

## CHAPTER 182

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**PUBLIC UTILITIES**

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**HOUSE BILL 95-1335**

BY REPRESENTATIVES Foster, McElhany, Allen, Chlouber, Clarke, Congrove, Dean, DeGette, Dyer, Epps, Friednash, George, Gordon, Hagedorn, June, Kerns, Lamborn, Lawrence, May, Moellenberg, Morrison, Paschall, Piffner, Prinzler, Reeser, Reeves, Romero, Saliman, Schwarz, Sullivan, Sullivant, Swenson, Taylor, and Tupa;  
also SENATORS Norton, Schroeder, Casey, Feeley, Matsunaka, L. Powers, Tebedo, and Weissmann.

**AN ACT**

**CONCERNING TELECOMMUNICATIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

**SECTION 1.** Article 15 of title 40, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

**PART 5  
TELECOMMUNICATIONS POLICY AND PLANNING**

**40-15-501. Legislative declaration - purpose and scope of part.** (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT COMPETITION IN THE MARKET FOR BASIC LOCAL EXCHANGE SERVICE WILL INCREASE THE CHOICES AVAILABLE TO CUSTOMERS AND REDUCE THE COSTS OF SUCH SERVICE. ACCORDINGLY, IT IS THE POLICY OF THE STATE OF COLORADO TO ENCOURAGE COMPETITION IN THIS MARKET AND STRIVE TO ENSURE THAT ALL CONSUMERS BENEFIT FROM SUCH INCREASED COMPETITION. THE COMMISSION IS ENCOURAGED, WHERE COMPETITION IS NOT IMMEDIATELY POSSIBLE, TO UTILIZE OTHER INTERIM MARKETPLACE MECHANISMS WHEREVER POSSIBLE, WITH THE ULTIMATE GOAL OF REPLACING THE REGULATORY FRAMEWORK ESTABLISHED IN PART 2 OF THIS ARTICLE WITH A FULLY COMPETITIVE TELECOMMUNICATIONS MARKETPLACE STATEWIDE AS CONTEMPLATED IN THIS PART 5.

(2) THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND DECLARES THAT:

(a) WISE PUBLIC POLICY RELATING TO THE TELECOMMUNICATIONS INDUSTRY AND

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

THE OTHER CRUCIAL SERVICES IT PROVIDES IS IN THE INTEREST OF COLORADO AND ITS CITIZENS;

(b) SOUND AND WELL-INFORMED DECISIONS NEED TO BE MADE ON A CONTINUING BASIS TO ENSURE THAT THE BENEFITS OF EXISTING AND NEW TELECOMMUNICATIONS SERVICES CONTINUE TO BE AVAILABLE TO THE GREATEST NUMBER OF COLORADO CITIZENS;

(c) THE INVOLVEMENT OF TELECOMMUNICATIONS PROVIDERS AND OTHERS WITH EXPERIENCE AND EXPERTISE IN THE AREA OF TELECOMMUNICATIONS IS ESSENTIAL TO KEEP LEGISLATORS INFORMED OF DEVELOPING TECHNOLOGY AND EVOLVING MARKETS, THUS TO AVOID COSTLY ERRORS AND ENHANCE THE EFFICIENCY OF THE STATE'S GROWING TELECOMMUNICATIONS NETWORK; AND

(d) THE RURAL NATURE OF COLORADO REQUIRES THAT SPECIAL RULES AND SUPPORT MECHANISMS BE ADOPTED TO ACHIEVE THE GOAL OF ENSURING THAT UNIVERSAL BASIC LOCAL EXCHANGE SERVICE BE AVAILABLE TO ALL RESIDENTS OF THE STATE AT REASONABLE RATES. RULES ADOPTED BY THE COMMISSION UNDER THIS PART 5 SHALL BE DESIGNED TO ACHIEVE THIS GOAL.

(3) THIS PART 5 IS ENACTED FOR THE FOLLOWING PURPOSES:

(a) TO SET FORTH, IN CONCISE FASHION, THE POLICY OF THIS STATE IN SPECIFIC SUBJECT MATTER AREAS WITHIN THE GENERAL TOPIC OF TELECOMMUNICATIONS, BOTH FOR THE GUIDANCE OF THE COMMISSION IN CARRYING OUT ITS DUTIES UNDER THIS ARTICLE AND FOR THE INFORMATION OF THE CITIZENS OF COLORADO;

(b) TO CREATE A FRAMEWORK FOR THE IDENTIFICATION OF OTHER SUBJECT MATTER AREAS SHOULD THE NEED ARISE, THE FORMULATION OF SUGGESTED POLICIES IN AREAS IN WHICH A POLICY DIRECTION HAS NOT YET BEEN STATED, AND THE REACHING OF CONSENSUS, WHEREVER POSSIBLE, AMONG PARTIES AFFECTED BY SUCH POLICIES SO AS TO MINIMIZE CONFLICTS, EASE THE COMMISSION'S CONSIDERABLE WORKLOAD, AND ENHANCE THE EFFICIENT DELIVERY OF TELECOMMUNICATIONS SERVICES TO THE PUBLIC; AND

(c) TO ADAPT THE REGULATORY STRUCTURE OF PARTS 2, 3, AND 4 OF THIS ARTICLE TO ACCOMMODATE MULTIPLE PROVIDERS OF LOCAL EXCHANGE SERVICE AND TO PERMIT ALTERNATE FORMS OF REGULATION FOR PROVIDERS OF LOCAL EXCHANGE SERVICE.

