

HOUSE BILL NO. 577

INTRODUCED BY BRADLEY, RAMIREZ, HAFFEY, MARKS, JACK MOORE,
KRUEGER, SPAETH, VAN VALKENBURG, M. WILLIAMS, PECK, KEENAN,
J. HAMMOND, B. WILLIAMS, ADDY, THOMAS, HALLIGAN, HARP,
BOYLAN, GALT, PAVLOVICH, D. BROWN, STEPHENS, B. BROWN,
BACHINI, MANNING, KEYSER, O'HARA, MERCER

BY REQUEST OF THE PUBLIC SERVICE COMMISSION

IN THE HOUSE

January 31, 1985	Introduced and referred to Committee on Judiciary.
February 16, 1985	Committee recommend bill do pass as amended. Report adopted.
February 18, 1985	Bill printed and placed on members' desks.
February 19, 1985	Second reading, do pass.
February 20, 1985	Considered correctly engrossed.
February 21, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 22, 1985	Introduced and referred to Committee on Business and Industry.
March 21, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 50; Noes, 0. Returned to House with amendments.

IN THE HOUSE

March 27, 1985

Received from Senate.

April 8, 1985

Second reading, amendments
concurrent in.

On motion, rules suspended and
bill placed on third reading
this day.

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 577
 2 INTRODUCED BY *Bradley Ramsey* *Markus Moore*
 3 *KZUEBLER* BY REQUEST OF THE PUBLIC SERVICE COMMISSION *Speth*
 4 *Van Valkenburg Williams Spik Keenan J. L. Hennig*
 5 *D. W. Adley Thomas Haller AARD Conroy*
 6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TRANSITION TO
 7 COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY; DEFINING
 8 "REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTIONS
 9 69-3-101, 69-3-201, AND 69-3-321, MCA; AND PROVIDING AN
 10 IMMEDIATE EFFECTIVE DATE."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

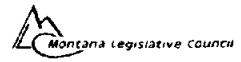
12 NEW SECTION. Section 1. Short title. [Sections 1
13 through 10 and 13] may be cited as the "Montana
14 Telecommunications Act".

15 NEW SECTION. Section 2. Purpose. The legislature
16 declares that it remains the policy of the state of Montana
17 to maintain universal availability of basic
18 telecommunications service at affordable rates. To the
19 extent that it is consistent with maintaining universal
20 service, it is further the policy of this state to encourage
21 competition in the telecommunications industry, thereby
22 allowing access by the public to resulting rapid advances in
23 telecommunications technology. It is the purpose of
24 [sections 1 through 10 and 13] to provide a regulatory
25 framework that will allow an orderly transition from a

1 regulated telecommunications industry to a competitive
2 market environment.

3 NEW SECTION. Section 3. Definitions. As used in this
4 part, the following definitions apply:

- 5 (1) "Commission" means the public service commission.
- 6 (2) "Private telecommunications service" means a
7 system, including the construction, maintenance, or
8 operation thereof, for the provision of telecommunications
9 service or any portion of such service, by a person or
10 entity for the sole and exclusive use of that person or
11 entity and not for resale, directly or indirectly. For
12 purposes of this definition, the term "person or entity"
13 includes a corporation and all of its affiliates and
14 subsidiaries if the corporation, affiliates, and
15 subsidiaries have a common ownership or control of 80% of
16 the outstanding voting shares.
- 17 (3) "Regulated telecommunications service" means
18 two-way switched, voice-grade access and transport of
19 communications originating and terminating in this state and
20 nonvoice-grade access and transport if intended to be
21 converted to or from voice-grade access and transport.
22 Regulated telecommunications service does not include the
23 provision of terminal equipment used to originate or
24 terminate such service, private telecommunications service,
25 resale of telecommunications service, one-way transmission



-2- INTRODUCED BILL
HB 577

1 of television signals, cellular communication, or provision
2 of radio paging or mobile radio services.

3 (4) "Resale of telecommunications service" means the
4 resale of regulated telecommunications service, with or
5 without adding value, provided any value added would not
6 otherwise be subject to regulation.

7 NEW SECTION. Section 4. Exemption for private
8 service. Construction, maintenance, or operation of a
9 private telecommunications service does not constitute the
10 provision of regulated telecommunications service, and a
11 private telecommunications service is not subject to any of
12 the provisions of this title. If any other person or entity,
13 including the owners or shareholders of the entity owning or
14 operating a private telecommunications service, uses the
15 telecommunications service, whether for hire or not, the
16 private telecommunications service is a regulated
17 telecommunications service under [sections 1 through 10 and
18 13].

19 NEW SECTION. Section 5. Manner of regulation of
20 telecommunications service. (1) Before any person or entity
21 provides regulated telecommunications service within the
22 state of Montana, it shall file with the commission a notice
23 including:

- 24 (a) the name and address of the provider;
25 (b) a narrative description of the regulated

1 telecommunications service to be offered and the geographic
2 area and markets to be served;

3 (c) initial tariffs for the regulated
4 telecommunications service;

5 (d) such other information as the commission may
6 require to accomplish the purpose of this chapter.

7 (2) The provision of any regulated telecommunications
8 service does not subject the provider thereof to regulation
9 of any other telecommunications services otherwise exempt
10 under this chapter.

11 NEW SECTION. Section 6. Prohibition against
12 cross-subsidization. (1) No provider of regulated
13 telecommunications service may use current revenues earned
14 or expenses incurred in conjunction with services subject to
15 regulation under this chapter to subsidize services which
16 are not regulated. Revenues and expenses incurred in
17 conjunction with services not regulated under this chapter
18 may not be attributed to or used to subsidize services which
19 are subject to regulation for any reason.

20 (2) Nothing in this section is to be construed to
21 effect the regulatory treatment of revenues, expenses, and
22 investment for telephone directory services currently
23 authorized under this title.

24 NEW SECTION. Section 7. Regulation of rates and
25 charges. (1) As to that telecommunications service which is

1 provided under regulation, the commission may establish
 2 specific rates, tariffs, or fares for the provision of such
 3 service to the public. The rates, tariffs, or fares must be
 4 just, reasonable, and nondiscriminatory.

5 (2) Alternatively, the commission may authorize the
 6 provision of regulated telecommunications service under such
 7 terms and conditions as may best serve the declared policy
 8 of this state. The commission is not required to fix and
 9 determine specific rates, tariffs, or fares for the service
 10 and in lieu thereof may:

11 (a) totally detariff the service;

12 (b) detariff rates for the service but retain tariffs
 13 for service standards and requirements;

14 (c) detariff rates but require notice of price changes
 15 to the commission and subscribers;

16 (d) establish only maximum rates, only minimum rates,
 17 or permissible price ranges; or

18 (e) provide such other rate or service regulation as
 19 will promote the purposes of [sections 2 through 10 and 13].

20 (3) All providers of comparable regulated
 21 telecommunications services within a market area must be
 22 subject to the same standards of regulation. For purposes
 23 of this section, regulated telecommunications services are
 24 comparable if they are reasonable substitutes for one
 25 another, to the extent that subscribers generally would

1 accept either service as meeting their needs.

2 NEW SECTION. Section 8. Forbearance of rate
 3 regulation to facilitate competition. (1) In accordance with
 4 the provisions of this section, the commission shall forbear
 5 regulation as to rates, tariffs, fares, or charges to
 6 facilitate competition and shall authorize the provision of
 7 all or any portion of regulated telecommunications service
 8 under stated or negotiated terms to any person or entity
 9 that has acquired or is contemplating acquisition of,
 10 through construction, lease, or any other form of
 11 acquisition, similar telecommunications service from an
 12 alternative source.

