

**Senate Bill No. 561**

(By Senator Sypolt (By Request))

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[Introduced February 18, 2011; referred to the Committee on  
Transportation and Infrastructure; and then to the Committee on  
the Judiciary.]  
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A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §31-15D-1, §31-15D-2,  
§31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, §31-15D-7, §31-  
15D-8 and §31-15D-9, all relating to alternative mechanisms to  
supplement current strategies to expeditiously expand  
broadband throughout the State of West Virginia.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended  
by adding thereto a new article, designated §31-15D-1, §31-15D-2,  
§31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, §31-15D-7, §31-15D-8  
and §31-15D-9, all to read as follows:

**ARTICLE 15D. ALTERNATIVE FORM OF REGULATION OF TELECOMMUNICATIONS  
SERVICES.**

**§31-15D-1. Declaration of policy.**

1           It is the policy of the State of West Virginia to:

2           (1) Strike a balance between mandated deployment and market-  
3 driven deployment of broadband facilities and advanced services  
4 throughout this state and to continue alternative regulation of  
5 exchange telecommunications companies.

6           (2) Maintain universal telecommunications at affordable rates  
7 while encouraging the accelerated provision of advanced services  
8 and deployment of a universally available, state-of-the-art,  
9 interactive broadband telecommunications network in rural, suburban  
10 and urban areas, including deployment of broadband facilities in or  
11 adjacent to public rights-of-way abutting public schools and  
12 including the administrative offices supporting public schools,  
13 industrial parks and health care facilities.

14           (3) Ensure that customers pay only reasonable charges for  
15 protected services which shall be available on a nondiscriminatory  
16 basis.

17           (4) Ensure that rates for protected services do not subsidize  
18 the competitive ventures of telecommunications carriers.

19           (5) Provide diversity in the supply of existing future  
20 telecommunications services and products in telecommunications  
21 markets throughout this commonwealth by ensuring that rates, terms  
22 and conditions for protected services are reasonable and do not  
23 impede the development of competition.

24           (6) Ensure the efficient delivery of technological advances

1 and new services throughout this state in order to improve the  
2 quality of life for all residents.

3       (7) Encourage the provision of telecommunications products and  
4 services that enhance the quality of life of people with  
5 disabilities.

6       (8) Promote and encourage the provision of competitive  
7 services by a variety of service providers on equal terms  
8 throughout all geographic areas of this state without jeopardizing  
9 the provision of universal telecommunications service at affordable  
10 rates.

11       (9) Encourage the competitive supply of any service in any  
12 region where there is market demand.

13       (10) Encourage joint ventures between local exchange  
14 telecommunications companies and other entities where such joint  
15 ventures accelerate, improve or otherwise assist a local exchange  
16 telecommunications company in implementing its network  
17 modernization plan.

18       (11) Establish a bona fide retail request program to aggregate  
19 and make advanced services available in areas where sufficient  
20 market demand exists and to supplement existing network  
21 modernization plans.

22       (12) Promote and encourage the provision of advanced services  
23 and broadband deployment in the service territories of local  
24 exchange telecommunications companies without jeopardizing the

1 provision of universal service.

2           (13) Recognize that the regulatory obligations imposed upon  
3 the incumbent local exchange telecommunications companies should be  
4 reduced to levels more consistent with those imposed upon competing  
5 alternative service providers.

6 **§31-15D-2. Definitions.**

7           The following words and phrases when used in this article  
8 have the meanings given to them in this section unless the context  
9 clearly indicates otherwise:

10           (1) "Advanced service" is a retail telecommunications service  
11 that, regardless of transmission medium or technology, is capable  
12 of supporting a minimum speed of one hundred kilobits per second  
13 (kbps) in at least one direction at the network demarcation point  
14 of the customer's premises.

15           (2) "Aggregator telephone" is a telephone which is made  
16 available to the transient public, customers or patrons, including,  
17 but not limited to, coin telephones, credit card telephones and  
18 telephones located in hotels, motels, hospitals and universities.

19           (3) "Alternative form of regulation" is a form of regulation  
20 of telecommunications services other than the traditional rate base  
21 or rate of return regulation, including a streamlined form of  
22 regulation as approved by the council.

23           (4) "Alternative service provider" is an entity that provides  
24 telecommunications services in competition with a local exchange

1 telecommunications company.

2       (5) "Bona fide retail request" is a written request for  
3 service which meets the requirements of section 3014(c) (relating  
4 to network modernization plans), is received by a local exchange  
5 telecommunications company, and through which end users commit to  
6 subscribe to an advanced service.

7       (6) "Bona fide retail request program" is a program  
8 established by a local exchange telecommunications company pursuant  
9 to those provisions of section 3014(c) relating to network  
10 modernization plans.

11       (7) "Broadband" is a communication channel using any  
12 technology and having a bandwidth equal to or greater than 1.544  
13 megabits per second (mbps) in the downstream direction and equal to  
14 or greater than 128 kilobits per second (kbps) in the upstream  
15 direction.

16       (8) "Broadband availability" is access to broadband service by  
17 a retail telephone customer of a local exchange telecommunications  
18 company.

19       (9) "Broadband outreach and aggregation program" is a program  
20 established by the Broadband Deployment Council of the Department  
21 of Commerce pursuant to the provisions of section 3014(i) relating  
22 to network modernization plans.

23       (10) "Business attraction or retention program" is a program  
24 established by a local exchange telecommunications company pursuant

1 to section 3014(d) relating to network modernization plans.

2 (11) "Central office" is a local exchange telecommunications  
3 company switch used to provide local exchange telecommunications  
4 service.

5 (12) "Community" is those customers of a local exchange  
6 telecommunications company served by an existing or planned remote  
7 terminal or, where no remote terminal exists or is planned, a  
8 central office switch.

9 (13) "Competitive service" is a service or business activity  
10 determined to be competitive by the council on or prior to December  
11 31, 2003, and a service or business activity determined or declared  
12 to be competitive pursuant to section 3016 relating to competitive  
13 services.

14 (14) "Department" is the Department of Commerce of this state.

15 (15) "Council" is the Broadband Deployment Council under the  
16 Department of Commerce.

17 (16) "Education Technology Fund" or "e-fund" is the fund  
18 established under section 3015(d) relating to alternative forms of  
19 regulation.

20 (17) "Education technology program" is the program established  
21 by the department of education pursuant to section 3014(j) relating  
22 to network modernization plans.

23 (18) "Eligible telecommunications carrier" is a carrier  
24 designated by the West Virginia Public Utility Council pursuant to

1 47 CFR 54.1 or successor regulation as eligible to receive support  
2 from the Federal Universal Service Fund.

3 (19) "Eligible telecommunications customer" is a customer of  
4 an eligible telecommunications carrier who qualifies for lifeline  
5 service discounts pursuant to the requirements of 47CFR 54.409 or  
6 successor regulation.

7 (20) "Fund" is the Broadband Outreach and Aggregation Fund  
8 established under section 3015(c) relating to alternative forms of  
9 regulation.

10 (21) "Gross domestic product price index" or "gdp-pi" is the  
11 gross domestic product fixed weight price index as calculated by  
12 the United States Department of Commerce or a successor price  
13 index.

14 (22) "Inflation offset" is the part of the price change  
15 formula in the price stability mechanism that reflects an offset to  
16 the gross domestic product price index or successor price index.

17 (23) "Interexchange services" is the transmission of interlata  
18 or intralata toll messages or data outside the local calling area.

19 (24) "Interexchange telecommunications carrier" is a carrier  
20 other than a local exchange telecommunications company authorized  
21 by the Council to provide interexchange services.

22 (25) "Lifeline service" is a discounted rate local service  
23 offering, as defined in 47CFR 54.401 or successor regulation, but  
24 excluding any offering funded in part by federal universal service

1 funding under 47CFR 54.403 or successor regulation.

2       (26) "Local development district" is a multicounty economic  
3 and community development organization established to provide  
4 regional planning and development services to improve the economy  
5 and quality of life in a particular region through a variety of  
6 activities, including, but not limited to, the fostering of public  
7 and private partnerships and providing assistance to businesses.