**40-15-502. Expressions of state policy. (1) Competitive local exchange market.** LOCAL EXCHANGE TELECOMMUNICATIONS MARKETS SHALL BE OPEN TO COMPETITION, UNDER CONDITIONS DETERMINED BY THE COMMISSION BY RULE PURSUANT TO THIS PART 5, ON OR BEFORE JULY 1, 1996.

(2) **Basic service.** BASIC SERVICE IS THE AVAILABILITY OF HIGH QUALITY, MINIMUM ELEMENTS OF TELECOMMUNICATIONS SERVICES, AS DEFINED BY THE COMMISSION, AT JUST, REASONABLE, AND AFFORDABLE RATES TO ALL PEOPLE OF THE STATE OF COLORADO. THE COMMISSION SHALL CONDUCT A PROCEEDING WHEN APPROPRIATE, BUT NO LATER THAN JULY 1, 1999, AND NO LESS FREQUENTLY THAN EVERY THREE YEARS TO CONSIDER THE REVISION OF THE DEFINITION OF BASIC

SERVICE, WITH THE GOAL THAT EVERY CITIZEN OF THIS STATE SHALL HAVE ACCESS TO A WIDER RANGE OF SERVICES AT RATES THAT ARE REASONABLY COMPARABLE AS BETWEEN URBAN AND RURAL AREAS.

(3) **Universal basic service - affordability of basic service.** (a) THE COMMISSION SHALL REQUIRE THE FURTHERANCE OF UNIVERSAL BASIC SERVICE, TOWARD THE ULTIMATE GOAL THAT BASIC SERVICE BE AVAILABLE AND AFFORDABLE TO ALL CITIZENS OF THE STATE OF COLORADO. THE GENERAL ASSEMBLY ACKNOWLEDGES THE USE OF LOW-INCOME TELEPHONE ASSISTANCE PROGRAMS, INCLUDING BUT NOT LIMITED TO "LIFE-LINE" AND "LINK-UP", AND TELECOMMUNICATIONS RELAY SERVICES FOR DISABLED TELEPHONE USERS TO FURTHER THE GOAL OF UNIVERSAL SERVICE. THE COMMISSION SHALL HAVE THE AUTHORITY TO REGULATE PROVIDERS OF TELECOMMUNICATIONS SERVICES TO THE EXTENT NECESSARY TO ASSURE THAT UNIVERSAL BASIC SERVICE IS PROVIDED TO ALL CONSUMERS IN THE STATE AT FAIR, JUST, AND REASONABLE RATES.

(b) (I) CONSISTENT WITH THE PUBLIC INTEREST GOAL OF MAINTAINING AFFORDABLE AND JUST AND REASONABLY PRICED BASIC LOCAL TELECOMMUNICATIONS SERVICE FOR ALL CITIZENS OF THE STATE, THE COMMISSION SHALL STRUCTURE TELECOMMUNICATIONS REGULATION TO ACHIEVE A TRANSITION TO A FULLY COMPETITIVE TELECOMMUNICATIONS MARKET WITH THE POLICY THAT PRICES FOR RESIDENTIAL BASIC LOCAL EXCHANGE SERVICE, INCLUDING ZONE CHARGES, IF ANY, DO NOT RISE ABOVE THE LEVELS IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION FOR COMPARABLE SERVICE; EXCEPT THAT THE PRICE OF SUCH SERVICE MAY BE ADJUSTED BY AN AMOUNT EQUAL TO THE CHANGE IN THE UNITED STATES GROSS DOMESTIC PRODUCT PRICE INDEX MINUS AN INDEX THAT REPRESENTS TELECOMMUNICATIONS PRODUCTIVITY CHANGES AS DETERMINED BY THE COMMISSION. THIS ADJUSTMENT SHALL BE GRANTED ONLY TO THE EXTENT THE COMMISSION DETERMINES AN ADJUSTMENT IS REQUIRED TO COVER REASONABLE COSTS AND SHALL NOT EXCEED FIVE PERCENT IN ANY ONE YEAR. THE COMMISSION SHALL NOT ALLOW PRICES FOR RESIDENTIAL BASIC SERVICE PLUS ZONE CHARGES TO INCREASE OUTSIDE BASE RATE AREAS BY AN AMOUNT GREATER THAN ANY PRICE INCREASE WITHIN BASE RATE AREAS.

(II) THE COMMISSION MAY DELAY OR DENY A PRICE INCREASE FOR RESIDENTIAL BASIC SERVICE IF A PROVIDER IS IN SUBSTANTIAL VIOLATION OF THE COMMISSION'S RULES GOVERNING QUALITY OF SERVICE OR HELD SERVICE ORDERS.

(III) THIS SECTION SHALL NOT BE CONSTRUED TO PROHIBIT THE COMMISSION FROM GRANTING AN INCREASE IN RESIDENTIAL BASIC LOCAL EXCHANGE SERVICE RATES FOR LOCAL EXCHANGE CARRIERS UNDER RATE-OF-RETURN REGULATION IF SUCH INCREASE WAS APPROVED BEFORE THE EFFECTIVE DATE OF THIS SECTION OR IF, AND TO THE EXTENT THAT, SUCH INCREASE IS NECESSARY TO RECOVER A PROVIDER'S COSTS ASSOCIATED WITH INVESTMENTS FOR NETWORK UPGRADES MADE FOR THE PURPOSE OF PROVISIONING RESIDENTIAL BASIC LOCAL EXCHANGE SERVICE IF SUCH INVESTMENTS ARE APPROVED OR REQUIRED BY THE COMMISSION AND NOT PREVIOUSLY INCLUDED IN THE CALCULATION OF RESIDENTIAL BASIC LOCAL EXCHANGE SERVICE RATES.

