

TITLE 62
RAILROADS AND OTHER PUBLIC UTILITIES

CHAPTER 6
TELECOMMUNICATIONS ACT OF 1988

62-601. SHORT TITLE. This chapter shall be known and may be referred to as the "Telecommunications Act of 1988."

[62-601, added 1988, ch. 195, sec. 1, p. 359.]

62-602. LEGISLATIVE INTENT. (1) The legislature of the state of Idaho hereby finds that universally available telecommunications services are essential to the health, welfare and economic well-being of the citizens of the state of Idaho and there is a need for establishing legislation to protect and maintain high-quality universal telecommunications at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition.

(2) It is the intent of this legislature that effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor. Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange calling area.

(3) It is the further intent of the legislature that the commission, in its deliberation of deregulation of the incumbent telephone corporations, will examine the impact such deregulation will have on the public interest in accordance with the general grant of authority given to the commission by the legislature and that all parties be allowed to comment thereon in such proceeding.

(4) The legislature further finds that the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry. The legislature encourages the development of open competition in the telecommunications industry in accordance with provisions of Idaho law and consistent with the federal telecommunications act of 1996.

(5) The commission shall administer these statutes with respect to telecommunication rates and services in accordance with these policies and applicable federal law.

(6) The legislature further finds that it is consistent with the public interest, convenience and necessity that the obligation of certain rural telephone companies to comply with the requirements of section 251(c) of the telecommunications act of 1996 should be suspended upon petition of the affected telephone company, based upon the following legislative findings that the suspension is necessary:

(a) To avoid a significant economic impact on users of telecommunications services generally in areas served by the rural telephone companies;

(b) To avoid imposing requirements that are unduly economically burdensome; or

(c) To avoid imposing requirements which are technically infeasible.

[62-602, added 1988, ch. 195, sec. 1, p. 359; am. 1997, ch. 192, sec. 2, p. 540.]

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

(1) "Basic local exchange service" means the provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communication within a local exchange calling area.

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

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

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

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

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

(7) "Local exchange calling area" means a geographic area encompassing one (1) or more local communities as described in maps, tariffs, rate schedules, price lists, or other descriptive material filed with the commission by a telephone corporation, within which area basic local exchange rates rather than message telecommunication service rates apply.

(8) "Message telecommunication service (MTS)" means the transmission of two-way interactive switched voice communication between local exchange calling areas for which charges are made on a per-unit basis, not including wide area telecommunications service (WATS), or its equivalent, or individually negotiated contracts for telecommunication services.

(9) "Residential customers" shall mean persons to whom telecommunication services are furnished at a dwelling and which are used for personal or domestic purposes and not for business, professional or institutional purposes.

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

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

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

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

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

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

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

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

(12) "Telecommunications act of 1996" means the federal telecommunications act of 1996, public law no. 104-104 as enacted effective February 8, 1996.

(13) "Telecommunication service" means the transmission of two-way interactive switched signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means (which includes message telecommunication service and access service), which originate and terminate in this state, and are offered to or for the public, or some portion thereof, for compensation. Except as otherwise provided by statute, "telecommunication service" does not include the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service, surveying, or the provision of radio paging, mobile radio telecommunication services, answering services (including computerized or otherwise automated answering or voice message services), and such services shall not be subject to the provisions of title 61, Idaho Code, or title 62, Idaho Code.

(14) "Telephone corporation" means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, providing telecommunication services for compensation within this state, provided that municipal, cooperative, or mutual nonprofit telephone companies shall be included in this definition only for the purposes of sections 62-610 and 62-617 through 62-620, Idaho Code. Except as otherwise provided by statute, telephone corporations providing radio paging, mobile radio telecommunications services, answering services (including computerized or otherwise automated answering or voice message services), or one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service or surveying are exempt from any requirement of this chapter or title 61, Idaho Code, in the provision of such services; provided, that the providers of these exempted services shall have the benefits given them under section 62-608, Idaho Code.

[62-603, added 1988, ch. 195, sec. 1, p. 359; am. 1997, ch. 192, sec. 3, p. 541; am. 1999, ch. 114, sec. 2, p. 342.]

62-604. APPLICABILITY OF CHAPTER.

(1) (a) Any telephone corporation, except any mutual nonprofit or cooperative telephone corporation, which did not, on January 1, 1988, hold a certificate of public convenience and necessity issued by the commission and, which does not provide basic local exchange service, shall, on and after the effective date of this act, be subject to the provisions of this chapter and shall be exempt from the provisions of title 61, Idaho Code.

(b) All telephone corporations, as set forth in subsection (1) (a) of this section, shall file a notice with the commission, which notice shall set forth the following information:

(i) the name of the telephone corporation and the address of its principal place of business within the state;

(ii) a description of the telecommunication services offered by such telephone corporation and the area served by it or in which it offers telecommunication services.

(c) Such notice shall be filed on or before the 1st day of January of each year following the effective date of this act.

