

IN THE SENATE

SENATE BILL NO. 1105

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO TELECOMMUNICATIONS; AMENDING SECTION 61-121, IDAHO CODE, TO RE-
2 VISE THE DEFINITION OF "TELEPHONE CORPORATION" AND "TELECOMMUNICATION
3 SERVICE" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 62-603,
4 IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS;
5 AMENDING SECTION 62-618, IDAHO CODE, TO PROVIDE PREEMPTION OF CERTAIN
6 PROVIDERS OF CERTAIN SERVICES; AMENDING CHAPTER 6, TITLE 62, IDAHO
7 CODE, BY THE ADDITION OF A NEW SECTION 62-618A, IDAHO CODE, TO CLARIFY
8 THAT NO STATE GOVERNMENT ENTITY OR POLITICAL SUBDIVISION SHALL REGULATE
9 VOIP AND IP-ENABLED SERVICES WITH EXCEPTIONS; AND AMENDING SECTIONS
10 18-6609, 26-2239, 61-1302 AND 62-609, IDAHO CODE, TO PROVIDE CORRECT
11 CODE REFERENCES.
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Section 61-121, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 61-121. TELEPHONE CORPORATION -- TELECOMMUNICATION SERVICES. (1) The
17 term "telephone corporation" when used in title 61, Idaho Code, means every
18 corporation or person, their lessees, trustees, receivers or trustees ap-
19 pointed by any court whatsoever, providing telecommunication services for
20 compensation within this state. Except as otherwise provided by statute,
21 telephone corporations providing : (a) radio paging, mobile radio telecom-
22 munication services, answering services, ~~(including computerized or other-~~
23 ~~wise automated answering or voice message services)~~; (b) one-way trans-
24 mission to subscribers of: (i) video programming; ~~or (ii) other program-~~
25 ~~ming service,~~ and subscriber interaction, if any, which is required for the
26 selection of such video programming or other programming service or survey-
27 ing; or (c) voice over internet protocol service or internet protocol-en-
28 abled service are exempt from any requirement of title 61, or chapter 6, ti-
29 tle 62, Idaho Code, in the provision of such services.

30 (2) "Telecommunication service" means the transmission of two-way in-
31 teractive switched signs, signals, writing, images, sounds, messages, data,
32 or other information of any nature by wire, radio, lightwaves, or other elec-
33 tromagnetic means ~~(which that includes message telecommunication service~~
34 ~~and access service)~~, which originate and terminate in this state, and are
35 offered to or for the public, or some portion thereof, for compensation. Ex-
36 cept as otherwise provided by statute, "telecommunication service" does not
37 include: (a) the one-way transmission to subscribers of: (i) video program-
38 ming; ~~or (ii) other programming service,~~ and subscriber interaction, if
39 any, which is required for the selection of such video programming or other
40 programming service, or surveying, ~~or~~; (b) the provision of radio paging,
41 mobile radio telecommunication services, answering services, ~~(including~~
42 ~~computerized or otherwise automated answering or voice message services)~~;

1 or (c) voice over internet protocol service or internet protocol-enabled
 2 service, and such services shall not be subject to the provisions of title
 3 61, Idaho Code, or title 62, Idaho Code.

4 SECTION 2. That Section 62-603, Idaho Code, be, and the same is hereby
 5 amended to read as follows:

6 62-603. DEFINITIONS. As used in this chapter:

7 (1) "Basic local exchange service" means the provision of access lines
 8 to residential and small business customers with the associated transmis-
 9 sion of two-way interactive switched voice communication within a local ex-
 10 change calling area.

11 (2) "Basic local exchange rate" shall mean the monthly charge imposed
 12 by a telephone corporation for basic local exchange service, but shall not
 13 include any charges resulting from action by a federal agency or taxes or
 14 surcharges imposed by a governmental body which are separately itemized and
 15 billed by a telephone corporation to its customers.

16 (3) "Chapter" as used herein shall mean chapter 6, title 62, Idaho Code.

17 (4) "Commission" means the Idaho public utilities commission.

18 (5) "Facilities-based competitor" means a local exchange carrier that
 19 offers basic local exchange service either: (a) exclusively over its own
 20 telecommunications service facilities; or (b) predominantly over its own
 21 facilities in combination with the resale of telecommunications services of
 22 another carrier.

