

# Telecommunications Deregulation Note

## Idaho

Idaho HB 0224 of 2005 permits regulated telephone companies operating in the state to transition into a technologically and competitively neutral communications market environment and away from a state-created monopoly regulatory environment, created by the state in 1913. Changes in federal and state law eliminated the monopoly status of the state's regulated telephone companies by opening the previously protected territories to all competitors and mandating "network-sharing" with their unregulated competitors. In addition, the digital revolution has made possible the dramatic growth in wireless usage, the steady increase in cable telephony, the rise of Voice over Internet Protocol (VoIP) services, and the explosion of electronic messaging, none of which are regulated by the state.

This legislation will allow regulated telephone companies operating in the state to forego the former monopoly based regulation, and, following a transition period of up to five years, be a full participant in the competitive communications marketplace. The legislation also addresses the following consumer issues: During a transition period of up to five years, the legislation caps basic local exchange rates at the maximum rate set by for regulated companies within the state during the overall transition period, with an annual cap not exceeding an amount equal to 10% of the company rate in effect at the time of the election to come under the provisions of the Act. The legislation prohibits rural rate increases above the rate established in the company's most populous urban area, thus giving the rural customer the benefit of the competition that now exists and will continue to grow, in the urban areas.

This provision does not end with the conclusion of the transition period. The bill guarantees that a customer will always have the option of "plain old telephone service" (POTS), without having to take package plans or services the customer does not want. It also provides customer remedy for unauthorized third-party service provider billings on customer telephone bill and provides the Public Utilities Commission with continuing authority over basic local exchange service quality standards, billing practices and procedures, and customer notice and customer-relations rules.

## Iowa

Iowa House File 277, which was enacted in 2005, concerns the deregulation of communications services. Provisions of the Act include considering market forces, eliminating accounting plan requirements, establishing antitrust procedures and remedies, eliminating reporting requirements, eliminating the state broadband initiative and providing a penalty.

## Missouri

Missouri SB 237 of 2005 adds cable television to the list of utilities allowed access to the Department of Transportation's right of way corridor. The Act modifies the definition of "competitive telecommunications service" to include the services which have been classified as such. The Act modifies the commission's approval process for service offerings in a sub-exchange. The Act states that telecommunication services may be offered in a sub-exchange unless the Public Service Commission (PSC) finds that doing so is contrary to the public interest; a change from the current law which states that such approval shall be based upon clear and convincing evidence. The Act authorizes customer-specific pricing for business customers only.

It shall be offered on an equal basis for both incumbent and alternative local exchange companies and for inter-exchange telecommunications companies. The Act adds business services in an exchange where basic local services offered to business customers have been declared competitive under the circumstances where customer-specific pricing has been authorized.

The Act allows telecommunications companies to offer discounted rates or special promotions to existing customers as well as new or former customers. The Act allows incumbent and alternative local exchange companies to offer packages of services - which is defined in this Act as more than one telecommunications service or one or more telecommunication service combined with one or more non telecommunication service – and that such packages shall not be subject to price cap or rate of return regulations, provided that each service offered in the package is available on its own, apart from the package, still subject to rate of return or price cap regulations.

The Act states that any rate, charge, toll or rental for telecommunication service that does not exceed the maximum allowable price shall be deemed to be just, reasonable and lawful. The Act adds to the provisions that allow small incumbent local exchange companies to be regulated under the price cap provisions by including situations where two or more wireless providers are providing service in any part of the company's service area. The Act allows an incumbent local exchange company to change the rates of service so long as they are consistent with subsections.

