

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 34.
PUBLIC UTILITIES.

CHAPTER 20.
TELECOMMUNICATIONS COMPETITION.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 20. TELECOMMUNICATIONS
COMPETITION.

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CHAPTER 20. TELECOMMUNICATIONS COMPETITION.

§ 34-2001. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Bell Operating Company" ("BOC") means Bell Atlantic Company.
- (2) "Cable" means coaxial cable, copper wire, fiber optic telecommunications cable, or other tangible linear transmission medium that may be used in lieu of any of the foregoing for the same purpose.
- (3) "Competitive service" means any telecommunications service which satisfies the criterion in paragraph (3)(A) or (C) of this section individually, or the criteria in paragraph (3)(B) or (D) of this section in combination with any other criterion as follows:
 - (A) Consumer premises equipment or some other technological medium or transmission service provides functionally equivalent service and is currently and generally available in the District of Columbia from at least one supplier other than the incumbent local exchange carrier at competitive price levels;
 - (B) The service is nonessential, but any bottleneck service whose use is required by either a customer or provider of a competing service is presumed to be essential;
 - (C) The service has a high own-price elasticity of demand; and
 - (D) The market in which the service is offered has an HHI of below 1800 based on a showing provided by the incumbent local exchange carrier supported by an analysis of the sensitivity of its calculated HHI values to the scope of the defined geographic and product markets.
- (4) "Competitive telecommunications service provider" means any provider of telecommunications service that was not an incumbent local exchange carrier on January 31, 1996.
- (5) "Conduit" means any pipe or other hollow protective sleeve through which cable may be inserted.
- (6) "Dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers, including the local exchange carrier.
- (7) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that provided telephone exchange service in such area on the date of enactment of the federal Telecommunications Act of 1996 (P.L. 104-104).
- (7A) "Internet Protocol-enabled Service" means any service, capability, functionality, or application provided using Internet protocol (or any successor protocol), that enables an end user to send or receive a communication in Internet protocol format (or any successor format), regardless of whether the communication is voice, data, or video.
- (8) "Local exchange carrier" ("LEC") means any person that is engaged in the provision of telephone exchange service or exchange access. The term "local exchange carrier" does not include a person insofar as the person is engaged in the provision of a commercial mobile service.
- (9) "Local exchange service" means a telecommunications service provided within an exchange area.
- (10) "Market power" means the ability to raise and hold prices at levels that are above or below those which would be charged in a fully competitive environment.
- (11) "Network element" means the facility or equipment used in the provision of a telecommunications service. The term "network element" also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and the information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(12) "Number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(13) "People's Counsel" ("OPC") means the Office of People's Counsel as established pursuant to § 34-804.

(14) "Public Service Commission" ("Commission" or "PSC") means the Public Service Commission of the District of Columbia established pursuant to § 34- 801.

(15) "Public way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, including public utility easements or rights of way, poles, ducts, conduits, and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the District, which may be utilized for the purpose of installing and maintaining the telecommunications system of a telecommunications service provider within the District, such use being on nondiscriminatory terms and conditions.

(16) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(17) "Telecommunications carrier" means any provider of telecommunications services, except that the term does not include aggregators of telecommunications services as defined in § 226 of the Communications Act of 1934 (47 U.S.C. § 226). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services and is a service that the United States Federal Communications Commission determines shall be treated as common carriage.

(18) "Telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services and includes software integral to such equipment, including upgrades.

(19) "Telecommunications industry" means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer, data transmission, software, programming, advanced messaging, and electronics.

(19A) "Telecommunications Relay Service" means a transmission service that provides the hearing-impaired or speech-impaired the ability to engage in communication by wire or radio with a non-hearing-impaired individual. The term "Telecommunications Relay Service" shall include services that enable 2- way communication between an individual who uses a telecommunications device for the deaf or other non-voice terminal device and an individual who does not use such a device.

(20) "Telecommunications service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public, regardless of the facilities used.

(20A) "Telecommunications service provider" means an entity that provides telecommunications services.

(21) "Telecommunications system" means the portion of a telecommunications network which has been or is to be constructed, operated, and maintained within the public ways by a provider of telecommunications services within the District, including, without limitation, all conduits, cables, manholes, handholes, splice boxes, ancillary hardware, poles, and supporting wires and anchors.

