A Report to the
U.S. Small Business Administration

The Impact of Telephone
Deregulation on Small Business

Prepared Under Contract
No. SBA-2096-AER-87

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APPENDICES
Appendix A

Nebraska Legislative Bill 835 (1986)
AN ACT relating to telecommunications; to amend sections 75-109 and 75-604, Reissue Revised Statutes of Nebraska, 1943, and section 75-609, Revised Statutes Supplement, 1984; to state intent; to define terms; to provide for the deregulation of telecommunications; to provide procedures; to provide powers and duties; to provide for the limitation of rate increases as prescribed; to provide for the joint provision of service as prescribed; to limit jurisdiction as prescribed; to provide preemption; to provide for the billing of certain taxes and fees; to provide for equitable relief; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section I. The Legislature declares that it is the policy of the state to;
(1) Preserve affordable telecommunications services;
(2) Maintain and advance the efficiency and availability of telecommunications services;
(3) Ensure that consumers pay only reasonable charges for telecommunications services; and
(4) Promote diversity in the supply of telecommunications services and products throughout the state.

Sec. 2. For purposes of sections 1 to 11 of this act and sections 75-109, 75-604, and 75-609, unless the context otherwise requires;
(1) Basic local exchange rate shall mean the flat monthly charge for an access line, whether the service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service, but shall not include any charges resulting from action by a federal agency or taxes imposed by a governmental body which are billed by a telecommunications company to its customers.
(2) Basic local exchange service shall mean
the access and transmission of two-way switched voice communications within a local exchange area:
(2) Business service shall mean telecommunications service which is used for occupational, professional or institutional purposes;
(3) Commission shall mean the Public Service Commission.
(4) Extended service area shall mean a grouping of two or more exchanges which allows subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge;
(6) Interexchange service shall mean the access and transmission of communications between two or more local exchange areas, except for two-way switched communications between local exchanges that are included in the same extended service area;
(7) Inter-LATA interexchange services shall mean interexchange telecommunications services originating and terminating in different LATAs;
(8) LATA shall mean local access transport area as defined by applicable federal law, rules, or regulations;
(9) Local exchange area shall mean a territorial unit established by a telecommunications company for the administration of communications services within a specific area generally encompassing a city, town, or village and its environs as described in maps filed with and approved by the Public Service Commission;
(11) Resident service shall mean telecommunications service which is furnished to a dwelling and which is used for personal or domestic purposes and not for business, professional or institutional purposes, and
(12) Telecommunications company shall mean any person, firm, partnership, corporation, association or governmental entity offering communications services to the public upon formal complaint against the same for violation of Chapter 75 articles 1 and 6, Telecommunications companies shall, instead, file rate lists for their telecommunications services which shall be effective after ten days' notice to the commission with the exception of monthly rates for basic local exchange services.
(2) Except as provided in subsection (4) of this section, monthly basic local exchange rates may be changed by a telecommunications company effective after sixty days' notice to all affected subscribers. Such notice shall include (a) the reasons for the rate increase, (b) a description of the affected service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times and places for the public informational meetings required by this section. A telecommunications company which proposes to increase its basic local exchange rate shall hold at least one public informational meeting in each commission district as established by section 5-107 in which it provides basic local exchange service prior to the effective date of the rate increase. If the telecommunications company presently charges different rates for residential or business basic service among various exchanges, increases or decreases in basic local exchange rates need not be uniform for all exchanges until all residential basic local exchange rates are fully equalized and all business basic local exchange rates are fully equalized. Thereafter, the amount of any increase or decrease in a business basic local exchange rate or residential basic local exchange rate made pursuant to this section shall be the same for all business service subscribers or for all residential service subscribers within the local service area of the telecommunications company making such increase or decrease. For purposes of this section, local service area shall mean the total area within the state for which a basic local exchange service is provided by a telecommunications company.
(3) The commission shall review basic local exchange rates set by any telecommunications company only upon formal complaint signed by five per cent of all affected subscribers if the telecommunications company has up to fifty thousand access lines in service, or three per cent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines in service, or (c) two per cent of all affected subscribers
if the telecommunications company has more than two hundred fifty thousand access lines in service. The complaint shall specifically set forth the particular rates or charges as to which review is requested, the reasons for the requested review and the relief which the complainants desire. If a proper complaint is presented to the commission within sixty days from the date notice of the rate change was sent to subscribers, the commission shall accept and file the complaint and, upon proper notice, may suspend the rates and charges at issue during the pendency of the proceedings and reinstates the rates and charges previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission may not set any rate or charge below the actual cost of providing such service as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. A telecommunications company shall not increase its rates without the approval of the commission for six months from the date the commission enters such order. If the commission fails to enter any order within sixty days after the close of the hearing, the complaint shall be deemed denied and the rates and charges shall be deemed approved for all purposes including for purposes of appeal. For purposes of this section, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs. This subsection shall terminate on August 31, 1991.

(4) A telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair and reasonable rates for the company or such telecommunications company may elect to proceed, if eligible, under section 75-609.01. Such proceeding shall be governed by Chapter 75. 

articles 1 and 6, and shall not be limited by subsection (2) of this section. Any rate so set may thereafter be adjusted as provided in subsections (1) and (2) of this section.

(5) In setting rates for interexchange services, telecommunications companies that provide such services shall continue to average their rates for all such services on a statewide basis until August 31, 1991, unless the commission, upon application and hearing, orders otherwise. This subsection shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange telecommunications services, nothing in sections 1 to 11 of this act shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

(6) The commission shall retain quality of service regulation over the services provided by all telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of service. If such complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing and may by order render its decision granting or denying in whole or in part the subscriber's petition or provide such other relief as is reasonable based on the evidence presented to the commission at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-145 and may be appealed.

(7) Except as provided in subsection (4) of this section, the commission may on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten per cent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission may not set any rate or charge below the actual cost of providing such service as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. If the commission fails to enter any order within sixty days after close of the hearing, the rates and charges shall be
deemed approved for all purposes, including for purposes of appeal. For purposes of this subsection, actual costs shall also include a reasonable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(8) The commission may order that flat rate services shall be available whenever measured service is implemented, and that for such services, the price restrictions prescribed in sections 1 to 11 of this act shall be retained. Measured service shall mean basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of call, distance and time of day.

(9) Rates being charged by telecommunications companies on the operative date of this act shall be deemed to be the effective rates until changed or altered pursuant to sections 1 to 11 of this act.

(10) No telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to subsections (3), (4), and (7) of this section.

(11) Any order of the commission entered pursuant to authority granted in sections 1 to 11 of this act, may be appealed by any party to the proceeding in accordance with sections 75:116 to 75:119.