(IV) (A) FOR SERVICE PROVIDED TO RESIDENTIAL CUSTOMERS OUTSIDE THE BASE RATE AREA OF A LOCAL EXCHANGE PROVIDER, THE COMMISSION SHALL LIMIT RATE

INCREASES TO MAINTAIN RATES AT AFFORDABLE LEVELS AND SHALL EMPLOY UNIVERSAL SERVICE FUNDING MECHANISMS AS CONTEMPLATED IN SUBSECTION (5) OF THIS SECTION TO COMPENSATE FOR THE HIGH COST OF SERVING SUCH CUSTOMERS IN PREFERENCE TO ALLOWING RATE INCREASES.

(B) IF THERE ARE AREAS WITHIN A PROVIDER'S BASE RATE AREA, AS DETERMINED BY THE COMMISSION, THAT ARE RECEIVING SUBSIDIES, SUCH AREAS MAY CONTINUE TO RECEIVE SUBSIDIES OR BE ELIGIBLE FOR FUNDING UNDER THE UNIVERSAL SERVICE SUPPORT FUNDING MECHANISMS AFTER JULY 1, 1996, AT THE COMMISSION'S DISCRETION.

(V) IF AND WHEN ADDITIONAL ELEMENTS ARE INCLUDED IN THE DEFINITION OF BASIC SERVICE AS A RESULT OF REVIEW BY THE COMMISSION UNDER SUBSECTION (2) OF THIS SECTION, PRICES MAY INCREASE AS IS REASONABLY NECESSARY TO COVER THE COST AND ACCOUNT FOR THE INCLUSION OF SUCH ADDITIONAL ELEMENTS.

(4) **Universal access to advanced service.** THE GENERAL ASSEMBLY ACKNOWLEDGES THE GOAL OF UNIVERSAL ACCESS TO ADVANCED SERVICE TO ALL TELECOMMUNICATIONS CONSUMERS IN THIS STATE. THE COMMISSION SHALL CONSIDER THE IMPACT OF OPENING ENTRY TO THE LOCAL EXCHANGE MARKET AND SHALL DETERMINE WHETHER ADDITIONAL SUPPORT MECHANISMS MAY BE NECESSARY TO PROMOTE THIS GOAL IF COMPETITION FOR LOCAL EXCHANGE SERVICES FAILS TO DELIVER ADVANCED SERVICES IN ALL AREAS OF THE STATE.

(5) **Universal service support mechanisms.** (a) IN ORDER TO ACCOMPLISH THE GOALS OF UNIVERSAL BASIC SERVICE, UNIVERSAL ACCESS TO ADVANCED SERVICE, AND ANY REVISION OF THE DEFINITION OF BASIC SERVICE UNDER SUBSECTION (2) OF THIS SECTION, THE COMMISSION SHALL CREATE A SYSTEM OF SUPPORT MECHANISMS TO ASSIST IN THE PROVISION OF SUCH SERVICES IN HIGH-COST AREAS. THESE SUPPORT MECHANISMS SHALL BE FUNDED EQUITABLY AND ON A NONDISCRIMINATORY, COMPETITIVELY NEUTRAL BASIS THROUGH ASSESSMENTS ON ALL TELECOMMUNICATIONS SERVICE PROVIDERS IN COLORADO AND SHALL BE DISTRIBUTED EQUITABLY AND ON A NONDISCRIMINATORY, COMPETITIVELY NEUTRAL BASIS. FOR PURPOSES OF ADMINISTERING SUCH SUPPORT MECHANISMS, THE COMMISSION SHALL DIVIDE THE STATE INTO REASONABLY COMPACT, COMPETITIVELY NEUTRAL GEOGRAPHIC SUPPORT AREAS. A PROVIDER'S ELIGIBILITY TO RECEIVE SUPPORT UNDER THE SUPPORT MECHANISMS SHALL BE CONDITIONED UPON THE PROVIDER'S OFFERING BASIC SERVICE THROUGHOUT AN ENTIRE SUPPORT AREA. THE COMMISSION SHALL REVIEW THE COSTS OF BASIC SERVICE AND SHALL ADMINISTER SUCH SUPPORT MECHANISMS.

(b) A PROVIDER THAT OFFERS BASIC LOCAL EXCHANGE SERVICE THROUGHOUT AN ENTIRE SUPPORT AREA THROUGH USE OF ITS OWN FACILITIES OR ON A RESALE BASIS MAY BE QUALIFIED AS A PROVIDER OF LAST RESORT OR MAY BE ELIGIBLE TO RECEIVE UNIVERSAL SERVICE SUPPORT, AS DETERMINED BY THE COMMISSION. RESALE SHALL BE MADE AVAILABLE ON A NONDISCRIMINATORY BASIS, AS DETERMINED BY THE COMMISSION.

(c) A PROVIDER THAT FAILS TO PAY AN ASSESSMENT DUE AND PAYABLE UNDER PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL HAVE ITS CERTIFICATE REVOKED AFTER NOTICE AND THE OPPORTUNITY FOR A HEARING AS PROVIDED IN ARTICLE 6 OF

THIS TITLE.

