CHAPTER 9

Telephone, Telegraph and Express Companies

ARTICLE 1

Telephone Companies—General Provisions

**SECTION 58‑9‑10.** Definitions.

 When used in Articles 1 through 13 of this chapter:

 (1) The term “Commission” means the Public Service Commission;

 (2) The term “commissioner” means one of the members of the Commission;

 (3) The term “corporation” includes all bodies corporate, joint stock companies or associations, domestic or foreign, their lessees, assignees, trustees, receivers or other successors in interest, having any of the power or privileges of corporations not possessed by individuals or partnerships;

 (4) The term “person” includes all individuals, partnerships or associations other than corporations;

 (5) The term “public” means the public generally or any limited portion of the public, including a person or corporation;

 (6) The term “telephone utility” includes persons and corporations, their lessees, assignees, trustees, receivers or other successors in interest owning or operating in this State equipment or facilities for the transmission of intelligence by telephone for hire, including all things incident thereto and related to the operation of telephones;

 (7) The term “rate” means and includes every compensation, charge, toll, rental and classification, or any of them, demanded, observed, charged or collected by any telephone utility for any communications service offered by it to the public and any rules, regulations, practices or contracts affecting any such compensation, charge, toll, rental or classification; and

 (8) The term “securities” means and includes stock, stock certificates, bonds, notes, debentures, or other evidences of indebtedness, and any assumption or guaranty thereof.

 (9) The term “basic local exchange telephone service” means for residential and single‑line business customers, access to basic voice grade local service, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent).

 (10) The term “carrier of last resort” means a facilities‑based local exchange carrier, as determined by the commission, not inconsistent with the federal Telecommunications Act of 1996, which has the obligation to provide basic local exchange telephone service, upon reasonable request, to all residential and single‑line business customers within a defined service or geographic area. A carrier of last resort may meet its obligation by using any available technology of equal or greater service quality than is required by applicable commission regulations as of the effective date of this item, including, but not limited to, the provision of a broadband connection that allows the customer to access basic voice grade local service from the carrier of last resort or other available voice provider of the customer’s choice. Notwithstanding any other provision of law, and regardless of the technology used, the basic voice grade local service provided to meet this obligation is subject to the commission’s jurisdiction with respect to service quality and rates, and is entitled to USF support. Initially, the incumbent LEC must be a carrier of last resort within its existing service area.

 (11) The term “incumbent local exchange carrier” or “incumbent LEC” means a telecommunications company, its affiliates, successors, or its assigns, which provide local exchange service pursuant to a certificate of public convenience and necessity issued by the commission before July 1, 1995, or operating as a local exchange carrier before that date pursuant to commission authority, to provide local exchange service within a certificated geographic service area of the State. Any such entity must be treated as the incumbent local exchange carrier only within the geographic area where it maintains service pursuant to:

 (a) any certificate of public convenience and necessity issued before July 1, 1995; or

 (b) any certificate of public convenience and necessity issued to supersede, in whole or in part, any certificate of public convenience and necessity issued before July 1, 1995.

 (12) The term “local exchange carrier” or “LEC” means either an incumbent local exchange carrier or a new entrant local exchange carrier.

 (13) The term “new entrant local exchange carrier” or “new entrant LEC” means a telecommunications company holding a certificate of public convenience and necessity issued by the commission pursuant to Section 58‑9‑280 (B) after December 31, 1995, to provide local exchange service within a certificated geographic service area of the State.

 (14) The term “small local exchange carrier” or “small LEC” means a rural telephone company as defined on February 8, 1996, in the federal Telecommunications Act of 1996.

 (15) The term “telecommunications services” means the services for the transmission of voice and data communications to the public for hire, including those nonwireline services provided in competition to landline services.

 (16) The term “universal service” means the providing of basic local exchange telephone service, at affordable rates, upon reasonable request, to all residential and single‑line business customers within a defined service area.

 (17) The term “broadband service” means a service that is used to deliver video or to provide access to the Internet or content and services similar to that accessible through the Internet, and that consists of the offering of:

 (a) a capability to transmit information at a rate that is generally not less than one hundred ninety kilobits per second in at least one direction; or

 (b) a service that uses one or more of the following to provide this access:

 (i) computer processing;

 (ii) information storage; and

 (iii) protocol conversion.

 (18) The term “regulatory staff” means the executive director or the executive director and the employees of the Office of Regulatory Staff.

HISTORY: 1962 Code Section 58‑351; 1952 Code Section 58‑351; 1950 (46) 2466; 1996 Act No. 354, Section 1, eff May 29, 1996; 2003 Act No. 6, Section 1, eff March 12, 2003; 2006 Act No. 318, Section 32, eff May 24, 2006; 2012 Act No. 284, Section 3, eff June 29, 2012; 2016 Act No. 181 (S.277), Section 4, eff May 25, 2016.

Editor’s Note

2006 Act No. 318, Section 234 , provides as follows:

“Nothing in this act shall be deemed to repeal or modify any prior act of the General Assembly that removes or modifies the regulation of any service provided by any telephone utility.”

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

Effect of Amendment

2016 Act No. 181, Section 4, in (9), deleted “with touchtone” following “basic voice grade local service”; and in (10), inserted “or geographic” in the first sentence, and inserted the second and third sentences.

CROSS REFERENCES

“Broadband service” defined, government‑owned communications service providers, see Section 58‑9‑2610.

“Person” defined, government‑owned communications service providers, see Section 58‑9‑2610.

Regulation of publicly owned utilities and privately owned utilities serving the public, see SC Const. Art. IX, Section 1.

State Commission of Forestry permitting telephone line attachments to its poles, see Section 48‑23‑190.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 49, Public Utilities and Transportation.

S.C. Jur. Telecommunications Section 2, Telephone Utility Defined.

S.C. Jur. Telecommunications Section 10, Telephone.

**SECTION 58‑9‑20.** Companies subject to Articles 1 through 13 of this chapter even before commencing operations.

 Corporations formed to acquire property or to transact business which would be subject to the provisions of Articles 1 through 13 of this chapter and corporations possessing franchises, powers or privileges for any of the purposes contemplated by Articles 1 through 13 of this chapter shall be deemed to be subject to the provisions of Articles 1 through 13 of this chapter, although no property may have been acquired, business transacted or franchises, powers or privileges exercised.

HISTORY: 1962 Code Section 58‑354; 1952 Code Section 58‑354; 1950 (46) 2466.

Library References

Telecommunications 760.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 15.

NOTES OF DECISIONS

In general 1

1. In general

Telecommunication tariff rate system established by the Public Service Commission has the full force and effect of law. GTE Sprint Communications Corp. v. Public Service Com’n of South Carolina (S.C. 1986) 288 S.C. 174, 341 S.E.2d 126.

**SECTION 58‑9‑30.** Municipal rights, powers and privileges under Constitution not impaired.

 Nothing contained in Articles 1 through 13 of this chapter shall be so construed as to modify, abridge, or impair any of the rights or powers granted to cities and towns under any provision of the Constitution of this State and every right, power or privilege conferred upon any city or town by the Constitution of this State otherwise appearing to be modified, abridged or impaired by any provision of Articles 1 through 13 of this chapter is to be deemed excepted from the operation thereof.

HISTORY: 1962 Code Section 58‑355; 1952 Code Section 58‑355; 1950 (46) 2466.

Library References

Telecommunications 760, 761.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 15.

NOTES OF DECISIONS

In general 1

1. In general

Where Public Service Commission (PSC) allows utility to pass on percentage of city’s business license tax which exceeds a cap approved by PSC to customers within city, tariff does not conflict with city’s power to tax under State Constitution and Code (Article VIII, Section 17, and Sections 5‑7‑10, 5‑7‑30, and 58‑9‑30 of Code), notwithstanding city’s assertion that cap is so low that it allows excessive percentage to be passed on to utility’s customers within city, since utility still pays tax and tariff simply passes portion of tax on to city’s taxpayers rather than to those outside city limits or across state. City of Spartanburg v. Public Service Com’n of South Carolina (S.C. 1984) 281 S.C. 223, 314 S.E.2d 599.

**SECTION 58‑9‑40.** Municipal police regulations and ordinances not affected.

 Nothing contained in Articles 1 through 13 of this chapter shall be so construed as to limit or restrict the right of cities and towns to adopt and enforce reasonable police regulations and ordinances affecting telephone utilities, not inconsistent with the provisions of Articles 1 through 13 of this chapter, in the interest of public safety, morals, convenience, health and good order.

HISTORY: 1962 Code Section 58‑356; 1952 Code Section 58‑356; 1950 (46) 2466.

Library References

Telecommunications 734.

Westlaw Topic No. 372.

**SECTION 58‑9‑50.** Articles 1 through 13 of this chapter not applicable to interstate commerce.

 No provision of Articles 1 through 13 of this chapter shall apply or be construed to apply to commerce among the several states of the United States, except in so far as such application may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

HISTORY: 1962 Code Section 58‑357; 1952 Code Section 58‑357; 1950 (46) 2466.

Library References

Commerce 82.20.

Telecommunications 734.

Westlaw Topic Nos. 83, 372.

C.J.S. Commerce Sections 17, 21 to 22, 26, 29, 45 to 46, 49, 51 to 53, 59 to 61, 75, 177.

ARTICLE 3

Telephone Companies ‑ Duties, Restrictions and Rights Generally

**SECTION 58‑9‑200.** Definitions.

 As used in Sections 58‑9‑295 and 58‑9‑297:

 (1) “Communications service provider” means:

 (a) a telephone utility as defined in Section 58‑9‑10(6);

 (b) a government‑owned telecommunications service provider as defined in Section 58‑9‑2610(1);

 (c) a telephone cooperative as defined in Section 33‑46‑20(4);

 (d) a person or entity providing telephone, voice over internet protocol, similar voice service, or any other voice replacement service, data service, video service, or any information service; or

 (e) an entity using or allowing another entity to use its cable, wires, fiber, or any material, facilities, or equipment that have the ability to carry voice, data, video, or any other information transmissions.