13 (2) At any time, the provider of regulated
 14 telecommunications service may file a verified application
 15 with the commission for forbearance of regulation to
 16 facilitate competition. The application shall describe the
 17 telecommunications service to be offered, the customer to be
 18 served, and the party or parties offering similar service,
 19 together with such other information and in such form as the
 20 commission may prescribe. Such additional information must
 21 be reasonably related to the determination of the existence
 22 of an alternative offer but may not require information
 23 relating to the cost of providing such service.

24 (3) The commission shall approve or deny any such
 25 application for forbearance of regulation to facilitate

1 competition within 10 days after the filing of the
 2 application, except that the commission may by order defer
 3 action for an additional 5-day period. If the commission has
 4 not acted on any application within the permitted time
 5 period, the application is considered granted. The
 6 commission shall deny the application only upon a finding
 7 that the application is incomplete or that the subject or
 8 similar service is not being offered to the customer by
 9 parties other than the applicant.

10 (4) The provisions of 2-4-601, relating to notice and
 11 hearing, do not apply to this section.

12 (5) Upon approval of the application, the provider of
 13 telecommunications service may negotiate with such person or
 14 entity for the provision of such service without regard to
 15 its tariffs on file and approved by the commission.

16 (6) Within 10 days after the conclusion of such
 17 negotiations, the provider of regulated telecommunications
 18 service shall file with the commission the final contract or
 19 other evidence of the service to be provided, together with
 20 the charges and other conditions of the service.
 21 Thereafter, the provider of regulated telecommunications
 22 service may provide such service to the customer without
 23 regard to its tariffs on file and approved by the
 24 commission.

25 (7) Services provided pursuant to subsection (1)

1 remain subject to the regulatory powers of the commission.

2 NEW SECTION. Section 9. Examination of books and
 3 records. Nothing in [sections 1 through 10 and 13] precludes
 4 the commission from exercising its authority under the
 5 provisions of 69-3-202. The commission may require such
 6 accounting or reporting systems as are necessary to allow a
 7 proper allocation of investments, costs, or expenses that
 8 are joint or common to both regulated telecommunications
 9 services and other services or to both tariffed regulated
 10 telecommunications services and nontariffed regulated
 11 telecommunications services.

12 NEW SECTION. Section 10. Rulemaking authority. The
 13 commission may adopt rules to implement [sections 1 through
 14 10 and 13].

15 Section 11. Section 69-3-101, MCA, is amended to read:
 16 "69-3-101. Meaning of term "public utility". (1) The
 17 term "public utility", within the meaning of this chapter,
 18 shall embrace every corporation, both public and private,
 19 company, individual, association of individuals, their
 20 lessees, trustees, or receivers appointed by any court
 21 whatsoever, that now or hereafter may own, operate, or
 22 control any plant or equipment, any part of a plant or
 23 equipment, or any water right within the state for the
 24 production, delivery, or furnishing for or to other persons,
 25 firms, associations, or corporations, private or municipal:

- 1 (a) heat;
- 2 (b) street-railway service;
- 3 (c) light;
- 4 (d) power in any form or by any agency;
- 5 (e) except as provided in chapter 7, water for
- 6 business, manufacturing, household use, or sewerage service,
- 7 whether within the limits of municipalities, towns, and
- 8 villages or elsewhere;
- 9 (f) ~~telegraph-----or-----telephone~~ regulated
- 10 telecommunications service.

- 11 (2) The term "public utility" does not include:
- 12 (a) privately owned and operated water, sewer, or
- 13 combination systems that do not serve the public; or
- 14 (b) county or consolidated city and county water or
- 15 sewer districts as defined in Title 7, chapter 13, parts 22
- 16 and 23."

17 Section 12. Section 69-3-201, MCA, is amended to read:

18 "69-3-201. Utilities to provide adequate service at

19 reasonable charges. Every public utility is required to

20 furnish reasonably adequate service and facilities. The

21 charge made by any public utility for any heat, light,

22 power, water, ~~telegraph~~ or telephone regulated

23 telecommunications service produced, transmitted, delivered,

24 or furnished or for any service to be rendered as or in

25 connection with any public utility shall be reasonable and

1 just, and every unjust and unreasonable charge is prohibited

2 and declared unlawful."

3 NEW SECTION. Section 13. Exception. Nothing in [this

4 act] affects the exemption from regulation provided by

5 35-18-104.

6 Section 14. Section 69-3-321, MCA, is amended to read:

7 "69-3-321. Complaints against public utility --

8 hearing. (1) The commission shall proceed, with or without

9 notice, to make such investigation as it may deem necessary

10 upon a complaint made against any public utility by any

11 mercantile, agricultural, or manufacturing society or club;

12 by any body politic or municipal organization or

13 association, the same being interested; or by any person,

14 firm, or corporation, provided such person, firm, or

15 corporation is directly affected thereby, that:

16 (a) any of the rates, tolls, charges, or schedules or

17 any joint rate or rates are in any way unreasonable or

18 unjustly discriminatory;

19 (b) any regulations, measurements, practices, or acts

20 whatsoever affecting or relating to the production,

21 transmission, delivery, or furnishing of heat, light, water,

22 or power, or regulated telecommunications service, or any

23 service in connection therewith ~~or-the-conveyance-of-any~~

24 ~~telegraph-or-telephone-message-or-any-service-in--connection~~

25 ~~therewith~~ is in any respect unreasonable, insufficient, or

1 unjustly discriminatory; or

2 (c) any service is inadequate.

3 (2) No order affecting such rates, tolls, charges,
4 schedules, regulations, measurements, practices, or acts
5 complained of shall be entered without a formal hearing,
6 except the commission may issue an order to provide service
7 to a residential consumer pending a hearing on a complaint
8 by such consumer or by the consumer counsel on behalf of
9 such consumer against a public utility, providing that the
10 hearing is held within 20 days unless further delayed by
11 consent of all parties."

12 NEW SECTION. Section 15. Codification instruction.
13 Sections 1 through 10 and 13 are intended to be codified as
14 an integral part of Title 69, chapter 3, and the provisions
15 of Title 69, chapter 3, apply to sections 1 through 10 and
16 13.

17 NEW SECTION. Section 16. Effective date. This act is
18 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

STATEMENT OF INTENT

HOUSE BILL 577

House Judiciary Committee

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As stated in the purpose section of this act, it is the intent of the legislature to maintain universal availability of basic telecommunications service at affordable rates. At the same time, the legislature desires to make available to the general public the rapid advances in telecommunications technology brought about by competition. It is the intent of this act to provide the regulatory flexibility necessary to allow a transition to a competitive market environment in the telecommunications industry.

Under prior law there was no mechanism that would allow telecommunications utilities to respond to competitive situations. It is the intent of the legislature that the public service commission now have the authority to permit flexible pricing in those instances where it will promote healthy competition. For example, if two telecommunications utilities are effectively competing to provide long distance service to a market, the commission may allow those companies to change their rates without commission approval in response to competition. Depending upon the circumstances, the commission may detariff rates for the competitive services or allow the telecommunications

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utilities to operate within permissible price ranges or implement some other form of regulation that is less restrictive than total rate regulation.

The legislature intends that the commission retain the power to protect ratepayer interests by totally regulating the rates for telecommunications services that are provided on a monopoly basis. It is intended that the commission be authorized to examine each service and market to determine when market conditions rather than total rate regulation can be relied upon to assure that adequate service will be provided at reasonable rates.

It is further intended that the commission have authority to take those actions necessary to assure that revenues from regulated telecommunications services are not used to subsidize nonregulated operations.

It is intended that the commission have authority to adopt rules, if needed, to develop standards for evaluating market conditions and criteria for determining that detariffing or rate flexibility is appropriate. The commission may also implement, by rule if necessary, such reporting requirements as are required to permit a proper allocation of common or joint costs and investments.

