

1 SENATE BILL NO. 89

2 INTRODUCED BY BECK

3 BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL
7 TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF
8 TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT
9 TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED
10 INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF
11 INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR
12 FEDERAL UNIVERSAL SERVICE SUPPORT; PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY
13 ADOPT RULES TO ALLOW VERIFICATION OF A SUBSCRIBER'S CHANGE IN TELECOMMUNICATIONS
14 SERVICES AND PROVIDING A PENALTY FOR VIOLATION OF THE VERIFICATION RULES; ALLOWING FOR
15 SPECIAL RATEMAKING PROCEDURES; RESTRICTING THE RESALE OF CERTAIN TELECOMMUNICATIONS
16 SERVICES; AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED
17 TELECOMMUNICATIONS PROVIDERS; CHANGING THE TYPES OF REGULATION AND CRITERIA FOR
18 ALTERNATIVE REGULATION OF TELECOMMUNICATIONS PROVIDERS; INCREASING THE AMOUNT OF
19 ASSISTANCE IN THE TELEPHONE LOW-INCOME ASSISTANCE PROGRAM; ESTABLISHING AN INTERIM
20 UNIVERSAL ACCESS TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED
21 BY THE PUBLIC SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED
22 TELECOMMUNICATIONS SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES,
23 HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL
24 REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING
25 THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE
26 REGARDING UNIVERSAL ACCESS AND SERVICE; AMENDING SECTIONS 2-4-102, 35-18-503, 69-3-305,
27 69-3-801, 69-3-802, 69-3-803, 69-3-805, 69-3-807, 69-3-809, 69-3-811, AND 69-3-1001, MCA;
28 REPEALING SECTIONS 69-6-101, 69-6-102, AND 69-6-103, MCA; AND PROVIDING EFFECTIVE DATES,
29 AN APPLICABILITY DATE, AND A TERMINATION DATE."
30

1 STATEMENT OF INTENT

2 A statement of intent is required for this bill because rulemaking authority is granted to the public
3 service commission and to the department of revenue.

4 [Section 4] authorizes the public service commission to adopt procedural rules relating to mediation
5 and arbitration for interconnection proceedings.

6 [Section 12] grants rulemaking authority to the public service commission to make rules establishing
7 verification procedures for the submission or execution of a change in a subscriber's selection of a provider
8 of telecommunications services. The rules are to address the problems of "slamming"--a change in service
9 providers that was unauthorized or a service change authorization that was made under deceptive or
10 misleading circumstances.

11 Under the interim universal access provisions of [sections 16 through 22], the public service
12 commission is to establish surcharge rates as provided in [section 21]. The surcharge rates must take into
13 account different cost structures among telecommunications carriers, particularly the wireless and CATV
14 industry. The retail revenue for these providers should be based on an equitable, per access line, revenue
15 equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary
16 to fund the program. The formulation should consider any overlapping federal discounts. The commission
17 should appoint an oversight group consisting of users and industry participants, to meet quarterly with the
18 commission to review revenue, discounts, and the administration of [sections 16 through 22]. The public
19 service commission shall also establish a method for paying discount reimbursements in accordance with
20 [section 20]. The public service commission shall cooperate with the department of revenue in determining
21 rates, administering offsets against any surcharges, and other matters necessary for the administration of
22 [sections 16 through 22].

23 The department of revenue shall administer the collection of the surcharge by rule. Because of the
24 limited duration of the program, it is contemplated that the rules and administration be minimal, flexible,
25 and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the
26 implementation of [sections 16 through 22].

27

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

29

30 NEW SECTION. **Section 1. Statement of policies.** (1) The commission shall, in the exercise of

1 the powers conferred upon it under Montana law, consider the following declared policies of the state of
2 Montana:

3 (a) The state of Montana shall encourage competition on a neutral basis and provide neither
4 competitive advantage nor a competitive disadvantage to any telecommunications carrier.

5 (b) The regulation of telecommunications carriers by the commission should attempt to produce
6 the same benefits for carriers as competition that includes:

7 (i) the ability to enter and exit markets quickly and easily;

8 (ii) the ability to price efficiently and flexibly; and

9 (iii) incentives to:

10 (A) offer new products and services;

11 (B) create operating and investing efficiencies; and

12 (C) stimulate sales of existing services.

13 (c) It is the objective of the state of Montana to make basic telecommunications services available
14 at the lowest possible price to all Montanans.

15 (d) It is the objective of the state of Montana to provide at least a minimum level of public access
16 to advanced telecommunications services through a library, school, or public institution in every Montana
17 community under the universal service access provisions in [sections 16 through 22].

18 (e) The advanced telecommunications services available in urban areas of Montana should also be
19 available in rural areas at rates reasonably comparable to rates in urban areas.

20 (f) All Montanans should have the ability to route their telecommunications to their carriers of
21 choice without the need to dial extra codes.

22 (g) Montana customers should have the ability to retain their telephone numbers when they switch
23 carriers within their local exchange area. Number portability should be provided, to the extent technically
24 feasible and economically reasonable, in accordance with the requirements prescribed by the federal
25 communications commission. The cost to implement number portability should be borne by all
26 telecommunications carriers on a competitively neutral basis. Rural telephone companies may petition the
27 commission for suspension or modification of these requirements.

28 (h) The commission should proceed at a reasonable speed, based on demonstrated demand, to
29 unbundle the network elements at technically feasible points.

30 (i) The commission is responsible for ensuring that prices for regulated telecommunications services

1 are priced above relevant costs to prevent cross-subsidization and predatory pricing.

2 (j) During the transition to local competition, the commission and regulated telecommunications
3 carriers are encouraged to review and remove any implicit subsidies and any other government-imposed
4 mandates that inhibit competition.

5 (k) When establishing new depreciation rates for ratemaking purposes, forward-looking asset lives,
6 consistent with the competitive market and consistent with the asset lives used by competing providers
7 of similar services, should be used.

8 (2) (a) This section does not alter the state policy of local control and regulation of cooperatives
9 through their elected boards of trustees and membership as provided in Title 35, chapter 18. However,
10 cooperatives providing telecommunications services are subject to registration requirements and other
11 provisions applicable to all other unregulated telecommunications carriers.

12 (b) This section does not grant the commission any power not otherwise provided in another
13 section of this title applicable to the regulation of carriers of regulated telecommunications service.

14

15 **NEW SECTION. Section 2. Interconnection -- construction and effect.** [Sections 5 through 10] do
16 not grant any jurisdiction to the commission over telecommunications carriers except as expressly set forth
17 in [sections 5 through 10], and [sections 5 through 10] may not be construed to limit or repeal exemptions
18 from the commission's jurisdiction otherwise recognized by statute or law. Legislation may not be
19 considered to supersede or modify any provision of [sections 5 through 10] except to the extent that the
20 legislation does so expressly.

21

22 **NEW SECTION. Section 3. Interconnection -- jurisdiction.** In addition to the authority granted to the
23 commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the
24 purposes of implementing [sections 5 through 10], over all telecommunications carriers.

25

26 **NEW SECTION. Section 4. Rulemaking authority.** The commission may adopt rules of procedure to
27 implement [sections 7 and 8].

28

29 **NEW SECTION. Section 5. Duty to interconnect.** (1) The purpose of this section is to implement
30 specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

1 (2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

2 (b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

3 (c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier
4 shall perform the duties enumerated in 47 U.S.C. 251(c).

5 (3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection
6 (2)(c) do not apply to a rural telephone company until:

7 (i) the company has received a bona fide request for interconnection, services, or network
8 elements; and

9 (ii) the commission determines under subsection (3)(b) that the request is not unduly economically
10 burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7)
11 and (c)(1)(D)).

12 (b) The party making a bona fide request of a rural telephone company for interconnection, services,
13 or network elements shall submit a notice of its request to the commission. The commission shall conduct
14 an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a).
15 Within 120 days after the commission receives notice of the request, the commission shall terminate the
16 exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent
17 with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the
18 commission shall establish an implementation schedule for compliance with the request that is consistent
19 in time and manner with the federal communications commission's regulations.

20 (4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a
21 cable operator providing video programming and seeking to provide any telecommunications service in the
22 area in which the rural telephone company was providing video programming on February 8, 1996.

23 (5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the
24 aggregate nationwide, may petition the commission for a suspension or modification of the application of
25 a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition.
26 The commission shall grant the petition for the suspension or modification to the extent and for the duration
27 that the commission determines:

28 (i) is necessary:

29 (A) to avoid a significant adverse economic impact on users of telecommunications services
30 generally;

1 (B) to avoid imposing a requirement that is unduly economically burdensome; or

2 (C) to avoid imposing a requirement that is technically infeasible; and

3 (ii) is consistent with the public interest, convenience, and necessity.

4 (b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days after
5 receiving the petition. Pending action, the commission may suspend enforcement of the requirement to
6 which the petition applies with respect to the petitioning carrier.

7

8 **NEW SECTION. Section 6. Voluntary negotiation of interconnection agreements.** Upon receiving
9 a request for interconnection, services, or network elements pursuant to [section 5], an incumbent local
10 exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications
11 carrier without regard to the duties set forth in [section 5(2)(b) or (2)(c)]. The agreement must include a
12 detailed schedule of itemized charges for interconnection and each service or network element included in
13 the agreement.

14

15 **NEW SECTION. Section 7. Mediation of interconnection agreements.** Upon the written request of
16 any party negotiating an agreement for interconnection with another telecommunications carrier, the
17 commission may designate a mediator, who may be a commission member, to mediate any differences
18 arising in the course of the negotiation.

19

20 **NEW SECTION. Section 8. Arbitration of interconnection issues.** (1) The commission has the
21 authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on
22 February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except as
23 expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not apply
24 to arbitrations conducted under the authority granted by this section.

25 (2) During the period from the 135th to the 160th day, inclusive, after the date on which an
26 incumbent local exchange carrier receives a request for negotiation under [section 5], the carrier or any
27 other party to the negotiation may petition the commission to arbitrate any open issues. A party that
28 petitions the commission under this section shall, at the same time as it submits the petition, provide the
29 commission all relevant documentation concerning the following:

30 (a) the unresolved issues;

1 (b) the position of each of the parties with respect to those issues; and

2 (c) any other issue discussed and resolved by the parties.

3 (3) A party petitioning the commission under this section shall provide a copy of the petition and
4 any documentation to the other party or parties not later than the day on which the commission receives
5 the petition.

6 (4) A nonpetitioning party to a negotiation under [section 5] may respond to the other party's
7 petition and provide any additional information that it wishes within 25 days after the commission receives
8 the petition.

9 (5) The commission shall limit its consideration to those issues set forth by the parties to the
10 negotiation in the petition for arbitration and the response to the petition.

11 (6) The commission may appoint a hearings examiner for arbitration proceedings under this section.
12 The hearings examiner shall file with the commission a proposed decision within the time set by order of
13 the commission. A hearings examiner must be assigned with regard to the expertise required for the
14 particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias,
15 lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the
16 hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the
17 record in the case. The commission may disqualify the hearings examiner and appoint another hearings
18 examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should
19 be disqualified and must be filed not less than 10 days before the original date set for the hearing.

20 (7) Participation in the arbitration proceeding must be limited to the telecommunications carrier
21 requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and
22 the Montana consumer counsel.

23 (8) Negotiations among the telecommunications carriers may continue, pending a final decision by
24 the arbitrator.

25 (9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of
26 a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule
27 for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and
28 a hearing date.

29 (10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties
30 are entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing

1 at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the
2 arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

3 (11) The commission may issue subpoenas for the attendance of witnesses and the production of
4 books, records, documents, and other evidence relevant to the issues being arbitrated and may administer
5 oaths. Subpoenas must be served and enforced in the manner provided by law for the service and
6 enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the
7 hearings and the need for filing briefs and may direct the parties to appear and confer to consider
8 simplification of the issues by consent of the parties.

9 (12) When the commission files its final decision or when the hearings examiner files the proposed
10 decision with the commission, each party must be simultaneously given a copy delivered personally or by
11 certified mail. The decision must:

12 (a) ensure the resolution of issues presented by the parties and ensure that the resolution meets
13 the requirements of [section 5] and this section;

14 (b) establish rates for interconnection, services, or access to unbundled network elements pursuant
15 to 47 U.S.C. 252(d); and

16 (c) provide a schedule for implementation of the terms and conditions of the decision by the
17 parties.

18 (13) If the person who conducted the hearing becomes unavailable to the commission, the
19 commission is not precluded from issuing a final decision based on the record if the demeanor of the
20 witnesses is considered immaterial by all parties.

21 (14) Unless required for the disposition of ex parte matters authorized by law, the person or persons
22 who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law
23 in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or
24 a party's representative in connection with any issue of fact or law in the case unless there is notice and
25 opportunity for all parties to participate.

26

27 **NEW SECTION. Section 9. Approval of arbitration decision.** (1) If the commission has not
28 approved or rejected in its entirety an agreement adopted by arbitration under [section 8(12)] within 30
29 days of submission by the parties, the agreement is considered approved.

30 (2) The commission may reject the agreement only if the commission finds that the agreement does

1 not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by
2 the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of
3 an agreement, the commission shall provide the parties with written findings as to any deficiencies.
4

5 **NEW SECTION. Section 10. Approval of interconnection agreements.** (1) Within 90 days of filing
6 of an interconnection agreement adopted by negotiation of the parties to an agreement, the commission
7 shall approve or reject the agreement, or the agreement is considered approved.

8 (2) The commission may reject an agreement filed under this section only if the commission finds
9 that:

10 (a) the agreement or a portion of the agreement discriminates against a telecommunications carrier
11 not a party to the agreement; or

12 (b) the implementation of the agreement or portion is not consistent with the public interest,
13 convenience, and necessity.

14 (3) Upon rejecting an agreement filed under this section, the commission shall issue written findings
15 detailing any deficiencies in the agreement.
16

17 **NEW SECTION. Section 11. Determination of eligible carrier status -- universal service support.** (1)
18 The commission is authorized to designate telecommunications carriers as eligible for federal universal
19 service support in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254. This authorization applies to
20 all telecommunications carriers notwithstanding the carrier's exemption from further regulation by the
21 commission.

22 (2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall
23 designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible
24 telecommunications carrier for a service area designated by the commission. In the case of an area served
25 by a rural telephone company, the term "service area" means the company's "study area" unless the federal
26 communications commission establishes a different definition of service area for the company. The term
27 "service area" for all other telecommunications carriers means a geographic area such as a census block
28 or grid block as established by the commission for the purpose of determining universal service obligations
29 and support mechanisms.

30 (3) Upon receiving a petition from a telecommunications carrier and consistent with the public

1 interest, convenience, and necessity, the commission may, in the case of an area served by a rural
2 telephone company, and shall, in the case of all other areas, designate more than one telecommunications
3 carrier for a service area, so long as each additional requesting telecommunications carrier meets the
4 requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier
5 for an area served by a rural telephone company, the commission shall find that the designation is in the
6 public interest.

7 (4) If no telecommunications carrier will provide the services that are supported by universal service
8 support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests
9 service, the commission shall determine which telecommunications carrier is best able to provide the service
10 to the requesting unserved community. Any telecommunications carrier ordered to provide service under
11 this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible
12 telecommunications carrier for that community or the unserved portion of the community.

13 (5) The commission shall permit an eligible telecommunications carrier to relinquish its designation
14 as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible
15 telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for
16 an area served by more than one eligible telecommunications carrier shall give advance notice to the
17 commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible
18 telecommunications carrier to cease providing universal service in an area served by more than one eligible
19 telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier
20 to ensure that all customers served by the relinquishing carrier will continue to be served and shall require
21 sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible
22 telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the
23 commission approves relinquishment under this section, within which the purchase or construction must
24 be completed.

25

26 **NEW SECTION.** **Section 12. Illegal changes in subscriber carrier selections.** (1) A
27 telecommunications carrier may not submit or execute a change in a subscriber's selection of a provider
28 of telecommunications services except in accordance with verification procedures that the commission has
29 adopted by rule pursuant to this section.

30 (2) Any telecommunications carrier that violates the verification procedures described in subsection

1 (1) and that collects charges for telecommunications services from a subscriber is liable to the carrier
2 previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the
3 violation, in accordance with procedures that the commission has adopted by rule pursuant to this section.
4 The remedy provided by this section is in addition to any other remedies available by law.

5
6 **NEW SECTION. Section 13. Special ratemaking procedures.** (1) A provider of regulated
7 telecommunications services may file with the commission, and the commission shall expeditiously hear,
8 an application to eliminate or minimize a noncost-based differential in the price of its telecommunications
9 services without reestablishing its cost of providing all regulated telecommunications services.

10 (2) If, upon hearing the application, the commission determines that a noncost-based differential
11 exists in the prices of the services of the provider of regulated telecommunications services, it may
12 authorize the provider to eliminate or minimize the differential in a fashion that neither increases nor
13 decreases the revenue currently being earned by the provider in providing those services.

14 (3) The commission may, in its discretion, require any change in prices required by subsection (2)
15 to be implemented over a transition period not exceeding 3 years.

16
17 **NEW SECTION. Section 14. Biennial report on telecommunications.** The commission is directed
18 to prepare a status report, limited to data readily available by the commission, to the governor and the
19 legislature by December 1 of each even-numbered year. The report must include:

20 (1) a summary of the implementation of [sections 16 through 22] and this part;

21 (2) a summary of the status of competition in the telecommunications industry in Montana,
22 including effects on universal service, rates, technological deployment, and economic development;

23 (3) a comparison of Montana's progress in relation to neighboring states and the nation in the
24 development of an affordable advanced telecommunications system necessary to maintain and advance
25 Montana's economic viability in a global economy;

26 (4) changes in regulation that can or should be implemented pursuant to the level of competition
27 in the telecommunications industry; and

28 (5) recommended changes to Montana law to further the goals of [sections 16 through 22] and this
29 part.

30

1 **NEW SECTION. Section 15. Restrictions on resale.** The resale of telecommunications services is
2 subject to the following restrictions:

3 (1) Services that are available for resale at a discounted rate do not include carrier access services.

4 (2) Resale is limited to retail products and services available to end-user customers. Wholesale
5 services are available only for resale and not predominantly for internal use.

6 (3) Consistent with the federal Telecommunications Act of 1996, Public Law 104-104, resale
7 between categories of customers is prohibited until any pricing disparity for the same service offered to
8 different categories of customers has been eliminated.

9 (4) Any explicit universal service support to a specific category of customers may not be
10 redistributed to another category of customers through resale.

11 (5) Lifeline and other means-tested services offerings may be resold only to customers who qualify
12 for the service.

13

14 **NEW SECTION. Section 16. Interim universal access program -- purpose.** (1) There is an interim
15 universal access program.

16 (2) The purpose of the interim universal access program is to further the goal of universal access
17 to advanced telecommunications services in Montana by:

18 (a) increasing safety net coverage through which advanced telecommunications services would,
19 at a minimum, be available through a library, school, or other specified type of public institution in every
20 community in the state;

21 (b) encouraging innovation in communities to bring advanced services to Montana's rural areas;
22 and

23 (c) assisting communities that have already succeeded in obtaining services when ongoing
24 transport costs threaten the continued availability of these services.

25

26 **NEW SECTION. Section 17. Interim universal access program -- definitions.** As used in [sections
27 16 through 22], the following definitions apply:

28 (1) "Administrator" means the public service commission.

29 (2) "Advanced services" means high-speed (56 kbps and above), dedicated or switched, broadband
30 telecommunications capability that enables users to originate and receive high-quality voice, data, graphics,

1 and video telecommunications using any technology.

2 (3) "Health care provider" means any one of, or a consortium of, the following institutions located
3 in Montana:

4 (a) postsecondary educational institutions offering health care instruction;

5 (b) community health care centers or health centers providing health care to migrants;

6 (c) local health departments or agencies;

7 (d) community mental health centers;

8 (e) not-for-profit hospitals; and

9 (f) rural health clinics.

10 (4) "Library" means a library located in Montana that is eligible for participation in state-based plans
11 for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).

12 (5) "School" means:

13 (a) an elementary school or secondary school that meets the definition set forth in paragraphs (14)
14 and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20
15 U.S.C. 8801) and that does not have an endowment of more than \$50 million; or

16 (b) a bureau of indian affairs elementary and secondary school.

17 (6) "Tribal college" means a college recognized by the United States government as a tribal college.

18

19 **NEW SECTION. Section 18. Interim universal access program -- public access points.** At a
20 minimum, all public access points must provide the general public access to advanced telecommunications
21 services that are not subscription based free of charge and at convenient hours on a walk-in basis. Public
22 access points may offer subscription based services, such as electronic mail, but are not required to
23 administer these types of services.

24

25 **NEW SECTION. Section 19. Interim universal access program -- funded services -- application for**
26 **services.** (1) The universal access program provides funding through discounts only for advanced services
27 for use by public access points, schools, tribal colleges, libraries, and health care providers approved by
28 the administrator.

29 (2) The first priority of the program is to provide funding for at least one public access point in each
30 Montana community. Subject to available funding, the program shall also provide funding for advanced

1 services to schools, tribal colleges, libraries, and health care providers.

2 (3) The administrator shall establish discount levels for services in each of the following categories:

3 (a) public access points;

4 (b) education services to schools and tribal colleges for distance learning, electronic access to
5 educational resources, and electronic delivery or reception of educational programming;

6 (c) library services for libraries not serving as public access points for electronic access to
7 information and library services; and

8 (d) rural health services to rural health care providers for access to similar services as urban health
9 care providers and to ensure electronic access to health care services.

10 (4) To receive discounted services under the interim universal access program, public access
11 providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The
12 application must be accompanied by a resolution of support from the governing body of the appropriate
13 city, county, or tribal government in which the applicant is located.

14

15 **NEW SECTION. Section 20. Interim universal access program -- services provided at discounts**

16 **-- reimbursements.** (1) Telecommunications carriers shall provide advanced services to eligible users at
17 specified discounts. The amount of the discount must be reimbursed to the provider from the interim
18 universal access account established in [section 22].

19 (2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost
20 rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest
21 access point for the requested service. However, the cost to the eligible user may not exceed \$100 a
22 month.

23 (3) If funds from the interim universal access account are not sufficient to fully reimburse for
24 discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced
25 proportionally.

26 (4) Even if best cost rates available to any business customer increase by more than 5%, the
27 amount payable by an eligible user may not increase by more than 5% during the period from [the effective
28 date of this section] to January 1, 2000.

29 (5) Subject to restrictions in federal law, if interstate universal access services are established by
30 the federal communications commission, federal funding for universal access services must be used to

1 reduce state funding for intrastate services.

2

3 **NEW SECTION. Section 21. Interim universal access program -- funding -- surcharge rate.** (1) (a)

4 The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate
5 telecommunications services in the state. The surcharge must be determined by the administrator by rule.

6 The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis.

7 (b) The rate of the surcharge must be set to raise \$500,000 during the fiscal year ending June 30,
8 1998, and \$1 million during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as
9 necessary.

10 (c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item
11 on each carrier's retail telecommunications services bills.

12 (d) The surcharge may be applied only to telecommunications services. Customer premise
13 equipment is not considered a telecommunications service.

14 (2) The surcharge is payable quarterly to the department of revenue and deposited by the
15 department in the interim universal access account established in [section 22]. The department may by
16 rule:

17 (a) establish the form of a reporting statement to be filed by telecommunications carriers subject
18 to the surcharge;

19 (b) set the date after the end of a fiscal quarter that the quarterly payment must be made;

20 (c) provide for recordkeeping by telecommunications providers subject to the surcharge; and

21 (d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted
22 services to be reimbursed, and to pay refunds of overpayment of the surcharge.

23 (3) (a) The collection of a surcharge under this section is subject to:

24 (i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;

25 (ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;

26 (iii) the estimation of tax on failure to file a statement of provisions of 15-53-112;

27 (iv) the warrant for distraint provisions of 15-53-113; and

28 (v) the statute of limitations provisions of 15-53-115.

29 (b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section
30 of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this

1 section.

2

3 **NEW SECTION. Section 22. Interim universal access program -- account.** An interim universal
4 access account is established in the state special revenue fund in the state treasury. All money received
5 by the department of revenue pursuant to [section 21] must be paid to the state treasurer for deposit in
6 the account. After payment of refunds, the balance of the account must be used for the purposes
7 described in [section 20].

8

9 **NEW SECTION. Section 23. Commission to make recommendations on universal access and**
10 **service.** The public service commission shall examine and make recommendations to the 56th legislature
11 on universal access and service. The commission shall:

12 (1) review the impact on universal access and service in Montana of any federal universal service
13 fund that results from current federal communications rulemaking under the federal Telecommunications
14 Act of 1996;

15 (2) evaluate the extent to which the federal universal service fund falls short of supporting
16 legislatively defined universal access and service goals in Montana; and

17 (3) develop plans and propose legislation for the establishment of a state universal service fund
18 that would ensure the attainment of those goals.

19

20 **Section 24.** Section 2-4-102, MCA, is amended to read:

21 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

22 (1) "Administrative code committee" or "committee" means the committee provided for in Title 5,
23 chapter 14.

24 (2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that
25 the provisions of this chapter do not apply to the following:

26 (i) the state board of pardons and parole, except that the board is subject to the requirements of
27 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of
28 Montana and the Montana Administrative Register;

29 (ii) the supervision and administration of a penal institution with regard to the institutional
30 supervision, custody, control, care, or treatment of youths or prisoners;

1 (iii) the board of regents and the Montana university system;

2 (iv) the financing, construction, and maintenance of public works;

3 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
 4 252 and [section 8].

5 (b) Agency does not include a school district, unit of local government, or any other political
 6 subdivision of the state.

7 (3) "ARM" means the Administrative Rules of Montana.

8 (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,
 9 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term
 10 includes but is not restricted to ratemaking, price fixing, and licensing.

11 (5) "License" includes the whole or part of any agency permit, certificate, approval, registration,
 12 charter, or other form of permission required by law but does not include a license required solely for
 13 revenue purposes.

14 (6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation,
 15 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

16 (7) "Party" means a person named or admitted as a party or properly seeking and entitled as of
 17 right to be admitted as a party, but nothing in this chapter may be construed to prevent an agency from
 18 admitting any person as a party for limited purposes.

19 (8) "Person" means an individual, partnership, corporation, association, governmental subdivision,
 20 agency, or public organization of any character.

21 (9) "Register" means the Montana Administrative Register.

22 (10) "Rule" means each agency regulation, standard, or statement of general applicability that
 23 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
 24 requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

25 (a) statements concerning only the internal management of an agency and not affecting private
 26 rights or procedures available to the public;

27 (b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

28 (c) rules relating to the use of public works, facilities, streets, and highways when the substance
 29 of the rules is indicated to the public by means of signs or signals;

30 (d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when

1 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially
 2 relating to the seasonal recreational use of lands and waters owned or controlled by the state when the
 3 substance of the rules is indicated to the public by means of signs or signals;

4 (e) rules implementing the state personnel classification plan, the state wage and salary plan, or
 5 the statewide budgeting and accounting system;

6 (f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
 7 accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

8 (11) "Substantive rules" are either:

9 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated
 10 authority to promulgate rules to implement a statute have the force of law and when not so adopted are
 11 invalid; or

12 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
 13 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of
 14 law."

15
 16 **Section 25.** Section 35-18-503, MCA, is amended to read:

17 **"35-18-503. Annual fee to department of revenue -- exemption from other taxes.** Cooperatives
 18 and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall
 19 pay annually on or before July 1, to the department of revenue a fee of \$10 for each 100 persons or
 20 fractions ~~thereof~~ of 100 persons to whom electricity or telephone service was supplied during the previous
 21 calendar year within the state and, except as provided in [section 21] and 10-4-201, ~~shall are be~~ exempt
 22 from all other excise and income taxes of ~~whatsoever~~ any kind or nature."
 23

24 **Section 26.** Section 69-3-305, MCA, is amended to read:

25 **"69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:

26 (a) charge, demand, collect, or receive a greater or less compensation for a utility service performed
 27 by it within the state or for any service in connection with a utility service than is specified in the printed
 28 schedules, including schedules of joint rates, that may at the time be in force;

29 (b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

30 (c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly,

1 has or may have the effect of changing the rates, tolls, charges, or payments.

2 (2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and
3 charges until the rates, tolls, and charges are changed, as provided in this chapter.

4 (3) The commission may order refunds or credits of rates, tolls, or charges collected in violation
5 of this section and may order payment of interest at a reasonable rate on the refunded amount.

6 (4) The provisions of this section do not prohibit the sharing of profits or revenues with customers
7 in conjunction with an alternative form of regulation approved under 69-3-809.

8 (5) (a) A provider of regulated telecommunications service may offer, for a limited period of time,
9 ~~either rebates, price or reductions, or waivers of installation charges in conjunction with promotions, market~~
10 ~~trials, or other sales-related activities that are common business practices. Promotional pricing of services~~
11 ~~that remain fully tariffed requires~~ for services other than basic local exchange access to end users does not
12 require advance approval of the commission. Informational price lists must be filed with the commission
13 on or before the date that the promotion begins. Promotional offerings for basic local exchange access to
14 end users and packaged services that include basic local exchange access to end users require advance
15 approval of the commission. The commission shall approve, deny, or upon a showing of good cause set
16 for hearing an application for a promotional discount within 30 days of the filing of the application. If the
17 commission has not acted on the application within the permitted time period, the application is considered
18 granted. A promotional offering may not combine monopoly services with competitive services unless
19 authorized by the commission.

20 (b) A public utility providing electricity or natural gas may offer grants and subsidized loans to
21 install energy conservation and nonfossil forms of energy generation systems in dwellings.

22 (c) The commission may define the appropriate scope of promotions, rebates, market trials, and
23 grants and subsidized loans, either by rule or in response to complaints. The commission may determine
24 whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly
25 discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to
26 sales activities and grant and subsidized loan programs that the commission determines are unfairly
27 discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the
28 commission.

29 (6) A public utility violating the provisions of this section is subject to the penalty prescribed in
30 69-3-206. ~~This, however~~ However, this does not have the effect of suspending, rescinding, invalidating,

1 or in any way affecting existing contracts."

2

3 **Section 27.** Section 69-3-801, MCA, is amended to read:

4 "**69-3-801. Short title.** This part may be cited as the "Montana Telecommunications Reform Act"."

5

6 **Section 28.** Section 69-3-802, MCA, is amended to read:

7 "**69-3-802. Purpose.** ~~The legislature declares that it remains the policy of the state of Montana~~
 8 ~~to maintain universal availability of basic telecommunications service at affordable rates. This part was~~
 9 ~~adopted in response to the enactment into law of the federal Telecommunications Act of 1996, Public Law~~
 10 ~~104-104, and the work performed by the governor's blue ribbon telecommunications task force established~~
 11 ~~by Chapter 508, Laws of 1995. This part expresses the policies of the state of Montana that should govern~~
 12 ~~the orderly transition of the telecommunications industry in the state from a regulated industry to an~~
 13 ~~industry primarily controlled by the economic forces of a competitive telecommunications marketplace. The~~
 14 ~~legislature declares that it remains the policy of the state of Montana to maintain universal availability of~~
 15 ~~basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining~~
 16 ~~universal service, it is further the policy of this state to encourage competition in the telecommunications~~
 17 ~~industry, thereby allowing access by the public to resulting rapid advances in telecommunications~~
 18 ~~technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly~~
 19 ~~transition from a regulated telecommunications industry to a competitive market environment, and it is~~
 20 ~~further the purpose of this part to clarify that the commission has authority to implement alternative forms~~
 21 ~~of regulation for providers of regulated telecommunications services."~~

22

23 **Section 29.** Section 69-3-803, MCA, is amended to read:

24 "**69-3-803. Definitions.** As used in this part, the following definitions apply:

25 (1) "Advanced telecommunications services" means high-speed (56 kbps) dedicated or switched,
 26 broadband telecommunications capability that enables users to originate and receive high-quality voice,
 27 data, graphics, and video telecommunications using any technology.

28 ~~(1)(2)~~ "Commission" means the public service commission.

29 (3) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier
 30 that:

1 (a) on February 8, 1996, provided telephone exchange service in the area; and

2 (b) on February 8, 1996, was considered to be a member of the exchange carrier association
 3 pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign
 4 of a member of the exchange carrier association.

5 ~~(2)(4)~~ "Private telecommunications service" means a system, including the construction,
 6 maintenance, or operation ~~thereof~~ of the system, for the provision of telecommunications service or any
 7 portion of ~~such~~ the service, by a person or entity for the sole and exclusive use of that person or entity and
 8 not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a
 9 corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a
 10 common ownership or control of 80% of the outstanding voting shares.

11 ~~(3)(5)~~ (a) "Regulated telecommunications service" means two-way switched, voice-grade access
 12 and transport of communications originating and terminating in this state and nonvoice-grade access and
 13 transport if intended to be converted to or from voice-grade access and transport.

14 ~~(b) Regulated telecommunications service~~ The term does not include the provision of terminal
 15 equipment used to originate or terminate ~~such~~ the regulated service, private telecommunications service,
 16 ~~resale of telecommunications service~~, one-way transmission of television signals, cellular communication,
 17 or provision of radio paging or mobile radio services.

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

21 (6) "Rural telephone company" means a local exchange carrier operating entity to the extent that
 22 the entity:

23 (a) provides common carrier service to any local exchange carrier study area that does not include
 24 either:

25 (i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most
 26 recently available population statistics of the United States bureau of the census; or

27 (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the
 28 United States bureau of the census as of August 10, 1993.

29 (b) provides telephone exchange service, including exchange access, to fewer than 50,000 access
 30 lines;

1 (c) provides telephone exchange service to any local exchange carrier study area with fewer than
 2 100,000 access lines; or

3 (d) has less than 15% of its access lines in communities of more than 50,000 on February 8,
 4 1996.

5 (7) "Telecommunications" means the transmission, between or among points specified by the user,
 6 of information of the user's choosing without a change in the form or content of the information upon
 7 receipt.

8 (8) "Telecommunications carrier" or "carrier" means any provider of telecommunications services.
 9 A person providing other products and services in addition to telecommunications services is considered
 10 a telecommunications carrier only to the extent that it is engaged in providing telecommunications services.
 11 The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

12

13 **Section 30.** Section 69-3-805, MCA, is amended to read:

14 **"69-3-805. ~~Manner of regulation~~ Registration of telecommunications service providers.** (1) Before
 15 any person or entity provides ~~regulated~~ telecommunications service within the state of Montana, it shall
 16 file with the commission a notice including:

17 (a) the name, ~~and address, and telephone number~~ of the provider;

18 ~~(b) a narrative description of the regulated telecommunications service to be offered and the~~
 19 ~~geographic area and markets to be served;~~

20 ~~(c) initial tariffs for the regulated telecommunications service;~~

21 ~~(d) such other information as the commission may require to accomplish the purpose of this~~
 22 ~~chapter.~~ the name, address, and telephone number of the person responsible for regulatory contacts and
 23 customer dispute resolution on behalf of the provider;

24 (c) a description of the provider's existing operations and general service and operating areas in any
 25 other jurisdictions;

26 (d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal
 27 addresses and telephone numbers of each;

28 (e) initial tariffs or price lists for regulated telecommunications services, including a narrative
 29 description of the regulated telecommunications to be offered and the geographic area and markets to be
 30 served;

1 (f) a general description of the facilities and equipment that will be used to provide services,
 2 including whether the service will be offered on a facilities basis, a resale basis, or a combination of both
 3 of them;

4 (g) a statement of whether the provider intends to draw from the federal or state universal service
 5 fund or other explicit support funds, including a statement of whether the provider intends to seek the
 6 commission's designation as an eligible telecommunications carrier;

7 (h) disclosure of any formal actions against it by any court or state or federal regulatory agency
 8 that resulted in any type of penalty or sanction or within the 5 years prior to the date of filing the notice;

9 (i) if the provider is other than a corporation, a description of the form of ownership, the names
 10 and addresses of all principal owners and managers, the provider's agent for service of process in Montana,
 11 and the date of creation of the business entity; and

12 (j) other information from regulated telecommunications carriers as the commission may require
 13 to accomplish the purposes of this chapter.

14 ~~(2) The provision of any regulated telecommunications service does not subject the provider thereof~~
 15 ~~to regulation of any other telecommunications services otherwise exempt under this chapter. The~~
 16 ~~commission may waive any of the requirements set forth in subsection (1).~~

17 (3) The provider shall file with the commission a report of any judgment, penalty, or sanction
 18 entered in any other jurisdiction that could adversely affect the provider's ability to provide communications
 19 services in Montana."

20

21 **Section 31.** Section 69-3-807, MCA, is amended to read:

22 **"69-3-807. Regulation of rates and charges.** (1) ~~As to telecommunications service that is provided~~
 23 ~~under regulation, the~~ The commission may establish specific rates, tariffs, or fares for the provision of the
 24 regulated telecommunications service to the public. The rates, tariffs, or fares must be just, reasonable, and
 25 nondiscriminatory.

26 (2) Alternatively, the commission may authorize the provision of regulated telecommunications
 27 service under terms and conditions that best serve the declared policy of this state. For a service detariffed
 28 under this subsection, the provider shall maintain a current price list on file with the commission and shall
 29 provide notice of changes in the price list as prescribed by the commission. The commission is not required
 30 to fix and determine specific rates, tariffs, or fares for the service and ~~in lieu thereof~~ the alternative may:

- 1 (a) totally detariff the service;
- 2 (b) detariff rates for the service but retain tariffs for service standards and requirements;
- 3 (c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the
4 minimum rate is cost compensatory; or
- 5 (d) provide ~~such~~ other rate or service regulation as will promote the purposes of this part.
- 6 (3) Except as provided in subsection (4), in determining applications under subsection (2), the
7 commission shall consider the following factors:
- 8 (a) the number, size, and distribution of alternative providers of service;
- 9 (b) the extent to which services are available from alternative providers in the relevant market;
- 10 (c) the ability of alternative providers to make functionally equivalent or substitute services readily
11 available;
- 12 (d) the overall impact of the proposed terms and conditions on the continued availability of existing
13 services at just and reasonable rates; and
- 14 (e) other factors that the commission may prescribe through rulemaking that are appropriate to
15 fulfill the purposes of this part.
- 16 (4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under
17 subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that
18 action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local
19 exchange access to end-users and carrier access services may not be detariffed.
- 20 (5) A provider of regulated message telecommunications service and related services shall average
21 its service rates on its routes of similar distance within the state unless otherwise authorized by the
22 commission. ~~Nothing contained in this~~ This subsection may not be construed to prohibit volume discounts,
23 discounts in promotional offerings, or other discounts as long as the discounts are not offered in a
24 discriminatory manner.
- 25 ~~(6) All providers of comparable regulated telecommunications services within a market area must~~
26 ~~be subject to the same standards of regulation. For purposes of this section, regulated telecommunications~~
27 ~~services are comparable to the extent alternative providers can make functionally equivalent substitutes or~~
28 ~~substitute services readily available."~~

29

30 **Section 32.** Section 69-3-809, MCA, is amended to read:

1 **"69-3-809. Alternative forms of regulation.** (1) The commission may authorize a provider of
 2 regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking
 3 practices required under parts 2, 3, and 9 of this chapter, including but not limited to:

4 (a) price caps;

5 (b) price regulation; and

6 (c) equitable sharing of earnings or ~~revenues~~ revenue between a provider of regulated
 7 telecommunications services and its customers.

8 (2) A provider of regulated telecommunications services may petition the commission to regulate
 9 the provider under an alternative form of regulation. The provider shall submit its plan for an alternative
 10 form of regulation with its petition. The commission's order on the petition must be issued no later than
 11 9 months after the filing of the petition. The commission shall review and may authorize implementation
 12 of the plan if it finds, after notice and hearing, that the plan:

13 (a) ~~will not degrade the quality of or the availability of efficient telecommunications services;~~

14 (b) ~~will produce fair, just, and reasonable rates for telecommunications services;~~

15 (c) ~~will not unduly or unreasonably prejudice or disadvantage a customer class;~~

16 (d) ~~will reduce regulatory delay and costs;~~

17 (e) is in the public interest; and

18 (f) ~~will enhance economic development in the state;~~

19 (g) ~~will result in the improvement of the telephone infrastructure in the state; and~~

20 (h) (b) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or
 21 9 of this chapter conforms to the stated purpose.