 “Communications service provider” does not mean a radio common carrier as defined in Section 58‑11‑10(f).

 (2) “Communications service” means:

 (a) telephone service, including without limitation basic local exchange telephone service as defined in Section 58‑9‑10(9);

 (b) voice over internet protocol, or similar voice or voice replacement service;

 (c) data service;

 (d) video service; or

 (e) any information service.

HISTORY: 2005 Act No. 134, Section 1, eff 45 days after approval (approved June 7, 2005).

Editor’s Note

2005 Act No. 134, Section 4, provides as follows:

“If, as result of federal law, a finding of a federal administrative agency or a decision of a federal or state court of competent jurisdiction, this act is deemed to be inapplicable to any person, entity, or class of provider that otherwise meets the definition of a communications service provider in Section 58‑9‑200, this act shall become void and unenforceable as to all communications service providers.”

**SECTION 58‑9‑210.** Rates shall be just and reasonable.

 Every rate made, demanded or received by any telephone utility or by any two or more telephone utilities jointly shall be just and reasonable.

HISTORY: 1962 Code Section 58‑371; 1952 Code Section 58‑371; 1950 (46) 2466.

Library References

Commerce 82.20.

Westlaw Topic No. 83.

C.J.S. Commerce Sections 17, 21 to 22, 26, 29, 45 to 46, 49, 51 to 53, 59 to 61, 75, 177.

NOTES OF DECISIONS

In general 1

1. In general

It is the Public Service Commission’s duty to set rates that are just and reasonable; the just and reasonable rate is set by balancing the interests of the rate payers and the right of the utility to earn a fair return. South Carolina Cable Television Ass’n v. Public Service Com’n of South Carolina (S.C. 1993) 313 S.C. 48, 437 S.E.2d 38. Public Utilities 123

**SECTION 58‑9‑230.** Adherence to schedules.

 (A) No telephone utility may directly or indirectly, by any device whatsoever or in any way, charge, demand, collect, or receive from any person or corporation a greater or less compensation for any service rendered or supplied, or to be rendered or supplied, by the telephone utility, than that prescribed in the schedules of the telephone utility applicable thereto then filed in the manner provided in Articles 1 through 13 of this chapter, nor may any person or corporation receive or accept any service from a telephone utility for a compensation greater or less than that prescribed in the schedules.

 (B) Local exchange company centrex‑type services or billing and collection services, or both, may be offered to subscribers without the schedules related thereto being filed as provided in subsection (A), if the Commission, after hearing, first determines that such services are subject to competition in the relevant product and geographic markets. The Commission shall retain regulatory authority, however, over the rates, revenues, investments, expenses, and quality of the services so offered.

 (C) The charges for services offered by the utility pursuant to subsection (B) must, in every instance, be provided at a level above the cost of the service as determined by the commission. The regulatory staff shall have access to such data to ensure compliance with this section. The cost data is not subject to disclosure to the public. However, upon the application of any interested party and for good cause shown, the commission may enter an appropriate order which directs the manner in which the proprietary cost data provided to the regulatory staff may be made available to such interested party.

 (D) When a local exchange company proposes to offer a service pursuant to subsections (B) and (C), the Commission shall first determine:

 (1) whether monopoly elements are offered as part of the centrex‑type service; and

 (2) if the Commission finds the existence of a monopoly element, then it must decide whether or not that monopoly element should be unbundled from the detariffed service. If they find that the monopoly element should be unbundled, then only the competitive elements of that service may be detariffed.

 (3) This section does not amend or repeal the provisions of Section 58‑9‑250.

HISTORY: 1962 Code Section 58‑373; 1952 Code Section 58‑373; 1950 (46) 2466; 1988 Act No. 537, eff May 17, 1988; 2006 Act No. 318, Section 33, eff May 24, 2006.

Library References

Telecommunications 926.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 63 to 65.

**SECTION 58‑9‑240.** Permitted free or reduced rates.

 Nothing herein contained shall prevent any telephone utility from granting free or reduced rate service to its officers, agents, employees, attorneys, physicians or surgeons, nor to prevent any telephone utility from granting free or reduced rate service to the State of South Carolina or any municipality therein or department thereof or to charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work, nor to prevent any telephone utility from granting free or reduced rate service with the object and for the purpose of providing relief in times and cases of flood, general epidemic, pestilence or other calamitous visitation, nor any such other instance when the Commission may deem that such service is not contrary to the public interest; provided, that such free or reduced rate service shall be granted in accordance with tariffs filed by such telephone utility with the Commission and which shall be subject to regulation and revision by the Commission in the same manner as other rates of telephone utilities. The terms “officers” and “employees” as used in this section shall include furloughed, pensioned and superannuated officers and employees of any such utility.

HISTORY: 1962 Code Section 58‑374; 1952 Code Section 58‑374; 1950 (46) 2466.

Library References

Telecommunications 954.

Westlaw Topic No. 372.

**SECTION 58‑9‑250.** Unreasonable preferences and differences in rates or service shall not be made; reasonable classifications may be established.

 No telephone utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or corporation or subject any person or corporation to any unreasonable prejudice or disadvantage. No telephone utility shall establish or maintain any unreasonable difference as to rates or service, either as between localities or as between classes of service. Subject to the approval of the Commission, however, telephone utilities may establish classifications of rates and services and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered or any other reasonable consideration. The Commission may determine any question arising under this section.

HISTORY: 1962 Code Section 58‑375; 1952 Code Section 58‑375; 1950 (46) 2466.

CROSS REFERENCES

Schedules, see Section 58‑9‑230.

Library References

Telecommunications 934.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 69 to 70.

**SECTION 58‑9‑260.** Facilities and equipment shall be maintained in adequate manner.

 Every telephone utility shall provide and maintain facilities and equipment to furnish reasonably adequate and efficient telephone service to its customers in this State.

HISTORY: 1962 Code Section 58‑376; 1952 Code Section 58‑376; 1950 (46) 2466.

Library References

Telecommunications 810.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 27.

**SECTION 58‑9‑270.** Extensions of existing facilities.

 When ordered by the commission after notice to other interested telephone utilities and the public and due hearing any telephone utility may be required to establish, construct, maintain, and operate any reasonable extension of its existing facilities. If any such extension, however, by any telephone utility of its existing facilities will interfere with the service or system of any other telephone utility, the commission may on petition and after hearing either order the discontinuance of such extension or prescribe such terms and conditions with respect thereto as may be just and reasonable.

HISTORY: 1962 Code Section 58‑377; 1952 Code Section 58‑377; 1950 (46) 2466; 2006 Act No. 318, Section 34, eff May 24, 2006.

Library References

Telecommunications 814.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 37.

**SECTION 58‑9‑280.** Certificate of public convenience and necessity shall be obtained prior to construction, operation or extension of plant or system; exceptions.

 (A) No telephone utility shall begin the construction or operation of any telephone utility plant or system, or of any extension thereof, except those ordered by the commission under the provisions of Section 58‑9‑270, without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction or operation. But this section shall not be construed to require any telephone utility to secure a certificate for any extension within any municipality or district within which it had lawfully commenced operations on June 16, 1950, or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it as defined by the commission and not receiving similar service from another telephone utility; but, if any telephone utility in constructing or extending its lines, plant, or system unreasonably interferes or is about to interfere unreasonably with the service or system of any other telephone utility, the commission may make such order and prescribe such terms and conditions in harmony with Articles 1 through 13 of this chapter as are just and reasonable.

 (B) After notice and an opportunity to be heard, the commission may grant a certificate to operate as a telephone utility, as defined in Section 58‑9‑10(6), to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC, subject to the conditions and exemptions stated in this section and in applicable federal law. The provisions of this act shall apply to any such application for a certificate pending before the commission on the effective date of this act; provided, however, that any carrier filing an application to furnish telecommunications service as a private line or special access service provider or as a carrier’s carrier prior to March 25, 1996, may elect to comply with the certification requirements in effect on that date rather than those contained within this subsection (B); provided, further, however, that such carrier shall comply with subsection (B)(4) hereof. In determining whether to grant a certificate under this subsection, the commission may require, not inconsistent with the federal Telecommunications Act of 1996, that the:

 (1) applicant show that it possesses technical, financial, and managerial resources sufficient to provide the services requested;

 (2) service to be provided will meet the service standards that the commission may adopt;

 (3) provision of the service will not adversely impact the availability of affordable local exchange service;

 (4) applicant, to the extent it may be required to do so by the commission, will participate in the support of universally available telephone service at affordable rates; and

 (5) provision of the service does not otherwise adversely impact the public interest.

 In its application for certification, the applicant seeking to provide the service shall set forth with particularity the proposed geographic territory to be served, and a price list and informational tariff regarding the types of local exchange and exchange access services to be provided. Any person granted authority under this section shall maintain a current price list with the commission and the Office of Regulatory Staff. A commission order, denying or approving an application for certification of a new local telephone service provider, shall be entered no more than sixty days from the filing of the application, except that the commission, upon notice, may extend that period not to exceed an additional sixty days.

 (C) The commission shall determine the requirements applicable to all local telephone service providers necessary to implement this subsection. These requirements shall be consistent with applicable federal law and shall:

 (1) provide for the reasonable interconnection of facilities between all certificated local telephone service providers upon a bona fide request for interconnection, subject to the negotiation process set forth in subsection (D) of this section;

 (2) provide for the transfer of telephone numbers between local telephone service providers in a manner that is technically feasible;

 (3) provide for the reasonable unbundling of network elements upon a request from a LEC where technically feasible and priced in a manner that recovers the providing LEC’s cost;

 (4) determine, for small LEC’s, when and under what circumstances resale of local exchange telephone services is in the public interest and should be allowed. Telecommunications services that are available at retail to a specific category of subscribers only shall not be offered for resale to a different category of subscribers; and

 (5) provide for the continued development and encouragement of universally available basic local exchange telephone service at reasonably affordable rates.

 The final commission order implementing these requirements shall be issued within six months of the effective date of this section, except that the commission, upon notice, may extend that period up to an additional ninety days.