(22) "Universal service" means that evolving array of services which the Public Service Commission, taking into account advances in telecommunications and information technologies and services and pursuant to any rules promulgated by the United States Federal Communications Commission, determines should be provided at just, reasonable, and affordable rates to all District residents, including the indigent and those with disabilities, to enable them to participate effectively in the economic, academic, medical, and democratic processes of the District. In circumstances defined by the Public Service Commission, certain low-income persons or persons with disabilities shall be assisted to receive those services determined to be universal services through a fund into which all local exchange carriers will be required to contribute in such amounts as the Public Service Commission shall determine.

(23)(A) "Voice Over Internet Protocol Service" means any service that:

- (i) Enables real-time 2-way voice communications that originate or terminate from the user's location using Internet protocol or a successor protocol; and
- (ii) Uses a broadband connection from the user's location.

(B) The term "Voice Over Internet Protocol Service" shall include any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

Apr. 24, 2007, D.C. Law 16-305, § 50, 53 DCR 6198; June 5, 2008, D.C. Law 17-165, § 3(a), 55 DCR 5171; Mar. 25, 2009, D.C. Law 17-353, § 172(b), 56 DCR 1117; Sept. 24, 2010, D.C. Law 18-223, § 2224(a), 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1451.

Effect of Amendments

D.C. Law 16-305, in par. (22), substituted "persons or persons with disabilities" for "or disabled persons".

D.C. Law 17-165 added pars. (7A), (19A), and (23).

D.C. Law 17-353 validated a previously made technical correction in par. (22).

D.C. Law 18-223 added par. (20A).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2224(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

Law 11-154, the "Telecommunications Competition Act of 1996," was introduced in Council and assigned Bill No. 11-258, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 21, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 25, 1996, it was assigned Act No. 11-300 and transmitted to Congress for its review. D.C. Law 11-154 became effective September 9, 1996.

Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

For Law 16-305, see notes following § 34-1253.02.

For Law 17-165, see notes following § 34-403.

For Law 17-353, see notes following § 34-804.

For Law 18-223, see notes following § 34-706.

References in Text

The federal Telecommunications Act of 1996, Pub. L. 104-104, referred to in (7), is codified throughout Title 47 of the United States Code.

§ 34-2002. REGULATION OF LOCAL EXCHANGE CARRIERS.

(a) The Public Service Commission may, upon petition by the incumbent local exchange carrier and pursuant to procedures developed by the PSC, reclassify any telecommunications service offered by the incumbent local exchange carrier.

(b) Pursuant to the federal Telecommunications Act of 1996 (Public Law 104- 104), the Public Service Commission shall establish a procedure to facilitate entry into the District for providers of all forms of telecommunications service in order to foster the availability of competitive telecommunications options to consumers in the District, and to encourage the development of a technological infrastructure which will afford District residents increased access to the information highway.

(c) The procedure established by the Public Service Commission shall provide that local exchange carriers will be regulated according to each LEC's respective market power in the local exchange market, and in such manner as to prohibit abuse of monopoly power and facilitate adjustments in pricing as developing competition dictates a need for market flexibility.

(d)(1) The Public Service Commission, in lieu of requiring a certificate of public convenience and necessity, shall grant any telecommunications service provider seeking to provide services within the District the authority to do so within 15 days of an applicant's filing with the Commission of a Statement of Business Operations, as described in subsection (e) of this section, and the payment of an application fee of \$1000. The provider shall be exempt from any other certification requirements if the applicant demonstrates in its Statement of Business Operations that it or its affiliates have at least three years experience providing telecommunications services pursuant to authorizations by the FCC or a state regulatory body and that it or its affiliates derives over \$50 million in gross annual revenues from

telecommunications services.

(2) Any telecommunications service provider possessing a certificate of convenience and public necessity to operate within the District of Columbia as of September 9, 1996 is exempted from the requirements in paragraph (1) of this subsection.