Sec. 4. The commission shall provide the Legislature with an annual report on or about the first day of each year on the status of the Nebraska telecommunications industry. The report shall describe:

(1) The quality of telecommunications services being provided to the citizens of Nebraska;

(2) The availability of diverse and affordable telecommunications services to all of the people of Nebraska;

(3) The level of rates of local exchange companies and interexchange telecommunications companies. The report also shall address the question of the need for further legislation to achieve the purposes of sections 1 to 11 of this act.

Sec. 5. (1) The commission may issue a certificate authorizing any telecommunications company which applies to the commission to offer and provide inter-LATA interexchange services, which application shall include such information as may be required by the commission, to offer its proposed service in, or to a local exchange area in which it serves unless:

(a) The commission finds upon application and hearing that one or more other telecommunications companies are furnishing comparable service in, or to a local exchange area which it serves unless:

(i) The commission finds that the telecommunications company is discontinuing service to such local exchange area.

(b) The telecommunications company discontinuing service to such local exchange area.

(b) Refunds any unused prepaid subscription charges or other unused prepaid charges to each customer in the local exchange area prior to the effective date.

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of the abandonment; and
(c) Prior to the effective date of the abandonment, reimburses its customers in the local exchange area for service charges which its customers incur in obtaining substitute service from another telecommunications company or, in lieu thereof, pays other telecommunications companies directly for such service charges on behalf of its customers making changes in their services as a result of the abandonment.

Sec. 7. (1) Except for requirements established by statute, the commission may limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may revoke any waivers if it finds or reinstates regulations if such revocation or reinstatement would protect the public interest upon a finding that the telecommunications company is restricting market output, impairing customer interest, or engaging in unlawful anticompetitive activity.

(2) A telecommunications company shall at a minimum:
(a) Keep its accounts according to rules and regulations adopted and promulgated by the commission;
(b) File financial reports with the commission as required by and in a form and at times prescribed by the commission;
(c) Keep on file at the commission such current price lists and service standards as the commission may require; and
(d) Cooperate with commission investigations of customer complaints.

Sec. 8. The commission shall not regulate the following:
(1) One-way broadcast or cable television transmission of television or radio signals; and
(2) Mobile radio services, radio paging services, and cellular services.

Sec. 9. Sections 1 to 11 of this act and sections 75-109, 75-604, and 75-609 shall preempt and prohibit any regulation of a telecommunications company by counties, cities, villages, townships, or any other local governmental entity.

Sec. 10. Whenever any municipality or any other local governmental entity imposes upon a telecommunications company any tax or fee, such tax or fee shall, so far as practicable, be billed pro rata to the telecommunications company's customers receiving communications services within the territorial limits of such municipality or other local governmental entity.

Sec. 11. If any telecommunications company violates any provision of sections 1 to 10 of this act or sections 75-109, 75-604, and 75-609, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of sections 1 to 10 of this act or sections 75-109, 75-604, and 75-609 has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors, officers, employees, or agents from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Supreme Court under the rules provided by law for appeals to the Supreme Court.

Sec. 12. That section 75-109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:
75-109. The Except as provided in sections 1 to 10 of this act, the commission shall have the power to regulate the rates and services of, and to exercise a general control over, all common carriers, which term is hereby defined as all carriers, including contract carriers, engaged in the transportation of freight or passengers for hire, or furnishing communication services for hire in Nebraska intrastate commerce.

Sec. 13. That section 75-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:
75-604. (1) Except as provided in section 5 of this act, no person, firm, partnership, corporation, cooperative, or association shall offer telephone service or any telecommunications service or shall construct a new telephone line telecommunications facilities in or extend an existing telephone line telecommunications facilities into the territory of another telephone telecommunications company for the purpose of providing any telecommunications service without first making an application for and receiving from the commission a certificate of convenience and necessity after due notice and hearing under the rules and regulations of the commission. Before granting a certificate of convenience and necessity, the commission must find that:
(a) The territory in which the applicant proposes to offer telephone telecommunications service is not receiving reasonably
adequate telephone telecommunications service. (b) if the portion of the territory of another telephone telecommunications company in which or into which the applicant proposes to construct new lines facilities or extend its existing lines facilities is not and will not within a reasonable time receive reasonably adequate telephone telecommunications service from the telephone telecommunications company already serving the territory; or (c) if the application is agreeable to the subscriber or subscribers and to both telephone telecommunications companies involved in the matter, will not create a duplication of facilities, and is in the interest of the public and the party or parties requiring telephone telecommunications service.

(2) Two years after the operative date of this act, the commission may waive applicability of subsection (1) of this section as to the provision of intra-LATA interexchange services by duly adopted and proclaimed rules and regulations applicable to all telecommunications companies providing such services, and after such waiver, certification for and provision of intra-LATA interexchange services shall be governed by the statutes, rules, and regulations for certification for and provision of inter-LATA interexchange services.

Sec. 14. That section 75-609, Revised Statutes Supplement, 1984, be amended to read as follows:

75-609. Except as provided in section 75-609-91, all rates for local telephone service and for interstate long distance telephone service shall be prescribed by the commission in determining the valuation of telephone property for the purpose of fixing fair and reasonable rates; the commission shall give consideration to the current value of such property and to such other factors as may be just and reasonable.

Where two or more telephone companies jointly furnish such local or long distance interexchange service or extended area service, the revenues from such jointly furnished service shall be divided in such manner as may be agreed upon between the companies furnishing such service. In the event of inability to agree, any one of the companies jointly furnishing such local or long distance service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenues from such jointly furnished service. The order entered pursuant to such application may be appealed from by any party to the proceeding in the same manner as from other orders of the commission.

(2) Access charges imposed by telecommunications companies for access to a local exchange network for the purpose of provision of interexchange services shall be as agreed to by the telecommunications companies involved. Any affected telecommunications company may by application cause review of such charges by the commission. Upon such application and unless otherwise agreed to by all parties thereto, the commission shall upon proper notice hold and complete a hearing thereon within sixty days of the filing. The commission may, within sixty days after the close of the hearing enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange telecommunications company but may order discounts where there is not available access of equal type and quality for all interexchange telecommunications companies, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange telecommunications company from all interexchange carriers to be less than the annual costs as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange telecommunications company in providing such access services.

Sec. 15. This act shall become operative on January 1, 1987.