(2) Any telephone corporation holding a certificate of public convenience and necessity on January 1, 1988, issued by the commission pursuant to title 61, Idaho Code, may, pursuant to section 62-605, Idaho Code:

(a) elect to exclude all, or part of its telecommunication services from regulation pursuant to title 61, Idaho Code, and such excluded telecommunication services shall thereafter be subject to the provisions of this chapter, except for the provisions of section 62-622(1) through (3), Idaho Code;

(b) notwithstanding any other provision of this chapter, a telephone corporation which, pursuant to section 61-538, Idaho Code, was, prior to the effective date of this chapter, subject to the provisions of such section, shall continue to be subject to the provisions of section 61-538, Idaho Code, notwithstanding such telephone corporation is subject to the provisions of this chapter.

[62-604, added 1988, ch. 195, sec. 1, p. 360; am. 2005, ch. 200, sec. 1, p. 605.]

62-605. PROCEDURE FOR NOTICE OF ELECTION -- COMMISSION CONTINUING AUTHORITY. (1) A telephone corporation which held a certificate of public convenience and necessity on January 1, 1988, may file with the commission a notice that such telephone corporation elects to be subject to the provisions of this chapter for all, or part of its telecommunication services, which notice shall include the following:

(a) The name and address of the telephone corporation;

(b) A narrative description of the telecommunication services provided by the telephone corporation and the geographic area and market served by the telephone corporation and a description of the telecommunication services for which the election is made.

(2) Upon the expiration of thirty (30) days from the filing of such notice of election, said telephone corporation shall, as to telecommunication services set forth in the notice of election, be exempt from the provisions of title 61, Idaho Code, and such telecommunication services shall thereafter be subject to the provisions of this chapter with the exception of the provisions of section 62-622(1) through (3), Idaho Code.

(3) Nothing contained in the provisions of this chapter or title 61, Idaho Code, shall be construed to prevent any person or entity from providing telecommunication services in competition with a telephone corporation as to those services which have been excluded from regulation under title 61, Idaho Code, pursuant to the provisions of this chapter, or with a telephone corporation, other than a mutual, nonprofit or cooperative telephone corporation, which was not, on the effective date of this act, subject to regulation by the commission pursuant to title 61, Idaho Code.

(4) Nothing contained in the provisions of this chapter shall be construed to prevent any telephone corporation from maintaining on file with the commission a tariff or price list describing the details of its services.

(5) (a) For any telecommunication service which was subject, on July 1, 1988, to title 61, Idaho Code, and which at the election of the telephone corporation became subject to this chapter, the commission shall have continuing authority to regulate the telephone corporation to the extent necessary to implement the federal communications act of 1996, in accordance with section 62-615, Idaho Code.

(b) The commission shall have the continuing authority to determine the noneconomic regulatory requirements relating to basic local exchange service for all telephone corporations providing basic local exchange service including, but not limited to, such matters as service quality standards, provision of access to carriers providing message telecommunication service, filing of price lists, customer notice and customer relation rules, and billing practices and procedures, which requirements shall be technologically and competitively neutral.

(c) In addition, if a telephone corporation has made an election pursuant to section 62-604, Idaho Code, and this section with reference to basic local exchange service, the maximum price the telephone corporation may charge for stand-alone basic local exchange service, as defined in section 62-607A, Idaho Code, during the transition period, shall, in the first year of the transition period, be capped at a rate ten percent (10%) above the rate in effect at the time of the election. Thereafter, in each succeeding year of the transition period, the price cap shall be increased by an additional amount that is equal to the difference between the rate at the time of the election and the price cap established hereunder for the first year of the transition period. However, during the transition period, the price cap established herein shall in no event exceed the maximum basic local exchange rate that was in effect and authorized or approved by the commission for any telephone corporation regulated pursuant to title 61, Idaho Code, or section 62-622(1), Idaho Code, for residence and business basic local exchange service rates, respectively, on the date the telephone corporation made the election pursuant to section 62-604, Idaho Code, and this section with reference to basic local exchange service.

(d) The term "transition period," as used in this section, means a period of three (3) years from the effective date of the election by a telephone corporation to exclude basic local exchange services from regulation pursuant to title 61, Idaho Code, or section 62-622(1), Idaho Code. Provided however, the commission may, during the one hundred eighty (180) day period prior to the expiration of the initial three (3) year transition period, by order, extend the transition period for a period of two (2) additional years if the commission finds that such action is necessary to protect the public interest. The commission shall, if the transition period is extended, as herein provided, file a copy of the commission's order with the governor and the legislature.

(e) For the purpose of calculating the weighted statewide average rates for residence and business basic local exchange service rates to enable the commission to determine eligibility for distributions to eligible telecommunications carriers from the universal service fund established pursuant to chapter 6, title 62, Idaho Code, the residence and business basic local exchange rates in effect on July 1, 2005, shall constitute the basis for such calculation, unless the commission determines that changes in basic local exchange rates subsequent to July 1,

2005, should be used for such calculation for the purpose of determining the eligibility of telecommunications carriers for distributions from the universal service fund.

[62-605, added 1988, ch. 195, sec. 1, p. 361; am. 2005, ch. 200, sec. 2, p. 606.]