 (D) A LEC shall negotiate the rates, terms, and conditions for local interconnection. In the event that the parties are unable to agree on appropriate rates, terms, and conditions for interconnection within one hundred thirty‑five to one hundred sixty days of receipt of a bona fide request, either party may petition the commission for determination of the appropriate rates, terms, and conditions for interconnection. This period may be shortened or extended by mutual agreement of the parties. The commission shall determine the appropriate rates, terms, and conditions for interconnection within nine months from the filing of the petition in accordance with the terms of applicable federal law. The regulatory staff shall represent the public interest in any matter undertaken pursuant to this subsection unless the Executive Director of the Office of Regulatory Staff chooses to opt out as a participant pursuant to Section 58‑4‑50.

 (E) In continuing South Carolina’s commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier of last resort. The commission shall issue its final order adopting such guidelines as necessary for the funding and management of the USF within twelve months of the effective date of this section except that the commission, upon notice, may extend that period up to an additional ninety days. These guidelines must not be inconsistent with applicable federal law and shall address, without limitation, the following:

 (1) The USF must be administered by the Office of Regulatory Staff or a third party designated by the Office of Regulatory Staff under guidelines to be adopted by the commission.

 (2) The commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.

 (a) Entities that provide service pursuant to a certificate issued by the commission must remit these contributions to the Office of Regulatory Staff. All other entities must remit these contributions to the Department of Revenue. The Department of Revenue monthly shall assess each provider that does not have such a certificate, the provider’s contribution to the USF. The Office of Regulatory Staff shall certify to the Department of Revenue the USF factor and the amounts to be assessed. The USF assessments, less the Department of Revenue actual incremental increase in the cost of administration, must be transferred to the USF administered by the Office of Regulatory Staff or third party administrator designated by the Office of Regulatory Staff.

 (b) USF contributions for service defined in Section 58‑9‑2510(17) must be collected pursuant to Section 58‑9‑280(E) from consumers, as defined in Section 58‑9‑2510(13), by persons or entities defined in Section 58‑9‑2510(16). The amount of the charge to be collected with respect to each retail transaction, as defined in Section 58‑9‑2510(15) must be a fixed per‑transaction fee established annually by the Office of Regulatory Staff. Persons or entities defined in Section 58‑9‑2510(16) shall submit all necessary forms to the department to demonstrate that the charges have been collected and remitted. An entity that remits funds in support of the USF may file a petition with the commission seeking a review of the fixed per‑transaction fee as determined by the Office of Regulatory Staff. A decision by the commission in response to the petition only may be applied prospectively and must be implemented the next time that the Office of Regulatory Staff makes its annual determination of the fixed per‑transaction fee.

 (c) Entities that are required to contribute shall provide information sufficient to permit the requirements of this subsection to be implemented, monitored, and enforced to the Office of Regulatory Staff. All information, records, documents, and their contents provided to the Office of Regulatory Staff pursuant to this subsection must be maintained as confidential and are exempt from public disclosure under the South Carolina Freedom of Information Act. All information, records, documents, and their contents that are exchanged between the Office of Regulatory Staff and other state or federal agencies related to implementing, monitoring, and enforcing the requirements of this subsection must be maintained as confidential and are exempt from public disclosure under the South Carolina Freedom of Information Act. Except to the extent necessary to implement, monitor, and enforce contributions to the USF, the provisions of this section do not expand, diminish, or otherwise affect any existing jurisdiction of the commission over any telecommunications company, VoIP provider, CMRS provider, prepaid wireless provider, or any services provided by these providers.

 (d) A person or entity defined in Section 58‑9‑2510(16) must collect the USF contribution from a consumer defined in Section 58‑9‑2510(13) with respect to each retail transaction defined in Section 58‑9‑2510(15) occurring in this State. The amount of the charge either must be separately stated on an invoice, receipt, or other similar document that is provided to the consumer defined in Section 58‑9‑2510(13) by the person or entity defined in Section 58‑9‑2510(16); or otherwise disclosed to the consumer defined in Section 58‑9‑2510(13). At the election of the person or entity defined in Section 58‑9‑2510(16), the dual party relay charge, the USF contribution charge, and the 911 charge described in Title 23, Chapter 47, may be combined into a single charge for purposes of being stated on the invoice, receipt, or other similar document or otherwise disclosed to the consumer defined in Section 58‑9‑2510(13). The person or entity defined in Section 58‑9‑2510(16) shall notify the department as to how much of the amount remitted is for dual party relay and how much of the amount remitted is for USF.

 (i) For the purposes of this subsection, a retail transaction defined in Section 58‑9‑2510 (15) must be sourced as provided in Section 12‑36‑910(B)(5)(b).

 (ii) A person or entity defined in Section 58‑9‑2510(16) is entitled to retain three percent of the gross USF contribution remitted to the department as an administrative fee. A person or entity defined in Section 58‑9‑2510(16) must remit the remainder of the USF contribution to the department on or before the twentieth day of the second month succeeding each monthly collection of the USF charges. The department shall transfer the USF contributions to the USF administered by the Office of Regulatory Staff or third party designated by the Office of Regulatory Staff. The amount of the USF contribution collected by a person or entity defined in Section 58‑9‑2510(16), whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer defined in Section 58‑9‑2510(13), may not be included in the base for measuring any tax, fee, USF contribution, or other charge that is imposed by this State, any political subdivision of this State, or any intergovernmental agency. This amount may not be considered revenue of the person or entity defined in Section 58‑9‑2510(16).

 (iii) The department shall establish procedures by which a person or entity defined in Section 58‑9‑2510 (16) may document that a sale is not a retail transaction defined in Section 58‑9‑2510(15), which procedures shall substantially coincide with the procedures for documenting sale for resale transactions pursuant to Section 12‑36‑950.

 (e) The USF contribution required to be remitted to the department must be administered and collected by the department in the same manner as taxes as defined in Section 12‑60‑30(27) are administered and collected by the department under the provisions of Title 12.

 (3) The commission also shall require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio‑based local exchange services in this State that compete with a local telecommunications service provided in this State.

 (4)(a) The size of the USF must be the sum of:

 (i) the amount of USF support received by each carrier of last resort in 2015;

 (ii) the amount of Interim LEC Fund support received by each local exchange carrier in 2015;

 (iii) all amounts approved by the commission to provide state funding for the Lifeline program for low income subscribers; and

 (iv) all amounts approved by the commission for administration of the USF.

 (b) The size of the USF may be adjusted to reflect changes in USF support for those LECs that have made the election set out in Section 58‑9‑576(C).

 (5) For local exchange carriers that have previously reduced rates and charges to be eligible to receive USF support and that have not made the election set out in Section 58‑9‑576(C), money in the USF must be distributed to a local exchange carrier in the same amount distributed to the carrier from the Interim LEC fund in 2015 and to a carrier of last resort in the same amount distributed to the carrier of last resort in 2015 for so long as it continues to serve as a carrier of last resort. For any carrier that makes, or has made, an election under Section 58‑9‑576(C), its right to recover from the USF must be governed by the provisions of Section 58‑9‑576(C), and the amount it is entitled to recover must be adjusted in accordance with Section 58‑9‑576(C); provided, however, that nothing in this subsection restricts the ability of any carrier to withdraw from the State USF all amounts approved by the commission to provide state funding for the Lifeline program for low income subscribers.

 (6) For services for which a bill is rendered or a charge is applied before the effective date of this subsection, no subscriber or consumer is liable to any person or entity for a different universal service charge than the consumer or subscriber has been billed or charged, and no telecommunications company, VoIP provider, CMRS provider, or prepaid wireless provider is liable to any person or entity for billing, collecting, or remitting a different universal contribution amount than is required by this article.

 (7) Subject to the provisions of items (2), (3), (4), and (5) the commission may make administrative adjustments to the contribution or distribution levels based on yearly reconciliations.

 (8) A carrier of last resort authorized to receive funds from the USF is subject to random compliance audits and other investigations by the Office of Regulatory Staff, in accordance with Section 58‑4‑55.

 (9) Nothing in subsection (G) of this section shall preclude the commission from assessing broadband service revenues for purposes of contributions to the USF, pursuant to this subsection.

 (10) All carriers of last resort shall retain all records of operations within the jurisdiction of the Office of Regulatory Staff required to demonstrate that the support received was used to support the programs for which it was intended. This documentation must be maintained for at least ten years from the receipt of the funding. All such documents must be made available upon request to the Office of Regulatory Staff.

 (11) In order to create an environment that ensures financial stability necessary to encourage long‑term investment by carriers of last resort while providing for appropriate oversight:

 (a) within two years after the effective date of this subitem, the Office of Regulatory Staff shall provide a report to the Public Utilities Review Committee (PURC) as to the State Universal Service Fund, the need for funding, and the appropriate level of distributions; and

 (b) every four years thereafter, the Office of Regulatory Staff shall provide a report to PURC as to the status of the State Universal Service Fund, provide recommendations, and provide such other information as the PURC deems appropriate.

 (F) Nothing in this chapter shall be interpreted to limit or restrict any right that any local exchange carrier may have under federal law.

 (G)(1) Competition exists for a particular service if, for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service, its functional equivalent, or a substitute service is available from two or more providers. The commission must not:

 (a) impose any requirements related to the terms, conditions, rates, or availability of broadband service; or

 (b) otherwise regulate broadband service; however, in order to facilitate the continued deployment of broadband service by rural telephone companies as defined in 47 U.S.C. Section 153 (37), facilities utilized by rural telephone companies for the provision of broadband service must continue to be treated by the commission in the same manner as they were treated as of January 1, 2003, so as not to impact the provision or pricing of regulated telecommunications services by rural telephone companies. The commission shall not regulate a service for which competition exists if the market for that service is sufficiently competitive to protect the public interest. If the commission finds that competition exists for a particular service, but that service is not sufficiently competitive to protect the public interest, the commission must provide appropriate regulatory and pricing flexibility to all providers of the service.