(3) For applicants other than those meeting the criteria set forth in paragraph (1) of this subsection, subsequent to the applicant's filing of the Statement of Business Operations as described in subsection (e) of this section, and the payment of an application fee of \$1000, the Commission may request additional information to determine whether the applicant has sufficient experience and financial stability to ensure the continued provision of local exchange services within the District. For such applicants, the Commission may waive the minimum experience and gross annual revenue requirements if it can determine that certification is in the public interest and that the applicant has sufficient experience and financial stability to ensure the continued provision of local exchange services within the District.

(A) If the PSC requests additional information from the applicant, such request must be provided in writing within 15 days of the applicant's filing.

(B) The applicant shall be afforded 15 days to provide the additional information requested by the PSC.

(C) Upon receipt of the additional information from the applicant, the PSC must determine within 15 days whether the additional information satisfies the PSC in respect to the applicant's ability to ensure continued provision of telecommunication services to District consumers.

(D) If the PSC determines that the additional information provides the necessary assurances, the PSC shall authorize the applicant to provide services within the District of Columbia; if the Commission determines that the applicant has not demonstrated sufficient experience and financing, the applicant shall be provided written notice of the deficiency.

(e) The Statement of Business Operations required by this section shall contain, at a minimum, the following information of each telecommunications service provider:

- (1) Name, address, and telephone number of corporate contact;
- (2) Name, address, and telephone number of a registered agent in the District of Columbia;
- (3) Telephone number for customer service;
- (4) Name, address, and telephone number of a regulatory contact person;
- (5) A copy of the provider's articles of incorporation;
- (6) A signed tax attestation form;
- (7) A brief description of the type of service to be offered;
- (8) Financial statements for the last three years from the applicant or its affiliate; and
- (9) Any other information the Public Service Commission may require.

(f) All local exchange carriers authorized by the PSC to provide service within the District must file and maintain tariffs with the Public Service Commission for each service offered within the District. The tariffs shall describe the service being offered, list all terms and conditions, and specify the rate or rates charged for the service.

(g) Tariffs of competitive telecommunications service providers shall not be regulated or otherwise reviewed by the Public Service Commission, except as otherwise specified in subsection (h) of this section, for interconnection, and in § 34-2003 for Universal Service Trust Fund subsidies. Tariffs filed by competitive telecommunications providers shall be deemed just and reasonable. Notwithstanding any other provision of law to the contrary, the Public Service Commission shall not regulate, fix, or prescribe the tolls, charges, rate structure, terms and conditions of service, rate base, rate of return, operating margin, earnings, cost of service, or the issuance of debt, equity, or other securities of any competitive telecommunications service provider, except that nothing in this chapter shall limit the authority of the PSC to establish service quality standards for such telecommunications service providers, to regulate terms and conditions of service (but not including rates, charges, and rate structure) to protect the public safety and welfare, provide for continued quality of telecommunications service, and safeguard the rights of consumers.

(h) All local exchange carriers in the District are required to unbundle network elements to the extent that federal law requires, and to interconnect networks and exchange local exchange service calls under terms that are reasonable and efficient.

(1) All LECs shall reciprocally terminate each other's local exchange service calls and shall financially compensate each other for this service if the PSC determines that a traffic imbalance exists. As between any two LECs, if at any time after implementation of local number portability pursuant to this chapter the traffic terminated by one provider, on a quarterly basis, is at least 5% greater than the traffic terminated by the other provider, the two affected LECs shall mutually negotiate an agreement

regarding the charges, terms, and conditions for the termination of local exchange service calls that originate on their respective networks.

(2) Any agreement adopted pursuant to this subsection shall be submitted for approval to the PSC. The PSC shall approve or reject the agreement, with written findings as to any deficiencies. If the PSC does not act to approve or reject the agreement within 90 days after submission by the LECs, the agreement shall be deemed approved. The PSC shall make a copy of each agreement approved pursuant to this subsection available for public inspection and copying within 10 days after the agreement is approved.

(3) If an agreement between the two affected providers has not been finalized within 90 days from the date one provider notifies the other provider of the traffic exchange imbalance, then either provider may petition the PSC to fix charges set at the economic costs, and the terms and conditions for the continued termination of local exchange service calls. The PSC shall resolve each issue set forth in the petition and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which one LEC received notification of the traffic imbalance.

(4) The incumbent local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved pursuant to this subsection to any other requesting LEC upon the same terms and conditions as those provided in the agreement.