22 (3) If the commission determines that the plan does not satisfy the requirements of this section,
 23 it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

24 (4) A proposed order modifying the plan submitted by a provider of regulated telecommunications
 25 service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw
 26 its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition
 27 for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:

28 (a) remains subject to the same regulation that applied when the petition was filed; and

29 (b) may petition the commission to be regulated under a revised alternative plan.

30 (5) Upon petition or upon its own motion, the commission may rescind its approval or amend an

1 alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are
2 no longer satisfied.

3 (6) ~~Nothing contained in this~~ This section may not be construed as limiting or otherwise affecting
4 the commission's authority to conduct investigations or hear complaints as provided in part 3 of this
5 chapter."

6

7 **Section 33.** Section 69-3-811, MCA, is amended to read:

8 **"69-3-811. ~~Costs for services provided~~ Relevant cost defined -- jurisdiction over complaints.** (1)
9 ~~Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise~~
10 ~~ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure~~
11 ~~that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.~~

12 (2) With regard to competitive services, the term "relevant costs" includes the price for any
13 components that are used by the telecommunications provider and that would be essential for alternative
14 providers to use in providing the competitive services pursuant to commission-approved methodology.

15 ~~(3)~~(2) The commission has jurisdiction to consider complaints and initiate investigations to
16 determine whether the price charged by a provider of regulated telecommunications service is above
17 relevant costs. The commission may also consider complaints that a pricing or promotional practice violates
18 any provision of this title."

19

20 **Section 34.** Section 69-3-1001, MCA, is amended to read:

21 **"69-3-1001. Creation of program -- amount of assistance.** (1) There is a telephone ~~low-income~~
22 low-income assistance program to provide an eligible subscriber with a discount in the monthly charge for
23 local exchange service in the telephone network.

24 (2) ~~This~~ The commission shall set the discount in the charge for local exchange service ~~is the~~
25 ~~greater of:~~

26 (a) ~~\$2~~ that is at least \$3.50 a month for each eligible subscriber; ~~or~~

27 (b) but not more than the amount ~~necessary to obtain the matching waiver available under~~
28 ~~applicable orders and regulations of the federal communications commission~~ that is the difference between
29 the otherwise applicable current rate for local exchange service and the rate as it was on [the effective date
30 of this section]."

1 **NEW SECTION. Section 35. Codification instruction.** (1) [Sections 1 through 15] are intended to
2 be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part
3 8, apply to [sections 1 through 15].

4 (2) [Sections 16 through 22] are intended to be codified as an integral part of Title 69, chapter 3,
5 and the provisions of Title 69, chapter 3, apply to [sections 16 through 22].
6

7 **NEW SECTION. Section 36. Repealer.** Sections 69-6-101, 69-6-102, and 69-6-103, MCA, are
8 repealed.
9

10 **NEW SECTION. Section 37. Effective dates -- applicability -- rulemaking.** (1) Except as provided
11 in subsection (2)(a), [this act] is effective on passage and approval.

12 (2) (a) [Sections 16 through 22] are effective July 1, 1997.

13 (b) [Section 21] applies to retail revenue for all intrastate telecommunications services received by
14 telecommunications providers after June 30, 1997.

15 (c) For the purpose of allowing the implementation of [sections 16 through 22] to begin on July
16 1, 1997, without resorting to the adoption of emergency rules, the public service commission and the
17 department of revenue may begin the process for the adoption of rules to implement [sections 16 through
18 22] prior to [the effective date of sections 16 through 22], but rules may not be adopted until July 1, 1997.
19

20 **NEW SECTION. Section 38. Termination.** [Sections 16 through 22] terminate December 31, 1999.
21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0089, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


An act generally revising the laws relating to the regulation of telecommunications services in response to the Federal Telecommunications Act of 1996; providing for the registration of telecommunications providers; establishing a duty to interconnect telecommunications carriers and providing for negotiated, mediated, and arbitrated interconnection agreements; requiring limited Public Service Commission approval of interconnection agreements; providing for the designation of carriers eligible for federal universal service support; providing that the Public Service Commission may adopt rules to allow verification of a subscriber's change in telecommunications services and providing a penalty for violation of the verification rules; allowing for special ratemaking procedures; restricting the resale of certain telecommunications services; amending the laws regarding promotional offerings by regulated telecommunications providers; changing the types of regulation and criteria for alternative regulation of telecommunications providers; increasing the amount of assistance in the telephone low-income assistance program; establishing an interim universal access to the advanced telecommunications services program administered by the Public Service Commission; providing a discount for use of advanced telecommunications services for certain public access points, schools, libraries, health care providers, and tribal colleges; establishing a surcharge on retail revenue derived from intrastate telecommunications services in the state; requiring the Public Service Commission to make recommendations to the 56th Legislature regarding universal access and service.

ASSUMPTIONS:

1. The Public Service Commission will implement the provisions of this act with its existing resources, which include a consulting budget of \$100,000 for the biennium. The consulting budget monies also may be used for other projects that pertain to the electric and natural gas industries.
2. The Governor's Executive Budget includes the Universal Access Program as a new proposal. The program would be funded based on the retail revenues for all intrastate telecommunication services as defined in 15-53-101(b), MCA. The funding for the 1999 biennium would be \$1,500,000 (as shown in the Executive Budget), with \$500,000 in fiscal 1998 and \$1,000,000 in fiscal 1999. Collection of the revenues will be administered by the Department of Revenue within the proposed budget. The Public Service Commission would administer the remainder of the funds. The new proposal for the Public Service Commission is shown below.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Public Service Commission		
<u>Expenditures:</u>		
Operating Expenses	500,000	1,000,000
<u>Revenues:</u>		
Universal Access SSR	500,000	1,000,000
<u>Net Impact of Fund Balance:</u>		
Universal Access SSR	0	0
(02997)		

 1-11-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 1/14/97
 TOM BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0089, as introduced

SB 89

1 SENATE BILL NO. 89

2 INTRODUCED BY BECK

3 BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL
7 TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF
8 TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT
9 TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED
10 INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF
11 INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR
12 FEDERAL UNIVERSAL SERVICE SUPPORT; ~~PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY~~
13 ~~ADOPT RULES TO ALLOW VERIFICATION OF A SUBSCRIBER'S CHANGE IN TELECOMMUNICATIONS~~
14 ~~SERVICES AND PROVIDING A PENALTY FOR VIOLATION OF THE VERIFICATION RULES; ALLOWING FOR~~
15 ~~SPECIAL RATE MAKING PROCEDURES; RESTRICTING THE RESALE OF CERTAIN TELECOMMUNICATIONS~~
16 ~~SERVICES; PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR~~
17 ~~INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH~~
18 ~~CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS~~
19 ~~SERVICES, INCLUDING INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES;~~
20 AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED TELECOMMUNICATIONS
21 PROVIDERS; ~~CHANGING THE TYPES OF REGULATION AND CRITERIA FOR ALTERNATIVE REGULATION~~
22 ~~OF TELECOMMUNICATIONS PROVIDERS; INCREASING THE AMOUNT OF ASSISTANCE IN THE~~
23 TELEPHONE LOW-INCOME ASSISTANCE PROGRAM; ~~ESTABLISHING AN INTERIM UNIVERSAL ACCESS~~
24 ~~TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC~~
25 ~~SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS~~
26 ~~SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS,~~
27 ~~AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL REVENUE DERIVED FROM~~
28 ~~INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE~~
29 ~~COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL~~
30 ~~ACCESS AND SERVICE; CREATING A UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS~~

1 SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES SUPPORTED BY THE FUND AND
 2 OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM TELECOMMUNICATIONS CARRIERS
 3 BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS CARRIERS' RETAIL REVENUE;
 4 PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATELY CONTRACTED ENTITY UNDER THE
 5 DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR DISTRIBUTIONS FROM THE FUND
 6 TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; AMENDING SECTIONS 2-4-102, ~~35-18-503~~, 69-3-305,
 7 ~~69-3-801, 69-3-802~~, 69-3-803, 69-3-805, 69-3-806, 69-3-807, ~~69-3-809, 69-3-811~~, AND 69-3-1001,
 8 MCA; REPEALING SECTIONS 69-6-101, 69-6-102, AND 69-6-103, MCA; AND PROVIDING EFFECTIVE
 9 DATES, ~~AN APPLICABILITY DATE~~, AND A TERMINATION DATE."

11 STATEMENT OF INTENT

12 A statement of intent is required for this bill because rulemaking authority is granted to the public
 13 service commission ~~and to the department of revenue~~.

14 [Section 4 ~~3~~] authorizes the public service commission to adopt procedural rules relating to
 15 mediation and arbitration for interconnection proceedings.

16 [~~Section 12~~] grants rulemaking authority to the public service commission to make rules establishing
 17 ~~verification procedures for the submission or execution of a change in a subscriber's selection of a provider~~
 18 ~~of telecommunications services. The rules are to address the problems of "clamming" a change in service~~
 19 ~~providers that was unauthorized or a service change authorization that was made under deceptive or~~
 20 ~~misleading circumstances.~~

21 ~~Under the interim universal access provisions of [sections 16 through 22], the public service~~
 22 ~~commission is to establish surcharge rates as provided in [section 21]. The surcharge rates must take into~~
 23 ~~account different cost structures among telecommunications carriers, particularly the wireless and CATV~~
 24 ~~industry. The retail revenue for these providers should be based on an equitable, per access line, revenue~~
 25 ~~equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary~~
 26 ~~to fund the program. The formulation should consider any overlapping federal discounts. The commission~~
 27 ~~should appoint an oversight group consisting of users and industry participants, to meet quarterly with the~~
 28 ~~commission to review revenue, discounts, and the administration of [sections 16 through 22]. The public~~
 29 ~~service commission shall also establish a method for paying discount reimbursements in accordance with~~
 30 ~~[section 20]. The public service commission shall cooperate with the department of revenue in determining~~

1 ~~rates, administering offsets against any surcharges, and other matters necessary for the administration of~~
 2 ~~[sections 16 through 22].~~

3 ~~The department of revenue shall administer the collection of the surcharge by rule. Because of the~~
 4 ~~limited duration of the program, it is contemplated that the rules and administration be minimal, flexible,~~
 5 ~~and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the~~
 6 ~~implementation of [sections 16 through 22].~~ UNDER [SECTION 13], THE PUBLIC SERVICE COMMISSION
 7 SHALL ADMINISTER A CONTRACT WITH A THIRD PARTY THAT WILL MANAGE THE UNIVERSAL
 8 SERVICE FUND FOR TELECOMMUNICATIONS SERVICES ON A DAILY BASIS. THE THIRD PARTY IS
 9 RESPONSIBLE FOR THE COLLECTION OF CONTRIBUTIONS TO THE FUND. THE THIRD PARTY IS ALSO
 10 RESPONSIBLE FOR SETTING THE AMOUNT OF CONTRIBUTION BASED ON TOTAL RETAIL REVENUE OF
 11 TELECOMMUNICATIONS CARRIERS OPERATING IN MONTANA. THE PUBLIC SERVICE COMMISSION
 12 SHALL ADOPT PROCEDURAL RULES FOR THE COLLECTION OF THE CONTRIBUTIONS. THE PUBLIC
 13 SERVICE COMMISSION SHALL ALSO ADOPT RULES ALLOWING THE THIRD PARTY TO ASSESS LATE
 14 FEES AND INTEREST ON LATE PAYMENTS OF CONTRIBUTIONS. THE RULES MUST SET INTEREST RATES
 15 AND PENALTIES FOR LATE PAYMENTS.

16 [SECTION 14] AUTHORIZES THE PUBLIC SERVICE COMMISSION TO ADOPT PROCEDURAL RULES
 17 RELATING TO THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND. [SECTION 14]
 18 AUTHORIZES THE PUBLIC SERVICE COMMISSION TO ADOPT RULES FOR THE ASSESSMENT OF LATE
 19 FEES AND INTEREST ON CONTRIBUTIONS TO THE FUND.

20 [SECTION 15] REQUIRES THE PUBLIC SERVICE COMMISSION TO ADOPT RULES ESTABLISHING
 21 AFFORDABILITY BENCHMARKS FOR LOCAL SERVICE.

22

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

24

25 ~~NEW SECTION. Section 1. Statement of policies. (1) The commission shall, in the exercise of~~
 26 ~~the powers conferred upon it under Montana law, consider the following declared policies of the state of~~
 27 ~~Montana:~~

28 ~~(a) The state of Montana shall encourage competition on a neutral basis and provide neither~~
 29 ~~competitive advantage nor a competitive disadvantage to any telecommunications carrier.~~

30 ~~(b) The regulation of telecommunications carriers by the commission should attempt to produce~~

1 ~~the same benefits for carriers as competition that includes:~~

2 ~~(i) the ability to enter and exit markets quickly and easily;~~

3 ~~(ii) the ability to price efficiently and flexibly; and~~

4 ~~(iii) incentives to:~~

5 ~~(A) offer new products and services;~~

6 ~~(B) create operating and investing efficiencies; and~~

7 ~~(C) stimulate sales of existing services.~~

8 ~~(c) It is the objective of the state of Montana to make basic telecommunications services available~~
9 ~~at the lowest possible price to all Montanans.~~

10 ~~(d) It is the objective of the state of Montana to provide at least a minimum level of public access~~
11 ~~to advanced telecommunications services through a library, school, or public institution in every Montana~~
12 ~~community under the universal service access provisions in [sections 16 through 22].~~

13 ~~(e) The advanced telecommunications services available in urban areas of Montana should also be~~
14 ~~available in rural areas at rates reasonably comparable to rates in urban areas.~~

15 ~~(f) All Montanans should have the ability to route their telecommunications to their carriers of~~
16 ~~choice without the need to dial extra codes.~~

17 ~~(g) Montana customers should have the ability to retain their telephone numbers when they switch~~
18 ~~carriers within their local exchange area. Number portability should be provided, to the extent technically~~
19 ~~feasible and economically reasonable, in accordance with the requirements prescribed by the federal~~
20 ~~communications commission. The cost to implement number portability should be borne by all~~
21 ~~telecommunications carriers on a competitively neutral basis. Rural telephone companies may petition the~~
22 ~~commission for suspension or modification of these requirements.~~

23 ~~(h) The commission should proceed at a reasonable speed, based on demonstrated demand, to~~
24 ~~unbundle the network elements at technically feasible points.~~

25 ~~(i) The commission is responsible for ensuring that prices for regulated telecommunications services~~
26 ~~are priced above relevant costs to prevent cross-subsidization and predatory pricing.~~

27 ~~(j) During the transition to local competition, the commission and regulated telecommunications~~
28 ~~carriers are encouraged to review and remove any implicit subsidies and any other government imposed~~
29 ~~mandates that inhibit competition.~~

30 ~~(k) When establishing new depreciation rates for ratemaking purposes, forward-looking asset lives,~~

1 ~~consistent with the competitive market and consistent with the accot lives used by competing providers~~
 2 ~~of similar services, should be used.~~

3 ~~(2) (a) This section does not alter the state policy of local control and regulation of cooperatives~~
 4 ~~through their elected boards of trustees and membership as provided in Title 35, chapter 18. However,~~
 5 ~~cooperatives providing telecommunications services are subject to registration requirements and other~~
 6 ~~provisions applicable to all other unregulated telecommunications carriers.~~

7 ~~(b) This section does not grant the commission any power not otherwise provided in another~~
 8 ~~section of this title applicable to the regulation of carriers of regulated telecommunications service.~~

9
 10 **NEW SECTION. Section 1. Interconnection -- construction and effect.** [Sections ~~5 through 10~~ 1
 11 THROUGH 19] do not grant any jurisdiction to the commission over telecommunications carriers except as
 12 expressly set forth in [sections ~~5 through 10~~ 1 THROUGH 19], and [sections ~~5 through 10~~ 1 THROUGH
 13 19] may not be construed to limit or repeal exemptions from the commission's jurisdiction otherwise
 14 recognized by statute or law. Legislation may not be considered to supersede or modify any provision of
 15 [sections ~~5 through 10~~ 1 THROUGH 19] except to the extent that the legislation does so expressly.

16
 17 **NEW SECTION. Section 2. Interconnection -- jurisdiction.** In addition to the authority granted to the
 18 commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the
 19 purposes of implementing [sections ~~5 through 10~~ 1 THROUGH 9], over all telecommunications carriers.

20
 21 **NEW SECTION. Section 3. Rulemaking authority.** The commission may adopt rules of procedure to
 22 implement [sections ~~7 and 8~~ 6 THROUGH 10].

23
 24 **NEW SECTION. Section 4. Duty to interconnect.** (1) The purpose of this section is to implement
 25 specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

26 (2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

27 (b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

28 (c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier
 29 shall perform the duties enumerated in 47 U.S.C. 251(c).

30 (3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection

1 (2)(c) do not apply to a rural telephone company until:

2 (i) the company has received a bona fide request for interconnection, services, or network
3 elements; and

4 (ii) the commission determines under subsection (3)(b) that the request is not unduly economically
5 burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7)
6 and (c)(1)(D)).

7 (b) The party making a bona fide request of a rural telephone company for interconnection, services,
8 or network elements shall submit a notice of its request to the commission. The commission shall conduct
9 an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a).
10 Within 120 days after the commission receives notice of the request, the commission shall terminate the
11 exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent
12 with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the
13 commission shall establish an implementation schedule for compliance with the request that is consistent
14 in time and manner with the federal communications commission's regulations.

15 (4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a
16 cable operator providing video programming and seeking to provide any telecommunications service in the
17 area in which the rural telephone company was providing video programming on February 8, 1996.

18 (5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the
19 aggregate nationwide, may petition the commission for a suspension or modification of the application of
20 a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition.
21 The commission shall grant the petition for the suspension or modification to the extent and for the duration
22 that the commission determines:

23 (i) is necessary:

24 (A) to avoid a significant adverse economic impact on users of telecommunications services
25 generally;

26 (B) to avoid imposing a requirement that is unduly economically burdensome; or

27 (C) to avoid imposing a requirement that is technically infeasible; and

28 (ii) is consistent with the public interest, convenience, and necessity.

29 (b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days after
30 receiving the petition. Pending action, the commission may suspend enforcement of the requirement to

1 which the petition applies with respect to the petitioning carrier.

2

3 **NEW SECTION. Section 5. Voluntary negotiation of interconnection agreements.** Upon receiving
4 a request for interconnection, services, or network elements pursuant to [section ~~5~~ 4], an incumbent local
5 exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications
6 carrier without regard to the duties set forth in [section ~~5(2)(b)~~ 4(2)(B) or (2)(c)]. The agreement must
7 include a detailed schedule of itemized charges for interconnection and each service or network element
8 included in the agreement.

9

10 **NEW SECTION. Section 6. Mediation of interconnection agreements.** Upon the written request of
11 any party negotiating an agreement for interconnection with another telecommunications carrier, the
12 commission may designate a mediator, who may be a commission member, to mediate any differences
13 arising in the course of the negotiation.

14

15 **NEW SECTION. Section 7. Arbitration of interconnection issues.** (1) The commission has the
16 authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on
17 February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except as
18 expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not apply
19 to arbitrations conducted under the authority granted by this section.

20 (2) During the period from the 135th to the 160th day, inclusive, after the date on which an
21 incumbent local exchange carrier receives a request for negotiation under [section ~~5~~ 4], the carrier or any
22 other party to the negotiation may petition the commission to arbitrate any open issues. A party that
23 petitions the commission under this section shall, at the same time as it submits the petition, provide the
24 commission all relevant documentation concerning the following:

- 25 (a) the unresolved issues;
- 26 (b) the position of each of the parties with respect to those issues; and
- 27 (c) any other issue discussed and resolved by the parties.

28 (3) A party petitioning the commission under this section shall provide a copy of the petition and
29 any documentation to the other party or parties not later than the day on which the commission receives
30 the petition.

1 (4) A nonpetitioning party to a negotiation under [section ~~5~~ 4] may respond to the other party's
2 petition and provide any additional information that it wishes within 25 days after the commission receives
3 the petition.

4 (5) The commission shall limit its consideration to those issues set forth by the parties to the
5 negotiation in the petition for arbitration and the response to the petition.

6 (6) The commission may appoint a hearings examiner for arbitration proceedings under this section.
7 The hearings examiner shall file with the commission a proposed decision within the time set by order of
8 the commission. A hearings examiner must be assigned with regard to the expertise required for the
9 particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias,
10 lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the
11 hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the
12 record in the case. The commission may disqualify the hearings examiner and appoint another hearings
13 examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should
14 be disqualified and must be filed not less than 10 days before the original date set for the hearing.

15 (7) Participation in the arbitration proceeding must be limited to the telecommunications carrier
16 requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and
17 the Montana consumer counsel.

18 (8) Negotiations among the telecommunications carriers may continue, pending a final decision by
19 the arbitrator.

20 (9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of
21 a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule
22 for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and
23 a hearing date.

24 (10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties
25 are entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing
26 at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the
27 arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

28 (11) The commission may issue subpoenas for the attendance of witnesses and the production of
29 books, records, documents, and other evidence relevant to the issues being arbitrated and may administer
30 oaths. Subpoenas must be served and enforced in the manner provided by law for the service and

1 enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the
 2 hearings and the need for filing briefs and may direct the parties to appear and confer to consider
 3 simplification of the issues by consent of the parties.

4 (12) THE COMMISSION SHALL ISSUE ITS FINAL DECISION NO LATER THAN 9 MONTHS AFTER
 5 THE REQUEST FOR NEGOTIATIONS ON A PETITION ISSUED UNDER [SECTION 4]. When the commission
 6 files its final decision or when the hearing examiner files the proposed decision with the commission, each
 7 party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

8 (a) ensure the resolution of issues presented by the parties and ensure that the resolution meets
 9 the requirements of [section ~~6~~ 4] and this section;

10 (b) establish rates for interconnection, services, or access to unbundled network elements pursuant
 11 to 47 U.S.C. 252(d); and

12 (c) provide a schedule for implementation of the terms and conditions of the decision by the
 13 parties.

14 (13) If the person who conducted the hearing becomes unavailable to the commission, the
 15 commission is not precluded from issuing a final decision based on the record if the demeanor of the
 16 witnesses is considered immaterial by all parties.

17 (14) Unless required for the disposition of ex parte matters authorized by law, the person or persons
 18 who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law
 19 in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or
 20 a party's representative in connection with any issue of fact or law in the case unless there is notice and
 21 opportunity for all parties to participate.

22
 23 **NEW SECTION. Section 8. Approval of arbitration decision.** (1) If the commission has not
 24 approved or rejected in its entirety an agreement adopted by arbitration under [section ~~8(12)~~ 7(12)] within
 25 30 days of submission by the parties, the agreement is considered approved.

26 (2) The commission may reject the agreement only if the commission finds that the agreement does
 27 not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by
 28 the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of
 29 an agreement, the commission shall provide the parties with written findings as to any deficiencies.

1 **NEW SECTION. Section 9. Approval of interconnection agreements.** (1) Within 90 days of filing of
 2 an interconnection agreement adopted by negotiation of the parties to an agreement, the commission shall
 3 approve or reject the agreement, or the agreement is considered approved.

4 (2) The commission may reject an agreement filed under this section only if the commission finds
 5 that:

6 (a) the agreement or a portion of the agreement discriminates against a telecommunications carrier
 7 not a party to the agreement; or

8 (b) the implementation of the agreement or portion is not consistent with the public interest,
 9 convenience, and necessity.

10 (3) Upon rejecting an agreement filed under this section, the commission shall issue written findings
 11 detailing any deficiencies in the agreement.

12
 13 **NEW SECTION. Section 10. Determination of eligible carrier status -- universal service support.** (1)

14 The commission is authorized to designate telecommunications carriers as eligible for federal universal
 15 service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, AND FOR ANY MONTANA
 16 UNIVERSAL SERVICE FUNDS. This authorization applies to all telecommunications carriers notwithstanding
 17 the carrier's exemption from further regulation by the commission.

18 (2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall
 19 designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible
 20 telecommunications carrier for a service area designated by the commission. In the case of an area served
 21 by a rural telephone company, the term "service area" means the company's "study area" FOR FEDERAL
 22 UNIVERSAL SERVICE SUPPORT unless the federal communications commission establishes a different
 23 definition of service area for the company. The term "service area" for all other telecommunications carriers
 24 means a geographic area such as a census block or grid block as established by the commission for the
 25 purpose of determining FEDERAL universal service obligations and support mechanisms.

26 (3) Upon receiving a petition from a telecommunications carrier and consistent with the public
 27 interest, convenience, and necessity, the commission may, in the case of an area served by a rural
 28 telephone company, and shall, in the case of all other areas, designate more than one telecommunications
 29 carrier for a service area, so long as each additional requesting telecommunications carrier meets the
 30 requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier

1 for an area served by a rural telephone company, the commission shall find that the designation is in the
2 public interest.

3 (4) If no telecommunications carrier will provide the services that are supported by universal service
4 support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests
5 service, the commission shall determine which telecommunications carrier is best able to provide the service
6 to the requesting unserved community. Any telecommunications carrier ordered to provide service under
7 this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible
8 telecommunications carrier for that community or the unserved portion of the community.

9 (5) The commission shall permit an eligible telecommunications carrier to relinquish its designation
10 as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible
11 telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for
12 an area served by more than one eligible telecommunications carrier shall give advance notice to the
13 commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible
14 telecommunications carrier to cease providing universal service in an area served by more than one eligible
15 telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier
16 to ensure that all customers served by the relinquishing carrier will continue to be served and shall require
17 sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible
18 telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the
19 commission approves relinquishment under this section, within which the purchase or construction must
20 be completed.

21
22 ~~NEW SECTION. Section 12. Illegal changes in subscriber carrier selections. (1) A~~
23 ~~telecommunications carrier may not submit or execute a change in a subscriber's selection of a provider~~
24 ~~of telecommunications services except in accordance with verification procedures that the commission has~~
25 ~~adopted by rule pursuant to this section.~~

26 ~~(2) Any telecommunications carrier that violates the verification procedures described in subsection~~
27 ~~(1) and that collects charges for telecommunications services from a subscriber is liable to the carrier~~
28 ~~previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the~~
29 ~~violation, in accordance with procedures that the commission has adopted by rule pursuant to this section.~~
30 ~~The remedy provided by this section is in addition to any other remedies available by law.~~

1 ~~NEW SECTION. Section 13. Special ratemaking procedures. (1) A provider of regulated~~
 2 ~~telecommunications services may file with the commission, and the commission shall expeditiously hear,~~
 3 ~~an application to eliminate or minimize a noncost-based differential in the price of its telecommunications~~
 4 ~~services without reestablishing its cost of providing all regulated telecommunications services.~~

5 ~~(2) If, upon hearing the application, the commission determines that a noncost-based differential~~
 6 ~~exists in the prices of the services of the provider of regulated telecommunications services, it may~~
 7 ~~authorize the provider to eliminate or minimize the differential in a fashion that neither increases nor~~
 8 ~~decreases the revenue currently being earned by the provider in providing those services.~~

9 ~~(3) The commission may, in its discretion, require any change in prices required by subsection (2)~~
 10 ~~to be implemented over a transition period not exceeding 3 years.~~

11
 12 ~~NEW SECTION. Section 14. Biennial report on telecommunications. The commission is directed~~
 13 ~~to prepare a status report, limited to data readily available by the commission, to the governor and the~~
 14 ~~legislature by December 1 of each even-numbered year. The report must include:~~

15 ~~(1) a summary of the implementation of [sections 16 through 22] and this part;~~

16 ~~(2) a summary of the status of competition in the telecommunications industry in Montana,~~
 17 ~~including effects on universal service, rates, technological deployment, and economic development;~~

18 ~~(3) a comparison of Montana's progress in relation to neighboring states and the nation in the~~
 19 ~~development of an affordable advanced telecommunications system necessary to maintain and advance~~
 20 ~~Montana's economic viability in a global economy;~~

21 ~~(4) changes in regulation that can or should be implemented pursuant to the level of competition~~
 22 ~~in the telecommunications industry; and~~

23 ~~(5) recommended changes to Montana law to further the goals of [sections 16 through 22] and this~~
 24 ~~part.~~

25
 26 ~~NEW SECTION. Section 15. Restrictions on resale. The resale of telecommunications services is~~
 27 ~~subject to the following restrictions:~~

28 ~~(1) Services that are available for resale at a discounted rate do not include carrier access services.~~

29 ~~(2) Resale is limited to retail products and services available to end user customers. Wholesale~~
 30 ~~services are available only for resale and not predominantly for internal use.~~

1 ~~(3) Consistent with the federal Telecommunications Act of 1996, Public Law 104-104, resale~~
 2 ~~between categories of customers is prohibited until any pricing disparity for the same service offered to~~
 3 ~~different categories of customers has been eliminated.~~

4 ~~(4) Any explicit universal service support to a specific category of customers may not be~~
 5 ~~redistributed to another category of customers through resale.~~

6 ~~(5) Lifeline and other means tested services offerings may be resold only to customers who qualify~~
 7 ~~for the service.~~

8
 9 ~~**NEW SECTION. Section 16. Interim universal access program -- purpose.** (1) There is an interim~~
 10 ~~universal access program.~~

11 ~~(2) The purpose of the interim universal access program is to further the goal of universal access~~
 12 ~~to advanced telecommunications services in Montana by:~~

13 ~~(a) increasing safety net coverage through which advanced telecommunications services would,~~
 14 ~~at a minimum, be available through a library, school, or other specified type of public institution in every~~
 15 ~~community in the state;~~

16 ~~(b) encouraging innovation in communities to bring advanced services to Montana's rural areas;~~
 17 ~~and~~

18 ~~(c) assisting communities that have already succeeded in obtaining services when ongoing~~
 19 ~~transport costs threaten the continued availability of these services.~~

20
 21 ~~**NEW SECTION. Section 17. Interim universal access program -- definitions.** As used in [sections~~
 22 ~~16 through 22], the following definitions apply:~~

23 ~~(1) "Administrator" means the public service commission.~~

24 ~~(2) "Advanced services" means high speed (56 kbps and above), dedicated or switched, broadband~~
 25 ~~telecommunications capability that enables users to originate and receive high quality voice, data, graphics,~~
 26 ~~and video telecommunications using any technology.~~

27 ~~(3) "Health care provider" means any one of, or a consortium of, the following institutions located~~
 28 ~~in Montana:~~

29 ~~(a) postsecondary educational institutions offering health care instruction;~~

30 ~~(b) community health care centers or health centers providing health care to migrants;~~

1 ~~(c) local health departments or agencies;~~

2 ~~(d) community mental health centers;~~

3 ~~(e) not for profit hospitals; and~~

4 ~~(f) rural health clinics.~~

5 ~~(4) "Library" means a library located in Montana that is eligible for participation in state based plans~~
 6 ~~for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).~~

7 ~~(5) "School" means:~~

8 ~~(a) an elementary school or secondary school that meets the definition set forth in paragraphs (14)~~
 9 ~~and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20~~
 10 ~~U.S.C. 8801) and that does not have an endowment of more than \$50 million; or~~

11 ~~(b) a bureau of indian affairs elementary and secondary school.~~

12 ~~(6) "Tribal college" means a college recognized by the United States government as a tribal college.~~

13

14 ~~**NEW SECTION. Section 18. Interim universal access program — public access points.** At a~~
 15 ~~minimum, all public access points must provide the general public access to advanced telecommunications~~
 16 ~~services that are not subscription based free of charge and at convenient hours on a walk in basis. Public~~
 17 ~~access points may offer subscription based services, such as electronic mail, but are not required to~~
 18 ~~administer these types of services.~~

19

20 ~~**NEW SECTION. Section 19. Interim universal access program — funded services — application for**~~
 21 ~~**services.** (1) The universal access program provides funding through discounts only for advanced services~~
 22 ~~for use by public access points, schools, tribal colleges, libraries, and health care providers approved by~~
 23 ~~the administrator.~~

24 ~~(2) The first priority of the program is to provide funding for at least one public access point in each~~
 25 ~~Montana community. Subject to available funding, the program shall also provide funding for advanced~~
 26 ~~services to schools, tribal colleges, libraries, and health care providers.~~

27 ~~(3) The administrator shall establish discount levels for services in each of the following categories:~~

28 ~~(a) public access points;~~

29 ~~(b) education services to schools and tribal colleges for distance learning, electronic access to~~
 30 ~~educational resources, and electronic delivery or reception of educational programming;~~

1 ~~(c) library services for libraries not serving as public access points for electronic access to~~
 2 ~~information and library services; and~~

3 ~~(d) rural health services to rural health care providers for access to similar services as urban health~~
 4 ~~care providers and to ensure electronic access to health care services.~~

5 ~~(4) To receive discounted services under the interim universal access program, public access~~
 6 ~~providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The~~
 7 ~~application must be accompanied by a resolution of support from the governing body of the appropriate~~
 8 ~~city, county, or tribal government in which the applicant is located.~~

9
 10 ~~**NEW SECTION. Section 20. Interim universal access program — services provided at discounts**~~
 11 ~~**— reimbursements.** (1) Telecommunications carriers shall provide advanced services to eligible users at~~
 12 ~~specified discounts. The amount of the discount must be reimbursed to the provider from the interim~~
 13 ~~universal access account established in [section 22].~~

14 ~~(2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost~~
 15 ~~rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest~~
 16 ~~access point for the requested service. However, the cost to the eligible user may not exceed \$100 a~~
 17 ~~month.~~

18 ~~(3) If funds from the interim universal access account are not sufficient to fully reimburse for~~
 19 ~~discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced~~
 20 ~~proportionally.~~

21 ~~(4) Even if best cost rates available to any business customer increase by more than 5%, the~~
 22 ~~amount payable by an eligible user may not increase by more than 5% during the period from [the effective~~
 23 ~~date of this section] to January 1, 2000.~~

24 ~~(5) Subject to restrictions in federal law, if interstate universal access services are established by~~
 25 ~~the federal communications commission, federal funding for universal access services must be used to~~
 26 ~~reduce state funding for intrastate services.~~

27
 28 ~~**NEW SECTION. Section 21. Interim universal access program — funding — surcharge rate.** (1) (a)~~
 29 ~~The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate~~
 30 ~~telecommunications services in the state. The surcharge must be determined by the administrator by rule.~~

1 ~~The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis.~~

2 ~~(b) The rate of the surcharge must be set to raise \$500,000 during the fiscal year ending June 30,~~
 3 ~~1998, and \$1 million during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as~~
 4 ~~necessary.~~

5 ~~(c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item~~
 6 ~~on each carrier's retail telecommunications services bills.~~

7 ~~(d) The surcharge may be applied only to telecommunications services. Customer premise~~
 8 ~~equipment is not considered a telecommunications service.~~

9 ~~(2) The surcharge is payable quarterly to the department of revenue and deposited by the~~
 10 ~~department in the interim universal access account established in [section 22]. The department may by~~
 11 ~~rule:~~

12 ~~(a) establish the form of a reporting statement to be filed by telecommunications carriers subject~~
 13 ~~to the surcharge;~~

14 ~~(b) set the date after the end of a fiscal quarter that the quarterly payment must be made;~~

15 ~~(c) provide for recordkeeping by telecommunications providers subject to the surcharge; and~~

16 ~~(d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted~~
 17 ~~services to be reimbursed, and to pay refunds of overpayment of the surcharge.~~

18 ~~(3) (a) The collection of a surcharge under this section is subject to:~~

19 ~~(i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;~~

20 ~~(ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;~~

21 ~~(iii) the estimation of tax on failure to file a statement of provisions of 15-53-112;~~

22 ~~(iv) the warrant for distraint provisions of 15-53-113; and~~

23 ~~(v) the statute of limitations provisions of 15-53-115.~~

24 ~~(b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section~~
 25 ~~of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this~~
 26 ~~section.~~

27

28 ~~NEW SECTION. Section 22. Interim universal access program -- account. An interim universal~~
 29 ~~access account is established in the state special revenue fund in the state treasury. All money received~~
 30 ~~by the department of revenue pursuant to [section 21] must be paid to the state treasurer for deposit in~~

1 ~~the account. After payment of refunds, the balance of the account must be used for the purposes~~
 2 ~~described in [section 20].~~

3
 4 ~~**NEW SECTION. Section 23. Commission to make recommendations on universal access and**~~
 5 ~~**service.** The public service commission shall examine and make recommendations to the 56th legislature~~
 6 ~~on universal access and service. The commission shall:~~

7 ~~(1) review the impact on universal access and service in Montana of any federal universal service~~
 8 ~~fund that results from current federal communications rulemaking under the federal Telecommunications~~
 9 ~~Act of 1996;~~

10 ~~(2) evaluate the extent to which the federal universal service fund falls short of supporting~~
 11 ~~legislatively defined universal access and service goals in Montana; and~~

12 ~~(3) develop plans and propose legislation for the establishment of a state universal service fund~~
 13 ~~that would ensure the attainment of these goals.~~

14
 15 **NEW SECTION. SECTION 11. UNIVERSAL SERVICE POLICIES. THE LEGISLATURE FINDS THAT**
 16 **UNIVERSALLY AVAILABLE TELECOMMUNICATIONS SERVICES ARE ESSENTIAL TO THE HEALTH,**
 17 **WELFARE, AND ECONOMIC WELL-BEING OF THE CITIZENS OF MONTANA. THE FEDERAL**
 18 **TELECOMMUNICATIONS ACT OF 1996, PUBLIC LAW 104-104, REQUIRES A TRANSITION TO LOCAL**
 19 **COMPETITION. IMPLICIT SUBSIDIES HAVE HISTORICALLY BEEN USED TO FURTHER THE PUBLIC POLICY**
 20 **OF KEEPING LOCAL RATES TO CUSTOMERS IN HIGH-COST AREAS AT AFFORDABLE LEVELS. THE**
 21 **FEDERAL ACT AND THE TRANSITION TO COMPETITION REQUIRE THAT ALL SUBSIDIES USED TO KEEP**
 22 **LOCAL RATES AT AFFORDABLE LEVELS BE EXPLICIT. ADDITIONALLY, THE FEDERAL ACT'S UNIVERSAL**
 23 **SERVICE PROVISIONS ESTABLISH A SYSTEM OF DISCOUNTS FOR SCHOOLS, LIBRARIES, AND HEALTH**
 24 **CARE PROVIDERS. SECURING THESE DISCOUNTS CAN BE DEPENDENT ON STATE ACTIONS. IN ORDER**
 25 **TO PRESERVE AND ADVANCE THE GOAL OF UNIVERSAL SERVICE IN THE NEW COMPETITIVE**
 26 **ENVIRONMENT ESTABLISHED BY THE FEDERAL ACT, THE LEGISLATURE FINDS THAT A NEW MONTANA**
 27 **UNIVERSAL SERVICE FUND, SUPPORTED BY CONTRIBUTIONS FROM THE TELECOMMUNICATIONS**
 28 **CARRIERS OPERATING IN MONTANA, SHOULD BE CREATED THAT WILL:**

29 **(1) NOT DUPLICATE THE FEDERAL UNIVERSAL SERVICE FUND MANDATED BY THE**
 30 **TELECOMMUNICATIONS ACT OF 1996 BUT THAT WILL COMPLEMENT THE FEDERAL FUND BY**

1 PROVIDING ADDITIONAL FUNDING AS NECESSARY TO ENSURE UNIVERSAL SERVICE IN THE STATE OF
 2 MONTANA;

3 (2) BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL IN BOTH FUNDING AND
 4 DISTRIBUTION;

5 (3) PROVIDE A SPECIFIC, PREDICTABLE, AND SUFFICIENT MECHANISM OF SUPPORT FOR
 6 HIGH-COST AREAS; AND

7 (4) ALLOW FOR IMPLEMENTATION OF THE FEDERAL SUPPORT SYSTEM FOR
 8 TELECOMMUNICATIONS SERVICES PROVIDED TO SCHOOLS, LIBRARIES, AND HEALTH CARE
 9 PROVIDERS.