 (2) Nothing in subsection (G)(1) of this section is intended to affect the Public Service Commission’s jurisdiction with respect to any service other than broadband service or to affect the application of access rates and charges to broadband providers or with respect to broadband services. Nothing in subsection (G)(1) of this section shall be construed to relieve an incumbent local exchange carrier, as defined by Section 251(h) of the federal Telecommunications Act of 1996, of its obligations pursuant to Sections 251 and 252 of the federal act or any Federal Communications Commission regulation relating to Sections 251 and 252 of the federal act to provide new entrant LEC’s with unbundled access to network elements or interconnection including, but not limited to, loops, subloops, transmission facilities, and collocation space.

 (3) The Office of Regulatory Staff must compile information in order to monitor the status of local telephone competition in this State. In compiling this information, the Office of Regulatory Staff must require all local exchange carriers, as defined in Section 58‑9‑10(12), to report to the Office of Regulatory Staff annually, the total number of access lines providing local exchange telecommunications services to an end user in this State. The Office of Regulatory Staff must also maintain a copy of all written complaints received regarding the impact broadband services may be having on the competitive local exchange market. This information must be compiled and made available prior to May fifteenth of each year.

 (H) Any local exchange carrier, upon a showing of changed circumstances or that it is necessary or appropriate to realign rates with the costs of various telecommunications components, may petition the commission to reexamine any rates that have been capped pursuant to the provisions of this chapter and to set new price caps. A copy of the petition must be served upon the Office of Regulatory Staff.

 (I) The incumbent LEC’s subject to this section shall be authorized to meet the offerings of any local exchange carrier serving the same area by packaging services together, using volume discounts and term discounts, and by offering individual contracts for services, except as restricted by federal law. Individual contracts for services or contracts with other providers of telecommunications services shall not be filed with the commission, except as required by federal law, provided that telecommunications carriers shall provide access to such contracts to the commission as required.

 (J) Subject to the requirements of applicable federal law, a small LEC may define the term “cost”, as used within this section and where applicable to a small LEC, to include all embedded costs as well as a reasonable contribution to universal local service, where applicable, until such time as these costs are recovered from other sources.

 (K) Subject to federal law, if the commission finds that the resale of any service or unbundled capability, element, feature, or function in a small LEC area is in the public interest, then the small LEC shall not be required to offer its services at a price below its cost.

 (L) Upon enactment of this section and the establishment of the Interim LEC Fund, as specified in subsection (M) of this section, the commission shall, subject to the requirements of federal law, require any electing incumbent LEC, other than an incumbent LEC operating under an alternative regulation plan approved by the commission before the effective date of this section, to immediately set its toll switched access rates at levels comparable to the toll switched access rate levels of the largest LEC operating within the State. To offset the adverse effect on the revenues of the incumbent LEC, the commission shall allow adjustment of other rates not to exceed statewide average rates, weighted by the number of access lines, and shall allow distributions from the Interim LEC Fund, as may be necessary to recover those revenues lost through the concurrent reduction of the intrastate switched access rates.

 (M) The commission shall, not later than December 31, 1996, establish an Interim LEC Fund to be administered by the Office of Regulatory Staff or a designee. The Interim LEC Fund shall initially be funded by those entities receiving an access or interconnection rate reduction from LEC’s pursuant to subsection (L) in proportion to the amount of the rate reduction. To the extent that affected LEC’s are entitled to payments from the USF, the Interim LEC Fund must transition into the USF as outlined in Section 58‑9‑280(E) when funding for the USF is finalized and adequate to support the obligations of the Interim LEC Fund.

 (N) The commission shall ensure that any requirements implemented under Section 58‑9‑280(C) are appropriate for the service territory of the small LEC and may implement such alternative requirements necessary to protect the public interest in such service area. Specifically, the commission shall ensure for small LEC’s that telecommunications services that are available at retail to a specific category of subscribers only shall not be offered for resale to a different category of subscribers. Additionally, consistent with the federal Telecommunications Act of 1996, LEC’s shall not be required to offer for resale services which they do not make available on a retail basis.

 (O) If any provision or section of this chapter is held invalid or held not to apply to a particular local exchange carrier, such holding shall not affect the remaining provisions of this chapter or their application to any local exchange carrier to which they might apply.

HISTORY: 1962 Code Section 58‑378; 1952 Code Section 58‑378; 1950 (46) 2466; 1996 Act No. 354, Section 2, eff May 29, 1996; 2003 Act No. 6, Sections 2, 3, eff March 12, 2003; 2005 Act No. 5, Section 2, eff July 1, 2004; 2006 Act No. 318, Section 35, eff May 24, 2006; 2016 Act No. 181 (S.277), Section 5.A, eff May 25, 2016.

Editor’s Note

2016 Act No. 181, Section 5.B, provides as follows:

“B. This entire section is void if any portion of this section is finally adjudicated invalid.”

2016 Act No. 181, Section 10, provides as follows:

“SECTION 10. Beginning on the effective date of this act, the Office of Regulatory Staff and the Department of Revenue may take necessary action to accommodate full implementation of SECTIONS 3, 5.A., and 8 of this act, as soon as practicable, provided, however, that full implementation shall not occur earlier than January 1, 2017. The Office of Regulatory Staff and the Department of Revenue shall provide at least thirty days’ public notice of the full implementation date before the full implementation of these SECTIONS occurs, and no person or entity is required to bill, collect, remit, or pay any charges pursuant to SECTION 3, 5.A., or 8 of this act prior to the full implementation date.”

Effect of Amendment

2016 Act No. 181, Section 5, rewrote (E).

CROSS REFERENCES

“Broadband service” defined, government‑owned communications service providers, see Section 58‑9‑2610.

Dual party relay charge collections, see Section 58‑9‑2535.

Library References

Telecommunications 784, 810.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 19, 27 to 28.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 6, Types of Franchises Granted.

S.C. Jur. Telecommunications Section 10, Telephone.

LAW REVIEW AND JOURNAL COMMENTARIES

Amending of Certificate of Public Convenience. 25 S.C. L. Rev. 319.

NOTES OF DECISIONS

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1. In general

Cable service provider that sought certification for Voice Over Internet Protocol (VoIP) could negotiate with local exchange carriers (LECs) for interconnect agreements in areas in which the provider did not have certification, under statute allowing reasonable interconnection of facilities between all certified local telephone service providers; the statute provided that the interconnect agreements could ultimately be approved only between certified carriers, but provider did not need certification as an LEC to negotiate agreements. Time Warner Cable Information Services (South Carolina), LLC v. Public Service Com’n of South Carolina (S.C. 2008) 377 S.C. 368, 660 S.E.2d 497. Telecommunications 856; Telecommunications 1323

Public Service Commission in implementing Universal Service Fund (USF) in accordance with the Telecommunications Act allocated joint and common costs to different services and did not isolate the cost of providing basic local service; witnesses testified that the Commission allocated joint and common costs to the various services using the network. Office of Regulatory Staff v. South Carolina Public Service Com’n (S.C. 2007) 374 S.C. 46, 647 S.E.2d 223, rehearing denied. Telecommunications 870(1)

Universal Service Fund (USF) as implemented by the Public Service Commission did not violate the Telecommunications Act provision that required a plan set forth specific, predictable, and sufficient mechanisms of control over USF; the Commission imparted control mechanisms by requiring incumbent local exchange carriers that apply for funding beyond the initial access step to file detailed cost data reports, and control of the fund was accomplished through the Commission’s phased‑in approach, which allowed gradual transition from implicit support system to an explicit funding system. Office of Regulatory Staff v. South Carolina Public Service Com’n (S.C. 2007) 374 S.C. 46, 647 S.E.2d 223, rehearing denied. Telecommunications 869

2. Constitutional issues

Iowa state court decision rejecting national telecommunications service provider’s claim that the Telecommunications Act of 1996 preempted intrastate regulation of Voice over Internet Protocol (VoIP) calls did not render moot provider’s federal action against members of Iowa Utilities Board seeking a declaration that the Act preempted the Board’s decision that intrastate fees applied to VoIP calls, given that national provider intended to appeal the state‑court decision and, thus, the controversy remained live. Sprint Communications, Inc. v. Jacobs, 2013, 134 S.Ct. 584, 187 L.Ed.2d 505, on remand 746 F.3d 850. Declaratory Judgment 206

Iowa Utilities Board proceeding to resolve legal question of whether Voice over Internet Protocol (VoIP) calls were subject to intrastate regulation or whether Telecommunications Act of 1996 preempted intrastate regulation of VoIP traffic did not require federal court, under Younger abstention doctrine, to abstain from deciding action brought by national telecommunications provider against members of Iowa Utilities Board seeking declaration that the Act preempted Board’s decision that intrastate fees applied to VoIP calls; the proceeding was civil, not criminal in character and did not touch on a state court’s ability to perform its judicial function nor did Board’s order rank as act of civil enforcement of the kind to which Younger has been extended. Sprint Communications, Inc. v. Jacobs, 2013, 134 S.Ct. 584, 187 L.Ed.2d 505, on remand 746 F.3d 850. Federal Courts 2641

Equal protection of the law did not result from the Public Service Commission’s refusal to grant authority to a telecommunications company to conduct state‑wide intra‑LATA service, where, although the commission had earlier granted such authority to another telecommunications company, the earlier grant had been made before the breakup of the Bell telephone system and before the state had been divided into LATA’s. GTE Sprint Communications Corp. v. Public Service Com’n of South Carolina (S.C. 1986) 288 S.C. 174, 341 S.E.2d 126.

