities within ninety days of the board's final
49 order adopting such rules, except for local exchange
50 carriers with less than seventy-five thousand access

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1 lines which must file such tariffs within two years of
2 the effective date of this Act. Such access, use, and
3 interconnection shall be on terms and conditions no
4 less favorable than those the local exchange carrier
5 provides to itself and its affiliates for the
6 provision of local exchange, access, and toll
7 services. This subsection shall not be construed to
8 establish a presumption as to the level of
9 interconnection charges, if any, to be determined by
10 the board pursuant to subparagraph (2).

11 (2) Establish reciprocal cost-based compensation
12 for termination of telecommunications services between
13 local exchange carriers and competitive local exchange
14 service providers. The board may also implement an
15 appropriate surcharge to be effective on July 1, 1997,
16 or upon the availability of provider number
17 portability, whichever is first, if the ratio of
18 residence to business customers served on a facilities
19 basis by a competitive local exchange service provider
20 does not approximate the ratio of residence to
21 business customers served by the local exchange
22 carrier. The board may eliminate the surcharge upon
23 the occurrence of either of the following:

24 (a) When the local exchange carrier's prices for
25 local exchange service cover the carrier's costs as
26 determined by the board.

27 (b) Once the competitive local exchange service
28 provider's ratio of residence to business customers
29 approximates that of the local exchange carrier.

30 The board may require the local exchange carrier,
31 by tariff, to implement an equalization adjustment
32 mechanism on an annual basis that recognizes the
33 competitive local exchange service provider's average
34 annual ratio of residence to business customers and
35 which makes appropriate pro rata reductions in the
36 surcharge if the competitive local exchange service
37 provider demonstrates a year-over-year change in the
38 ratio of residence to business customers served. The
39 tariff may also provide for an equalization adjustment
40 on an annual basis if the local exchange carrier
41 experienced an increase in its residential local
42 service rates during the preceding year.

43 (3) Require local exchange carriers to make
44 interim number portability available on request of a
45 competitive local exchange service provider, and to
46 implement provider number portability as soon as the
47 availability of necessary technology makes provider
48 number portability economically and technically
49 feasible, as determined by the board. The rules shall
50 also devise a reasonable and nondiscriminatory

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1 mechanism for the recovery of all recurring and
2 nonrecurring costs of interim and provider number
3 portability.
4 (4) Develop the cost methodology appropriate for a
5 competitive telecommunications environment.
6 b. The rules adopted in paragraph "a",
7 subparagraphs (2) and (3), do not apply to local
8 exchange carriers with less than seventy-five thousand
9 access lines until a competitive local exchange
10 service provider has filed for a certificate to
11 provide basic communications services in an exchange
12 or exchanges of the local exchange carrier, or the
13 board determines that competitive necessity requires
14 the implementation of the rules in paragraph "a",
15 subparagraphs (2) and (3), by the local exchange
16 carrier.
17 5. Local exchange carriers shall file tariffs or
18 price lists in accordance with board rules with
19 respect to the services, features, functions, and
20 capabilities offered to comply with board rules on
21 unbundling of essential facilities and
22 interconnection. Local exchange carriers shall submit
23 with the tariffs or price lists for basic
24 communications services and toll services supporting
25 information that is sufficient for the board to
26 determine the relationship between the proposed
27 charges and the costs of providing such services,
28 features, functions, or capabilities, including the
29 imputed cost of intrastate access service rates in
30 toll service rates pursuant to existing board orders.
31 The board shall review the tariffs or price lists to
32 ensure that the charges are cost-based and that the
33 terms and conditions contained in the tariffs or price
34 lists unbundle any essential facilities in accordance
35 with the board's rules and any other applicable laws.
36 6. This section shall not be construed to prohibit
37 the board from enforcing rules or orders entered in
38 contested cases pending on the effective date of this
39 Act to the extent that such rules and orders are
40 consistent with the provisions of this section.
41 7. Except as provided under section 476.29,
42 subsection 2, and this section, the board shall not
43 impose or allow a local exchange carrier to impose
44 restrictions on the resale of local exchange services,
45 functions, or capabilities. The board may prohibit
46 residential service from being resold as a different
47 class of service.
48 8. Any person may file a written complaint with
49 the board requesting the board to determine compliance
50 by a local exchange carrier with the provisions of

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1 sections 476.30A through 476.30E, 476.30G, and this
2 section, or any board rules implementing those
3 sections. Upon the filing of such complaint, the
4 board may promptly initiate a formal complaint
5 proceeding and give notice of the proceeding and the
6 opportunity for hearing. The formal complaint
7 proceeding may be initiated at any time by the board
8 on its own motion. The board shall render a decision
9 in the proceeding within ninety days after the date
10 the written complaint was filed.

11 Sec. 12. NEW SECTION. 476.30G UNIVERSAL SERVICE.

12 1. The board shall initiate a proceeding to
13 preserve universal service such that it shall be
14 maintained in a competitively neutral fashion. As a
15 part of this proceeding, the board shall determine the
16 difference between the cost of providing universal
17 service and the prices determined to be appropriate
18 for such service.