Sec. 16. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 17. That original sections 75-109 and 75-604, Reissue Revised Statutes of Nebraska, 1943, and section 75-609, Revised Statutes Supplement, 1984, are repealed.
Appendix B

Vermont Legislative Bill S.114 (1987)
AN ACT RELATING TO REGULATION OF THE TELECOMMUNICATIONS INDUSTRY

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Part I. Telecommunications Policy and Planning * * *

Sec. 1. 30 V.S.A. § 202c is added to read:

§ 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The general assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the state vastly improved communication and access to information, but shifting costs to local telephone users and threatening universal basic service.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d to:

(1) protect basic local exchange telephone service to Vermont residents by permitting the state to enter into a contract with providers of such services, at reasonable cost and superior quality;

(2) provide the benefits of advances in telecommunications technology to Vermont residents either through a contract or by supporting competition through the reduction or suspension of regulatory requirements over any telecommunications service in which a competitive market exists;
(3) strengthen the state's role in telecommunications planning;

and

(4) separate and make independent from the planning and regulatory agencies the function of public advocacy for advocating, monitoring and reporting on contracts for basic exchange telephone services.

Sec. 2. 30 V.S.A. § 202d is added to read:

§ 202d. TELECOMMUNICATIONS PLANNING

(a) The department of public service, through the director for regulated utility planning, shall constitute the responsible utility planning agency of the state for the purpose of obtaining for all consumers in the state stable and predictable local exchange rates and toll rates and a technologically advanced telecommunications network serving all local exchange service areas in the state. The director shall be responsible for the provision of plans for meeting emerging trends related to telecommunications, demand, supply, basic services, technology and competition.

(b) The department, through the director, shall prepare a telecommunications plan for the state. The plan shall be for a 10 year period and shall serve as a basis for state telecommunications policy. The plan shall include at a minimum:

(1) an overview, looking ten years ahead, of statewide growth and development as they relate to future requirements for
telecommunications services, including patterns of urban expansion, statewide and service area economic growth, shifts in transportation modes, economic development, technological advances and other trends and factors which, as determined by the director, will significantly affect state telecommunications policy and programs;

(2) a survey of Vermont residents and businesses, conducted in cooperation with the agency of development and community affairs, to determine what telecommunications services are needed now and in the succeeding ten years;

(3) a study and evaluation of conversion to measured service as ordered by the board;

(4) an assessment of the current state telecommunications system and evaluation of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government.

(c) In developing the plan, the department shall take into account the policies and goals of section 202c, and the need for basic service at affordable rates, improved competition among providers, the needs of the state as user of telecommunications services, and future development of the state.

(d) In establishing plans, public hearings shall be held and the director shall consult with members of the public, representatives of telephone utilities, other providers and other interested state agencies, whose views shall be considered in preparation of the
plan. To the extent necessary, the director shall include in the plan, surveys to determine needed and desirable plant improvements and extensions, access and coordination between telecommunications providers, methods of operations, and any change that will produce better service or reduce costs. To this end the director may require the submission of data by each company subject to supervision as the director deems desirable.

(e) Before adopting a plan, the department shall conduct public hearings on a final draft. At least one hearing shall be held jointly with committees of the general assembly designated by the general assembly for this purpose. The department shall then accept the plan or modify it in accordance with the evidence presented at such hearings. The plan shall be adopted by January 1, 1989.

(f) The director shall annually review that portion of a plan which extends over the next three years. The department, through the director, shall annually extend the plan by one additional year; and from time to time, but in no event less than every three years, institute proceedings to review a plan and make revisions, where necessary. The three-year review and any interim revisions shall be made according to the procedures established in this section for initial adoption of the plan.
Sec. 3. REDESIGNATION

30 V.S.A. § 202 shall be redesignated "Electrical Energy Planning".

--- Part II. Telecommunications Regulation ---

Sec. 4. 30 V.S.A. § 102 is amended to read:

§ 102. PETITION; HEARING; CERTIFICATE

(a) Before the articles of association are transmitted to the secretary of state, the incorporators shall petition the public service board to *(hold a public hearing, in the county where the proposed corporation is to have its principal office, to)* determine whether the establishment and maintenance of such corporation will promote the general good of the state *(1)*. The board shall thereupon appoint a time and place in such county *(2)* and shall at that time file a copy of any such petition with the department. The department, within 12 days, shall review the petition and file a recommendation regarding the petition in the same manner as is set forth in 30 V.S.A. § 225(b). Such recommendation shall set forth reasons why the petition shall be accepted without hearing or shall request that a hearing on the petition be scheduled. If the department requests a hearing on the petition, or, if the board deems a hearing necessary, it shall appoint a time and place in the county where the proposed corporation is to have its principal office for hearing the petition, and shall make an order for the publication of the substance thereof and of the time and place of hearing two weeks successively in a newspaper *(3)*[published in the county, or, for want thereof, in an]
adjoining county]* of general circulation in the county to be served by the corporation, the last publication to be at least twelve days before the day appointed for the hearing. The department of public service, through the director for public advocacy, shall represent the public at the hearing.

(b) *[When, after the hearing,]* If the board finds *[and adjudges]* that the establishment and maintenance of the proposed corporation will promote the general good of the state, it shall give the incorporators a certificate to that effect under its seal.

(c) For good cause, after a hearing, the board may amend or revoke any certificate awarded under the provisions of this section. If any such certificate is revoked, the corporation shall no longer have authority to conduct any business which is subject to the jurisdiction of the board whether or not regulation thereunder has been reduced or suspended under sections 226a or 227a.

Sec. 5. 30 V.S.A. § 203(5) is amended to read:

(5) *[A company owning or operating telegraph or telephone lines, stations or exchanges within this state]* A person or company offering telecommunications service to the public on a common carrier basis. "Telecommunications service" means the transmission of any interactive two-way electromagnetic communications, including voice, image, data and information. Transmission of electromagnetic communications includes the use of any media such as wires, cables, television cables, microwaves, radio waves, light waves or any
combination of those or similar media. Telecommunications service does not include value added nonvoice services in which computer processing applications are used to act on the form, content, code and protocol of the information to be transmitted unless those services are provided under tariff approved by the public service board.

Sec. 6. 30 V.S.A. § 226a is added to read:

§ 226a. CONTRACTS REGARDING BASIC EXCHANGE TELECOMMUNICATIONS SERVICES

(a) For the purpose of this section "basic exchange telecommunications service" shall mean the provision of publicly switched, voice grade interactive telecommunications services between or among two or more end users, where a single central office provides that service to those two or more end users. The term may also, at the board's discretion, include services which are or have been tariffed at rates equivalent to local service rates for basic exchange services.