Procedural due process is was not denied by the Public Service Commission’s refusal to grant to a telecommunications company authority to conduct state‑wide intra‑LATA service, on the grounds that such service would have an adverse effect on local exchange service rates, where, even though the telecommunications company had notice that the impact on local rates would be at issue in the hearing before the commission, it failed to present rebuttal evidence or to dispute the relevancy of the issue. GTE Sprint Communications Corp. v. Public Service Com’n of South Carolina (S.C. 1986) 288 S.C. 174, 341 S.E.2d 126. Telecommunications 804

3. Notice

Public Service Commission’s (PSC) failure to give adequate notice of proceedings in which it adjusted rates for local exchange carriers who lowered access rates they charged long‑distance carriers to access local network, and in which PSC also made distributions from Interim Local Exchange Carrier Fund to offset local exchange carriers’ loss of revenue, required reversal of that order; although there was no way to determine actual prejudice in amount of rate increases ordered, due process was violated, as public was completely deprived of opportunity to be heard. Porter v. South Carolina Public Service Com’n (S.C. 2000) 338 S.C. 164, 525 S.E.2d 866, rehearing denied. Telecommunications 973

4. Sufficiency of evidence

Evidence that cable service provider’s proposed expanded certification for Voice Over Internet Protocol (VoIP) would adversely impact the availability of local exchange service supported Public Service Commission’s denial of the provider’s application for amended certification, where rural local exchange carrier’s (LEC’s) experts testified that granting the application would have an adverse impact on the affordability of rural telephone service because it would cause the rural LEC’s to raise rates to rural subscribers. Time Warner Cable Information Services (South Carolina), LLC v. Public Service Com’n of South Carolina (S.C. 2008) 377 S.C. 368, 660 S.E.2d 497. Telecommunications 1337

Substantial evidence supported Public Service Commission’s findings regarding the selection of an appropriate cost model for Universal Service Fund (USF) pursuant to the Telecommunications Act; in deciding on the cost model, the Commission considered the testimony of over 30 experts and carefully analyzed the two models presented to it for consideration. Office of Regulatory Staff v. South Carolina Public Service Com’n (S.C. 2007) 374 S.C. 46, 647 S.E.2d 223, rehearing denied. Telecommunications 870(1)

5. Review

In the matter of granting of certificates of public convenience and necessity to provide unlimited intercity telecommunication services in the state, the Public Service Commission is the recognized expert designated by law to make factual determinations and, when those determinations are supported by substantial evidence, the Supreme Court is without authority to substitute its judgment for that of the commission. GTE Sprint Communications Corp. v. Public Service Com’n of South Carolina (S.C. 1986) 288 S.C. 174, 341 S.E.2d 126.

**SECTION 58‑9‑285.** Regulation of bundled offerings.

 (A) As used in this section:

 (1) “Bundled offering” means:

 (a) for a qualifying LEC, an offering of two or more products or services to customers at a single price provided that:

 (i) the bundled offering must be advertised and sold as a bundled offering at rates, terms, or conditions that are different than if the services are purchased separately from the LEC’s tariffed offerings;

 (ii) each regulated product or service in the offering is available on a stand‑alone basis under a tariff on file with the commission; and

 (iii) the qualifying LEC has a tariffed flat‑rated local exchange service offering for residential customers and for single‑line business customers on file with the commission that provides access to the services and functionalities set forth in Section 58‑9‑10(9).

 (b) for a qualifying IXC, an offering of two or more products or services to customers at a single price provided that:

 (i) the bundled offering must be advertised and sold as a bundled offering at rates, terms, or conditions that are different than if the services are purchased separately from the IXC’s tariffed offerings; and

 (ii) each regulated product or service in the offering is available on a stand‑alone basis under a tariff on file with the commission.

 (2) “Contract offering” means any contractual agreement, memorialized in writing, by which a qualifying LEC or a qualifying IXC offers any tariffed product or service to any customer at rates, terms, or conditions that differ from those set forth in the qualifying LECs or qualifying IXCs tariffs.

 (3) “Qualifying IXC” means any interexchange carrier operating under alternative means of regulation authorized by the commission.

 (4) “Qualifying LEC” means any LEC operating under an alternative means of regulation pursuant to Section 58‑9‑575; any LEC that has elected to have rates, terms, and conditions for its services determined pursuant to the plan described in Section 58‑9‑576(B); and any LEC that has elected to have rates, terms, and conditions determined pursuant to alternative means of regulation under Section 58‑9‑577.

 (B) The commission must not:

 (1) impose any requirements related to the terms, conditions, rates, or availability of any bundled offering or contract offering of any qualifying LEC or qualifying IXC that a customer accepts after the effective date of this act; or

 (2) otherwise regulate any bundled offering or contract offering of any qualifying LEC or qualifying IXC that a customer accepts after the effective date of this act. Without limiting the foregoing, upon the filing of a complaint by an end use purchaser of a bundled offering or a contract offering, the commission may enforce the terms and conditions of a bundled offering or a contract offering under the same principles that apply when a court of general jurisdiction enforces the terms and conditions of an unregulated contract between two parties. No person or entity other than the end user purchaser that filed the complaint and the qualifying LEC or qualifying IXC that provides the bundled offering or contract offering that is the subject of such complaint shall be a party to any such complaint proceeding before the commission.

 (C) A qualifying LEC or qualifying IXC providing bundled offerings or contract offerings is obligated to provide contributions to the Universal Service Fund (USF), and the commission shall ensure that contributions to the state USF, pursuant to Section 58‑9‑280(E), are maintained at appropriate levels. Nothing in this section affects the commission’s jurisdiction over distributions from the USF pursuant to Section 58‑9‑280(E).

 (D) Access minutes of use must continue to be classified and reported for purposes of administering the Interim LEC Fund, pursuant to Section 58‑9‑280(M), in the same manner as they were classified and reported before the effective date of this subsection.

 (E) Nothing in this section affects any jurisdiction conferred upon the commission by 47 U.S.C. Section 254(k).

 (F) Nothing in this section affects the commission’s jurisdiction over complaints alleging that a change in a subscriber’s selection of a provider of telecommunications service was made without appropriate authorization or that services that the customer did not order appear on the customer’s bill.

 (G) The State Regulation of Public Utilities Review Committee may request the Office of Regulatory Staff to compile information to enable the review committee to monitor the effect of bundled offerings and contract offerings on the provision of telecommunications services in South Carolina.

HISTORY: 2005 Act No. 5, Section 3, eff July 1, 2004.

Library References

Telecommunications 622, 624.

Westlaw Topic No. 372.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 10, Telephone.

**SECTION 58‑9‑290.** Interchange of service.

 Telephone utilities may contract with each other for the connection of their respective lines or systems and for the interchange through such connections of public telephone and communications service and for other proper purposes. A copy of every such contract shall be filed with the commission and provided to the Office of Regulatory Staff. Such contract shall remain in effect in accordance with its terms unless the commission, after notice and hearing, shall find that such contract is contrary to the public interest and shall disapprove it.

HISTORY: 1962 Code Section 58‑379; 1952 Code Section 58‑379; 1950 (46) 2466; 2006 Act No. 318, Section 36, eff May 24, 2006.

Library References

Telecommunications 854.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 24 to 26, 36, 107.

**SECTION 58‑9‑295.** Agreements limiting other communications providers from access to rights‑of‑way prohibited; penalties.

 (A) No communications service provider or a parent company, subsidiary, or affiliate of a communications service provider shall enter into any contract, agreement, or arrangement, oral or written, with a person or entity that:

 (1) requires a person or entity to restrict or limit the ability of any other communications service provider from obtaining easements or rights‑of‑way for the installation of facilities or equipment to provide communications services in this State or otherwise deny or restrict access to the real property by any other communications service provider; or

 (2) offers or grants incentives or rewards to an owner of real property or the owner’s agent that are contingent upon restricting or limiting the ability of any other communications service provider from obtaining easements or rights‑of‑way for the installation of facilities or equipment to provide communications services in this State or otherwise denying or restricting access to the real property by any other communications service provider.

 (B)(1) Nothing in this section prohibits a communications service provider and a user or prospective user of communications service from entering into an agreement with respect to the user or prospective user’s own communications service.

 (2) Nothing in this section prohibits an owner of real property or the owner’s agent from entering into agreements with one or more communications service providers for the purpose of marketing a communications service to the owner of real property or to the tenants of real property, so long as such agreements are not in violation of subsection (A).

 (3) This section does not affect a franchise agreement or other agreement with a municipality concerning the use of public streets, public rights‑of‑way, or other public property.

 (C) All contracts, agreements, or arrangements in violation of subsection (A) made on or after the effective date of this section are void and unenforceable.

 (D) A communications service provider who violates the provisions of this section is subject to a monetary penalty as provided in Section 58‑9‑1610. Each day that a contract, agreement, or arrangement prohibited by this section remains in force or effect shall constitute a separate violation as provided in Section 58‑9‑1620.

HISTORY: 2005 Act No. 134, Section 2, eff 45 days after approval (approved June 7, 2005).

Editor’s Note

2005 Act No. 134, Section 4, provides as follows:

“If, as result of federal law, a finding of a federal administrative agency or a decision of a federal or state court of competent jurisdiction, this act is deemed to be inapplicable to any person, entity, or class of provider that otherwise meets the definition of a communications service provider in Section 58‑9‑200, this act shall become void and unenforceable as to all communications service providers.”

Library References

Telecommunications 623, 780, 1002.

Westlaw Topic No. 372.

**SECTION 58‑9‑297.** Relief from obligation to provide communications services.

 (A) No other communications service provider, including without limitation a carrier of last resort as defined in Section 58‑9‑10(10), shall be obligated to provide any communications service to the occupants of the property described herein if an owner or developer of any multi‑tenant business or residential property, including without limitation apartments, condominiums, subdivisions, office buildings, or office parks:

 (1) permits only one communications service provider to install its facilities or equipment during the construction phase of the property;

 (2) accepts or agrees to accept incentives or rewards from a communications service provider to the owner, developer, or occupants of the property that are contingent upon the provision of communications service by that communications service provider to the exclusion of other providers of communications service;

 (3) collects from the occupants of the property charges for the provision of communications service to the occupants in any manner, including without limitation through rent, fees, or dues; or

 (4) enters into an agreement with a communications service provider that is in violation of Section 58‑9‑295.

 (B) If any communications service provider is relieved of an obligation to provide communications service to occupants of property pursuant to subsection (A), the communications service provider may voluntarily provide communications services to the occupants of that property, and the public service commission must not impose any requirements related to the terms, conditions, rates, or availability of this service.

HISTORY: 2005 Act No. 134, Section 3, eff 45 days after approval (approved June 7, 2005).