8       (27) "Local exchange telecommunications company" is an  
9 incumbent carrier authorized by the council to provide local  
10 exchange telecommunications services. The term includes a rural  
11 telecommunications carrier and a nonrural telecommunications  
12 carrier.

13       (28) "Local exchange telecommunications service" is the  
14 transmission of messages or communications that originate and  
15 terminate within a prescribed local calling area.

16       (29) "Network modernization plan" is a plan for the deployment  
17 of broadband service by a local exchange telecommunications company  
18 under this chapter or any prior law of this state.

19       (30) "Noncompetitive service" is a regulated  
20 telecommunications service or business activity that has not been  
21 determined or declared to be competitive.

22       (31) "Nonprotected service" is any telecommunications service  
23 provided by a local exchange telecommunications company that is not  
24 a protected service.



1           (32) "Nonrural telecommunications carrier" is a local exchange  
2 telecommunications company that is not a rural telephone company as  
3 defined in section 3 of the Telecommunications Act of 1996.

4           (33) "Optional calling plan" is a discounted toll plan offered  
5 by either a local exchange telecommunications company or an  
6 interexchange telecommunications carrier.

7           (34) "Political subdivision" is any county, city, borough,  
8 incorporated town, township, municipality, municipal authority or  
9 county institution district.

10          (35) "Price stability mechanism" is a formula which may be  
11 included in a council-approved alternative form of regulation plan  
12 that permits rates for noncompetitive services to be adjusted  
13 upward or downward.

14          (36) "Protected service" is the following telecommunications  
15 services provided by a local exchange telecommunications company,  
16 unless the council has determined the service to be competitive:

17           (A) Service provided to residential consumers or business  
18 consumers that is necessary to complete a local exchange call.

19           (B) Touch-tone service.

20           (C) Switched access service.

21           (D) Special access service.

22           (E) Ordering, installation, restoration and disconnection of  
23 these services.

24          (37) "Remote terminal" is a structure located outside of a

1 central office which houses electronic equipment and which provides  
2 transport for telecommunications services to and from a central  
3 office.

4 (38) "Rural telecommunications carrier" is a local exchange  
5 telecommunications company that is a rural telephone company as  
6 defined in section three of the Telecommunications Act of 1996.

7 (39) "School entity" is an intermediate unit, school district,  
8 joint school district, area vocational-technical school,  
9 independent school, licensed private academic school, accredited  
10 school and any other public or nonpublic school serving students in  
11 any grade from kindergarten through twelfth grade.

12 (40) "Special access service" is service provided over  
13 dedicated, nonswitched facilities by local exchange  
14 telecommunications companies to interexchange telecommunications  
15 carriers or other large volume users which provides connection  
16 between an interexchange telecommunications carrier or private  
17 network and a customer's premises.

18 (41) "Switched access service" is a service which provides for  
19 the use of common terminating, switching and trunking facilities of  
20 a local exchange telecommunications company's public switched  
21 network. The term includes, but is not limited to, the rates for  
22 local switching, common and dedicated transport and the carrier  
23 charge.

24 (42) "Telecommunications Act of 1996" is the

1 Telecommunications Act of 1996.

2       (43) "Telecommunications carrier" is an entity that provides  
3 telecommunications services subject to the jurisdiction of the  
4 council.

5       (44) "Telecommunications service" is the offering of the  
6 transmission of messages or communications for a fee to the public.

7       (45) "Universal broadband availability" is access to broadband  
8 service by each telephone customer of a local exchange  
9 telecommunications company.

10 **§31-15D-3. Continuation of approved alternative modernization**  
11 **plans.**

12       (a) General Rule. An alternative form of regulation plan and  
13 network modernization plan approved by the Department of Commerce,  
14 the Public Service Commission or the Broadband Council prior to the  
15 effective date of this article for a local exchange  
16 telecommunications company remains valid and effective except as  
17 may be amended at the election of the local exchange  
18 telecommunications company as authorized by law. The council shall  
19 allow a previously approved plan to be amended to conform to any  
20 changes made under this article and shall not require any other  
21 changes to the plan.

22       (b) Limitation on changes to plans. Except for changes to  
23 existing alternative form of regulation and network modernization  
24 plans as authorized by this chapter, no change to any alternative

1 form of regulation or network modernization plan may be made  
2 without the express agreement of both the council and the local  
3 exchange telecommunications company.

4 (c) Grandfather provision. All services determined to be  
5 competitive prior to the effective date of this amendment remain  
6 competitive services unless reclassified by the council under  
7 section 3016(c).

8 (d) Council Oversight. The council will continue to exercise  
9 oversight of alternative form of regulation and network  
10 modernization plans for local exchange telecommunications companies  
11 as provided in this chapter.

12 **§31-15D-4. Network modernization plans.**

13 (a) Continuation of approved plan. A local exchange  
14 telecommunications company that does not elect an option under  
15 subsection (b) remains subject to its network modernization plan in  
16 effect prior to the effective date of this article without revision  
17 or modification except by agreement under section 3013(b) and as  
18 provided in this section through December 31, 2115.

19 (b) Options for amendment of network modernization plan. Local  
20 exchange telecommunications companies shall have the following  
21 options:

22 (1) (A) A rural telecommunications carrier that elects to amend  
23 its network modernization plan pursuant to this subsection shall  
24 remain subject to the carrier's network modernization plan

1 previously in effect, and as amended under this section, until  
2 December 31, 2117. Prior to implementation of such election, the  
3 rural telecommunications carrier shall comply with the notification  
4 requirements of subsection (e).

5 (B) The rural telecommunications carrier shall commit to  
6 accelerate one hundred percent broadband availability by December  
7 31, 2112, in its amended network modernization plan. Any rural  
8 telecommunications carrier electing this option shall not be  
9 required to offer a bona fide retail request program or a business  
10 attraction or retention program.

11 (2) (A) A rural telecommunications carrier that elects to  
12 amend its network modernization plan pursuant to this section shall  
13 remain subject to the carrier's current network modernization plan,  
14 as amended pursuant to this section, through December 31, 2112, or  
15 December 31, 2117, as applicable. Prior to implementation of such  
16 election, the rural telecommunications carrier shall comply with  
17 the notification requirements of subsection (e).

18 (B) The rural telecommunications carrier shall commit:

19 (i) To accelerate broadband availability to at least eighty  
20 percent of its total retail access lines in its distribution  
21 network by December 31, 2011, and one hundred percent of its total  
22 retail access lines in its distribution network by December 31,  
23 2012; or

24 (ii) To accelerate broadband availability to at least eighty

1 percent of its total retail access lines in its distribution  
2 network by December 31, 2012, and one hundred percent of its total  
3 retail access lines in its distribution network by December 31,  
4 2015; and

5 (iii) To offer a bona fide retail request program and a  
6 business attraction or retention program pursuant to subsections (c)  
7 and (d). Under no circumstances may the rural telecommunications  
8 carrier reduce its existing broadband availability commitment.

9 (3) (A) A nonrural telecommunications carrier that elects to  
10 amend its network modernization plan pursuant to this section shall  
11 remain subject to such carrier's network modernization plan  
12 currently in effect, as amended pursuant to this section, including  
13 meeting its one hundred percent broadband availability commitment.  
14 Prior to implementation of such election, the nonrural  
15 telecommunications carrier shall comply with the notification  
16 requirements of subsection (e).

17 (B) The nonrural telecommunications carrier shall commit:

18 (i) To provide broadband availability to one hundred percent  
19 of its total retail access lines in its distribution network by  
20 December 31, 2115, or December 31, 2117; and

21 (ii) To offer a bona fide retail request program and a  
22 business attraction or retention program pursuant to subsections  
23 (c) and (d). Under no circumstances may such nonrural  
24 telecommunications carriers reduce its existing broadband

1 availability commitment.