(h-1) For a violation of any provision of this chapter or a violation of any rule or order issued under this chapter, after notice and a hearing, the Commission may:

- (1) Suspend or revoke the certification of a telecommunications service provider;
- (2) Impose a civil penalty on a telecommunications service provider;
- (3) Order a refund or credit to a customer;
- (4) Cancel a contract or part of a contract between a customer and a telecommunications service provider; or
- (5) Issue a cease and desist order to a telecommunications service provider.

(h-2)(1) A civil penalty imposed by the Commission under this section shall not exceed \$10,000 per violation.

- (2) The Commission shall determine the amount of the civil penalty after considering:
- (A) The number of previous violations of the telecommunications service provider;
 - (B) The gravity and duration of the current violation; and
 - (C) The good faith of the telecommunications service provider in attempting to achieve compliance after notification of the violation.

(h-3) The Commission may temporarily suspend a certification, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that customers or the reliability of the telecommunications service in the District of Columbia will be harmed by the actions of a telecommunications service provider.

(h-4) A proceeding under this section may be initiated by the Commission, the Office of the People's Counsel, the Office of the Attorney General, or any aggrieved party.

(h-5) In connection with a proceeding under this section, a telecommunications service provider shall provide to the Commission access to any accounts, books, papers, and documents which the Commission considers necessary to resolve the matter.

(i) Regulation of the Bell Operating Company:

- (1) Existing and proposed tariffs of the BOC must:
 - (A) Contain rates that are just and reasonable; and
 - (B) Ensure that the BOC does not unjustly discriminate in favor of itself or any other telecommunications provider in the provision of any telecommunications service or network element.
- (2) The Public Service Commission may, pursuant to the Commission's existing procedures, suspend and reject any proposed or existing tariffs of the BOC if it fails to meet the requirements of paragraph (1) of this subsection.
- (3) The BOC shall unbundle each network element and shall make those network elements available under nondiscriminatory terms and conditions filed with the PSC, including cost-based prices that are identical to those used in the provision of its own services and the services provided by its affiliates.
- (4) The rate that the BOC charges for any service shall not be less than the sum of rates charged to others for any network elements unbundled pursuant to paragraph (3) of this subsection which are also used by the BOC to provide that service, and any other costs incurred by the BOC to provide that

service.

(5) The incumbent LEC shall offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to noncarriers. The incumbent LEC shall not prohibit nor impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service, except that the Public Service Commission may prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(6) The BOC shall afford to any competitive telecommunications service provider offering, or seeking to offer, a telecommunications service reasonable and nondiscriminatory access to poles, ducts, conduits, and rights-of-way integral to the efficient transmission, routing, or other provision of local exchange service or exchange access; and the PSC shall determine the criteria for ensuring that such access shall be equal in type and quality to the access which the BOC affords to itself or to any other person, and that such access is made available by the BOC on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(j) The BOC may petition the Public Service Commission for an alternative form of regulation, or for forbearance of regulation. The Public Service Commission shall approve or disapprove a plan for alternative regulation or for forbearance within 270 days of the BOC filing its petition, after notice and a public hearing, provided it finds that:

(1) The plan is in the public interest;

(2) The BOC has filed and received approval for a tariff for each network element; provided, that nothing in this subsection shall prohibit the Public Service Commission from implementing any settlement arrived at in respect to a formal case in process, or any future case, so long as such settlement establishes tariffs that are not inconsistent with the requirements of the federal Telecommunications Act;

(3) The plan will produce fair, just, and reasonable rates for telecommunications services in the District based upon the Commission determination that existing rates at the time the plan is approved are fair, just, and reasonable;

(4) The plan accounts for changes in technology and the structure of the telecommunications industry that are occurring;

(5) The plan specifies how customers will benefit from any efficiency gains, cost savings arising out of the regulatory change, and improvements in productivity as a result of technological change;

(6) The plan will maintain the quality and availability of telecommunications services;

(7) The plan contains adequate safeguards to ensure that the BOC does not discriminate in favor of any telecommunications provider, including itself, in the provision and pricing of any telecommunications service;

(8) The plan contains adequate safeguards to ensure that no service is receiving a subsidy, unless such a subsidy is necessary to maintain basic residential local exchange service for eligible customers pursuant to this section; and

(9) The plan does not unreasonably prejudice or disadvantage any customer class or provider of competitive services.