Editor’s Note

2005 Act No. 134, Section 4, provides as follows:

“If, as result of federal law, a finding of a federal administrative agency or a decision of a federal or state court of competent jurisdiction, this act is deemed to be inapplicable to any person, entity, or class of provider that otherwise meets the definition of a communications service provider in Section 58‑9‑200, this act shall become void and unenforceable as to all communications service providers.”

Library References

Telecommunications 622.

Westlaw Topic No. 372.

**SECTION 58‑9‑300.** Abandonment of service.

 No telephone utility shall abandon all or any portion of its service to the public, except for ordinary discontinuance of service for nonpayment of a lawful charge or for violation of rules and regulations approved by the commission, unless written application is first made to the commission for the issuance of a certificate authorizing such abandonment, nor until the commission in its discretion issues such certificate. Any application must also be served on the Office of Regulatory Staff at the same time it is filed with the commission.

HISTORY: 1962 Code Section 58‑380; 1952 Code Section 58‑380; 1950 (46) 2466; 2006 Act No. 318, Section 37, eff May 24, 2006.

Library References

Telecommunications 769, 850.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 52 to 56, 103.

**SECTION 58‑9‑310.** Sale or other disposition of property, powers, franchises or privileges.

 No telephone utility, without the approval of the Commission after due hearing and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, transfer, lease, consolidate, or merge its property, powers, franchises, or privileges or any of them; provided, however, that a telephone cooperative association may acquire or incorporate a subsidiary corporation or a subsidiary cooperative association without the approval of the Commission.

HISTORY: 1962 Code Section 58‑381; 1952 Code Section 58‑381; 1950 (46) 2466; 1983 Act No. 67 Section 3, eff May 26, 1983.

Library References

Telecommunications 761, 793.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 21.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 6, Types of Franchises Granted.

**SECTION 58‑9‑320.** Transactions with affiliates.

 When in the judgment of the commission there is a reasonably substantial affiliation of any telephone utility engaged in business in this State with any other corporation or person or when in the judgment of the commission any other corporation or person either exercises, or is in position to exercise, by reason of ownership or control of securities or for any other cause, any reasonably substantial control over the business or policies of any telephone utility engaged in business in this State, the burden of proof shall be upon the telephone utility to establish as determined by the commission the reasonableness, fairness, and absence of injurious effect upon the public interest of any fees or charges growing out of any transactions between any telephone utility and such other corporation or person. Every telephone utility shall be required to produce, if so ordered by the commission, for the information of the commission, the Office of Regulatory Staff, and the public, all such contracts, papers, and documents relating thereto and explanatory thereof as may be required by the commission, and unless the reasonableness, fairness, and absence of injurious effect upon the public interest of such fees and charges are established as determined by the commission, they shall not be allowed by the commission for rate‑making purposes. The commission shall not allow for rate‑making purposes any fees or expenses included in any contract or agreement with an affiliate representing charges that the commission has directly disallowed in its rate‑making orders.

HISTORY: 1962 Code Section 58‑382; 1952 Code Section 58‑382; 1950 (46) 2466; 1983 Act No. 67 Section 4, eff May 26, 1983; 1983 Act No. 138 Section 15, eff June 15, 1983; 2006 Act No. 318, Section 38, eff May 24, 2006.

Library References

Telecommunications 769.

Westlaw Topic No. 372.

**SECTION 58‑9‑330.** Participation in profits from efficiency.

 For the purpose of encouraging economy, efficiency and improvements in methods of service any telephone utility may participate, subject to the approval of the Commission, to such extent as may be permitted by the Commission, in the additional profits arising from any economy, efficiency or improvement in methods or service instituted by such telephone utility.

HISTORY: 1962 Code Section 58‑383; 1952 Code Section 58‑383; 1950 (46) 2466.

Library References

Telecommunications 850.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 52 to 56, 103.

**SECTION 58‑9‑340.** System of accounts.

 The Office of Regulatory Staff may, in its discretion, and subject to approval of the commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission’s jurisdiction and the Office of Regulatory Staff may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the Office of Regulatory Staff. But nothing in this section shall be construed to be in conflict with or in violation of the provisions of the Communications Act of Congress of 1934, as amended (U. S. C. A. Title 47, Sections 151 through 609), nor shall anything herein be construed to be in conflict with any lawful order of the Federal Communications Commission issued pursuant to the authority vested in it by said act of Congress.

HISTORY: 1962 Code Section 58‑384; 1952 Code Section 58‑384; 1950 (46) 2466; 2006 Act No. 318, Section 39, eff May 24, 2006.

Library References

Telecommunications 762.

Westlaw Topic No. 372.

**SECTION 58‑9‑350.** Depreciation and retirement charges.

 Every telephone utility shall have the right, and may be so required, to charge annually as an operating expense a reasonable sum for depreciation and credit it to a reserve account for such purpose. Such reserve account shall be charged with plant retirements. But if the reserve thus created shall at any time in the judgment of the Commission be excessive, the Commission after due hearing shall make such order as will result in credits to such reserve thereafter conforming to actual facts and conditions as ascertained by the Commission.

 The Commission may control or limit such depreciation reserve.

 Nothing in this section shall be construed to be in conflict with or in violation of the provisions of the Communications Act of Congress of 1934, as amended (U. S. C. A. Title 47, Sections 151 through 609), nor shall anything herein be construed to be in conflict with any lawful order of the Federal Communications Commission issued pursuant to the authority vested in it by said act of Congress.

HISTORY: 1962 Code Section 58‑385; 1952 Code Section 58‑385; 1950 (46) 2466.

Library References

Telecommunications 940(2), 945(2).

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 86.

NOTES OF DECISIONS

In general 1

1. In general

The Public Service Commission (PSC) properly approved new depreciation rates that a telephone company charged its subscribers without considering the company’s earnings level, since Section 58‑9‑350 grants the company the right to charge subscribers for depreciation, and the PSC has interpreted the statutory scheme of this section to allow it to consider depreciation issues separate from general rate cases; the construction of a statute by the agency charged with executing it is entitled to respectful consideration, and should not be overruled without cogent reasons. South Carolina Cable Television Ass’n v. Southern Bell Tel. and Tel. Co. (S.C. 1992) 308 S.C. 216, 417 S.E.2d 586.

**SECTION 58‑9‑360.** Restrictions on capitalization for rate‑making purposes.

 No telephone utility shall for rate‑making purposes, capitalize its franchises, rights, powers or privileges or its right to own and operate or enjoy any such franchise, rights, powers or privileges in excess of the amount paid to the State or to any political subdivision of the State as the consideration for the grant thereof or capitalize any lease or contract of sale for consolidation or merger of two or more telephone utilities; nor shall the Commission permit any such capitalization by a telephone utility nor shall any telephone utility issue by way of substitution any capital stock, trust certificates, bonds, notes or other evidences of indebtedness or other securities for any consolidated or merged company exceeding the aggregate value of the properties so consolidated or merged and any additional sum of money actually contributed in cash and additional property or labor actually contributed. The determination of such consideration or value as aforesaid shall be subject to the approval of the Commission.

HISTORY: 1962 Code Section 58‑386; 1952 Code Section 58‑386; 1950 (46) 2466.

Library References

Telecommunications 941.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 82.

**SECTION 58‑9‑370.** Annual and special reports.

 (A) Subject to approval of the commission, the Office of Regulatory Staff may require any telephone utility to file annual reports in such form and of such content as the Office of Regulatory Staff may require and special reports concerning any matter about which the Office of Regulatory Staff is authorized to inquire or to keep itself informed or which it is required to enforce. All reports shall be under oath when required by the Office of Regulatory Staff.

 (B) A copy of all reports filed with the commission also must be provided to the Office of Regulatory Staff.

HISTORY: 1962 Code Section 58‑387; 1952 Code Section 58‑387; 1950 (46) 2466; 2006 Act No. 318, Section 40, eff May 24, 2006.

Library References

Telecommunications 760, 762.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 15.

NOTES OF DECISIONS

In general 1

1. In general

Public Service Commission could properly issue order which retroactively rescinded previous orders by requiring that all interexchange carriers (IXC) file modified surveillance reports on a streamlined basis beginning four years previous to time at which order was issued; modification and allowance of noncomplying IXC’s to file information for prior years on a modified basis was not an impermissible retroactive ratemaking type activity, but an administrative, discretionary decision relating to filing of information as required by the Commission for its own purpose. Code 1976, Sections 58‑9‑370, 58‑9‑1180. Hamm v. American Tel. & Tel. Co. (S.C. 1990) 302 S.C. 210, 394 S.E.2d 842. Telecommunications 969

**SECTION 58‑9‑380.** Office in State.

 Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers, and records as shall reasonably be required by the Office of Regulatory Staff to be kept within the State. No books, accounts, papers, or records required by the Office of Regulatory Staff to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

HISTORY: 1962 Code Section 58‑388; 1952 Code Section 58‑388; 1950 (46) 2466; 2006 Act No. 318, Section 41, eff May 24, 2006.

Library References

Telecommunications 760.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 15.

**SECTION 58‑9‑390.** Compliance with rules and regulations.

 Each telephone utility shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the commission and every direction, rule, or regulation made or prescribed by the Office of Regulatory Staff in the performance of its duties under Articles 1 through 13 of this chapter, or in relation to any other matter in any way relating to or affecting the business of such telephone utility and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

HISTORY: 1962 Code Section 58‑389; 1952 Code Section 58‑389; 1950 (46) 2466; 2006 Act No. 318, Section 42, eff May 24, 2006.

Library References

Telecommunications 760.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 15.

NOTES OF DECISIONS

In general 1

1. In general

Telecommunication tariff rate system established by the Public Service Commission has the full force and effect of law. GTE Sprint Communications Corp. v. Public Service Com’n of South Carolina (S.C. 1986) 288 S.C. 174, 341 S.E.2d 126.

ARTICLE 5

Telephone Companies ‑ Changes in Rates

**SECTION 58‑9‑510.** Changes in phone rates.

 Whenever the commission after a hearing finds that the existing rates in effect and collected by any telephone utility for any service are unjust, unreasonable, insufficient, unreasonably discriminatory, or in any way in violation of any provision of law, the commission shall determine the just, reasonable, and sufficient rates to be thereafter observed and in force and shall fix them by its order.