2       (4) A local exchange telecommunications company that elects  
3 under paragraph(1), (2) or (3) shall also commit to universal  
4 broadband deployment in or adjacent to public rights-of-way  
5 abutting all public schools including the administration offices  
6 supporting public schools, industrial parks and health care  
7 facilities in its service territory on or before December 31, 2012,  
8 except that a local exchange telecommunications company serving  
9 more than ten exchanges in this state may elect to extend this  
10 commitment from December 31, 2012, to December 31, 2013, for any  
11 exchange with less than four thousand access lines.

12       (5) A local exchange telecommunications company that elects  
13 under paragraph (1),(2) or (3) may amend its network modernization  
14 plan to extend the period of time within which broadband service  
15 must be made available to a customer for up to ten business days  
16 after the customer's request for broadband service.

17       (6) A local exchange telecommunications company operating  
18 under an amended network modernization plan may subsequently  
19 petition the council for approval of further modification of its  
20 amended network modernization plan which the council may grant upon  
21 good cause shown.

22       (7) A rural telecommunications carrier serving less than fifty  
23 thousand access lines in this state making an election pursuant to  
24 paragraph (1) and filing its amended network modernization plan

1 with the council pursuant to subsection (e) shall be granted by the  
2 council a suspension of section 251(c)(2), (3), (4), (5) and (6)  
3 obligations under the Telecommunications Act of 1996. This  
4 suspension of obligations expires December 31, 2016, unless  
5 extended by the council. Should the council, following a hearing,  
6 determine that the rural telecommunications carrier has failed to  
7 timely meet its commitments pursuant to this paragraph, the  
8 suspension of obligations expires upon entry of the council order  
9 making such determination. Expiration of the suspension of  
10 obligations shall not impact the rural telephone company's  
11 exemption of the rural telecommunications carrier under section  
12 251(f)(1) of the Telecommunications Act of 1996.

13 (8) A local exchange telecommunications company may accelerate  
14 its broadband availability commitment by electing an additional  
15 option pursuant to paragraph (1), (2) or (3), as applicable, at a  
16 later date. The local exchange telecommunications company shall be  
17 subject to the applicable modified inflation offset in its price  
18 stability mechanism as set forth in section 3015(a)(1), relating to  
19 alternative forms of regulation, effective upon the filing of an  
20 amended network modernization plan under subsection (e).

21 (c) Bona Fide Retail Request Program. A local exchange  
22 telecommunications company that elects to amend its network  
23 modernization plan pursuant to subsection (b)(2) or (3) shall, no  
24 later than ninety days after the effective date of its amended



1 plan, implement a Bona Fide Retail Request Program in areas where  
2 it does not provide broadband. Not later than thirty days in  
3 advance of program implementation, the local exchange  
4 telecommunications company shall file with the council and provide  
5 it with a written description of the program, a sample request for  
6 advanced services form for use in the program and the form of any  
7 advanced services term subscription agreements customers will be  
8 required to execute in connection with receiving the requested  
9 services. A Bona Fide Retail Request Program shall consist of the  
10 following:

11 (1) Any person, business, local development district,  
12 industrial development agency or other entity seeking advanced  
13 services pursuant to a Bona Fide Retail Request Program shall  
14 submit a written request for such services to the local exchange  
15 telecommunications company or to the department in accordance with  
16 subsection (d). The written request may be in the form of a  
17 petition which includes the information required by paragraph (2)  
18 or in the form provided by the council under subsection (d) which  
19 includes the information required by paragraph (2) or in the form  
20 of individual requests each of which includes the information  
21 required by paragraph (2). If individual requests are received, the  
22 local exchange telecommunications company shall aggregate requests  
23 for the same service and initiate appropriate action pursuant to  
24 this subsection when the required number of requests have been

1 received.

2 (2) To be considered a bona fide retail request, the written  
3 request must include:

4 (A) A request that a minimum of fifty retail access lines or  
5 twenty-five percent of retail access lines within a community,  
6 whichever is less, each be provided the same advanced service or  
7 comparable advanced services having a bandwidth within one hundred  
8 kilobits per second (kbps) of each other. Notwithstanding the  
9 foregoing comparable bandwidth limitation, where a request includes  
10 individual customer requests for advanced services having equal to  
11 or less than 1.544 megabits per second (mbps) bandwidth in the  
12 downstream direction, all lines in the request shall be counted in  
13 meeting the minimum line requirement of this subparagraph;

14 (B) The name, address, telephone number and signature of each  
15 existing retail customer requesting the advanced service, the  
16 advanced service being requested and the number of access lines for  
17 which the advanced service is being requested;

18 (C) The name, address and telephone number of a designated  
19 contact person where the request is made by or on behalf of more  
20 than one person or business; and

21 (D) A commitment by each customer who signs the request to  
22 subscribe to the requested service for one year subject to the  
23 local exchange telecommunications company's identification of the  
24 price and terms of the service and the customer's agreement to the

1 price and terms.

2 (3) In administering the Bona Fide Retail Request Program, the  
3 local exchange telecommunications company shall:

4 (A) Establish an Internet website and toll-free telephone  
5 number to address customer inquiries regarding the program;

6 (B) Mail a request form to a customer upon request;

7 (C) Confirm its receipt of any completed request in writing to  
8 the customer and identify the service requested;

9 (D) As part of the written confirmation, if available or in a  
10 subsequent written communication to the customer, provide the  
11 customer the applicable rate, the contract term, the status of the  
12 request and a term subscription agreement for execution; and

13 (E) Notify the customers in a community within thirty days of  
14 receipt of a bona fide request of the expected date of the  
15 availability of the requesters' service.

16 (4) When a bona fide retail request has been received that  
17 meets the requirements of paragraph (2), the local exchange  
18 telecommunications company shall provide the requested advanced  
19 service or other reasonably comparable service having a bandwidth  
20 within 100 kilobits per second (kbps) of the requested service, to  
21 the community as soon as practicable, but in no event later than  
22 three hundred sixty-five days of the date the requirements of  
23 paragraph (2) have been met or within the period approved by the  
24 council under paragraph (5) or (6) where:

1 (A) The local exchange telecommunications company provides the  
2 requested advanced service to other customers in its service  
3 territory;

4 (B) No service is available to the requesting customers from  
5 an alternative service provider at or within one hundred kilobits  
6 per second (kbps) of the data speed requested or such service is  
7 available at a price that exceeds the then current price offered by  
8 the local exchange telecommunications company by more than fifty  
9 percent;

10 (C) The community is situated within the service territory of  
11 the local exchange telecommunications company; and

12 (D) The local exchange telecommunications company does not  
13 have to provide fiber to the customer's premises to furnish the  
14 requested advanced service.

15 (5) Where, as a result of property acquisition, including  
16 acquiring rights-of-way or new construction, a local exchange  
17 telecommunications company is unable to provide the requested  
18 advanced service within the one-year period set forth in paragraph  
19 (4), the company may petition the council for an extension of up to  
20 six months with service upon the customer or customers who made the  
21 bona fide retail request and the department if the department  
22 submitted the request on behalf of the customer or customers. The  
23 council shall grant the petition for good cause shown.

24 (6) Where the total number of bona fide retail requests

1 received by any local exchange telecommunications company or  
2 affiliated companies that meet the requirements of paragraphs (2)  
3 and (4) exceed forty requests in any twelve-month period, or where  
4 there are more than such requests that require property  
5 acquisition, including acquiring rights-of-way, or new construction  
6 in any twelve-month period, the local exchange telecommunications  
7 company or companies may provide a verified certification to the  
8 council that one or both of the previously stated criteria are met,  
9 with service upon the customer or customers who made the additional  
10 requests and upon the department if the department submitted any  
11 such requests. Upon receipt of the certification, the council, or  
12 the council through its designated staff, shall permit the local  
13 exchange telecommunications company or companies to extend the time  
14 for such deployments for a period of no more than twelve months  
15 unless the council determines an additional time period to be just  
16 and reasonable. If a deployment is extended, it shall be counted in  
17 determining the maximum number of deployments provided ~~for~~ under  
18 this subsection in any twelve-month period covering the month to  
19 which it is extended.