HOUSE BILL NO. 577

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BY REQUEST OF THE PUBLIC SERVICE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TRANSITION TO
COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY; DEFINING
"REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTIONS
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extent that it is consistent with maintaining universal

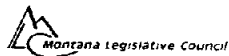
service, it is further the policy of this state to encourage
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allowing access by the public to resulting rapid advances in
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framework that will allow an orderly transition from a
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part, the following definitions apply:

(1) "Commission" means the public service commission.

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system, including the construction, maintenance, or
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service or any portion of such service, by a person or
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entity and not for resale, directly or indirectly. For
purposes of this definition, the term "person or entity"
includes a corporation and all of its affiliates and
subsidiaries if the corporation, affiliates, and
subsidiaries have a common ownership or control of 80% of
the outstanding voting shares.

(3) "Regulated telecommunications service" means
two-way switched, voice-grade access and transport of
communications originating and terminating in this state and



1 nonvoice-grade access and transport if intended to be
 2 converted to or from voice-grade access and transport.
 3 Regulated telecommunications service does not include the
 4 provision of terminal equipment used to originate or
 5 terminate such service, private telecommunications service,
 6 resale of telecommunications service, one-way transmission
 7 of television signals, cellular communication, or provision
 8 of radio paging or mobile radio services.

9 (4) "Resale of telecommunications service" means the
 10 resale of regulated telecommunications service, with or
 11 without adding value, provided any value added would not
 12 otherwise be subject to regulation.

13 NEW SECTION. Section 4. Exemption for private
 14 service. Construction, maintenance, or operation of a
 15 private telecommunications service does not constitute the
 16 provision of regulated telecommunications service, and a
 17 private telecommunications service is not subject to any of
 18 the provisions of this title. If any other person or entity,
 19 including the owners or shareholders of the entity owning or
 20 operating a private telecommunications service, uses the
 21 telecommunications service, whether for hire or not, the
 22 private telecommunications service is a regulated
 23 telecommunications service under [sections 1 through 10 and
 24 13].

25 NEW SECTION. Section 5. Manner of regulation of

1 telecommunications service. (1) Before any person or entity
 2 provides regulated telecommunications service within the
 3 state of Montana, it shall file with the commission a notice
 4 including:

- 5 (a) the name and address of the provider;
- 6 (b) a narrative description of the regulated
 7 telecommunications service to be offered and the geographic
 8 area and markets to be served;
- 9 (c) initial tariffs for the regulated
 10 telecommunications service;

11 (d) such other information as the commission may
 12 require to accomplish the purpose of this chapter.

13 (2) The provision of any regulated telecommunications
 14 service does not subject the provider thereof to regulation
 15 of any other telecommunications services otherwise exempt
 16 under this chapter.

17 NEW SECTION. Section 6. Prohibition against
 18 cross-subsidization. (1) No provider of regulated
 19 telecommunications service may use current revenues earned
 20 or expenses incurred in conjunction with services subject to
 21 regulation under this chapter to subsidize services which
 22 are not regulated. Revenues and expenses incurred in
 23 conjunction with services not regulated under this chapter
 24 may not be attributed to or used to subsidize services which
 25 are subject to regulation for any reason.

1 (2) Nothing in this section is to be construed to
 2 effect the regulatory treatment of revenues, expenses, and
 3 investment for telephone directory services currently
 4 authorized under this title.

5 NEW SECTION. Section 7. Regulation of rates and
 6 charges. (1) As to that telecommunications service which is
 7 provided under regulation, the commission may establish
 8 specific rates, tariffs, or fares for the provision of such
 9 service to the public. The rates, tariffs, or fares must be
 10 just, reasonable, and nondiscriminatory.

11 (2) Alternatively, the commission may authorize the
 12 provision of regulated telecommunications service under such
 13 terms and conditions as may best serve the declared policy
 14 of this state. The commission is not required to fix and
 15 determine specific rates, tariffs, or fares for the service
 16 and in lieu thereof may:

17 (a) totally detariff the service;

18 (b) detariff rates for the service but retain tariffs
 19 for service standards and requirements;

20 (c) detariff rates but require notice of price changes
 21 to the commission and subscribers;

22 (d) establish only maximum rates, only minimum rates,
 23 or permissible price ranges AS LONG AS THE MINIMUM RATE IS
 24 FULLY COMPENSATORY; or

25 (e) provide such other rate or service regulation as

1 will promote the purposes of [sections 2 through 10 and 13].

2 (3) All providers of comparable regulated
 3 telecommunications services within a market area must be
 4 subject to the same standards of regulation. For purposes
 5 of this section, regulated telecommunications services are
 6 comparable if they are reasonable substitutes for one
 7 another, to the extent that subscribers generally would
 8 accept either service as meeting their needs.

9 NEW SECTION. Section 8. Forbearance of rate
 10 regulation to facilitate competition. (1) In accordance with
 11 the provisions of this section, the commission shall forbear
 12 regulation as to rates, tariffs, fares, or charges to
 13 facilitate competition and shall authorize the provision of
 14 all or any portion of regulated telecommunications service
 15 under stated or negotiated terms to any person or entity
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 17 through construction, lease, or any other form of
 18 acquisition, similar telecommunications service from an
 19 alternative source.

20 (2) At any time, the provider of regulated
 21 telecommunications service may file a verified application
 22 with the commission for forbearance of regulation to
 23 facilitate competition. The application shall describe the
 24 telecommunications service to be offered, the customer to be
 25 served, and the party or parties offering similar service,

1 together with such other information and in such form as the
 2 commission may prescribe. Such additional information must
 3 be reasonably related to the determination of the existence
 4 of an alternative offer but may not require information
 5 relating to the cost of providing such service.

6 (3) The commission shall approve or deny any such
 7 application for forbearance of regulation to facilitate
 8 competition within 10 days after the filing of the
 9 application, except that the commission may by order defer
 10 action for an additional 5-day period. If the commission has
 11 not acted on any application within the permitted time
 12 period, the application is considered granted. The
 13 commission shall deny the application only upon a finding
 14 that the application is incomplete or that the subject or
 15 similar service is not being offered to the customer by
 16 parties other than the applicant.

17 (4) The provisions of 2-4-601, relating to notice and
 18 hearing, do not apply to this section.

19 (5) Upon approval of the application, the provider of
 20 telecommunications service may negotiate with such person or
 21 entity for the provision of such service without regard to
 22 its tariffs on file and approved by the commission.

23 (6) Within 10 days after the conclusion of such
 24 negotiations, the provider of regulated telecommunications
 25 service shall file with the commission the final contract or

1 other evidence of the service to be provided, together with
 2 the charges and other conditions of the service.
 3 Thereafter, the provider of regulated telecommunications
 4 service may provide such service to the customer without
 5 regard to its tariffs on file and approved by the
 6 commission.

7 (7) Services provided pursuant to subsection (1)
 8 remain subject to the regulatory powers of the commission.

9 NEW SECTION. Section 9. Examination of books and
 10 records. Nothing in [sections 1 through 10 and 13] precludes
 11 the commission from exercising its authority under the
 12 provisions of 69-3-202. The commission may require such
 13 accounting or reporting systems as are necessary to allow a
 14 proper allocation of investments, costs, or expenses that
 15 are joint or common to both regulated telecommunications
 16 services and other services or to both tariffed regulated
 17 telecommunications services and nontariffed regulated
 18 telecommunications services.

19 NEW SECTION. Section 10. Rulemaking authority. The
 20 commission may adopt rules to implement [sections 1 through
 21 10 and 13].