(b) The department is authorized to negotiate, and upon approval of the board may execute on behalf of the state, a contract for a fixed term with any company providing basic exchange telecommunications services. Any such contract shall provide for:

(1) specified basic exchange rates during the life of the contract;
(2) minimum plant and equipment modernization schedules;

(3) specified service quality levels for telecommunications services, including those offered to competitors, measured by objective standards;

(4) furnishing such technical information as may be needed by a competitor in order for the competitor to offer and provide competitive services which require access to or utilize the company's regulated basic exchange services in a manner technically equivalent to the company's use of those regulated services;

(5) rates, terms and conditions for access charges for use of the company's facilities by competitors, that are established by order of the board unless otherwise approved under this section by the board;

(6) elimination or reduction of regulatory requirements under sections 218(a), 225, 226 and 227 of this title, including rate of return requirements; and

(7) such other rates, terms, and conditions as the department and company may agree upon and the board approves, provided that the parties to the contract affirmatively demonstrate and the board finds that such rates, terms and conditions are consistent with the state telecommunications purposes established under section 202c and after its adoption with a state telecommunications plan established under section 202d.
(c) Any contract made pursuant to this section shall be written, signed by the parties, and filed with the board. At the time of filing a contract with the board, the company also shall file with the board for public inspection all information made available to the department during the negotiations. After public notice and no less than 45 days after the parties have filed a contract with it, the board shall hold a hearing to determine whether it should approve the contract. In such proceedings, the public contract advocate appointed by the attorney general under 3 V.S.A. § 165 shall represent the interests of the public and the state, and any interested party may intervene. The board shall grant approval only if it finds that a contract in its entirety is just and reasonable giving due consideration to the services and price levels covered and any risk of cross-subsidization, promotes the general good of the state, supports reasonable competition and takes into consideration any state telecommunications plan or policy adopted pursuant to section 202d. The board shall render its decision within eight and one-half months from the date of filing of a contract.

(d) The board shall retain jurisdiction over any contract under this section and shall hear and resolve any disputes or claims which may arise regarding its application. During the period of any contract under this section, a company shall continue to file with the board and the department its rates, tariffs and tolls for any service provided including any service subject to the contract, and
shall also file on a monthly basis its rate of return under the contract. No less than annually, the department shall report to the senate finance and house commerce committees of the general assembly, or such subcommittees or joint committee thereof as may be established for this purpose, a summary and analysis of the rates, tariffs and tolls for any service provided by a company under a contract, the rate of return of a company under the contract, and any other information pertaining to the contract which the committees may request. Concurrently, the public contract advocate shall report to such committees, subcommittees or joint committees, his or her analysis of the effect of the contract on the cost and quality of basic exchange telecommunications services and intrastate toll rates and modernization of telecommunications services.

(e) If at any time, after notice and hearing, the board determines that changes in federal regulatory law, unforeseen and significant economic shifts, or changes in technology have created either extremely severe economic hardships for the company or a condition that is severely detrimental and contrary to the public good, the board shall order the department and the company to renegotiate relevant portions of a contract negotiated under this section, and any renegotiated provisions shall be subject to the board's approval under the procedures of subsection (c). If at any time the general assembly is concerned that such conditions exist, it may by joint resolution, direct the board to conduct a hearing and make a
determination thereon. If the department and the company fail to reach a negotiated agreement within four months of receipt of an order to negotiate from the board, the board shall hold a hearing to determine the appropriate content of the relevant portions of the contract. In such proceedings, the public contract advocate shall represent the interests of the public and the state, and any interested party may intervene. The board shall complete its hearings and render its decision within four months from the date that the department and the company failed to agree under an order to negotiate, and a new contract containing such revisions as the board may order shall go into effect immediately.

(f) Any contract under this section shall extend for no more than five years, and this section and any contract shall terminate December 31, 1992. Upon expiration or termination of a contract, the rates, terms, and conditions then in effect under the contract shall continue in effect as duly filed and approved rates and schedules under this title and shall thereafter be subject to all of the provisions of this title.

Sec. 7. 30 V.S.A. § 227a is added to read:

§ 227a. PRICING OF COMPETITIVE TELECOMMUNICATIONS SERVICES

(a) In addition to the board's authority to reduce or suspend any regulatory requirements as part of a contract negotiated under section 226a, the board may also suspend or reduce such requirements in a competitive market under this section. If, after hearing, the
board determines that a competitive market exists for the provision of any telecommunications service offered by a company subject to its jurisdiction, the board may suspend or reduce any or all of the regulatory requirements otherwise applicable to the provision of such service under sections 218(a), 225, 226, and 227. In determining whether a competitive market exists, the board shall find:

(1) that no competitor offering such service has sufficient market power to set prices for the service; taking into consideration whether competitors to any dominant market provider offer a sufficient quantity of similar or equivalent services, whether there is reasonable ease of entry into the market for providers of these services, and any other relevant indicator of market power;

(2) that the competition in the market will afford the public at least as much protection as the applicable regulatory requirements being suspended or reduced;

(3) that adequate safeguards exist to assure that any services provided by a competitor which continue to be regulated are not supporting or subsidizing any services offered in the competitive market, and that no company shall allocate revenues from regulated activities to unregulated activities nor allocate costs from unregulated activities to regulated activities and, upon request, shall provide the board and the department with information including, but not limited to, cost studies indicating whether any regulated services are supporting any services which are deregulated; and
(4) That adequate safeguards exist to assure that access to any regulated basic exchange services or any other regulated services that must be utilized to provide the competitive service is available at the same rates, terms and conditions at which they are provided by the company to its own unregulated affiliates or charged to its own unregulated accounts.

(b) Nothing in this section shall limit the existing authority of the board or department to require provision of or access to information required by this title.

(c) The board shall upon petition of the department, and may upon its own initiative, investigate whether it should reimpose any regulatory requirements which it has suspended or reduced in accordance with subsection (a) of this section; and if the board finds that it is in the public interest to reapply any such regulatory provisions it may do so if it determines that the standards in subsection (a) are no longer met. Pending any final order, the board may reimpose any regulatory requirements on a preliminary basis as it determines is just and reasonable. The board shall rule on any request by the department for a preliminary order within 60 days. The board shall make a final decision on reimposition of regulatory requirements within seven months of the department’s request or of the date of commencement of its own investigation. A preliminary or final order shall be after public notice and hearing.
Sec. 8. 30 V.S.A. § 231 is amended to read:

§ 231. CERTIFICATE OF PUBLIC GOOD; ABANDONMENT OF SERVICE; HEARING

(a) A person, partnership *or* a unincorporated association, or previously incorporated association, which desires to own or operate a business over which the public service board has jurisdiction under the provisions of this chapter shall *not commence to operate the same without first petitioning* first petition the board to *hold a public hearing in the county where the proposed business is to operate, to* determine whether the operation of such business will promote the general good of the state *. The board shall thereupon appoint a time and place in such county* , and shall at that time file a copy of any such petition with the department. The department, within 12 days, shall review the petition and file a recommendation regarding the petition in the same manner as is set forth in 30 V.S.A. § 225(b). Such recommendation shall set forth reasons why the petition shall be accepted without hearing or shall request that a hearing on the petition be scheduled. If the department requests a hearing on the petition, or, if the board deems a hearing necessary, it shall appoint a time and place in the county where the proposed corporation is to have its principal office for hearing the petition, and shall make an order for the publication of the substance thereof and the time and place of hearing two weeks successively in a newspaper *published in the county, or, for want
thereof, in an adjoining county[* of general circulation in the county to be served by the petitioner, the last publication to be at least seven days before the day appointed for the hearing. The director for public advocacy shall represent the public at such hearing. If *[!, after the hearing,]* the board finds *[and adjudges]* that the operation of such business will promote the general good of the state, it shall give such person, partnership *[or]* unincorporated association or previously incorporated association a certificate *[to that effect,]* of public good specifying the business and territory to be served by such petitioners. *[The board may amend or revoke any such certificate.]* For good cause, after a hearing, the board may amend or revoke any certificate awarded under the provisions of this section. If any such certificate is revoked, the person, partnership, unincorporated association, or previously incorporated association shall no longer have authority to conduct any business which is subject to the jurisdiction of the board whether or not regulation thereunder has been reduced or suspended, under sections 226a or 227a.

(b) A company subject to the general supervision of the public service board under section 203 of this title may not abandon or curtail any service subject to the jurisdiction of the board or abandon all or any part of its facilities if it would in doing so
effect the abandonment, curtailment or impairment of the service, without first obtaining approval of the public service board, after notice and hearing, and upon finding by the board that the abandonment or curtailment is consistent with the public interest; provided, however, this section shall not apply to disconnection of service pursuant to valid tariffs or to rules adopted under section 209(b) and (c) of this title.

*** Part III. Public Contract Advocate ***

Sec. 9. 3 V.S.A. § 165 is added to read:

§ 165. PUBLIC CONTRACT ADVOCATE

(a) There is hereby imposed upon the office of the attorney general the duty to provide public contract advocacy for all proceedings involving contracts for basic telecommunications service under 30 V.S.A. § 226a. The attorney general shall appoint or retain as required one or more public contract advocates who shall be knowledgeable in the fields of public utility regulation and telecommunications services.

(b) Public contract advocates shall be appointed or retained for such time as may be required to monitor, represent the public interest, and report on any contract for basic telecommunications service under 30 V.S.A. § 226a. Compensation, expenses and support of public contract advocates shall be assessed as costs to the department of public service and paid from the revenues received from the tax to finance the department and the board levied under 30 V.S.A. § 22.
HOUSE BILL NO. 1336.

BY REPRESENTATIVES Grant, Allison, Anderson, Bath, Berry, Bond, Bowen, Dambman, Entz, Fagan, Fish, Grampsas, P. Hernandez, T. Hernandez, Jenkins, Paulson, Reeser, Schauer, Taylor-Little, and Wham;
also SENATORS Beatty, Fenlon, Lee, Meiklejohn, Schroeder, and Traylor.

CONCERNING THE REGULATION OF INTRASTATE TELECOMMUNICATIONS SERVICE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 15 of title 40, Colorado Revised Statutes, 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

ARTICLE 15
Intrastate Telecommunications Services

PART 1
GENERAL PROVISIONS

40-15-101. Legislative declaration. The general assembly hereby finds, determines, and declares that it is the policy of the state of Colorado to promote a competitive telecommunications marketplace while protecting and maintaining the wide availability of high-quality telecommunications services. Such goals are best achieved by legislation that brings telecommunications regulation into the modern era by guaranteeing the affordability of basic telephone service while fostering free market competition within the telecommunications industry. The general assembly further finds that the technological advancements and increased customer choices for telecommunications services generated by such market competition will enhance Colorado's economic development and play a critical role in Colorado's
economic future. However, the general assembly recognizes that the strength of competitive force varies widely between markets and products and services. Therefore, to foster, encourage, and accelerate the continuing emergence of a competitive telecommunications environment, the general assembly declares that flexible regulatory treatments are appropriate for different telecommunications services.

40-15-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Access" means special access and switched access.

(2) "Advanced features" means custom calling features known as speed dialing, 3-way calling, call forwarding, and call waiting.

(3) "Basic local exchange service" means the telecommunications service which provides a local dial tone line and local usage necessary to place or receive a call within an exchange area regulated pursuant to part 2 of this article.

(4) "Centron and centron-like services" means services which provide custom switching features which include but are not limited to distributive dial tone, select number screening, toll restriction and screening, nonattendant busy out, nonattend and call transfer, and select trunk hunting and screening.

(5) "Commission" means the public utilities commission of the state of Colorado.

(6) "Deregulated telecommunications services" means telecommunications services not subject to the jurisdiction of the commission pursuant to part 4 of this article.

(7) "Emerging competitive telecommunications services" means telecommunications services subject to regulation by the commission pursuant to part 3 of this article.

(8) "Exchange area" means a geographic area established by the commission, which consists of one or more central offices together with associated facilities which are used in providing basic local exchange service.

(9) "Functionally equivalent" refers to services or products which perform the same or similar tasks or functions to obtain substantially the same result at reasonably comparable prices.

(10) "Informational services" means nonstandard services.
Sec. 10. EFFECTIVE DATE

This act shall take effect July 1, 1987, except that the provisions of Sec. 6 authorizing the department to enter into negotiations for a contract under 30 V.S.A. § 226a shall take effect from passage provided that no contract may be approved by the board and executed prior to July 1, 1987.
Appendix C

Colorado House Bill No 1336 (1987)
provided to customers by means of personnel and facilities which include personalized intercept, synthesized voice messages, specialized bill services, and personalized number services.

(11) "Interexchange provider" means a person who provides telecommunications services between exchange areas.

(12) "Interexchange telecommunications services" means telephone services, not included in basic local exchange service, and which are priced based upon usage.

(13) "InterLATA" means telecommunications services between LATA's.

(14) "InterLATA interexchange telecommunications service" means long-distance service between LATA's.

(15) "IntraLATA" means telecommunications service provided within one LATA.

(16) "IntraLATA interexchange telecommunications service" means long-distance service within a LATA.

(17) "LATA" means each local access and transport area which has been designated in this state by the commission. A LATA may encompass more than one contiguous local exchange area in this state which serves common social, economic, or other purposes, even where such area transcends municipal or other local governmental boundaries.

(18) "Local exchange provider" means any person authorized by the commission to provide basic local exchange service.

(19) "New products and services" means any new product or service introduced separately or in combination with other products and services after January 1, 1988, which is not functionally required to provide basic local exchange service and any new product or service which is introduced after January 1, 1988, which is not a repackaged current product or service or a direct replacement for a regulated product or service. Repackaging any product or service deregulated under part 4 of this article with any service regulated under part 2 or 3 of this article shall not be considered a new product or service.

(20) "Operator services" means optional services provided by operators to customers which offer individualized and select call processing.