20 (7) No advanced service requested and deployed by a local  
21 exchange telecommunications company under the bona fide retail  
22 request program which has a bandwidth of less than 1.544 megabits  
23 per second (mbps) in the downstream direction shall be counted as  
24 a credit toward the local exchange telecommunications company's

1 broadband deployment obligation under its network modernization  
2 plan amended pursuant to subsection (b)(2) or (3).

3 (8) With regard to requests submitted under this subsection,  
4 a retail customer may challenge the action of a local exchange  
5 telecommunications company pursuant to section 701 relating to  
6 complaints.

7 (9) Local exchange telecommunications companies with bona fide  
8 retail request programs shall provide semiannual reports to the  
9 council of the number of requests for advanced services received  
10 during the reporting period by exchange or density cell and the  
11 action taken on requests meeting the requirements of this  
12 subsection.

13 (10) A local exchange telecommunication company's Bona Fide  
14 Retail Request Program established under this subsection shall  
15 continue through December 31, 2023, or such earlier date as the  
16 local exchange telecommunications company achieves one hundred  
17 percent broadband availability throughout its service territory.

18 (11) In addition to adjudicating any complaints brought by  
19 customers under paragraph (8), the council shall monitor and  
20 enforce the compliance of participating local exchange  
21 telecommunications companies with their obligations under this  
22 subsection.

23 (d) Business attraction or retention program.

24 (1) Not later than ninety days after amending its network

1 modernization plan under subsection (b)(2) or (3), the local  
2 exchange telecommunications company shall establish a business  
3 attraction or retention program to permit the department to  
4 aggregate customer demand where necessary and facilitate the  
5 deployment of advanced or broadband services to qualifying  
6 businesses which the council seeks to attract to or retain in this  
7 state.

8       (2) Each local exchange telecommunications company which  
9 amends its network modernization plan under subsection (b)(2) or  
10 (3) not later than ninety days after the effective date of its  
11 amended plan shall designate a single point of contact to receive  
12 all written advanced or broadband service requests forwarded by the  
13 department, provide associated contact information to the  
14 department and provide the department and the council with a  
15 written description of its participation in the program and a  
16 sample request for advanced or broadband services form for use in  
17 the program.

18       (3) The council may submit a request to the applicable local  
19 exchange telecommunications company by or on behalf of qualifying  
20 businesses in areas that the council deems priority areas for  
21 economic development, including and giving preference to keystone  
22 opportunity zones, keystone opportunity expansion zones, enterprise  
23 zones, keystone opportunity improvement zones and other areas  
24 identified as lacking adequate access to advanced or broadband

1 services which would be important in order to promote economic  
2 development projects in those areas.

3 (4) The council shall establish an advisory committee  
4 consisting of representatives of each local exchange  
5 telecommunications company with a business attraction or retention  
6 program, local development districts and other local economic and  
7 industrial development agencies to assist the council in developing  
8 protocols and procedures for implementing these programs pursuant  
9 to this subsection.

10 (5) Qualifying business or businesses' requests for advanced  
11 services that are provisioned through the bona fide retail request  
12 program shall be processed in accordance with subsection (c) and  
13 shall be allocated fifty percent of the maximum number of annual  
14 deployments referenced in subsection (c)(6). Other requests shall  
15 be allocated fifty percent of the number of such deployments:  
16 *Provided*, that any allocated deployments that are unused may be  
17 utilized by the department or nondepartment applicants, as  
18 applicable.

19 (6) For qualifying business or businesses whose request for  
20 advanced services is determined by the local exchange  
21 telecommunications company to be better processed outside of the  
22 Bona Fide Retail Request Program, the local exchange  
23 telecommunications company shall make a proposal to the requesting  
24 business or businesses to provide the requested advanced or



1 broadband service and subsequently shall provision such service.  
2 The local exchange telecommunications company shall advise the  
3 council and the business or businesses within thirty days of the  
4 date the contract is signed of the date by which the requested  
5 advanced or broadband service will be provided, which date shall be  
6 not later than one year after the date the contract is signed,  
7 unless the business or businesses agree to a longer period, or the  
8 local exchange telecommunications company obtains council approval  
9 of an extension under the same procedure set forth in subsection  
10 (c) (5).

11 (7) No advanced service requested of and deployed by a local  
12 exchange telecommunications company under the business attraction  
13 or retention program which has a bandwidth of less than 1.544  
14 megabits per second (mbps) in the downstream direction shall be  
15 counted as a credit toward the local exchange telecommunication  
16 company's broadband deployment obligation under its network  
17 modernization plan amended under subsection (b) (2) or (3).

18 (8) Each local exchange telecommunications company which is  
19 required to participate in the council's business attraction or  
20 retention program shall continue its participation through December  
21 31, 2023, or such earlier date as it achieves one hundred percent  
22 broadband availability throughout its service territory.

23 (9) The council shall oversee local exchange  
24 telecommunications company participation in the business attraction

1 or retention program, including the timely completion of qualifying  
2 advanced or broadband services requests submitted, which are  
3 processed within or outside of the participating local exchange  
4 telecommunications companies' bona fide retail request programs.

5 (10) The council shall monitor and enforce the compliance of  
6 participating local exchange telecommunications companies with  
7 their obligations under the business attraction or retention  
8 program.

9 (e) Notice of filing of amendments. A local exchange  
10 telecommunications company that elects to amend its network  
11 modernization plan under subsection (b) shall notify the council in  
12 writing of such election and, within sixty days following such  
13 notification, file its amended network modernization plan with the  
14 council. Copies of the written notice of election and of the  
15 amended network modernization plan shall be served by the local  
16 exchange telecommunications company on the office of consumer  
17 advocate and the office of small business advocate. Concurrent with  
18 the filing of the amended plan with the council, the local exchange  
19 telecommunications company shall publish notice of such filing in  
20 a newspaper or newspapers of general circulation in its service  
21 territory or by bill message or insert. An amended plan compliant  
22 with the requirements of this chapter shall be approved by the  
23 council within one hundred days of its filing. If the council fails  
24 to act within one hundred days, the amended plan is deemed

1 approved.

2 (f) Network modernization plan report.

3 (1) A local exchange telecommunications company operating  
4 under a network modernization plan shall continue to file with the  
5 council biennial reports on its provision of broadband availability  
6 in the form and detail required by the council, unless such  
7 reporting requirements are subsequently reduced by the council.

8 (2) Nothing in this subsection impedes the ability of the  
9 council to require the submission of further information to support  
10 the accuracy of or to seek an explanation of the reports specified  
11 in this subsection.

12 (3) Under no circumstances shall the council compel the public  
13 release of maps or other information describing the actual location  
14 of a local exchange telecommunications company's facilities.

15 (g) Assistance to political subdivisions. A local exchange  
16 telecommunications company shall commit, in its amended network  
17 modernization plan, to make technical assistance available to  
18 political subdivisions located in its service territory in pursuing  
19 the deployment of additional telecommunications infrastructure or  
20 services by the local exchange telecommunications company.

21 (h) Prohibition against political subdivision advanced and  
22 broadband services deployment.

23 (1) Except as otherwise provided ~~for~~ under paragraph (2), a  
24 political subdivision or any entity established by a political

1 subdivision may not provide to the public for compensation any  
2 telecommunications services, including advanced and broadband  
3 services, within the service territory of a local exchange  
4 telecommunications company operating under a network modernization  
5 plan.

6 (2) A political subdivision may offer advanced or broadband  
7 services if the political subdivision has submitted a written  
8 request for the deployment of such service to the local exchange  
9 telecommunications company serving the area and, within two months  
10 of receipt of the request, the local exchange telecommunications  
11 company or one of its affiliates has not agreed to provide the data  
12 speeds requested. If the local exchange telecommunications company  
13 or one of its affiliates agrees to provide the data speeds  
14 requested, then it must do so within fourteen months of receipt of  
15 the request.

16 (3) The prohibition in paragraph (1) shall not be construed to  
17 preclude the continued provision or offering of telecommunications  
18 services by a political subdivision of the same type and scope as  
19 were being provided on the effective date of this section.