22 Section 11. Section 69-3-101, MCA, is amended to read:
 23 "69-3-101. Meaning of term "public utility". (1) The
 24 term "public utility", within the meaning of this chapter,
 25 shall embrace every corporation, both public and private,

1 company, individual, association of individuals, their
 2 lessees, trustees, or receivers appointed by any court
 3 whatsoever, that now or hereafter may own, operate, or
 4 control any plant or equipment, any part of a plant or
 5 equipment, or any water right within the state for the
 6 production, delivery, or furnishing for or to other persons,
 7 firms, associations, or corporations, private or municipal:

- 8 (a) heat;
- 9 (b) street-railway service;
- 10 (c) light;
- 11 (d) power in any form or by any agency;
- 12 (e) except as provided in chapter 7, water for
 13 business, manufacturing, household use, or sewerage service,
 14 whether within the limits of municipalities, towns, and
 15 villages or elsewhere;

16 (f) ~~telegraph-----or-----telephone~~ regulated
 17 telecommunications service.

- 18 (2) The term "public utility" does not include:
- 19 (a) privately owned and operated water, sewer, or
 20 combination systems that do not serve the public; or
- 21 (b) county or consolidated city and county water or
 22 sewer districts as defined in Title 7, chapter 13, parts 22
 23 and 23."

24 Section 12. Section 69-3-201, MCA, is amended to read:
 25 "69-3-201. Utilities to provide adequate service at

1 reasonable charges. Every public utility is required to
 2 furnish reasonably adequate service and facilities. The
 3 charge made by any public utility for any heat, light,
 4 power, water, telegraph, or telephone regulated
 5 telecommunications service produced, transmitted, delivered,
 6 or furnished or for any service to be rendered as or in
 7 connection with any public utility shall be reasonable and
 8 just, and every unjust and unreasonable charge is prohibited
 9 and declared unlawful."

10 NEW SECTION. Section 13. Exception. Nothing in [this
 11 act] affects the exemption from regulation provided by
 12 35-18-104.

13 Section 14. Section 69-3-321, MCA, is amended to read:
 14 "69-3-321. Complaints against public utility --
 15 hearing. (1) The commission shall proceed, with or without
 16 notice, to make such investigation as it may deem necessary
 17 upon a complaint made against any public utility by any
 18 mercantile, agricultural, or manufacturing society or club;
 19 by any body politic or municipal organization or
 20 association, the same being interested; or by any person,
 21 firm, or corporation, provided such person, firm, or
 22 corporation is directly affected thereby, that:

- 23 (a) any of the rates, tolls, charges, or schedules or
 24 any joint rate or rates are in any way unreasonable or
 25 unjustly discriminatory;

1 (b) any regulations, measurements, practices, or acts
 2 whatsoever affecting or relating to the production,
 3 transmission, delivery, or furnishing of heat, light, water,
 4 or power, or regulated telecommunications service, or any
 5 service in connection therewith ~~or--the--conveyance--of--any~~
 6 ~~telegraph--or--telephone--message--or--any--service--in--connection~~
 7 ~~therewith~~ is in any respect unreasonable, insufficient, or
 8 unjustly discriminatory; or

9 (c) any service is inadequate.

10 (2) No order affecting such rates, tolls, charges,
 11 schedules, regulations, measurements, practices, or acts
 12 complained of shall be entered without a formal hearing,
 13 except the commission may issue an order to provide service
 14 to a residential consumer pending a hearing on a complaint
 15 by such consumer or by the consumer counsel on behalf of
 16 such consumer against a public utility, providing that the
 17 hearing is held within 20 days unless further delayed by
 18 consent of all parties."

19 NEW SECTION. SECTION 15. NO PREEMPTION OF LAWS
 20 GOVERNING ANTICOMPETITIVE ACTIVITY. NOTHING IN [SECTIONS 1
 21 THROUGH 10 AND 13] IN ANY WAY PREEMPTS, ABROGATES, OR
 22 OTHERWISE AFFECTS ANY RIGHT, LIABILITY, OR OBLIGATION
 23 ARISING FROM ANY FEDERAL OR STATE LAW REGARDING UNFAIR
 24 BUSINESS PRACTICES OR ANTICOMPETITIVE ACTIVITY.

25 NEW SECTION. Section 16. Codification instruction.

1 Sections 1 through 10 and 13 are intended to be codified as
 2 an integral part of Title 69, chapter 3, and the provisions
 3 of Title 69, chapter 3, apply to sections 1 through 10 and
 4 13.

5 NEW SECTION. Section 17. Effective date. This act is
 6 effective on passage and approval.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 577

3 House Judiciary Committee

4

5 As stated in the purpose section of this act, it is the
6 intent of the legislature to maintain universal availability
7 of basic telecommunications service at affordable rates. At
8 the same time, the legislature desires to make available to
9 the general public the rapid advances in telecommunications
10 technology brought about by competition. It is the intent of
11 this act to provide the regulatory flexibility necessary to
12 allow a transition to a competitive market environment in
13 the telecommunications industry.

14 Under prior law there was no mechanism that would allow
15 telecommunications utilities to respond to competitive
16 situations. It is the intent of the legislature that the
17 public service commission now have the authority to permit
18 flexible pricing in those instances where it will promote
19 healthy competition. For example, if two telecommunications
20 utilities are effectively competing to provide long distance
21 service to a market, the commission may allow those
22 companies to change their rates without commission approval
23 in response to competition. Depending upon the
24 circumstances, the commission may detariff rates for the
25 competitive services or allow the telecommunications

1 utilities to operate within permissible price ranges or
2 implement some other form of regulation that is less
3 restrictive than total rate regulation.

4 The legislature intends that the commission retain the
5 power to protect ratepayer interests by totally regulating
6 the rates for telecommunications services that are provided
7 on a monopoly basis. It is intended that the commission be
8 authorized to examine each service and market to determine
9 when market conditions rather than total rate regulation can
10 be relied upon to assure that adequate service will be
11 provided at reasonable rates.

12 It is further intended that the commission have
13 authority to take those actions necessary to assure that
14 revenues from regulated telecommunications services are not
15 used to subsidize nonregulated operations.

16 It is intended that the commission have authority to
17 adopt rules, if needed, to develop standards for evaluating
18 market conditions and criteria for determining that
19 detariffing or rate flexibility is appropriate. The
20 commission may also implement, by rule if necessary, such
21 reporting requirements as are required to permit a proper
22 allocation of common or joint costs and investments.

THIRD READING

-2-

4B577

1 HOUSE BILL NO. 577

2 INTRODUCED BY BRADLEY, RAMIREZ, HAFPEY, MARKS,

3 JACK MOORE, KRUEGER, SPAETH, VAN VALKENBURG,

4 M. WILLIAMS, PECK, KEENAN, J. HAMMOND,

5 B. WILLIAMS, ADDY, THOMAS, HALLIGAN,

6 HARP, BOYLAN, GALT, PAVLOVICH, D. BROWN,

7 STEPHENS, B. BROWN, BACHINI, MANNING, KEYSER,

8 O'HARA, MERCER

9 BY REQUEST OF THE PUBLIC SERVICE COMMISSION

10
11 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TRANSITION TO
12 COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY; DEFINING
13 "REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTIONS
14 69-3-101, 69-3-201, AND 69-3-321, MCA; AND PROVIDING AN
15 IMMEDIATE EFFECTIVE DATE."
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. Section 1. Short title. [Sections 1
19 through 10 and 13] may be cited as the "Montana
20 Telecommunications Act".

21 NEW SECTION. Section 2. Purpose. The legislature
22 declares that it remains the policy of the state of Montana
23 to maintain universal availability of basic
24 telecommunications service at affordable rates. To the
25 extent that it is consistent with maintaining universal

1 service, it is further the policy of this state to encourage
2 competition in the telecommunications industry, thereby
3 allowing access by the public to resulting rapid advances in
4 telecommunications technology. It is the purpose of
5 [sections 1 through 10 and 13] to provide a regulatory
6 framework that will allow an orderly transition from a
7 regulated telecommunications industry to a competitive
8 market environment.