(21) "Premium services" means any enhanced or improved
product or service offered by a telecommunications provider which is not functionally required for the provision of basic local exchange or interexchange service and which the customer may purchase at his option.

(22) "Private line service" means any point-to-point or point-to-multi-point service dedicated to the exclusive use of an end user for the transmission of any telecommunications services.

(23) "Private telecommunications network" means a system, including the construction, maintenance, or operation of such system, for the provision of telecommunications service, or any portion of such service, by a person or entity for the sole and exclusive use of such person or entity and not for resale, directly or indirectly. "Private telecommunications network" also includes any telecommunications service, the operation, facilities, or premises of which are or may be shared by energy utilities, used solely and exclusively by and for such utilities and not for resale, directly or indirectly. Construction, maintenance, or operation of a private telecommunications network shall not constitute the provision of public utility service, and such network shall not be subject to any of the provisions of articles 1 to 7 of this title.

(24) "Regulated telecommunications services" means telecommunications services treated as public utility services subject to the jurisdiction of the commission.

(25) "Special access" means any point-to-point or point-to-multi-point service provided by a local exchange provider dedicated to the exclusive use of any interexchange provider for the transmission of any telecommunications services.

(26) "Special arrangements" means custom assemblies of optional manufactured products which allow users to select nonstandard interfaces and switched or dedicated facilities in combinations for select, specialized custom applications, including but not limited to combinations of microwave, coaxial or copper cable, fiber optics, multiplexing equipment, or specialized electronics. "Special arrangements" does not include access.

(27) "Special assemblies" means services provided to customers who require special or nonstandard conditioning for interoffice or intraoffice connections or image-data use interruptions for combination lines.

(28) "Switched access" means the services or facilities furnished by a local exchange company to interexchange
providers which allow them to use the basic exchange network for origination or termination of interexchange telecommunications services.

(29) "Telecommunications service" means the electronic or optical transmission of information between separate points by prearranged means.

40-15-103. Application of part. The provisions of this part shall apply throughout this article, unless specifically otherwise stated.

40-15-104. Powers of local government. Nothing in this article shall be construed to supersede any existing powers of a local government.

40-15-105. Nondiscriminatory access charges. (1) No local exchange provider shall, as to its pricing and provision of access, make or grant any preference or advantage to any person providing telecommunications service between exchanges nor subject any such person to, nor itself take advantage of, any prejudice or competitive disadvantage for providing access to the local exchange network. Access charges by a local exchange provider shall be cost-based, as determined by the commission, but shall not exceed its average price by rate element and by type of access in effect in the state of Colorado on July 1, 1987.

(2) At its option, any local exchange provider with fifty thousand or fewer access lines may, in lieu of the provisions of subsection (1) of this section, remain under the jurisdiction of the commission pursuant to part 2 of this article. A local exchange provider operating under this subsection (2) may at any time apply to the commission for regulatory relief under section 40-15-203 or 40-15-207. Any such local exchange provider, upon the granting of regulatory relief, shall provide access services under the conditions established in subsection (1) of this section; except that the commission shall set the maximum price for access services for such provider.

(3) Contracts for access pursuant to subsection (1) of this section shall be filed with the commission and open to review by other purchasers of such access to assure compliance with the provisions of this section. Prior to such review, the purchaser desiring such review shall execute a nondisclosure agreement as determined by the commission for the protection of business and trade secrets.

40-15-106. Cross-subsidization prohibited - illegal restraint of trade. The price of telecommunications services or products which are not subject to the jurisdiction of the
commission shall not be priced below cost by use of subsidization from customers of services and products subject to the jurisdiction of the commission, and any such cross-subsidization is deemed to be an illegal restraint of trade subject to the provisions of article 4 of title 6, C.R.S.

40-15-107. Powers of commission - inspection of books and documents. The commission shall administer and enforce all provisions of this article, and, in addition to any other powers under articles 1 to 7 of this title, the commission has the right to inspect the books and documents of the local exchange provider as those books and documents pertain to any proceeding pending before the commission. The local exchange provider shall supply additional relevant and material information to the commission as needed. In addition, the commission has the right to inspect the books and records of any affiliate of a local exchange provider which provides telecommunications service under part 2, 3, or 4 of this article, if, in the provision of such service, the affiliate uses a plant or incurs costs which are joint and common to the provision of any basic local exchange service of the local exchange provider regulated under part 2 of this article. Upon application to the commission and for good cause shown, the commission may enter an appropriate protective order which directs the manner in which proprietary information shall be treated.

40-15-108. Cost methodologies. (1) Any local exchange provider which provides facilities or equipment for use by interstate users or providers of telecommunications services shall separate all investments and expenses associated therewith according to applicable federal separations procedures and agreements.

(2) Any provider of telecommunications service which offers both regulated and deregulated telecommunications service shall segregate its intrastate investments and expenses in accordance with allocation methodologies as prescribed by the commission to ensure that deregulated telecommunications services are not subsidized by regulated telecommunications services.

40-15-109. Assurance of interconnections - averaging of rates. (1) If a local exchange provider does not have interconnection with an interexchange provider, the commission may order any provider of interexchange service in the state to interconnect with the local exchange provider. Nothing in this subsection (1) shall require a local exchange provider with less than fifty thousand lines to provide interexchange telecommunications service.
(2) All providers of interexchange voice grade telecommunications service shall average their interexchange voice grade rates on a statewide basis. Nothing in this section shall be construed to prohibit volume discounts or other discounts in promotional offerings.

(3) The commission may provide for just and equitable compensation upon application of an interexchange provider subject to subsection (1) or (2) of this section.

40-15-110. Provision of regulated and deregulated service. Nothing in this article shall be construed to preclude a single entity from offering and providing services under parts 2, 3, and 4 of this article.

PART 2
REGULATED TELECOMMUNICATIONS SERVICES

40-15-201. Regulation by commission. (1) For purposes of this part 2, except as otherwise provided in this title, each provider of basic local exchange service is declared to be affected with a public interest and a public utility subject to the provisions of articles 1 to 7 of this title, so far as applicable, including the regulation of all rates and charges pertaining to local exchange companies. The commission may promulgate such rules and regulations as are necessary for the purpose of implementing the provisions of this part 2.

(2) The following products, services, and providers are declared to be subject to regulation pursuant to this part 2 and subject to potential reclassification under section 40-15-207:

(a) Basic local exchange service;

(b) Basic emergency service;

(c) Public coin telephone service;

(d) White page directory listing;

(e) Local exchange listed telephone number service;

(f) New products and services necessary for the provision of basic local exchange service;

(g) Dual tone multifrequency signalling.

40-15-202. Certificate required. (1) No local exchange provider shall operate in this state except in accordance with the provisions of this part 2.
(2) No local exchange provider shall operate within this state without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation, unless such operation is authorized by section 40-5-102.