23 (6) "Incumbent telephone corporation" means a telephone corporation or
 24 its successor which was providing basic local exchange service on or before
 25 February 8, 1996.

26 (7) "Internet protocol-enabled service" or "IP-enabled service"
 27 means, except as provided in the definition of "voice over internet proto-
 28 col service" herein, any service capability, functionality, or application
 29 provided using internet protocol or any successor protocol, that enables an
 30 end user to send or receive a communication in internet protocol format or
 31 any successor format regardless of whether the communication is voice, data
 32 or video.

33 (8) "Local exchange calling area" means a geographic area encompass-
 34 ing one (1) or more local communities as described in maps, tariffs, rate
 35 schedules, price lists, or other descriptive material filed with the com-
 36 mission by a telephone corporation, within which area basic local exchange
 37 rates rather than message telecommunication service rates apply.

38 (89) "Message telecommunication service" (MTS) means the transmis-
 39 sion of two-way interactive switched voice communication between local ex-
 40 change calling areas for which charges are made on a per-unit basis, not in-
 41 cluding wide area telecommunications service (WATS), or its equivalent, or
 42 individually negotiated contracts for telecommunication services.

43 (910) "Residential customers" shall mean persons to whom telecommuni-
 44 cation services are furnished at a dwelling and which are used for personal
 45 or domestic purposes and not for business, professional or institutional
 46 purposes.

47 (101) "Rural telephone company" means a local exchange carrier operat-
 48 ing entity to the extent that the entity:

1 (a) Provides common carrier service to any local exchange carrier study
2 area that does not include either:

3 (i) ~~a~~Any incorporated place of ten thousand (10,000) inhabitants
4 or more, or any part thereof, based on the most recently available
5 population statistics of the bureau of the census; or

6 (ii) ~~a~~Any territory, incorporated or unincorporated, included in
7 an urbanized area, as defined by the bureau of the census as of Au-
8 gust 10, 1993;

9 (b) Provides telephone exchange service, including exchange access, to
10 fewer than fifty thousand (50,000) access lines;

11 (c) Provides telephone exchange service to any local exchange carrier
12 study area with fewer than one hundred thousand (100,000) access lines;
13 or

14 (d) Has less than fifteen percent (15%) of its access lines in communi-
15 ties of more than fifty thousand (50,000) on the date of enactment of the
16 federal telecommunications act of 1996.

17 (112) "Small business customers" shall mean a business entity, whether
18 an individual, partnership, corporation or any other business form, to whom
19 telecommunication services are furnished for occupational, professional or
20 institutional purposes, and which business entity does not subscribe to more
21 than five (5) access lines which are billed to a single billing location.

22 (123) "Telecommunications act of 1996" means the federal telecommuni-
23 cations act of 1996, ~~p~~Public ~~l~~Law ~~n~~No. 104-104 as enacted effective February
24 8, 1996.

25 (134) "Telecommunication service" means the transmission of two-way
26 interactive switched signs, signals, writing, images, sounds, messages,
27 data, or other information of any nature by wire, radio, lightwaves, or other
28 electromagnetic means ~~(which that includes message telecommunication ser-~~
29 ~~vice and access service)~~, which originate and terminate in this state, and
30 are offered to or for the public, or some portion thereof, for compensation.
31 Except as otherwise provided by statute, "telecommunication service" does
32 not include: (a) the one-way transmission to subscribers of: (i) video
33 programming~~;~~ or (ii) other programming service, and subscriber interac-
34 tion, if any, which is required for the selection of such video programming
35 or other programming service~~;~~ or surveying~~;~~ ~~or~~; (b) the provision of ra-
36 dio paging, mobile radio telecommunication services, answering services,
37 ~~(including computerized or otherwise automated answering or voice message~~
38 ~~services)~~~~;~~ or (c) voice over internet protocol service or internet proto-
39 col-enabled service and such services shall not be subject to the provisions
40 of title 61, Idaho Code, or title 62, Idaho Code.