HISTORY: 1962 Code Section 58‑401; 1952 Code Section 58‑401; 1950 (46) 2466; 2006 Act No. 318, Section 43, eff May 24, 2006.

Library References

Telecommunications 938, 968.

Westlaw Topic No. 372.

**SECTION 58‑9‑520.** Change in telephone rates initiated by utility; notice.

 Whenever a telephone utility desires to put into operation a new rate or tariff which affects the telephone utility’s general body of subscribers, the telephone utility shall give the commission and the Office of Regulatory Staff not less than thirty days’ notice of its intention to file and shall, after the expiration of the notice period, then file with the commission and provide to the Office of Regulatory Staff a schedule setting forth the proposed changes; provided, however, a hearing shall not be required when the proposed rate or tariff is a proposal to institute or modify an offering or regulation that is not part of a general rate case and does not affect the telephone utility’s general body of subscribers. Subject to the provisions of subsections (B) and (C) of Section 58‑9‑540, the proposed changes must not be put into effect in full or in part until approved by the commission.

HISTORY: 1962 Code Section 58‑402; 1952 Code Section 58‑402; 1950 (46) 2466; 1983 Act No. 138 Section 2, eff June 15, 1983; 2006 Act No. 318, Section 44, eff May 24, 2006.

Library References

Telecommunications 936, 967.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 88 to 89.

**SECTION 58‑9‑530.** Dispensing with thirty days’ notice of rate change.

 The Commission, for good cause shown, may allow changes in rates without requiring the thirty days’ notice under such conditions as it may prescribe, except that when changes in general schedules of rates and charges are involved, before they may become effective, notice to the public of such proposed changes shall be given by publication thereof once a week for two consecutive weeks in newspapers of general circulation in the territory involved and a hearing held thereon. All such changes shall be immediately indicated upon its schedules by such telephone utility.

HISTORY: 1962 Code Section 58‑403; 1952 Code Section 58‑403; 1950 (46) 2466.

Library References

Telecommunications 971.

Westlaw Topic No. 372.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

NOTES OF DECISIONS

Adequacy of notice 1

1. Adequacy of notice

Public Service Commission (PSC) failed to give adequate notice of proceedings in which it adjusted rates for local exchange carriers who lowered access rates they charged long‑distance carriers to access local network, and in which PSC also made distributions from Interim Local Exchange Carrier Fund to offset local exchange carriers’ loss of revenue; although notice was published in several newspapers identifying companies involved and announcing public hearing “concerning the proposed rate adjustments filed” by them, such notice did not even specify that such adjustments included increases. Porter v. South Carolina Public Service Com’n (S.C. 2000) 338 S.C. 164, 525 S.E.2d 866, rehearing denied. Telecommunications 971

**SECTION 58‑9‑540.** Hearing on new schedule of rates; time for Commission action.

 (A) Whenever there is filed with the commission by any telephone utility a schedule stating a new rate or rates which affect the telephone utility’s general body of subscribers, the commission shall, after notice to the Office of Regulatory Staff and the public such as the commission may prescribe, hold a hearing concerning the lawfulness or reasonableness of the rate or rates; provided, however, that when the proposed rate or tariff is a proposal to institute or modify an offering or regulation that is not part of a general rate case and does not affect the telephone utility’s general body of subscribers, the commission may approve such filing without a hearing. Whenever a new rate is requested which affects the telephone utility’s general body of subscribers, the commission shall rule and issue its order approving or disapproving the changes in full or in part within six months of the time of filing.

 (B) Should the Commission determine that it cannot, due to circumstances reasonably beyond its control, issue such order within the six‑month period prescribed by this section, the Commission, may, by order, extend the six‑month period for an additional five days. Any such order shall set forth such circumstances and make appropriate findings concerning the need for the extended period.

 If the Commission rules and issues its order within the time aforesaid, and the utility shall appeal from the order, by filing with the Commission a petition for rehearing, the utility may put the rates requested in its schedule into effect under bond only during the appeal and until final disposition of the case. Such bond must be in a reasonable amount approved by the Commission, with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons, corporations, or municipalities respectively entitled to the amount of the excess, if the rate or rates put into effect are finally determined to be excessive; or there may be substituted for the bond other arrangements satisfactory to the Commission for the protection of parties interested. During any period in which a utility shall charge increased rates under bond, it shall provide records or other evidence of payments made by its subscribers or patrons under the rate or rates which the utility has put into operation in excess of the rate or rates in effect immediately prior to the filing of the schedule.

 All increases in rates put into effect under the provisions of this section which are not approved and for which a refund is required shall bear interest at a rate of twelve percent per annum. The interest shall commence on the date the disallowed increase is paid and continue until the date the refund is made.

 In all cases in which a refund is due, the Commission shall order a total refund of the difference between the amount collected under bond and the amount finally approved.

 (C) If the Commission fails to rule or issue its order within the time prescribed in subsection (A) or (B) of this section, the utility may put into effect the change in rates it requested in its schedule. The change is to be treated as an approval of the new rate schedule by the Commission.

 (D) After the date the schedule, which affects the telephone utility’s general body of subscribers, is filed with the Commission, no further rate change request which affects the telephone utility’s general body of subscribers may be filed until twelve months have elapsed from the date of the filing of the schedule; provided, however, this section shall not apply to a request for rate reduction.

 (E) The commission’s determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record.

HISTORY: 1962 Code Section 58‑404; 1952 Code Section 58‑404; 1950 (46) 2466; 1983 Act No. 138 Section 3, eff June 15, 1983; 1989 Act No. 184, Section 3, eff June 8, 1989; 2006 Act No. 318, Section 45, eff May 24, 2006.

CROSS REFERENCES

Applications of provisions of this section to utility‑initiated rate changes, see Section 58‑9‑520.

Library References

Telecommunications 971, 973.

Westlaw Topic No. 372.

**SECTION 58‑9‑570.** Factors which Commission shall consider in determining rates.

 In determining just, reasonable and sufficient rates the Commission shall give due consideration to the telephone utility’s property devoted to the public service; the revenues received for the service; the reasonable operating expenses and other costs necessary to provide the service; the total earnings required for the proper discharge of the telephone utility’s public duty; the capitalization of the telephone utility and the net income required on its net worth; and such other matters, circumstances and conditions as the Commission may find necessary. But the rates so fixed shall not be higher than necessary to give a fair return to the stockholders.

HISTORY: 1962 Code Section 58‑407; 1952 Code Section 58‑407; 1950 (46) 2466.

Library References

Telecommunications 937, 964.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 74 to 79, 81 to 87.

NOTES OF DECISIONS

In general 1

Bonds 2

Debt 3

Losses 4

Property held for future use 5

Return on common equity 6

Review 9

Sufficiency of evidence 8

Wages 7

1. In general

In utility rate cases, the Public Service Commission (PSC) must adjust atypical test‑year figures in order to accurately perform calculations that affect the company’s overall rate of return and, ultimately, customer rates. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Public Utilities 122

It is the Public Service Commission’s duty to set rates that are just and reasonable; the just and reasonable rate is set by balancing the interests of the rate payers and the right of the utility to earn a fair return. South Carolina Cable Television Ass’n v. Public Service Com’n of South Carolina (S.C. 1993) 313 S.C. 48, 437 S.E.2d 38. Public Utilities 123

2. Bonds

Utility’s present rate of interest on long term bond issues is merely one item of cost of capital which is only one element of cost of doing business, and this item alone in and of itself does not prove confiscation as matter of law. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Telecommunications 943

3. Debt

Public service commission improperly determined cost of short term debt of telephone company, if cost figure used represented use of “spot date” such as March 31, 1976, since acceptance of such figure would have been arbitrary and capricious. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Public Utilities 128

4. Losses

Telephone company’s stipulation with Public Service Commission (PSC) and long‑distance carriers, that company would not come before PSC seeking relief from losses resulting from introduction of telephone company’s proposed optional service, precluded company, in subsequent rate‑making proceedings, from recognizing nearly $4.5 million in losses attributable to that optional service; fact that PSC, rather than company, initiated review of company’s earnings was irrelevant, as company would receive rate relief if it were allowed to recognize those losses. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Telecommunications 967

5. Property held for future use

Property held for future use by telephone company, if in fact bought in good faith for future utility use rather than for speculation, should properly be included in computing telephone company’s rate base. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278.

6. Return on common equity

In denying proposed rate increase public service commission properly observed that telephone company could achieve return on common equity which fell within the 8% to 11% range through cost reductions and improved efficiency, and such observation was not improper. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Telecommunications 964

7. Wages

Public service commission improperly refused to permit adjustment to be made in telephone company’s net operating income for increased wages where commission improperly determined adjustment on that ground would not materially affect its decision to refuse proposed rate increase. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278.