19 2. The board shall base policies for the
20 preservation of universal service on the following
21 principles:

22 a. A plan adopted by the board should ensure the
23 continued viability of universal service by
24 maintaining quality services at just and reasonable
25 rates.

26 b. The plan should define the nature and extent of
27 the service encompassed within any entities' universal
28 service obligations.

29 c. The plan should establish specific and
30 predictable mechanisms to provide competitively
31 neutral support for universal service. Those
32 mechanisms shall include a nondiscriminatory mechanism
33 by which funds to support universal service shall be
34 collected, and a mechanism for disbursement of support
35 funds to eligible subscribers, either directly to
36 those subscribers, or to the subscriber's provider of
37 local exchange services chosen by the subscriber.

38 d. The plan should be based on other principles as
39 the board determines are necessary and appropriate for
40 the protection of the public interest, convenience,
41 and necessity and consistent with the purposes of
42 sections 476.30 through 476.30F and this section.

43 Sec. 13. REPORT. The utilities board shall submit
44 a report to the general assembly no later than January
45 15, 1999, concerning the implementation of price
46 regulation for local exchange carriers furnishing
47 communications services."

By PATRICK J. DELUHERY

S-3426 FILED APRIL 13, 1995

Adapted 4/28/95 (p. 1519)

DeLaney
Husak
Lundby

SSB.58
Commerce

Succeeded By
(SF) / HF
SENATE/HOUSE FILE 411
BY (PROPOSED DEPARTMENT OF
COMMERCE/UTILITIES
DIVISION BILL)

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

A BILL FOR

1 An Act relating to authorization of price regulation for
2 utilities providing communications services.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 476.3, subsection 2, Code 1995, is
2 amended by adding the following new unnumbered paragraph:
3 NEW UNNUMBERED PARAGRAPH. Notwithstanding the provisions
4 of this subsection, the consumer advocate shall not file a
5 petition under this subsection which alleges that a utility's
6 rates are excessive while the utility is participating in a
7 price regulation plan approved by the board pursuant to
8 section 476.30A.

9 Sec. 2. NEW SECTION. 476.30 FINDINGS -- STATEMENT OF
10 POLICY.

11 The general assembly finds all of the following:

12 1. Communications services should be available throughout
13 the state at just, reasonable, and affordable rates.

14 2. Regulatory flexibility is appropriate when competition
15 provides consumers with choices in the variety, quality, and
16 pricing of communications services, and when consistent with
17 consumer protection and other relevant public interests.

18 3. The utilities board should respond rapidly and with
19 flexibility to changes in the communications industry.

20 4. Economic development can be fostered by advanced
21 communications networks.

22 Sec. 3. NEW SECTION. 476.30A DEFINITIONS.

23 As used in sections 476.30 through 476.30B, unless the
24 context otherwise requires:

25 1. "Essential communications service" includes at a
26 minimum, basic local telephone service, switched access, 911
27 and E-911 services, and relay service for communications-
28 impaired persons. The board may classify by rule other
29 communications services as essential communications services
30 consistent with community expectations and the public
31 interest.

32 2. "Nonessential communications services" means all
33 communications services subject to the board's jurisdiction
34 not defined or classified either by statute or by rule as
35 essential communications services. Consistent with community

1 expectations and the public interest, the board may reclassify
2 by rule as nonessential those communications services
3 previously classified by rule as essential.

4 Sec. 4. NEW SECTION. 476.30B PRICE REGULATION.

5 1. Notwithstanding contrary provisions of this chapter
6 relating to rate regulation, the board may adopt rules
7 relating to price regulation for rate-regulated utilities
8 furnishing communications services.

9 2. If rules for price regulation are adopted, a rate-
10 regulated utility certified under section 476.29 shall submit
11 a plan for price regulation specific to that utility. The
12 board, after notice and opportunity for hearing, may approve,
13 modify, or reject the plan.

14 3. A price regulation plan shall, at a minimum, include
15 provisions for all of the following:

16 a. Establishing and changing prices, terms, and conditions
17 for essential communications services.

18 b. Establishing and changing prices, terms, and conditions
19 for nonessential communications services.

20 c. Reporting new service offerings to the board.

21 d. Reflecting changes in revenues, expenses, and
22 investment due to exogenous factors beyond the control of the
23 utility in the rates charged by the utility.

24 e. Modernizing the utility's telecommunications
25 infrastructure.

26 4. The board shall consider the extent to which a proposed
27 plan achieves the following:

28 a. Just, nondiscriminatory, and reasonable rates.

29 b. High quality, universally available communications
30 services.

31 c. Investment in communications infrastructure, efficiency
32 improvements, and technological innovation.

33 d. Introduction of new communications products and
34 services.

35 e. Regulatory efficiency, including reduction of

1 regulatory costs and delays.