20 (i) Broadband outreach and aggregation program.

21 (1) The council shall establish a broadband outreach and  
22 aggregation program for the purpose of making expenditures and  
23 providing grants from the broadband outreach and aggregation fund  
24 established under section 3015(c), relating to alternative forms of

1 regulation, for:

2 (A) Outreach programs for political subdivisions, economic  
3 development entities, schools, health care facilities, businesses  
4 and residential customers concerning the benefits, use and  
5 procurement of broadband services; and

6 (B) Seed grants to aggregate customer demand for broadband  
7 services in communities or political subdivisions with limited  
8 access to such services and to permit customers in such communities  
9 or political subdivisions to request such services from a  
10 telecommunications provider.

11 (2) The council shall annually report to the department on all  
12 payments to and expenditures from the broadband outreach and  
13 aggregation fund and the council shall verify the accuracy of the  
14 contributions from the participating local exchange  
15 telecommunications companies.

16 (j) Education technology program.

17 (1) The department of education shall establish an education  
18 technology program for the purpose of providing grants to school  
19 entities from the Education Technology Fund, also referred to as  
20 the "e-fund", established in section five, article 15-d, chapter  
21 thirty-one.

22 (2) The department of education shall authorize grants from  
23 the e-fund for the following purposes:

24 (A) Purchase or lease of telecommunications services,

1 infrastructure or facilities to establish and support broadband  
2 networks between, among and within school entities and not for the  
3 provision of telecommunications services to the public for  
4 compensation.

5 (B) Purchase or lease of premises telecommunications network  
6 equipment and end-user equipment to enable the effective use of  
7 broadband networks between, among and within school entities and  
8 not for the provision of telecommunications services to the public  
9 for compensation.

10 (C) Distance learning initiatives that use the foregoing  
11 broadband networks.

12 (D) Technical support services for the activities described in  
13 subparagraphs (i) through (iii).

14 (3) Each applicant school entity shall be required to provide  
15 one hundred percent matching funds to support each e-fund grant  
16 request. Funds received from federal technology programs such as  
17 the universal service support mechanism for schools and libraries  
18 set forth in 47 CFR pt. 54, relating to universal service or  
19 successor regulations, in-kind contributions and any other  
20 technology expenditures shall be applied toward the matching fund  
21 requirement.

22 (4) No later than ninety days after the effective date of this  
23 section, the department of education shall prescribe the grant  
24 process and the form and manner of the e-fund application. Grants

1 shall be limited to the funds available in the education technology  
2 fund. In awarding grants, the department of education shall give  
3 priority to applications:

4 (A) That are submitted by school entities that seek funds for  
5 discounted broadband services under subsection (l) or for broadband  
6 infrastructure, facilities or equipment from local exchange  
7 telecommunications companies which contribute to the e-fund;

8 (B) That seek funds for regional networks that serve multiple  
9 school districts which are filed on behalf of multiple school  
10 districts and school entities; or

11 (C) That are submitted by school entities that do not have  
12 broadband service: *Provided*, That nothing in this subsection shall  
13 preclude the department from awarding funds to school entities for  
14 telecommunications services, infrastructure or facilities that  
15 provide bandwidths greater than 1.544 megabits per second. The  
16 department of education shall assure that the applications funded  
17 each year are geographically dispersed throughout the state.

18 (k) Balanced deployment. A local exchange telecommunications  
19 company shall reasonably balance deployment of its broadband  
20 network between rural, urban and suburban areas within its service  
21 territory, as those areas are applicable, in accordance with its  
22 approved network modernization plan.

23 (l) Broadband discounts to schools. Each local exchange  
24 telecommunications company that elects to amend its network

1 modernization plan pursuant to this section:

2       (1) Shall offer school customers which meet the eligibility  
3 standards described in 47 CFR 54.501 and which agree to enter into  
4 a minimum three-year contract, a thirty percent discount, or  
5 greater discount at the local exchange telecommunications company's  
6 discretion, in the otherwise applicable tariffed distance sensitive  
7 per-mile rate element and also will waive the associated  
8 nonrecurring charges for available intrastate broadband services  
9 where used for educational purposes and not for the provision of  
10 telecommunications services to the public for compensation. The  
11 discount or waiver shall not be required where application of it to  
12 a particular service would conflict with applicable law.

13       (2) Will assist school customers in applying for e-rate  
14 funding under 47 CFR 54.505.

15       (m) Inventory of available services.

16       (1) The council shall compile, periodically update and  
17 publish, including at its Internet website, a listing of advanced  
18 and broadband services, by general location, available from all  
19 advanced and broadband service providers operating in this  
20 commonwealth irrespective of the technology used.

21       (2) All providers of advanced and broadband services shall  
22 cooperate with the council.

23       (3) The council may not disclose maps or other information  
24 describing the specific location of any telecommunications



1 carrier's or alternative service provider's facilities.

2 (n) Construction. Nothing in this section shall be construed:

3 (1) As giving the council the authority to require a local  
4 exchange telecommunications company to provide specific services or  
5 to deploy a specific technology to retail customers seeking  
6 broadband or advanced services.

7 (2) As prohibiting a local exchange telecommunications company  
8 from participating in joint ventures with other entities in meeting  
9 its advanced services and broadband deployment commitments under  
10 its network modernization plan.

11 **§31-15D-5. Alternative forms of regulation.**

12 (a) Inflation offset.

13 (1) Except as otherwise provided in paragraphs (2) and (3), a  
14 local exchange telecommunications company with an alternative form  
15 of regulation containing a price stability mechanism that files an  
16 amended network modernization plan under section 3014(b)(1), (2) or  
17 (3) relating to network modernization plans shall be subject to a  
18 modified inflation offset in its price stability mechanism in  
19 adjusting its rates for noncompetitive services, effective upon the  
20 filing of an amended network modernization plan under section  
21 3014(e), as follows:

22 (A) If a nonrural telecommunications carrier files an amended  
23 network modernization plan under section 3014(b)(3) that commits to  
24 deploy one hundred percent broadband availability by December 31,

1 2021, then the carrier's inflation offset shall be zero.

2 (B) If a nonrural telecommunications carrier files an amended  
3 network modernization plan under section 3014(b)(3) that commits to  
4 deploy one hundred percent broadband availability by December 31,  
5 2023, then the carrier's inflation offset shall be equal to one-  
6 half percent.

7 (C) If a rural telecommunications carrier files an amended  
8 network modernization plan under section 3014(b)(1) that commits to  
9 deploy one hundred percent broadband availability by December 31,  
10 2024, or under section 3014(b)(2)(ii)(a), that commits to deploy  
11 one hundred percent broadband availability by December 31, 2029,  
12 then the carrier's inflation offset shall be zero.

13 (D) If a rural telecommunications carrier files an amended  
14 network modernization plan under section 3014(b)(2)(ii)(b) that  
15 commits to deploy one hundred percent broadband availability by  
16 December 31, 2023, then the carrier's inflation offset shall be  
17 equal to one-half percent.

18 (2) Utilizing network modernization plan reports filed with  
19 the council by local exchange telecommunications companies under  
20 section 3014(f), the council shall monitor and enforce companies'  
21 compliance with their interim and final one hundred percent  
22 commitments for broadband availability in their amended network  
23 modernization plans. In the event that a local exchange  
24 telecommunications company is found by the council, after notice

1 and evidentiary hearings held on an expedited basis, to have failed  
2 to meet such an interim or final one hundred percent commitment,  
3 then the council shall require the local exchange  
4 telecommunications company to refund to customers in its next price  
5 stability filing an amount that is just and reasonable under the  
6 circumstances. Such amount shall not exceed an amount determined by  
7 multiplying the percentage shortfall of the broadband availability  
8 commitment on an access line basis required to be met during the  
9 period from the start of the amended plan or from the date of the  
10 last prior interim commitment, as applicable, times the increased  
11 revenue that was obtained during this period as a result of the  
12 modified inflation offset provided in this section that reduced the  
13 inflation offset applicable in the local exchange  
14 telecommunications company's alternative regulation plan in effect  
15 on the effective date of this section, plus interest calculated  
16 under section 1308(d) relating to voluntary changes in rates. Any  
17 such refund required under this subsection shall be separate from  
18 and in addition to any civil or other penalties that the may be  
19 imposed on a local exchange telecommunications company. ( 3 )

20 Where annual rate adjustments made under a nonrural  
21 telecommunications carrier's price stability mechanism are  
22 calculated using revenues from protected services, an average rate  
23 adjustment for protected residential customer local exchange  
24 telecommunications service lines shall be determined by dividing

1 the total protected service revenues associated with such lines, as  
2 adjusted by the price stability formula, by the number of such  
3 lines and the rate adjustment for any individual line shall not  
4 vary from this average rate adjustment by more than twenty percent.