**(6) Provider of last resort - duty to follow evolving definition of basic service.**

(a) IN ALL RELEVANT GEOGRAPHIC AREAS OF THE STATE, AS DEFINED BY THE COMMISSION, THE COMMISSION SHALL DESIGNATE AT LEAST ONE PROVIDER AS THE PROVIDER OF LAST RESORT AND ADOPT PROCEDURES FOR CHANGING OR TERMINATING SUCH DESIGNATIONS. A PROVIDER OF LAST RESORT DESIGNATION CARRIES THE RESPONSIBILITY TO OFFER BASIC LOCAL EXCHANGE SERVICE TO ALL CONSUMERS WHO REQUEST IT.

(b) A PERSON HOLDING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE BASIC SERVICE SHALL BE SUBJECT TO THE EVOLVING DEFINITION OF BASIC SERVICE DEVELOPED BY THE COMMISSION UNDER SUBSECTION (2) OF THIS SECTION AND THE SYSTEM OF FINANCIAL SUPPORT FOR UNIVERSAL SERVICE ESTABLISHED BY THE COMMISSION UNDER SUBSECTION (5) OF THIS SECTION.

**(7) Barriers to entry.** IT IS THE POLICY OF THIS STATE THAT ALL BARRIERS TO ENTRY INTO THE PROVISION OF TELECOMMUNICATIONS SERVICES IN COLORADO BE REMOVED AS SOON AS IS PRACTICABLE, SUBJECT TO THE COMMISSION'S AUTHORITY TO ENSURE QUALITY OF SERVICE AND OTHER MATTERS AS PROVIDED IN THIS ARTICLE.

**40-15-503. Opening of competitive local exchange market - process of negotiation and rule-making - issues to be considered by commission.**

(1) COMMENCING ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION AND CONCLUDING ON OR BEFORE JANUARY 1, 1996, MEMBERS OF THE WORKING GROUP IDENTIFIED IN SECTION 40-15-504 SHALL MEET AND ATTEMPT TO REACH CONSENSUS ON PROPOSED RULES TO BE SUBMITTED TO THE COMMISSION FOR CONSIDERATION AND ADOPTION AS APPROPRIATE TO IMPLEMENT SECTION 40-15-502 (1).

(2) (a) ON OR BEFORE JANUARY 1, 1996, THE COMMISSION SHALL INITIATE RULE-MAKING PROCEEDINGS TO IMPLEMENT SECTION 40-15-502 (1). RULES ADOPTED IN SUCH PROCEEDINGS SHALL BECOME EFFECTIVE ON OR BEFORE JULY 1, 1996. THE COMMISSION SHALL GRANT SUBSTANTIAL DEFERENCE TO THE PROPOSALS SUBMITTED BY THE WORKING GROUP UNDER SUBSECTION (1) OF THIS SECTION IN REGARD TO ISSUES ON WHICH THE WORKING GROUP REPORTS IT HAS REACHED CONSENSUS. SAID RULES SHALL BE DESIGNED TO FOSTER AND ENCOURAGE THE EMERGENCE OF A COMPETITIVE TELECOMMUNICATIONS MARKETPLACE AND MAY INCLUDE MORE ACTIVE REGULATION OF ONE PROVIDER THAN ANOTHER OR THE IMPOSITION OF GEOGRAPHIC LIMITS OR OTHER CONDITIONS ON THE AUTHORITY GRANTED TO A PROVIDER. IN ADDITION, IN ADOPTING SUCH RULES, THE COMMISSION SHALL CONSIDER THE DIFFERENCES BETWEEN THE ECONOMIC CONDITIONS OF RURAL AND URBAN AREAS.

(b) IN ADOPTING RULES UNDER PARAGRAPH (a) OF THIS SUBSECTION (2), THE COMMISSION SHALL ADOPT RULES GOVERNING, AND SHALL ESTABLISH METHODS OF PAYING FOR, WITHOUT LIMITATION, THE FOLLOWING:

(I) COST-BASED, NONDISCRIMINATORY CARRIER INTERCONNECTION TO ESSENTIAL FACILITIES OR FUNCTIONS, WHICH SHALL BE UNBUNDLED;

(II) COST-BASED NUMBER PORTABILITY AND THE COMPETITIVELY NEUTRAL ADMINISTRATION OF TELEPHONE NUMBERING PLANS;

(III) COST-BASED, OPEN NETWORK ARCHITECTURE;

(IV) TERMS AND CONDITIONS FOR RESALE OF SERVICES THAT ENHANCE COMPETITION;

(V) APPROPRIATE MEANS OF ASSESSING, COLLECTING, AND DISTRIBUTING CONTRIBUTIONS TO THE COLORADO HIGH COST FUND CREATED IN SECTION 40-15-208 AND ANY OTHER FINANCIAL SUPPORT MECHANISMS ADOPTED BY THE COMMISSION UNDER SECTION 40-15-502 (4); AND

(VI) ACCESS TO EMERGENCY 911 SERVICE.

(c) (I) THE COMMISSION SHALL CONSIDER CHANGING TO FORMS OF PRICE REGULATION OTHER THAN RATE-OF-RETURN REGULATION FOR ANY TELECOMMUNICATIONS PROVIDER THAT PROVIDES SERVICES REGULATED UNDER PART 2 OR 3 OF THIS ARTICLE AND SHALL CONSIDER THE CONDITIONS UNDER WHICH SUCH A CHANGE MAY TAKE PLACE TO ENSURE THAT TELECOMMUNICATIONS SERVICES CONTINUE TO BE AVAILABLE TO ALL CONSUMERS IN THE STATE AT FAIR, JUST, AND REASONABLE RATES. THIS PARAGRAPH (c) SHALL NOT BE CONSTRUED TO LIMIT THE MANNER AND METHODS OF REGULATION AVAILABLE UNDER SECTION 40-15-302.