9 NEW SECTION. Section 3. Definitions. As used in this
10 part, the following definitions apply:

11 (1) "Commission" means the public service commission.

12 (2) "Private telecommunications service" means a
13 system, including the construction, maintenance, or
14 operation thereof, for the provision of telecommunications
15 service or any portion of such service, by a person or
16 entity for the sole and exclusive use of that person or
17 entity and not for resale, directly or indirectly. For
18 purposes of this definition, the term "person or entity"
19 includes a corporation and all of its affiliates and
20 subsidiaries if the corporation, affiliates, and
21 subsidiaries have a common ownership or control of 80% of
22 the outstanding voting shares.

23 (3) "Regulated telecommunications service" means
24 two-way switched, voice-grade access and transport of
25 communications originating and terminating in this state and

1 nonvoice-grade access and transport if intended to be
 2 converted to or from voice-grade access and transport.
 3 Regulated telecommunications service does not include the
 4 provision of terminal equipment used to originate or
 5 terminate such service, private telecommunications service,
 6 resale of telecommunications service, one-way transmission
 7 of television signals, cellular communication, or provision
 8 of radio paging or mobile radio services.

9 (4) "Resale of telecommunications service" means the
 10 resale of regulated telecommunications service, with or
 11 without adding value, provided any value added would not
 12 otherwise be subject to regulation.

13 NEW SECTION. Section 4. Exemption for private
 14 service. Construction, maintenance, or operation of a
 15 private telecommunications service does not constitute the
 16 provision of regulated telecommunications service, and a
 17 private telecommunications service is not subject to any of
 18 the provisions of this title. If any other person or entity,
 19 including the owners or shareholders of the entity owning or
 20 operating a private telecommunications service, uses the
 21 telecommunications service, whether for hire or not, the
 22 private telecommunications service is a regulated
 23 telecommunications service under [sections 1 through 10 and
 24 13].

25 NEW SECTION. Section 5. Manner of regulation of

1 telecommunications service. (1) Before any person or entity
 2 provides regulated telecommunications service within the
 3 state of Montana, it shall file with the commission a notice
 4 including:

- 5 (a) the name and address of the provider;
- 6 (b) a narrative description of the regulated
 7 telecommunications service to be offered and the geographic
 8 area and markets to be served;
- 9 (c) initial tariffs for the regulated
 10 telecommunications service;
- 11 (d) such other information as the commission may
 12 require to accomplish the purpose of this chapter.

13 (2) The provision of any regulated telecommunications
 14 service does not subject the provider thereof to regulation
 15 of any other telecommunications services otherwise exempt
 16 under this chapter.

17 NEW SECTION. Section 6. Prohibition against
 18 cross-subsidization. (1) No provider of regulated
 19 telecommunications service may use current revenues earned
 20 or expenses incurred in conjunction with services subject to
 21 regulation under this chapter to subsidize services which
 22 are not regulated. Revenues and expenses incurred in
 23 conjunction with services not regulated under this chapter
 24 may not be attributed to or used to subsidize services which
 25 are subject to regulation for any reason.

1 (2) Nothing in this section is to be construed to
2 effect the regulatory treatment of revenues, expenses, and
3 investment for telephone directory services currently
4 authorized under this title.

5 NEW SECTION. Section 7. Regulation of rates and
6 charges. (1) As to that telecommunications service which is
7 provided under regulation, the commission may establish
8 specific rates, tariffs, or fares for the provision of such
9 service to the public. The rates, tariffs, or fares must be
10 just, reasonable, and nondiscriminatory.

11 (2) Alternatively, the commission may authorize the
12 provision of regulated telecommunications service under such
13 terms and conditions as may best serve the declared policy
14 of this state. The commission is not required to fix and
15 determine specific rates, tariffs, or fares for the service
16 and in lieu thereof may:

17 (a) totally detariff the service;

18 (b) detariff rates for the service but retain tariffs
19 for service standards and requirements;

20 (c) detariff rates but require notice of price changes
21 to the commission and subscribers;

22 (d) establish only maximum rates, only minimum rates,
23 or permissible price ranges AS LONG AS THE MINIMUM RATE IS
24 FULLY COMPENSATORY; or

25 (e) provide such other rate or service regulation as

1 will promote the purposes of [sections 2 through 10 and 13].

2 (3) All providers of comparable regulated
3 telecommunications services within a market area must be
4 subject to the same standards of regulation. For purposes
5 of this section, regulated telecommunications services are
6 comparable if they are reasonable substitutes for one
7 another, to the extent that subscribers generally would
8 accept either service as meeting their needs.

9 NEW SECTION. Section 8. Forbearance of rate
10 regulation to facilitate competition. (1) In accordance with
11 the provisions of this section, the commission shall forbear
12 regulation as to rates, tariffs, fares, or charges to
13 facilitate competition and shall authorize the provision of
14 all or any portion of regulated telecommunications service
15 under stated or negotiated terms to any person or entity
16 that has acquired or is contemplating acquisition of,
17 through construction, lease, or any other form of
18 acquisition, similar telecommunications service from an
19 alternative source.

20 (2) At any time, the provider of regulated
21 telecommunications service may file a verified application
22 with the commission for forbearance of regulation to
23 facilitate competition. The application shall describe the
24 telecommunications service to be offered, the customer to be
25 served, and the party or parties offering similar service,

1 together with such other information and in such form as the
2 commission may prescribe. Such additional information must
3 be reasonably related to the determination of the existence
4 of an alternative offer but may not require information
5 relating to the cost of providing such service.

6 (3) The commission shall approve or deny any such
7 application for forbearance of regulation to facilitate
8 competition within 10 days after the filing of the
9 application, except that the commission may by order defer
10 action for an additional 5-day period. If the commission has
11 not acted on any application within the permitted time
12 period, the application is considered granted. The
13 commission shall deny the application only upon a finding
14 that the application is incomplete or that the subject or
15 similar service is not being offered to the customer by
16 parties other than the applicant.

17 (4) The provisions of 2-4-601, relating to notice and
18 hearing, do not apply to this section.

19 (5) Upon approval of the application, the provider of
20 telecommunications service may negotiate with such person or
21 entity for the provision of such service without regard to
22 its tariffs on file and approved by the commission.

23 (6) Within 10 days after the conclusion of such
24 negotiations, the provider of regulated telecommunications
25 service shall file with the commission the final contract or

1 other evidence of the service to be provided, together with
2 the charges and other conditions of the service.
3 Thereafter, the provider of regulated telecommunications
4 service may provide such service to the customer without
5 regard to its tariffs on file and approved by the
6 commission.

7 (7) Services provided pursuant to subsection (1)
8 remain subject to the regulatory powers of the commission.

9 NEW SECTION. Section 9. Examination of books and
10 records. Nothing in [sections 1 through 10 and 13] precludes
11 the commission from exercising its authority under the
12 provisions of 69-3-202. The commission may require such
13 accounting or reporting systems as are necessary to allow a
14 proper allocation of investments, costs, or expenses that
15 are joint or common to both regulated telecommunications
16 services and other services or to both tariffed regulated
17 telecommunications services and nontariffed regulated
18 telecommunications services.

19 NEW SECTION. Section 10. Rulemaking authority. The
20 commission may adopt rules to implement [sections 1 through
21 10 and 13].