5 (b) Rate changes for rural telecommunications carriers.

6 (1) In addition to the rate change provisions in its  
7 alternative form of regulation plan, a rural telecommunications  
8 carrier operating without a price stability mechanism that files  
9 with the council an amended network modernization plan under  
10 section 3014(b)(1) or (2) shall be permitted at any time to file  
11 proposed tariff changes with the council, effective forty-five days  
12 after filing, setting forth miscellaneous changes, including  
13 increases and decreases, in rates for noncompetitive services,  
14 excluding basic residential and business rates, provided such rate  
15 changes do not increase the rural telecommunications carrier's  
16 annual intrastate revenues by more than three percent.

17 (2) The council tariff filing requirements and review  
18 associated with such proposed rate changes shall be limited to  
19 schedules submitted by the rural telecommunications carrier  
20 detailing the impact of the rate changes on the carrier's annual  
21 intrastate revenues.

22 (3) A rural telecommunications carrier that implements  
23 noncompetitive rate changes consistent with the procedure set forth  
24 in its alternative form of regulation plan shall be required only

1 to file such financial and cost data with the council to justify  
2 such changes as is required under its council-approved alternative  
3 form of regulation plan.

4 (4) Notwithstanding the provisions of paragraph (1), (2) or  
5 (3), for any rural telecommunications carrier serving less than  
6 fifty-thousand access lines in this state and operating under an  
7 alternative form of regulation plan, a formal complaint to deny  
8 rate changes for noncompetitive services, unless signed by at least  
9 twenty customers of the rural telecommunications carrier, shall not  
10 prevent implementation of the rate changes pending the adjudication  
11 of the formal complaint by the council.

12 (c) Broadband outreach and aggregation fund.--

13 (1) There is hereby established within the State Treasury a  
14 special fund to be known as the Broadband Outreach and Aggregation  
15 Fund for the purposes enumerated in section 3014(i).

16 (2) A local exchange telecommunications company that files an  
17 amended network modernization plan under section 3014(b) (2) or (3)  
18 shall be assessed by the council for contribution to the fund and  
19 to the e-fund established under subsection (d) an amount of twenty  
20 percent of the first year's annual revenue effect:

21 (A) Of any rate increase permitted by the elimination or  
22 reduction of the offset under subsection (A) and placed into  
23 effect; or

24 (B) Of any rate increase placed into effect under subsection

1 (b)(1) if the local exchange telecommunications company is  
2 operating without a price stability mechanism.

3 For purposes of this paragraph, the term "first year's annual  
4 revenue effect" means the projected or actual increased revenues  
5 received by the local exchange telecommunications company during  
6 the one-year period from the effective date of its rate increase.  
7 The council shall begin the assessments provided ~~for~~ in this  
8 paragraph on June 30, 2113, and thereafter shall make such  
9 assessments annually on June 30 until June 30, 2018, for  
10 assessments that include amounts for the fund and the e-fund and  
11 until June 30, 2023, for assessments that include amounts for only  
12 the fund. Each assessment shall be based on the first year's annual  
13 revenue effect of any covered rate increase effective after the  
14 date of the last annual assessment.

15 (3) An amount not to exceed fifty percent of such assessment  
16 shall be allocated to the fund. The remainder of the assessment  
17 shall be allocated to the e-fund provided ~~for~~ under subsection (d)  
18 until its termination on June 30, 2019. After the e-fund  
19 termination, the maximum assessment percentage shall be reduced  
20 from twenty percent to ten percent and contributions shall be made  
21 only to the fund until the local exchange telecommunications  
22 company achieves one hundred percent broadband availability.  
23 Contributions of allocated amounts shall be paid to the fund and  
24 the e-fund by the local exchange telecommunications company in

1 equal quarterly installments.

2 (4) In no event shall the total amount of the fund exceed \$5  
3 million annually and, in the event of such over-funding, the  
4 council shall credit the over-collection to the next year's  
5 contribution amount.

6 (5) A local exchange telecommunications company that elects to  
7 amend its network modernization plan pursuant to section 3014  
8 (B) (1) shall not be required to contribute to the fund.

9 (6) The moneys in the Broadband Outreach and Aggregation Fund  
10 are hereby appropriated, upon approval of the Governor, to the  
11 department for the purposes enumerated in paragraph (1). The  
12 council may use up to three percent of the money in the fund for  
13 administration.

14 (7) The fund shall continue until July 1, 2024, at which time  
15 the fund shall terminate and the council shall return any funds  
16 remaining in the fund, on a pro rata basis, to the local exchange  
17 telecommunications companies that contributed to the fund.

18 (d) Education Technology Fund.

19 (1) There is hereby established within the State Treasury a  
20 special fund to be known as the Education Technology Fund, also  
21 known as "e-fund" for the purposes enumerated in paragraph (4).

22 (2) All e-fund assessments imposed by the council under  
23 subsection (c) (2) and paragraph (3), moneys specifically  
24 appropriated by the general assembly for the purposes of this

1 subsection and any funds, contributions or payments which may be  
2 made available to the fund by the federal government, another state  
3 agency or any public or private source for the purpose of  
4 implementing this subsection, shall be deposited in the e-fund.

5       (3) Beginning in 2013 and continuing through 2018, the council  
6 shall, no later than June 30 of each year, assess each nonrural  
7 telecommunications carrier that files an amended network  
8 modernization plan under section 3014(b)(3), an amount to be  
9 deposited in the e-fund. Each carrier's annual assessment shall be  
10 payable in two equal installments due on October 31, of each year,  
11 and January 31 of the following year and shall be based on the  
12 relative proportion of the retail access lines served by the  
13 nonrural telecommunications carrier in relation to the number of  
14 retail access lines served by all nonrural telecommunications  
15 carriers that have filed an amended network modernization plan  
16 under section 3014(b)(3). For fiscal years 2013-2014 and 2014-  
17 2015, the total annual assessment amount shall be \$7 million. For  
18 fiscal years 2015-2016, 2016-2017, 2017-2018 and 2018-2019, the  
19 total annual assessment amount shall be the difference between \$7  
20 million and any amount remaining in the e-fund from prior fiscal  
21 years which remains unencumbered or unexpended. A nonrural  
22 telecommunications carrier's assessments required under this  
23 paragraph may not be recovered via a surcharge on customers' bills  
24 or in rates for noncompetitive services as exogenous change



1 adjustment under the provisions of the carrier's price stability  
2 mechanism and subsection (a)(3) where applicable.

3 (4) Additional local exchange telecommunications company  
4 contributions to the e-fund shall be made pursuant to the  
5 provisions of subsections (c)(2) and (3).

6 (5) The department of education shall expend the moneys of the  
7 e-fund for the purpose of providing grants to school entities as  
8 prescribed by section 3014(j).

9 (6) The moneys of the Education Technology Fund are hereby  
10 appropriated, upon approval of the Governor, to the department of  
11 education for the purposes enumerated in paragraph (5). The  
12 department of education may use up to three percent of the money  
13 for administration. Appropriations by the general assembly to the  
14 fund shall be continuing appropriations and shall not lapse at the  
15 close of any fiscal year.

16 (7) The e-fund shall continue until June 30, 2019, at which  
17 time the fund shall terminate and the department of education shall  
18 return any funds remaining therein, on a pro rata basis, to the  
19 local exchange telecommunications companies that contributed to the  
20 fund.