41 (145) "Telephone corporation" means every corporation or person, their
42 lessees, trustees, receivers or trustees appointed by any court whatso-
43 ever, providing telecommunication services for compensation within this
44 state, provided that municipal, cooperative, or mutual nonprofit telephone
45 companies shall be included in this definition only for the purposes of
46 sections 62-610 and 62-617 through 62-620, Idaho Code. Except as otherwise
47 provided by statute, telephone corporations providing: (a) radio paging,
48 mobile radio telecommunications services, answering services, ~~(including~~
49 ~~computerized or otherwise automated answering or voice message services)~~~~;~~
50 ~~or~~; (b) one-way transmission to subscribers of: (i) video programming~~;~~ or

1 (ii) other programming service, and subscriber interaction, if any, which
 2 is required for the selection of such video programming or other programming
 3 service or surveying; or (c) voice over internet protocol service or inter-
 4 net protocol-enabled service are exempt from any requirement of this chapter
 5 or title 61, Idaho Code, in the provision of such services; provided, that
 6 the providers of these exempted services shall have the benefits given them
 7 under section 62-608, Idaho Code.

8 (16) "Voice over internet protocol service" or "VoIP service" means an
 9 internet protocol-enabled service that facilitates real time, two-way voice
 10 communication that originates from, or terminates at, a user's location and
 11 permits the user to receive a call that originates from the public switched
 12 telephone network and terminates a call on the public switched telephone
 13 network. "Voice over internet protocol service" does not include a service
 14 that uses ordinary customer premises' equipment with no enhanced function-
 15 ality that originates from and terminates on the public switched telephone
 16 network, undergoes no net protocol conversion, and provides no enhanced
 17 functionality to end users due to the provider's use of internet protocol
 18 technology.

19 SECTION 3. That Section 62-618, Idaho Code, be, and the same is hereby
 20 amended to read as follows:

21 62-618. PREEMPTION. The provisions of this chapter preempt, elim-
 22 inate, and prohibit any economic, franchise or licensing regulation of
 23 providers of VoIP or IP-enabled services or telephone corporations subject
 24 to this chapter by cities, counties, incorporated or unincorporated areas,
 25 special use districts, or any other local governmental entity, of any kind.

26 SECTION 4. That Chapter 6, Title 62, Idaho Code, be, and the same is
 27 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 28 ignated as Section 62-618A, Idaho Code, and to read as follows:

29 62-618A. VOIP AND IP-ENABLED SERVICES. No department, agency, commis-
 30 sion or political subdivision of the state shall enact, adopt or enforce,
 31 either directly or indirectly, any law, rule, regulation, ordinance, stan-
 32 dard, order or other provision having the force or effect of law that regu-
 33 lates or has the effect of regulating the entry, rates, terms or conditions
 34 of VoIP service or IP-enabled service. Nothing in this title, or title 61,
 35 Idaho Code, shall be construed to:

36 (1) Require or prohibit the assessment on VoIP service for nondiscrim-
 37 inatory emergency communications fees, telecommunications relay service
 38 fees, Idaho telecommunications service assistance program fees or state
 39 universal service fund fee;

40 (2) Exempt VoIP service or IP-enabled service from the Idaho consumer
 41 protection act, chapter 6, title 48, Idaho Code, or affect the attorney gen-
 42 eral's authority to apply and enforce that chapter; or

43 (3) Modify or affect the rights or obligations of any entity, includ-
 44 ing the Idaho public utilities commission, arising from 47 U.S.C. section
 45 214(e), 47 U.S.C. section 251 or 47 U.S.C. section 252, including a wholesale
 46 communications provider certification granted by the Idaho public utilities
 47 commission.

1 SECTION 5. That Section 18-6609, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 18-6609. CRIME OF VIDEO VOYEURISM. (1) As used in this section:

4 (a) "Broadcast" means the electronic transmittal of a visual image with
5 the intent that it be viewed by a person or persons.

6 (b) "Disseminate" means to make available by any means to any person.

7 (c) "Imaging device" means any instrument capable of recording, stor-
8 ing, viewing or transmitting visual images.

9 (d) "Intimate areas" means the buttocks, genitals or genital areas of
10 males or females, and the breast area of females.

11 (e) "Person" means any natural person, corporation, partnership, firm,
12 association, joint venture or any other recognized legal entity or any
13 agent or servant thereof.