(k) Within 30 days of September 9, 1996, and pursuant to the authority given to State Commissions under the federal Telecommunications Act of 1996, the Public Service Commission shall initiate a proceeding to address and resolve the issues associated with competition in the local exchange, including, but not limited to:

(1) Local number portability;

(2) Unbundling;

(3) Universal service;

(4) Wholesale rates for the resale of BOC services;

(5) Numbering resources and local dialing parity;

(6) Collocation of network equipment;

(7) Directory listings and directory assistance;

(8) Service quality standards;

(9) Incentives to facilitate the involvement in the telecommunications industry in the District of Columbia of small and disadvantaged businesses, including telecommunications service providers with gross annual revenues of less than \$50 million; and in addressing the issue of incentives to assist small and disadvantaged businesses, the PSC shall monitor the Federal Communications Commission implementation of § 257 of the federal Telecommunications Act of 1996 to follow the development of strategies which may be useful to the District of Columbia; examine ways to facilitate access for

eligible District of Columbia businesses to the capital and programs of the Telecommunications Development Fund established by § 714 of the federal Telecommunications Act of 1996; and require, to the extent permissible under the federal Telecommunications Competition Act of 1996, that telecommunications providers authorized to operate in the District of Columbia agree to provide, in the manner that the existing monopoly utilities historically have agreed to provide them, contracting opportunities for small and disadvantaged businesses and employment and training programs for District residents;

(10) Strategies necessary to implement the mandate to state commissions contained in § 706 of the federal Telecommunications Act of 1996 to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans, including, in particular, elementary and secondary schools and classrooms, and methods of facilitating access for eligible District of Columbia institutions to the funding and assistance available from the National Education Technology Funding Corporation, as well as the development of incentives for telecommunications providers authorized to operate in the District of Columbia to invest appropriate resources in the National Education Technology Funding Corporation;

(11) The application of quality service standards; and

(12) Any other issues the Commission may determine to be necessary.

(l) A Public Service Commission order, including appropriate findings of fact and conclusions of law, resulting from the proceeding required pursuant to subsection (k) of this section shall be issued no later than 12 months subsequent to the initiation of that proceeding.

(m) Notwithstanding any other provisions of law, the Public Service Commission shall expend no more than \$250,000, and the Office of the People's Counsel shall expend no more than \$150,000 for the proceeding required by subsection (k) of this section unless either of those agencies presents to the Council of the District of Columbia a written determination that funds in excess of these amounts will be required to carry out the provisions of subsections (k) and (l) of this section along with a resolution requesting authorization to expend a specific additional amount, and that resolution shall be deemed approved if not disapproved by the Council within a 30-day period of review.

(n) Within 12 months of September 9, 1996, or upon a finding of the PSC, whichever is earlier, the Public Service Commission shall promulgate rules in respect to the notice requirements for abandonment of any service, and delineate the responsibilities, if any, incumbent upon the telecommunications service provider consequent to service abandonment.

(Sept. 9, 1996, D.C. Law 11-154, § 3, 43 DCR 3736; September 9, 1996, D.C. Law 11-155, § 25(a), 43 DCR 4213; Apr. 12, 2005, D.C. Law 15-342, § 307, 52 DCR 2346; Sept. 24, 2010, D.C. Law 18-223, § 2224(b), 57 DCR 6242.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1452.

Effect of Amendments

D.C. Law 15-342, in subsec. (m), substituted "\$250,000" for "\$100,000", and substituted "\$150,000" for "50,000".

D.C. Law 18-223 added subsecs. (h-1) to (h-5).

Emergency Act Amendments

For temporary (90 day) amendment of section, see §§ 305, 402 of Omnibus Utility Emergency Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary (90 day) amendment of section, see § 2224(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

Law 11-155, the "Mortgage Lender and Broker Act of 1996," was introduced in Council and assigned Bill No. 11-637, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-309 and transmitted to both Houses of Congress for its review. D.C. Law 11-155 became effective on September 9, 1996.

For Law 15-342, see notes following § 34-401.

For Law 18-223, see notes following § 34-706.