(II) AS USED IN THIS PARAGRAPH (c), "PRICE REGULATION" MEANS A FORM OF REGULATION THAT MAY CONTAIN, WITHOUT LIMITATION, ANY OF THE FOLLOWING ELEMENTS:

(A) REGULATION OF THE PRICE AND QUALITY OF SERVICES;

(B) PRICE FLOORS AND PRICE CEILINGS;

(C) FLEXIBILITY IN PRICING BETWEEN PRICE FLOORS AND PRICE CEILINGS;

(D) MODIFIED TARIFF REQUIREMENTS;

(E) INCENTIVES FOR INCREASED EFFICIENCY, PRODUCTIVITY, AND QUALITY OF SERVICE.

(d) THE COMMISSION SHALL ADOPT RULES PROVIDING FOR SIMPLIFIED REGULATORY TREATMENT FOR BASIC LOCAL EXCHANGE PROVIDERS THAT SERVE ONLY RURAL EXCHANGES OF TEN THOUSAND OR FEWER ACCESS LINES. SUCH SIMPLIFIED TREATMENT MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, OPTIONAL METHODS OF REGULATORY TREATMENT THAT REDUCE REGULATORY REQUIREMENTS, REDUCE THE FINANCIAL BURDEN OF REGULATION, AND ALLOW PRICING FLEXIBILITY. SUCH SIMPLIFIED TREATMENT MAY ALSO ALLOW EXTENSIONS OF TIME FOR THE IMPLEMENTATION OF REQUIREMENTS UNDER THIS PART 5 IN RURAL EXCHANGES FOR WHICH THERE ARE NO COMPETING BASIC LOCAL EXCHANGE PROVIDERS CERTIFIED.

(e) APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE BASIC LOCAL EXCHANGE SERVICE PURSUANT TO THIS SUBSECTION (2) MAY BE FILED WITH THE COMMISSION AT ANY TIME AFTER THE EFFECTIVE DATE OF THE RULES REQUIRED. A PERSON THAT, ON OR BEFORE JANUARY 1, 1995, HELD A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE BASIC LOCAL

EXCHANGE SERVICE UNDER PART 2 OF THIS ARTICLE AND WHO STILL HOLDS SUCH CERTIFICATE SHALL CONTINUE TO HAVE SUCH AUTHORITY WITHOUT HAVING TO APPLY TO THE COMMISSION FOR ADDITIONAL OR CONTINUED AUTHORITY. NO PROVIDER OF LOCAL EXCHANGE SERVICES SHALL OPERATE IN THIS STATE WITHOUT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(f) A TELECOMMUNICATIONS PROVIDER THAT IS GRANTED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE IN COMPETITION WITH AN INCUMBENT PROVIDER OF LOCAL EXCHANGE SERVICE SHALL BE REGULATED UNDER PART 3 OF THIS ARTICLE UNLESS THE COMMISSION DETERMINES THAT THE SERVICES OF SUCH PROVIDER ARE NOT SUBJECT TO EFFECTIVE COMPETITION FROM THE INCUMBENT LOCAL EXCHANGE PROVIDER.

(3) DURING THE PERIOD OF NEGOTIATION AND RULE-MAKING AS CONTEMPLATED IN THIS SECTION, THE DIRECTOR OF THE COMMISSION MAY REQUEST, ON A CASE-BY-CASE BASIS, AND THE COMMISSION MAY GRANT, EXTENSIONS TO THE STATUTORILY DIRECTED TIMES FOR COMPLETION OF PROCEEDINGS BEFORE THE COMMISSION; EXCEPT THAT NO SUCH EXTENSION SHALL BE REQUESTED FOR PROCEEDINGS UNDER THIS SECTION. DURING RULE-MAKING UNDER THIS SECTION, THE COMMISSION MAY, ON ITS OWN MOTION AND ON A CASE-BY-CASE BASIS, GRANT SUCH EXTENSIONS; EXCEPT THAT NO SUCH EXTENSION SHALL BE GRANTED FOR PROCEEDINGS UNDER THIS SECTION.

**40-15-504. Working support group - duties - composition - repeal.** (1) THERE IS HEREBY ESTABLISHED A WORKING SUPPORT GROUP, REFERRED TO IN THIS PART 5 AS THE "WORKING GROUP", TO NEGOTIATE AND ATTEMPT TO RESOLVE ISSUES OF CONTENTION AMONG AFFECTED PARTIES IN CONNECTION WITH RULE-MAKING BY THE COMMISSION. THE WORKING GROUP SHALL ALSO CONFER WITH THE ADVISORY COMMITTEE CREATED IN SECTION 40-15-506 TO IDENTIFY ISSUES ON WHICH CONSENSUS CANNOT BE REACHED.

(2) THE WORKING GROUP SHALL BE APPOINTED BY THE GOVERNOR, IN CONSULTATION WITH THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE, AND SHALL CONSIST OF FIFTEEN TO EIGHTEEN REPRESENTATIVES OF PROVIDERS OF TELECOMMUNICATIONS SERVICES, CONSUMERS OF TELECOMMUNICATIONS SERVICES, THE GOVERNOR'S OFFICE, COMMISSION STAFF, LEGISLATIVE STAFF, AND OTHER INTERESTED PARTIES. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES OR HIS OR HER DESIGNEE SHALL CHAIR THE WORKING GROUP AND CONVENE MEETINGS AS REQUIRED UNDER THIS SECTION. MEETINGS OF THE WORKING GROUP SHALL BE OPEN TO THE PUBLIC.