The Act allows an incumbent local exchange company to change the rates of service so long as they are consistent with subsections. The Act changes the standards by which services are classified as competitive. The Act states that any service offered to business and residential customers other than exchange access service, shall be classified as competitive if there are two non-affiliated entities in addition to the incumbent local exchange company (ILEC) providing basic local service to both business and residential customers within that exchange. The Act clarifies that wireless providers shall be considered as entities providing basic local services, provided that only one such non-affiliated provider shall be considered as providing said service within an exchange. The Act states that any entity providing local voice service over facilities in which it or one of its affiliates have an ownership shall be considered as a basic local service provider; regardless of whether or not that entity is regulated by the PSC. A provider of local voice service that requires the use of a third party, unaffiliated broadband network for origination of such service shall not be considered a basic service provider. Local voice service has been defined in the Act; two-way voice service capable of receiving calls from a provider of basic local telecommunication service. The Act defines broadband network as a connection that delivers services at speeds exceeding two hundred kilobits per second in at least one direction. The Act states that companies only offering prepaid services, or only reselling telecommunications service, shall not be considered entities providing basic local service. The Act provides a time frame of thirty days from the request under which the commission shall determine whether the requisite number of companies are providing the services required and if so, approve tariffs as competitive.

The Act allows ILECs to petition the commission for a competitive classification determination separate from the determination found when the requisite number of providers are supplying service in an exchange. This process allows an ILEC to use competition from any entity providing voice service using another company's facilities to do so, as the basis for the petition. This would allow, in certain circumstances, resellers to be considered in this petition process - this is different than the competitive classification determination found when the requisite number of providers are supplying service in an exchange, where resellers are not considered in the competition equation. The determination for competition here utilizes a more subjective investigation by the commission and provides more time for the commission to make

a determination; sixty days. The Act also directs the commission to maintain records of regulated providers of local voice service; the commission shall utilize these records when making a determination on any such petition.

If the services of an incumbent local exchange company are determined to be competitive, the company may thereafter adjust its rates upon filing tariffs which shall become effective within the timelines identified in Section 392.500. The commission is authorized to review the services which have been classified as competitive at least every two years, or when an ILEC increases the rates for basic local services in an exchange which has been declared competitive. The purpose for the review is to determine if the competitive conditions continue to exist in the exchange. The maximum annual increase for non basic telecommunications services of an ILEC has been changed with the Act; the maximum allowable increase is now five percent rather than eight. The Act provides a mechanism by which the Public Service Commission shall measure the rates for basic local telecommunications service; the measure shall come at the time of the effective date of the Act, two years after that date, and five years after the effective date of the Act.

## **Texas**

Texas SB 5 of 2005 relates to furthering competition in the communications industry. The Act provides fair, just and reasonable rates and adequate and efficient services, and the governing body of a municipality has exclusive original jurisdiction over the rates, operations and services of an electric utility in areas in the municipality, subject to limitation imposed in this Act.

The governing body of the municipality shall not have jurisdiction over the BPL (Broadband Power Lines) system, BPL services, telecommunications using BPL services, or the rates operations or services of the electric utility or transmission and distribution utility to the extent that such rates, operations, or services are related, wholly or partly, to the construction, maintenance, or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities.

The legislature finds that broadband over power lines, also known as BPL, is an emerging technology platform that offers a means of providing broadband services to reach homes and businesses. BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

The legislature finds that access to quality, high speed broadband services is important to this state. BPL deployment in Texas has the potential to extend broadband service to customers where broadband access is currently not available and may provide an additional option for existing broadband consumers in Texas, resulting in a more competitive market for broadband services. The legislature further finds that BPL development in Texas is fully dependent upon the participation of electric utilities in this state that own and operate power lines and related facilities that are necessary for the construction of BPL systems and the provision of BPL services.

Consistent with the goal of increasing options for telecommunications in this state, the legislature finds that it is in the public interest to encourage the deployment of BPL by permitting affiliates of the electric utility, or permitting unaffiliated entities, to own or operate all or a portion of such BPL systems. The purpose of this Act is to provide the appropriate framework to support the deployment of BPL.

The legislature finds that an electric utility may choose to implement BPL under the procedures set forth in this Act, but is not required to do so. The electric utility shall have the

right to decide, in its sole discretion, whether to implement BPL and may not be penalized for deciding to implement or not to implement BPL.

This Act applies to an electric utility whether or not the electric utility is offering customer choice. If there is a conflict between the specific provisions of this Act and any other provisions of state law, the provisions of this Act control.

No provision of the Act shall impose an obligation on an electric utility to implement BPL, to provide broadband services, or to allow others to install BPL facilities or use the electric utility's facilities for the provision of broadband services.