References in Text

The federal Telecommunications Act of 1996, Pub. L. 104-104, referred to in (b) and (k), is codified throughout Title 47 of the United States Code.

Resolutions

Resolution 15-250, the "Public Service Commission Telecommunications Competition Fund Expenditure Increase Approval Resolution of 2003", was approved effective October 7, 2003.

Miscellaneous Notes

Section 401 of D.C. Law 15-342 provides:

"Sec. 401. Applicability.

"Sections 303(c)(1) and 307 shall apply as of October 1, 2004."

§ 34-2003. UNIVERSAL SERVICE TRUST FUND.

(a) The Public Service Commission shall establish a Universal Service Trust Fund, and determine those services which shall constitute universal service in the District of Columbia, the costs of providing universal service, and the amount of subsidy needed to maintain the Universal Service Trust Fund. Any subsidy necessary to support universal service shall be separately funded out of the Universal Service Trust Fund, and administered by a Universal Service Trust Fund administrator named by the Public Service Commission.

(b)(1) Upon an annual determination by the Public Service Commission of the amount needed to support a universal service subsidy, the PSC shall bill and collect from all local exchange carriers ("LEC") and Voice Over Internet Protocol Service providers operating in the District at any time during the previous year an amount representing each carrier's share of the total universal service subsidy. To the extent permitted by federal law and regulation, the determination of each LEC's share and Voice Over Internet Protocol Service provider's share shall be in proportion to each LEC's and Voice Over Internet Protocol Service provider's total revenues for local telecommunications or telecommunications services derived from end users in the District during the previous year.

(2) The Commission may exempt from the requirements of this subsection any LEC or Voice Over Internet Protocol Service provider whose share of the total universal service subsidy the Public Service Commission determines to be de minimis.

(c) There shall be no fiscal year limitation on the funds in the Universal Service Trust Fund, and any funds unspent in one fiscal year may be used to offset the amounts required to be contributed by local exchange carriers to the fund in the next fiscal year.

(d) The universal service subsidy derived from the Universal Service Trust Fund shall be available for eligible customers regardless of the local exchange carrier which the eligible customers choose to use.

(Sept. 9, 1996, D.C. Law 11-154, § 4, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(b), 55 DCR 5171; Sept. 24, 2010, D.C. Law 18-223, § 2224(c), 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 2083, 58 DCR 6226.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1453.

Effect of Amendments

D.C. Law 17-165, in subsec. (b), substituted "local exchange carriers and Voice Over Internet Protocol Service providers" for "local exchange carriers", and substituted "LEC's share and Voice Over Internet Protocol Service provider's share" for "LEC's share".

D.C. Law 18-223, in subsec. (b), rewrote the second sentence which had read: "The determination of each LEC's share and Voice Over Internet Protocol Service provider's share shall be in proportion to each carrier's total revenues for local exchange services provided in the District during the previous year."

D.C. Law 19-21, in subsec. (b), designated the existing text as par. (1); in subsec. (b)(1), substituted "local exchange carriers ('LEC') and Voice Over" for "local exchange carriers and Voice Over"; and added subsec. (b)(2).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2224(c) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

For Law 18-223, see notes following § 34-706.

For history of Law 19-21, see notes under § 34-706.

§ 34-2003.01. CASES IN PROCESS.

Nothing in this chapter shall prevent the PSC from proceeding with respect to a formal case in process before the Commission so long as it is not inconsistent with the requirements of the federal Telecommunications Act of 1996.

(Sept. 9, 1996, D.C. Law 11-154, § 4a., as added Sept. 9, 1996, D.C. Law 11-155, § 25(b), 43 DCR 4213.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1453.1.

Legislative History of Laws

For legislative history of D.C. Law 11-155, see Historical and Statutory Notes following § 34-2001.

References in Text

The federal Telecommunications Act of 1996, referred to in this section, is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

§ 34-2004. ACCESS TO PUBLIC WAYS.

(a) Any telecommunications provider in the District shall have the right to utilize the public right-of-ways of the District for installation, maintenance, repair, replacement, and operation of its telecommunications system on terms and conditions that are competitively neutral; provided, that nothing in this chapter shall affect the authority of the District government to manage its public ways or to require fair and reasonable compensation from the telecommunications service providers, on a nondiscriminatory basis. Any compensation the District government may require pursuant to this subsection shall be in addition to all other payments, fees, or collections required by this chapter. The Mayor shall promulgate rules to carry out the purposes of this subsection.