(3) THE WORKING GROUP WILL FORM THE CORE GROUP FOR NEGOTIATIONS. ANY ENTITY WITH AN INTEREST IN THE OUTCOME OF RULE-MAKING MAY ATTEND MEETINGS AND PROVIDE INFORMATION TO THE WORKING GROUP.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1997.

**40-15-505. Committee on telecommunications policy - creation - duties - repeal.** (1) THERE IS HEREBY CREATED AN INTERIM COMMITTEE OF THE GENERAL ASSEMBLY, TO BE KNOWN AS THE COMMITTEE ON TELECOMMUNICATIONS POLICY, REFERRED TO IN THIS SECTION AS THE "COMMITTEE". THE COMMITTEE SHALL CONSIST

OF FIVE MEMBERS FROM THE HOUSE OF REPRESENTATIVES AND FOUR FROM THE SENATE.

(2) THE COMMITTEE SHALL MEET WITH THE ADVISORY COMMITTEE CREATED IN SECTION 40-15-506 AT LEAST ONCE PER MONTH FROM JUNE, 1995, TO NOVEMBER, 1995, AND SHALL RECOMMEND TO THE GENERAL ASSEMBLY LEGISLATION RELATING TO TELECOMMUNICATIONS POLICY FOR INTRODUCTION DURING THE 1996 REGULAR SESSION.

(3) THE COMMITTEE SHALL MEET DURING THE 1996 INTERIM TO ADDRESS ANY ISSUES REMAINING TO BE RESOLVED IN LEGISLATION FOLLOWING THE 1996 REGULAR SESSION.

(4) MATTERS ON WHICH THE INTERIM COMMITTEE MAY CONFER AND RECOMMEND LEGISLATION MAY INCLUDE, WITHOUT LIMITATION:

(a) WHETHER THERE SHOULD BE A FREEZE OR STANDSTILL IN RESIDENTIAL BASIC RATES, AND, IF SO, AT WHAT LEVEL AND FOR HOW LONG;

(b) WHETHER RESIDENTIAL BASIC RATES SHOULD BE ALLOWED TO INCREASE AS A RESULT OF INFLATION OR OTHER FACTORS, AND, IF SO, AN IDENTIFICATION OF THOSE FACTORS;

(c) WHETHER A LOCAL EXCHANGE PROVIDER THAT FACES COMPETITION FROM NEW ENTRANTS IN THE MARKET FOR BASIC LOCAL EXCHANGE SERVICE SHOULD RECEIVE A TAX DEDUCTION OR TAX CREDIT IN AN AMOUNT DETERMINED BY THE PUBLIC UTILITIES COMMISSION TO REPRESENT THE PORTION OF THE PROVIDER'S RATES THAT, BUT FOR THE ADVENT OF COMPETITION, WOULD HAVE BEEN CHARGEABLE TO THE PROVIDER'S RATEPAYERS FOR THE RECOVERY OF CAPITAL COSTS INCURRED UNDER A SYSTEM OF REGULATED MONOPOLY;

(d) WHETHER A FUND SHOULD BE CREATED TO ASSIST IN THE RECOVERY OF CAPITAL COSTS THAT WERE REASONABLY INCURRED BY AN INCUMBENT LOCAL EXCHANGE PROVIDER UNDER A SYSTEM OF REGULATED MONOPOLY WHEN:

(I) THE ADVENT OF COMPETITION OCCURS BEFORE THE END OF THE PROJECTED USEFUL LIFE OF THE INCUMBENT PROVIDER'S CAPITAL ASSETS;

(II) COMPETITION CAUSES THE INCUMBENT PROVIDER TO LOSE CUSTOMERS TO NEW MARKET ENTRANTS OR FORCES THE INCUMBENT PROVIDER TO REDUCE ITS PRICES IN AN EFFORT TO RETAIN ITS EXISTING CUSTOMERS, OR BOTH; AND

(III) AS A RESULT, THE INCUMBENT PROVIDER'S REVENUES ARE INSUFFICIENT TO RECOVER THE COSTS OF ITS CAPITAL ASSETS PURCHASED BEFORE THE ADVENT OF COMPETITION.

(e) THE PREDICTED BENEFIT OR DETRIMENT TO BUSINESS LOCAL EXCHANGE CUSTOMERS AND THE PREDICTED EFFECT ON BUSINESS TELEPHONE RATES AND SERVICE RESULTING FROM THE LIMITATIONS ON RESIDENTIAL LOCAL EXCHANGE SERVICE RATES IMPOSED UNDER SECTION 40-15-503 AND FROM COMPETITION IN LOCAL EXCHANGE MARKETS AS CONTEMPLATED IN THIS PART 5.



(5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1997.

**40-15-506. Advisory committee to committee on telecommunications policy - creation - duties - repeal.** (1) THERE IS HEREBY CREATED THE ADVISORY COMMITTEE TO THE LEGISLATIVE INTERIM COMMITTEE ON TELECOMMUNICATIONS POLICY CREATED IN SECTION 40-15-505. SAID COMMITTEE SHALL CONSIST OF TWELVE MEMBERS INCLUDING THE GOVERNOR, THREE MEMBERS OF THE SENATE, THREE MEMBERS OF THE HOUSE OF REPRESENTATIVES, AND ONE REPRESENTATIVE EACH FROM A LARGE LOCAL TELEPHONE COMPANY, A SMALL LOCAL TELEPHONE COMPANY, THE CABLE TELEVISION INDUSTRY, A LONG DISTANCE PROVIDER, AND CONSUMERS. INITIAL AND ANY VACANCY APPOINTMENTS OF MEMBERS OF THE ADVISORY COMMITTEE OTHER THAN THE GOVERNOR SHALL BE MADE BY THE GOVERNOR, THE PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES; EXCEPT THAT, OF THE LEGISLATIVE MEMBERS, ONE SHALL BE APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES AND ONE SHALL BE APPOINTED BY THE MINORITY LEADER OF THE SENATE.