62-606. REQUIREMENT FOR PRICE LIST OR TARIFF FILING -- WITHDRAWAL OF TARIFFS OR PRICE LISTS. (1) All telephone corporations which provide message telecommunication services, WATS service or access to their local exchange network for the provision of such services by the use of special access or private line access and switched access, or their equivalents, shall file with the commission, for information purposes, tariffs or price lists which reflect the availability, price, and terms and conditions for those services. Changes to such tariffs or price lists, except as hereinafter provided, shall be effective not less than ten (10) days after filing with the commission, and giving public notice to affected customers. Changes to tariffs or price lists that are for nonrecurring services and that are quoted directly to the customer when an order is placed, or changes that result in price reductions, shall be effective immediately upon filing with the commission and no other public notice shall be required. Notwithstanding the foregoing, telephone corporations shall not be required to file tariffs or price lists for any services provided to business customers.

(2) Upon written notice to the commission and to its business customers, and after posting the rates, terms and conditions of its services on the carrier's public website, a telephone corporation may withdraw any tariff or price list not required to be filed under the provisions of this section, provided:

(a) The carrier continues to maintain the rates, terms and conditions of its services on the company's public website;

(b) The commission maintains access to such terms and conditions of the telephone corporation's service; and

(c) Nothing in this section overrides the commission's existing authority pursuant to section 62-616, Idaho Code, to resolve customer complaints.

[62-606, added 1988, ch. 195, sec. 1, p. 362; am. 1993, ch. 208, sec. 1, p. 570; am. 2011, ch. 312, sec. 1, p. 905.]

62-607. AVERAGING OF MESSAGE TELECOMMUNICATION SERVICE RATES. Each provider of message telecommunication service which is subject to the provisions of the [this] chapter, shall average its rates for such service on its routes of similar distance within the state of Idaho unless otherwise authorized by the commission. Nothing contained herein shall be construed to prohibit volume discounts, or other discounts in promotional offerings.

[62-607, added 1988, ch. 195, sec. 1, p. 362.]

62-607A. PROHIBITED ACTIVITIES BY A TELEPHONE CORPORATION. (1) No incumbent telephone corporation, or eligible telecommunications carrier as defined in section 62-610B(1), Idaho Code, shall require a residential or small business customer, as a condition of receiving basic local exchange service, to purchase or subscribe to telecommunication services other than one (1) access line for the provision of basic local exchange service.

(2) A telephone corporation that has made the election provided in sections 62-604 and 62-605, Idaho Code, with reference to basic local exchange

service, shall not increase its stand-alone basic local exchange rate to residential or small business customers in any local exchange calling area to an amount that is higher than that telephone corporation's stand-alone basic local exchange rate for residential or small business customers in the local exchange calling area having the highest number of basic local exchange service residential or business customers served by the telephone corporation within the state.

(3) "Stand-alone basic local exchange rate," as used herein, means the monthly charge made by a telephone corporation to a residential or small business basic local exchange service customer for a single line that is not included in a package of services or price discounted in a promotional offering. "Stand-alone basic local exchange rate" does not include any charges resulting from action by a federal agency or taxes or surcharge imposed by a governmental body that are separately itemized and billed by a telephone corporation to its customers.

[62-607A, added 2005, ch. 200, sec. 3, p. 608.]

62-608. COMMISSION AUTHORITY TO REQUIRE INTERCONNECTION FOR THE PURPOSE OF PROVIDING MESSAGE TELECOMMUNICATION SERVICES. A telephone corporation providing basic local exchange service shall not be required to provide message telecommunication services. In the event a telephone corporation which provides basic local exchange service does not have interconnection with a provider of message telecommunication services, the commission may order any provider of message telecommunication service in the state to interconnect with that telephone corporation upon such terms as will be just and equitable to such provider.

[62-608, added 1988, ch. 195, sec. 1, p. 362.]

62-608A. INTERLATA SERVICE RESTRICTIONS. (1) As used in this section:

(a) "Dialing parity" means the provision of dialing arrangements and other service characteristics by a telephone corporation subject to interLATA telecommunication service restrictions, to a telephone corporation which is not subject to interLATA telecommunication service restriction, which dialing arrangements and other service characteristics are equivalent in type and quality to those provided by the telephone corporation subject to interLATA telecommunication service restrictions in its provision of message telecommunication services to its subscribers;

(b) "InterLATA telecommunication service restrictions" means the restrictions upon interexchange telecommunication services contained in section II(D)(1) of the Modification of Final Judgment entered in the case of the United States v. Western Electric Co., 552 F. Supp. 131 (D.D.C. 1982), and section V(C)(1) of the Final Judgment entered in the case of the United States v. GTE Corporation, 1985-1 Trade Cs. (CCH) P66, 355 (D.D.C. Dec. 21, 1984).

(c) "LATA" (Local Access and Transport Area), means the geographical area within which a telephone corporation may provide message telecommunication services without violating interLATA telecommunication service restrictions.

(2) A telephone corporation providing basic local exchange service, which also provides message telecommunication services and is subject to interLATA telecommunication service restrictions, shall not be required to provide dialing parity to other telephone corporations for the provision of

intraLATA message telecommunication services until such telephone corporation is also permitted to provide interstate and intrastate interLATA and intraLATA message telecommunication services on an integrated basis, and is not subject to interLATA telecommunication service restrictions.