14 (f) "Place where a person has a reasonable expectation of privacy"
15 means:

16 (i) A place where a reasonable person would believe that he could
17 undress, be undressed or engage in sexual activity in privacy,
18 without concern that he is being viewed, photographed, filmed or
19 otherwise recorded by an imaging device; or

20 (ii) A place where a person might reasonably expect to be safe from
21 casual or hostile surveillance by an imaging device; or

22 (iii) Any public place where a person, by taking reasonable
23 steps to conceal intimate areas, should be free from the viewing,
24 recording, storing or transmitting of images obtained by imaging
25 devices designed to overcome the barriers created by a person's
26 covering of intimate areas.

27 (g) "Publish" means to:

28 (i) Disseminate with the intent that such image or images be made
29 available by any means to any person; or

30 (ii) Disseminate with the intent that such images be sold by an-
31 other person; or

32 (iii) Post, present, display, exhibit, circulate, advertise or
33 allow access by any means so as to make an image or images available
34 to the public; or

35 (iv) Disseminate with the intent that an image or images be
36 posted, presented, displayed, exhibited, circulated, advertised
37 or made accessible by any means and to make such image or images
38 available to the public.

39 (h) "Sell" means to disseminate to another person, or to publish, in ex-
40 change for something of value.

41 (2) A person is guilty of video voyeurism when:

42 (a) With the intent of arousing, appealing to or gratifying the lust
43 or passions or sexual desires of such person or another person, or for
44 his own or another person's lascivious entertainment or satisfaction of
45 prurient interest, or for the purpose of sexually degrading or abusing
46 any other person, he uses, installs or permits the use or installation
47 of an imaging device at a place where a person would have a reasonable
48 expectation of privacy, without the knowledge or consent of the person
49 using such place; or

1 (b) He either intentionally or with reckless disregard disseminates,
 2 publishes or sells or conspires to disseminate, publish or sell any im-
 3 age or images of the intimate areas of another person or persons without
 4 the consent of such other person or persons and he knows or reasonably
 5 should have known that one (1) or both parties agreed or understood that
 6 the images should remain private.

7 (3) A violation of this section is a felony.

8 (4) This section does not apply to an interactive computer service, as
 9 defined in 47 U.S.C. section 230(f)(2), an information service, as defined
 10 in 47 U.S.C. section 153 or a telecommunication service, as defined in sec-
 11 tion 61-121(2) or 62-603(134), Idaho Code, for content provided by another
 12 person, unless the provider intentionally aids or abets video voyeurism.

13 SECTION 6. That Section 26-2239, Idaho Code, be, and the same is hereby
 14 amended to read as follows:

15 26-2239. EXEMPTIONS. The provisions of this act shall not apply to the
 16 following:

17 (1) Persons licensed to practice law in this state, to the extent that
 18 they are retained by their clients to engage in activities authorized by this
 19 act, and such activities are incidental to the practice of law. Such exemp-
 20 tion shall not apply to an attorney engaged in a separate business conducting
 21 the activities authorized by this act;

22 (2) Any regulated lender as defined in section 28-41-301, Idaho Code,
 23 and its subsidiary, affiliate or agent to the extent that the regulated
 24 lender, subsidiary, affiliate or agent collects for the regulated lender or
 25 engages in acts governed by this act which are incidental to the business of
 26 a regulated lender;

27 (3) Any bank, trust company, credit union, insurance company or indus-
 28 trial loan company authorized to do business in this state;

29 (4) Any federal, state or local governmental agency or instrumental-
 30 ity;

31 (5) Any real estate broker or real estate salesman licensed under the
 32 laws of and residing within this state while engaged in acts authorized by
 33 his real estate license;

34 (6) Any person authorized to engage in escrow business in this state
 35 while engaged in authorized escrow business;

36 (7) Any mortgage company engaged in the regular business of a mortgage
 37 company as defined in section 26-2802, Idaho Code, except a mortgage company
 38 engaged in a separate business conducting the activities authorized by this
 39 act;

40 (8) Any court appointed trustee, receiver or conservator;

41 (9) Any telephone corporation, as defined in subsection (105) of sec-
 42 tion 62-603, Idaho Code, whose initial request for payment on behalf of such
 43 telephone corporation or on behalf of another person is made by the tele-
 44 phone corporation as a part of regular telecommunications billings to its
 45 customers and at a time before the account, bill, claim or other indebtedness
 46 becomes past due or delinquent;

47 (10) Any person while acting as a debt collector for another person,
 48 both of whom are related by common ownership or affiliated by corporate
 49 control, if the person acting as a debt collector does so only for persons

1 to whom he is so related or affiliated and if the principal business of such
2 person is not the collection of debts.