(2) THE ADVISORY COMMITTEE SHALL REVIEW, ADVISE, AND MAKE RECOMMENDATIONS TO THE LEGISLATIVE INTERIM COMMITTEE ON TELECOMMUNICATIONS POLICY CONCERNING EMERGING ISSUES IN THE FIELD OF TELECOMMUNICATIONS, POLICY OPTIONS AVAILABLE TO ADDRESS THOSE ISSUES, AND PENDING LEGISLATION IN THE FIELD OF TELECOMMUNICATIONS. THE ADVISORY COMMITTEE SHALL ALSO ADVISE SAID LEGISLATIVE COMMITTEE ON AREAS IN WHICH THE WORKING GROUP IS UNABLE TO REACH CONSENSUS.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1997.

**40-15-507. Funding and appropriations - telecommunications policy development fund - creation - repeal.** (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE TELECOMMUNICATIONS POLICY DEVELOPMENT FUND, REFERRED TO IN THIS SECTION AS THE "FUND", WHICH SHALL BE A SEPARATE, INTEREST-BEARING ACCOUNT ADMINISTERED AND ACCOUNTED FOR BY THE STAFF OF THE COMMISSION. EXPENDITURES MAY BE MADE FROM THE FUND TO AUGMENT THE COMMISSION'S ANNUAL BUDGET APPROPRIATION AS REQUIRED FOR EXPERT TESTIMONY, CONSULTING SERVICES, POSTAGE AND PRINTING COSTS, COSTS ASSOCIATED WITH ARRANGING FOR AND CONDUCTING MEETINGS, AND OTHER ASSOCIATED SUPPORT AND OPERATING COSTS INCURRED IN CARRYING OUT THE COMMISSION'S DUTIES UNDER THIS PART 5. EXPENDITURES FROM THE FUND SHALL BE AUTHORIZED BY THE DIRECTOR OF THE COMMISSION WITH THE CONSENT OF THE DIRECTOR OF THE LEGISLATIVE COUNCIL. THE FUND SHALL BE SUPPORTED BY VOLUNTARY CASH CONTRIBUTIONS FROM TELECOMMUNICATIONS SERVICE PROVIDERS AND SHALL NOT EXCEED A TOTAL OF EIGHTY THOUSAND DOLLARS FOR THE PERIOD FROM THE EFFECTIVE DATE OF THIS PART 5 TO AND INCLUDING JUNE 30, 1996. ANY MONEYS REMAINING IN THE FUND ON JUNE 30, 1996, SHALL BE TRANSFERRED TO THE LOW-INCOME TELEPHONE ASSISTANCE FUND CREATED IN SECTION 40-3.4-108 (2).

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1996.

**40-15-508. Local exchange administration fund - repeal.** (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE LOCAL EXCHANGE ADMINISTRATION FUND, REFERRED TO IN THIS SECTION AS THE "FUND". THE PURPOSE OF THE FUND IS TO

DEFRAY THE COMMISSION'S COSTS INCURRED IN CARRYING OUT THE COMMISSION'S DUTIES UNDER THIS PART 5 TO THE EXTENT SUCH COSTS ARE NOT ADEQUATELY COVERED BY THE TELECOMMUNICATIONS POLICY DEVELOPMENT FUND CREATED IN SECTION 40-15-507. IN PARTICULAR, THE COMMISSION IS AUTHORIZED TO DRAW UPON THE FUND BOTH BEFORE AND AFTER JULY 1, 1996; TO CONTRACT WITH PRIVATE PARTIES FOR SERVICES REQUIRED TO MEET THE COMMISSION'S DEADLINES FOR RULE-MAKING AND THE PREPARATION OF STUDIES AND REPORTS AS CONTEMPLATED BY SECTION 40-15-503 (2); AND TO TAKE SUCH OTHER ACTIONS AS IT MAY DEEM NECESSARY TO ADMINISTER THE TRANSITION TO COMPETITION IN LOCAL EXCHANGE MARKETS WITHOUT DELAYING ITS OTHER BUSINESS AS CONTEMPLATED IN SECTION 40-15-503 (3).

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1999.

**40-15-509. Transfer of certificate.** ANY CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE SERVICE MAY BE SOLD, ASSIGNED, LEASED, ENCUMBERED, OR TRANSFERRED AS OTHER PROPERTY ONLY UPON AUTHORIZATION BY THE COMMISSION.

**40-15-510. Violations.** VIOLATIONS OF THIS PART 5 BY A TELECOMMUNICATIONS PROVIDER ARE SUBJECT TO ENFORCEMENT AND PENALTIES AS PROVIDED IN ARTICLE 7 OF THIS TITLE.

**SECTION 2.** Part 1 of article 15 of title 40, Colorado Revised Statutes, 1993 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**40-15-111. 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 JULY 2, 1996, 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 JULY 2, 1996, 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.