22 Section 11. Section 69-3-101, MCA, is amended to read:
23 "69-3-101. Meaning of term "public utility". (1) The
24 term "public utility", within the meaning of this chapter,
25 shall embrace every corporation, both public and private,

1 company, individual, association of individuals, their
 2 lessees, trustees, or receivers appointed by any court
 3 whatsoever, that now or hereafter may own, operate, or
 4 control any plant or equipment, any part of a plant or
 5 equipment, or any water right within the state for the
 6 production, delivery, or furnishing for or to other persons,
 7 firms, associations, or corporations, private or municipal:

- 8 (a) heat;
- 9 (b) street-railway service;
- 10 (c) light;
- 11 (d) power in any form or by any agency;
- 12 (e) except as provided in chapter 7, water for
 13 business, manufacturing, household use, or sewerage service,
 14 whether within the limits of municipalities, towns, and
 15 villages or elsewhere;
- 16 (f) telegraph-----or-----telephone regulated
 17 telecommunications service.

18 (2) The term "public utility" does not include:

- 19 (a) privately owned and operated water, sewer, or
 20 combination systems that do not serve the public; or
- 21 (b) county or consolidated city and county water or
 22 sewer districts as defined in Title 7, chapter 13, parts 22
 23 and 23."

24 Section 12. Section 69-3-201, MCA, is amended to read:

25 "69-3-201. Utilities to provide adequate service at

1 reasonable charges. Every public utility is required to
 2 furnish reasonably adequate service and facilities. The
 3 charge made by any public utility for any heat, light,
 4 power, water, telegraph or telephone regulated
 5 telecommunications service produced, transmitted, delivered,
 6 or furnished or for any service to be rendered as or in
 7 connection with any public utility shall be reasonable and
 8 just, and every unjust and unreasonable charge is prohibited
 9 and declared unlawful."

10 NEW SECTION. Section 13. Exception. Nothing in [this
 11 act] affects the exemption from regulation provided by
 12 35-18-104.

13 Section 14. Section 69-3-321, MCA, is amended to read:

14 "69-3-321. Complaints against public utility --
 15 hearing. (1) The commission shall proceed, with or without
 16 notice, to make such investigation as it may deem necessary
 17 upon a complaint made against any public utility by any
 18 mercantile, agricultural, or manufacturing society or club;
 19 by any body politic or municipal organization or
 20 association, the same being interested; or by any person,
 21 firm, or corporation, provided such person, firm, or
 22 corporation is directly affected thereby, that:

- 23 (a) any of the rates, tolls, charges, or schedules or
 24 any joint rate or rates are in any way unreasonable or
 25 unjustly discriminatory;

1 (b) any regulations, measurements, practices, or acts
 2 whatsoever affecting or relating to the production,
 3 transmission, delivery, or furnishing of heat, light, water,
 4 or power, or regulated telecommunications service, or any
 5 service in connection therewith ~~or--the--conveyance--of--any~~
 6 ~~telegraph--or--telephone--message--or--any--service--in--connection~~
 7 therewith is in any respect unreasonable, insufficient, or
 8 unjustly discriminatory; or

9 (c) any service is inadequate.

10 (2) No order affecting such rates, tolls, charges,
 11 schedules, regulations, measurements, practices, or acts
 12 complained of shall be entered without a formal hearing,
 13 except the commission may issue an order to provide service
 14 to a residential consumer pending a hearing on a complaint
 15 by such consumer or by the consumer counsel on behalf of
 16 such consumer against a public utility, providing that the
 17 hearing is held within 20 days unless further delayed by
 18 consent of all parties."

19 NEW SECTION. SECTION 15. NO PREEMPTION OF LAWS
 20 GOVERNING ANTICOMPETITIVE ACTIVITY. NOTHING IN [SECTIONS 1
 21 THROUGH 10 AND 13] IN ANY WAY PREEMPTS, ABROGATES, OR
 22 OTHERWISE AFFECTS ANY RIGHT, LIABILITY, OR OBLIGATION
 23 ARISING FROM ANY FEDERAL OR STATE LAW REGARDING UNFAIR
 24 BUSINESS PRACTICES OR ANTICOMPETITIVE ACTIVITY.

25 NEW SECTION. Section 16. Codification instruction.

1 Sections 1 through 10 and 13 are intended to be codified as
 2 an integral part of Title 69, chapter 3, and the provisions
 3 of Title 69, chapter 3, apply to sections 1 through 10 and
 4 13.

5 NEW SECTION. Section 17. Effective date. This act is
 6 effective on passage and approval.

-End-

SENATE

STANDING COMMITTEE REPORT

MARCH 21 19 85

House Bill 577
Business & Industry Committee
Page 2 of 2

MARCH 21 19 85

MR. PRESIDENT

Page 1 of 2

We, your committee on BUSINESS & INDUSTRY

having had under consideration HOUSE BILL No. 577

third reading copy (blue color)

DEFINE REGULATED TELECOMMUNICATION SERVICE; ALLOW TRANSITION TO COMPETITION (Haffey)

Respectfully report as follows: That HOUSE BILL No. 577

be amended as follows:

1. Page 3, line 13.
Following: "private"
Insert: "telecommunications"

2. Page 3, line 24.
Following: "13]."
Insert: "An occasional or accomodative use of a private telecommunication system by a third person is not a violation of this section."

3. Page 4, line 22.
Following: "regulated"
Insert: "or are not tarified"
Following: "."
Strike: "Revenues and expenses"
Insert: "Expenses"

4. Page 4, line 23.
Following: "regulated"
Insert: "or not tarified"

5. Page 4, line 24.
Following: "attributed to"
Strike: "or used to subsidize"

(continued on page 2)

~~XXXXXX~~
~~XXXXXXXX~~

MB

Chairman

6. Page 5, line 24.
Following: line 23
Strike: "FULLY"
Insert: "cost"

7. Page 6, line 2.
Following: line 1
Insert: "(3) In determining applications under subsection (2), the commission shall consider the following factors: (a) the number, size, and distribution of alternative providers of service; (b) the extent to which services are available from alternative providers in the relevant market; (c) the ability of alternative providers to make functionally equivalent or substitute services readily available; (d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and (e) such other factors as the commission may prescribe through rulemaking which are appropriate to fulfill the purposes of [the act]. (4) Nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services."
Renumber: subsequent subsection

8. Page 6, lines 6 through 8.
Following: "comparable" on line 6
Strike: remainder of line 6 through "needs" on line 8
Insert: "to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available"

AND AS AMENDED
BE CONCURRED IN

Mike Halligan
Sen. Mike Halligan, Chairman

STATEMENT OF INTENT

HOUSE BILL 577

House Judiciary Committee

As stated in the purpose section of this act, it is the intent of the legislature to maintain universal availability of basic telecommunications service at affordable rates. At the same time, the legislature desires to make available to the general public the rapid advances in telecommunications technology brought about by competition. It is the intent of this act to provide the regulatory flexibility necessary to allow a transition to a competitive market environment in the telecommunications industry.

Under prior law there was no mechanism that would allow telecommunications utilities to respond to competitive situations. It is the intent of the legislature that the public service commission now have the authority to permit flexible pricing in those instances where it will promote healthy competition. For example, if two telecommunications utilities are effectively competing to provide long distance service to a market, the commission may allow those companies to change their rates without commission approval in response to competition. Depending upon the circumstances, the commission may detariff rates for the competitive services or allow the telecommunications

utilities to operate within permissible price ranges or implement some other form of regulation that is less restrictive than total rate regulation.

The legislature intends that the commission retain the power to protect ratepayer interests by totally regulating the rates for telecommunications services that are provided on a monopoly basis. It is intended that the commission be authorized to examine each service and market to determine when market conditions rather than total rate regulation can be relied upon to assure that adequate service will be provided at reasonable rates.

It is further intended that the commission have authority to take those actions necessary to assure that revenues from regulated telecommunications services are not used to subsidize nonregulated operations.

It is intended that the commission have authority to adopt rules, if needed, to develop standards for evaluating market conditions and criteria for determining that detariffing or rate flexibility is appropriate. The commission may also implement, by rule if necessary, such reporting requirements as are required to permit a proper allocation of common or joint costs and investments.