21 (e) General filing requirements. The council's filing and  
22 audit requirements for a local exchange telecommunications company  
23 that is operating under an amended network modernization plan shall  
24 be limited to the following:

1 (1) Network modernization plan reports filed pursuant to  
2 section 3014(f).

3 (2) An annual financial report consisting of a balance sheet  
4 and income statement.

5 (3) An annual deaf, speech-impaired and hearing-impaired relay  
6 information report.

7 (4) An annual service report.

8 (5) Universal service reports.

9 (6) An annual access line report.

10 (7) An annual statement of gross intrastate operating revenues  
11 for purposes of calculating assessments for regulatory expenses.

12 (8) An annual state tax adjustment computation for years in  
13 which a tax change has occurred, if applicable.

14 (9) For those companies with a Bona Fide Retail Request  
15 Program, a bona fide retail request report under section  
16 3014(c)(9). These reports shall be submitted in the form determined  
17 by the council.

18 (f) Other reports

19 (1) Notwithstanding any other provision of this title to the  
20 contrary, no report, statement, filing or other document or  
21 information, except as specified in subsection (e), shall be  
22 required of any local exchange telecommunications company unless  
23 the council, upon notice to the affected local exchange  
24 telecommunications company and an opportunity to be heard, has

1 first made specific written findings supporting conclusions in an  
2 entered order that:

3 (A) The report is necessary to ensure that the local exchange  
4 telecommunications company is charging rates that are in compliance  
5 with this chapter and its effective alternative form of regulation.

6 (B) The benefits of the report substantially outweigh the  
7 attendant expense and administrative time and effort required of  
8 the local exchange telecommunications company to prepare it.

9 (2) Nothing in this subsection impedes the ability of the  
10 council to require the submission of further information to support  
11 the accuracy of or to seek an explanation of the reports specified  
12 in subsection (e).

13 (g) Rate change limitations.-- Nothing in this chapter shall  
14 be construed to limit the requirement of section 1301 that rates  
15 shall be just and reasonable. The annual rate change limitations  
16 set forth in a local exchange telecommunications company's  
17 effective council-approved alternative form of regulation plan or  
18 any other council-approved annual rate change limitation shall  
19 remain applicable and shall be deemed just and reasonable under  
20 section 1301.

21 (h) Conformance of plan.-- Upon approval of a local exchange  
22 telecommunications company of network modernization plan amendments  
23 pursuant to section 3014(e), the local exchange telecommunications  
24 company's alternative form of regulation plan shall be deemed

1 amended consistent with this section.

2 **§31-15D-6. Competitive services.**

3 (a) Council determination of protected, retail nonprotected  
4 and retail noncompetitive services as competitive.

5 (1) A local exchange telecommunications company may petition  
6 the council for a determination of whether a protected or retail  
7 noncompetitive service or other business activity in its service  
8 territory or a particular geographic area, exchange or group of  
9 exchanges, or density cell within its service territory is  
10 competitive based on the demonstrated availability of like or  
11 substitute services or other business activities provided or  
12 offered by alternative service providers. The council, after notice  
13 and hearing, shall enter an order granting or denying the petition  
14 within sixty days of the filing date or within one-hundred fifty  
15 days of the filing date where a protest is timely filed or the  
16 petition shall be granted.

17 (2) The local exchange telecommunications company shall serve  
18 a copy of its petition on the Office of Consumer Advocate, the  
19 Office of Small Business Advocate and each of the parties to the  
20 council's proceeding in which the company's network modernization  
21 plan was approved.

22 (3) In making its determination, the council shall consider  
23 all relevant information submitted to it, including the  
24 availability of like or substitute services or other business

1 activities, and shall limit its determination to the service  
2 territory or the particular geographic area, exchange or group of  
3 exchanges or density cell in which the service or other business  
4 activity has been proved to be competitive.

5 (4) The burden of proving that a protected or retail  
6 noncompetitive service or other business activity is competitive  
7 rests on the local exchange telecommunications company.

8 (b) Declaration of retail nonprotected services as  
9 competitive. Notwithstanding the provisions of subsection (a), a  
10 local exchange telecommunications company may declare any retail  
11 nonprotected service as competitive by filing its declaration with  
12 the council and serving it on the Office of Consumer Advocate,  
13 Office of Small Business Advocate and each of the parties to the  
14 council's proceeding in which the company's network modernization  
15 plan was approved, provided that a local exchange  
16 telecommunications company may not use this declaration process for  
17 any service that the council previously has reclassified as  
18 noncompetitive under either subsection (c) or prior law. A  
19 declaration of a retail nonprotected service as competitive is  
20 effective upon filing by the local exchange telecommunications  
21 company with the council.

22 (c) reclassification.

23 (1) A party may petition the council for a determination of  
24 whether a service or other business activity previously determined

1 or declared to be competitive is noncompetitive. The council, after  
2 notice and hearing, shall enter an order deciding the petition  
3 within sixty days of the filing date or ninety days of the filing  
4 date where a protest is timely filed or the petition is approved.

5       (2) The petitioner shall serve a copy of the petition on the  
6 affected local exchange telecommunications company, if the  
7 petitioner is not the company, the Office of Consumer Advocate, the  
8 Office of Small Business Advocate and each of the parties to the  
9 council's proceeding in which the company's network modernization  
10 plan was approved.

11       (3) In making its determination, the council shall consider  
12 all relevant information submitted to it, including the  
13 availability of like or substitute services or other business  
14 activities, and shall limit its determination to the particular  
15 geographic area, exchange or density cell in which the service or  
16 other business activity has been proved to be noncompetitive.

17       (4) The burden of proving that a competitive service or other  
18 business activity should be reclassified as noncompetitive rests on  
19 the party seeking the reclassification.

20       (5) If the council reclassifies a service or other business  
21 activity as noncompetitive, the council shall determine a just and  
22 reasonable rate for the reclassified service or business activity  
23 in accordance with section 1301 relating to rates to be just and  
24 reasonable.

1 (d) Additional requirements.

2 (1) The prices which a local exchange telecommunications  
3 company charges for competitive services shall not be less than the  
4 costs to provide the services.

5 (2) The council may not require tariffs for competitive  
6 service offerings to be filed with the council.

7 (3) A local exchange telecommunications company, at its  
8 option, may tariff its rates, subject to rules and regulations  
9 applicable to the provision of competitive services.

10 (4) The council may require a local exchange  
11 telecommunications company to maintain price lists with the council  
12 applicable to its competitive services. Price changes that are  
13 filed in a company's tariff for competitive services will go into  
14 effect on a one-day notice.

15 (e) Pricing flexibility and bundling.

16 (1) Subject to the requirements of subsection (d)(1), a local  
17 exchange telecommunications company may price competitive services  
18 at the company's discretion.

19 (2) A local exchange telecommunications company may offer and  
20 bill to customers on one bill, bundled packages of services which  
21 include nontariffed, competitive, noncompetitive or protected  
22 services, including services of an affiliate, in combinations and  
23 at a single price selected by the company. A local exchange  
24 telecommunications company may file an informational tariff for a

1 bundled package effective on a one-day notice.

2       (3) When an alternative service provider is offering local  
3 exchange telecommunications services within an exchange of a rural  
4 telecommunications carrier, the rural telecommunications carrier  
5 may reduce its prices on services offered within the exchange below  
6 the rates set forth in its otherwise applicable tariff in order to  
7 meet such competition. A rural telecommunications carrier may not  
8 offset revenue reductions resulting from such competitive pricing  
9 by increasing rates charged to other customers through its price  
10 stability mechanism or otherwise.

11       (f) Prohibitions.

12       (1) A local exchange telecommunications company shall be  
13 prohibited from using revenues earned or expenses incurred in  
14 conjunction with noncompetitive services to subsidize competitive  
15 services.

16       (2) Paragraph (1) does not prevent the marketing and billing  
17 of packages containing both noncompetitive and competitive services  
18 to customers.