10

11 NEW SECTION. SECTION 12. UNIVERSAL SERVICE FUND ESTABLISHED -- PURPOSE. (1)
 12 PURSUANT TO A DETERMINATION OF NEED, THE COMMISSION SHALL ESTABLISH AND ADMINISTER
 13 A FUND TO ASSIST ELIGIBLE TELECOMMUNICATIONS CARRIERS IN PROVIDING AFFORDABLE
 14 TELECOMMUNICATIONS SERVICES IN HIGH-COST AREAS. THE FUND MUST PROVIDE SUPPORT FOR
 15 THE FOLLOWING SERVICES:

16 (A) VOICE GRADE ACCESS TO THE PUBLIC SWITCHED NETWORK, INCLUDING SOME USAGE;

17 (B) DUAL-TONE MULTIFREQUENCY (DTMF OR "TOUCH TONE") SIGNALING OR ITS EQUIVALENT;

18 (C) SINGLE-PARTY SERVICE;

19 (D) ACCESS TO EMERGENCY SERVICES, INCLUDING ACCESS TO 9-1-1, WHERE AVAILABLE,
 20 AND ACCESS TO ENHANCED 9-1-1 WHEN REQUESTED BY A TELECOMMUNICATIONS CARRIER'S LOCAL
 21 COMMUNITY AND WHEN THE TELECOMMUNICATIONS CARRIER HAS TECHNICAL CAPACITY TO
 22 PROVIDE IT;

23 (E) ACCESS TO OPERATOR SERVICES;

24 (F) ACCESS TO INTEREXCHANGE SERVICES; AND

25 (G) ACCESS TO DIRECTORY ASSISTANCE.

26 (2) THE FUND MUST SUPPORT ONLY ACCESS TO THE SERVICES LISTED IN SUBSECTIONS (1)(D)
 27 THROUGH (1)(G) AND NOT SUPPORT THE SERVICES THEMSELVES.

28 (3) THE FUND MUST BE ADMINISTERED TO ENSURE THAT ITS OPERATION IS COMPETITIVELY
 29 AND TECHNOLOGICALLY NEUTRAL.

30

1 NEW SECTION. SECTION 13. FUND ADMINISTRATOR. (1) A FISCAL AGENT AND DAILY
2 ADMINISTRATOR MUST BE SELECTED TO RECEIVE AND DISTRIBUTE FUNDS UNDER [SECTIONS 11
3 THROUGH 15].

4 (2) THE FISCAL AGENT MUST BE SELECTED BY THE COMMISSION BASED UPON A
5 COMPETITIVE BIDDING PROCESS AFTER AN OPPORTUNITY FOR PUBLIC COMMENT ON THE SPECIFIC
6 QUALIFICATIONS REQUIRED OF THE FISCAL AGENT. A TELECOMMUNICATIONS CARRIER IS NOT
7 ELIGIBLE TO BE THE FISCAL AGENT. THE DUTIES OF THE FISCAL AGENT MUST BE DETERMINED BY
8 A CONTRACT CONSISTENT WITH [SECTIONS 11 THROUGH 15]. THE CONTRACT TERM OF THE FISCAL
9 AGENT MUST EXPIRE DECEMBER 31, 1999.

10 (3) THE FISCAL AGENT SHALL PROVIDE QUARTERLY REPORTS OF FUND ACTIVITIES TO THE
11 COMMISSION AND SHALL PROVIDE AUDITS ANNUALLY BY A CERTIFIED PUBLIC ACCOUNTANT IN A
12 MANNER DETERMINED BY AND UNDER THE DIRECTION OF THE COMMISSION.

13 (4) THE FINANCIAL ACCOUNTS OF THE FISCAL AGENT MUST BE AVAILABLE AT REASONABLE
14 TIMES TO ANY TELECOMMUNICATIONS CARRIER IN THE STATE AND TO THE PUBLIC. THE
15 COMMISSION MAY INVESTIGATE THE ACCOUNTS AND PRACTICES OF THE FISCAL AGENT AND ENTER
16 ORDERS CONCERNING THE ACCOUNTS AND PRACTICES.

17
18 NEW SECTION. SECTION 14. CONTRIBUTIONS TO FUND. (1) THE FISCAL AGENT SHALL
19 COLLECT CONTRIBUTIONS FROM ALL TELECOMMUNICATIONS CARRIERS ON A QUARTERLY BASIS,
20 BASED ON A JULY 1 TO JUNE 30 FISCAL YEAR. INITIAL CONTRIBUTIONS TO THE FUND MAY ONLY
21 BE COLLECTED FOR THE 2-MONTH PERIOD PRIOR TO THE EFFECTIVE DATE OF DISTRIBUTIONS FROM
22 THE FUND AND MUST BE CALCULATED AS FOLLOWS:

23 (A) DETERMINE THE TOTAL RETAIL REVENUE FOR ALL TELECOMMUNICATIONS CARRIERS FOR
24 THE IMMEDIATELY PRECEDING CALENDAR YEAR;

25 (B) DETERMINE THE TOTAL FUNDS NEEDED FOR DISTRIBUTIONS IN THE NEXT FISCAL YEAR
26 AS AUTHORIZED PURSUANT TO [SECTION 15];

27 (C) COMPUTE A UNIFORM PERCENTAGE OF THE AMOUNT DETERMINED IN SUBSECTION (1)(A)
28 THAT WILL PRODUCE AN AMOUNT EQUAL TO THE FUND TOTAL CALCULATED IN SUBSECTION (1)(B);

29 (D) ADJUST THE PERCENTAGE MULTIPLIER COMPUTED IN SUBSECTION (1)(C) TO RECOVER
30 OR REIMBURSE ANY FUND SHORTFALLS OR EXCESSES IN THE PREVIOUS FISCAL YEAR; AND

1 (E) SEND NOTICE OF THE CURRENT UNIFORM PERCENTAGE AND APPROPRIATE REMITTANCE
2 FORMS TO EACH TELECOMMUNICATIONS CARRIER AT LEAST 2 MONTHS PRIOR TO THE EFFECTIVE
3 DATE OF THE APPLICATION OF THE PERCENTAGE.

4 (2) THE COMMISSION SHALL ADOPT PROCEDURAL RULES TO GOVERN COLLECTION OF THE
5 CONTRIBUTIONS REQUIRED BY THIS SECTION, AS WELL AS RULES ALLOWING THE FISCAL AGENT AND
6 DAILY ADMINISTRATOR TO ASSESS LATE FEES AND INTEREST ON DELINQUENT PAYMENTS FROM
7 TELECOMMUNICATIONS CARRIERS. THE FISCAL AGENT IS SPECIFICALLY AUTHORIZED TO ENFORCE
8 THE CONTRIBUTION REQUIREMENTS OF THIS SECTION THROUGH SUIT IN THE DISTRICT COURTS OF
9 MONTANA.

10 (3) ANY REDUCTION IN TELECOMMUNICATIONS CARRIER ACCESS EXPENSES BECAUSE OF THE
11 REMOVAL OF IMPLICIT SUBSIDIES INHERENT IN TELECOMMUNICATIONS CARRIER ACCESS RATES
12 MUST BE DIRECTLY PASSED THROUGH TO END-USER CUSTOMERS BY A REDUCTION IN
13 CORRESPONDING RETAIL RATES.

14
15 NEW SECTION. SECTION 15. DISTRIBUTIONS FROM FUND -- CALCULATION OF COSTS. (1)
16 SUBJECT TO THE REQUIREMENTS OF THIS SECTION, PAYMENTS FROM THE FUND MUST BE MADE BY
17 THE FISCAL AGENT TO QUALIFYING ELIGIBLE TELECOMMUNICATIONS CARRIERS, ON A MONTHLY
18 BASIS, PURSUANT TO RULES ADOPTED BY THE COMMISSION.

19 (2) ONLY ELIGIBLE TELECOMMUNICATIONS CARRIERS THAT OFFER THE
20 TELECOMMUNICATIONS SERVICES DESCRIBED IN [SECTION 12(1)] TO ALL CUSTOMERS IN A
21 DESIGNATED SUPPORT AREA AND THAT ADVERTISE THE AVAILABILITY OF THE
22 TELECOMMUNICATIONS SERVICES AND THE CHARGES FOR THE TELECOMMUNICATIONS SERVICES
23 USING MEDIA OF GENERAL DISTRIBUTION MAY RECEIVE SUPPORT FROM THE FUND FOR THE
24 DESIGNATED SUPPORT AREA.

25 (3) DISTRIBUTIONS MUST BE CALCULATED FOR THE DESIGNATED SUPPORT AREAS
26 ESTABLISHED BY THE COMMISSION. IN THE CASE OF AN AREA SERVED BY A RURAL TELEPHONE
27 COMPANY, THE TERM "DESIGNATED SUPPORT AREA" MEANS THE RURAL TELEPHONE COMPANY'S
28 MONTANA SERVICE AREA UNLESS THE RURAL TELEPHONE COMPANY VOLUNTARILY ADOPTS A
29 PROXY MODEL FOR THE CALCULATION OF THE RURAL TELEPHONE COMPANY'S COST OF
30 TELECOMMUNICATIONS SERVICES UNDER SUBSECTION (6). AFTER ADOPTION OF A PROXY MODEL,

1 THE RURAL TELEPHONE COMPANY'S DESIGNATED SUPPORT AREA MUST BE AN AREA DESIGNATED
2 BY THE COMMISSION, WHICH MAY BE SMALLER THAN A WIRE CENTER. THE TERM DESIGNATED
3 SUPPORT AREA FOR ALL OTHER TELECOMMUNICATIONS CARRIERS MEANS A GEOGRAPHIC AREA AS
4 ESTABLISHED BY THE COMMISSION, WHICH MUST BE SMALLER THAN A WIRE CENTER.

5 (4) SUPPORT FOR THE SERVICES LISTED IN [SECTION 12(1)] MUST BE CALCULATED AS THE
6 DIFFERENCE BETWEEN THE COSTS DETERMINED IN EACH DESIGNATED SUPPORT AREA AND THE
7 AFFORDABILITY BENCHMARK IN THAT SUPPORT AREA. THE COMMISSION SHALL ADOPT RULES TO
8 DETERMINE AFFORDABILITY BENCHMARKS.

9 (5) EXCEPT AS PROVIDED IN SUBSECTION (6), FOR RURAL TELEPHONE COMPANIES AND
10 OTHER ELIGIBLE TELECOMMUNICATIONS CARRIERS OFFERING SERVICES IN A DESIGNATED SUPPORT
11 AREA SERVED BY A RURAL TELEPHONE COMPANY, THE AVERAGE COST FOR EACH LINE MUST BE
12 CALCULATED AND SUBMITTED, BASED ON THE PRECEDING CALENDAR YEAR, TO THE FISCAL AGENT
13 AS FOLLOWS:

14 (A) IF AN ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER HAS NOT BEEN DESIGNATED
15 PURSUANT TO [SECTION 10(3)], THE RURAL TELEPHONE COMPANY'S TOTAL UNSEPARATED LOOP
16 COST, AS DEFINED BY FEDERAL SEPARATION RULE METHODOLOGY IN EFFECT ON DECEMBER 31,
17 1996, MUST BE ADDED TO THE SWITCHING COSTS, LOCAL TRANSPORT COSTS, AND CUSTOMER
18 OPERATIONS COSTS ASSIGNED TO THE TELECOMMUNICATIONS SERVICES SET FORTH IN [SECTION
19 12(1)], WHICH MUST BE CALCULATED USING THE METHODOLOGY SET FORTH IN FEDERAL
20 COMMUNICATIONS COMMISSION JURISDICTIONAL SEPARATION RULES IN EFFECT AS OF DECEMBER
21 31 OF EACH CALENDAR YEAR. THIS TOTAL COST MUST BE REDUCED BY ANY FEDERAL UNIVERSAL
22 SERVICE SUPPORT, INTERSTATE ALLOCATION OF LOOP COSTS CHARGED TO LONG-DISTANCE
23 COMPANIES, AND LOOP COSTS RECOVERED THROUGH INTRASTATE TELECOMMUNICATIONS CARRIER
24 COMMON LINE CHARGES TO LONG-DISTANCE COMPANIES.

25 (B) UPON THE DESIGNATION OF AN ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER
26 PURSUANT TO [SECTION 10(3)] IN A DESIGNATED SUPPORT AREA SERVED BY A RURAL TELEPHONE
27 COMPANY, THE ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER HAS ACCESS TO THE FUND
28 ON THE SAME BASIS AS THE RURAL TELEPHONE COMPANY. UPON THE DESIGNATION OF THE
29 ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER, BOTH THE CARRIER AND THE RURAL
30 TELEPHONE COMPANY MUST RECEIVE DISTRIBUTIONS FROM THE FUND BASED UPON THE RURAL

1 TELEPHONE COMPANY'S AVERAGE COST FOR EACH LINE DISAGGREGATED TO GEOGRAPHIC AREAS
2 SMALLER THAN A WIRE CENTER. THE SUPPORT FOR EACH LINE FOR EACH GEOGRAPHIC AREA MUST
3 BE BASED UPON THE RURAL TELEPHONE COMPANY'S COSTS, AS DETERMINED IN SUBSECTION (5)(A),
4 DISTRIBUTED TO EACH OF THE GEOGRAPHIC AREAS ON THE BASIS OF RELATIVE DISTRIBUTION
5 FACTORS ESTABLISHED BY A COST PROXY MODEL ADOPTED BY THE COMMISSION.

6 (6) EXCEPT AS PROVIDED IN SUBSECTION (5)(B), FOR COMPANIES THAT ARE NOT RURAL
7 TELEPHONE COMPANIES AND FOR RURAL TELEPHONE COMPANIES VOLUNTARILY ELECTING TO USE
8 A COST PROXY MODEL, THE AVERAGE COST FOR EACH LINE IN DESIGNATED SUPPORT AREAS MUST
9 BE CALCULATED BASED ON THE COST PROXY MODEL ADOPTED BY THE COMMISSION. THIS TOTAL
10 PER-LINE COST MUST BE REDUCED BY ANY FEDERAL UNIVERSAL SERVICE SUPPORT, INTERSTATE
11 ALLOCATION OF LOOP COSTS CHARGED TO LONG-DISTANCE COMPANIES, AND LOOP COSTS
12 RECOVERED THROUGH INTRASTATE TELECOMMUNICATIONS CARRIER COMMON LINE CHARGES TO
13 LONG-DISTANCE COMPANIES.

14 (7) IN DETERMINING ANY PROXY MECHANISM UNDER THIS SECTION, THE COMMISSION SHALL
15 USE A MODEL THAT:

16 (A) TARGETS SUPPORT TO A GEOGRAPHIC AREA SMALLER THAN A WIRE CENTER;

17 (B) USES ACCEPTABLE OUTSIDE PLANT DESIGN AND COSTING PRINCIPLES;

18 (C) USES REASONABLE SWITCH DESIGN AND COSTING PRINCIPLES;

19 (D) INCLUDES A REASONABLE SHARE OF THE JOINT AND COMMON COSTS OF THE
20 TELECOMMUNICATIONS CARRIER;

21 (E) MEETS STANDARDS FOR DOCUMENTING MODEL LOGIC AND THE SOURCES OF COST DATA
22 INPUT; AND

23 (F) MEETS REASONABLENESS TESTS TO ENSURE THAT MODEL OUTPUTS ARE
24 REPRESENTATIVE OF COSTS THAT CAN BE REASONABLY EXPECTED IN THE CONSTRUCTION OF A
25 NETWORK AND THAT THE NETWORK IS CAPABLE OF PROVIDING TELECOMMUNICATIONS SERVICES
26 THAT MEET THE TELECOMMUNICATIONS SERVICES QUALITY STANDARDS OF THE COMMISSION AND
27 FEDERAL REGULATORS.

28 (8) AN ELIGIBLE TELECOMMUNICATIONS CARRIER PROVIDING TELECOMMUNICATIONS
29 SERVICES THROUGH RESALE OF ANOTHER TELECOMMUNICATIONS CARRIER'S
30 TELECOMMUNICATIONS SERVICES OR FACILITIES MAY NOT RECEIVE SUPPORT FOR THOSE

1 TELECOMMUNICATIONS SERVICES IF THE RATES CHARGED TO AN ELIGIBLE TELECOMMUNICATIONS
 2 CARRIER BY THE OTHER TELECOMMUNICATIONS CARRIER INCLUDE A CONTRIBUTION FOR UNIVERSAL
 3 SERVICE FUNDS UNDER THIS SECTION.

4 (9) COSTS OF ADMINISTERING THE FUND MUST BE PAID FROM THE FUND.

5
 6 NEW SECTION. SECTION 16. DISCOUNTS FOR SCHOOLS, LIBRARIES, AND HEALTH CARE
 7 PROVIDERS. THE COMMISSION IS AUTHORIZED TO ESTABLISH INTRASTATE DISCOUNTS TO SCHOOLS,
 8 LIBRARIES, AND HEALTH CARE PROVIDERS AND TO PERFORM ADMINISTRATIVE FUNCTIONS
 9 NECESSARY AS A CONDITION OF FEDERAL UNIVERSAL SERVICE SUPPORT IF THE DISCOUNTS ARE
 10 RECOVERED THROUGH THE FEDERAL UNIVERSAL SERVICE FUND.

11
 12 NEW SECTION. SECTION 17. WHOLESALE PRICING STANDARDS. IF THE COMMISSION IS
 13 REQUESTED BY A TELECOMMUNICATIONS CARRIER TO ESTABLISH WHOLESALE PRICES FOR SERVICES
 14 PROVIDED BY A TELECOMMUNICATIONS CARRIER, THE COMMISSION MAY NOT ESTABLISH A
 15 WHOLESALE PRICE USING A STANDARDIZED OR DEFAULT DISCOUNT VALUE TO BE APPLIED TO THE
 16 APPLICABLE RETAIL PRICE.

17
 18 NEW SECTION. SECTION 18. PRICING OF INDIVIDUAL NETWORK ELEMENTS. (1) IF THE
 19 COMMISSION IS REQUESTED BY A TELECOMMUNICATIONS CARRIER TO ESTABLISH THE PRICES OF
 20 THE INDIVIDUAL NETWORK ELEMENTS USED TO PROVIDE TELECOMMUNICATIONS SERVICES, THE
 21 COMMISSION SHALL SET THOSE PRICES AT A LEVEL SUFFICIENT TO RECOVER THE ACTUAL COST OF
 22 PROVIDING THOSE ELEMENTS, INCLUDING:

23 (A) A REASONABLE SHARE OF THE JOINT AND COMMON COSTS SO THAT THE
 24 TELECOMMUNICATIONS CARRIER HAS A REASONABLE OPPORTUNITY TO RECOVER THESE COSTS IN
 25 TOTAL;

26 (B) DEPRECIATION COSTS THAT ARE BASED UPON FORWARD-LOOKING ASSET LIVES
 27 CONSISTENT WITH ASSET LIVES OF OTHER TELECOMMUNICATIONS CARRIERS AND THAT REFLECT
 28 AN AMORTIZATION OF ANY UNDERDEPRECIATED INVESTMENT;

29 (C) FILL FACTORS THAT RECOGNIZE THE SPARE CAPACITY REQUIRED TO FULFILL ELIGIBLE
 30 TELECOMMUNICATIONS CARRIER RESPONSIBILITIES; AND

1 (D) A FAIR RETURN ON INVESTMENTS.

2 (2) IF A TELECOMMUNICATIONS CARRIER USES AVERAGE PRICES FOR SERVICES TO END
 3 USERS WITHOUT REGARD TO THE CUSTOMER'S LOCATION, THE COMMISSION SHALL SIMILARLY
 4 ESTABLISH AN AVERAGE COST AND WHOLESALE PRICE FOR EACH INDIVIDUAL NETWORK ELEMENT
 5 SOLD TO OTHER TELECOMMUNICATIONS CARRIERS. THE COMMISSION MAY DEPART FROM AVERAGE
 6 PRICING FOR NETWORK ELEMENTS ONLY TO THE EXTENT THAT THE RETAIL PRICES TO END USERS
 7 OF A TELECOMMUNICATIONS CARRIER HAVE DEPARTED FROM AVERAGE PRICING.

8

9 NEW SECTION. SECTION 19. PROHIBITED SUBSIDIES. THE COMMISSION MAY NOT SUBSIDIZE
 10 THE PRICE OF ANY TELECOMMUNICATIONS SERVICE, INCLUDING WHOLESALE PRICES OR THE PRICES
 11 OF INDIVIDUAL NETWORK ELEMENTS, BY REDUCING THE PRICES TO REFLECT AN ALLOCATION OR
 12 CREDIT OF REVENUE FROM THE OPERATIONS OF AN AFFILIATED COMPANY OF THE CARRIER OF
 13 TELECOMMUNICATIONS SERVICES, INCLUDING A PUBLISHING AFFILIATE.

14

15 **Section 20.** Section 2-4-102, MCA, is amended to read:

16 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

17 (1) "Administrative code committee" or "committee" means the committee provided for in Title 5,
 18 chapter 14.

19 (2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that
 20 the provisions of this chapter do not apply to the following:

21 (i) the state board of pardons and parole, except that the board is subject to the requirements of
 22 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of
 23 Montana and the Montana Administrative Register;

24 (ii) the supervision and administration of a penal institution with regard to the institutional
 25 supervision, custody, control, care, or treatment of youths or prisoners;

26 (iii) the board of regents and the Montana university system;

27 (iv) the financing, construction, and maintenance of public works;

28 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
 29 252 and [section 7].

30 (b) Agency does not include a school district, unit of local government, or any other political

1 subdivision of the state.

2 (3) "ARM" means the Administrative Rules of Montana.

3 (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,
4 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term
5 includes but is not restricted to ratemaking, price fixing, and licensing.

6 (5) "License" includes the whole or part of any agency permit, certificate, approval, registration,
7 charter, or other form of permission required by law but does not include a license required solely for
8 revenue purposes.

9 (6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation,
10 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

11 (7) "Party" means a person named or admitted as a party or properly seeking and entitled as of
12 right to be admitted as a party, but nothing in this chapter may be construed to prevent an agency from
13 admitting any person as a party for limited purposes.

14 (8) "Person" means an individual, partnership, corporation, association, governmental subdivision,
15 agency, or public organization of any character.

16 (9) "Register" means the Montana Administrative Register.

17 (10) "Rule" means each agency regulation, standard, or statement of general applicability that
18 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
19 requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

20 (a) statements concerning only the internal management of an agency and not affecting private
21 rights or procedures available to the public;

22 (b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

23 (c) rules relating to the use of public works, facilities, streets, and highways when the substance
24 of the rules is indicated to the public by means of signs or signals;

25 (d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
26 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially
27 relating to the seasonal recreational use of lands and waters owned or controlled by the state when the
28 substance of the rules is indicated to the public by means of signs or signals;

29 (e) rules implementing the state personnel classification plan, the state wage and salary plan, or
30 the statewide budgeting and accounting system;

1 (f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
2 accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

3 (11) "Substantive rules" are either:

4 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated
5 authority to promulgate rules to implement a statute have the force of law and when not so adopted are
6 invalid; or

7 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
8 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of
9 law."

10
11 ~~Section 25. Section 35-18-503, MCA, is amended to read:~~

12 ~~"35-18-503. Annual fee to department of revenue — exemption from other taxes. Cooperatives~~
13 ~~and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall~~
14 ~~pay annually on or before July 1, to the department of revenue a fee of \$10 for each 100 persons or~~
15 ~~fractions thereof of 100 persons to whom electricity or telephone service was supplied during the previous~~
16 ~~calendar year within the state and, except as provided in [section 21] and 10-4-201, shall are be exempt~~
17 ~~from all other excise and income taxes of whatsoever any kind or nature."~~

18
19 **Section 21.** Section 69-3-305, MCA, is amended to read:

20 **"69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:

21 (a) charge, demand, collect, or receive a greater or less compensation for a utility service performed
22 by it within the state or for any service in connection with a utility service than is specified in the printed
23 schedules, including schedules of joint rates, that may at the time be in force;

24 (b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

25 (c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly,
26 has or may have the effect of changing the rates, tolls, charges, or payments.

27 (2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and
28 charges until the rates, tolls, and charges are changed, as provided in this chapter.

29 (3) The commission may order refunds or credits of rates, tolls, or charges collected in violation
30 of this section and may order payment of interest at a reasonable rate on the refunded amount.

1 (4) The provisions of this section do not prohibit the sharing of profits or revenues with customers
2 in conjunction with an alternative form of regulation approved under 69-3-809.

3 (5) (a) A provider of regulated telecommunications service may offer, for a limited period of time,
4 ~~either rebates, price or reductions, or waivers of installation charges in conjunction with promotions, market~~
5 ~~trials, or other sales-related activities that are common business practices. Promotional pricing of services~~
6 ~~that remain fully tariffed requires~~ for services other than basic local exchange access to end users does not
7 require advance approval of the commission. Informational price lists must be filed with the commission
8 on or before the date that the promotion begins. Promotional offerings for basic local exchange access to
9 end users and packaged services that include basic local exchange access to end users require advance
10 approval of the commission. The commission shall approve, deny, or upon a showing of good cause set
11 for hearing an application for a promotional discount within 30 days of the filing of the application. If the
12 commission has not acted on the application within the permitted time period, the application is considered
13 granted. A promotional offering may not combine monopoly services with competitive services unless
14 authorized by the commission.

15 (b) A public utility providing electricity or natural gas may offer grants and subsidized loans to
16 install energy conservation and nonfossil forms of energy generation systems in dwellings.

17 (c) The commission may define the appropriate scope of promotions, rebates, market trials, and
18 grants and subsidized loans, either by rule or in response to complaints. The commission may determine
19 whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly
20 discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to
21 sales activities and grant and subsidized loan programs that the commission determines are unfairly
22 discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the
23 commission.

24 (6) A public utility violating the provisions of this section is subject to the penalty prescribed in
25 69-3-206. ~~This, however~~ However, this does not have the effect of suspending, rescinding, invalidating,
26 or in any way affecting existing contracts."

27
28 ~~Section 27. Section 69-3-801, MCA, is amended to read:~~

29 ~~"69-3-801. Short title. This part may be cited as the "Montana Telecommunications Reform Act"."~~

1 **Section 28.** ~~Section 69-3-802, MCA, is amended to read:~~

2 ~~"69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana~~
 3 ~~to maintain universal availability of basic telecommunications service at affordable rates. This part was~~
 4 ~~adopted in response to the enactment into law of the federal Telecommunications Act of 1996, Public Law~~
 5 ~~104-104, and the work performed by the governor's blue ribbon telecommunications task force established~~
 6 ~~by Chapter 508, Laws of 1995. This part expresses the policies of the state of Montana that should govern~~
 7 ~~the orderly transition of the telecommunications industry in the state from a regulated industry to an~~
 8 ~~industry primarily controlled by the economic forces of a competitive telecommunications marketplace. The~~
 9 ~~legislature declares that it remains the policy of the state of Montana to maintain universal availability of~~
 10 ~~basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining~~
 11 ~~universal service, it is further the policy of this state to encourage competition in the telecommunications~~
 12 ~~industry, thereby allowing access by the public to resulting rapid advances in telecommunications~~
 13 ~~technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly~~
 14 ~~transition from a regulated telecommunications industry to a competitive market environment, and it is~~
 15 ~~further the purpose of this part to clarify that the commission has authority to implement alternative forms~~
 16 ~~of regulation for providers of regulated telecommunications services."~~

17

18 **Section 22.** Section 69-3-803, MCA, is amended to read:

19 **"69-3-803. Definitions.** As used in this part, the following definitions apply:

20 ~~(1) "Advanced telecommunications services" means high speed (56 kbps) dedicated or switched,~~
 21 ~~broadband telecommunications capability that enables users to originate and receive high quality voice,~~
 22 ~~data, graphics, and video telecommunications using any technology.~~

23 ~~(1)(2)(1)~~ "Commission" means the public service commission.

24 ~~(2) "ELIGIBLE TELECOMMUNICATIONS CARRIER" MEANS A TELECOMMUNICATIONS PROVIDER~~
 25 ~~DESIGNATED BY THE COMMISSION UNDER [SECTION 10].~~

26 ~~(3) "FUND" MEANS THE UNIVERSAL SERVICE FUND ESTABLISHED IN [SECTION 12].~~

27 ~~(3)(4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange~~
 28 ~~carrier that:~~

29 ~~(a) on February 8, 1996, provided telephone exchange service in the area; and~~

30 ~~(b) on February 8, 1996, was considered to be a member of the exchange carrier association~~

1 pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign
 2 of a member of the exchange carrier association.

3 ~~(2)(4)(5)~~ "Private telecommunications service" means a system, including the construction,
 4 maintenance, or operation ~~thereof~~ of the system, for the provision of telecommunications service or any
 5 portion of ~~such~~ the service, by a person or entity for the sole and exclusive use of that person or entity and
 6 not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a
 7 corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a
 8 common ownership or control of 80% of the outstanding voting shares.

9 ~~(3)(5)(6)~~ (a) "Regulated telecommunications service" means two-way switched, voice-grade access
 10 and transport of communications originating and terminating in this state and nonvoice-grade access and
 11 transport if intended to be converted to or from voice-grade access and transport.

12 ~~(b) Regulated telecommunications service~~ The term does not include the provision of terminal
 13 equipment used to originate or terminate ~~such~~ the regulated service, private telecommunications service,
 14 ~~resale of telecommunications service,~~ RESALE OF TELECOMMUNICATIONS SERVICES, one-way
 15 transmission of television signals, cellular communication, or provision of radio paging or mobile radio
 16 services.

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

20 (7) "RESALE OF TELECOMMUNICATIONS SERVICES" MEANS THE RESALE OF REGULATED
 21 TELECOMMUNICATIONS SERVICES, WITH OR WITHOUT ADDING VALUE, PROVIDED THAT ANY VALUE
 22 ADDED WOULD NOT OTHERWISE BE SUBJECT TO REGULATION.

23 (8) "RETAIL REVENUE" MEANS THE GROSS MONTANA REVENUE FROM TELECOMMUNICATIONS
 24 SERVICES THAT ORIGINATE OR TERMINATE IN MONTANA, EXCLUDING REVENUE FROM THE RESALE
 25 OF TELECOMMUNICATIONS SERVICES TO ANOTHER TELECOMMUNICATIONS SERVICES PROVIDER
 26 THAT USES THE TELECOMMUNICATIONS SERVICES TO PROVIDE TELECOMMUNICATIONS SERVICES
 27 TO THE ULTIMATE RETAIL CONSUMER WHO ORIGINATES OR TERMINATES THE TRANSMISSION.

28 ~~(6)(9)~~ "Rural telephone company" means a local exchange carrier operating entity to the extent that
 29 the entity:

30 (a) provides common carrier service to any local exchange carrier study area that does not include

1 either:

2 (i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most
3 recently available population statistics of the United States bureau of the census; or

4 (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the
5 United States bureau of the census as of August 10, 1993.

6 (b) provides telephone exchange service, including exchange access, to fewer than 50,000 access
7 lines;

8 (c) provides telephone exchange service to any local exchange carrier study area with fewer than
9 100,000 access lines; or

10 (d) has less than 15% of its access lines in communities of more than 50,000 on February 8,
11 1996.

12 ~~(7)~~(10) "Telecommunications" means the transmission, between or among points specified by the
13 user, of information of the user's choosing without a change in the form or content of the information upon
14 receipt.

15 ~~(8)~~(11) "Telecommunications carrier" or "carrier" means any provider of telecommunications
16 services. A person providing other products and services in addition to telecommunications services is
17 considered a telecommunications carrier only to the extent that it is engaged in providing
18 telecommunications services. The term does not mean aggregators of telecommunications services as
19 defined in 47 U.S.C. 226."

20

21 **Section 23.** Section 69-3-805, MCA, is amended to read:

22 **"69-3-805. ~~Manner of regulation~~ Registration of telecommunications service providers.** (1) Before
23 any person or entity provides ~~regulated~~ telecommunications service within the state of Montana, it shall
24 file with the commission a notice including:

25 (a) the name, and address, and telephone number of the provider;

26 (b) ~~a narrative description of the regulated telecommunications service to be offered and the~~
27 ~~geographic area and markets to be served;~~

28 (c) ~~initial tariffs for the regulated telecommunications service;~~

29 (d) ~~such other information as the commission may require to accomplish the purpose of this~~
30 ~~chapter.~~ the name, address, and telephone number of the person responsible for regulatory contacts and

1 customer dispute resolution on behalf of the provider;

2 (c) a description of the provider's existing operations and general service and operating areas in any
3 other jurisdictions;

4 (d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal
5 addresses and telephone numbers of each;

6 (e) initial tariffs or price lists for regulated telecommunications services, including a narrative
7 description of the regulated telecommunications to be offered and the geographic area and markets to be
8 served;

9 (f) a general description of the facilities and equipment that will be used to provide services,
10 including whether the service will be offered on a facilities basis, a resale basis, or a combination of both
11 of them;

12 (g) a statement of whether the provider intends to draw from the federal or state universal service
13 fund or other explicit support funds, including a statement of whether the provider intends to seek the
14 commission's designation as an eligible telecommunications carrier;

15 (h) disclosure of any formal actions against it by any court or state or federal regulatory agency
16 that resulted in any type of penalty or sanction or within the 5 years prior to the date of filing the notice;

17 (i) if the provider is other than a corporation, a description of the form of ownership, the names
18 and addresses of all principal owners and managers, the provider's agent for service of process in Montana,
19 and the date of creation of the business entity; and

20 (j) other information from regulated telecommunications carriers as the commission may require
21 to accomplish the purposes of this chapter.

22 ~~(2) The provision of any regulated telecommunications service does not subject the provider thereof~~
23 ~~to regulation of any other telecommunications services otherwise exempt under this chapter. The~~
24 ~~commission may waive any of the requirements set forth in subsection (1).~~

25 (3) The provider shall file with the commission a report of any judgment, penalty, or sanction
26 entered in any other jurisdiction that could adversely affect the provider's ability to provide communications
27 services in Montana."

28

29 **SECTION 24. SECTION 69-3-806, MCA, IS AMENDED TO READ:**

30 **"69-3-806. Prohibition against cross-subsidization. (1) No A provider of regulated**

1 telecommunications ~~service~~ services may not use current ~~revenues~~ revenue earned or expenses incurred
 2 in conjunction with services subject to regulation under this chapter to subsidize services ~~which~~ that are
 3 not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or
 4 that are not tariffed under this chapter may not be attributed to services ~~which~~ that are subject to regulation
 5 for any reason.

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

8

9 **Section 25.** Section 69-3-807, MCA, is amended to read:

10 **"69-3-807. Regulation of rates and charges.** (1) ~~As to telecommunications service that is provided~~
 11 ~~under regulation, the~~ The commission may establish specific rates, tariffs, or fares for the provision of ~~the~~
 12 regulated telecommunications service to the public. The rates, tariffs, or fares must be just, reasonable, and
 13 nondiscriminatory.

14 (2) Alternatively, the commission may authorize the provision of regulated telecommunications
 15 service under terms and conditions that best serve the declared policy of this state. For a service detariffed
 16 under this subsection, the provider shall maintain a current price list on file with the commission and shall
 17 provide notice of changes in the price list as prescribed by the commission. The commission is not required
 18 to fix and determine specific rates, tariffs, or fares for the service and ~~in lieu thereof~~ the alternative may:

- 19 (a) totally detariff the service;
- 20 (b) detariff rates for the service but retain tariffs for service standards and requirements;
- 21 (c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the
 22 minimum rate is cost compensatory; or
- 23 (d) provide ~~such~~ other rate or service regulation as will promote the purposes of this part.

24 (3) Except as provided in subsection (4), in determining applications under subsection (2), the
 25 commission shall consider the following factors:

- 26 (a) the number, size, and distribution of alternative providers of service;
- 27 (b) the extent to which services are available from alternative providers in the relevant market;
- 28 (c) the ability of alternative providers to make functionally equivalent or substitute services readily
 29 available;
- 30 (d) the overall impact of the proposed terms and conditions on the continued availability of existing

1 services at just and reasonable rates; and

2 (e) other factors that the commission may prescribe through rulemaking that are appropriate to
3 fulfill the purposes of this part.

4 (4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under
5 subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that
6 action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local
7 exchange access to end-users and carrier access services may not be detariffed.

8 (5) A provider of regulated message telecommunications service and related services shall average
9 its service rates on its routes of similar distance within the state unless otherwise authorized by the
10 commission. ~~Nothing contained in this~~ This subsection may not be construed to prohibit volume discounts,
11 discounts in promotional offerings, or other discounts as long as the discounts are not offered in a
12 discriminatory manner.

13 ~~(6) All providers of comparable regulated telecommunications services within a market area must
14 be subject to the same standards of regulation. For purposes of this section, regulated telecommunications
15 services are comparable to the extent alternative providers can make functionally equivalent substitutes or
16 substitute services readily available."~~

17

18 **Section 32.** ~~Section 69-3-809, MCA, is amended to read:~~

19 ~~"69-3-809. Alternative forms of regulation. (1) The commission may authorize a provider of
20 regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking
21 practices required under parts 2, 3, and 9 of this chapter, including but not limited to:~~

22 ~~(a) price caps;~~

23 ~~(b) price regulation; and~~

24 ~~(c) equitable sharing of earnings or revenues revenue between a provider of regulated
25 telecommunications services and its customers.~~

26 ~~(2) A provider of regulated telecommunications services may petition the commission to regulate
27 the provider under an alternative form of regulation. The provider shall submit its plan for an alternative
28 form of regulation with its petition. The commission's order on the petition must be issued no later than
29 9 months after the filing of the petition. The commission shall review and may authorize implementation
30 of the plan if it finds, after notice and hearing, that the plan:~~

- 1 ~~(a) will not degrade the quality of or the availability of efficient telecommunications services;~~
 2 ~~(b) will produce fair, just, and reasonable rates for telecommunications services;~~
 3 ~~(c) will not unduly or unreasonably prejudice or disadvantage a customer class;~~
 4 ~~(d) will reduce regulatory delay and costs;~~
 5 ~~(e) is in the public interest; and~~
 6 ~~(f) will enhance economic development in the state;~~
 7 ~~(g) will result in the improvement of the telephone infrastructure in the state; and~~
 8 ~~(h)(b) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or~~
 9 ~~9 of this chapter conforms to the stated purpose.~~

10 ~~(3) If the commission determines that the plan does not satisfy the requirements of this section,~~
 11 ~~it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.~~

12 ~~(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications~~
 13 ~~service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw~~
 14 ~~its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition~~
 15 ~~for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:~~

- 16 ~~(a) remains subject to the same regulation that applied when the petition was filed; and~~
 17 ~~(b) may petition the commission to be regulated under a revised alternative plan.~~

18 ~~(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an~~
 19 ~~alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are~~
 20 ~~no longer satisfied.~~

21 ~~(6) Nothing contained in this This section may not be construed as limiting or otherwise affecting~~
 22 ~~the commission's authority to conduct investigations or hear complaints as provided in part 3 of this~~
 23 ~~chapter."~~

24

25 ~~Section 33. Section 69-3-811, MCA, is amended to read:~~

26 ~~"69-3-811. Costs for services provided Relevant cost defined — jurisdiction over complaints. (1)~~
 27 ~~Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise~~
 28 ~~ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure~~
 29 ~~that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.~~

30 ~~(2) With regard to competitive services, the term "relevant costs" includes the price for any~~

1 components that are used by the telecommunications provider and that would be essential for alternative
 2 providers to use in providing the competitive services pursuant to commission approved methodology.

3 ~~(3)(2) The commission has jurisdiction to consider complaints and initiate investigations to~~
 4 ~~determine whether the price charged by a provider of regulated telecommunications service is above~~
 5 ~~relevant costs. The commission may also consider complaints that a pricing or promotional practice violates~~
 6 ~~any provision of this title."~~

7
 8 **Section 26.** Section 69-3-1001, MCA, is amended to read:

9 **"69-3-1001. Creation of program -- amount of assistance.** (1) There is a telephone ~~low income~~
 10 low-income assistance program to provide an eligible subscriber with a discount in the monthly charge for
 11 local exchange service in the telephone network.

12 (2) ~~This~~ The commission shall set the discount in the charge for local exchange service ~~is the~~
 13 ~~greater of:~~

14 (a) ~~\$2 that is at least \$3.50~~ a month for each eligible subscriber; ~~or~~

15 (b) but not more than the amount ~~necessary to obtain the matching waiver available under~~
 16 ~~applicable orders and regulations of the federal communications commission that is the difference between~~
 17 the otherwise applicable current rate for local exchange service and the rate as it was on [the effective date
 18 of this section]."

