

industry clusters which will make a higher than average capital investment and which will pay an average starting wage for all the new jobs created as the result of the project that is significantly higher than the wage requirement in section 15.329. For purposes of this section, "targeted industry clusters" includes the industry clusters of life sciences, information solutions, and advanced manufacturing.

Approved May 12, 2003

CHAPTER 126

TELECOMMUNICATIONS SERVICES AND PUBLIC UTILITY REGULATION

S.F. 368

AN ACT relating to advanced telecommunications services, including rate provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 476.1D, subsection 1, Code 2003, is amended to read as follows:

1. Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not applicable to a service or facility that is provided or is proposed to be provided by a telephone utility that is or becomes subject to effective competition, as determined by the board. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility in the geographic market being considered by the board and whether market forces in that market are sufficient to assure just and reasonable rates without regulation.

Sec. 2. Section 476.6, subsection 1, Code 2003, is amended to read as follows:

1. **FILING WITH BOARD.** A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 11 and 13.

~~A subscriber of a telephone exchange or service, who is declared to be legally blind under section 422.12, subsection 1, paragraph "e", is exempt from any charges for telephone directory assistance that may be approved by the board.~~

Sec. 3. Section 476.6, subsections 2 through 4, Code 2003, are amended by striking the subsections.

Sec. 4. Section 476.51, Code 2003, is amended to read as follows:

476.51 **CIVIL PENALTY.**

1. A public utility which, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.

2. A public utility which willfully, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same

provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one thousand dollars nor more than ten thousand dollars per violation. For the purposes of this section, "willful" means knowing and deliberate, with a specific intent to violate.

3. Each violation is a separate offense. In the case of a continuing violation, each day a violation continues, after the time specified for compliance in the written notice by the board, is a separate and distinct offense. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the appropriateness of the penalty in relation to the size of the public utility, the gravity of the violation, and the good faith of the public utility in attempting to achieve compliance following notification of a violation, and any other relevant factors.

4. The written notice given by the board to a public utility under this section shall specify an appropriate time for compliance.

5. Civil penalties collected pursuant to this section from utilities providing water, electric, or gas service shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the division of community action agencies of the department of human rights. Civil penalties collected pursuant to this section from utilities providing telecommunications service shall be forwarded to the treasurer of state to be credited to the general fund of the state to be used only for consumer education programs administered by the board. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

Sec. 5. Section 476.97, subsection 3, paragraph a, subparagraph (5), Code 2003, is amended to read as follows:

(5) The plan shall provide for both increases and decreases in the prices for basic communications services reflecting annual changes in inflation and productivity. ~~Prior to January 1, 2000, Initially,~~ the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure, ~~and two and six-tenths percentage points for a productivity measure.~~ ~~On or after January 1, 2000, the~~ The board by rule may adopt a more current measure of inflation and productivity. Any plan in effect as of July 1, 2003, that contains a productivity factor shall strike the productivity factor on a prospective basis.

Sec. 6. Section 476.97, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 12. a. The Iowa broadband initiative is created to provide access to advanced telecommunications services to all customers in all exchanges served by rate-regulated local exchange carriers where advanced telecommunications services are not already available at affordable rates, to the extent consistent with technological limitations and the public interest as determined by the board. The general assembly specifically finds that regulatory flexibility is appropriate when fostering economic development through the increased availability of advanced telecommunications services.

b. For purposes of this section, "advanced telecommunications services" is defined as infrastructure capable of delivering a data transmission speed of at least two hundred kilobits per second in each direction.

c. Any rate-regulated local exchange carrier may implement a single increase in monthly rates for residential or business dial tone access service lines by an amount not to exceed two dollars per month. The increase shall be included in the customer's bill as an unidentified part of the overall rate for service. The revenue from this increase shall be used to provide advanced telecommunications services in each of the carrier's local exchange central office wire centers where advanced telecommunications services are not currently available at affordable rates in all or a substantial part of the exchange, subject to the requirements in subparagraphs (1) through (7). In addition, any increase or decrease required by an approved price regulation

plan that, as of July 1, 2003, has been deferred pursuant to subsection 3, paragraph "a", subparagraph (6), shall not be implemented and the amount of any deferral shall also be used to provide advanced telecommunications services, subject to the following requirements:

(1) Any carrier electing to participate in the Iowa broadband initiative shall file for the board's review and approval a plan for using the revenue resulting from the rate increase. In reviewing the plan, the board shall consider investments and expenditures by the carrier that will best serve the public interest as described in this subsection, including upgrading the existing telecommunications infrastructure to permit improved data services for customers who cannot be offered advanced telecommunications services because of their geographical location. The board shall adopt rules to implement its review process, including rules that specify the initial plan filing requirements, further define the public interest, and identify some of the factors the board will consider in reviewing plans.

(2) The carrier shall use the revenue resulting from the rate increase to implement its approved plan. Whenever the board is of the opinion that a carrier is not complying with its approved plan, the board may commence an action in the district court for any county in which such violation is alleged to have occurred to have such violation stopped and prevented by injunction, mandamus, or other appropriate remedy. The board may also, after notice and opportunity for hearing, require that the carrier refund any revenue resulting from the rate increase that has not been used to implement its approved plan. The board may also enforce the approved plan with civil penalties, pursuant to section 476.51.

(3) The carrier shall file annual reports with the board detailing its progress toward completion of its approved plan.

(4) The carrier, the board, or any other interested person may propose modifications to a carrier's plan at any time.

(5) By choosing to participate in the Iowa broadband initiative, the participating carrier agrees to make available to other carriers, on both a wholesale and an unbundled basis, the services and facilities that result from implementation of the participating carrier's plan. The wholesale rates and unbundled rates shall be set by the board, which shall consider, among other factors, the extent to which the service or facility was financed by the revenues generated by the rate increase allowed under this paragraph "c".

(6) Upon completion of its initial Iowa broadband initiative plan, a carrier shall do one or more of the following:

(a) File a plan for board review and approval for continued use of the revenue resulting from the rate increase for further deployment of advanced services.

(b) File a rate of return rate proceeding pursuant to section 476.6 to determine new rates.

(c) File proposed tariffs for board review and approval to reduce the monthly rates that were increased under this subsection by an amount equal to the increase.

(7) A carrier choosing to participate in the Iowa broadband initiative shall also apply a credit, in an amount equal to the amount of the residential service increase, to the monthly local exchange service rate for qualified applicants for low-income lifeline assistance programs. This credit shall continue for as long as the retail rate increase is in effect.

Sec. 7. NEW SECTION. 476.105 SEVERABILITY.

If any provision of this chapter or its application to any person or circumstance is held invalid or otherwise rendered ineffective by any entity, the invalidity or ineffectiveness shall not affect other provisions or applications of this chapter that can be given effect without the invalid or ineffective provision or application, and to this end the provisions of this chapter are severable.

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