2 5. The board shall have authority over all of the
3 following:

4 a. The level, extent, and timing of the unbundling of
5 services by the local exchange utility.

6 b. Ensuring against cross subsidization of nonessential
7 services by essential services.

8 6. Any person may file a complaint pursuant to section
9 476.3, subsection 1, regarding a utility's operation under its
10 price regulation plan.

11 7. The consumer advocate may represent consumers before
12 the utilities board regarding any rule, order, or proceeding
13 pertaining to price regulation. The consumer advocate may act
14 as attorney for and represent consumers generally before any
15 state or federal court concerning a utilities board rule,
16 order, or proceeding pertaining to price regulation.

17 8. In implementing price regulation, the board shall
18 consider methods to assist low-income Iowans to secure and
19 retain telephone services.

20 9. The board shall review a utility's operation under its
21 plan, with notice and an opportunity for hearing, prior to the
22 termination of the plan or within five years of the initiation
23 of the plan, whichever comes first.

24 Sec. 5. NEW SECTION. 476.30C PROHIBITED ACTS.

25 A utility under a price regulation plan shall not do any of
26 the following:

27 1. Discriminate against another provider of communications
28 services by refusing or delaying access to regulated services
29 or in the pricing of regulated services.

30 2. Degrade the quality of access or service provided to
31 another provider of communications services.

32 3. Fail to disclose in a timely manner, upon request and
33 pursuant to a protective agreement concerning proprietary
34 information, all information reasonably necessary for the
35 design of network interface equipment or network interface

1 services that will meet the specifications of the
2 participating utility's local exchange network.

3 Sec. 6. REPORT. The utilities board shall submit a report
4 to the general assembly no later than January 15, 1999,
5 concerning the implementation of price regulation for
6 utilities furnishing communications services.

7 EXPLANATION

8 The bill provides the utilities board with the authority to
9 adopt rules to implement price regulation for rate-regulated
10 telephone companies. The bill provides that the board is to
11 consider the extent to which a proposed plan achieves just,
12 nondiscriminatory, and reasonable rates; high quality,
13 universally available communications services; investment in
14 communications infrastructure, efficiency improvements, and
15 technological innovation; the introduction of new
16 communications products and services; and regulatory
17 efficiency, including reduction of regulatory costs and
18 delays. The consumer advocate is authorized to represent
19 consumers before the utilities board regarding any proceeding
20 pertaining to price regulation. In implementing price
21 regulation, the board is directed to consider methods to
22 assist low-income Iowans in securing and retaining telephone
23 services.

24 The bill defines essential communications services to
25 include at a minimum, basic local telephone service, switched
26 access, 911 and E-911 services, and relay service for
27 communications-impaired persons. Nonessential communications
28 services are defined as all communications services subject to
29 the board's jurisdiction not deemed either by statute or by
30 rule as essential communications services.

31 BACKGROUND STATEMENT

32 SUBMITTED BY THE AGENCY

33 The bill allows price regulation for rate-regulated
34 telephone companies in place of traditional rate-of-return
35 regulation. Under price regulation, utilities are allowed to

1 change rates within limits and on notice to their customers
2 and the board. Price increases under typical price regulation
3 plans are limited by an index that includes inflation,
4 industry productivity, and other factors. Generally, price
5 reductions are not limited.

6 The reasons for authorizing price regulation relate to
7 increasing competition in the telephone industry. A number of
8 services have already been deregulated by the board, pursuant
9 to statute, because they are subject to effective competition.
10 Other services offered by the former monopoly providers are
11 beginning to be offered by competitors. In this environment,
12 the traditional rate-making method hinders competition by
13 rate-regulated providers. Price regulation allows flexible
14 and timely responses in a dynamic marketplace. It also
15 provides those companies better incentives to control costs
16 and introduce new services. In a more competitive industry,
17 price regulation will usually produce better results for the
18 telephone company's ordinary customers, for other telephone
19 companies that must buy services from it, and for the company
20 itself, than traditional rate-of-return regulation, without
21 being unfair or sending improper economic signals to potential
22 competitors. A properly designed price regulation plan can
23 allow the telephone company to compete within reasonable
24 parameters, while offering customers appropriate protection as
25 to rates and service quality.

26 Traditional rate-of-return regulation requires complex and
27 lengthy rate cases to consider evidence on the utility's
28 revenues, expenses, capital structure, and a proper return on
29 its investment, as well as testimony on the amount of revenue
30 to be recovered from individual services offered by the
31 utility. These cases take up to 10 months at the agency and
32 up to three years, if appealed to the courts. A rate case can
33 be initiated by the utility if it believes its revenues are
34 inadequate, or by the consumer advocate if it believes the
35 utility is overearning. Rate-of-return regulation gets its

1 name because in a rate case the utilities board determines the
2 amount of revenue needed to provide the utility the
3 opportunity to recover its expenses plus a reasonable rate of
4 return on the investment of shareholders.

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