19
 20 **NEW SECTION. Section 27. Codification instruction.** ~~(1)~~ [Sections 1 through ~~45~~ 19] are intended
 21 to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3,
 22 part 8, apply to [sections 1 through ~~45~~ 19].

23 ~~(2) [Sections 16 through 22] are intended to be codified as an integral part of Title 69, chapter 3,~~
 24 ~~and the provisions of Title 69, chapter 3, apply to [sections 16 through 22].~~

25
 26 **NEW SECTION. Section 28. Repealer.** Sections 69-6-101, 69-6-102, and 69-6-103, MCA, are
 27 repealed.

28
 29 **NEW SECTION. SECTION 29. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID**
 30 **PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]**

1 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
2 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

3

4 NEW SECTION. Section 30. Effective dates — applicability — rulemaking. (1) Except as provided
5 in subsection (2)(a), [this act] is effective on passage and approval.

6 (2) (a) [Sections ~~16 through 22~~ 17 THROUGH 19] are effective July 1, 1997.

7 (b) [~~Section 21~~] applies to retail revenue for all intrastate telecommunications services received by
8 telecommunications providers after June 30, 1997.

9 (c) ~~For the purpose of allowing the implementation of [sections 16 through 22] to begin on July~~
10 ~~1, 1997, without resorting to the adoption of emergency rules, the public service commission and the~~
11 ~~department of revenue may begin the process for the adoption of rules to implement [sections 16 through~~
12 ~~22] prior to [the effective date of sections 16 through 22], but rules may not be adopted until July 1, 1997.~~

13

14 NEW SECTION. Section 31. Termination. [~~Sections 16 through 22~~ 11 THROUGH 15] terminate
15 December 31, 1999.

16

-END-

SENATE BILL NO. 89

INTRODUCED BY BECK

BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR FEDERAL UNIVERSAL SERVICE SUPPORT; ~~PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY ADOPT RULES TO ALLOW VERIFICATION OF A SUBSCRIBER'S CHANGE IN TELECOMMUNICATIONS SERVICES AND PROVIDING A PENALTY FOR VIOLATION OF THE VERIFICATION RULES; ALLOWING FOR SPECIAL RATE MAKING PROCEDURES; RESTRICTING THE RESALE OF CERTAIN TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS SERVICES, INCLUDING INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES;~~ AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED TELECOMMUNICATIONS

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 SENATE BILL NO. 89

2 INTRODUCED BY BECK

3 BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE

6 REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL

7 TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF

8 TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT

9 TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED

10 INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF

11 INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR

12 FEDERAL UNIVERSAL SERVICE SUPPORT; ~~PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY~~

13 ~~ADOPT RULES TO ALLOW VERIFICATION OF A SUBSCRIBER'S CHANGE IN TELECOMMUNICATIONS~~

14 ~~SERVICES AND PROVIDING A PENALTY FOR VIOLATION OF THE VERIFICATION RULES; ALLOWING FOR~~

15 ~~SPECIAL RATE MAKING PROCEDURES; RESTRICTING THE RESALE OF CERTAIN TELECOMMUNICATIONS~~

16 ~~SERVICES; PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR~~

17 ~~INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH~~

18 ~~CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS~~

19 ~~SERVICES, INCLUDING INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES;~~

20 AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED TELECOMMUNICATIONS

21 PROVIDERS; ~~CHANGING THE TYPES OF REGULATION AND CRITERIA FOR ALTERNATIVE REGULATION~~

22 ~~OF TELECOMMUNICATIONS PROVIDERS; INCREASING THE AMOUNT OF ASSISTANCE IN THE~~

23 TELEPHONE LOW-INCOME ASSISTANCE PROGRAM; ~~ESTABLISHING AN INTERIM UNIVERSAL ACCESS~~

24 ~~TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC~~

25 ~~SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS~~

26 ~~SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS,~~

27 ~~AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL REVENUE DERIVED FROM~~

28 ~~INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE~~

29 ~~COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL~~

30 ~~ACCESS AND SERVICE; ESTABLISHING AN INTERIM UNIVERSAL ACCESS TO THE ADVANCED~~

1 TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC SERVICE COMMISSION;
 2 PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR CERTAIN
 3 PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND ACCESS POINTS,
 4 SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTABLISHING A
 5 SURCHARGE ON RETAIL REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN
 6 THE STATE; REQUIRING THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE
 7 56TH LEGISLATURE REGARDING UNIVERSAL ACCESS AND SERVICE; CREATING A UNIVERSAL SERVICE
 8 FUND FOR TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES
 9 SUPPORTED BY THE FUND AND OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM
 10 TELECOMMUNICATIONS CARRIERS BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS
 11 CARRIERS' RETAIL REVENUE; PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATELY
 12 CONTRACTED ENTITY UNDER THE DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR
 13 DISTRIBUTIONS FROM THE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; ESTABLISHING A
 14 COMMITTEE TO MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL TELECOMMUNICATIONS ACT
 15 OF 1996; APPROPRIATING FUNDS FOR THE COMMITTEE; AMENDING SECTIONS 2-4-102, ~~36-18-603,~~
 16 69-3-305, ~~69-3-801, 69-3-802,~~ 69-3-803, 69-3-805, ~~69-3-806,~~ 69-3-807, ~~69-3-809, 69-3-811,~~ AND
 17 69-3-1001, MCA; REPEALING SECTIONS 69-6-101, 69-6-102, AND 69-6-103, MCA; AND PROVIDING
 18 AN IMMEDIATE EFFECTIVE DATES DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."
 19

20 STATEMENT OF INTENT

21 A statement of intent is required for this bill because rulemaking authority is granted to the public
 22 service commission ~~and to the department of revenue.~~

23 [Section 4 3] authorizes the public service commission to adopt procedural rules relating to
 24 mediation and arbitration for interconnection proceedings.

25 ~~[Section 12] grants rulemaking authority to the public service commission to make rules establishing~~
 26 ~~verification procedures for the submission or execution of a change in a subscriber's selection of a provider~~
 27 ~~of telecommunications services. The rules are to address the problems of "slamming" a change in service~~
 28 ~~providers that was unauthorized or a service change authorization that was made under deceptive or~~
 29 ~~misleading circumstances.~~

30 ~~Under the interim universal access provisions of [sections 16 through 22], the public service~~

1 ~~commission is to establish surcharge rates as provided in [section 21]. The surcharge rates must take into~~
 2 ~~account different cost structures among telecommunications carriers, particularly the wireless and CATV~~
 3 ~~industry. The retail revenue for these providers should be based on an equitable, per access line, revenue~~
 4 ~~equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary~~
 5 ~~to fund the program. The formulation should consider any overlapping federal discounts. The commission~~
 6 ~~should appoint an oversight group consisting of users and industry participants, to meet quarterly with the~~
 7 ~~commission to review revenue, discounts, and the administration of [sections 16 through 22]. The public~~
 8 ~~service commission shall also establish a method for paying discount reimbursements in accordance with~~
 9 ~~[section 20]. The public service commission shall cooperate with the department of revenue in determining~~
 10 ~~rates, administering offsets against any surcharges, and other matters necessary for the administration of~~
 11 ~~[sections 16 through 22].~~

12 ~~The department of revenue shall administer the collection of the surcharge by rule. Because of the~~
 13 ~~limited duration of the program, it is contemplated that the rules and administration be minimal, flexible,~~
 14 ~~and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the~~
 15 ~~implementation of [sections 16 through 22].~~ UNDER THE INTERIM UNIVERSAL ACCESS PROVISIONS OF
 16 [SECTIONS 20 THROUGH 26], THE PUBLIC SERVICE COMMISSION IS TO ESTABLISH SURCHARGE RATES
 17 AS PROVIDED IN [SECTION 25]. THE SURCHARGE RATES MUST TAKE INTO ACCOUNT DIFFERENT COST
 18 STRUCTURES AMONG TELECOMMUNICATIONS CARRIERS, PARTICULARLY THE WIRELESS AND CATV
 19 INDUSTRY. THE RETAIL REVENUE FOR THESE PROVIDERS SHOULD BE BASED ON AN EQUITABLE, PER
 20 ACCESS LINE, REVENUE EQUIVALENT. THE COMMISSION SHALL ALSO SET THE SURCHARGE RATE TO
 21 PRODUCE THE AMOUNT OF REVENUE NECESSARY TO FUND THE PROGRAM. THE FORMULATION
 22 SHOULD CONSIDER ANY OVERLAPPING FEDERAL DISCOUNTS. THE COMMISSION SHOULD APPOINT
 23 AN OVERSIGHT GROUP, CONSISTING OF USERS AND INDUSTRY PARTICIPANTS, TO MEET QUARTERLY
 24 WITH THE COMMISSION TO REVIEW REVENUE, DISCOUNTS, AND THE ADMINISTRATION OF [SECTIONS
 25 20 THROUGH 26]. THE PUBLIC SERVICE COMMISSION SHALL ALSO ESTABLISH A METHOD FOR PAYING
 26 DISCOUNT REIMBURSEMENTS IN ACCORDANCE WITH [SECTION 25]. THE PUBLIC SERVICE
 27 COMMISSION SHALL COOPERATE WITH THE DEPARTMENT OF REVENUE IN DETERMINING RATES,
 28 ADMINISTERING OFFSETS AGAINST ANY SURCHARGES, AND OTHER MATTERS NECESSARY FOR THE
 29 ADMINISTRATION OF [SECTIONS 20 THROUGH 26].

30 THE DEPARTMENT OF REVENUE SHALL ADMINISTER THE COLLECTION OF THE SURCHARGE BY

1 RULE. BECAUSE OF THE LIMITED DURATION OF THE PROGRAM, IT IS CONTEMPLATED THAT THE
 2 RULES AND ADMINISTRATION BE MINIMAL, FLEXIBLE, AND AS UNOBTRUSIVE AS POSSIBLE WHILE
 3 ENSURING THAT THERE ARE SUFFICIENT ADMINISTRATIVE POWERS TO ENABLE THE IMPLEMENTATION
 4 OF [SECTIONS 20 THROUGH 26].

5 UNDER [SECTION 13], THE PUBLIC SERVICE COMMISSION SHALL ADMINISTER A CONTRACT WITH A
 6 THIRD PARTY THAT WILL MANAGE THE UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS
 7 SERVICES ON A DAILY BASIS. THE THIRD PARTY IS RESPONSIBLE FOR THE COLLECTION OF
 8 CONTRIBUTIONS TO THE FUND. THE THIRD PARTY IS ALSO RESPONSIBLE FOR SETTING THE AMOUNT
 9 OF CONTRIBUTION BASED ON TOTAL RETAIL REVENUE OF TELECOMMUNICATIONS CARRIERS
 10 OPERATING IN MONTANA. THE PUBLIC SERVICE COMMISSION SHALL ADOPT PROCEDURAL RULES FOR
 11 THE COLLECTION OF THE CONTRIBUTIONS. THE PUBLIC SERVICE COMMISSION SHALL ALSO ADOPT
 12 RULES ALLOWING THE THIRD PARTY TO ASSESS LATE FEES AND INTEREST ON LATE PAYMENTS OF
 13 CONTRIBUTIONS. THE RULES MUST SET INTEREST RATES AND PENALTIES FOR LATE PAYMENTS.

14 [SECTION 14] AUTHORIZES THE PUBLIC SERVICE COMMISSION TO ADOPT PROCEDURAL RULES
 15 RELATING TO THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND. [SECTION 14]
 16 AUTHORIZES THE PUBLIC SERVICE COMMISSION TO ADOPT RULES FOR THE ASSESSMENT OF LATE
 17 FEES AND INTEREST ON CONTRIBUTIONS TO THE FUND.

18 [SECTION 15] REQUIRES THE PUBLIC SERVICE COMMISSION TO ADOPT RULES ESTABLISHING
 19 AFFORDABILITY BENCHMARKS FOR LOCAL SERVICE.

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
 23 ~~NEW SECTION. Section 1. Statement of policies. (1) The commission shall, in the exercise of~~
 24 ~~the powers conferred upon it under Montana law, consider the following declared policies of the state of~~
 25 ~~Montana:~~

26 ~~(a) The state of Montana shall encourage competition on a neutral basis and provide neither~~
 27 ~~competitive advantage nor a competitive disadvantage to any telecommunications carrier.~~

28 ~~(b) The regulation of telecommunications carriers by the commission should attempt to produce~~
 29 ~~the same benefits for carriers as competition that includes:~~

30 ~~(i) the ability to enter and exit markets quickly and easily;~~

- 1 ~~(ii) the ability to price efficiently and flexibly; and~~
- 2 ~~(iii) incentives to:~~
- 3 ~~(A) offer new products and services;~~
- 4 ~~(B) create operating and investing efficiencies; and~~
- 5 ~~(C) stimulate sales of existing services.~~
- 6 ~~(c) It is the objective of the state of Montana to make basic telecommunications services available~~
- 7 ~~at the lowest possible price to all Montanans.~~
- 8 ~~(d) It is the objective of the state of Montana to provide at least a minimum level of public access~~
- 9 ~~to advanced telecommunications services through a library, school, or public institution in every Montana~~
- 10 ~~community under the universal service access provisions in [sections 16 through 22].~~
- 11 ~~(e) The advanced telecommunications services available in urban areas of Montana should also be~~
- 12 ~~available in rural areas at rates reasonably comparable to rates in urban areas.~~
- 13 ~~(f) All Montanans should have the ability to route their telecommunications to their carriers of~~
- 14 ~~choice without the need to dial extra codes.~~
- 15 ~~(g) Montana customers should have the ability to retain their telephone numbers when they switch~~
- 16 ~~carriers within their local exchange area. Number portability should be provided, to the extent technically~~
- 17 ~~feasible and economically reasonable, in accordance with the requirements prescribed by the federal~~
- 18 ~~communications commission. The cost to implement number portability should be borne by all~~
- 19 ~~telecommunications carriers on a competitively neutral basis. Rural telephone companies may petition the~~
- 20 ~~commission for suspension or modification of these requirements.~~
- 21 ~~(h) The commission should proceed at a reasonable speed, based on demonstrated demand, to~~
- 22 ~~unbundle the network elements at technically feasible points.~~
- 23 ~~(i) The commission is responsible for ensuring that prices for regulated telecommunications services~~
- 24 ~~are priced above relevant costs to prevent cross-subsidization and predatory pricing.~~
- 25 ~~(j) During the transition to local competition, the commission and regulated telecommunications~~
- 26 ~~carriers are encouraged to review and remove any implicit subsidies and any other government-imposed~~
- 27 ~~mandates that inhibit competition.~~
- 28 ~~(k) When establishing new depreciation rates for ratemaking purposes, forward-looking asset lives,~~
- 29 ~~consistent with the competitive market and consistent with the asset lives used by competing providers~~
- 30 ~~of similar services, should be used.~~

1 ~~(2) (a) This section does not alter the state policy of local control and regulation of cooperatives~~
 2 ~~through their elected boards of trustees and membership as provided in Title 35, chapter 18. However,~~
 3 ~~cooperatives providing telecommunications services are subject to registration requirements and other~~
 4 ~~provisions applicable to all other unregulated telecommunications carriers.~~

5 ~~(b) This section does not grant the commission any power not otherwise provided in another~~
 6 ~~section of this title applicable to the regulation of carriers of regulated telecommunications service.~~

7
 8 **NEW SECTION. Section 1. Interconnection -- construction and effect.** [Sections ~~5 through 10~~ 1
 9 THROUGH 19] do not grant any jurisdiction to the commission over telecommunications carriers except as
 10 expressly set forth in [sections ~~5 through 10~~ 1 THROUGH 19], and [sections ~~5 through 10~~ 1 THROUGH
 11 19] may not be construed to limit or repeal exemptions from the commission's jurisdiction otherwise
 12 recognized by statute or law. Legislation may not be considered to supersede or modify any provision of
 13 [sections ~~5 through 10~~ 1 THROUGH 19] except to the extent that the legislation does so expressly.

14
 15 **NEW SECTION. Section 2. Interconnection -- jurisdiction.** In addition to the authority granted to the
 16 commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the
 17 purposes of implementing [sections ~~5 through 10~~ 1 THROUGH 9], over all telecommunications carriers.

18
 19 **NEW SECTION. Section 3. Rulemaking authority.** The commission may adopt rules of procedure to
 20 implement [sections ~~7 and 8~~ 6 THROUGH 10].

21
 22 **NEW SECTION. Section 4. Duty to interconnect.** (1) The purpose of this section is to implement
 23 specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

24 (2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

25 (b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

26 (c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier
 27 shall perform the duties enumerated in 47 U.S.C. 251(c).

28 (3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection
 29 (2)(c) do not apply to a rural telephone company until:

30 (i) the company has received a bona fide request for interconnection, services, or network

1 elements; and

2 (ii) the commission determines under subsection (3)(b) that the request is not unduly economically
3 burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7)
4 and (c)(1)(D)).

5 (b) The party making a bona fide request of a rural telephone company for interconnection, services,
6 or network elements shall submit a notice of its request to the commission. The commission shall conduct
7 an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a).
8 Within 120 days after the commission receives notice of the request, the commission shall terminate the
9 exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent
10 with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the
11 commission shall establish an implementation schedule for compliance with the request that is consistent
12 in time and manner with the federal communications commission's regulations.

13 (4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a
14 cable operator providing video programming and seeking to provide any telecommunications service in the
15 area in which the rural telephone company was providing video programming on February 8, 1996.

16 (5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the
17 aggregate nationwide, may petition the commission for a suspension or modification of the application of
18 a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition.
19 The commission shall grant the petition for the suspension or modification to the extent and for the duration
20 that the commission determines:

21 (i) is necessary:

22 (A) to avoid a significant adverse economic impact on users of telecommunications services
23 generally;

24 (B) to avoid imposing a requirement that is unduly economically burdensome; or

25 (C) to avoid imposing a requirement that is technically infeasible; and

26 (ii) is consistent with the public interest, convenience, and necessity.

27 (b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days after
28 receiving the petition. Pending action, the commission may suspend enforcement of the requirement to
29 which the petition applies with respect to the petitioning carrier.

30

1 **NEW SECTION. Section 5. Voluntary negotiation of interconnection agreements.** Upon receiving
2 a request for interconnection, services, or network elements pursuant to [section ~~5~~ 4], an incumbent local
3 exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications
4 carrier without regard to the duties set forth in [section ~~5(2)(b)~~ 4(2)(B) or (2)(c)]. The agreement must
5 include a detailed schedule of itemized charges for interconnection and each service or network element
6 included in the agreement.

7
8 **NEW SECTION. Section 6. Mediation of interconnection agreements.** Upon the written request of
9 any party negotiating an agreement for interconnection with another telecommunications carrier, the
10 commission may designate a mediator, who may be a commission member, to mediate any differences
11 arising in the course of the negotiation.

12
13 **NEW SECTION. Section 7. Arbitration of interconnection issues.** (1) The commission has the
14 authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on
15 February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except as
16 expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not apply
17 to arbitrations conducted under the authority granted by this section.

18 (2) During the period from the 135th to the 160th day, inclusive, after the date on which an
19 incumbent local exchange carrier receives a request for negotiation under [section ~~5~~ 4], the carrier or any
20 other party to the negotiation may petition the commission to arbitrate any open issues. A party that
21 petitions the commission under this section shall, at the same time as it submits the petition, provide the
22 commission all relevant documentation concerning the following:

- 23 (a) the unresolved issues;
24 (b) the position of each of the parties with respect to those issues; and
25 (c) any other issue discussed and resolved by the parties.

26 (3) A party petitioning the commission under this section shall provide a copy of the petition and
27 any documentation to the other party or parties not later than the day on which the commission receives
28 the petition.

29 (4) A nonpetitioning party to a negotiation under [section ~~5~~ 4] may respond to the other party's
30 petition and provide any additional information that it wishes within 25 days after the commission receives

1 the petition.

2 (5) The commission shall limit its consideration to those issues set forth by the parties to the
3 negotiation in the petition for arbitration and the response to the petition.

4 (6) The commission may appoint a hearings examiner for arbitration proceedings under this section.
5 The hearings examiner shall file with the commission a proposed decision within the time set by order of
6 the commission. A hearings examiner must be assigned with regard to the expertise required for the
7 particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias,
8 lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the
9 hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the
10 record in the case. The commission may disqualify the hearings examiner and appoint another hearings
11 examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should
12 be disqualified and must be filed not less than 10 days before the original date set for the hearing.

13 (7) Participation in the arbitration proceeding must be limited to the telecommunications carrier
14 requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and
15 the Montana consumer counsel.

16 (8) Negotiations among the telecommunications carriers may continue, pending a final decision by
17 the arbitrator.

18 (9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of
19 a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule
20 for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and
21 a hearing date.

22 (10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties
23 are entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing
24 at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the
25 arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

26 (11) The commission may issue subpoenas for the attendance of witnesses and the production of
27 books, records, documents, and other evidence relevant to the issues being arbitrated and may administer
28 oaths. Subpoenas must be served and enforced in the manner provided by law for the service and
29 enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the
30 hearings and the need for filing briefs and may direct the parties to appear and confer to consider

1 simplification of the issues by consent of the parties.

2 (12) THE COMMISSION SHALL ISSUE ITS FINAL DECISION NO LATER THAN 9 MONTHS AFTER
 3 THE REQUEST FOR NEGOTIATIONS ON A PETITION ISSUED UNDER [SECTION 4]. When the commission
 4 files its final decision or when the hearings examiner files the proposed decision with the commission, each
 5 party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

6 (a) ensure the resolution of issues presented by the parties and ensure that the resolution meets
 7 the requirements of [section ~~5~~ 4] and this section;

8 (b) establish rates for interconnection, services, or access to unbundled network elements pursuant
 9 to 47 U.S.C. 252(d); and

10 (c) provide a schedule for implementation of the terms and conditions of the decision by the
 11 parties.

12 (13) If the person who conducted the hearing becomes unavailable to the commission, the
 13 commission is not precluded from issuing a final decision based on the record if the demeanor of the
 14 witnesses is considered immaterial by all parties.

15 (14) Unless required for the disposition of ex parte matters authorized by law, the person or persons
 16 who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law
 17 in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or
 18 a party's representative in connection with any issue of fact or law in the case unless there is notice and
 19 opportunity for all parties to participate.

20

21 NEW SECTION. Section 8. Approval of arbitration decision. (1) If the commission has not
 22 approved or rejected in its entirety an agreement adopted by arbitration under [section ~~8(12)~~ 7(12)] within
 23 30 days of submission by the parties, the agreement is considered approved.

24 (2) The commission may reject the agreement only if the commission finds that the agreement does
 25 not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by
 26 the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of
 27 an agreement, the commission shall provide the parties with written findings as to any deficiencies.

28

29 NEW SECTION. Section 9. Approval of interconnection agreements. (1) Within 90 days of filing of
 30 an interconnection agreement adopted by negotiation of the parties to an agreement, the commission shall

1 approve or reject the agreement, or the agreement is considered approved.

2 (2) The commission may reject an agreement filed under this section only if the commission finds
3 that:

4 (a) the agreement or a portion of the agreement discriminates against a telecommunications carrier
5 not a party to the agreement; or

6 (b) the implementation of the agreement or portion is not consistent with the public interest,
7 convenience, and necessity.

8 (3) Upon rejecting an agreement filed under this section, the commission shall issue written findings
9 detailing any deficiencies in the agreement.

10

11 **NEW SECTION. Section 10. Determination of eligible carrier status -- universal service support.** (1)

12 The commission is authorized to designate telecommunications carriers as eligible for federal universal
13 service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, AND FOR ANY MONTANA
14 UNIVERSAL SERVICE FUNDS. This authorization applies to all telecommunications carriers notwithstanding
15 the carrier's exemption from further regulation by the commission.

16 (2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall
17 designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible
18 telecommunications carrier for a service area designated by the commission. In the case of an area served
19 by a rural telephone company, the term "service area" means the company's "study area" FOR FEDERAL
20 UNIVERSAL SERVICE SUPPORT unless the federal communications commission establishes a different
21 definition of service area for the company. The term "service area" for all other telecommunications carriers
22 means a geographic area such as a census block or grid block as established by the commission for the
23 purpose of determining FEDERAL universal service obligations and support mechanisms.

24 (3) Upon receiving a petition from a telecommunications carrier and consistent with the public
25 interest, convenience, and necessity, the commission may, in the case of an area served by a rural
26 telephone company, and shall, in the case of all other areas, designate more than one telecommunications
27 carrier for a service area, so long as each additional requesting telecommunications carrier meets the
28 requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier
29 for an area served by a rural telephone company, the commission shall find that the designation is in the
30 public interest.

1 (4) If no telecommunications carrier will provide the services that are supported by universal service
 2 support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests
 3 service, the commission shall determine which telecommunications carrier is best able to provide the service
 4 to the requesting unserved community. Any telecommunications carrier ordered to provide service under
 5 this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible
 6 telecommunications carrier for that community or the unserved portion of the community.

7 (5) The commission shall permit an eligible telecommunications carrier to relinquish its designation
 8 as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible
 9 telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for
 10 an area served by more than one eligible telecommunications carrier shall give advance notice to the
 11 commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible
 12 telecommunications carrier to cease providing universal service in an area served by more than one eligible
 13 telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier
 14 to ensure that all customers served by the relinquishing carrier will continue to be served and shall require
 15 sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible
 16 telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the
 17 commission approves relinquishment under this section, within which the purchase or construction must
 18 be completed.

19
 20 ~~NEW SECTION. Section 12. Illegal changes in subscriber carrier selections. (1) A~~
 21 ~~telecommunications carrier may not submit or execute a change in a subscriber's selection of a provider~~
 22 ~~of telecommunications services except in accordance with verification procedures that the commission has~~
 23 ~~adopted by rule pursuant to this section.~~

24 ~~(2) Any telecommunications carrier that violates the verification procedures described in subsection~~
 25 ~~(1) and that collects charges for telecommunications services from a subscriber is liable to the carrier~~
 26 ~~previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the~~
 27 ~~violation, in accordance with procedures that the commission has adopted by rule pursuant to this section.~~
 28 ~~The remedy provided by this section is in addition to any other remedies available by law.~~

29
 30 ~~NEW SECTION. Section 13. Special ratemaking procedures. (1) A provider of regulated~~

1 ~~telecommunications services may file with the commission, and the commission shall expeditiously hear,~~
2 ~~an application to eliminate or minimize a noncost-based differential in the price of its telecommunications~~
3 ~~services without reestablishing its cost of providing all regulated telecommunications services.~~

4 ~~(2) If, upon hearing the application, the commission determines that a noncost-based differential~~
5 ~~exists in the prices of the services of the provider of regulated telecommunications services, it may~~
6 ~~authorize the provider to eliminate or minimize the differential in a fashion that neither increases nor~~
7 ~~decreases the revenue currently being earned by the provider in providing these services.~~

8 ~~(3) The commission may, in its discretion, require any change in prices required by subsection (2)~~
9 ~~to be implemented over a transition period not exceeding 3 years.~~

10
11 ~~**NEW SECTION. Section 14. Biennial report on telecommunications.** The commission is directed~~
12 ~~to prepare a status report, limited to data readily available by the commission, to the governor and the~~
13 ~~legislature by December 1 of each even-numbered year. The report must include:~~

14 ~~(1) a summary of the implementation of [sections 16 through 22] and this part;~~

15 ~~(2) a summary of the status of competition in the telecommunications industry in Montana,~~
16 ~~including effects on universal service, rates, technological deployment, and economic development;~~

17 ~~(3) a comparison of Montana's progress in relation to neighboring states and the nation in the~~
18 ~~development of an affordable advanced telecommunications system necessary to maintain and advance~~
19 ~~Montana's economic viability in a global economy;~~

20 ~~(4) changes in regulation that can or should be implemented pursuant to the level of competition~~
21 ~~in the telecommunications industry; and~~

22 ~~(5) recommended changes to Montana law to further the goals of [sections 16 through 22] and this~~
23 ~~part.~~

24
25 ~~**NEW SECTION. Section 15. Restrictions on resale.** The resale of telecommunications services is~~
26 ~~subject to the following restrictions:~~

27 ~~(1) Services that are available for resale at a discounted rate do not include carrier access services.~~

28 ~~(2) Resale is limited to retail products and services available to end-user customers. Wholesale~~
29 ~~services are available only for resale and not predominantly for internal use.~~

30 ~~(3) Consistent with the federal Telecommunications Act of 1996, Public Law 104-104, resale~~

1 ~~between categories of customers is prohibited until any pricing disparity for the same service offered to~~
2 ~~different categories of customers has been eliminated.~~

3 ~~(4) Any explicit universal service support to a specific category of customers may not be~~
4 ~~redistributed to another category of customers through resale.~~

5 ~~(5) Lifeline and other means tested services offerings may be resold only to customers who qualify~~
6 ~~for the service.~~

7

8 ~~**NEW SECTION. Section 16. Interim universal access program -- purpose.** (1) There is an interim~~
9 ~~universal access program.~~

10 ~~(2) The purpose of the interim universal access program is to further the goal of universal access~~
11 ~~to advanced telecommunications services in Montana by:~~

12 ~~(a) increasing safety net coverage through which advanced telecommunications services would,~~
13 ~~at a minimum, be available through a library, school, or other specified type of public institution in every~~
14 ~~community in the state;~~

15 ~~(b) encouraging innovation in communities to bring advanced services to Montana's rural areas;~~
16 ~~and~~

17 ~~(c) assisting communities that have already succeeded in obtaining services when ongoing~~
18 ~~transport costs threaten the continued availability of those services.~~

19

20 ~~**NEW SECTION. Section 17. Interim universal access program -- definitions.** As used in [sections~~
21 ~~16 through 22], the following definitions apply:~~

22 ~~(1) "Administrator" means the public service commission.~~

23 ~~(2) "Advanced services" means high-speed (56 kbps and above), dedicated or switched, broadband~~
24 ~~telecommunications capability that enables users to originate and receive high-quality voice, data, graphics,~~
25 ~~and video telecommunications using any technology.~~

26 ~~(3) "Health care provider" means any one of, or a consortium of, the following institutions located~~
27 ~~in Montana:~~

28 ~~(a) postsecondary educational institutions offering health care instruction;~~

29 ~~(b) community health care centers or health centers providing health care to migrants;~~

30 ~~(c) local health departments or agencies;~~

1 ~~(d) community mental health centers;~~

2 ~~(e) not-for-profit hospitals; and~~

3 ~~(f) rural health clinics.~~

4 ~~(4) "Library" means a library located in Montana that is eligible for participation in state-based plans~~
5 ~~for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).~~

6 ~~(5) "School" means:~~

7 ~~(a) an elementary school or secondary school that meets the definition set forth in paragraphs (14)~~
8 ~~and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20~~
9 ~~U.S.C. 8801) and that does not have an endowment of more than \$50 million; or~~

10 ~~(b) a bureau of Indian affairs elementary and secondary school.~~

11 ~~(6) "Tribal college" means a college recognized by the United States government as a tribal college.~~

12

13 ~~**NEW SECTION. Section 18. Interim universal access program -- public access points.** At a~~
14 ~~minimum, all public access points must provide the general public access to advanced telecommunications~~
15 ~~services that are not subscription based free of charge and at convenient hours on a walk-in basis. Public~~
16 ~~access points may offer subscription-based services, such as electronic mail, but are not required to~~
17 ~~administer these types of services.~~

18

19 ~~**NEW SECTION. Section 19. Interim universal access program -- funded services -- application for**~~
20 ~~**services.** (1) The universal access program provides funding through discounts only for advanced services~~
21 ~~for use by public access points, schools, tribal colleges, libraries, and health care providers approved by~~
22 ~~the administrator.~~

23 ~~(2) The first priority of the program is to provide funding for at least one public access point in each~~
24 ~~Montana community. Subject to available funding, the program shall also provide funding for advanced~~
25 ~~services to schools, tribal colleges, libraries, and health care providers.~~

26 ~~(3) The administrator shall establish discount levels for services in each of the following categories:~~

27 ~~(a) public access points;~~

28 ~~(b) education services to schools and tribal colleges for distance learning, electronic access to~~
29 ~~educational resources, and electronic delivery or reception of educational programming;~~

30 ~~(c) library services for libraries not serving as public access points for electronic access to~~

1 information and library services; and

2 ~~(d) rural health services to rural health care providers for access to similar services as urban health~~
3 ~~care providers and to ensure electronic access to health care services.~~

4 ~~(4) To receive discounted services under the interim universal access program, public access~~
5 ~~providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The~~
6 ~~application must be accompanied by a resolution of support from the governing body of the appropriate~~
7 ~~city, county, or tribal government in which the applicant is located.~~

8
9 ~~**NEW SECTION. Section 20. Interim universal access program — services provided at discounts**~~
10 ~~**— reimbursements.** (1) Telecommunications carriers shall provide advanced services to eligible users at~~
11 ~~specified discounts. The amount of the discount must be reimbursed to the provider from the interim~~
12 ~~universal access account established in [section 22].~~

13 ~~(2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost~~
14 ~~rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest~~
15 ~~access point for the requested service. However, the cost to the eligible user may not exceed \$100 a~~
16 ~~month.~~

17 ~~(3) If funds from the interim universal access account are not sufficient to fully reimburse for~~
18 ~~discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced~~
19 ~~proportionally.~~

20 ~~(4) Even if best cost rates available to any business customer increase by more than 5%, the~~
21 ~~amount payable by an eligible user may not increase by more than 5% during the period from [the effective~~
22 ~~date of this section] to January 1, 2000.~~

23 ~~(5) Subject to restrictions in federal law, if interstate universal access services are established by~~
24 ~~the federal communications commission, federal funding for universal access services must be used to~~
25 ~~reduce state funding for intrastate services.~~

26
27 ~~**NEW SECTION. Section 21. Interim universal access program — funding — surcharge rate.** (1) (a)~~
28 ~~The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate~~
29 ~~telecommunications services in the state. The surcharge must be determined by the administrator by rule.~~
30 ~~The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis.~~

1 ~~(b) The rate of the surcharge must be set to raise \$500,000 during the fiscal year ending June 30,~~
 2 ~~1998, and \$1 million during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as~~
 3 ~~necessary.~~

4 ~~(c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item~~
 5 ~~on each carrier's retail telecommunications services bills.~~

6 ~~(d) The surcharge may be applied only to telecommunications services. Customer premise~~
 7 ~~equipment is not considered a telecommunications service.~~

8 ~~(2) The surcharge is payable quarterly to the department of revenue and deposited by the~~
 9 ~~department in the interim universal access account established in [section 22]. The department may by~~
 10 ~~rule:~~

11 ~~(a) establish the form of a reporting statement to be filed by telecommunications carriers subject~~
 12 ~~to the surcharge;~~

13 ~~(b) set the date after the end of a fiscal quarter that the quarterly payment must be made;~~

14 ~~(c) provide for recordkeeping by telecommunications providers subject to the surcharge; and~~

15 ~~(d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted~~
 16 ~~services to be reimbursed, and to pay refunds of overpayment of the surcharge.~~

17 ~~(3) (a) The collection of a surcharge under this section is subject to:~~

18 ~~(i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;~~

19 ~~(ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;~~

20 ~~(iii) the estimation of tax on failure to file a statement of provisions of 15-53-112;~~

21 ~~(iv) the warrant for distraint provisions of 15-53-113; and~~

22 ~~(v) the statute of limitations provisions of 15-53-115.~~

23 ~~(b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section~~
 24 ~~of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this~~
 25 ~~section.~~

26
 27 ~~NEW SECTION. Section 22. Interim universal access program account. An interim universal~~
 28 ~~access account is established in the state special revenue fund in the state treasury. All money received~~
 29 ~~by the department of revenue pursuant to [section 21] must be paid to the state treasurer for deposit in~~
 30 ~~the account. After payment of refunds, the balance of the account must be used for the purposes~~

1 ~~described in [section 20].~~

2

3 ~~NEW SECTION. Section 23. Commission to make recommendations on universal access and~~
 4 ~~service. The public service commission shall examine and make recommendations to the 56th legislature~~
 5 ~~on universal access and service. The commission shall:~~

6 ~~(1) review the impact on universal access and service in Montana of any federal universal service~~
 7 ~~fund that results from current federal communications rulemaking under the federal Telecommunications~~
 8 ~~Act of 1996;~~

9 ~~(2) evaluate the extent to which the federal universal service fund falls short of supporting~~
 10 ~~legislatively defined universal access and service goals in Montana; and~~

11 ~~(3) develop plans and propose legislation for the establishment of a state universal service fund~~
 12 ~~that would ensure the attainment of these goals.~~

13

14 NEW SECTION. SECTION 11. UNIVERSAL SERVICE POLICIES. THE LEGISLATURE FINDS THAT
 15 UNIVERSALLY AVAILABLE TELECOMMUNICATIONS SERVICES ARE ESSENTIAL TO THE HEALTH,
 16 WELFARE, AND ECONOMIC WELL-BEING OF THE CITIZENS OF MONTANA. THE FEDERAL
 17 TELECOMMUNICATIONS ACT OF 1996, PUBLIC LAW 104-104, REQUIRES A TRANSITION TO LOCAL
 18 COMPETITION. IMPLICIT SUBSIDIES HAVE HISTORICALLY BEEN USED TO FURTHER THE PUBLIC POLICY
 19 OF KEEPING LOCAL RATES TO CUSTOMERS IN HIGH-COST AREAS AT AFFORDABLE LEVELS. THE
 20 FEDERAL ACT AND THE TRANSITION TO COMPETITION REQUIRE THAT ALL SUBSIDIES USED TO KEEP
 21 LOCAL RATES AT AFFORDABLE LEVELS BE EXPLICIT. ADDITIONALLY, THE FEDERAL ACT'S UNIVERSAL
 22 SERVICE PROVISIONS ESTABLISH A SYSTEM OF DISCOUNTS FOR SCHOOLS, LIBRARIES, AND HEALTH
 23 CARE PROVIDERS. SECURING THESE DISCOUNTS CAN BE DEPENDENT ON STATE ACTIONS. IN ORDER
 24 TO PRESERVE AND ADVANCE THE GOAL OF UNIVERSAL SERVICE IN THE NEW COMPETITIVE
 25 ENVIRONMENT ESTABLISHED BY THE FEDERAL ACT, THE LEGISLATURE FINDS THAT A NEW MONTANA
 26 UNIVERSAL SERVICE FUND, SUPPORTED BY CONTRIBUTIONS FROM THE TELECOMMUNICATIONS
 27 CARRIERS OPERATING IN MONTANA, SHOULD BE CREATED THAT WILL:

28 (1) NOT DUPLICATE THE FEDERAL UNIVERSAL SERVICE FUND MANDATED BY THE
 29 TELECOMMUNICATIONS ACT OF 1996 BUT THAT WILL COMPLEMENT THE FEDERAL FUND BY
 30 PROVIDING ADDITIONAL FUNDING AS NECESSARY TO ENSURE UNIVERSAL SERVICE IN THE STATE OF

1 MONTANA;

2 (2) BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL IN BOTH FUNDING AND
3 DISTRIBUTION;

4 (3) PROVIDE A SPECIFIC, PREDICTABLE, AND SUFFICIENT MECHANISM OF SUPPORT FOR
5 HIGH-COST AREAS; AND

6 (4) ALLOW FOR IMPLEMENTATION OF THE FEDERAL SUPPORT SYSTEM FOR
7 TELECOMMUNICATIONS SERVICES PROVIDED TO SCHOOLS, LIBRARIES, AND HEALTH CARE
8 PROVIDERS.