3 SECTION 7. That Section 61-1302, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 61-1302. DEFINITIONS. In this chapter:

6 (1) "Administrator" means the person with whom the Idaho public utili-
7 ties commission contracts to administer the program for delivery of telecom-
8 munications relay services.

9 (2) "Commission" means the Idaho public utilities commission.

10 (3) "Communications impaired" mean individuals who are hearing-im-
11 paired or speech-impaired as defined in title IV, section 401, Americans
12 with disabilities act of 1990, public law 101-336, 104 stat. 327, 336-69 (47
13 U.S.C. section 225) or regulations promulgated pursuant thereto.

14 (4) "Local exchange company" means a telephone corporation which pro-
15 vides access lines to residential and business customers with the associ-
16 ated transmission of two (2) way interactive switched voice communication
17 within a geographic area where basic local exchange rates rather than mes-
18 sage telecommunications service rates apply.

19 (5) "Message telecommunications service" shall have the meaning pre-
20 scribed in section 62-603(~~69~~), Idaho Code.

21 (6) "Program" means the effort directed by the administrator pursuant
22 to this chapter to establish and operate an Idaho system to provide telecom-
23 munications relay services.

24 (7) "Telephone corporation" shall have the meaning prescribed in sec-
25 tion 62-603(~~105~~), Idaho Code.

26 (8) "Telecommunications relay services (TRS)" mean services through
27 which a communications impaired person, using specialized telecommunica-
28 tions equipment, may send and receive messages to and from a noncommuni-
29 cations impaired person whose telephone is not equipped with specialized
30 telecommunications equipment and through which a noncommunications im-
31 paired person may, by using voice communication, send and receive messages
32 to and from a communications impaired person.

33 SECTION 8. That Section 62-609, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 62-609. IMPUTED AND NONDISCRIMINATORY ACCESS CHARGES -- COMMISSION
36 AUTHORITY. (1) A telephone corporation, which provides basic local exchange
37 service, and which also provides message telecommunications service shall
38 impute to itself its prices of special access or private line access and
39 switched access for the use of essential facilities used in the provision of
40 message telecommunications service, special access or private line access
41 services and WATS service or their equivalents. Such imputation shall be in
42 the aggregate on a service by service basis. All other providers of message
43 telecommunications service, special access or private line access services
44 and WATS service or their equivalents shall impute to themselves, in the
45 aggregate on a service by service basis, their individual cost of special or
46 switched access or its equivalent in their pricing.

1 The commission shall define in an appropriate proceeding what are es-
2 sential facilities for the purpose of this subsection and shall resolve any
3 dispute which may arise under this subsection.

4 (2) Telecommunication services which are subject to the provisions
5 of this chapter and which services utilize special or switched access,
6 shall be made available by the telephone corporation for resale. No tele-
7 phone corporation shall, as to its prices or charges for or the provision of
8 such services, make or grant any preference or advantage to any telephone
9 corporation or to a provider of services exempted from regulation under sec-
10 tion 62-603(134), Idaho Code, or subject any telephone corporation or any
11 provider of services exempted from regulation under section 62-603(134),
12 Idaho Code, to any prejudice or competitive disadvantage with respect to its
13 prices or charges for providing access to its local exchange network nor es-
14 tablish or maintain any unreasonable difference as to its prices or charges
15 for access to its local exchange network.

16 (3) Notwithstanding the provisions of section 62-614, Idaho Code, if,
17 after negotiation, a dispute under this section exists between or among
18 telephone corporations or between or among telephone corporation(s) and
19 provider(s) of services exempted from regulation under section 62-603(134),
20 Idaho Code, such dispute shall be determined by the commission upon petition
21 of any affected telephone corporation or provider(s) of services exempted
22 from regulation under section 62-603(134), Idaho Code.

23 Information disclosed to the commission for resolution of disputes un-
24 der this section shall be provided by the telephone corporations with appro-
25 priate safeguards for the protection of business or trade secrets.