(b) Prior to constructing each portion of its telecommunications system located within the public ways, a telecommunications service provider shall obtain all necessary construction permits and licenses from the appropriate agency. All such construction shall be performed in compliance with applicable codes and regulations, and all facilities so constructed shall be maintained in compliance with applicable codes and regulations.

(c) The Mayor shall issue rules to establish and regulate the process through which any alteration or damage to public rights of way in the District of Columbia shall be compensated by the telecommunications service provider whose construction or repair work has altered or damaged public rights of way. The rules shall require the telecommunications service provider to repair any alteration or damage pursuant to specifications and inspection by the District of Columbia Department of Public Works, or require that the telecommunications service provider compensate the District of Columbia for the cost of repair to a public right of way.

(Sept. 9, 1996, D.C. Law 11-154, § 5, 43 DCR 3736.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1454.

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

§ 34-2005. ACCESS TO BUILDINGS.

The Public Service Commission shall have the authority to promulgate rules to ensure that access to public and privately owned buildings is afforded in a manner which does not unjustly or unreasonably discriminate between or among providers of telecommunications services. The Commission may initiate a rulemaking proceeding pursuant to this section only after determining that (1) federal telecommunications law and regulations authorize state public utility commissions to promulgate rules

regarding building access; (2) substantial evidence exists that unjust and unreasonable discrimination regarding building access impaired telecommunications services competition in the District of Columbia; and (3) that promulgation of rules by the Commission regarding building access is the only effective means of removing the impairment to competition.

(Sept. 9, 1996, D.C. Law 11-154, § 6, 43 DCR 3736.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1455.

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

§ 34-2006. EXEMPTIONS.

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

- (1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;
- (2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;
- (3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or
- (4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104- 104, which is codified throughout Title 47 of the United States Code.

§ 34-2007. TAXATION OF LOCAL EXCHANGE PROVIDERS.

Notwithstanding any other provisions of law, each local exchange carrier in the District of Columbia shall be subject to the same District of Columbia taxes and fees and shall be entitled to the same tax exemptions, including, but not limited to, personal property taxes. For purposes of District of Columbia taxation only, a local exchange carrier shall include a telephone company that sells public utility services. For the taxation purposes of this chapter, the term "public utility services" shall include all local telecommunications services sold for a fee directly to the public irrespective of the technology used to provide the services, including, but not limited to, local commercial mobile services.

(Sept. 9, 1996, D.C. Law 11-154, § 8, 43 DCR 3736.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1457.

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

§ 34-2008. IMPLEMENTATION POLICY.

(a) In the implementation of this chapter, it shall be the policy of the District government to promote the hiring, education, and training of District residents in every facet of telecommunications endeavor in the District.

(b) Pursuant to this chapter, it shall be the policy of the District government to promote the utilization of small, disadvantaged, women-owned, and District businesses in the establishment and contracting processes regarding telecommunications in the District.

(c) Nothing in this chapter shall be construed to contravene any provision in the federal Telecommunications Act of 1996 passed by the U.S. Congress in January and signed into law by President Clinton in February or to be inconsistent with the findings of the PSC in a proceeding pursuant to § 34- 2002(k).

(d) Two years after June 5, 2008, the People's Counsel shall issue a report on the effect of the absence of local regulation of Voice Over Internet Protocol Service telecommunications service in the District of Columbia. The report shall be a general analysis of the impacts and effects of the VOIP act on consumers. The report shall also include an examination of the market availability of Voice Over Internet Protocol Service technology to consumers.

(Sept. 9, 1996, D.C. Law 11-154, § 10, 43 DCR 3736; Mar. 24, 1998, D.C. Law 12-81, § 52, 45 DCR 745; June 5, 2008, D.C. Law 17-165, § 3(d), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1458.

Effect of Amendments

D.C. Law 17-165 added subsec. (d).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

For Law 17-165, see notes following § 34-403.

References in Text

The federal Telecommunications Act of 1996, referred to in (c), is Pub. L. 104- 104, which is codified throughout Title 47 of the United States Code.