9
10 NEW SECTION. SECTION 12. UNIVERSAL SERVICE FUND ESTABLISHED -- PURPOSE. (1)

11 PURSUANT TO A DETERMINATION OF NEED, THE COMMISSION SHALL ESTABLISH AND ADMINISTER
12 A FUND TO ASSIST ELIGIBLE TELECOMMUNICATIONS CARRIERS IN PROVIDING AFFORDABLE
13 TELECOMMUNICATIONS SERVICES IN HIGH-COST AREAS. THE FUND MUST PROVIDE SUPPORT FOR
14 THE FOLLOWING SERVICES:

15 (A) VOICE GRADE ACCESS TO THE PUBLIC SWITCHED NETWORK, INCLUDING SOME USAGE;

16 (B) DUAL-TONE MULTIFREQUENCY (DTMF OR "TOUCH TONE") SIGNALING OR ITS EQUIVALENT;

17 (C) SINGLE-PARTY SERVICE;

18 (D) ACCESS TO EMERGENCY SERVICES, INCLUDING ACCESS TO 9-1-1, WHERE AVAILABLE,

19 AND ACCESS TO ENHANCED 9-1-1 WHEN REQUESTED BY A TELECOMMUNICATIONS CARRIER'S LOCAL
20 COMMUNITY AND WHEN THE TELECOMMUNICATIONS CARRIER HAS TECHNICAL CAPACITY TO

21 PROVIDE IT;

22 (E) ACCESS TO OPERATOR SERVICES;

23 (F) ACCESS TO INTEREXCHANGE SERVICES; AND

24 (G) ACCESS TO DIRECTORY ASSISTANCE.

25 (2) THE FUND MUST SUPPORT ONLY ACCESS TO THE SERVICES LISTED IN SUBSECTIONS (1)(D)
26 THROUGH (1)(G) AND NOT SUPPORT THE SERVICES THEMSELVES.

27 (3) THE FUND MUST BE ADMINISTERED TO ENSURE THAT ITS OPERATION IS COMPETITIVELY
28 AND TECHNOLOGICALLY NEUTRAL.

29
30 NEW SECTION. SECTION 13. FUND ADMINISTRATOR. (1) A FISCAL AGENT AND DAILY

1 ADMINISTRATOR MUST BE SELECTED TO RECEIVE AND DISTRIBUTE FUNDS UNDER [SECTIONS 11
2 THROUGH 15].

3 (2) THE FISCAL AGENT MUST BE SELECTED BY THE COMMISSION BASED UPON A
4 COMPETITIVE BIDDING PROCESS AFTER AN OPPORTUNITY FOR PUBLIC COMMENT ON THE SPECIFIC
5 QUALIFICATIONS REQUIRED OF THE FISCAL AGENT. A TELECOMMUNICATIONS CARRIER IS NOT
6 ELIGIBLE TO BE THE FISCAL AGENT. THE DUTIES OF THE FISCAL AGENT MUST BE DETERMINED BY
7 A CONTRACT CONSISTENT WITH [SECTIONS 11 THROUGH 15]. THE CONTRACT TERM OF THE FISCAL
8 AGENT MUST EXPIRE DECEMBER 31, 1999.

9 (3) THE FISCAL AGENT SHALL PROVIDE QUARTERLY REPORTS OF FUND ACTIVITIES TO THE
10 COMMISSION AND SHALL PROVIDE AUDITS ANNUALLY BY A CERTIFIED PUBLIC ACCOUNTANT IN A
11 MANNER DETERMINED BY AND UNDER THE DIRECTION OF THE COMMISSION.

12 (4) THE FINANCIAL ACCOUNTS OF THE FISCAL AGENT MUST BE AVAILABLE AT REASONABLE
13 TIMES TO ANY TELECOMMUNICATIONS CARRIER IN THE STATE AND TO THE PUBLIC. THE
14 COMMISSION MAY INVESTIGATE THE ACCOUNTS AND PRACTICES OF THE FISCAL AGENT AND ENTER
15 ORDERS CONCERNING THE ACCOUNTS AND PRACTICES.

16
17 NEW SECTION. SECTION 14. CONTRIBUTIONS TO FUND. (1) THE FISCAL AGENT SHALL
18 COLLECT CONTRIBUTIONS FROM ALL TELECOMMUNICATIONS CARRIERS ON A QUARTERLY BASIS,
19 BASED ON A JULY 1 TO JUNE 30 FISCAL YEAR. INITIAL CONTRIBUTIONS TO THE FUND MAY ONLY
20 BE COLLECTED FOR THE 2-MONTH PERIOD PRIOR TO THE EFFECTIVE DATE OF DISTRIBUTIONS FROM
21 THE FUND AND MUST BE CALCULATED AS FOLLOWS:

22 (A) DETERMINE THE TOTAL RETAIL REVENUE FOR ALL TELECOMMUNICATIONS CARRIERS FOR
23 THE IMMEDIATELY PRECEDING CALENDAR YEAR;

24 (B) DETERMINE THE TOTAL FUNDS NEEDED FOR DISTRIBUTIONS IN THE NEXT FISCAL YEAR
25 AS AUTHORIZED PURSUANT TO [SECTION 15];

26 (C) COMPUTE A UNIFORM PERCENTAGE OF THE AMOUNT DETERMINED IN SUBSECTION (1)(A)
27 THAT WILL PRODUCE AN AMOUNT EQUAL TO THE FUND TOTAL CALCULATED IN SUBSECTION (1)(B);

28 (D) ADJUST THE PERCENTAGE MULTIPLIER COMPUTED IN SUBSECTION (1)(C) TO RECOVER
29 OR REIMBURSE ANY FUND SHORTFALLS OR EXCESSES IN THE PREVIOUS FISCAL YEAR; AND

30 (E) SEND NOTICE OF THE CURRENT UNIFORM PERCENTAGE AND APPROPRIATE REMITTANCE

1 FORMS TO EACH TELECOMMUNICATIONS CARRIER AT LEAST 2 MONTHS PRIOR TO THE EFFECTIVE
2 DATE OF THE APPLICATION OF THE PERCENTAGE.

3 (2) THE COMMISSION SHALL ADOPT PROCEDURAL RULES TO GOVERN COLLECTION OF THE
4 CONTRIBUTIONS REQUIRED BY THIS SECTION, AS WELL AS RULES ALLOWING THE FISCAL AGENT AND
5 DAILY ADMINISTRATOR TO ASSESS LATE FEES AND INTEREST ON DELINQUENT PAYMENTS FROM
6 TELECOMMUNICATIONS CARRIERS. THE FISCAL AGENT IS SPECIFICALLY AUTHORIZED TO ENFORCE
7 THE CONTRIBUTION REQUIREMENTS OF THIS SECTION THROUGH SUIT IN THE DISTRICT COURTS OF
8 MONTANA.

9 (3) ANY REDUCTION IN TELECOMMUNICATIONS CARRIER ACCESS EXPENSES BECAUSE OF THE
10 REMOVAL OF IMPLICIT SUBSIDIES INHERENT IN TELECOMMUNICATIONS CARRIER ACCESS RATES
11 MUST BE DIRECTLY PASSED THROUGH TO MONTANA END-USER CUSTOMERS BY A REDUCTION IN
12 CORRESPONDING CUSTOMER RETAIL RATES.

13

14 NEW SECTION. SECTION 15. DISTRIBUTIONS FROM FUND -- CALCULATION OF COSTS. (1)
15 SUBJECT TO THE REQUIREMENTS OF THIS SECTION, PAYMENTS FROM THE FUND MUST BE MADE BY
16 THE FISCAL AGENT TO QUALIFYING ELIGIBLE TELECOMMUNICATIONS CARRIERS, ON A MONTHLY
17 BASIS, PURSUANT TO RULES ADOPTED BY THE COMMISSION.

18 (2) ONLY ELIGIBLE TELECOMMUNICATIONS CARRIERS THAT OFFER THE
19 TELECOMMUNICATIONS SERVICES DESCRIBED IN [SECTION 12(1)] TO ALL CUSTOMERS IN A
20 DESIGNATED SUPPORT AREA AND THAT ADVERTISE THE AVAILABILITY OF THE
21 TELECOMMUNICATIONS SERVICES AND THE CHARGES FOR THE TELECOMMUNICATIONS SERVICES
22 USING MEDIA OF GENERAL DISTRIBUTION MAY RECEIVE SUPPORT FROM THE FUND FOR THE
23 DESIGNATED SUPPORT AREA.

24 (3) DISTRIBUTIONS MUST BE CALCULATED FOR THE DESIGNATED SUPPORT AREAS
25 ESTABLISHED BY THE COMMISSION. IN THE CASE OF AN AREA SERVED BY A RURAL TELEPHONE
26 COMPANY, THE TERM "DESIGNATED SUPPORT AREA" MEANS THE RURAL TELEPHONE COMPANY'S
27 MONTANA SERVICE AREA UNLESS THE RURAL TELEPHONE COMPANY VOLUNTARILY ADOPTS A
28 PROXY MODEL FOR THE CALCULATION OF THE RURAL TELEPHONE COMPANY'S COST OF
29 TELECOMMUNICATIONS SERVICES UNDER SUBSECTION (6). AFTER ADOPTION OF A PROXY MODEL,
30 THE RURAL TELEPHONE COMPANY'S DESIGNATED SUPPORT AREA MUST BE AN AREA DESIGNATED

1 BY THE COMMISSION, WHICH MAY BE SMALLER THAN A WIRE CENTER. THE TERM DESIGNATED
2 SUPPORT AREA FOR ALL OTHER TELECOMMUNICATIONS CARRIERS MEANS A GEOGRAPHIC AREA AS
3 ESTABLISHED BY THE COMMISSION, WHICH MUST BE SMALLER THAN A WIRE CENTER.

4 (4) SUPPORT FOR THE SERVICES LISTED IN [SECTION 12(1)] MUST BE CALCULATED AS THE
5 DIFFERENCE BETWEEN THE COSTS DETERMINED IN EACH DESIGNATED SUPPORT AREA AND THE
6 AFFORDABILITY BENCHMARK IN THAT SUPPORT AREA. THE COMMISSION SHALL ADOPT RULES TO
7 DETERMINE AFFORDABILITY BENCHMARKS.

8 (5) EXCEPT AS PROVIDED IN SUBSECTION (6), FOR RURAL TELEPHONE COMPANIES AND
9 OTHER ELIGIBLE TELECOMMUNICATIONS CARRIERS OFFERING SERVICES IN A DESIGNATED SUPPORT
10 AREA SERVED BY A RURAL TELEPHONE COMPANY, THE AVERAGE COST FOR EACH LINE MUST BE
11 CALCULATED AND SUBMITTED, BASED ON THE PRECEDING CALENDAR YEAR, TO THE FISCAL AGENT
12 AS FOLLOWS:

13 (A) IF AN ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER HAS NOT BEEN DESIGNATED
14 PURSUANT TO [SECTION 10(3)], THE RURAL TELEPHONE COMPANY'S TOTAL UNSEPARATED LOOP
15 COST, AS DEFINED BY FEDERAL SEPARATION RULE METHODOLOGY IN EFFECT ON DECEMBER 31,
16 1996, MUST BE ADDED TO THE SWITCHING COSTS, LOCAL TRANSPORT COSTS, AND CUSTOMER
17 OPERATIONS COSTS ASSIGNED TO THE TELECOMMUNICATIONS SERVICES SET FORTH IN [SECTION
18 12(1)], WHICH MUST BE CALCULATED USING THE METHODOLOGY SET FORTH IN FEDERAL
19 COMMUNICATIONS COMMISSION JURISDICTIONAL SEPARATION RULES IN EFFECT AS OF DECEMBER
20 31 OF EACH CALENDAR YEAR. THIS TOTAL COST MUST BE REDUCED BY ANY FEDERAL UNIVERSAL
21 SERVICE SUPPORT, INTERSTATE ALLOCATION OF LOOP COSTS CHARGED TO LONG-DISTANCE
22 COMPANIES, AND LOOP COSTS RECOVERED THROUGH INTRASTATE TELECOMMUNICATIONS CARRIER
23 COMMON LINE CHARGES TO LONG-DISTANCE COMPANIES.

24 (B) UPON THE DESIGNATION OF AN ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER
25 PURSUANT TO [SECTION 10(3)] IN A DESIGNATED SUPPORT AREA SERVED BY A RURAL TELEPHONE
26 COMPANY, THE ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER HAS ACCESS TO THE FUND
27 ON THE SAME BASIS AS THE RURAL TELEPHONE COMPANY. UPON THE DESIGNATION OF THE
28 ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER, BOTH THE CARRIER AND THE RURAL
29 TELEPHONE COMPANY MUST RECEIVE DISTRIBUTIONS FROM THE FUND BASED UPON THE RURAL
30 TELEPHONE COMPANY'S AVERAGE COST FOR EACH LINE DISAGGREGATED TO GEOGRAPHIC AREAS

1 SMALLER THAN A WIRE CENTER. THE SUPPORT FOR EACH LINE FOR EACH GEOGRAPHIC AREA MUST
2 BE BASED UPON THE RURAL TELEPHONE COMPANY'S COSTS, AS DETERMINED IN SUBSECTION (5)(A),
3 DISTRIBUTED TO EACH OF THE GEOGRAPHIC AREAS ON THE BASIS OF RELATIVE DISTRIBUTION
4 FACTORS ESTABLISHED BY A COST PROXY MODEL ADOPTED BY THE COMMISSION.

5 (6) EXCEPT AS PROVIDED IN SUBSECTION (5)(B), FOR COMPANIES THAT ARE NOT RURAL
6 TELEPHONE COMPANIES AND FOR RURAL TELEPHONE COMPANIES VOLUNTARILY ELECTING TO USE
7 A COST PROXY MODEL, THE AVERAGE COST FOR EACH LINE IN DESIGNATED SUPPORT AREAS MUST
8 BE CALCULATED BASED ON THE COST PROXY MODEL ADOPTED BY THE COMMISSION. THIS TOTAL
9 PER-LINE COST MUST BE REDUCED BY ANY FEDERAL UNIVERSAL SERVICE SUPPORT, INTERSTATE
10 ALLOCATION OF LOOP COSTS CHARGED TO LONG-DISTANCE COMPANIES, AND LOOP COSTS
11 RECOVERED THROUGH INTRASTATE TELECOMMUNICATIONS CARRIER COMMON LINE CHARGES TO
12 LONG-DISTANCE COMPANIES.

13 (7) IN DETERMINING ANY PROXY MECHANISM UNDER THIS SECTION, THE COMMISSION SHALL
14 USE A MODEL THAT:

15 (A) TARGETS SUPPORT TO A GEOGRAPHIC AREA SMALLER THAN A WIRE CENTER;

16 (B) USES ACCEPTABLE OUTSIDE PLANT DESIGN AND COSTING PRINCIPLES;

17 (C) USES REASONABLE SWITCH DESIGN AND COSTING PRINCIPLES;

18 (D) INCLUDES A REASONABLE SHARE OF THE JOINT AND COMMON COSTS OF THE
19 TELECOMMUNICATIONS CARRIER;

20 (E) MEETS STANDARDS FOR DOCUMENTING MODEL LOGIC AND THE SOURCES OF COST DATA
21 INPUT; AND

22 (F) MEETS REASONABLENESS TESTS TO ENSURE THAT MODEL OUTPUTS ARE
23 REPRESENTATIVE OF COSTS THAT CAN BE REASONABLY EXPECTED IN THE CONSTRUCTION OF A
24 NETWORK AND THAT THE NETWORK IS CAPABLE OF PROVIDING TELECOMMUNICATIONS SERVICES
25 THAT MEET THE TELECOMMUNICATIONS SERVICES QUALITY STANDARDS OF THE COMMISSION AND
26 FEDERAL REGULATORS.

27 (8) AN ELIGIBLE TELECOMMUNICATIONS CARRIER PROVIDING TELECOMMUNICATIONS
28 SERVICES THROUGH RESALE OF ANOTHER TELECOMMUNICATIONS CARRIER'S
29 TELECOMMUNICATIONS SERVICES OR FACILITIES MAY NOT RECEIVE SUPPORT FOR THOSE
30 TELECOMMUNICATIONS SERVICES OR FACILITIES IF THE RATES CHARGED TO AN ELIGIBLE

1 TELECOMMUNICATIONS CARRIER BY THE OTHER TELECOMMUNICATIONS CARRIER INCLUDE HAVE
 2 BEEN REDUCED BY A CONTRIBUTION FOR FROM UNIVERSAL SERVICE FUNDS UNDER THIS SECTION.

3 (9) COSTS OF ADMINISTERING THE FUND MUST BE PAID FROM THE FUND.

4
 5 NEW SECTION. SECTION 16. DISCOUNTS FOR SCHOOLS, LIBRARIES, AND HEALTH CARE
 6 PROVIDERS. THE COMMISSION IS AUTHORIZED TO ESTABLISH INTRASTATE DISCOUNTS TO SCHOOLS,
 7 LIBRARIES, AND HEALTH CARE PROVIDERS AND TO PERFORM ADMINISTRATIVE FUNCTIONS
 8 NECESSARY AS A CONDITION OF FEDERAL UNIVERSAL SERVICE SUPPORT IF THE DISCOUNTS ARE
 9 RECOVERED THROUGH THE FEDERAL UNIVERSAL SERVICE FUND.

10
 11 NEW SECTION. SECTION 17. WHOLESALE PRICING STANDARDS. IF (1) EXCEPT AS PROVIDED
 12 IN SUBSECTION (2), IF THE COMMISSION IS REQUESTED BY A TELECOMMUNICATIONS CARRIER TO
 13 ESTABLISH WHOLESALE PRICES FOR SERVICES PROVIDED BY A TELECOMMUNICATIONS CARRIER, THE
 14 COMMISSION MAY NOT ESTABLISH A WHOLESALE PRICE USING A STANDARDIZED OR DEFAULT
 15 PROXY DISCOUNT VALUE TO BE APPLIED TO THE APPLICABLE RETAIL PRICE. THE COMMISSION SHALL
 16 ESTABLISH WHOLESALE PRICES USING COMPANY-SPECIFIC COSTS.

17 (2) THIS SECTION DOES NOT APPLY TO THE PRICES, TERMS, AND CONDITIONS OF A FINAL
 18 OR INTERIM ARBITRATED INTERCONNECTION AGREEMENT, ARBITRATION DECISION, OR APPEAL FROM
 19 AN AGREEMENT OR DECISION IF THE REQUEST FOR ARBITRATION WAS FILED ON OR BEFORE MARCH
 20 1, 1997.

21
 22 NEW SECTION. SECTION 18. PRICING OF INDIVIDUAL NETWORK ELEMENTS. (1) IF EXCEPT
 23 AS PROVIDED IN SUBSECTION (4), IF THE COMMISSION IS REQUESTED BY A TELECOMMUNICATIONS
 24 CARRIER TO ESTABLISH THE PRICES OF THE INDIVIDUAL NETWORK ELEMENTS USED TO PROVIDE
 25 TELECOMMUNICATIONS SERVICES, THE COMMISSION SHALL SET THOSE PRICES AT A JUST AND
 26 REASONABLE LEVEL SUFFICIENT TO RECOVER THE ACTUAL COST OF PROVIDING THOSE ELEMENTS,
 27 INCLUDING:

28 (A) A REASONABLE SHARE OF THE JOINT AND COMMON COSTS SO THAT THE
 29 TELECOMMUNICATIONS CARRIER HAS A REASONABLE OPPORTUNITY TO RECOVER THESE COSTS IN
 30 TOTAL;

1 (B) DEPRECIATION COSTS THAT ARE BASED UPON FORWARD-LOOKING ASSET LIVES
2 CONSISTENT WITH ASSET LIVES OF OTHER TELECOMMUNICATIONS CARRIERS AND THAT REFLECT
3 AN AMORTIZATION OF ANY UNDERDEPRECIATED INVESTMENT;

4 (C) A REASONABLE SHARE OF THE COSTS ASSOCIATED WITH FILL FACTORS THAT RECOGNIZE
5 THE, RECOGNIZING SPARE CAPACITY REQUIRED TO FULFILL ELIGIBLE TELECOMMUNICATIONS CARRIER
6 RESPONSIBILITIES; AND

7 (D) A FAIR RETURN ON INVESTMENTS.

8 (2) THE ACTUAL COST OF PROVIDING THE ELEMENTS INCLUDED IN SUBSECTIONS (1)(A)
9 THROUGH (1)(D) MUST BE DETERMINED WITHOUT REFERENCE TO A RATE-OF-RETURN OR OTHER
10 RATE-BASED PROCEEDING.

11 ~~(2)(3)~~ IF A TELECOMMUNICATIONS CARRIER USES AVERAGE PRICES FOR SERVICES TO END
12 USERS WITHOUT REGARD TO THE CUSTOMER'S LOCATION, THE COMMISSION SHALL SIMILARLY
13 ESTABLISH AN AVERAGE COST AND WHOLESALE PRICE FOR EACH INDIVIDUAL NETWORK ELEMENT
14 SOLD TO OTHER TELECOMMUNICATIONS CARRIERS. THE COMMISSION MAY DEPART FROM AVERAGE
15 PRICING FOR NETWORK ELEMENTS ONLY TO THE EXTENT THAT THE RETAIL PRICES TO END USERS
16 OF A TELECOMMUNICATIONS CARRIER HAVE DEPARTED FROM AVERAGE PRICING.

17 (4) THIS SECTIONS DOES NOT APPLY TO THE PRICES, TERMS, AND CONDITIONS OF A FINAL
18 OR INTERIM ARBITRATED INTERCONNECTION AGREEMENT, ARBITRATION DECISION, OR APPEAL FROM
19 AN AGREEMENT OR DECISION IF THE REQUEST FOR ARBITRATION WAS FILED ON OR BEFORE MARCH
20 1, 1997.

21
22 NEW SECTION. SECTION 19. PROHIBITED SUBSIDIES. THE COMMISSION MAY NOT SUBSIDIZE
23 THE PRICE OF ANY TELECOMMUNICATIONS SERVICE, INCLUDING WHOLESALE PRICES OR THE PRICES
24 OF INDIVIDUAL NETWORK ELEMENTS, BY REDUCING THE PRICES TO REFLECT AN ALLOCATION OR
25 CREDIT OF REVENUE FROM THE OPERATIONS OF AN AFFILIATED COMPANY OF THE CARRIER OF
26 TELECOMMUNICATIONS SERVICES, INCLUDING A PUBLISHING AFFILIATE.

27
28 NEW SECTION. SECTION 20. INTERIM UNIVERSAL ACCESS PROGRAM -- PURPOSE. (1) THERE
29 IS AN INTERIM UNIVERSAL ACCESS PROGRAM.

30 (2) THE PURPOSE OF THE INTERIM UNIVERSAL ACCESS PROGRAM IS TO FURTHER THE GOAL

1 OF UNIVERSAL ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES IN MONTANA BY:

2 (A) INCREASING SAFETY NET COVERAGE THROUGH WHICH ADVANCED
3 TELECOMMUNICATIONS SERVICES WOULD, AT A MINIMUM, BE AVAILABLE THROUGH A LIBRARY,
4 SCHOOL, OR OTHER SPECIFIED TYPE OF PUBLIC INSTITUTION IN EVERY COMMUNITY IN THE STATE;

5 (B) ENCOURAGING INNOVATION IN COMMUNITIES TO BRING ADVANCED SERVICES TO
6 MONTANA'S RURAL AREAS; AND

7 (C) ASSISTING COMMUNITIES THAT HAVE ALREADY SUCCEEDED IN OBTAINING SERVICES
8 WHEN ONGOING TRANSPORT COSTS THREATEN THE CONTINUED AVAILABILITY OF THESE SERVICES.

9
10 NEW SECTION. SECTION 21. INTERIM UNIVERSAL ACCESS PROGRAM -- DEFINITIONS. AS
11 USED IN [SECTIONS 20 THROUGH 27], THE FOLLOWING DEFINITIONS APPLY:

12 (1) "ADMINISTRATOR" MEANS THE PUBLIC SERVICE COMMISSION.

13 (2) "ADVANCED SERVICES" MEANS HIGH-SPEED (56 KBPS AND ABOVE), DEDICATED OR
14 SWITCHED, BROADBAND TELECOMMUNICATIONS CAPABILITY THAT ENABLES USERS TO ORIGINATE
15 AND RECEIVE HIGH-QUALITY VOICE, DATA, GRAPHICS, AND VIDEO TELECOMMUNICATIONS USING
16 ANY TECHNOLOGY.

17 (3) "HEALTH CARE PROVIDER" MEANS ANY ONE OF, OR A CONSORTIUM OF, THE FOLLOWING
18 INSTITUTIONS LOCATED IN MONTANA:

19 (A) POSTSECONDARY EDUCATIONAL INSTITUTIONS OFFERING HEALTH CARE INSTRUCTION;

20 (B) COMMUNITY HEALTH CARE CENTERS OR HEALTH CENTERS PROVIDING HEALTH CARE TO
21 MIGRANTS;

22 (C) LOCAL HEALTH DEPARTMENTS OR AGENCIES;

23 (D) COMMUNITY MENTAL HEALTH CENTERS;

24 (E) NOT-FOR-PROFIT HOSPITALS; AND

25 (F) RURAL HEALTH CLINICS.

26 (4) "LIBRARY" MEANS A LIBRARY LOCATED IN MONTANA THAT IS ELIGIBLE FOR
27 PARTICIPATION IN STATE-BASED PLANS FOR FUNDS UNDER TITLE III OF THE LIBRARY SERVICES AND
28 CONSTRUCTION ACT (20 U.S.C. 335C, ET SEQ.).

29 (5) "SCHOOL" MEANS:

30 (A) AN ELEMENTARY SCHOOL OR SECONDARY SCHOOL THAT MEETS THE DEFINITION SET

1 FORTH IN SUBSECTIONS (14) AND (25), RESPECTIVELY, OF SECTION 14101 OF THE ELEMENTARY AND
 2 SECONDARY EDUCATION ACT OF 1965 (20 U.S.C. 8801) AND THAT DOES NOT HAVE AN
 3 ENDOWMENT OF MORE THAN \$50 MILLION; OR

4 (B) A BUREAU OF INDIAN AFFAIRS ELEMENTARY AND SECONDARY SCHOOL.

5 (6) "TRIBAL COLLEGE" MEANS A COLLEGE RECOGNIZED BY THE UNITED STATES GOVERNMENT
 6 AS A TRIBAL COLLEGE.

7
 8 NEW SECTION. SECTION 22. INTERIM UNIVERSAL ACCESS PROGRAM -- PUBLIC ACCESS
 9 POINTS. AT A MINIMUM, ALL PUBLIC ACCESS POINTS MUST PROVIDE THE GENERAL PUBLIC ACCESS
 10 TO ADVANCED TELECOMMUNICATIONS SERVICES THAT ARE NOT SUBSCRIPTION-BASED. THE ACCESS
 11 MUST BE PROVIDED FREE OF CHARGE AND AT CONVENIENT HOURS ON A WALK-IN BASIS. PUBLIC
 12 ACCESS POINTS MAY OFFER SUBSCRIPTION- BASED SERVICES, SUCH AS ELECTRONIC MAIL, BUT ARE
 13 NOT REQUIRED TO ADMINISTER THESE TYPES OF SERVICES.

14
 15 NEW SECTION. SECTION 23. INTERIM UNIVERSAL ACCESS PROGRAM -- FUNDED SERVICES
 16 -- APPLICATION FOR SERVICES. (1) THE UNIVERSAL ACCESS PROGRAM PROVIDES FUNDING
 17 THROUGH DISCOUNTS ONLY FOR ADVANCED SERVICES FOR USE BY PUBLIC ACCESS POINTS,
 18 SCHOOLS, TRIBAL COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS APPROVED BY THE
 19 ADMINISTRATOR.

20 (2) THE FIRST PRIORITY OF THE PROGRAM IS TO PROVIDE FUNDING FOR AT LEAST ONE
 21 PUBLIC ACCESS POINT IN EACH MONTANA COMMUNITY. SUBJECT TO AVAILABLE FUNDING, THE
 22 PROGRAM SHALL ALSO PROVIDE FUNDING FOR ADVANCED SERVICES TO SCHOOLS, TRIBAL
 23 COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS.

24 (3) THE ADMINISTRATOR SHALL ESTABLISH DISCOUNT LEVELS FOR SERVICES IN EACH OF THE
 25 FOLLOWING CATEGORIES:

26 (A) PUBLIC ACCESS POINTS;

27 (B) EDUCATION SERVICES TO SCHOOLS AND TRIBAL COLLEGES FOR DISTANCE LEARNING,
 28 ELECTRONIC ACCESS TO EDUCATIONAL RESOURCES, AND ELECTRONIC DELIVERY OR RECEPTION OF
 29 EDUCATIONAL PROGRAMMING;

30 (C) LIBRARY SERVICES FOR LIBRARIES NOT SERVING AS PUBLIC ACCESS POINTS FOR

1 ELECTRONIC ACCESS TO INFORMATION AND LIBRARY SERVICES; AND

2 (D) RURAL HEALTH SERVICES TO RURAL HEALTH CARE PROVIDERS FOR ACCESS TO SIMILAR
3 SERVICES AS URBAN HEALTH CARE PROVIDERS AND TO ENSURE ELECTRONIC ACCESS TO HEALTH
4 CARE SERVICES.

5 (4) TO RECEIVE DISCOUNTED SERVICES UNDER THE INTERIM UNIVERSAL ACCESS PROGRAM,
6 PUBLIC ACCESS PROVIDERS, SCHOOLS, TRIBAL COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS
7 SHALL APPLY FOR THE DISCOUNTS. THE APPLICATION MUST BE ACCOMPANIED BY A RESOLUTION
8 OF SUPPORT FROM THE GOVERNING BODY OF THE APPROPRIATE CITY, COUNTY, OR TRIBAL
9 GOVERNMENT IN WHICH THE APPLICANT IS LOCATED.

10

11 NEW SECTION. SECTION 24. INTERIM UNIVERSAL ACCESS PROGRAM -- SERVICES PROVIDED
12 AT DISCOUNTS -- REIMBURSEMENTS. (1) TELECOMMUNICATIONS CARRIERS SHALL PROVIDE
13 ADVANCED SERVICES TO ELIGIBLE USERS AT SPECIFIED DISCOUNTS. THE AMOUNT OF THE
14 DISCOUNT MUST BE REIMBURSED TO THE PROVIDER FROM THE INTERIM UNIVERSAL ACCESS
15 ACCOUNT ESTABLISHED IN [SECTION 26].

16 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THE ADVANCED DISCOUNT IS EQUAL TO 50%
17 OF THE BEST COST RATE AVAILABLE TO ANY BUSINESS CUSTOMER FOR AN EQUIVALENT OF ONE 56
18 KBPS DEDICATED CIRCUIT TO THE NEAREST ACCESS POINT FOR THE REQUESTED SERVICE. HOWEVER,
19 THE COST TO THE ELIGIBLE USER MAY NOT EXCEED \$100 A MONTH.

20 (3) IF FUNDS FROM THE INTERIM UNIVERSAL ACCESS ACCOUNT ARE NOT SUFFICIENT TO
21 FULLY REIMBURSE FOR DISCOUNTS AUTHORIZED IN SUBSECTION (2), THE AMOUNT OF THE
22 DISCOUNTS TO EACH ELIGIBLE USER MUST BE REDUCED PROPORTIONALLY.

23 (4) EVEN IF BEST COST RATES AVAILABLE TO ANY BUSINESS CUSTOMER INCREASE BY MORE
24 THAN 5%, THE AMOUNT PAYABLE BY AN ELIGIBLE USER MAY NOT INCREASE BY MORE THAN 5%
25 DURING THE PERIOD FROM [THE EFFECTIVE DATE OF THIS SECTION] TO JANUARY 1, 2000.

26 (5) SUBJECT TO RESTRICTIONS IN FEDERAL LAW, IF INTERSTATE UNIVERSAL ACCESS
27 SERVICES ARE ESTABLISHED BY THE FEDERAL COMMUNICATIONS COMMISSION, FEDERAL FUNDING
28 FOR UNIVERSAL ACCESS SERVICES MUST BE USED TO REDUCE STATE FUNDING FOR INTRASTATE
29 SERVICES.

30

1 NEW SECTION. SECTION 25. INTERIM UNIVERSAL ACCESS PROGRAM -- FUNDING --

2 SURCHARGE RATE. (1) (A) THE INTERIM UNIVERSAL ACCESS PROGRAM IS FUNDED BY A SURCHARGE
3 BASED ON THE RETAIL REVENUE FOR ALL INTRASTATE TELECOMMUNICATIONS SERVICES IN THE
4 STATE. THE SURCHARGE MUST BE DETERMINED BY THE ADMINISTRATOR BY RULE. THE SURCHARGE
5 MUST BE SET AND APPLIED TO ALL TELECOMMUNICATIONS CARRIERS ON A COMPETITIVELY
6 NEUTRAL BASIS.

7 (B) THE RATE OF THE SURCHARGE MUST BE SET TO RAISE \$250,000 DURING THE FISCAL
8 YEAR ENDING JUNE 30, 1998, AND \$500,000 DURING THE FISCAL YEAR ENDING JUNE 30, 1999. THE
9 RATE MAY BE CHANGED, BY RULE, AS NECESSARY.

10 (C) THE PAYMENT OF THE SURCHARGE IS AN EXPLICIT SUBSIDY AND MAY BE SHOWN AS A
11 SEPARATE LINE ITEM ON EACH CARRIER'S RETAIL TELECOMMUNICATIONS SERVICES BILLS.

12 (D) THE SURCHARGE MAY BE APPLIED ONLY TO TELECOMMUNICATIONS SERVICES.
13 CUSTOMER PREMISE EQUIPMENT IS NOT CONSIDERED A TELECOMMUNICATIONS SERVICE.

14 (2) THE SURCHARGE IS PAYABLE QUARTERLY TO THE DEPARTMENT OF REVENUE AND
15 DEPOSITED BY THE DEPARTMENT IN THE INTERIM UNIVERSAL ACCESS ACCOUNT ESTABLISHED IN
16 [SECTION 26]. THE DEPARTMENT MAY BY RULE:

17 (A) ESTABLISH THE FORM OF A REPORTING STATEMENT TO BE FILED BY
18 TELECOMMUNICATIONS CARRIERS SUBJECT TO THE SURCHARGE;

19 (B) SET THE DATE AFTER THE END OF A FISCAL QUARTER THAT THE QUARTERLY PAYMENT
20 MUST BE MADE;

21 (C) PROVIDE FOR RECORDKEEPING BY TELECOMMUNICATIONS PROVIDERS SUBJECT TO THE
22 SURCHARGE; AND

23 (D) PROVIDE METHODS TO PAY THE SURCHARGE, INCLUDING OFFSETS OF SURCHARGES
24 OWED AGAINST DISCOUNTED SERVICES TO BE REIMBURSED, AND TO PAY REFUNDS OF
25 OVERPAYMENT OF THE SURCHARGE.

26 (3) (A) THE COLLECTION OF A SURCHARGE UNDER THIS SECTION IS SUBJECT TO:

27 (I) THE DEFICIENCY ASSESSMENT, REVIEW, INTEREST, AND PENALTY PROVISIONS OF
28 15-53-105;

29 (II) THE PENALTY AND INTEREST FOR DELINQUENCY AND WAIVER PROVISIONS OF 15-53-111;

30 (III) THE ESTIMATION OF TAX ON FAILURE TO FILE A STATEMENT PROVISIONS OF 15-53-112;

1 (IV) THE WARRANT FOR DISTRAINT PROVISIONS OF 15-53-113; AND

2 (V) THE STATUTE OF LIMITATIONS PROVISIONS OF 15-53-115.

3 (B) ANY REFERENCE TO THE TAX UNDER SECTIONS LISTED IN SUBSECTION (3)(A), EITHER BY
 4 CITE TO A SECTION OF LAW OR LITERALLY TO THE TAX, REFER, FOR THE PURPOSES OF THIS
 5 SECTION, TO THE SURCHARGE IMPOSED BY THIS SECTION.

6
 7 NEW SECTION. SECTION 26. INTERIM UNIVERSAL ACCESS PROGRAM -- ACCOUNT. AN
 8 INTERIM UNIVERSAL ACCESS ACCOUNT IS ESTABLISHED IN THE STATE SPECIAL REVENUE FUND IN
 9 THE STATE TREASURY. ALL MONEY RECEIVED BY THE DEPARTMENT OF REVENUE PURSUANT TO
 10 [SECTION 25] MUST BE PAID TO THE STATE TREASURER FOR DEPOSIT IN THE ACCOUNT. AFTER
 11 PAYMENT OF REFUNDS, THE BALANCE OF THE ACCOUNT MUST BE USED FOR THE PURPOSES
 12 DESCRIBED IN [SECTION 24].

13
 14 NEW SECTION. SECTION 27. COMMISSION TO MAKE RECOMMENDATIONS ON UNIVERSAL
 15 ACCESS AND SERVICE. THE PUBLIC SERVICE COMMISSION SHALL EXAMINE AND MAKE
 16 RECOMMENDATIONS TO THE 56TH LEGISLATURE ON UNIVERSAL ACCESS AND SERVICE. THE
 17 COMMISSION SHALL:

18 (1) REVIEW THE IMPACT ON UNIVERSAL ACCESS AND SERVICE IN MONTANA OF ANY FEDERAL
 19 UNIVERSAL SERVICE FUND THAT RESULTS FROM CURRENT FEDERAL COMMUNICATIONS RULEMAKING
 20 UNDER THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; AND

21 (2) EVALUATE THE EXTENT TO WHICH THE FEDERAL UNIVERSAL SERVICE FUND FALLS SHORT
 22 OF SUPPORTING LEGISLATIVELY DEFINED UNIVERSAL ACCESS AND SERVICE GOALS IN MONTANA.

23 (3) THE COMMISSION MAY DEVELOP PLANS AND PROPOSE LEGISLATION THAT WOULD
 24 ENSURE THE ATTAINMENT OF UNIVERSAL ACCESS AND SERVICE GOALS IN MONTANA.

25
 26 **Section 28.** Section 2-4-102, MCA, is amended to read:

27 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

28 (1) "Administrative code committee" or "committee" means the committee provided for in Title 5,
 29 chapter 14.

30 (2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that

1 the provisions of this chapter do not apply to the following:

2 (i) the state board of pardons and parole, except that the board is subject to the requirements of
3 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of
4 Montana and the Montana Administrative Register;

5 (ii) the supervision and administration of a penal institution with regard to the institutional
6 supervision, custody, control, care, or treatment of youths or prisoners;

7 (iii) the board of regents and the Montana university system;

8 (iv) the financing, construction, and maintenance of public works;

9 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
10 252 and [section 8 7].

11 (b) Agency does not include a school district, unit of local government, or any other political
12 subdivision of the state.

13 (3) "ARM" means the Administrative Rules of Montana.

14 (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,
15 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term
16 includes but is not restricted to ratemaking, price fixing, and licensing.

17 (5) "License" includes the whole or part of any agency permit, certificate, approval, registration,
18 charter, or other form of permission required by law but does not include a license required solely for
19 revenue purposes.

20 (6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation,
21 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

22 (7) "Party" means a person named or admitted as a party or properly seeking and entitled as of
23 right to be admitted as a party, but nothing in this chapter may be construed to prevent an agency from
24 admitting any person as a party for limited purposes.

25 (8) "Person" means an individual, partnership, corporation, association, governmental subdivision,
26 agency, or public organization of any character.

27 (9) "Register" means the Montana Administrative Register.

28 (10) "Rule" means each agency regulation, standard, or statement of general applicability that
29 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
30 requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

1 (a) statements concerning only the internal management of an agency and not affecting private
2 rights or procedures available to the public;

3 (b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

4 (c) rules relating to the use of public works, facilities, streets, and highways when the substance
5 of the rules is indicated to the public by means of signs or signals;

6 (d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
7 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially
8 relating to the seasonal recreational use of lands and waters owned or controlled by the state when the
9 substance of the rules is indicated to the public by means of signs or signals;

10 (e) rules implementing the state personnel classification plan, the state wage and salary plan, or
11 the statewide budgeting and accounting system;

12 (f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
13 accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

14 (11) "Substantive rules" are either:

15 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated
16 authority to promulgate rules to implement a statute have the force of law and when not so adopted are
17 invalid; or

18 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
19 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of
20 law."