1 HOUSE BILL NO. 577

2 INTRODUCED BY BRADLEY, RAMIREZ, HAFFEY, MARKS,

3 JACK MOORE, KRUEGER, SPAETH, VAN VALKENBURG,

4 M. WILLIAMS, PECK, KEENAN, J. HAMMOND,

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9 BY REQUEST OF THE PUBLIC SERVICE COMMISSION

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11 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TRANSITION TO
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13 "REGULATED TELECOMMUNICATIONS SERVICE"; AMENDING SECTIONS
14 69-3-101, 69-3-201, AND 69-3-321, MCA; AND PROVIDING AN
15 IMMEDIATE EFFECTIVE DATE."
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 through 10 and 13] may be cited as the "Montana
20 Telecommunications Act".

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22 declares that it remains the policy of the state of Montana
23 to maintain universal availability of basic
24 telecommunications service at affordable rates. To the
25 extent that it is consistent with maintaining universal

1 service, it is further the policy of this state to encourage
2 competition in the telecommunications industry, thereby
3 allowing access by the public to resulting rapid advances in
4 telecommunications technology. It is the purpose of
5 [sections 1 through 10 and 13] to provide a regulatory
6 framework that will allow an orderly transition from a
7 regulated telecommunications industry to a competitive
8 market environment.

9 NEW SECTION. Section 3. Definitions. As used in this
10 part, the following definitions apply:

11 (1) "Commission" means the public service commission.

12 (2) "Private telecommunications service" means a
13 system, including the construction, maintenance, or
14 operation thereof, for the provision of telecommunications
15 service or any portion of such service, by a person or
16 entity for the sole and exclusive use of that person or
17 entity and not for resale, directly or indirectly. For
18 purposes of this definition, the term "person or entity"
19 includes a corporation and all of its affiliates and
20 subsidiaries if the corporation, affiliates, and
21 subsidiaries have a common ownership or control of 80% of
22 the outstanding voting shares.

23 (3) "Regulated telecommunications service" means
24 two-way switched, voice-grade access and transport of
25 communications originating and terminating in this state and

1 nonvoice-grade access and transport if intended to be
 2 converted to or from voice-grade access and transport.
 3 Regulated telecommunications service does not include the
 4 provision of terminal equipment used to originate or
 5 terminate such service, private telecommunications service,
 6 resale of telecommunications service, one-way transmission
 7 of television signals, cellular communication, or provision
 8 of radio paging or mobile radio services.

9 (4) "Resale of telecommunications service" means the
 10 resale of regulated telecommunications service, with or
 11 without adding value, provided any value added would not
 12 otherwise be subject to regulation.

13 NEW SECTION. Section 4. Exemption for private
 14 TELECOMMUNICATIONS service. Construction, maintenance, or
 15 operation of a private telecommunications service does not
 16 constitute the provision of regulated telecommunications
 17 service, and a private telecommunications service is not
 18 subject to any of the provisions of this title. If any other
 19 person or entity, including the owners or shareholders of
 20 the entity owning or operating a private telecommunications
 21 service, uses the telecommunications service, whether for
 22 hire or not, the private telecommunications service is a
 23 regulated telecommunications service under [sections 1
 24 through 10 and 13]. AN OCCASIONAL OR ACCOMODATIVE USE OF A
 25 PRIVATE TELECOMMUNICATION SYSTEM BY A THIRD PERSON IS NOT A

1 VIOLATION OF THIS SECTION.

2 NEW SECTION. Section 5. Manner of regulation of
 3 telecommunications service. (1) Before any person or entity
 4 provides regulated telecommunications service within the
 5 state of Montana, it shall file with the commission a notice
 6 including:

- 7 (a) the name and address of the provider;
- 8 (b) a narrative description of the regulated
- 9 telecommunications service to be offered and the geographic
- 10 area and markets to be served;
- 11 (c) initial tariffs for the regulated
- 12 telecommunications service;
- 13 (d) such other information as the commission may
- 14 require to accomplish the purpose of this chapter.

15 (2) The provision of any regulated telecommunications
 16 service does not subject the provider thereof to regulation
 17 of any other telecommunications services otherwise exempt
 18 under this chapter.

19 NEW SECTION. Section 6. Prohibition against
 20 cross-subsidization. (1) No provider of regulated
 21 telecommunications service may use current revenues earned
 22 or expenses incurred in conjunction with services subject to
 23 regulation under this chapter to subsidize services which
 24 are not regulated OR ARE NOT TARIFFED. Revenues-and-expenses
 25 EXPENSES incurred in conjunction with services not regulated

1 OR NOT TARIFFED under this chapter may not be attributed to
 2 ~~or---used---to---subsidize~~ services which are subject to
 3 regulation for any reason.

4 (2) Nothing in this section is to be construed to
 5 effect the regulatory treatment of revenues, expenses, and
 6 investment for telephone directory services currently
 7 authorized under this title.

8 NEW SECTION. Section 7. Regulation of rates and
 9 charges. (1) As to that telecommunications service which is
 10 provided under regulation, the commission may establish
 11 specific rates, tariffs, or fares for the provision of such
 12 service to the public. The rates, tariffs, or fares must be
 13 just, reasonable, and nondiscriminatory.

14 (2) Alternatively, the commission may authorize the
 15 provision of regulated telecommunications service under such
 16 terms and conditions as may best serve the declared policy
 17 of this state. The commission is not required to fix and
 18 determine specific rates, tariffs, or fares for the service
 19 and in lieu thereof may:

- 20 (a) totally detariff the service;
 21 (b) detariff rates for the service but retain tariffs
 22 for service standards and requirements;
 23 (c) detariff rates but require notice of price changes
 24 to the commission and subscribers;
 25 (d) establish only maximum rates, only minimum rates,

1 or permissible price ranges AS LONG AS THE MINIMUM RATE IS
 2 FULLY COST COMPENSATORY; or

3 (e) provide such other rate or service regulation as
 4 will promote the purposes of [sections 2 through 10 and 13].

5 (3) IN DETERMINING APPLICATIONS UNDER SUBSECTION (2),
 6 THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

7 (A) THE NUMBER, SIZE, AND DISTRIBUTION OF ALTERNATIVE
 8 PROVIDERS OF SERVICE;

9 (B) THE EXTENT TO WHICH SERVICES ARE AVAILABLE FROM
 10 ALTERNATIVE PROVIDERS IN THE RELEVANT MARKET;

11 (C) THE ABILITY OF ALTERNATIVE PROVIDERS TO MAKE
 12 FUNCTIONALLY EQUIVALENT OR SUBSTITUTE SERVICES READILY
 13 AVAILABLE;

14 (D) THE OVERALL IMPACT OF THE PROPOSED TERMS AND
 15 CONDITIONS ON THE CONTINUED AVAILABILITY OF EXISTING
 16 SERVICES AT JUST AND REASONABLE RATES; AND

17 (E) SUCH OTHER FACTORS AS THE COMMISSION MAY PRESCRIBE
 18 THROUGH RULEMAKING WHICH ARE APPROPRIATE TO FULFILL THE
 19 PURPOSES OF [THE ACT].

20 (4) NOTHING IN THIS SECTION SHALL AUTHORIZE THE
 21 APPLICATION OF SUBSECTION (2) TO ANY SERVICES FOR WHICH
 22 THERE ARE NO ALTERNATIVE PROVIDERS OF SUCH SERVICES.