19 **§31-15D-7. Access charges.**

20       (a) General rule. The council may not require a local exchange  
21 telecommunications company to reduce access rates except on a  
22 revenue-neutral basis.

23       (b) Refusal to pay access charges prohibited.-- No person or  
24 entity may refuse to pay tariffed access charges for interexchange



1 services provided by a local exchange telecommunications company.

2 (c) Limitation. No telecommunications carrier providing  
3 competitive local exchange telecommunications service may charge  
4 access rates higher than those charged by the incumbent local  
5 exchange telecommunications company in the same service territory,  
6 unless such carrier can demonstrate that the higher access rates  
7 are cost justified.

8 **§31-15D-8. Interexchange telecommunications carriers.**

9 (a) Competitive and noncompetitive services.-- Interexchange  
10 services provided by interexchange telecommunications carriers  
11 shall be competitive services.

12 (b) Rate regulation.

13 (1) The council may not fix or prescribe the rates, tolls,  
14 charges, rate structures, rate base, rate of return, operating  
15 margin or earnings for interexchange competitive services or  
16 otherwise regulate interexchange competitive services except as set  
17 forth in this chapter.

18 (2) An interexchange telecommunications carrier may file and  
19 maintain tariffs or price lists with the council for competitive  
20 telecommunications services.

21 (3) Nothing in this chapter limits the authority of the  
22 council to regulate the privacy of interexchange service and the  
23 ordering, installation, restoration and disconnection of  
24 interexchange service to customers.

1 (c) Reclassification. The council may reclassify  
2 telecommunications services provided by an interexchange  
3 telecommunications carrier as noncompetitive if, after notice and  
4 hearing, it determines, upon application of the criteria set forth  
5 in this chapter, that sufficient competition is no longer present.

6 (d) Construction.-- Nothing in this chapter:

7 (1) Limits the authority of the council to resolve complaints  
8 regarding the quality of interexchange telecommunications carrier  
9 service.

10 (2) Limits the authority of the council to determine whether  
11 an interexchange telecommunications carrier should be extended the  
12 privilege of operating within this state or to order the filing of  
13 such reports, documents and information as may be necessary to  
14 monitor the market for and competitiveness of interexchange  
15 telecommunications services.

16 **§31-15D-9. Additional powers and duties.**

17 (a) General rule. The council may certify more than one  
18 telecommunications carrier to provide local exchange  
19 telecommunications service in a specific geographic location. The  
20 certification shall be granted upon a showing that it is in the  
21 public interest and that the applicant possesses sufficient  
22 technical, financial and managerial resources.

23 (b) Powers and duties retained. The council shall retain the  
24 following powers and duties relating to the regulation of all

1 telecommunications carriers and interexchange telecommunications  
2 carriers, including the power to seek information necessary to  
3 facilitate the exercise of these powers and duties:

4       (1) To audit the accounting and reporting systems of  
5 telecommunications carriers relating to their transactions with  
6 affiliates. A telecommunications carrier shall file affiliated  
7 interest and affiliated transaction agreements unless such  
8 agreements involve services declared to be competitive. The filings  
9 shall constitute notice to the council only and shall not require  
10 approval by the council.

11       (2) To review and revise quality of service standards that  
12 address the safety, adequacy, reliability and privacy of  
13 telecommunications services and the ordering, installation,  
14 suspension, termination and restoration of any telecommunications  
15 service. Any review or revision shall take into consideration the  
16 emergence of new industry participants, technological advancements,  
17 service standards and consumer demand.

18       (3) Subject to the provisions of section 3015(e), to establish  
19 such additional requirements as are consistent with this chapter as  
20 the council determines to be necessary to ensure the protection of  
21 customers.

22       (4) To condition the sale, merger, acquisition or other  
23 transaction required to be approved under section 1102(a)(3) of a  
24 local exchange telecommunications company or any facilities used to

1 provide telecommunications services to ensure that there is no  
2 reduction in the advanced service or broadband deployment  
3 obligations for the affected property or facilities.

4 (c) Privacy of customer information.

5 (1) Except as otherwise provided in this subsection, a  
6 telecommunications carrier may not disclose to any person  
7 information relating to any customer's patterns of use, equipment  
8 and network information and any accumulated records about customers  
9 with the exception of name, address and telephone number.

10 (2) A telecommunications carrier may disclose such  
11 information:

12 (A) Pursuant to a court order or where otherwise required by  
13 federal or state law.

14 (B) To the carrier's affiliates, agents, contractors or  
15 vendors and other telecommunications carriers or interexchange  
16 telecommunications carriers, as permitted by federal or state law.

17 (C) Where the information consists of aggregate data which  
18 does not identify individual customers.

19 (d) Unreasonable preferences. Nothing in this article limits  
20 the authority of the council to ensure that local exchange  
21 telecommunications companies do not make or impose unreasonable  
22 preferences, discriminations or classifications for protected  
23 services and other noncompetitive services.

24 (e) Lifeline service.

1           (1) All eligible telecommunications carriers certificated to  
2 provide local exchange telecommunications service shall provide  
3 lifeline service to all eligible telecommunications customers who  
4 subscribe to such service.

5           (2) All eligible telecommunications customers who subscribe to  
6 lifeline service shall be permitted to subscribe to any number of  
7 other eligible telecommunications carrier telecommunications  
8 services at the tariffed rates for such services.

9           (3) Whenever a prospective customer seeks to subscribe to  
10 local exchange telecommunications service from an eligible  
11 telecommunications carrier, the carrier shall explicitly advise the  
12 customer of the availability of lifeline service and shall make  
13 reasonable efforts where appropriate to determine whether the  
14 customer qualifies for such service and, if so, whether the  
15 customer wishes to subscribe to the service.

16           (4) Eligible telecommunications carriers shall inform existing  
17 customers of the availability of lifeline service twice annually by  
18 bill insert or message. The notice shall be conspicuous and shall  
19 provide appropriate eligibility, benefits and contact information  
20 for customers who wish to learn of the lifeline service  
21 subscription requirements.

22           (5) When a person enrolls in a low-income program administered  
23 by the Department of Health and Human Resources that qualifies the  
24 person for lifeline service, the Department of Health and Human

1 Resources shall automatically notify that person at the time of  
2 enrollment of his or her eligibility for lifeline service. This  
3 notification also shall provide information about lifeline service  
4 including a telephone number of and lifeline subscription form for  
5 the person's current eligible telecommunications carrier or, if the  
6 person does not have telephone service, telephone numbers of  
7 eligible telecommunications carriers serving the person's area,  
8 that the person can call to obtain lifeline service. Eligible  
9 telecommunications carriers shall provide the Department of Health  
10 and Human Resources with lifeline service descriptions and  
11 subscription forms, contact telephone numbers, and a listing of the  
12 geographic area or areas they serve, for use by the Department of  
13 Health and Human Resources in providing the notifications required  
14 by this paragraph.

15 (6) No eligible telecommunications carrier shall be required  
16 to provide after the effective date of this section any new  
17 lifeline service discount that is not fully subsidized by the  
18 federal universal service fund.

19 (f) Method for fixing rates. The council may not fix or  
20 prescribe the rates, tolls, charges, rate structures, rate base,  
21 rate of return or earnings of competitive services or otherwise  
22 regulate competitive services except as set forth in this chapter.

23 (g) Protection of employees.

24 (1) No telecommunications carrier may discharge, threaten,

1 discriminate or retaliate against an employee because the employee  
2 made a good faith report to the council, the Office of Consumer  
3 Advocate or the Office of Attorney General regarding wrongdoing,  
4 waste or a potential violation of the council's orders or  
5 regulations or of this title.

6 (2) A person who alleges a violation of this section must  
7 bring a civil action in a court of competent jurisdiction for  
8 appropriate injunctive relief or damages within one hundred eighty  
9 days after the occurrence of the alleged violation.

NOTE: The purpose of this article is to provide alternative mechanisms to supplement current strategies designed to encourage the speedy deployment of broadband throughout the state.

This article is new; therefore, strike-throughs and underscoring have been omitted.