[62-608A, added 1995, ch. 60, sec. 1, p. 133.]

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

The commission shall define in an appropriate proceeding what are essential facilities for the purpose of this subsection and shall resolve any dispute which may arise under this subsection.

(2) Telecommunication services which are subject to the provisions of this chapter and which services utilize special or switched access, shall be made available by the telephone corporation for resale. No telephone corporation shall, as to its prices or charges for or the provision of such services, make or grant any preference or advantage to any telephone corporation or to a provider of services exempted from regulation under section 62-603(13), Idaho Code, or subject any telephone corporation or any provider of services exempted from regulation under section 62-603(13), Idaho Code, to any prejudice or competitive disadvantage with respect to its prices or charges for providing access to its local exchange network nor establish or maintain any unreasonable difference as to its prices or charges for access to its local exchange network.

(3) Notwithstanding the provisions of section 62-614, Idaho Code, if, after negotiation, a dispute under this section exists between or among telephone corporations or between or among telephone corporation(s) and provider(s) of services exempted from regulation under section 62-603(13), Idaho Code, such dispute shall be determined by the commission upon petition of any affected telephone corporation or provider(s) of services exempted from regulation under section 62-603(13), Idaho Code.

Information disclosed to the commission for resolution of disputes under this section shall be provided by the telephone corporations with appropriate safeguards for the protection of business or trade secrets.

[62-609, added 1988, ch. 195, sec. 1, p. 362; am. 1999, ch. 114, sec. 3, p. 344.]

62-610. UNIVERSAL SERVICE FUND. (1) The commission shall establish a universal service fund (USF) for the purpose of maintaining the universal availability of local exchange service at reasonable rates and to promote the availability of message telecommunications service (MTS) at reasonably comparable prices throughout the state of Idaho.

(2) The USF shall be funded by imposing a statewide end user surcharge on local exchange service and MTS and WATS type services.

(a) The local exchange surcharge shall be a cents per line charge with a business-residential differential equal to the statewide average business-residential price ratio. Providers of local exchange service shall remit the local exchange surcharge revenues to the fund administrator on a monthly basis, unless less frequent remittances are authorized by order or rule of the commission.

(b) The MTS and WATS surcharge shall be recovered on a percentage basis through a surcharge applied to the monthly bill of each end user or by a cents per minute charge applied to the bills of all end users. Providers of MTS or WATS services shall remit the revenues derived from such surcharge to the fund administrator on a monthly basis, unless less frequent remittances are authorized by order or rule of the commission.

(c) The surcharges set forth in paragraphs (a) and (b) of this subsection shall be collected by all telephone corporations, including telephone corporations subject to the provisions of this chapter and mutual nonprofit and cooperative telephone corporations, providing the services upon which the surcharge is levied.

(3) Eligible telecommunications carriers that provide local exchange service and access service for MTS/WATS providers and that have rates for these respective services that meet both of the following criteria shall be eligible for distributions from the USF:

(a) The eligible telecommunications carrier's average residence and business local exchange service rates for one-party single line service are in excess of one hundred and twenty-five percent (125%) of the weighted statewide average rates for residence and business local exchange service rates for one-party single line service respectively, and

(b) The eligible telecommunications carrier's average per minute charge for MTS/WATS access services it provides is in excess of one hundred percent (100%) of the weighted statewide average for the same or similar MTS/WATS access services.

(4) Distributions from the fund shall be available to the individual eligible telecommunications carrier in Idaho providing basic local exchange service to meet residual revenue requirements remaining after deducting the revenue generated by all intrastate telecommunication services, from the eligible telecommunications carrier's total intrastate telecommunication service revenue requirement as determined by the commission, including local exchange priced at one hundred twenty-five percent (125%) or more of the weighted statewide average and MTS/WATS access services priced at one hundred percent (100%) or more of the statewide average and contributions from the federal universal service fund. The commission shall provide, by order, for not less than seventy-five percent (75%) nor more than one hundred percent (100%) of the residual revenue requirement of the individual eligible telecommunications carrier to be funded by the universal service fund. The commission shall retain its authority to approve rate design consistent with this subsection, but notwithstanding such authority, the commission shall supply full funding for any commission determined revenue requirement. Distributions from the fund shall be made monthly.

(5) The commission shall:

(a) Adopt rules for the implementation and administration of the universal service fund established in this section;

(b) Determine which telephone corporations meet the eligibility standards;

(c) Provide for the receipt and collection of the surcharge for the universal service fund; and

(d) Provide for the administration and distribution of the fund to eligible telecommunications carriers in a manner determined by the commission.

(6) "Local Exchange Service," as used in section 62-610, Idaho Code, means the provision of access lines to customers with the associated transmission of two-way interactive switched voice communication within a local exchange area.

[62-610, added 1988, ch. 195, sec. 1, p. 363; am. 1993, ch. 219, sec. 1, p. 683; am. 1998, ch. 37, sec. 1, p. 157.]

62-610A. PURPOSE. The purpose of this act is to authorize the Idaho public utilities commission to establish a competitively and technologically neutral funding mechanism which will operate in coordination with federal universal service support mechanisms. All consumers in this state, without regard to their location, should have comparable accessibility to basic telecommunication services at just and reasonable rates.