23 ~~(3)~~(5) All providers of comparable regulated
 24 telecommunications services within a market area must be
 25 subject to the same standards of regulation. For purposes

1 of this section, regulated telecommunications services are
 2 comparable ~~if--they--are--reasonable--substitutes--for--one~~
 3 ~~another;--to--the--extent--that--subscribers--generally--would~~
 4 ~~accept--either--service--as--meeting--their--needs~~ TO THE EXTENT
 5 ALTERNATIVE PROVIDERS CAN MAKE FUNCTIONALLY EQUIVALENT
 6 SUBSTITUTES OR SUBSTITUTE SERVICES READILY AVAILABLE.

7 NEW SECTION. Section 8. Forbearance of rate
 8 regulation to facilitate competition. (1) In accordance with
 9 the provisions of this section, the commission shall forbear
 10 regulation as to rates, tariffs, fares, or charges to
 11 facilitate competition and shall authorize the provision of
 12 all or any portion of regulated telecommunications service
 13 under stated or negotiated terms to any person or entity
 14 that has acquired or is contemplating acquisition of,
 15 through construction, lease, or any other form of
 16 acquisition, similar telecommunications service from an
 17 alternative source.

18 (2) At any time, the provider of regulated
 19 telecommunications service may file a verified application
 20 with the commission for forbearance of regulation to
 21 facilitate competition. The application shall describe the
 22 telecommunications service to be offered, the customer to be
 23 served, and the party or parties offering similar service,
 24 together with such other information and in such form as the
 25 commission may prescribe. Such additional information must

1 be reasonably related to the determination of the existence
 2 of an alternative offer but may not require information
 3 relating to the cost of providing such service.

4 (3) The commission shall approve or deny any such
 5 application for forbearance of regulation to facilitate
 6 competition within 10 days after the filing of the
 7 application, except that the commission may by order defer
 8 action for an additional 5-day period. If the commission has
 9 not acted on any application within the permitted time
 10 period, the application is considered granted. The
 11 commission shall deny the application only upon a finding
 12 that the application is incomplete or that the subject or
 13 similar service is not being offered to the customer by
 14 parties other than the applicant.

15 (4) The provisions of 2-4-601, relating to notice and
 16 hearing, do not apply to this section.

17 (5) Upon approval of the application, the provider of
 18 telecommunications service may negotiate with such person or
 19 entity for the provision of such service without regard to
 20 its tariffs on file and approved by the commission.

21 (6) Within 10 days after the conclusion of such
 22 negotiations, the provider of regulated telecommunications
 23 service shall file with the commission the final contract or
 24 other evidence of the service to be provided, together with
 25 the charges and other conditions of the service.

1 Thereafter, the provider of regulated telecommunications
 2 service may provide such service to the customer without
 3 regard to its tariffs on file and approved by the
 4 commission.

5 (7) Services provided pursuant to subsection (1)
 6 remain subject to the regulatory powers of the commission.

7 NEW SECTION. Section 9. Examination of books and
 8 records. Nothing in [sections 1 through 10 and 13] precludes
 9 the commission from exercising its authority under the
 10 provisions of 69-3-202. The commission may require such
 11 accounting or reporting systems as are necessary to allow a
 12 proper allocation of investments, costs, or expenses that
 13 are joint or common to both regulated telecommunications
 14 services and other services or to both tariffed regulated
 15 telecommunications services and nontariffed regulated
 16 telecommunications services.

17 NEW SECTION. Section 10. Rulemaking authority. The
 18 commission may adopt rules to implement [sections 1 through
 19 10 and 13].

20 Section 11. Section 69-3-101, MCA, is amended to read:
 21 "69-3-101. Meaning of term "public utility". (1) The
 22 term "public utility", within the meaning of this chapter,
 23 shall embrace every corporation, both public and private,
 24 company, individual, association of individuals, their
 25 lessees, trustees, or receivers appointed by any court

1 whatsoever, that now or hereafter may own, operate, or
 2 control any plant or equipment, any part of a plant or
 3 equipment, or any water right within the state for the
 4 production, delivery, or furnishing for or to other persons,
 5 firms, associations, or corporations, private or municipal:

- 6 (a) heat;
- 7 (b) street-railway service;
- 8 (c) light;
- 9 (d) power in any form or by any agency;
- 10 (e) except as provided in chapter 7, water for
- 11 business, manufacturing, household use, or sewerage service,
- 12 whether within the limits of municipalities, towns, and
- 13 villages or elsewhere;

14 (f) telegraph-----or-----telephone regulated
 15 telecommunications service.

- 16 (2) The term "public utility" does not include:
- 17 (a) privately owned and operated water, sewer, or
- 18 combination systems that do not serve the public; or
- 19 (b) county or consolidated city and county water or
- 20 sewer districts as defined in Title 7, chapter 13, parts 22
- 21 and 23."

22 Section 12. Section 69-3-201, MCA, is amended to read:
 23 "69-3-201. Utilities to provide adequate service at
 24 reasonable charges. Every public utility is required to
 25 furnish reasonably adequate service and facilities. The

1 charge made by any public utility for any heat, light,
 2 power, water, telegraph, or telephone regulated
 3 telecommunications service produced, transmitted, delivered,
 4 or furnished or for any service to be rendered as or in
 5 connection with any public utility shall be reasonable and
 6 just, and every unjust and unreasonable charge is prohibited
 7 and declared unlawful."

8 NEW SECTION. Section 13. Exception. Nothing in [this
 9 act] affects the exemption from regulation provided by
 10 35-18-104.

11 Section 14. Section 69-3-321, MCA, is amended to read:
 12 "69-3-321. Complaints against public utility --
 13 hearing. (1) The commission shall proceed, with or without
 14 notice, to make such investigation as it may deem necessary
 15 upon a complaint made against any public utility by any
 16 mercantile, agricultural, or manufacturing society or club;
 17 by any body politic or municipal organization or
 18 association, the same being interested; or by any person,
 19 firm, or corporation, provided such person, firm, or
 20 corporation is directly affected thereby, that:

21 (a) any of the rates, tolls, charges, or schedules or
 22 any joint rate or rates are in any way unreasonable or
 23 unjustly discriminatory;

24 (b) any regulations, measurements, practices, or acts
 25 whatsoever affecting or relating to the production,

1 transmission, delivery, or furnishing of heat, light, water,
 2 or power, or regulated telecommunications service, or any
 3 service in connection therewith ~~or the conveyance of any~~
 4 ~~telegraph or telephone message or any service in connection~~
 5 therewith is in any respect unreasonable, insufficient, or
 6 unjustly discriminatory; or

7 (c) any service is inadequate.
 8 (2) No order affecting such rates, tolls, charges,
 9 schedules, regulations, measurements, practices, or acts
 10 complained of shall be entered without a formal hearing,
 11 except the commission may issue an order to provide service
 12 to a residential consumer pending a hearing on a complaint
 13 by such consumer or by the consumer counsel on behalf of
 14 such consumer against a public utility, providing that the
 15 hearing is held within 20 days unless further delayed by
 16 consent of all parties."

17 NEW SECTION. SECTION 15. NO PREEMPTION OF LAWS
 18 GOVERNING ANTICOMPETITIVE ACTIVITY. NOTHING IN [SECTIONS 1
 19 THROUGH 10 AND 13] IN ANY WAY PREEMPTS, ABROGATES, OR
 20 OTHERWISE AFFECTS ANY RIGHT, LIABILITY, OR OBLIGATION
 21 ARISING FROM ANY FEDERAL OR STATE LAW REGARDING UNFAIR
 22 BUSINESS PRACTICES OR ANTICOMPETITIVE ACTIVITY.

23 NEW SECTION. Section 16. Codification instruction.
 24 Sections 1 through 10 and 13 are intended to be codified as
 25 an integral part of Title 69, chapter 3, and the provisions

1 of Title 69, chapter 3, apply to sections 1 through 10 and
2 13.

3 NEW SECTION. Section 17. Effective date. This act is
4 effective on passage and approval.

-End-