(3) The commission is authorized to issue a certificate of public convenience and necessity to a local exchange provider, and the commission may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

(4) A local exchange provider holding a certificate of public convenience and necessity to offer or provide basic local exchange service or a local exchange provider that had authority lawfully to offer or provide basic local exchange service immediately prior to the effective date of this article, as amended, without a certificate of public convenience and necessity shall continue to have such authority without having to make application to the commission for additional or continued authority.

40-15-203. Manner of regulation - refraining from regulation. (1) Subject to the provisions of section 40-15-207 and parts 3 and 4 of this article, the granting of any certificate of public convenience and necessity to provide basic local exchange service shall be deemed an exclusive grant or monopoly, subject to regulation by the commission pursuant to section 40-15-201.

(2) In accordance with the provisions of this part 2, upon its own motion or application of a local exchange provider, the commission may refrain from regulation for competitive purposes, and authorize a local exchange provider to provide all or a portion of a private telecommunications network service under stated or negotiated terms to any person or entity that has acquired, is contemplating the acquisition of, or is operating a private telecommunications network.

(3) (a) At any time, the local exchange provider may file or the commission on its own motion may request that the provider file a verified application with the commission for refraining from regulation for competitive purposes. The application shall contain at least the following information:

(1) The name and address of the local exchange provider;

(II) The name and address of the person or entity that has acquired, is contemplating the acquisition of, or is operating a private telecommunications network.
penalties as provided in article 7 of this title.

40-15-206. Regulation of the discontinuation or rearrangement of basic local exchange service - measured or message rate service not required. (1) Every local exchange provider shall continue to offer and provide basic local exchange service in any exchange area it serves immediately prior to the effective date of this article, as amended, unless the commission determines that an alternative provider offers or provides functionally equivalent service to the customers in such exchange area.

(2) Rearrangements of exchange areas different from those in existence on the effective date of this article, as amended, shall require a public hearing and a determination by the commission that such rearrangement will promote the public interest and welfare and will not adversely impact the public switched network of the affected local exchange provider or such provider's financial integrity.

(3) Measured or message rate service for end user customers shall not be required in order for such customers to obtain basic local exchange service unless the commission so orders.

40-15-207. Reclassification of services and products. (1) (a) Notwithstanding any other provision of this title, upon its own motion, or upon application by any person, the commission shall regulate, pursuant to part 3 of this article, specific telecommunications services regulated under this part 2 upon a finding that there is effective competition in the relevant market for such service and that such regulation under part 3 of this article will promote the public interest and the provision of adequate and reliable service at just and reasonable rates.

(b) In determining whether effective competition for a specific telecommunications service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors:

(1) The extent of economic, technological, or other barriers to market entry and exit;

(II) The number of other providers offering similar services in the relevant geographic area;

(III) The ability of consumers in the relevant geographic area to obtain the service from other providers at reasonable and comparable rates on comparable terms and under comparable conditions.

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(IV) The ability of any provider of such telecommunications service to affect prices or deter competition; and

(V) Such other factors as the commission deems appropriate.

(c) In determining geographic areas under paragraph (b) of this subsection (I), the commission shall not be unduly restrictive.

PART 3
EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICE

40-15-301. Regulation by the commission. (1) The commission shall regulate the terms and conditions, including rates and charges, under which telecommunications service pursuant to this part 3 is offered and provided to customers exclusively in accordance with the provisions of sections 40-4-101 (I), 40-4-111, 40-4-112, and 40-5-105 and articles 2, 3, 6, and 7 of this title, unless otherwise specified in this article.

(2) The following telecommunications products, services, and providers are declared to be initially subject to regulation pursuant to this part 3 and subject to potential deregulation under section 40-15-305:

(a) Advanced features offered and provided to residential customers and nonresidential customers with no more than five lines;

(b) Premium services except as provided in section 40-15-401 (I) (f), (I) (g), (I) (h), and (I) (i);

(c) InterLATA toll;

(d) IntraLATA toll, subject to the provisions of section 40-15-306;

(e) Switched access, subject to the provisions of section 40-15-307;

(f) Private line service, subject to the provisions of section 40-15-308.

40-15-302. Manner of regulation - rules and regulations. (1) Within ninety days from the effective date of this article, as amended, the commission shall promulgate emergency or temporary rules and regulations and within one hundred twenty days permanent rules and regulations as may be appropriate to regulate services and products provided
(III) A statement of what products or services of the local exchange provider are offered or are being provided by such private telecommunications network;

(IV) A statement that the local exchange provider intends to provide a competitive alternative proposal to its existing regulated tariffs for such person or entity;

(V) A statement of what products and services of the local exchange provider will or may be subject to the competitive alternative.

(b) For the purpose of evaluating said application, the commission may require such additional information as it deems proper for the processing of the application.

(c) The local exchange provider's application for refraining from regulation for competitive purposes and all information contained therein shall remain confidential.

(d) The commission shall approve or deny any such application for refraining from regulation for competitive purposes within ten days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one additional period of five days. If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.

(4) (a) Upon approval of an application for refraining from regulation for competitive purposes, the local exchange provider may thereafter negotiate with the person or entity that intends to acquire, is contemplating the acquisition of, or is operating a private telecommunications network without regard to its obligations as a public utility under Articles 1 to 7 of this title, including any tariffs of such company on file and approved by the commission.

(b) Within ten days after the conclusion of such negotiations between the local exchange provider and the entity which intends to acquire, is contemplating the acquisition of, or is operating a private telecommunications network, such provider shall file with the commission the final contract or other evidence of what basic local exchange service will be provided to such person or entity and what will be the charges and costs for such service. The final contracts or other evidence and all information contained therein shall remain confidential. Thereafter, for any basic local exchange service actually furnished through a private telecommunications network to a person or entity that is a party to a contract or other arrangement that has been filed with the commission pursuant to this section, such provider
may also furnish or offer to furnish similar basic local exchange service to such person or entity operating such private telecommunications network without regard to its obligations as a public utility under articles 1 to 7 of this title, including any tariffs of such provider on file and approved by the commission. The commission shall not have the power to approve or disapprove services provided or the charges therefor, but this limitation shall not prevent the commission from considering and evaluating the same, and the costs associated therewith, for general regulatory purposes.

(5) The provisions of articles 3 and 6 of this title shall not apply to proceedings related to an application for refraining from regulation for competitive purposes submitted pursuant to subsection (2) of this section.

(6) (a) Upon its own motion or application of a provider of telecommunications service regulated under this part 2, the commission may, in lieu of reclassification of a service under section 40-15-207, examine whether it should refrain from regulation and may refrain from regulation for competitive need for specific telecommunications service otherwise subject to its jurisdiction.