[62-610A, added 1998, ch. 37, sec. 2, p. 159.]

62-610B. DEFINITIONS. For purposes of section 62-610, Idaho Code, and sections 62-610A through 62-610F, Idaho Code, the following words and phrases shall have the following meanings:

(1) "Eligible telecommunications carrier" means a telecommunications carrier designated by the commission who has the obligation to provide universal service throughout the service area for which the designation is received.

(2) "Fund" means the Idaho telecommunications universal service fund established by the commission pursuant to sections 62-610A and 62-610F, Idaho Code.

(3) "Service area" means a geographic area designated by the commission for the purpose of determining universal service obligations of eligible telecommunications carriers. In the case of a rural telephone company "service area" means the company's "study area(s)" as established by the federal communications commission and the public utilities commission.

(4) "Support area" means a geographic area designated by the commission as a high-cost area for which eligible telecommunications carrier(s) serving such area may receive financial assistance from the universal service fund. The commission shall consider population distribution, geographic factors, cost model capabilities and other relevant considerations in making such a determination.

(5) "Telecommunications carrier" means a telephone corporation providing telecommunication services for compensation within this state, and shall, for the purposes of sections 62-610A through 62-610F, Idaho Code, include municipal, cooperative or mutual telephone companies and telecommunications companies providing wireless, cellular, personal communications services and mobile radio services for compensation.

(6) "Universal service" means basic local exchange service and other telecommunication services designated by the commission as services which should be widely available to consumers in all regions of the state at just and reasonable rates.

(7) All other terms, words or phrases shall have the meaning set forth in section 62-603, Idaho Code.

[62-610B, added 1998, ch. 37, sec. 3, p. 159; am. 1999, ch. 114, sec. 4, p. 345.]

62-610C. UNIVERSAL SERVICE. (1) Universal service is an evolving level of telecommunication services to which consumers in all regions of the state should have access.

(2) The commission shall review the level of telecommunication services within the state on a periodic basis and designate those service(s) which should be made available to consumers by eligible telecommunications carriers to meet their obligation to provide universal service. The commission shall, if services in addition to basic local exchange service are to be designated, consider the extent to which such other telecommunication services:

(a) Have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(b) Are being deployed in public telecommunications networks by telecommunications carriers; and

(c) Are consistent with the public interest, convenience and necessity.

(d) The commission shall also consider definitions of universal service adopted by the federal communications commission pursuant to the telecommunications act of 1996.

[62-610C, added 1998, ch. 37, sec. 4, p. 160.]

62-610D. ELIGIBLE TELECOMMUNICATIONS CARRIERS. (1) Only a telecommunications carrier designated as an eligible telecommunications carrier by the commission shall be eligible to receive universal service fund support.

(2) The commission shall upon its own motion or upon request designate a telecommunications carrier that meets the requirements of subsection (3) of this section as an eligible telecommunications carrier for a service area designated by the commission. Upon request and consistent with the public interest, convenience and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one (1) telecommunications carrier as an eligible telecommunications carrier for a service area designated by the commission, so long as the requesting telecommunications carrier meets the requirements set forth in this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(3) A telecommunications carrier requesting designation as an eligible telecommunications carrier shall, throughout the service area for which the designation is made:

(a) Offer the services which are within the definition of universal service adopted by the commission, using its own facilities or a combination of its own facilities and resale of another telecommunications carrier's services (including the services offered by another eligible telecommunications carrier); and

(b) Advertise the availability of such services and the charges therefor using media of general distribution.

(c) For the purpose of being eligible to receive support from the fund, the eligible telecommunications carrier shall also offer low-income telecommunication services pursuant to chapter 9, title 56, Idaho Code.

(4) The commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one (1) eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one (1) eligible telecommunications carrier shall give no less than thirty (30) days notice to the commission of its intent to relinquish such designation. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one (1) eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served.

[62-610D, added 1998, ch. 37, sec. 5, p. 160.]

62-610E. DESIGNATING SERVICE AND SUPPORT AREAS. The commission shall designate geographic service areas for the purpose of determining universal service obligations of eligible telecommunications carriers. The commission shall also designate geographic support areas for the purpose of determining areas for which financial assistance shall be made available from the fund to assist eligible telecommunications carriers to meet universal service obligations.

[62-610E, added 1998, ch. 37, sec. 6, p. 161.]

62-610F. HIGH-COST SUPPORT -- ADMINISTRATION -- TRANSITION. (1) The commission shall establish a universal service fund to enable eligible telecommunications carriers to make universal service widely available to all persons within the state of Idaho at reasonable rates. Eligible telecommunication carriers receiving financial support shall use that support only for the provision, maintenance and upgrading of services and facilities for which the support is intended.