21
22 ~~Section 25. Section 35-18-503, MCA, is amended to read:~~

23 ~~"35-18-503. Annual fee to department of revenue -- exemption from other taxes. Cooperatives~~
24 ~~and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall~~
25 ~~pay annually on or before July 1, to the department of revenue a fee of \$10 for each 100 persons or~~
26 ~~fractions thereof of 100 persons to whom electricity or telephone service was supplied during the previous~~
27 ~~calendar year within the state and, except as provided in [section 21] and 10-4-201, shall are be exempt~~
28 ~~from all other excise and income taxes of whatsoever any kind or nature."~~

29
30 **Section 29.** Section 69-3-305, MCA, is amended to read:

- 1 **"69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:
- 2 (a) charge, demand, collect, or receive a greater or less compensation for a utility service performed
- 3 by it within the state or for any service in connection with a utility service than is specified in the printed
- 4 schedules, including schedules of joint rates, that may at the time be in force;
- 5 (b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or
- 6 (c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly,
- 7 has or may have the effect of changing the rates, tolls, charges, or payments.
- 8 (2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and
- 9 charges until the rates, tolls, and charges are changed, as provided in this chapter.
- 10 (3) The commission may order refunds or credits of rates, tolls, or charges collected in violation
- 11 of this section and may order payment of interest at a reasonable rate on the refunded amount.
- 12 (4) The provisions of this section do not prohibit the sharing of profits or revenues with customers
- 13 in conjunction with an alternative form of regulation approved under 69-3-809.
- 14 (5) (a) A provider of regulated telecommunications service may offer, for a limited period of time,
- 15 ~~either rebates, price or reductions, or waivers of installation charges in conjunction with promotions, market~~
- 16 ~~trials, or other sales-related activities that are common business practices. Promotional pricing of services~~
- 17 ~~that remain fully tariffed requires~~ for services other than basic local exchange access to end users does not
- 18 require advance approval of the commission. Informational price lists must be filed with the commission
- 19 on or before the date that the promotion begins. Promotional offerings for basic local exchange access to
- 20 end users and packaged services that include basic local exchange access to end users require advance
- 21 approval of the commission. The commission shall approve, deny, or upon a showing of good cause set
- 22 for hearing an application for a promotional discount within 30 days of the filing of the application. If the
- 23 commission has not acted on the application within the permitted time period, the application is considered
- 24 granted. A promotional offering may not combine monopoly services with competitive services unless
- 25 authorized by the commission.
- 26 (b) A public utility providing electricity or natural gas may offer grants and subsidized loans to
- 27 install energy conservation and nonfossil forms of energy generation systems in dwellings.
- 28 (c) The commission may define the appropriate scope of promotions, rebates, market trials, and
- 29 grants and subsidized loans, either by rule or in response to complaints. The commission may determine
- 30 whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly

1 discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to
2 sales activities and grant and subsidized loan programs that the commission determines are unfairly
3 discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the
4 commission.

5 (6) A public utility violating the provisions of this section is subject to the penalty prescribed in
6 69-3-206. ~~This, however~~ However, this does not have the effect of suspending, rescinding, invalidating,
7 or in any way affecting existing contracts."

8
9 ~~Section 27. Section 69-3-801, MCA, is amended to read:~~

10 ~~"69-3-801. Short title. This part may be cited as the "Montana Telecommunications Reform Act"."~~

11
12 ~~Section 28. Section 69-3-802, MCA, is amended to read:~~

13 ~~"69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana~~
14 ~~to maintain universal availability of basic telecommunications service at affordable rates. This part was~~
15 ~~adopted in response to the enactment into law of the federal Telecommunications Act of 1996, Public Law~~
16 ~~104-104, and the work performed by the governor's blue ribbon telecommunications task force established~~
17 ~~by Chapter 508, Laws of 1995. This part expresses the policies of the state of Montana that should govern~~
18 ~~the orderly transition of the telecommunications industry in the state from a regulated industry to an~~
19 ~~industry primarily controlled by the economic forces of a competitive telecommunications marketplace. The~~
20 ~~legislature declares that it remains the policy of the state of Montana to maintain universal availability of~~
21 ~~basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining~~
22 ~~universal service, it is further the policy of this state to encourage competition in the telecommunications~~
23 ~~industry, thereby allowing access by the public to resulting rapid advances in telecommunications~~
24 ~~technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly~~
25 ~~transition from a regulated telecommunications industry to a competitive market environment, and it is~~
26 ~~further the purpose of this part to clarify that the commission has authority to implement alternative forms~~
27 ~~of regulation for providers of regulated telecommunications services."~~

28
29 ~~Section 30. Section 69-3-803, MCA, is amended to read:~~

30 ~~"69-3-803. Definitions. As used in this part, the following definitions apply:~~

1 ~~(1) "Advanced telecommunications services" means high-speed (56 kbps) dedicated or switched,~~
 2 ~~broadband telecommunications capability that enables users to originate and receive high-quality voice,~~
 3 ~~data, graphics, and video telecommunications using any technology.~~

4 ~~(1)(2)(1)~~ "Commission" means the public service commission.

5 ~~(2) "ELIGIBLE TELECOMMUNICATIONS CARRIER" MEANS A TELECOMMUNICATIONS PROVIDER~~
 6 ~~DESIGNATED BY THE COMMISSION UNDER [SECTION 10].~~

7 ~~(3) "FUND" MEANS THE UNIVERSAL SERVICE FUND ESTABLISHED IN [SECTION 12].~~

8 ~~(3)(4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange~~
 9 ~~carrier that:~~

10 ~~(a) on February 8, 1996, provided telephone exchange service in the area; and~~

11 ~~(b) on February 8, 1996, was considered to be a member of the exchange carrier association~~
 12 ~~pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign~~
 13 ~~of a member of the exchange carrier association.~~

14 ~~(2)(4)(5) "Private telecommunications service" means a system, including the construction,~~
 15 ~~maintenance, or operation thereof of the system, for the provision of telecommunications service or any~~
 16 ~~portion of such the service, by a person or entity for the sole and exclusive use of that person or entity and~~
 17 ~~not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a~~
 18 ~~corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a~~
 19 ~~common ownership or control of 80% of the outstanding voting shares.~~

20 ~~(3)(5)(6) (a) "Regulated telecommunications service" means two-way switched, voice-grade access~~
 21 ~~and transport of communications originating and terminating in this state and nonvoice-grade access and~~
 22 ~~transport if intended to be converted to or from voice-grade access and transport.~~

23 ~~(b) Regulated telecommunications service The term does not include the provision of terminal~~
 24 ~~equipment used to originate or terminate such the regulated service, private telecommunications service,~~
 25 ~~resale of telecommunications service, RESALE OF TELECOMMUNICATIONS SERVICES, one-way~~
 26 ~~transmission of television signals, cellular communication, or provision of radio paging or mobile radio~~
 27 ~~services.~~

28 ~~(4) "Resale of telecommunications services" means the resale of regulated telecommunications~~
 29 ~~service, with or without adding value, provided any value added would not otherwise be subject to~~
 30 ~~regulation.~~

1 ~~(7) "RESALE OF TELECOMMUNICATIONS SERVICES" MEANS THE RESALE OF REGULATED~~
 2 ~~TELECOMMUNICATIONS SERVICES, WITH OR WITHOUT ADDING VALUE, PROVIDED THAT ANY VALUE~~
 3 ~~ADDED WOULD NOT OTHERWISE BE SUBJECT TO REGULATION.~~

4 ~~(8)(7) "RETAIL REVENUE" MEANS THE GROSS MONTANA REVENUE FROM~~
 5 ~~TELECOMMUNICATIONS SERVICES THAT ORIGINATE OR TERMINATE IN MONTANA AND ARE BILLED~~
 6 ~~FOR A SERVICE ADDRESS IN MONTANA, EXCLUDING REVENUE FROM THE RESALE OF~~
 7 ~~TELECOMMUNICATIONS SERVICES TO ANOTHER TELECOMMUNICATIONS SERVICES PROVIDER THAT~~
 8 ~~USES THE TELECOMMUNICATIONS SERVICES TO PROVIDE TELECOMMUNICATIONS SERVICES TO THE~~
 9 ~~ULTIMATE RETAIL CONSUMER WHO ORIGINATES OR TERMINATES THE TRANSMISSION.~~

10 ~~(6)(9)(8) "Rural telephone company" means a local exchange carrier operating entity to the extent~~
 11 ~~that the entity:~~

12 ~~(a) provides common carrier service to any local exchange carrier study area that does not include~~
 13 ~~either:~~

14 ~~(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most~~
 15 ~~recently available population statistics of the United States bureau of the census; or~~

16 ~~(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the~~
 17 ~~United States bureau of the census as of August 10, 1993.~~

18 ~~(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access~~
 19 ~~lines;~~

20 ~~(c) provides telephone exchange service to any local exchange carrier study area with fewer than~~
 21 ~~100,000 access lines; or~~

22 ~~(d) has less than 15% of its access lines in communities of more than 50,000 on February 8,~~
 23 ~~1996.~~

24 ~~(7)(10)(9) "Telecommunications" means the transmission, between or among points specified by~~
 25 ~~the user, of information of the user's choosing without a change in the form or content of the information~~
 26 ~~upon receipt.~~

27 ~~(8)(11)(10) "Telecommunications carrier" or "carrier" means any provider of telecommunications~~
 28 ~~services. A person providing other products and services in addition to telecommunications services is~~
 29 ~~considered a telecommunications carrier only to the extent that it is engaged in providing~~
 30 ~~telecommunications services. The term does not mean aggregators of telecommunications services as~~

1 defined in 47 U.S.C. 226."

2

3 **Section 31.** Section 69-3-805, MCA, is amended to read:

4 "**69-3-805. ~~Manner of regulation~~ Registration of telecommunications service providers.** (1) Before,
5 any person or entity provides ~~regulated~~ telecommunications service within the state of Montana, it shall
6 file with the commission a notice including:

7 (a) the name, ~~and~~ address, and telephone number of the provider;

8 (b) ~~a narrative description of the regulated telecommunications service to be offered and the~~
9 ~~geographic area and markets to be served;~~

10 (c) ~~initial tariffs for the regulated telecommunications service;~~

11 (d) ~~such other information as the commission may require to accomplish the purpose of this~~
12 ~~chapter.~~ the name, address, and telephone number of the person responsible for regulatory contacts and
13 customer dispute resolution on behalf of the provider;

14 (c) a description of the provider's existing operations and general service and operating areas in any
15 other jurisdictions;

16 (d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal
17 addresses and telephone numbers of each;

18 (e) initial tariffs or price lists for regulated telecommunications services, including a narrative
19 description of the regulated telecommunications to be offered and the geographic area and markets to be
20 served;

21 (f) a general description of the facilities and equipment that will be used to provide services,
22 including whether the service will be offered on a facilities basis, a resale basis, or a combination of both
23 of them;

24 (g) a statement of whether the provider intends to draw from the federal or state universal service
25 fund or other explicit support funds, including a statement of whether the provider intends to seek the
26 commission's designation as an eligible telecommunications carrier;

27 (h) disclosure of any formal actions against it by any court or state or federal regulatory agency
28 that resulted in any type of penalty or sanction ~~or~~ within the 5 years prior to the date of filing the notice;

29 (i) if the provider is other than a corporation, a description of the form of ownership, the names
30 and addresses of all principal owners and managers, the provider's agent for service of process in Montana,

1 and the date of creation of the business entity; and

2 (j) other information from regulated telecommunications carriers as the commission may require
3 to accomplish the purposes of this chapter.

4 ~~(2) The provision of any regulated telecommunications service does not subject the provider thereof~~
5 ~~to regulation of any other telecommunications services otherwise exempt under this chapter. The~~
6 ~~commission may waive any of the requirements set forth in subsection (1).~~

7 (3) The provider shall file with the commission a report of any judgment, penalty, or sanction
8 entered in any other jurisdiction that could adversely affect the provider's ability to provide communications
9 services in Montana."

10
11 **SECTION 32. SECTION 69-3-806, MCA, IS AMENDED TO READ:**

12 **"69-3-806. Prohibition against cross-subsidization.** ~~(1) No~~ A provider of regulated
13 telecommunications ~~service~~ services may not use current ~~revenues~~ revenue earned or expenses incurred
14 in conjunction with services subject to regulation under this chapter to subsidize services ~~which~~ that are
15 not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or
16 that are not tariffed under this chapter may not be attributed to services ~~which~~ that are subject to regulation
17 for any reason.

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

20
21 **Section 33. Section 69-3-807, MCA, is amended to read:**

22 **"69-3-807. Regulation of rates and charges.** (1) ~~As to telecommunications service that is provided~~
23 ~~under regulation, the~~ The commission may establish specific rates, tariffs, or fares for the provision of ~~the~~
24 regulated telecommunications service to the public. The rates, tariffs, or fares must be just, reasonable, and
25 nondiscriminatory.

26 (2) Alternatively, the commission may authorize the provision of regulated telecommunications
27 service under terms and conditions that best serve the declared policy of this state. For a service detariffed
28 under this subsection, the provider shall maintain a current price list on file with the commission and shall
29 provide notice of changes in the price list as prescribed by the commission. The commission is not required
30 to fix and determine specific rates, tariffs, or fares for the service and in ~~lieu thereof~~ the alternative may:

- 1 (a) totally detariff the service;
- 2 (b) detariff rates for the service but retain tariffs for service standards and requirements;
- 3 (c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the
- 4 minimum rate is cost compensatory; or
- 5 (d) provide ~~such~~ other rate or service regulation as will promote the purposes of this part.

6 (3) Except as provided in subsection (4), in determining applications under subsection (2), the

7 commission shall consider the following factors:

- 8 (a) the number, size, and distribution of alternative providers of service;
- 9 (b) the extent to which services are available from alternative providers in the relevant market;
- 10 (c) the ability of alternative providers to make functionally equivalent or substitute services readily
- 11 available;
- 12 (d) the overall impact of the proposed terms and conditions on the continued availability of existing
- 13 services at just and reasonable rates; and
- 14 (e) other factors that the commission may prescribe through rulemaking that are appropriate to
- 15 fulfill the purposes of this part.

16 (4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under

17 subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that

18 action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local

19 exchange access to end-users and carrier access services may not be detariffed.

20 (5) A provider of regulated message telecommunications service and related services shall average

21 its service rates on its routes of similar distance within the state unless otherwise authorized by the

22 commission. ~~Nothing contained in this~~ This subsection may not be construed to prohibit volume discounts,

23 discounts in promotional offerings, or other discounts as long as the discounts are not offered in a

24 discriminatory manner.

25 ~~(6) All providers of comparable regulated telecommunications services within a market area must~~

26 ~~be subject to the same standards of regulation. For purposes of this section, regulated telecommunications~~

27 ~~services are comparable to the extent alternative providers can make functionally equivalent substitutes or~~

28 ~~substitute services readily available."~~

29

30 ~~Section 32. Section 69-3-809, MCA, is amended to read:~~

1 ~~"69-3-809. Alternative forms of regulation. (1) The commission may authorize a provider of~~
 2 ~~regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking~~
 3 ~~practices required under parts 2, 3, and 9 of this chapter, including but not limited to;~~

4 ~~(a) price caps;~~

5 ~~(b) price regulation; and~~

6 ~~(c) equitable sharing of earnings or revenues revenue between a provider of regulated~~
 7 ~~telecommunications services and its customers.~~

8 ~~(2) A provider of regulated telecommunications services may petition the commission to regulate~~
 9 ~~the provider under an alternative form of regulation. The provider shall submit its plan for an alternative~~
 10 ~~form of regulation with its petition. The commission's order on the petition must be issued no later than~~
 11 ~~9 months after the filing of the petition. The commission shall review and may authorize implementation~~
 12 ~~of the plan if it finds, after notice and hearing, that the plan:~~

13 ~~(a) will not degrade the quality of or the availability of efficient telecommunications services;~~

14 ~~(b) will produce fair, just, and reasonable rates for telecommunications services;~~

15 ~~(c) will not unduly or unreasonably prejudice or disadvantage a customer class;~~

16 ~~(d) will reduce regulatory delay and costs;~~

17 ~~(e) is in the public interest; and~~

18 ~~(f) will enhance economic development in the state;~~

19 ~~(g) will result in the improvement of the telephone infrastructure in the state; and~~

20 ~~(h)(b) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or~~
 21 ~~9 of this chapter conforms to the stated purpose.~~

22 ~~(3) If the commission determines that the plan does not satisfy the requirements of this section,~~
 23 ~~it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.~~

24 ~~(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications~~
 25 ~~service may not be final until 60 days after issuance. During that 60 day period, the provider may withdraw~~
 26 ~~its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition~~
 27 ~~for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:~~

28 ~~(a) remains subject to the same regulation that applied when the petition was filed; and~~

29 ~~(b) may petition the commission to be regulated under a revised alternative plan.~~

30 ~~(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an~~

1 alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are
2 no longer satisfied.

3 (6) ~~Nothing contained in this~~ This section may not be construed as limiting or otherwise affecting
4 the commission's authority to conduct investigations or hear complaints as provided in part 3 of this
5 chapter."

6

7 **Section 33.** ~~Section 69-3-811, MCA, is amended to read:~~

8 ~~"69-3-811. Costs for services provided Relevant cost defined — jurisdiction over complaints. (1)~~
9 ~~Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise~~
10 ~~ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure~~
11 ~~that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.~~

12 ~~(2) With regard to competitive services, the term "relevant costs" includes the price for any~~
13 ~~components that are used by the telecommunications provider and that would be essential for alternative~~
14 ~~providers to use in providing the competitive services pursuant to commission-approved methodology.~~

15 ~~(3)(2) The commission has jurisdiction to consider complaints and initiate investigations to~~
16 ~~determine whether the price charged by a provider of regulated telecommunications service is above~~
17 ~~relevant costs. The commission may also consider complaints that a pricing or promotional practice violates~~
18 ~~any provision of this title."~~

19

20 **Section 34.** ~~Section 69-3-1001, MCA, is amended to read:~~

21 ~~"69-3-1001. Creation of program -- amount of assistance. (1) There is a telephone low-income~~
22 ~~low-income assistance program to provide an eligible subscriber with a discount in the monthly charge for~~
23 ~~local exchange service in the telephone network.~~

24 ~~(2) This~~ The commission shall set the discount in the charge for local exchange service ~~is the~~
25 ~~greater of:~~

26 ~~(a) \$2~~ that is at least \$3.50 a month for each eligible subscriber; ~~or~~

27 ~~(b) but not more than~~ the amount ~~necessary to obtain the matching waiver available under~~
28 ~~applicable orders and regulations of the federal communications commission~~ that is the difference between
29 the otherwise applicable current rate for local exchange service and the rate as it was on [the effective date
30 of this section]."

1 NEW SECTION. SECTION 35. TELECOMMUNICATIONS COMMITTEE. (1) THERE IS A
2 TELECOMMUNICATIONS COMMITTEE. THE COMMITTEE CONSISTS OF:

3 (A) TWO MEMBERS OF THE SENATE, ONE FROM EACH POLITICAL PARTY, APPOINTED BY THE
4 COMMITTEE ON COMMITTEES OF THE SENATE;

5 (B) TWO MEMBERS OF THE HOUSE OF REPRESENTATIVES, ONE FROM EACH POLITICAL PARTY,
6 APPOINTED BY THE SPEAKER OF THE HOUSE; AND

7 (C) A REPRESENTATIVE OF THE PUBLIC SERVICE COMMISSION APPOINTED BY THE PUBLIC
8 SERVICE COMMISSION.

9 (2) THE COMMITTEE SHALL MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL
10 TELECOMMUNICATIONS ACT OF 1996, PUBLIC LAW 104-104. THE COMMITTEE SHALL RECOMMEND
11 TO THE 56TH LEGISLATURE POLICIES, PRACTICES, AND STATUTORY CHANGES THAT ARE REQUIRED
12 TO IMPLEMENT OR CONFORM TO THE FEDERAL IMPLEMENTATION.

13 (3) THE OFFICE OF THE CONSUMER COUNSEL SHALL PROVIDE STAFF ASSISTANCE TO THE
14 COMMITTEE.

15

16 NEW SECTION. SECTION 36. APPROPRIATION. (1) SUBJECT TO FUNDS BEING AVAILABLE
17 PURSUANT TO SUBSECTION (2), THERE IS APPROPRIATED FROM THE STATE SPECIAL REVENUE FUND
18 UP TO \$30,000 TO THE OFFICE OF THE CONSUMER COUNSEL FOR PURPOSES OF [SECTION 35]. (2)
19 THE TELECOMMUNICATIONS COMMITTEE MAY ACCEPT GIFTS, GRANTS, AND DONATIONS FOR
20 DEPOSIT IN THE STATE SPECIAL REVENUE FUND FOR PURPOSES OF [SECTION 35].

21

22 NEW SECTION. Section 37. Codification instruction. (1) [Sections 1 through 15 19 27] are
23 intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69,
24 chapter 3, part 8, apply to [sections 1 through 15 19 27].

25 (2) [Sections 16 through 22] are intended to be codified as an integral part of Title 69, chapter 3,
26 and the provisions of Title 69, chapter 3, apply to [sections 16 through 22].

27

28 NEW SECTION. Section 38. Repealer. Sections 69-6-101, 69-6-102, and 69-6-103, MCA, are
29 repealed.

30

1 NEW SECTION. SECTION 39. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
2 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
3 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
4 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

5
6 NEW SECTION. Section 40. Effective dates DATE. —applicability— rulemaking. (1) Except as
7 provided in subsection (2)(a), [this act] is effective on passage and approval.

8 (2) (a) ~~[Sections 16 through 22]~~ 17 THROUGH 19 are effective July 1, 1997 [THIS ACT] IS
9 EFFECTIVE ON PASSAGE AND APPROVAL.

10 (b) ~~[Section 21] applies to retail revenue for all intrastate telecommunications services received by~~
11 ~~telecommunications providers after June 30, 1997.~~

12 (c) ~~For the purpose of allowing the implementation of [sections 16 through 22] to begin on July~~
13 ~~1, 1997, without resorting to the adoption of emergency rules, the public service commission and the~~
14 ~~department of revenue may begin the process for the adoption of rules to implement [sections 16 through~~
15 ~~22] prior to [the effective date of sections 16 through 22], but rules may not be adopted until July 1, 1997.~~

16
17 NEW SECTION. Section 41. Termination. ~~[Sections 16 through 22]~~ 11 THROUGH 15 terminate
18 December 31, 1999.

19 -END-

1 SENATE BILL NO. 89

2 INTRODUCED BY BECK

3 BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE
6 REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL
7 TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF
8 TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT
9 TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED
10 INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF
11 INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR
12 FEDERAL UNIVERSAL SERVICE SUPPORT; ~~PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY~~
13 ~~ADOPT RULES TO ALLOW VERIFICATION OF A SUBSCRIBER'S CHANGE IN TELECOMMUNICATIONS~~
14 ~~SERVICES AND PROVIDING A PENALTY FOR VIOLATION OF THE VERIFICATION RULES; ALLOWING FOR~~
15 ~~SPECIAL RATEMAKING PROCEDURES; RESTRICTING THE RESALE OF CERTAIN TELECOMMUNICATIONS~~
16 ~~SERVICES; PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR~~
17 ~~INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH~~
18 ~~CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS~~
19 ~~SERVICES, INCLUDING INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES;~~
20 AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED TELECOMMUNICATIONS
21 PROVIDERS; ~~CHANGING THE TYPES OF REGULATION AND CRITERIA FOR ALTERNATIVE REGULATION~~
22 ~~OF TELECOMMUNICATIONS PROVIDERS;~~ INCREASING THE AMOUNT OF ASSISTANCE IN THE
23 TELEPHONE LOW-INCOME ASSISTANCE PROGRAM; ~~ESTABLISHING AN INTERIM UNIVERSAL ACCESS~~
24 ~~TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC~~
25 ~~SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS~~
26 ~~SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS,~~
27 ~~AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL REVENUE DERIVED FROM~~
28 ~~INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE~~
29 ~~COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL~~
30 ~~ACCESS AND SERVICE; ESTABLISHING AN INTERIM UNIVERSAL ACCESS TO THE ADVANCED~~

1 TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC SERVICE COMMISSION;
 2 PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR CERTAIN
 3 PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND ACCESS POINTS,
 4 SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTABLISHING A
 5 SURCHARGE ON RETAIL REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN
 6 THE STATE; REQUIRING THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE
 7 56TH LEGISLATURE REGARDING UNIVERSAL ACCESS AND SERVICE; CREATING A UNIVERSAL SERVICE
 8 FUND FOR TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES
 9 SUPPORTED BY THE FUND AND OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM
 10 TELECOMMUNICATIONS CARRIERS BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS
 11 CARRIERS' RETAIL REVENUE; PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATELY
 12 CONTRACTED ENTITY UNDER THE DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR
 13 DISTRIBUTIONS FROM THE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; ESTABLISHING A
 14 COMMITTEE TO MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL TELECOMMUNICATIONS ACT
 15 OF 1996; APPROPRIATING FUNDS FOR THE COMMITTEE; AMENDING SECTIONS 2-4-102, ~~35-18-503,~~
 16 69-3-305, ~~69-3-801, 69-3-802,~~ 69-3-803, 69-3-805, ~~69-3-806, 69-3-807, 69-3-808, 69-3-811,~~ AND
 17 69-3-1001, MCA; REPEALING SECTIONS 69-6-101, 69-6-102, AND 69-6-103, MCA; AND PROVIDING
 18 AN IMMEDIATE EFFECTIVE DATES DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

19

20

STATEMENT OF INTENT

21

A statement of intent is required for this bill because rulemaking authority is granted to the public service commission and to the department of revenue.

23

[Section 4 ~~3~~] authorizes the public service commission to adopt procedural rules relating to mediation and arbitration for interconnection proceedings.

25

[Section ~~12~~] grants rulemaking authority to the public service commission to make rules establishing verification procedures for the submission or execution of a change in a subscriber's selection of a provider of telecommunications services. The rules are to address the problems of "slamming"—a change in service providers that was unauthorized or a service change authorization that was made under deceptive or misleading circumstances.

30

~~Under the interim universal access provisions of (sections 16 through 22), the public service~~

1 ~~commission is to establish surcharge rates as provided in [section 21]. The surcharge rates must take into~~
2 ~~account different cost structures among telecommunications carriers, particularly the wireless and CATV~~
3 ~~industry. The retail revenue for these providers should be based on an equitable, per access line, revenue~~
4 ~~equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary~~
5 ~~to fund the program. The formulation should consider any overlapping federal discounts. The commission~~
6 ~~should appoint an oversight group consisting of users and industry participants, to meet quarterly with the~~
7 ~~commission to review revenue, discounts, and the administration of [sections 16 through 22]. The public~~
8 ~~service commission shall also establish a method for paying discount reimbursements in accordance with~~
9 ~~[section 20]. The public service commission shall cooperate with the department of revenue in determining~~
10 ~~rates, administering offsets against any surcharges, and other matters necessary for the administration of~~
11 ~~[sections 16 through 22].~~

12 ~~The department of revenue shall administer the collection of the surcharge by rule. Because of the~~
13 ~~limited duration of the program, it is contemplated that the rules and administration be minimal, flexible,~~
14 ~~and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the~~
15 ~~implementation of [sections 16 through 22].~~ UNDER THE INTERIM UNIVERSAL ACCESS PROVISIONS OF
16 [SECTIONS 20 THROUGH 26], THE PUBLIC SERVICE COMMISSION IS TO ESTABLISH SURCHARGE RATES
17 AS PROVIDED IN [SECTION 25]. THE SURCHARGE RATES MUST TAKE INTO ACCOUNT DIFFERENT COST
18 STRUCTURES AMONG TELECOMMUNICATIONS CARRIERS, PARTICULARLY THE WIRELESS AND CATV
19 INDUSTRY. THE RETAIL REVENUE FOR THESE PROVIDERS SHOULD BE BASED ON AN EQUITABLE, PER
20 ACCESS LINE, REVENUE EQUIVALENT. THE COMMISSION SHALL ALSO SET THE SURCHARGE RATE TO
21 PRODUCE THE AMOUNT OF REVENUE NECESSARY TO FUND THE PROGRAM. THE FORMULATION
22 SHOULD CONSIDER ANY OVERLAPPING FEDERAL DISCOUNTS. THE COMMISSION SHOULD APPOINT
23 AN OVERSIGHT GROUP, CONSISTING OF USERS AND INDUSTRY PARTICIPANTS, TO MEET QUARTERLY
24 WITH THE COMMISSION TO REVIEW REVENUE, DISCOUNTS, AND THE ADMINISTRATION OF [SECTIONS
25 20 THROUGH 26]. THE PUBLIC SERVICE COMMISSION SHALL ALSO ESTABLISH A METHOD FOR PAYING
26 DISCOUNT REIMBURSEMENTS IN ACCORDANCE WITH [SECTION 25]. THE PUBLIC SERVICE
27 COMMISSION SHALL COOPERATE WITH THE DEPARTMENT OF REVENUE IN DETERMINING RATES,
28 ADMINISTERING OFFSETS AGAINST ANY SURCHARGES, AND OTHER MATTERS NECESSARY FOR THE
29 ADMINISTRATION OF [SECTIONS 20 THROUGH 26].

30 THE DEPARTMENT OF REVENUE SHALL ADMINISTER THE COLLECTION OF THE SURCHARGE BY

1 RULE. BECAUSE OF THE LIMITED DURATION OF THE PROGRAM, IT IS CONTEMPLATED THAT THE
 2 RULES AND ADMINISTRATION BE MINIMAL, FLEXIBLE, AND AS UNOBTRUSIVE AS POSSIBLE WHILE
 3 ENSURING THAT THERE ARE SUFFICIENT ADMINISTRATIVE POWERS TO ENABLE THE IMPLEMENTATION
 4 OF [SECTIONS 20 THROUGH 26].

5 7 UNDER [SECTION 13], THE PUBLIC SERVICE COMMISSION SHALL ADMINISTER A CONTRACT WITH A
 6 THIRD PARTY THAT WILL MANAGE THE UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS
 7 SERVICES ON A DAILY BASIS. THE THIRD PARTY IS RESPONSIBLE FOR THE COLLECTION OF
 8 CONTRIBUTIONS TO THE FUND. THE THIRD PARTY IS ALSO RESPONSIBLE FOR SETTING THE AMOUNT
 9 OF CONTRIBUTION BASED ON TOTAL RETAIL REVENUE OF TELECOMMUNICATIONS CARRIERS
 10 OPERATING IN MONTANA. THE PUBLIC SERVICE COMMISSION SHALL ADOPT PROCEDURAL RULES FOR
 11 THE COLLECTION OF THE CONTRIBUTIONS. THE PUBLIC SERVICE COMMISSION SHALL ALSO ADOPT
 12 RULES ALLOWING THE THIRD PARTY TO ASSESS LATE FEES AND INTEREST ON LATE PAYMENTS OF
 13 CONTRIBUTIONS. THE RULES MUST SET INTEREST RATES AND PENALTIES FOR LATE PAYMENTS.

14 [SECTION 14] AUTHORIZES THE PUBLIC SERVICE COMMISSION TO ADOPT PROCEDURAL RULES
 15 RELATING TO THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND. [SECTION 14]
 16 AUTHORIZES THE PUBLIC SERVICE COMMISSION TO ADOPT RULES FOR THE ASSESSMENT OF LATE
 17 FEES AND INTEREST ON CONTRIBUTIONS TO THE FUND.

18 [SECTION 15] REQUIRES THE PUBLIC SERVICE COMMISSION TO ADOPT RULES ESTABLISHING
 19 AFFORDABILITY BENCHMARKS FOR LOCAL SERVICE.

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
 23 ~~NEW SECTION. Section 1. Statement of policies. (1) The commission shall, in the exercise of~~
 24 ~~the powers conferred upon it under Montana law, consider the following declared policies of the state of~~
 25 ~~Montana:~~

26 ~~(a) The state of Montana shall encourage competition on a neutral basis and provide neither~~
 27 ~~competitive advantage nor a competitive disadvantage to any telecommunications carrier.~~

28 ~~(b) The regulation of telecommunications carriers by the commission should attempt to produce~~
 29 ~~the same benefits for carriers as competition that includes:~~

30 ~~(i) the ability to enter and exit markets quickly and easily;~~

1 ~~(ii) the ability to price efficiently and flexibly; and~~

2 ~~(iii) incentives to:~~

3 ~~(A) offer new products and services;~~

4 ~~(B) create operating and investing efficiencies; and~~

5 ~~(C) stimulate sales of existing services.~~

6 ~~(c) It is the objective of the state of Montana to make basic telecommunications services available~~
7 ~~at the lowest possible price to all Montanans.~~

8 ~~(d) It is the objective of the state of Montana to provide at least a minimum level of public access~~
9 ~~to advanced telecommunications services through a library, school, or public institution in every Montana~~
10 ~~community under the universal service access provisions in [sections 16 through 22].~~

11 ~~(e) The advanced telecommunications services available in urban areas of Montana should also be~~
12 ~~available in rural areas at rates reasonably comparable to rates in urban areas.~~

13 ~~(f) All Montanans should have the ability to route their telecommunications to their carriers of~~
14 ~~choice without the need to dial extra codes.~~

15 ~~(g) Montana customers should have the ability to retain their telephone numbers when they switch~~
16 ~~carriers within their local exchange area. Number portability should be provided, to the extent technically~~
17 ~~feasible and economically reasonable, in accordance with the requirements prescribed by the federal~~
18 ~~communications commission. The cost to implement number portability should be borne by all~~
19 ~~telecommunications carriers on a competitively neutral basis. Rural telephone companies may petition the~~
20 ~~commission for suspension or modification of these requirements.~~

21 ~~(h) The commission should proceed at a reasonable speed, based on demonstrated demand, to~~
22 ~~unbundle the network elements at technically feasible points.~~

23 ~~(i) The commission is responsible for ensuring that prices for regulated telecommunications services~~
24 ~~are priced above relevant costs to prevent cross-subsidization and predatory pricing.~~

25 ~~(j) During the transition to local competition, the commission and regulated telecommunications~~
26 ~~carriers are encouraged to review and remove any implicit subsidies and any other government imposed~~
27 ~~mandates that inhibit competition.~~

28 ~~(k) When establishing new depreciation rates for ratemaking purposes, forward-looking asset lives,~~
29 ~~consistent with the competitive market and consistent with the asset lives used by competing providers~~
30 ~~of similar services, should be used.~~

1 ~~(2) (a) This section does not alter the state policy of local control and regulation of cooperatives~~
 2 ~~through their elected boards of trustees and membership as provided in Title 35, chapter 18. However,~~
 3 ~~cooperatives providing telecommunications services are subject to registration requirements and other~~
 4 ~~provisions applicable to all other unregulated telecommunications carriers.~~

5 ~~(b) This section does not grant the commission any power not otherwise provided in another~~
 6 ~~section of this title applicable to the regulation of carriers of regulated telecommunications service.~~

7
 8 **NEW SECTION. Section 1. Interconnection -- construction and effect.** [~~Sections 5 through 10 1~~
 9 ~~THROUGH 19]~~ do not grant any jurisdiction to the commission over telecommunications carriers except as
 10 expressly set forth in [~~sections 5 through 10 1 THROUGH 19]~~, and [~~sections 5 through 10 1 THROUGH~~
 11 ~~19]~~ may not be construed to limit or repeal exemptions from the commission's jurisdiction otherwise
 12 recognized by statute or law. Legislation may not be considered to supersede or modify any provision of
 13 [~~sections 5 through 10 1 THROUGH 19]~~ except to the extent that the legislation does so expressly.

14
 15 **NEW SECTION. Section 2. Interconnection -- jurisdiction.** In addition to the authority granted to the
 16 commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the
 17 purposes of implementing [~~sections 5 through 10 1 THROUGH 9]~~, over all telecommunications carriers.

18
 19 **NEW SECTION. Section 3. Rulemaking authority.** The commission may adopt rules of procedure to
 20 implement [~~sections 7 and 8 6 THROUGH 10]~~.

21
 22 **NEW SECTION. Section 4. Duty to interconnect.** (1) The purpose of this section is to implement
 23 specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

24 (2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

25 (b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

26 (c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier
 27 shall perform the duties enumerated in 47 U.S.C. 251(c).

28 (3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection
 29 (2)(c) do not apply to a rural telephone company until:

30 (i) the company has received a bona fide request for interconnection, services, or network

1 elements; and

2 (ii) the commission determines under subsection (3)(b) that the request is not unduly economically
3 burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7)
4 and (c)(1)(D)).

5 (b) The party making a bona fide request of a rural telephone company for interconnection, services,
6 or network elements shall submit a notice of its request to the commission. The commission shall conduct
7 an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a).
8 Within 120 days after the commission receives notice of the request, the commission shall terminate the
9 exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent
10 with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the
11 commission shall establish an implementation schedule for compliance with the request that is consistent
12 in time and manner with the federal communications commission's regulations.

13 (4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a
14 cable operator providing video programming and seeking to provide any telecommunications service in the
15 area in which the rural telephone company was providing video programming on February 8, 1996.

16 (5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the
17 aggregate nationwide, may petition the commission for a suspension or modification of the application of
18 a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition.
19 The commission shall grant the petition for the suspension or modification to the extent and for the duration
20 that the commission determines:

21 (i) is necessary:

22 (A) to avoid a significant adverse economic impact on users of telecommunications services
23 generally;

24 (B) to avoid imposing a requirement that is unduly economically burdensome; or

25 (C) to avoid imposing a requirement that is technically infeasible; and

26 (ii) is consistent with the public interest, convenience, and necessity.

27 (b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days after
28 receiving the petition. Pending action, the commission may suspend enforcement of the requirement to
29 which the petition applies with respect to the petitioning carrier.

30

1 **NEW SECTION. Section 5. Voluntary negotiation of interconnection agreements.** Upon receiving
2 a request for interconnection, services, or network elements pursuant to [section ~~5 4~~], an incumbent local
3 exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications
4 carrier without regard to the duties set forth in [section ~~5(2)(b) 4(2)(B)~~ or (2)(c)]. The agreement must
5 include a detailed schedule of itemized charges for interconnection and each service or network element
6 included in the agreement.

7
8 **NEW SECTION. Section 6. Mediation of interconnection agreements.** Upon the written request of
9 any party negotiating an agreement for interconnection with another telecommunications carrier, the
10 commission may designate a mediator, who may be a commission member, to mediate any differences
11 arising in the course of the negotiation.

12
13 **NEW SECTION. Section 7. Arbitration of interconnection issues.** (1) The commission has the
14 authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on
15 February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except as
16 expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not apply
17 to arbitrations conducted under the authority granted by this section.

18 (2) During the period from the 135th to the 160th day, inclusive, after the date on which an
19 incumbent local exchange carrier receives a request for negotiation under [section ~~5 4~~], the carrier or any
20 other party to the negotiation may petition the commission to arbitrate any open issues. A party that
21 petitions the commission under this section shall, at the same time as it submits the petition, provide the
22 commission all relevant documentation concerning the following:

- 23 (a) the unresolved issues;
24 (b) the position of each of the parties with respect to those issues; and
25 (c) any other issue discussed and resolved by the parties.

26 (3) A party petitioning the commission under this section shall provide a copy of the petition and
27 any documentation to the other party or parties not later than the day on which the commission receives
28 the petition.

29 (4) A nonpetitioning party to a negotiation under [section ~~5 4~~] may respond to the other party's
30 petition and provide any additional information that it wishes within 25 days after the commission receives

1 the petition.

2 (5) The commission shall limit its consideration to those issues set forth by the parties to the
3 negotiation in the petition for arbitration and the response to the petition.

4 (6) The commission may appoint a hearings examiner for arbitration proceedings under this section.
5 The hearings examiner shall file with the commission a proposed decision within the time set by order of
6 the commission. A hearings examiner must be assigned with regard to the expertise required for the
7 particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias,
8 lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the
9 hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the
10 record in the case. The commission may disqualify the hearings examiner and appoint another hearings
11 examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should
12 be disqualified and must be filed not less than 10 days before the original date set for the hearing.

13 (7) Participation in the arbitration proceeding must be limited to the telecommunications carrier
14 requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and
15 the Montana consumer counsel.

16 (8) Negotiations among the telecommunications carriers may continue, pending a final decision by
17 the arbitrator.

18 (9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of
19 a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule
20 for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and
21 a hearing date.

22 (10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties
23 are entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing
24 at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the
25 arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

26 (11) The commission may issue subpoenas for the attendance of witnesses and the production of
27 books, records, documents, and other evidence relevant to the issues being arbitrated and may administer
28 oaths. Subpoenas must be served and enforced in the manner provided by law for the service and
29 enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the
30 hearings and the need for filing briefs and may direct the parties to appear and confer to consider

1 simplification of the issues by consent of the parties.