(b) The commission shall approve or deny any such application for refraining from regulation for competitive need within one hundred eighty days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one additional period of sixty days. If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.

(7) The authority granted the commission pursuant to this section is in addition to, and not a limitation upon, other powers of the commission, and such authority shall not be construed to be the sole or exclusive means by which the commission may refrain from regulation under this title.

(8) Notwithstanding the provisions of this section, no expenses incurred in the solicitation and the provision of services under this section shall be paid, directly or indirectly, by the subscribers of the applicant's regulated services.

40-15-204. Transfer of certificate. Any certificate of public convenience and necessity issued pursuant to this part 2 may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission.

40-15-205. Violations. Violations of this part 2 by a telecommunications provider are subject to enforcement and
pursuant to this part 3. In promulgating such rules and regulations, the commission shall consider such alternatives to traditional rate of return regulations as flexible pricing, detariffing, and other such manner and methods of regulation that are deemed consistent with the general assembly's expression of intent pursuant to section 40-15-101. It is the intent of the general assembly that traditional rate base or rate of return regulation may be considered but shall not be the sole factor considered by the commission. Such rate of return information shall be provided by the local exchange provider as requested by the commission.

(2) The commission shall promulgate rules and regulations for the certification of providers of emerging competitive telecommunications services, but nothing in this part 3 shall require the mandatory certification of providers of telecommunications service.

(3) The provisions of section 40-15-206 pertaining to regulation of the discontinuation or rearrangement of basic local exchange service shall apply to all services and products regulated pursuant to this section.

(4) A provider of telecommunications service holding a certificate of public convenience and necessity to offer or provide services and products regulated pursuant to this part 3 immediately prior to the effective date of this article, as amended, shall continue to have such authority without having to make application to the commission for additional or continued authority.

40-15-303. Transfer of certificate. Any certificate of public convenience and necessity issued pursuant to this part 3 may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission.

40-15-304. Violations. Violations of this part 3 by a telecommunications provider are subject to enforcement and penalties as provided in article 7 of this title.

40-15-305. Time period for consideration of deregulation of emerging competitive telecommunications service. (1) (a) Notwithstanding any other provision of this title, upon its own motion, or upon application by any person, the commission shall deregulate, pursuant to part 4 of this article, specific telecommunications services subject to this part 3 upon a finding that there is effective competition in the relevant market for such service and that such deregulation will promote the public interest and the provision of adequate and reliable service at just and reasonable rates.
(b) In determining whether effective competition for a specific telecommunication service exists, the commission shall make findings, after notice and opportunity for hearing, and shall issue an order based upon consideration of the following factors as the commission deems applicable in particular cases:

(I) The extent of economic, technological, or other barriers to market entry and exit;

(II) The number of other providers offering similar services;

(III) The ability of consumers to obtain the service from other providers at reasonable and comparable rates on comparable terms and under comparable conditions;

(IV) The ability of any provider of such telecommunications service to affect prices or deter competition;

(V) Such other relevant and necessary factors, including but not limited to relevant geographic areas, as the commission deems appropriate.

(c) The commission shall approve or deny any such application for deregulation within one hundred eighty days after the filing of the application; except that the commission may, by order, defer the period within which it must act for one additional period of ninety days, upon a finding that the proceeding cannot be completed within one hundred eighty days and that the additional time period is necessary for the commission to adequately and completely fulfill its duty under this subsection (I). If the commission has not acted on any such application within the appropriate time period permitted, the application shall be deemed granted.

(d) In determining geographic areas under paragraph (b) of this subsection (I), the commission shall not be unduly restrictive.

(2) Any telecommunications service or product not defined in part 1 of this article or not already classified pursuant to parts 2 to 4 of this article shall be classified as an emerging competitive telecommunications service under this part 3.

40-15-306. *IntralATA interexchange service.* IntralATA interexchange telecommunications services shall be regulated in accordance with the provisions of this part 3; except that such services shall not automatically be deregulated as part 4.
finds, determines, and declares that this act is necessary for
the immediate preservation of the public peace, health, and
safety.

Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Ted L. Strickland
PRESIDENT OF
THE SENATE

Lee C. Bahrych
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Marjorie L. Nielson
SECRETARY OF
THE SENATE

APPROVED July 2, 1987 at 10:11 am

Roy Romer
GOVERNOR OF THE STATE OF COLORADO
services pursuant to section 40-15-305 except upon application of the provider of such services. No interexchange provider shall market intralATA interexchange telecommunications service without obtaining prior approval of the commission. An interexchange provider shall not be required to compensate a local exchange provider for incidental telecommunications services that occur after the effective date of this article, as amended.

40-15-307. Switched access. Switched access shall not be deregulated pursuant to section 40-15-305 prior to the enactment of enabling legislation authorizing such deregulation.

40-15-308. Private line services. Private line service shall be reviewed with all due haste pursuant to section 40-15-305; except that in no event shall a decision on the pending action before the commission be issued later than one hundred twenty days after the effective date of this article, as amended, and, for good cause, an additional thirty days may be taken by the commission.

PART 4
DEREGULATION

40-15-401. Services, products, and providers exempt from regulation. (1) The following products, services, and providers are exempt from regulation under this article or under the "Public Utilities Law" of the state of Colorado:

(a) Cable services as defined by section 602(5) of the federal "Cable Franchise Policy and Communications Act of 1984";

(b) Cellular telecommunications services;

(c) Mobile radio service;

(d) Radio paging service;

(e) New products and services other than those necessary to provide basic local exchange service;

(f) Centron and centron-like services;

(g) Special arrangements;

(h) Special assemblies;

(i) Informational services;

(j) Operator services;
(k) Advanced features offered and provided to nonresidential customers with more than five lines;

(1) Special access.

40-15-402. No regulation by the commission - no certificate required. (1) Nothing in articles 1 to 7 of this title or parts 2 and 3 of this article shall apply to deregulated services and products pursuant to this part 4.

(2) No certificate of public convenience and necessity shall be required for the provision of services under this part 4.

(3) The commission may not reclassify deregulated services or products under this part 4 or services and products deregulated by the commission pursuant to section 40-15-305 (1).

40-15-403. General assembly may reregulate. Any telecommunications service or product deregulated pursuant to this part 4 may be reregulated by action of the general assembly.

40-15-404. Dispute - interconnection or access. In the event of a dispute between providers of telecommunications services or products deregulated pursuant to this part 4 concerning the terms, conditions, quality, or compensation for the interconnection or access of lines or facilities between providers, any such provider may apply to the commission for resolution of such dispute. After notice and hearing, the commission shall enter its decision resolving any such interconnection or access dispute.

SECTION 2. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 3. Safety clause. The general assembly hereby