(2) The commission shall initiate a proceeding to determine and adopt the appropriate methodology and mechanisms to collect and distribute financial assistance which are specific, predictable and sufficient in conjunction with federal universal service support mechanisms to preserve and advance universal service within the state of Idaho. Revenue for the fund shall be collected through a uniform universal service fund surcharge as calculated by the commission. The surcharge shall be imposed on end users of all retail telecommunication services originating and terminating within the state of Idaho and collected by the telecommunications carrier providing telecommunication services to such end user. Disbursements from the fund shall be used to defray the costs, as determined by the commission, of providing universal service to customers within a geographic support area. Those costs shall be calculated using a forward-looking cost methodology. When providing disbursements from the fund, the commission shall take such actions as may be necessary to prevent redundant cost recovery by recipients of such funds including the reduction of access charges subject to title 61 or 62, Idaho Code.

(3) The commission shall establish procedures to administer the universal service fund and shall contract with a neutral third party for administration of the fund. The administrator shall perform the duties required by the commission including data gathering, collecting the surcharge

revenues, disbursing funds, and notifying the commission of any fund violations.

(4) The commission shall develop procedures and provide for a transition period to begin no earlier than January 1, 2001, for rural telephone companies to replace funding available pursuant to section 62-610, Idaho Code, with the funding mechanism established pursuant to this section for the support of universal service.

[62-610F, added 1998, ch. 37, sec. 7, p. 162; am. 1999, ch. 114, sec. 5, p. 346; am. 2000, ch. 158, sec. 1, p. 400.]

62-611. REGULATORY FEES. Telephone corporations whose services are subject to the provisions of this chapter, shall pay to the commission a special regulatory fee to be determined by the commission, pursuant to procedures set forth in chapter 10, title 61, Idaho Code, in such amount as may be necessary to defray the amount to be expended by the commission for expenses in supervising and regulating telephone corporations pursuant to this chapter.

[62-611, added 1988, ch. 195, sec. 1, p. 365.]

62-612. RESTRICTION ON WITHDRAWAL OR DISCONTINUANCE OF SERVICE. (1) A telephone corporation subject to this chapter which provides basic local exchange or message telecommunication service, may not withdraw or otherwise discontinue such service to a local exchange area unless one or more alternative telephone corporations are furnishing the respective telecommunication service or equivalent service to the customers in such local exchange area at the time such service is withdrawn or otherwise discontinued.

(2) A telephone corporation proposing to withdraw or otherwise discontinue the services set forth in subsection (1) of this section to a local exchange area shall file a notice of such withdrawal or discontinuance of service with the commission and shall publish a notice of such withdrawal in a legal newspaper circulated within the local exchange area, and provide such other reasonable notice as may be required by the commission.

(3) Any person or telephone corporation affected by a withdrawal or discontinuance of such services by a telephone corporation subject to this chapter, may within thirty (30) days from the date of publication of the notice apply to the commission to determine whether such withdrawal or discontinuance of service is authorized pursuant to this section.

[62-612, added 1988, ch. 195, sec. 1, p. 365.]

62-613. SUBSIDIZATION OF CERTAIN SERVICES NOT ALLOWED. A telephone corporation may not subsidize nonprice-regulated telecommunication services with those telecommunication services price-regulated by the commission pursuant to this chapter or to title 61, Idaho Code. The commission shall not require revenues earned from nonprice-regulated services or affiliates to be attributed to basic local exchange services, nor permit expenses incurred in producing the revenues to be attributed to the cost of providing basic local exchange services. Provided, payments to the universal service fund established by state or federal law shall not be considered to be a violation of this section.

[62-613, added 1988, ch. 195, sec. 1, p. 365; am. 1997, ch. 192, sec. 4, p. 543.]

62-614. RESOLUTION OF INTER-TELEPHONE CORPORATION DISPUTES. (1) If a telephone corporation providing basic local exchange service which has exercised the election provided in section 62-604(2) (a), Idaho Code, and any other telephone corporation subject to title 61, Idaho Code, or any mutual, nonprofit or cooperative telephone corporation, are unable to agree on any matter relating to telecommunication issues between such companies, then either telephone corporation may apply to the commission for determination of the matter.

(2) Upon receipt of the application, the commission shall have jurisdiction to conduct an investigation, and upon request of either party, to conduct a hearing and, based upon evidence presented to the commission, to issue its findings and order determining such dispute in accordance with applicable provisions of law and in a manner which shall best serve the public interest.

[62-614, added 1988, ch. 195, sec. 1, p. 365.]

62-615. AUTHORITY TO IMPLEMENT THE TELECOMMUNICATIONS ACT -- SUSPENSION OF OBLIGATIONS OF RURAL CARRIERS -- PROMULGATION OF RULES OR PROCEDURES. (1) The commission shall have full power and authority to implement the federal telecommunications act of 1996, including, but not limited to, the power to establish unbundled network element charges in accordance with the act.

(2) Upon petition of a rural telephone company with fewer than two percent (2%) of the nation's subscriber lines installed in the aggregate nationwide, the commission shall suspend the petitioner's obligations pursuant to section 251(c) of the telecommunications act of 1996. The period of suspension shall be determined by the commission, consistent with the public interest, convenience, and necessity, provided that such suspension shall be for a period of not less than three (3) years nor more than five (5) years. All other suspensions, modifications or exemptions pursuant to the telecommunications act of 1996 shall be committed to the commission's discretion.

(3) The commission may promulgate rules and/or procedures necessary to carry out the duties authorized or required by the federal telecommunications act of 1996.