(4) A TELECOMMUNICATIONS PROVIDER SHALL NOT BASE ITS CHARGES FOR BASIC LOCAL EXCHANGE SERVICE ON THE VOLUME OR AMOUNT OF DATA OR VOICE TRAFFIC OF AN INDIVIDUAL SUBSCRIBER EXCEPT WITH THE PRIOR APPROVAL OF THE COMMISSION FOLLOWING NOTICE AND THE OPPORTUNITY FOR A HEARING.

**SECTION 3.** 40-15-102 (3), Colorado Revised Statutes, 1993 Repl. Vol., is

amended to read:

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

(3) "Basic local exchange service" OR "BASIC 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~~ AND ANY OTHER SERVICES OR FEATURES THAT MAY BE ADDED BY THE COMMISSION UNDER SECTION 40-15-502 (2).

**SECTION 4.** 40-15-203 (1), Colorado Revised Statutes, 1993 Repl. Vol., is amended to read:

**40-15-203. Manner of regulation - refraining from regulation - repeal.**

(1) (a) 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.

(b) THIS SUBSECTION (1) IS REPEALED, EFFECTIVE JULY 1, 1996.

**SECTION 5.** 40-15-208, Colorado Revised Statutes, 1993 Repl. Vol., is amended to read:

**40-15-208. Colorado high cost fund - creation - purpose - operation.** There is hereby created, in the state treasury, the Colorado high cost fund, referred to in this section as the "fund", which shall be distributed to ~~small local exchange carriers with high loop costs, high local switching costs, or high exchange trunk costs,~~ as determined by rules promulgated by the commission. Any fund created prior to April 16, 1992, for a similar purpose by the commission pursuant to rule is hereby validated. The purpose of the fund created in this section is to provide financial assistance to ~~certain small~~ local exchange carriers to help make basic local ~~telephone~~ EXCHANGE service affordable AND ALLOW SUCH PROVIDERS TO BE FULLY REIMBURSED FOR THE DIFFERENCE BETWEEN THE REASONABLE COSTS INCURRED IN MAKING BASIC SERVICE AVAILABLE TO THEIR CUSTOMERS WITHIN A RURAL, HIGH-COST GEOGRAPHIC SUPPORT AREA AND THE PRICE CHARGED FOR SUCH SERVICE, AFTER TAKING INTO ACCOUNT ANY AMOUNTS RECEIVED BY SUCH PROVIDERS UNDER PRICE SUPPORT MECHANISMS ESTABLISHED BY THE FEDERAL GOVERNMENT AND BY THIS STATE. THE COMMISSION SHALL ENSURE THAT NO LOCAL EXCHANGE PROVIDER IS RECEIVING FUNDS FROM THIS OR ANY OTHER SOURCE THAT, TOGETHER WITH LOCAL EXCHANGE SERVICE REVENUES, EXCEEDS THE COST OF PROVIDING LOCAL EXCHANGE SERVICE TO CUSTOMERS OF SUCH PROVIDER. The moneys in the fund that are to be used for administrative costs incurred by the fund shall be appropriated annually by the general assembly, and the moneys in the fund that are to be used for the payment of benefits are hereby continuously appropriated to the commission for the purposes of this section. At the end of any fiscal year all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. Each year the commission shall determine the costs incurred in administering the fund and shall determine, together with any surplus revenues from any prior year, the charge to subscribers that will be necessary to

cover the cost of implementing this section. The moneys from such charge shall be transmitted to the state treasurer, who shall credit the same to the Colorado high cost fund. The commission shall be reimbursed from the fund for reasonable expenses incurred in its administration. All interest derived from the deposit and investment of this fund shall ~~be credited to the general fund pursuant to section 24-36-114, C.R.S.~~ REMAIN IN THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND.

**SECTION 6. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the telecommunications policy development fund not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 1995, the sum of eighty thousand dollars (\$80,000), or so much thereof as may be necessary, for the implementation of this act. The moneys appropriated by this subsection (1) shall become available upon passage of this act and shall remain available until June 30, 1996.

(2) (a) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the local exchange administration fund created in section 40-15-508, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 1995, the sum of three hundred thousand dollars (\$300,000), or so much thereof as may be necessary, for the purposes outlined in section 40-15-508, Colorado Revised Statutes. This appropriation shall become available upon passage of this act.

(b) For the purpose of implementing section 40-15-508, Colorado Revised Statutes, prior to sufficient moneys becoming available in the local exchange administration fund, the department of regulatory agencies is authorized to borrow moneys from the controlled maintenance trust fund created in section 24-75-302.5, Colorado Revised Statutes, upon passage of this act, in an amount up to the amount of the appropriation in paragraph (a) of this subsection (2). Said moneys shall be transferred and credited to the local exchange administration fund. Moneys borrowed from the controlled maintenance trust fund shall be repaid, with interest, from assessments set by the public utilities commission and paid into the local exchange administration fund by incumbent providers and new entrants in the local exchange market on or after July 1, 1996. The loan shall bear interest at the earnings rate calculated monthly by the state treasurer and shall be repaid by and at the discretion of the state treasurer at the end of any fiscal year but not sooner than July 1, 1998. Such repayment may be extended to a date no later than June 30, 1999.

(3) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the legislative department, for allocation to the office of the legislative council, for the fiscal year beginning July 1, 1995, the sum of fifteen thousand one hundred four dollars (\$15,104) and 0.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

(4) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the legislative department, for allocation to the office of legislative legal services, for the fiscal year beginning July 1, 1995, the sum of four thousand five hundred two dollars (\$4,502) and 0.1 FTE, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 24, 1995