2 (12) THE COMMISSION SHALL ISSUE ITS FINAL DECISION NO LATER THAN 9 MONTHS AFTER
 3 THE REQUEST FOR NEGOTIATIONS ON A PETITION ISSUED UNDER [SECTION 4]. When the commission
 4 files its final decision or when the hearings examiner files the proposed decision with the commission, each
 5 party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

6 (a) ensure the resolution of issues presented by the parties and ensure that the resolution meets
 7 the requirements of [section ~~5~~ 4] and this section;

8 (b) establish rates for interconnection, services, or access to unbundled network elements pursuant
 9 to 47 U.S.C. 252(d); and

10 (c) provide a schedule for implementation of the terms and conditions of the decision by the
 11 parties.

12 (13) If the person who conducted the hearing becomes unavailable to the commission, the
 13 commission is not precluded from issuing a final decision based on the record if the demeanor of the
 14 witnesses is considered immaterial by all parties.

15 (14) Unless required for the disposition of ex parte matters authorized by law, the person or persons
 16 who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law
 17 in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or
 18 a party's representative in connection with any issue of fact or law in the case unless there is notice and
 19 opportunity for all parties to participate.

20

21 NEW SECTION. Section 8. Approval of arbitration decision. (1) If the commission has not
 22 approved or rejected in its entirety an agreement adopted by arbitration under [section ~~8(12)~~ 7(12)] within
 23 30 days of submission by the parties, the agreement is considered approved.

24 (2) The commission may reject the agreement only if the commission finds that the agreement does
 25 not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by
 26 the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of
 27 an agreement, the commission shall provide the parties with written findings as to any deficiencies.

28

29 NEW SECTION. Section 9. Approval of interconnection agreements. (1) Within 90 days of filing of
 30 an interconnection agreement adopted by negotiation of the parties to an agreement, the commission shall

1 approve or reject the agreement, or the agreement is considered approved.

2 (2) The commission may reject an agreement filed under this section only if the commission finds
3 that:

4 (a) the agreement or a portion of the agreement discriminates against a telecommunications carrier
5 not a party to the agreement; or

6 (b) the implementation of the agreement or portion is not consistent with the public interest,
7 convenience, and necessity.

8 (3) Upon rejecting an agreement filed under this section, the commission shall issue written findings
9 detailing any deficiencies in the agreement.

10

11 **NEW SECTION. Section 10. Determination of eligible carrier status -- universal service support.** (1)

12 The commission is authorized to designate telecommunications carriers as eligible for federal universal
13 service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, AND FOR ANY MONTANA
14 UNIVERSAL SERVICE FUNDS. This authorization applies to all telecommunications carriers notwithstanding
15 the carrier's exemption from further regulation by the commission.

16 (2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall
17 designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible
18 telecommunications carrier for a service area designated by the commission. In the case of an area served
19 by a rural telephone company, the term "service area" means the company's "study area" FOR FEDERAL
20 UNIVERSAL SERVICE SUPPORT unless the federal communications commission establishes a different
21 definition of service area for the company. The term "service area" for all other telecommunications carriers
22 means a geographic area such as a census block or grid block as established by the commission for the
23 purpose of determining FEDERAL universal service obligations and support mechanisms.

24 (3) Upon receiving a petition from a telecommunications carrier and consistent with the public
25 interest, convenience, and necessity, the commission may, in the case of an area served by a rural
26 telephone company, and shall, in the case of all other areas, designate more than one telecommunications
27 carrier for a service area, so long as each additional requesting telecommunications carrier meets the
28 requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier
29 for an area served by a rural telephone company, the commission shall find that the designation is in the
30 public interest.

1 (4) If no telecommunications carrier will provide the services that are supported by universal service
 2 support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests
 3 service, the commission shall determine which telecommunications carrier is best able to provide the service
 4 to the requesting unserved community. Any telecommunications carrier ordered to provide service under
 5 this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible
 6 telecommunications carrier for that community or the unserved portion of the community.

7 (5) The commission shall permit an eligible telecommunications carrier to relinquish its designation
 8 as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible
 9 telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for
 10 an area served by more than one eligible telecommunications carrier shall give advance notice to the
 11 commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible
 12 telecommunications carrier to cease providing universal service in an area served by more than one eligible
 13 telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier
 14 to ensure that all customers served by the relinquishing carrier will continue to be served and shall require
 15 sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible
 16 telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the
 17 commission approves relinquishment under this section, within which the purchase or construction must
 18 be completed.

19

20 ~~NEW SECTION. Section 12. Illegal changes in subscriber carrier selections. (1) A~~
 21 ~~telecommunications carrier may not submit or execute a change in a subscriber's selection of a provider~~
 22 ~~of telecommunications services except in accordance with verification procedures that the commission has~~
 23 ~~adopted by rule pursuant to this section.~~

24 ~~(2) Any telecommunications carrier that violates the verification procedures described in subsection~~
 25 ~~(1) and that collects charges for telecommunications services from a subscriber is liable to the carrier~~
 26 ~~previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the~~
 27 ~~violation, in accordance with procedures that the commission has adopted by rule pursuant to this section.~~
 28 ~~The remedy provided by this section is in addition to any other remedies available by law.~~

29

30 ~~NEW SECTION. Section 13. Special ratemaking procedures. (1) A provider of regulated~~

1 ~~telecommunications services may file with the commission, and the commission shall expeditiously hear,~~
 2 ~~an application to eliminate or minimize a noncost-based differential in the price of its telecommunications~~
 3 ~~services without reestablishing its cost of providing all regulated telecommunications services.~~

4 ~~(2) If, upon hearing the application, the commission determines that a noncost-based differential~~
 5 ~~exists in the prices of the services of the provider of regulated telecommunications services, it may~~
 6 ~~authorize the provider to eliminate or minimize the differential in a fashion that neither increases nor~~
 7 ~~decreases the revenue currently being earned by the provider in providing those services.~~

8 ~~(3) The commission may, in its discretion, require any change in prices required by subsection (2)~~
 9 ~~to be implemented over a transition period not exceeding 3 years.~~

10

11 ~~**NEW SECTION. Section 14. Biennial report on telecommunications.** The commission is directed~~
 12 ~~to prepare a status report, limited to data readily available by the commission, to the governor and the~~
 13 ~~legislature by December 1 of each even-numbered year. The report must include:~~

14 ~~(1) a summary of the implementation of [sections 16 through 22] and this part;~~

15 ~~(2) a summary of the status of competition in the telecommunications industry in Montana,~~
 16 ~~including effects on universal service, rates, technological deployment, and economic development;~~

17 ~~(3) a comparison of Montana's progress in relation to neighboring states and the nation in the~~
 18 ~~development of an affordable advanced telecommunications system necessary to maintain and advance~~
 19 ~~Montana's economic viability in a global economy;~~

20 ~~(4) changes in regulation that can or should be implemented pursuant to the level of competition~~
 21 ~~in the telecommunications industry; and~~

22 ~~(5) recommended changes to Montana law to further the goals of [sections 16 through 22] and this~~
 23 ~~part.~~

24

25 ~~**NEW SECTION. Section 15. Restrictions on resale.** The resale of telecommunications services is~~
 26 ~~subject to the following restrictions:~~

27 ~~(1) Services that are available for resale at a discounted rate do not include carrier access services.~~

28 ~~(2) Resale is limited to retail products and services available to end-user customers. Wholesale~~
 29 ~~services are available only for resale and not predominantly for internal use.~~

30 ~~(3) Consistent with the federal Telecommunications Act of 1996, Public Law 104-104, resale~~

1 ~~between categories of customers is prohibited until any pricing disparity for the same service offered to~~
 2 ~~different categories of customers has been eliminated.~~

3 ~~(4) Any explicit universal service support to a specific category of customers may not be~~
 4 ~~redistributed to another category of customers through resale.~~

5 ~~(5) Lifeline and other means tested services offerings may be resold only to customers who qualify~~
 6 ~~for the service.~~

7

8 ~~**NEW SECTION. Section 16. Interim universal access program purpose.** (1) There is an interim~~
 9 ~~universal access program.~~

10 ~~(2) The purpose of the interim universal access program is to further the goal of universal access~~
 11 ~~to advanced telecommunications services in Montana by:~~

12 ~~(a) increasing safety net coverage through which advanced telecommunications services would,~~
 13 ~~at a minimum, be available through a library, school, or other specified type of public institution in every~~
 14 ~~community in the state;~~

15 ~~(b) encouraging innovation in communities to bring advanced services to Montana's rural areas;~~
 16 ~~and~~

17 ~~(c) assisting communities that have already succeeded in obtaining services when ongoing~~
 18 ~~transport costs threaten the continued availability of those services.~~

19

20 ~~**NEW SECTION. Section 17. Interim universal access program definitions.** As used in (sections~~
 21 ~~16 through 22), the following definitions apply:~~

22 ~~(1) "Administrator" means the public service commission.~~

23 ~~(2) "Advanced services" means high speed (56 kbps and above), dedicated or switched, broadband~~
 24 ~~telecommunications capability that enables users to originate and receive high quality voice, data, graphics,~~
 25 ~~and video telecommunications using any technology.~~

26 ~~(3) "Health care provider" means any one of, or a consortium of, the following institutions located~~
 27 ~~in Montana:~~

28 ~~(a) postsecondary educational institutions offering health care instruction;~~

29 ~~(b) community health care centers or health centers providing health care to migrants;~~

30 ~~(c) local health departments or agencies;~~

1 ~~(d) community mental health centers;~~

2 ~~(e) not-for-profit hospitals; and~~

3 ~~(f) rural health clinics.~~

4 ~~(4) "Library" means a library located in Montana that is eligible for participation in state-based plans~~
 5 ~~for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).~~

6 ~~(5) "School" means:~~

7 ~~(a) an elementary school or secondary school that meets the definition set forth in paragraphs (14)~~
 8 ~~and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20~~
 9 ~~U.S.C. 8801) and that does not have an endowment of more than \$50 million; or~~

10 ~~(b) a bureau of Indian Affairs elementary and secondary school.~~

11 ~~(6) "Tribal college" means a college recognized by the United States government as a tribal college.~~

12
 13 ~~**NEW SECTION. Section 18. Interim universal access program — public access points.** At a~~
 14 ~~minimum, all public access points must provide the general public access to advanced telecommunications~~
 15 ~~services that are not subscription based free of charge and at convenient hours on a walk-in basis. Public~~
 16 ~~access points may offer subscription-based services, such as electronic mail, but are not required to~~
 17 ~~administer those types of services.~~

18
 19 ~~**NEW SECTION. Section 19. Interim universal access program — funded services — application for**~~
 20 ~~**services.** (1) The universal access program provides funding through discounts only for advanced services~~
 21 ~~for use by public access points, schools, tribal colleges, libraries, and health care providers approved by~~
 22 ~~the administrator.~~

23 ~~(2) The first priority of the program is to provide funding for at least one public access point in each~~
 24 ~~Montana community. Subject to available funding, the program shall also provide funding for advanced~~
 25 ~~services to schools, tribal colleges, libraries, and health care providers.~~

26 ~~(3) The administrator shall establish discount levels for services in each of the following categories:~~

27 ~~(a) public access points;~~

28 ~~(b) education services to schools and tribal colleges for distance learning, electronic access to~~
 29 ~~educational resources, and electronic delivery or reception of educational programming;~~

30 ~~(c) library services for libraries not serving as public access points for electronic access to~~

1 ~~information and library services; and~~

2 ~~(d) rural health services to rural health care providers for access to similar services as urban health~~
 3 ~~care providers and to ensure electronic access to health care services.~~

4 ~~(4) To receive discounted services under the interim universal access program, public access~~
 5 ~~providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The~~
 6 ~~application must be accompanied by a resolution of support from the governing body of the appropriate~~
 7 ~~city, county, or tribal government in which the applicant is located.~~

8

9 ~~**NEW SECTION. Section 20. Interim universal access program — services provided at discounts**~~
 10 ~~**— reimbursements.** (1) Telecommunications carriers shall provide advanced services to eligible users at~~
 11 ~~specified discounts. The amount of the discount must be reimbursed to the provider from the interim~~
 12 ~~universal access account established in {section 22}.~~

13 ~~(2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost~~
 14 ~~rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest~~
 15 ~~access point for the requested service. However, the cost to the eligible user may not exceed \$100 a~~
 16 ~~month.~~

17 ~~(3) If funds from the interim universal access account are not sufficient to fully reimburse for~~
 18 ~~discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced~~
 19 ~~proportionally.~~

20 ~~(4) Even if best cost rates available to any business customer increase by more than 5%, the~~
 21 ~~amount payable by an eligible user may not increase by more than 5% during the period from [the effective~~
 22 ~~date of this section] to January 1, 2000.~~

23 ~~(5) Subject to restrictions in federal law, if interstate universal access services are established by~~
 24 ~~the federal communications commission, federal funding for universal access services must be used to~~
 25 ~~reduce state funding for intrastate services.~~

26

27 ~~**NEW SECTION. Section 21. Interim universal access program — funding — surcharge rate.** (1) (a)~~
 28 ~~The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate~~
 29 ~~telecommunications services in the state. The surcharge must be determined by the administrator by rule.~~
 30 ~~The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis.~~

1 ~~(b) The rate of the surcharge must be set to raise \$500,000 during the fiscal year ending June 30,~~
 2 ~~1998, and \$1 million during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as~~
 3 ~~necessary.~~

4 ~~(c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item~~
 5 ~~on each carrier's retail telecommunications services bills.~~

6 ~~(d) The surcharge may be applied only to telecommunications services. Customer premise~~
 7 ~~equipment is not considered a telecommunications service.~~

8 ~~(2) The surcharge is payable quarterly to the department of revenue and deposited by the~~
 9 ~~department in the interim universal access account established in [section 22]. The department may by~~
 10 ~~rule:~~

11 ~~(a) establish the form of a reporting statement to be filed by telecommunications carriers subject~~
 12 ~~to the surcharge;~~

13 ~~(b) set the date after the end of a fiscal quarter that the quarterly payment must be made;~~

14 ~~(c) provide for recordkeeping by telecommunications providers subject to the surcharge; and~~

15 ~~(d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted~~
 16 ~~services to be reimbursed, and to pay refunds of overpayment of the surcharge.~~

17 ~~(3) (a) The collection of a surcharge under this section is subject to:~~

18 ~~(i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;~~

19 ~~(ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;~~

20 ~~(iii) the estimation of tax on failure to file a statement of provisions of 15-53-112;~~

21 ~~(iv) the warrant for distraint provisions of 15-53-113; and~~

22 ~~(v) the statute of limitations provisions of 15-53-115.~~

23 ~~(b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section~~
 24 ~~of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this~~
 25 ~~section.~~

26
 27 ~~NEW SECTION. Section 22. Interim universal access program account. An interim universal~~
 28 ~~access account is established in the state special revenue fund in the state treasury. All money received~~
 29 ~~by the department of revenue pursuant to [section 21] must be paid to the state treasurer for deposit in~~
 30 ~~the account. After payment of refunds, the balance of the account must be used for the purposes~~

1 ~~described in {section 20}.~~

2

3 ~~NEW SECTION. Section 23. Commission to make recommendations on universal access and~~
 4 ~~service. The public service commission shall examine and make recommendations to the 56th legislature~~
 5 ~~on universal access and service. The commission shall:~~

6 ~~(1) review the impact on universal access and service in Montana of any federal universal service~~
 7 ~~fund that results from current federal communications rulemaking under the federal Telecommunications~~
 8 ~~Act of 1996;~~

9 ~~(2) evaluate the extent to which the federal universal service fund falls short of supporting~~
 10 ~~legislatively defined universal access and service goals in Montana; and~~

11 ~~(3) develop plans and propose legislation for the establishment of a state universal service fund~~
 12 ~~that would ensure the attainment of those goals.~~

13

14 NEW SECTION. SECTION 11. UNIVERSAL SERVICE POLICIES. THE LEGISLATURE FINDS THAT
 15 UNIVERSALLY AVAILABLE TELECOMMUNICATIONS SERVICES ARE ESSENTIAL TO THE HEALTH,
 16 WELFARE, AND ECONOMIC WELL-BEING OF THE CITIZENS OF MONTANA. THE FEDERAL
 17 TELECOMMUNICATIONS ACT OF 1996, PUBLIC LAW 104-104, REQUIRES A TRANSITION TO LOCAL
 18 COMPETITION. IMPLICIT SUBSIDIES HAVE HISTORICALLY BEEN USED TO FURTHER THE PUBLIC POLICY
 19 OF KEEPING LOCAL RATES TO CUSTOMERS IN HIGH-COST AREAS AT AFFORDABLE LEVELS. THE
 20 FEDERAL ACT AND THE TRANSITION TO COMPETITION REQUIRE THAT ALL SUBSIDIES USED TO KEEP
 21 LOCAL RATES AT AFFORDABLE LEVELS BE EXPLICIT. ADDITIONALLY, THE FEDERAL ACT'S UNIVERSAL
 22 SERVICE PROVISIONS ESTABLISH A SYSTEM OF DISCOUNTS FOR SCHOOLS, LIBRARIES, AND HEALTH
 23 CARE PROVIDERS. SECURING THESE DISCOUNTS CAN BE DEPENDENT ON STATE ACTIONS. IN ORDER
 24 TO PRESERVE AND ADVANCE THE GOAL OF UNIVERSAL SERVICE IN THE NEW COMPETITIVE
 25 ENVIRONMENT ESTABLISHED BY THE FEDERAL ACT, THE LEGISLATURE FINDS THAT A NEW MONTANA
 26 UNIVERSAL SERVICE FUND, SUPPORTED BY CONTRIBUTIONS FROM THE TELECOMMUNICATIONS
 27 CARRIERS OPERATING IN MONTANA, SHOULD BE CREATED THAT WILL:

28 (1) NOT DUPLICATE THE FEDERAL UNIVERSAL SERVICE FUND MANDATED BY THE
 29 TELECOMMUNICATIONS ACT OF 1996 BUT THAT WILL COMPLEMENT THE FEDERAL FUND BY
 30 PROVIDING ADDITIONAL FUNDING AS NECESSARY TO ENSURE UNIVERSAL SERVICE IN THE STATE OF

1 MONTANA;

2 (2) BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL IN BOTH FUNDING AND
3 DISTRIBUTION;

4 (3) PROVIDE A SPECIFIC, PREDICTABLE, AND SUFFICIENT MECHANISM OF SUPPORT FOR
5 HIGH-COST AREAS; AND

6 (4) ALLOW FOR IMPLEMENTATION OF THE FEDERAL SUPPORT SYSTEM FOR
7 TELECOMMUNICATIONS SERVICES PROVIDED TO SCHOOLS, LIBRARIES, AND HEALTH CARE
8 PROVIDERS.

9

10 NEW SECTION. SECTION 12. UNIVERSAL SERVICE FUND ESTABLISHED -- PURPOSE. (1)
11 PURSUANT TO A DETERMINATION OF NEED, THE COMMISSION SHALL ESTABLISH AND ADMINISTER
12 A FUND TO ASSIST ELIGIBLE TELECOMMUNICATIONS CARRIERS IN PROVIDING AFFORDABLE
13 TELECOMMUNICATIONS SERVICES IN HIGH-COST AREAS. THE FUND MUST PROVIDE SUPPORT FOR
14 THE FOLLOWING SERVICES:

15 (A) VOICE GRADE ACCESS TO THE PUBLIC SWITCHED NETWORK, INCLUDING SOME USAGE;

16 (B) DUAL-TONE MULTIFREQUENCY (DTMF OR "TOUCH TONE") SIGNALING OR ITS EQUIVALENT;

17 (C) SINGLE-PARTY SERVICE;

18 (D) ACCESS TO EMERGENCY SERVICES, INCLUDING ACCESS TO 9-1-1, WHERE AVAILABLE,
19 AND ACCESS TO ENHANCED 9-1-1 WHEN REQUESTED BY A TELECOMMUNICATIONS CARRIER'S LOCAL
20 COMMUNITY AND WHEN THE TELECOMMUNICATIONS CARRIER HAS TECHNICAL CAPACITY TO
21 PROVIDE IT;

22 (E) ACCESS TO OPERATOR SERVICES;

23 (F) ACCESS TO INTEREXCHANGE SERVICES; AND

24 (G) ACCESS TO DIRECTORY ASSISTANCE.

25 (2) THE FUND MUST SUPPORT ONLY ACCESS TO THE SERVICES LISTED IN SUBSECTIONS (1)(D)
26 THROUGH (1)(G) AND NOT SUPPORT THE SERVICES THEMSELVES.

27 (3) THE FUND MUST BE ADMINISTERED TO ENSURE THAT ITS OPERATION IS COMPETITIVELY
28 AND TECHNOLOGICALLY NEUTRAL.

29

30 NEW SECTION. SECTION 13. FUND ADMINISTRATOR. (1) A FISCAL AGENT AND DAILY

1 ADMINISTRATOR MUST BE SELECTED TO RECEIVE AND DISTRIBUTE FUNDS UNDER [SECTIONS 11
 2 THROUGH 15].

3 (2) THE FISCAL AGENT MUST BE SELECTED BY THE COMMISSION BASED UPON A
 4 COMPETITIVE BIDDING PROCESS AFTER AN OPPORTUNITY FOR PUBLIC COMMENT ON THE SPECIFIC
 5 QUALIFICATIONS REQUIRED OF THE FISCAL AGENT. A TELECOMMUNICATIONS CARRIER IS NOT
 6 ELIGIBLE TO BE THE FISCAL AGENT. THE DUTIES OF THE FISCAL AGENT MUST BE DETERMINED BY
 7 A CONTRACT CONSISTENT WITH [SECTIONS 11 THROUGH 15]. THE CONTRACT TERM OF THE FISCAL
 8 AGENT MUST EXPIRE DECEMBER 31, 1999.

9 (3) THE FISCAL AGENT SHALL PROVIDE QUARTERLY REPORTS OF FUND ACTIVITIES TO THE
 10 COMMISSION AND SHALL PROVIDE AUDITS ANNUALLY BY A CERTIFIED PUBLIC ACCOUNTANT IN A
 11 MANNER DETERMINED BY AND UNDER THE DIRECTION OF THE COMMISSION.

12 (4) THE FINANCIAL ACCOUNTS OF THE FISCAL AGENT MUST BE AVAILABLE AT REASONABLE
 13 TIMES TO ANY TELECOMMUNICATIONS CARRIER IN THE STATE AND TO THE PUBLIC. THE
 14 COMMISSION MAY INVESTIGATE THE ACCOUNTS AND PRACTICES OF THE FISCAL AGENT AND ENTER
 15 ORDERS CONCERNING THE ACCOUNTS AND PRACTICES.

16
 17 NEW SECTION. SECTION 14. CONTRIBUTIONS TO FUND. (1) THE FISCAL AGENT SHALL
 18 COLLECT CONTRIBUTIONS FROM ALL TELECOMMUNICATIONS CARRIERS ON A QUARTERLY BASIS,
 19 BASED ON A JULY 1 TO JUNE 30 FISCAL YEAR. INITIAL CONTRIBUTIONS TO THE FUND MAY ONLY
 20 BE COLLECTED FOR THE 2-MONTH PERIOD PRIOR TO THE EFFECTIVE DATE OF DISTRIBUTIONS FROM
 21 THE FUND AND MUST BE CALCULATED AS FOLLOWS:

22 (A) DETERMINE THE TOTAL RETAIL REVENUE FOR ALL TELECOMMUNICATIONS CARRIERS FOR
 23 THE IMMEDIATELY PRECEDING CALENDAR YEAR;

24 (B) DETERMINE THE TOTAL FUNDS NEEDED FOR DISTRIBUTIONS IN THE NEXT FISCAL YEAR
 25 AS AUTHORIZED PURSUANT TO [SECTION 15];

26 (C) COMPUTE A UNIFORM PERCENTAGE OF THE AMOUNT DETERMINED IN SUBSECTION (1)(A)
 27 THAT WILL PRODUCE AN AMOUNT EQUAL TO THE FUND TOTAL CALCULATED IN SUBSECTION (1)(B);

28 (D) ADJUST THE PERCENTAGE MULTIPLIER COMPUTED IN SUBSECTION (1)(C) TO RECOVER
 29 OR REIMBURSE ANY FUND SHORTFALLS OR EXCESSES IN THE PREVIOUS FISCAL YEAR; AND

30 (E) SEND NOTICE OF THE CURRENT UNIFORM PERCENTAGE AND APPROPRIATE REMITTANCE

1 FORMS TO EACH TELECOMMUNICATIONS CARRIER AT LEAST 2 MONTHS PRIOR TO THE EFFECTIVE
2 DATE OF THE APPLICATION OF THE PERCENTAGE.

3 (2) THE COMMISSION SHALL ADOPT PROCEDURAL RULES TO GOVERN COLLECTION OF THE
4 CONTRIBUTIONS REQUIRED BY THIS SECTION, AS WELL AS RULES ALLOWING THE FISCAL AGENT AND
5 DAILY ADMINISTRATOR TO ASSESS LATE FEES AND INTEREST ON DELINQUENT PAYMENTS FROM
6 TELECOMMUNICATIONS CARRIERS. THE FISCAL AGENT IS SPECIFICALLY AUTHORIZED TO ENFORCE
7 THE CONTRIBUTION REQUIREMENTS OF THIS SECTION THROUGH SUIT IN THE DISTRICT COURTS OF
8 MONTANA.

9 (3) ANY REDUCTION IN TELECOMMUNICATIONS CARRIER ACCESS EXPENSES BECAUSE OF THE
10 REMOVAL OF IMPLICIT SUBSIDIES INHERENT IN TELECOMMUNICATIONS CARRIER ACCESS RATES
11 MUST BE DIRECTLY PASSED THROUGH TO MONTANA END-USER CUSTOMERS BY A REDUCTION IN
12 CORRESPONDING CUSTOMER RETAIL RATES.

13
14 NEW SECTION. SECTION 15. DISTRIBUTIONS FROM FUND -- CALCULATION OF COSTS. (1)
15 SUBJECT TO THE REQUIREMENTS OF THIS SECTION, PAYMENTS FROM THE FUND MUST BE MADE BY
16 THE FISCAL AGENT TO QUALIFYING ELIGIBLE TELECOMMUNICATIONS CARRIERS, ON A MONTHLY
17 BASIS, PURSUANT TO RULES ADOPTED BY THE COMMISSION.

18 (2) ONLY ELIGIBLE TELECOMMUNICATIONS CARRIERS THAT OFFER THE
19 TELECOMMUNICATIONS SERVICES DESCRIBED IN [SECTION 12(1)] TO ALL CUSTOMERS IN A
20 DESIGNATED SUPPORT AREA AND THAT ADVERTISE THE AVAILABILITY OF THE
21 TELECOMMUNICATIONS SERVICES AND THE CHARGES FOR THE TELECOMMUNICATIONS SERVICES
22 USING MEDIA OF GENERAL DISTRIBUTION MAY RECEIVE SUPPORT FROM THE FUND FOR THE
23 DESIGNATED SUPPORT AREA.

24 (3) DISTRIBUTIONS MUST BE CALCULATED FOR THE DESIGNATED SUPPORT AREAS
25 ESTABLISHED BY THE COMMISSION. IN THE CASE OF AN AREA SERVED BY A RURAL TELEPHONE
26 COMPANY, THE TERM "DESIGNATED SUPPORT AREA" MEANS THE RURAL TELEPHONE COMPANY'S
27 MONTANA SERVICE AREA UNLESS THE RURAL TELEPHONE COMPANY VOLUNTARILY ADOPTS A
28 PROXY MODEL FOR THE CALCULATION OF THE RURAL TELEPHONE COMPANY'S COST OF
29 TELECOMMUNICATIONS SERVICES UNDER SUBSECTION (6). AFTER ADOPTION OF A PROXY MODEL,
30 THE RURAL TELEPHONE COMPANY'S DESIGNATED SUPPORT AREA MUST BE AN AREA DESIGNATED

1 BY THE COMMISSION, WHICH MAY BE SMALLER THAN A WIRE CENTER. THE TERM DESIGNATED
2 SUPPORT AREA FOR ALL OTHER TELECOMMUNICATIONS CARRIERS MEANS A GEOGRAPHIC AREA AS
3 ESTABLISHED BY THE COMMISSION, WHICH MUST BE SMALLER THAN A WIRE CENTER.

4 (4) SUPPORT FOR THE SERVICES LISTED IN [SECTION 12(1)] MUST BE CALCULATED AS THE
5 DIFFERENCE BETWEEN THE COSTS DETERMINED IN EACH DESIGNATED SUPPORT AREA AND THE
6 AFFORDABILITY BENCHMARK IN THAT SUPPORT AREA. THE COMMISSION SHALL ADOPT RULES TO
7 DETERMINE AFFORDABILITY BENCHMARKS.

8 (5) EXCEPT AS PROVIDED IN SUBSECTION (6), FOR RURAL TELEPHONE COMPANIES AND
9 OTHER ELIGIBLE TELECOMMUNICATIONS CARRIERS OFFERING SERVICES IN A DESIGNATED SUPPORT
10 AREA SERVED BY A RURAL TELEPHONE COMPANY, THE AVERAGE COST FOR EACH LINE MUST BE
11 CALCULATED AND SUBMITTED, BASED ON THE PRECEDING CALENDAR YEAR, TO THE FISCAL AGENT
12 AS FOLLOWS:

13 (A) IF AN ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER HAS NOT BEEN DESIGNATED
14 PURSUANT TO [SECTION 10(3)], THE RURAL TELEPHONE COMPANY'S TOTAL UNSEPARATED LOOP
15 COST, AS DEFINED BY FEDERAL SEPARATION RULE METHODOLOGY IN EFFECT ON DECEMBER 31,
16 1996, MUST BE ADDED TO THE SWITCHING COSTS, LOCAL TRANSPORT COSTS, AND CUSTOMER
17 OPERATIONS COSTS ASSIGNED TO THE TELECOMMUNICATIONS SERVICES SET FORTH IN [SECTION
18 12(1)], WHICH MUST BE CALCULATED USING THE METHODOLOGY SET FORTH IN FEDERAL
19 COMMUNICATIONS COMMISSION JURISDICTIONAL SEPARATION RULES IN EFFECT AS OF DECEMBER
20 31 OF EACH CALENDAR YEAR. THIS TOTAL COST MUST BE REDUCED BY ANY FEDERAL UNIVERSAL
21 SERVICE SUPPORT, INTERSTATE ALLOCATION OF LOOP COSTS CHARGED TO LONG-DISTANCE
22 COMPANIES, AND LOOP COSTS RECOVERED THROUGH INTRASTATE TELECOMMUNICATIONS CARRIER
23 COMMON LINE CHARGES TO LONG-DISTANCE COMPANIES.

24 (B) UPON THE DESIGNATION OF AN ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER
25 PURSUANT TO [SECTION 10(3)] IN A DESIGNATED SUPPORT AREA SERVED BY A RURAL TELEPHONE
26 COMPANY, THE ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER HAS ACCESS TO THE FUND
27 ON THE SAME BASIS AS THE RURAL TELEPHONE COMPANY. UPON THE DESIGNATION OF THE
28 ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER, BOTH THE CARRIER AND THE RURAL
29 TELEPHONE COMPANY MUST RECEIVE DISTRIBUTIONS FROM THE FUND BASED UPON THE RURAL
30 TELEPHONE COMPANY'S AVERAGE COST FOR EACH LINE DISAGGREGATED TO GEOGRAPHIC AREAS

1 SMALLER THAN A WIRE CENTER. THE SUPPORT FOR EACH LINE FOR EACH GEOGRAPHIC AREA MUST
2 BE BASED UPON THE RURAL TELEPHONE COMPANY'S COSTS, AS DETERMINED IN SUBSECTION (5)(A),
3 DISTRIBUTED TO EACH OF THE GEOGRAPHIC AREAS ON THE BASIS OF RELATIVE DISTRIBUTION
4 FACTORS ESTABLISHED BY A COST PROXY MODEL ADOPTED BY THE COMMISSION.

5 (6) EXCEPT AS PROVIDED IN SUBSECTION (5)(B), FOR COMPANIES THAT ARE NOT RURAL
6 TELEPHONE COMPANIES AND FOR RURAL TELEPHONE COMPANIES VOLUNTARILY ELECTING TO USE
7 A COST PROXY MODEL, THE AVERAGE COST FOR EACH LINE IN DESIGNATED SUPPORT AREAS MUST
8 BE CALCULATED BASED ON THE COST PROXY MODEL ADOPTED BY THE COMMISSION. THIS TOTAL
9 PER-LINE COST MUST BE REDUCED BY ANY FEDERAL UNIVERSAL SERVICE SUPPORT, INTERSTATE
10 ALLOCATION OF LOOP COSTS CHARGED TO LONG-DISTANCE COMPANIES, AND LOOP COSTS
11 RECOVERED THROUGH INTRASTATE TELECOMMUNICATIONS CARRIER COMMON LINE CHARGES TO
12 LONG-DISTANCE COMPANIES.

13 (7) IN DETERMINING ANY PROXY MECHANISM UNDER THIS SECTION, THE COMMISSION SHALL
14 USE A MODEL THAT:

15 (A) TARGETS SUPPORT TO A GEOGRAPHIC AREA SMALLER THAN A WIRE CENTER;

16 (B) USES ACCEPTABLE OUTSIDE PLANT DESIGN AND COSTING PRINCIPLES;

17 (C) USES REASONABLE SWITCH DESIGN AND COSTING PRINCIPLES;

18 (D) INCLUDES A REASONABLE SHARE OF THE JOINT AND COMMON COSTS OF THE
19 TELECOMMUNICATIONS CARRIER;

20 (E) MEETS STANDARDS FOR DOCUMENTING MODEL LOGIC AND THE SOURCES OF COST DATA
21 INPUT; AND

22 (F) MEETS REASONABLENESS TESTS TO ENSURE THAT MODEL OUTPUTS ARE
23 REPRESENTATIVE OF COSTS THAT CAN BE REASONABLY EXPECTED IN THE CONSTRUCTION OF A
24 NETWORK AND THAT THE NETWORK IS CAPABLE OF PROVIDING TELECOMMUNICATIONS SERVICES
25 THAT MEET THE TELECOMMUNICATIONS SERVICES QUALITY STANDARDS OF THE COMMISSION AND
26 FEDERAL REGULATORS.

27 (8) AN ELIGIBLE TELECOMMUNICATIONS CARRIER PROVIDING TELECOMMUNICATIONS
28 SERVICES THROUGH RESALE OF ANOTHER TELECOMMUNICATIONS CARRIER'S
29 TELECOMMUNICATIONS SERVICES OR FACILITIES MAY NOT RECEIVE SUPPORT FOR THOSE
30 TELECOMMUNICATIONS SERVICES OR FACILITIES IF THE RATES CHARGED TO AN ELIGIBLE

1 TELECOMMUNICATIONS CARRIER BY THE OTHER TELECOMMUNICATIONS CARRIER INCLUDE HAVE
 2 BEEN REDUCED BY A CONTRIBUTION FOR FROM UNIVERSAL SERVICE FUNDS UNDER THIS SECTION.
 3 (9) COSTS OF ADMINISTERING THE FUND MUST BE PAID FROM THE FUND.

4
 5 NEW SECTION. SECTION 16. DISCOUNTS FOR SCHOOLS, LIBRARIES, AND HEALTH CARE
 6 PROVIDERS. THE COMMISSION IS AUTHORIZED TO ESTABLISH INTRASTATE DISCOUNTS TO SCHOOLS,
 7 LIBRARIES, AND HEALTH CARE PROVIDERS AND TO PERFORM ADMINISTRATIVE FUNCTIONS
 8 NECESSARY AS A CONDITION OF FEDERAL UNIVERSAL SERVICE SUPPORT IF THE DISCOUNTS ARE
 9 RECOVERED THROUGH THE FEDERAL UNIVERSAL SERVICE FUND.

10
 11 NEW SECTION. SECTION 17. WHOLESALE PRICING STANDARDS. IF (1) EXCEPT AS PROVIDED
 12 IN SUBSECTION (2), IF THE COMMISSION IS REQUESTED BY A TELECOMMUNICATIONS CARRIER TO
 13 ESTABLISH WHOLESALE PRICES FOR SERVICES PROVIDED BY A TELECOMMUNICATIONS CARRIER, THE
 14 COMMISSION MAY NOT ESTABLISH A WHOLESALE PRICE USING A STANDARDIZED OR DEFAULT
 15 PROXY DISCOUNT VALUE TO BE APPLIED TO THE APPLICABLE RETAIL PRICE. THE COMMISSION SHALL
 16 ESTABLISH WHOLESALE PRICES USING COMPANY-SPECIFIC COSTS.

17 (2) THIS SECTION DOES NOT APPLY TO THE PRICES, TERMS, AND CONDITIONS OF A FINAL
 18 OR INTERIM ARBITRATED INTERCONNECTION AGREEMENT, ARBITRATION DECISION, OR APPEAL FROM
 19 AN AGREEMENT OR DECISION IF THE REQUEST FOR ARBITRATION WAS FILED ON OR BEFORE MARCH
 20 1, 1997.

21
 22 NEW SECTION. SECTION 18. PRICING OF INDIVIDUAL NETWORK ELEMENTS. (1) IF EXCEPT
 23 AS PROVIDED IN SUBSECTION (4), IF THE COMMISSION IS REQUESTED BY A TELECOMMUNICATIONS
 24 CARRIER TO ESTABLISH THE PRICES OF THE INDIVIDUAL NETWORK ELEMENTS USED TO PROVIDE
 25 TELECOMMUNICATIONS SERVICES, THE COMMISSION SHALL SET THOSE PRICES AT A JUST AND
 26 REASONABLE LEVEL SUFFICIENT TO RECOVER THE ACTUAL COST OF PROVIDING THOSE ELEMENTS,
 27 INCLUDING:

28 (A) A REASONABLE SHARE OF THE JOINT AND COMMON COSTS SO THAT THE
 29 TELECOMMUNICATIONS CARRIER HAS A REASONABLE OPPORTUNITY TO RECOVER THESE COSTS IN
 30 TOTAL;

1 (B) DEPRECIATION COSTS THAT ARE BASED UPON FORWARD-LOOKING ASSET LIVES
 2 CONSISTENT WITH ASSET LIVES OF OTHER TELECOMMUNICATIONS CARRIERS AND THAT REFLECT
 3 AN AMORTIZATION OF ANY UNDERDEPRECIATED INVESTMENT;

4 (C) A REASONABLE SHARE OF THE COSTS ASSOCIATED WITH FILL FACTORS THAT RECOGNIZE
 5 THE, RECOGNIZING SPARE CAPACITY REQUIRED TO FULFILL ELIGIBLE TELECOMMUNICATIONS CARRIER
 6 RESPONSIBILITIES; AND

7 (D) A FAIR RETURN ON INVESTMENTS.

8 (2) THE ACTUAL COST OF PROVIDING THE ELEMENTS INCLUDED IN SUBSECTIONS (1)(A)
 9 THROUGH (1)(D) MUST BE DETERMINED WITHOUT REFERENCE TO A RATE-OF-RETURN OR OTHER
 10 RATE-BASED PROCEEDING.

11 ~~(2)~~(3) IF A TELECOMMUNICATIONS CARRIER USES AVERAGE PRICES FOR SERVICES TO END
 12 USERS WITHOUT REGARD TO THE CUSTOMER'S LOCATION, THE COMMISSION SHALL SIMILARLY
 13 ESTABLISH AN AVERAGE COST AND WHOLESAL PRICE FOR EACH INDIVIDUAL NETWORK ELEMENT
 14 SOLD TO OTHER TELECOMMUNICATIONS CARRIERS. THE COMMISSION MAY DEPART FROM AVERAGE
 15 PRICING FOR NETWORK ELEMENTS ONLY TO THE EXTENT THAT THE RETAIL PRICES TO END USERS
 16 OF A TELECOMMUNICATIONS CARRIER HAVE DEPARTED FROM AVERAGE PRICING.