[62-615, added 1997, ch. 192, sec. 6, p. 544.]

62-616. COMMISSION AUTHORITY TO RESOLVE SUBSCRIBER COMPLAINTS. The commission shall have the authority to investigate and resolve complaints made by subscribers to telecommunication services which are subject to the provisions of this chapter which concern the quality and availability of local exchange service, or whether price and conditions of service are in conformance with filed tariffs or price lists, deposit requirements for such service or disconnection of such service by telephone corporations subject to the provisions of this chapter. The commission may, by order, render its decision granting or denying in whole or in part the subscriber's complaint or providing such other relief as is reasonable based on the evidence presented to the commission at the hearing. Any final order of the commission entered pursuant to this section may be enforced against any telephone corporation by an affected person or by the commission.

[62-616, added 1988, ch. 195, sec. 1, p. 367.]

62-616A. DUTY OF TELEPHONE COMPANY TO CUSTOMERS RELATING TO UNAUTHORIZED CHARGES BY A THIRD-PARTY SERVICE PROVIDER. If a customer of a telephone corporation, whether subject to the provisions of this chapter or title 61, Idaho Code, notifies the telephone corporation that an unauthorized charge from a third-party service provider has been included on the telephone customer's bill by the telephone corporation, the telephone corporation shall remove the disputed charge from the bill and shall credit to the customer any amounts for unauthorized charges, whether paid or unpaid, that were billed by the telephone corporation on behalf of the third-party service provider during the period of six (6) months prior to the customer's notification to the telephone corporation that unauthorized charges from a third-party service provider have been included on the telephone corporation customer's bill. Nothing contained herein shall restrict the right of the telephone corporation to recover credited charges from the third-party service provider.

[62-616A, added 2005, ch. 200, sec. 4, p. 608.]

62-617. TELEPHONE CORPORATION ANTITRUST LIABILITY. No action under the antitrust laws or any other provision or doctrine of law of the state of Idaho shall lie against a telephone corporation for providing service in compliance with any order of the commission. Provided however, this section shall not apply to the provision of any service for which the commission has approved or acknowledged an election pursuant to section 62-605(1), Idaho Code, except to the extent such service thereafter is the subject of a specific commission order pursuant to title 62, Idaho Code.

[62-617, added 1988, ch. 195, sec. 1, p. 367; am. 2005, ch. 200, sec. 5, p. 608.]

62-618. PREEMPTION. The provisions of this chapter preempt, eliminate, and prohibit any economic, franchise or licensing regulation of telephone corporations subject to this chapter by cities, counties, incorporated or unincorporated areas, special use districts, or any other local governmental entity, of any kind.

[62-618, added 1988, ch. 195, sec. 1, p. 367.]

62-619. PROCEDURE BEFORE COMMISSION -- APPEALS. (1) In all matters arising under this chapter, which are submitted to the commission for decision, order or review, procedure shall be governed by the commission's rules of practice and procedure.

(2) Reconsideration of, appeal from, and stay of orders issued pursuant to this chapter shall be governed by law as for orders of the commission in other matters.

[62-619, added 1988, ch. 195, sec. 1, p. 367.]

62-620. CIVIL PENALTY FOR VIOLATION. Any telephone corporation who violates or fails to comply with any final order, decision, rule or regulation duly issued by the commission pursuant to this chapter shall be subject to a civil penalty of not to exceed two thousand dollars (\$2,000) for each day that the violation continues.

Actions to recover penalties under this act shall be brought in the name of the state of Idaho, in the district court in and for the county in which the cause of action or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the

person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the attorney for the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such action, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general account. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

[62-620, added 1988, ch. 195, sec. 1, p. 367.]

62-621. SEVERABILITY. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this chapter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional.

[62-621, added 1988, ch. 195, sec. 1, p. 368.]

62-622. REGULATION OF BASIC LOCAL EXCHANGE RATES, SERVICES AND PRICE LISTS. (1) The commission shall regulate the prices for basic local exchange services for incumbent telephone corporations in accordance with the following provisions:

(a) At the request of the incumbent telephone corporation, the commission shall establish maximum just and reasonable rates for basic local exchange service. Maximum basic local exchange rates shall be sufficient to recover the costs incurred to provide the services. Costs shall include authorized depreciation, a reasonable portion of shared and common costs, and a reasonable profit. Authorized depreciation lives shall use forward-looking competitive market lives. Authorized depreciation lives shall be applied prospectively and to undepreciated balances.

(b) At the request of the telephone corporation, the commission may find that existing rates for local services constitute the maximum rates.

(c) The commission shall issue its order establishing maximum rates no later than one hundred eighty (180) days after the filing of the request unless the telephone corporation consents to a longer period.

(d) An incumbent telephone corporation may charge prices lower than the maximum basic local exchange rates established by the commission. Provided however, upon the petition of a nonincumbent telephone corporation, the commission shall establish a minimum price for the incumbent telephone corporation's basic local exchange service if the commission finds, by a preponderance of the evidence, that the incumbent telephone corporation's prices for basic local exchange services in the local exchange area are below the incumbent telephone corporation's average variable cost of providing such services.