17 (4) THIS SECTIONS DOES NOT APPLY TO THE PRICES, TERMS, AND CONDITIONS OF A FINAL
 18 OR INTERIM ARBITRATED INTERCONNECTION AGREEMENT, ARBITRATION DECISION, OR APPEAL FROM
 19 AN AGREEMENT OR DECISION IF THE REQUEST FOR ARBITRATION WAS FILED ON OR BEFORE MARCH
 20 1, 1997.

21
 22 NEW SECTION. SECTION 19. PROHIBITED SUBSIDIES. THE COMMISSION MAY NOT SUBSIDIZE
 23 THE PRICE OF ANY TELECOMMUNICATIONS SERVICE, INCLUDING WHOLESAL PRICES OR THE PRICES
 24 OF INDIVIDUAL NETWORK ELEMENTS, BY REDUCING THE PRICES TO REFLECT AN ALLOCATION OR
 25 CREDIT OF REVENUE FROM THE OPERATIONS OF AN AFFILIATED COMPANY OF THE CARRIER OF
 26 TELECOMMUNICATIONS SERVICES, INCLUDING A PUBLISHING AFFILIATE.

27
 28 NEW SECTION. SECTION 20. INTERIM UNIVERSAL ACCESS PROGRAM -- PURPOSE. (1) THERE
 29 IS AN INTERIM UNIVERSAL ACCESS PROGRAM.

30 (2) THE PURPOSE OF THE INTERIM UNIVERSAL ACCESS PROGRAM IS TO FURTHER THE GOAL

1 OF UNIVERSAL ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES IN MONTANA BY:

2 (A) INCREASING SAFETY NET COVERAGE THROUGH WHICH ADVANCED
3 TELECOMMUNICATIONS SERVICES WOULD, AT A MINIMUM, BE AVAILABLE THROUGH A LIBRARY,
4 SCHOOL, OR OTHER SPECIFIED TYPE OF PUBLIC INSTITUTION IN EVERY COMMUNITY IN THE STATE;

5 (B) ENCOURAGING INNOVATION IN COMMUNITIES TO BRING ADVANCED SERVICES TO
6 MONTANA'S RURAL AREAS; AND

7 (C) ASSISTING COMMUNITIES THAT HAVE ALREADY SUCCEEDED IN OBTAINING SERVICES
8 WHEN ONGOING TRANSPORT COSTS THREATEN THE CONTINUED AVAILABILITY OF THESE SERVICES.

9
10 NEW SECTION. SECTION 21. INTERIM UNIVERSAL ACCESS PROGRAM -- DEFINITIONS. AS
11 USED IN [SECTIONS 20 THROUGH 27], THE FOLLOWING DEFINITIONS APPLY:

12 (1) "ADMINISTRATOR" MEANS THE PUBLIC SERVICE COMMISSION.

13 (2) "ADVANCED SERVICES" MEANS HIGH-SPEED (56 Kbps AND ABOVE), DEDICATED OR
14 SWITCHED, BROADBAND TELECOMMUNICATIONS CAPABILITY THAT ENABLES USERS TO ORIGINATE
15 AND RECEIVE HIGH-QUALITY VOICE, DATA, GRAPHICS, AND VIDEO TELECOMMUNICATIONS USING
16 ANY TECHNOLOGY.

17 (3) "HEALTH CARE PROVIDER" MEANS ANY ONE OF, OR A CONSORTIUM OF, THE FOLLOWING
18 INSTITUTIONS LOCATED IN MONTANA:

19 (A) POSTSECONDARY EDUCATIONAL INSTITUTIONS OFFERING HEALTH CARE INSTRUCTION;

20 (B) COMMUNITY HEALTH CARE CENTERS OR HEALTH CENTERS PROVIDING HEALTH CARE TO
21 MIGRANTS;

22 (C) LOCAL HEALTH DEPARTMENTS OR AGENCIES;

23 (D) COMMUNITY MENTAL HEALTH CENTERS;

24 (E) NOT-FOR-PROFIT HOSPITALS; AND

25 (F) RURAL HEALTH CLINICS.

26 (4) "LIBRARY" MEANS A LIBRARY LOCATED IN MONTANA THAT IS ELIGIBLE FOR
27 PARTICIPATION IN STATE-BASED PLANS FOR FUNDS UNDER TITLE III OF THE LIBRARY SERVICES AND
28 CONSTRUCTION ACT (20 U.S.C. 335C, ET SEQ.).

29 (5) "SCHOOL" MEANS:

30 (A) AN ELEMENTARY SCHOOL OR SECONDARY SCHOOL THAT MEETS THE DEFINITION SET

1 FORTH IN SUBSECTIONS (14) AND (25), RESPECTIVELY, OF SECTION 14101 OF THE ELEMENTARY AND
 2 SECONDARY EDUCATION ACT OF 1965 (20 U.S.C. 8801) AND THAT DOES NOT HAVE AN
 3 ENDOWMENT OF MORE THAN \$50 MILLION; OR

4 (B) A BUREAU OF INDIAN AFFAIRS ELEMENTARY AND SECONDARY SCHOOL.

5 (6) "TRIBAL COLLEGE" MEANS A COLLEGE RECOGNIZED BY THE UNITED STATES GOVERNMENT
 6 AS A TRIBAL COLLEGE.

7
 8 NEW SECTION. SECTION 22. INTERIM UNIVERSAL ACCESS PROGRAM -- PUBLIC ACCESS
 9 POINTS. AT A MINIMUM, ALL PUBLIC ACCESS POINTS MUST PROVIDE THE GENERAL PUBLIC ACCESS
 10 TO ADVANCED TELECOMMUNICATIONS SERVICES THAT ARE NOT SUBSCRIPTION-BASED. THE ACCESS
 11 MUST BE PROVIDED FREE OF CHARGE AND AT CONVENIENT HOURS ON A WALK-IN BASIS. PUBLIC
 12 ACCESS POINTS MAY OFFER SUBSCRIPTION- BASED SERVICES, SUCH AS ELECTRONIC MAIL, BUT ARE
 13 NOT REQUIRED TO ADMINISTER THESE TYPES OF SERVICES.

14
 15 NEW SECTION. SECTION 23. INTERIM UNIVERSAL ACCESS PROGRAM -- FUNDED SERVICES
 16 -- APPLICATION FOR SERVICES. (1) THE UNIVERSAL ACCESS PROGRAM PROVIDES FUNDING
 17 THROUGH DISCOUNTS ONLY FOR ADVANCED SERVICES FOR USE BY PUBLIC ACCESS POINTS,
 18 SCHOOLS, TRIBAL COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS APPROVED BY THE
 19 ADMINISTRATOR.

20 (2) THE FIRST PRIORITY OF THE PROGRAM IS TO PROVIDE FUNDING FOR AT LEAST ONE
 21 PUBLIC ACCESS POINT IN EACH MONTANA COMMUNITY. SUBJECT TO AVAILABLE FUNDING, THE
 22 PROGRAM SHALL ALSO PROVIDE FUNDING FOR ADVANCED SERVICES TO SCHOOLS, TRIBAL
 23 COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS.

24 (3) THE ADMINISTRATOR SHALL ESTABLISH DISCOUNT LEVELS FOR SERVICES IN EACH OF THE
 25 FOLLOWING CATEGORIES:

26 (A) PUBLIC ACCESS POINTS;

27 (B) EDUCATION SERVICES TO SCHOOLS AND TRIBAL COLLEGES FOR DISTANCE LEARNING,
 28 ELECTRONIC ACCESS TO EDUCATIONAL RESOURCES, AND ELECTRONIC DELIVERY OR RECEPTION OF
 29 EDUCATIONAL PROGRAMMING;

30 (C) LIBRARY SERVICES FOR LIBRARIES NOT SERVING AS PUBLIC ACCESS POINTS FOR

1 ELECTRONIC ACCESS TO INFORMATION AND LIBRARY SERVICES; AND

2 (D) RURAL HEALTH SERVICES TO RURAL HEALTH CARE PROVIDERS FOR ACCESS TO SIMILAR
 3 SERVICES AS URBAN HEALTH CARE PROVIDERS AND TO ENSURE ELECTRONIC ACCESS TO HEALTH
 4 CARE SERVICES.

5 (4) TO RECEIVE DISCOUNTED SERVICES UNDER THE INTERIM UNIVERSAL ACCESS PROGRAM,
 6 PUBLIC ACCESS PROVIDERS, SCHOOLS, TRIBAL COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS
 7 SHALL APPLY FOR THE DISCOUNTS. THE APPLICATION MUST BE ACCOMPANIED BY A RESOLUTION
 8 OF SUPPORT FROM THE GOVERNING BODY OF THE APPROPRIATE CITY, COUNTY, OR TRIBAL
 9 GOVERNMENT IN WHICH THE APPLICANT IS LOCATED.

10
 11 **NEW SECTION. SECTION 24. INTERIM UNIVERSAL ACCESS PROGRAM -- SERVICES PROVIDED**
 12 **AT DISCOUNTS -- REIMBURSEMENTS. (1) TELECOMMUNICATIONS CARRIERS SHALL PROVIDE**
 13 **ADVANCED SERVICES TO ELIGIBLE USERS AT SPECIFIED DISCOUNTS. THE AMOUNT OF THE**
 14 **DISCOUNT MUST BE REIMBURSED TO THE PROVIDER FROM THE INTERIM UNIVERSAL ACCESS**
 15 **ACCOUNT ESTABLISHED IN [SECTION 26].**

16 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THE ADVANCED DISCOUNT IS EQUAL TO 50%
 17 OF THE BEST COST RATE AVAILABLE TO ANY BUSINESS CUSTOMER FOR AN EQUIVALENT OF ONE 56
 18 KBPS DEDICATED CIRCUIT TO THE NEAREST ACCESS POINT FOR THE REQUESTED SERVICE. HOWEVER,
 19 THE COST TO THE ELIGIBLE USER MAY NOT EXCEED \$100 A MONTH.

20 (3) IF FUNDS FROM THE INTERIM UNIVERSAL ACCESS ACCOUNT ARE NOT SUFFICIENT TO
 21 FULLY REIMBURSE FOR DISCOUNTS AUTHORIZED IN SUBSECTION (2), THE AMOUNT OF THE
 22 DISCOUNTS TO EACH ELIGIBLE USER MUST BE REDUCED PROPORTIONALLY.

23 (4) EVEN IF BEST COST RATES AVAILABLE TO ANY BUSINESS CUSTOMER INCREASE BY MORE
 24 THAN 5%, THE AMOUNT PAYABLE BY AN ELIGIBLE USER MAY NOT INCREASE BY MORE THAN 5%
 25 DURING THE PERIOD FROM [THE EFFECTIVE DATE OF THIS SECTION] TO JANUARY 1, 2000.

26 (5) SUBJECT TO RESTRICTIONS IN FEDERAL LAW, IF INTERSTATE UNIVERSAL ACCESS
 27 SERVICES ARE ESTABLISHED BY THE FEDERAL COMMUNICATIONS COMMISSION, FEDERAL FUNDING
 28 FOR UNIVERSAL ACCESS SERVICES MUST BE USED TO REDUCE STATE FUNDING FOR INTRASTATE
 29 SERVICES.

30

1 NEW SECTION. SECTION 25. INTERIM UNIVERSAL ACCESS PROGRAM -- FUNDING --

2 SURCHARGE RATE. (1) (A) THE INTERIM UNIVERSAL ACCESS PROGRAM IS FUNDED BY A SURCHARGE
3 BASED ON THE RETAIL REVENUE FOR ALL INTRASTATE TELECOMMUNICATIONS SERVICES IN THE
4 STATE. THE SURCHARGE MUST BE DETERMINED BY THE ADMINISTRATOR BY RULE. THE SURCHARGE
5 MUST BE SET AND APPLIED TO ALL TELECOMMUNICATIONS CARRIERS ON A COMPETITIVELY
6 NEUTRAL BASIS.

7 (B) THE RATE OF THE SURCHARGE MUST BE SET TO RAISE \$250,000 DURING THE FISCAL
8 YEAR ENDING JUNE 30, 1998, AND \$500,000 DURING THE FISCAL YEAR ENDING JUNE 30, 1999. THE
9 RATE MAY BE CHANGED, BY RULE, AS NECESSARY.

10 (C) THE PAYMENT OF THE SURCHARGE IS AN EXPLICIT SUBSIDY AND MAY BE SHOWN AS A
11 SEPARATE LINE ITEM ON EACH CARRIER'S RETAIL TELECOMMUNICATIONS SERVICES BILLS.

12 (D) THE SURCHARGE MAY BE APPLIED ONLY TO TELECOMMUNICATIONS SERVICES.
13 CUSTOMER PREMISE EQUIPMENT IS NOT CONSIDERED A TELECOMMUNICATIONS SERVICE.

14 (2) THE SURCHARGE IS PAYABLE QUARTERLY TO THE DEPARTMENT OF REVENUE AND
15 DEPOSITED BY THE DEPARTMENT IN THE INTERIM UNIVERSAL ACCESS ACCOUNT ESTABLISHED IN
16 [SECTION 26]. THE DEPARTMENT MAY BY RULE:

17 (A) ESTABLISH THE FORM OF A REPORTING STATEMENT TO BE FILED BY
18 TELECOMMUNICATIONS CARRIERS SUBJECT TO THE SURCHARGE;

19 (B) SET THE DATE AFTER THE END OF A FISCAL QUARTER THAT THE QUARTERLY PAYMENT
20 MUST BE MADE;

21 (C) PROVIDE FOR RECORDKEEPING BY TELECOMMUNICATIONS PROVIDERS SUBJECT TO THE
22 SURCHARGE; AND

23 (D) PROVIDE METHODS TO PAY THE SURCHARGE, INCLUDING OFFSETS OF SURCHARGES
24 OWED AGAINST DISCOUNTED SERVICES TO BE REIMBURSED, AND TO PAY REFUNDS OF
25 OVERPAYMENT OF THE SURCHARGE.

26 (3) (A) THE COLLECTION OF A SURCHARGE UNDER THIS SECTION IS SUBJECT TO:

27 (I) THE DEFICIENCY ASSESSMENT, REVIEW, INTEREST, AND PENALTY PROVISIONS OF
28 15-53-105;

29 (II) THE PENALTY AND INTEREST FOR DELINQUENCY AND WAIVER PROVISIONS OF 15-53-111;

30 (III) THE ESTIMATION OF TAX ON FAILURE TO FILE A STATEMENT PROVISIONS OF 15-53-112;

1 (IV) THE WARRANT FOR DISTRAINT PROVISIONS OF 15-53-113; AND

2 (V) THE STATUTE OF LIMITATIONS PROVISIONS OF 15-53-115.

3 (B) ANY REFERENCE TO THE TAX UNDER SECTIONS LISTED IN SUBSECTION (3)(A), EITHER BY
 4 CITE TO A SECTION OF LAW OR LITERALLY TO THE TAX, REFER, FOR THE PURPOSES OF THIS
 5 SECTION, TO THE SURCHARGE IMPOSED BY THIS SECTION.

6
 7 NEW SECTION. SECTION 26. INTERIM UNIVERSAL ACCESS PROGRAM -- ACCOUNT. AN
 8 INTERIM UNIVERSAL ACCESS ACCOUNT IS ESTABLISHED IN THE STATE SPECIAL REVENUE FUND IN
 9 THE STATE TREASURY. ALL MONEY RECEIVED BY THE DEPARTMENT OF REVENUE PURSUANT TO
 10 [SECTION 25] MUST BE PAID TO THE STATE TREASURER FOR DEPOSIT IN THE ACCOUNT. AFTER
 11 PAYMENT OF REFUNDS, THE BALANCE OF THE ACCOUNT MUST BE USED FOR THE PURPOSES
 12 DESCRIBED IN [SECTION 24].

13
 14 NEW SECTION. SECTION 27. COMMISSION TO MAKE RECOMMENDATIONS ON UNIVERSAL
 15 ACCESS AND SERVICE. THE PUBLIC SERVICE COMMISSION SHALL EXAMINE AND MAKE
 16 RECOMMENDATIONS TO THE 56TH LEGISLATURE ON UNIVERSAL ACCESS AND SERVICE. THE
 17 COMMISSION SHALL:

18 (1) REVIEW THE IMPACT ON UNIVERSAL ACCESS AND SERVICE IN MONTANA OF ANY FEDERAL
 19 UNIVERSAL SERVICE FUND THAT RESULTS FROM CURRENT FEDERAL COMMUNICATIONS RULEMAKING
 20 UNDER THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; AND

21 (2) EVALUATE THE EXTENT TO WHICH THE FEDERAL UNIVERSAL SERVICE FUND FALLS SHORT
 22 OF SUPPORTING LEGISLATIVELY DEFINED UNIVERSAL ACCESS AND SERVICE GOALS IN MONTANA.

23 (3) THE COMMISSION MAY DEVELOP PLANS AND PROPOSE LEGISLATION THAT WOULD
 24 ENSURE THE ATTAINMENT OF UNIVERSAL ACCESS AND SERVICE GOALS IN MONTANA.

25
 26 **Section 28.** Section 2-4-102, MCA, is amended to read:

27 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

28 (1) "Administrative code committee" or "committee" means the committee provided for in Title 5,
 29 chapter 14.

30 (2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that

1 the provisions of this chapter do not apply to the following:

2 (i) the state board of pardons and parole, except that the board is subject to the requirements of
3 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of
4 Montana and the Montana Administrative Register;

5 (ii) the supervision and administration of a penal institution with regard to the institutional
6 supervision, custody, control, care, or treatment of youths or prisoners;

7 (iii) the board of regents and the Montana university system;

8 (iv) the financing, construction, and maintenance of public works;

9 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
10 252 and [section 8 7].

11 (b) Agency does not include a school district, unit of local government, or any other political
12 subdivision of the state.

13 (3) "ARM" means the Administrative Rules of Montana.

14 (4) "Contested case" means a proceeding before an agency in which a determination of legal rights,
15 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term
16 includes but is not restricted to ratemaking, price fixing, and licensing.

17 (5) "License" includes the whole or part of any agency permit, certificate, approval, registration,
18 charter, or other form of permission required by law but does not include a license required solely for
19 revenue purposes.

20 (6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation,
21 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

22 (7) "Party" means a person named or admitted as a party or properly seeking and entitled as of
23 right to be admitted as a party, but nothing in this chapter may be construed to prevent an agency from
24 admitting any person as a party for limited purposes.

25 (8) "Person" means an individual, partnership, corporation, association, governmental subdivision,
26 agency, or public organization of any character.

27 (9) "Register" means the Montana Administrative Register.

28 (10) "Rule" means each agency regulation, standard, or statement of general applicability that
29 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
30 requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

1 (a) statements concerning only the internal management of an agency and not affecting private
2 rights or procedures available to the public;

3 (b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

4 (c) rules relating to the use of public works, facilities, streets, and highways when the substance
5 of the rules is indicated to the public by means of signs or signals;

6 (d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
7 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially
8 relating to the seasonal recreational use of lands and waters owned or controlled by the state when the
9 substance of the rules is indicated to the public by means of signs or signals;

10 (e) rules implementing the state personnel classification plan, the state wage and salary plan, or
11 the statewide budgeting and accounting system;

12 (f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
13 accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

14 (11) "Substantive rules" are either:

15 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated
16 authority to promulgate rules to implement a statute have the force of law and when not so adopted are
17 invalid; or

18 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
19 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of
20 law."

21
22 **Section 25.** ~~Section 35-18-503, MCA, is amended to read:~~

23 ~~"35-18-503. Annual fee to department of revenue — exemption from other taxes. Cooperatives~~
24 ~~and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall~~
25 ~~pay annually on or before July 1, to the department of revenue a fee of \$10 for each 100 persons or~~
26 ~~fractions thereof of 100 persons to whom electricity or telephone service was supplied during the previous~~
27 ~~calendar year within the state and, except as provided in [section 21] and 10-4-201, shall are be exempt~~
28 ~~from all other excise and income taxes of whatsoever any kind or nature."~~

29
30 **Section 29.** Section 69-3-305, MCA, is amended to read:

- 1 **"69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:
- 2 (a) charge, demand, collect, or receive a greater or less compensation for a utility service performed
- 3 by it within the state or for any service in connection with a utility service than is specified in the printed
- 4 schedules, including schedules of joint rates, that may at the time be in force;
- 5 (b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or
- 6 (c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly,
- 7 has or may have the effect of changing the rates, tolls, charges, or payments.
- 8 (2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and
- 9 charges until the rates, tolls, and charges are changed, as provided in this chapter.
- 10 (3) The commission may order refunds or credits of rates, tolls, or charges collected in violation
- 11 of this section and may order payment of interest at a reasonable rate on the refunded amount.
- 12 (4) The provisions of this section do not prohibit the sharing of profits or revenues with customers
- 13 in conjunction with an alternative form of regulation approved under 69-3-809.
- 14 (5) (a) A provider of regulated telecommunications service may offer, for a limited period of time,
- 15 ~~either rebates, price or reductions, or waivers of installation charges in conjunction with promotions, market~~
- 16 ~~trials, or other sales-related activities that are common business practices. Promotional pricing of services~~
- 17 ~~that remain fully tariffed requires~~ for services other than basic local exchange access to end users does not
- 18 require advance approval of the commission. Informational price lists must be filed with the commission
- 19 on or before the date that the promotion begins. Promotional offerings for basic local exchange access to
- 20 end users and packaged services that include basic local exchange access to end users require advance
- 21 approval of the commission. The commission shall approve, deny, or upon a showing of good cause set
- 22 for hearing an application for a promotional discount within 30 days of the filing of the application. If the
- 23 commission has not acted on the application within the permitted time period, the application is considered
- 24 granted. ~~A promotional offering may not combine monopoly services with competitive services unless~~
- 25 ~~authorized by the commission.~~
- 26 (b) A public utility providing electricity or natural gas may offer grants and subsidized loans to
- 27 install energy conservation and nonfossil forms of energy generation systems in dwellings.
- 28 (c) The commission may define the appropriate scope of promotions, rebates, market trials, and
- 29 grants and subsidized loans, either by rule or in response to complaints. The commission may determine
- 30 whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly

1 discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to
 2 sales activities and grant and subsidized loan programs that the commission determines are unfairly
 3 discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the
 4 commission.

5 (6) A public utility violating the provisions of this section is subject to the penalty prescribed in
 6 69-3-206. ~~This, however~~ However, this does not have the effect of suspending, rescinding, invalidating,
 7 or in any way affecting existing contracts."

8

9 ~~Section 27. Section 69-3-801, MCA, is amended to read:~~

10 ~~"69-3-801. Short title. This part may be cited as the "Montana Telecommunications Reform Act"."~~

11

12 ~~Section 28. Section 69-3-802, MCA, is amended to read:~~

13 ~~"69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana~~
 14 ~~to maintain universal availability of basic telecommunications service at affordable rates. This part was~~
 15 ~~adopted in response to the enactment into law of the federal Telecommunications Act of 1996, Public Law~~
 16 ~~104-104, and the work performed by the governor's blue ribbon telecommunications task force established~~
 17 ~~by Chapter 508, Laws of 1995. This part expresses the policies of the state of Montana that should govern~~
 18 ~~the orderly transition of the telecommunications industry in the state from a regulated industry to an~~
 19 ~~industry primarily controlled by the economic forces of a competitive telecommunications marketplace. The~~
 20 ~~legislature declares that it remains the policy of the state of Montana to maintain universal availability of~~
 21 ~~basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining~~
 22 ~~universal service, it is further the policy of this state to encourage competition in the telecommunications~~
 23 ~~industry, thereby allowing access by the public to resulting rapid advances in telecommunications~~
 24 ~~technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly~~
 25 ~~transition from a regulated telecommunications industry to a competitive market environment, and it is~~
 26 ~~further the purpose of this part to clarify that the commission has authority to implement alternative forms~~
 27 ~~of regulation for providers of regulated telecommunications services."~~

28

29 ~~Section 30. Section 69-3-803, MCA, is amended to read:~~

30 ~~"69-3-803. Definitions. As used in this part, the following definitions apply:~~

1 ~~(1) "Advanced telecommunications services" means high speed (56 kbps) dedicated or switched,~~
 2 ~~broadband telecommunications capability that enables users to originate and receive high quality voice,~~
 3 ~~data, graphics, and video telecommunications using any technology.~~

4 ~~(1)(2)(1)~~ "Commission" means the public service commission.

5 ~~(2) "ELIGIBLE TELECOMMUNICATIONS CARRIER" MEANS A TELECOMMUNICATIONS PROVIDER~~
 6 ~~DESIGNATED BY THE COMMISSION UNDER [SECTION 10].~~

7 ~~(3) "FUND" MEANS THE UNIVERSAL SERVICE FUND ESTABLISHED IN [SECTION 12].~~

8 ~~(3)(4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange~~
 9 ~~carrier that:~~

10 ~~(a) on February 8, 1996, provided telephone exchange service in the area; and~~

11 ~~(b) on February 8, 1996, was considered to be a member of the exchange carrier association~~
 12 ~~pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign~~
 13 ~~of a member of the exchange carrier association.~~

14 ~~(2)(4)(5)~~ "Private telecommunications service" means a system, including the construction,
 15 maintenance, or operation ~~thereof~~ of the system, for the provision of telecommunications service or any
 16 portion of ~~such~~ the service, by a person or entity for the sole and exclusive use of that person or entity and
 17 not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a
 18 corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a
 19 common ownership or control of 80% of the outstanding voting shares.

20 ~~(3)(5)(6)~~ (a) "Regulated telecommunications service" means two-way switched, voice-grade access
 21 and transport of communications originating and terminating in this state and nonvoice-grade access and
 22 transport if intended to be converted to or from voice-grade access and transport.

23 ~~(b) Regulated telecommunications service~~ The term does not include the provision of terminal
 24 equipment used to originate or terminate ~~such~~ the regulated service, private telecommunications service,
 25 ~~resale of telecommunications service,~~ RESALE OF TELECOMMUNICATIONS SERVICES, one-way
 26 transmission of television signals, cellular communication, or provision of radio paging or mobile radio
 27 services.

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

1 ~~(7) "RESALE OF TELECOMMUNICATIONS SERVICES" MEANS THE RESALE OF REGULATED~~
 2 ~~TELECOMMUNICATIONS SERVICES, WITH OR WITHOUT ADDING VALUE, PROVIDED THAT ANY VALUE~~
 3 ~~ADDED WOULD NOT OTHERWISE BE SUBJECT TO REGULATION.~~

4 ~~(8)(7) "RETAIL REVENUE" MEANS THE GROSS MONTANA REVENUE FROM~~
 5 ~~TELECOMMUNICATIONS SERVICES THAT ORIGINATE OR TERMINATE IN MONTANA AND ARE BILLED~~
 6 ~~FOR A SERVICE ADDRESS IN MONTANA, EXCLUDING REVENUE FROM THE RESALE OF~~
 7 ~~TELECOMMUNICATIONS SERVICES TO ANOTHER TELECOMMUNICATIONS SERVICES PROVIDER THAT~~
 8 ~~USES THE TELECOMMUNICATIONS SERVICES TO PROVIDE TELECOMMUNICATIONS SERVICES TO THE~~
 9 ~~ULTIMATE RETAIL CONSUMER WHO ORIGINATES OR TERMINATES THE TRANSMISSION.~~

10 ~~(6)(9)(8) "Rural telephone company" means a local exchange carrier operating entity to the extent~~
 11 ~~that the entity:~~

12 ~~(a) provides common carrier service to any local exchange carrier study area that does not include~~
 13 ~~either:~~

14 ~~(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most~~
 15 ~~recently available population statistics of the United States bureau of the census; or~~

16 ~~(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the~~
 17 ~~United States bureau of the census as of August 10, 1993.~~

18 ~~(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access~~
 19 ~~lines;~~

20 ~~(c) provides telephone exchange service to any local exchange carrier study area with fewer than~~
 21 ~~100,000 access lines; or~~

22 ~~(d) has less than 15% of its access lines in communities of more than 50,000 on February 8,~~
 23 ~~1996.~~

24 ~~(7)(10)(9) "Telecommunications" means the transmission, between or among points specified by~~
 25 ~~the user, of information of the user's choosing without a change in the form or content of the information~~
 26 ~~upon receipt.~~

27 ~~(8)(11)(10) "Telecommunications carrier" or "carrier" means any provider of telecommunications~~
 28 ~~services. A person providing other products and services in addition to telecommunications services is~~
 29 ~~considered a telecommunications carrier only to the extent that it is engaged in providing~~
 30 ~~telecommunications services. The term does not mean aggregators of telecommunications services as~~

1 defined in 47 U.S.C. 226."

2

3 Section 31. Section 69-3-805, MCA, is amended to read:

4 "69-3-805. ~~Manner of regulation~~ **Registration of telecommunications service providers.** (1) Before
5 any person or entity provides ~~regulated~~ telecommunications service within the state of Montana, it shall
6 file with the commission a notice including:

7 (a) the name, and address, and telephone number of the provider;

8 (b) ~~a narrative description of the regulated telecommunications service to be offered and the~~
9 ~~geographic area and markets to be served;~~

10 (c) ~~initial tariffs for the regulated telecommunications service;~~

11 (d) ~~such other information as the commission may require to accomplish the purpose of this~~
12 ~~chapter,~~ the name, address, and telephone number of the person responsible for regulatory contacts and
13 customer dispute resolution on behalf of the provider;

14 (c) a description of the provider's existing operations and general service and operating areas in any
15 other jurisdictions;

16 (d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal
17 addresses and telephone numbers of each;

18 (e) initial tariffs or price lists for regulated telecommunications services, including a narrative
19 description of the regulated telecommunications to be offered and the geographic area and markets to be
20 served;

21 (f) a general description of the facilities and equipment that will be used to provide services,
22 including whether the service will be offered on a facilities basis, a resale basis, or a combination of both
23 of them;

24 (g) a statement of whether the provider intends to draw from the federal or state universal service
25 fund or other explicit support funds, including a statement of whether the provider intends to seek the
26 commission's designation as an eligible telecommunications carrier;

27 (h) disclosure of any formal actions against it by any court or state or federal regulatory agency
28 that resulted in any type of penalty or sanction ~~or~~ within the 5 years prior to the date of filing the notice;

29 (i) if the provider is other than a corporation, a description of the form of ownership, the names
30 and addresses of all principal owners and managers, the provider's agent for service of process in Montana,

1 and the date of creation of the business entity; and

2 (j) other information from regulated telecommunications carriers as the commission may require
3 to accomplish the purposes of this chapter.

4 ~~(2) The provision of any regulated telecommunications service does not subject the provider thereof~~
5 ~~to regulation of any other telecommunications services otherwise exempt under this chapter. The~~
6 ~~commission may waive any of the requirements set forth in subsection (1).~~

7 (3) The provider shall file with the commission a report of any judgment, penalty, or sanction
8 entered in any other jurisdiction that could adversely affect the provider's ability to provide communications
9 services in Montana."

10

11 **SECTION 32. SECTION 69-3-806, MCA, IS AMENDED TO READ:**

12 **"69-3-806. Prohibition against cross-subsidization.** ~~(1) No~~ A provider of regulated
13 telecommunications ~~service~~ services may not use current ~~revenues~~ revenue earned or expenses incurred
14 in conjunction with services subject to regulation under this chapter to subsidize services ~~which~~ that are
15 not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or
16 that are not tariffed under this chapter may not be attributed to services ~~which~~ that are subject to regulation
17 for any reason.

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

20

21 **Section 33. Section 69-3-807, MCA, is amended to read:**

22 **"69-3-807. Regulation of rates and charges.** (1) ~~As to telecommunications service that is provided~~
23 ~~under regulation, the~~ The commission may establish specific rates, tariffs, or fares for the provision of ~~the~~
24 regulated telecommunications service to the public. The rates, tariffs, or fares must be just, reasonable, and
25 nondiscriminatory.

26 (2) Alternatively, the commission may authorize the provision of regulated telecommunications
27 service under terms and conditions that best serve the declared policy of this state. For a service detariffed
28 under this subsection, the provider shall maintain a current price list on file with the commission and shall
29 provide notice of changes in the price list as prescribed by the commission. The commission is not required
30 to fix and determine specific rates, tariffs, or fares for the service and ~~in lieu thereof~~ the alternative may:

- 1 (a) totally detariff the service;
- 2 (b) detariff rates for the service but retain tariffs for service standards and requirements;
- 3 (c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the
4 minimum rate is cost compensatory; or
- 5 (d) provide ~~such~~ other rate or service regulation as will promote the purposes of this part.
- 6 (3) Except as provided in subsection (4), in determining applications under subsection (2), the
7 commission shall consider the following factors:
- 8 (a) the number, size, and distribution of alternative providers of service;
- 9 (b) the extent to which services are available from alternative providers in the relevant market;
- 10 (c) the ability of alternative providers to make functionally equivalent or substitute services readily
11 available;
- 12 (d) the overall impact of the proposed terms and conditions on the continued availability of existing
13 services at just and reasonable rates; and
- 14 (e) other factors that the commission may prescribe through rulemaking that are appropriate to
15 fulfill the purposes of this part.
- 16 (4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under
17 subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that
18 action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local
19 exchange access to end-users and carrier access services may not be detariffed.
- 20 (5) A provider of regulated message telecommunications service and related services shall average
21 its service rates on its routes of similar distance within the state unless otherwise authorized by the
22 commission. ~~Nothing contained in this~~ This subsection may not be construed to prohibit volume discounts,
23 discounts in promotional offerings, or other discounts as long as the discounts are not offered in a
24 discriminatory manner.
- 25 ~~(6) All providers of comparable regulated telecommunications services within a market area must
26 be subject to the same standards of regulation. For purposes of this section, regulated telecommunications
27 services are comparable to the extent alternative providers can make functionally equivalent substitutes or
28 substitute services readily available."~~

29

30

~~Section 32. Section 69-3-809, MCA, is amended to read:~~

1 ~~"69-3-809. Alternative forms of regulation. (1) The commission may authorize a provider of~~
 2 ~~regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking~~
 3 ~~practices required under parts 2, 3, and 9 of this chapter, including but not limited to:~~

4 ~~(a) price caps;~~

5 ~~(b) price regulation; and~~

6 ~~(c) equitable sharing of earnings or revenues revenue between a provider of regulated~~
 7 ~~telecommunications services and its customers.~~

8 ~~(2) A provider of regulated telecommunications services may petition the commission to regulate~~
 9 ~~the provider under an alternative form of regulation. The provider shall submit its plan for an alternative~~
 10 ~~form of regulation with its petition. The commission's order on the petition must be issued no later than~~
 11 ~~9 months after the filing of the petition. The commission shall review and may authorize implementation~~
 12 ~~of the plan if it finds, after notice and hearing, that the plan:~~

13 ~~(a) will not degrade the quality of or the availability of efficient telecommunications services;~~

14 ~~(b) will produce fair, just, and reasonable rates for telecommunications services;~~

15 ~~(c) will not unduly or unreasonably prejudice or disadvantage a customer class;~~

16 ~~(d) will reduce regulatory delay and costs;~~

17 ~~(e) is in the public interest; and~~

18 ~~(f) will enhance economic development in the state;~~

19 ~~(g) will result in the improvement of the telephone infrastructure in the state; and~~

20 ~~(h) (b) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or~~
 21 ~~9 of this chapter conforms to the stated purpose.~~

22 ~~(3) If the commission determines that the plan does not satisfy the requirements of this section,~~
 23 ~~it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.~~

24 ~~(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications~~
 25 ~~service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw~~
 26 ~~its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition~~
 27 ~~for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:~~

28 ~~(a) remains subject to the same regulation that applied when the petition was filed; and~~

29 ~~(b) may petition the commission to be regulated under a revised alternative plan.~~

30 ~~(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an~~

1 ~~alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are~~
 2 ~~no longer satisfied.~~

3 ~~(6) Nothing contained in this This section may not be construed as limiting or otherwise affecting~~
 4 ~~the commission's authority to conduct investigations or hear complaints as provided in part 3 of this~~
 5 ~~chapter."~~

6

7 ~~**Section 33.** Section 69-3-811, MCA, is amended to read:~~

8 ~~"**69-3-811. Costs for services provided Relevant cost defined -- jurisdiction over complaints.** (1)~~
 9 ~~Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise~~
 10 ~~ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure~~
 11 ~~that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.~~

12 ~~(2) With regard to competitive services, the term "relevant costs" includes the price for any~~
 13 ~~components that are used by the telecommunications provider and that would be essential for alternative~~
 14 ~~providers to use in providing the competitive services pursuant to commission approved methodology.~~

15 ~~(3)(2) The commission has jurisdiction to consider complaints and initiate investigations to~~
 16 ~~determine whether the price charged by a provider of regulated telecommunications service is above~~
 17 ~~relevant costs. The commission may also consider complaints that a pricing or promotional practice violates~~
 18 ~~any provision of this title."~~

19

20 ~~**Section 34.** Section 69-3-1001, MCA, is amended to read:~~

21 ~~"**69-3-1001. Creation of program -- amount of assistance.** (1) There is a telephone ~~low-income~~~~
 22 ~~low-income assistance program to provide an eligible subscriber with a discount in the monthly charge for~~
 23 ~~local exchange service in the telephone network.~~

24 ~~(2) ~~This~~ The commission shall set the discount in the charge for local exchange service ~~is the~~~~
 25 ~~greater of:~~

26 ~~(a) ~~\$2~~ that is at least \$3.50 a month for each eligible subscriber; or~~

27 ~~(b) but not more than the amount ~~necessary to obtain the matching waiver available under~~~~
 28 ~~applicable orders and regulations of the federal communications commission that is the difference between~~
 29 ~~the otherwise applicable current rate for local exchange service and the rate as it was on [the effective date~~
 30 ~~of this section]."~~

1 NEW SECTION. SECTION 35. TELECOMMUNICATIONS COMMITTEE. (1) THERE IS A
2 TELECOMMUNICATIONS COMMITTEE. THE COMMITTEE CONSISTS OF:

3 (A) TWO MEMBERS OF THE SENATE, ONE FROM EACH POLITICAL PARTY, APPOINTED BY THE
4 COMMITTEE ON COMMITTEES OF THE SENATE;

5 (B) TWO MEMBERS OF THE HOUSE OF REPRESENTATIVES, ONE FROM EACH POLITICAL PARTY,
6 APPOINTED BY THE SPEAKER OF THE HOUSE; AND

7 (C) A REPRESENTATIVE OF THE PUBLIC SERVICE COMMISSION APPOINTED BY THE PUBLIC
8 SERVICE COMMISSION.

9 (2) THE COMMITTEE SHALL MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL
10 TELECOMMUNICATIONS ACT OF 1996, PUBLIC LAW 104-104. THE COMMITTEE SHALL RECOMMEND
11 TO THE 56TH LEGISLATURE POLICIES, PRACTICES, AND STATUTORY CHANGES THAT ARE REQUIRED
12 TO IMPLEMENT OR CONFORM TO THE FEDERAL IMPLEMENTATION.

13 (3) THE OFFICE OF THE CONSUMER COUNSEL SHALL PROVIDE STAFF ASSISTANCE TO THE
14 COMMITTEE.

15
16 NEW SECTION. SECTION 36. APPROPRIATION. (1) SUBJECT TO FUNDS BEING AVAILABLE
17 PURSUANT TO SUBSECTION (2), THERE IS APPROPRIATED FROM THE STATE SPECIAL REVENUE FUND
18 UP TO \$30,000 TO THE OFFICE OF THE CONSUMER COUNSEL FOR PURPOSES OF [SECTION 35]. (2)
19 THE TELECOMMUNICATIONS COMMITTEE MAY ACCEPT GIFTS, GRANTS, AND DONATIONS FOR
20 DEPOSIT IN THE STATE SPECIAL REVENUE FUND FOR PURPOSES OF [SECTION 35].

21
22 NEW SECTION. Section 37. Codification instruction. ~~(4)~~ [Sections 1 through ~~45~~ 19 27] are
23 intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69,
24 chapter 3, part 8, apply to [sections 1 through ~~45~~ 19 27].

25 ~~(2) [Sections 16 through 22] are intended to be codified as an integral part of Title 69, chapter 3,~~
26 ~~and the provisions of Title 69, chapter 3, apply to [sections 16 through 22].~~

27
28 NEW SECTION. Section 38. Repealer. Sections 69-6-101, 69-6-102, and 69-6-103, MCA, are
29 repealed.