(e) After the commission has established maximum basic local exchange rates, an incumbent telephone corporation may change its tariffs or price lists reflecting the availability, price, terms and conditions for local exchange service effective not less than ten (10) days after filing with the commission and giving notice to affected customers.

Changes to tariffs or price lists that are for nonrecurring services and that are quoted directly to the customer when an order for service is placed, or changes that result in price reductions or new service offerings, shall be effective immediately upon filing with the commission and no other notice shall be required.

(2) The commission shall not regulate the prices for basic local exchange services for telephone corporations that were not providing such local service on or before February 8, 1996. Provided however, such telephone corporation providing basic local exchange services shall file price lists with the commission that reflect the availability, price, terms and conditions for such services. Changes to such price lists shall be effective not less than ten (10) days after filing with the commission and giving notice to affected customers. Changes to price lists that are for nonrecurring services and that are quoted directly to the customer when an order for service is placed, or changes that result in price reductions or new service offerings, shall be effective immediately upon filing with the commission and no other notice shall be required. Notwithstanding the provisions of this subsection and subsection (1) of this section, telephone corporations that are subject to the provisions of this subsection shall not be required to file tariffs or price lists for basic local exchange services provided to business customers.

Upon written notice to the commission and to its business customers, and after posting the rates, terms and conditions of its services on the carrier's public website, a telephone corporation may withdraw any tariff or price list not required to be filed under the provisions of this section, provided:

- (a) The carrier continues to maintain the rates, terms and conditions of its services on the company's public website;
- (b) The commission maintains access to such terms and conditions on the telephone corporation's service; and
- (c) Nothing in this section overrides the commission's existing authority pursuant to section 62-616, Idaho Code, to resolve customer complaints.

(3) The commission shall cease regulating basic local exchange rates in a local exchange calling area upon a showing by an incumbent telephone corporation that effective competition exists for basic local exchange service throughout the local exchange calling area. Effective competition exists throughout a local exchange calling area when either:

- (a) Actual competition from a facilities-based competitor is present for both residential and small business basic local exchange customers; or
- (b) There are functionally equivalent, competitively priced local services reasonably available to both residential and small business customers from a telephone corporation unaffiliated with the incumbent telephone corporation.

(4) Telephone corporations shall not resell:

- (a) A telecommunications service that is available at retail only to a category of subscribers to a different category of subscribers;
- (b) A means-tested service to ineligible customers; or
- (c) A category of service to circumvent switched or special access charges.

(5) The commission shall determine the noneconomic regulatory requirements for all telephone corporations providing basic local exchange

service or designated as an eligible telecommunications carrier pursuant to sections 62-610A through 62-610F, Idaho Code, including, but not limited to, such matters as service quality standards, provision of access to carriers providing message telecommunications service, filing of price lists, customer notice and customer relation rules.

[62-622, added 1997, ch. 192, sec. 8, p. 544; am. 1999, ch. 114, sec. 6, p. 346; am. 2011, ch. 312, sec. 2, p. 905.]

62-622A. COMMISSION AUTHORITY TO ESTABLISH MINIMUM PRICING OF BASIC LOCAL EXCHANGE SERVICE. A telephone corporation may file a petition with the commission alleging that another telephone corporation, not subject to regulation pursuant to title 61, Idaho Code, is offering basic local exchange service to customers in a local exchange calling area at a price below its average variable cost of providing such service in the local exchange calling area. The commission shall, if after hearing it finds by a preponderance of the evidence that the allegations contained in the petition are true, establish a minimum price for basic local exchange service of the telephone corporation in the local exchange calling area, which minimum price shall reflect the telephone corporation's average variable cost of providing such service.

[62-622A, added 2005, ch. 200, sec. 6, p. 609.]

62-623. SUBSIDY REFORM -- UNIVERSAL SERVICE -- REPORT TO LEGISLATURE. The commission shall commence a proceeding to:

(1) Identify and quantify implicit subsidies within the rates of incumbent telephone corporations including, but not limited to:

(a) Access charges paid by intrastate interexchange carriers to incumbent telephone corporations including all of the carrier common line charge;

(b) Above cost rates paid by one (1) class of customers to reduce the price paid by another class of customers; and

(c) Imputation of revenue from nonregulated telecommunications services.

(2) Determine a mechanism for removal of the subsidies from the rates of incumbent telephone corporations and the creation of explicit subsidy mechanisms.

(3) Determine revisions that may be necessary to section 62-610, Idaho Code, regarding universal service in order to comply with the telecommunications act of 1996 and regulations promulgated thereunder.

(4) On or before the first day of December 1997, the commission shall issue a report to the governor and the legislature recommending any necessary or desirable legislation concerning state and federal universal support mechanisms, the removal of implicit subsidies from rates and other telecommunication matters.

[62-623, added 1997, ch. 192, sec. 9, p. 546.]

62-624. PROCEEDINGS PRIOR TO ENACTMENT RATIFIED. Commission orders issued prior to approval of this act which relate to duties or authority granted to the commission by the telecommunications act of 1996 are hereby ratified and approved to the extent that such actions conform with the provisions of this chapter and the telecommunications act of 1996.

[62-624, added 1997, ch. 192, sec. 10, p. 546.]