8. Sufficiency of evidence

Record in utility rate case did not support Public Service Commission’s (PSC) order setting telephone company’s rate of return on common equity at 12.75%; order simply recited economists’ conflicting testimony, mentioned established legal principles applied in rate cases, and then concluded that 12.75% was proper rate. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Telecommunications 964

Record in utility rate case did not support Public Service Commission’s (PSC) decision to include allowance for cash working capital of $10.4 million in telephone company’s rate base; Consumer Advocate presented evidence that, under lead‑lag method, company’s allowance for cash working capital should be set at zero because company billed most of its customers for services in advance, but PSC merely adhered to its past practice without attempting to explain that position, and PSC incorrectly stated that there was no such thing as negative cash working capital requirement. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Telecommunications 964

Record in telephone rate‑making case supported Public Service Commission’s (PSC) decision, in determining annualized salary and wage expenses, to rely on PSC staff’s recommended reduction of $5.2 million to reflect employee reductions, even though more recent data reflected further employee reductions, which Consumer Advocate claimed should result in additional reduction of $2.9 million; PSC’s order upon reconsideration revealed that PSC chose not to consider more recent data because it was unaudited. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Telecommunications 964

In determining amount of revenue generated by telephone company’s advertising subsidiary, for purposes of determining telephone company’s future rates, record did not support Public Service Commission’s (PSC) rejection of Consumer Advocate’s position that $6 million figure recommended by PSC staff for subsidiary’s test year income was abnormally low due to certain nonrecurring accounting adjustments made by subsidiary; operating loss for last month of that year was described as “extraordinary” by telephone company itself, which explained loss as related to downsizing of work force and technological improvements, among other things. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Telecommunications 964

Evidence supported public service commission order stating telephone company was entitled to return on common equity between 8% and 11%, and such order was neither capricious nor arbitrary. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Telecommunications 943; Telecommunications 964

9. Review

Court may not reverse commission determination of reasonable rate of return on common equity unless commission’s rate is so low as to force conclusion there is deprivation of property without due process of law. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Constitutional Law 4370

**SECTION 58‑9‑575.** Alternative means of regulating telephone utilities.

 (A) Notwithstanding the provisions of Section 58‑9‑570, in fixing rates and charges for a local exchange telephone utility, the commission may, upon the request of the telephone utility or upon motion of the Office of Regulatory Staff, consider in lieu of the procedures provided in this chapter, alternative means of regulating the telephone utility. If the commission determines that a local exchange telephone utility is subject to competition with respect to its services, the commission may implement regulatory alternatives including, but not limited to, equitable sharing of earnings between a local exchange telephone utility and its customers, consistent with the provisions of Section 58‑9‑330.

 (B) The commission shall review and may authorize implementation of an alternative regulatory plan under subsection (A) if it finds after notice and hearing that the substantial evidence of record shows that the plan:

 (1) is consistent with the public interest;

 (2) does not jeopardize the availability of reasonably affordable and reliable telecommunications services;

 (3) provides clearly identifiable benefits to consumers that are not otherwise available under existing regulatory procedures;

 (4) will reduce regulatory delay and costs;

 (5) provides adequate safeguards to consumers of telecommunications services, including other telecommunications companies, when such services are not readily available from alternative suppliers in the relevant geographic market;

 (6) includes effective safeguards to assure that rates for noncompetitive services do not subsidize the prices charged for competitive services. In determining whether a service is competitive, the commission shall consider, at a minimum, the availability, market share, and price of comparable service alternatives;

 (7) assures that rates for noncompetitive services are just, reasonable, or not unduly discriminatory and provide a contribution to basic local telephone service; and

 (8) does not jeopardize the ability of the telephone utility to provide quality, affordable telecommunications service.

 (C) The commission may, on the motion of the Office of Regulatory Staff or any interested party, review any decision adopting an alternative method of regulation for a local exchange telephone utility. After notice and opportunity to be heard and upon a showing by substantial evidence, the commission may impose regulatory standards consistent with the provisions of this chapter.

HISTORY: 1994 Act No. 347, Section 1, eff April 20, 1994; 2006 Act No. 318, Section 46, eff May 24, 2006.

Library References

Telecommunications 938, 968.

Westlaw Topic No. 372.

NOTES OF DECISIONS

Noncompetitive services 1

1. Noncompetitive services

Reference to “just” and “reasonable” rates for noncompetitive services in statute which requires that alternative regulation plan assure that rates for noncompetitive services are just, reasonable, or not unduly discriminatory and provide contribution to basic local telephone service, does not mean that price for noncompetitive service must be controlled by traditional rate‑of‑return standard; rather such reference merely requires Public Service Commission (PSC) to exercise particular scrutiny of rates for noncompetitive services. Porter v. South Carolina Public Service Com’n (S.C. 1999) 335 S.C. 157, 515 S.E.2d 923, rehearing denied. Telecommunications 947

Telephone utility’s consumer price protection plan, which was proposed as alternative means of regulation, failed to satisfy statute that requires separate evaluation of noncompetitive services, despite Public Service Commission’s (PSC) finding that all current rates had been previously approved, and that those rates were subject to specific caps under plan and would be further monitored by PSC; prices for “non‑basic” services, which might include some noncompetitive services, were not capped at current rates but could increase up to 20% annually. Porter v. South Carolina Public Service Com’n (S.C. 1999) 335 S.C. 157, 515 S.E.2d 923, rehearing denied. Telecommunications 947

Telephone utility’s consumer price protection plan, which was proposed as alternative means of regulation, was required to divide services into competitive and noncompetitive in order to ensure that prices for monopoly services did not subsidize prices for competitive services, even if utility’s general pricing rule requiring all prices to equal or exceed long‑run incremental cost (LRIC) of providing service assured there would be no cross‑subsidization; relevant statute indicated legislative intent that Public Service Commission (PSC) control cross‑subsidization by identifying which of regulated company’s services were competitive, and plan did not allow for type of oversight envisioned by legislature. Porter v. South Carolina Public Service Com’n (S.C. 1999) 335 S.C. 157, 515 S.E.2d 923, rehearing denied. Telecommunications 947

In determining whether local exchange telephone utility is “subject to competition” within meaning of statute permitting Public Service Commission (PSC) to implement regulatory alternatives if PSC determines that such utility is subject to competition with respect to its services, PUC must read that statute together with statute that enumerates factors to determine what services are competitive. Porter v. South Carolina Public Service Com’n (S.C. 1999) 335 S.C. 157, 515 S.E.2d 923, rehearing denied. Telecommunications 855

**SECTION 58‑9‑576.** Election by LEC (local exchange carrier); alternative forms of regulation; duties of LEC.

 (A) Any LEC may elect to have rates, terms, and conditions determined pursuant to the plan described in subsection (B), if the commission:

 (1) has approved a local interconnection agreement in which the LEC is a participant with an entity determined by the commission not to be affiliated with the LEC;

 (2) determines that another provider’s service competes with the LEC’s basic local exchange telephone service; or

 (3) determines that at least two wireless providers have coverage generally available in the LEC’s service area and that the providers are not affiliates of the LEC. A determination by the commission under subitem (3) of this subsection shall not constitute a determination under Section 58‑9‑280(E)(3) or (G)(1), or any other applicable provision of law, that a wireless provider is providing services that compete with a local telecommunications service in this State for purposes of participation in the state Universal Service Fund.

 (B) Notwithstanding any other provision of this chapter, effective July 1, 1996, any LEC may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection, in lieu of other forms of regulation including, but not limited to, rate of return or rate base monitoring or regulation, upon the filing of notice with the commission and providing a copy of any such notice to the Office of Regulatory Staff as follows:

 (1) If the provisions of subsection (A) have been complied with, the plan under this subsection becomes effective on the date specified by the electing LEC, but in no event sooner than thirty days after the notice is filed with the commission.

 (2) Except as provided in item (8), on the date a LEC notifies the commission of its intent to elect the plan described in this section, existing rates, terms, and conditions for the services provided by the electing LEC contained in the then‑existing tariffs and contracts are considered just and reasonable.

 (3) The rates for flat‑rated local exchange services for residential and single‑line business customers on the date of election shall be the maximum rates that the LEC may charge for these local exchange services for a period of two years from the date the election is filed with the commission. During this period, the local exchange company may charge less than the authorized maximum rates for these services. For those small LEC’s whose prices are below the statewide average local service rate, weighted by number of access lines, the commission shall waive the requirements of this paragraph until the time as the flat‑rated local exchange service rate for residential customers equals the statewide average local residential service rate, weighted by the number of access lines, and the flat‑rated local exchange service rate for single‑line business customers equals two times the statewide average local residential service rate.

 (4) For those companies to which item (3) applies, after the expiration of the period set forth above, the rates for flat‑rate local exchange residential and single‑line business service provided by a LEC may be adjusted on an annual basis pursuant to an inflation‑based index.

 (5) The LEC’s shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers. All of these rates are subject to a complaint process for abuse of market position. The commission shall resolve any complaint alleging abuse of market position within one hundred eighty days of the date the complaint is filed with the commission. Rates that exceed the total service long run incremental cost of an offering or that satisfy Section 58‑9‑280(I) do not constitute an “abuse of market position”. Other rates constitute an “abuse of market position” if they constitute any anticompetitive pricing action that prohibits a new firm from entering a market or that would cause a firm to exit a market. Additionally, during any given twelve‑month period, the aggregate increases in the tariffed rates for other services must not exceed five percent of the aggregate revenues from tariffed other services during the prior twelve‑month period.

 (6) A LEC subject to this section shall file tariffs in accordance with Section 58‑3‑140(F) for its local exchange services that set out the terms and conditions of the services and the rates for these services. The LEC also must provide a copy of the tariffs to the regulatory staff. The tariff shall be presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services.

 (7) Any incumbent LEC operating under an alternative regulatory plan approved by the commission before the effective date of this section must adhere to the plan until the plan expires or is terminated by the commission, whichever is sooner.

 (8) On the date a LEC notifies the commission of its intent to elect the plan described in this section under the criteria established by the provisions of subsection (A)(3), existing rates, terms, and conditions for the services provided by the electing LEC contained in the then‑existing tariffs and contracts are considered just and reasonable; however, a LEC’s election to be regulated pursuant to the plan described in this section under the criteria established by the provisions of subsection (A)(3) must not be used as the basis for dismissing or not adjudicating a pending complaint relating to the LEC’s rates, terms, or conditions.

 (C) Notwithstanding any other provision of this chapter, upon the effective date of this subsection, a LEC that is operating pursuant to subsection (B) based on having complied with subsection (A)(1) or (A)(2), or a LEC that complies with subsection (A)(1) or (A)(2), may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection. If at the time of this election the LEC is operating pursuant to subsection (B) based on having complied with subsection (A)(1) or (A)(2), the election becomes effective five days after the notice of the election is filed with the commission. Otherwise, the election becomes effective in the same manner as provided for in subsection (B)(1).

 (1) As used in this subsection:

 (a) “Single‑line basic residential service” means single‑line residential flat rate basic voice grade local service within a traditional local calling area that provides access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent).

 (b) “Stand‑alone basic residential line” means single‑line basic residential service that is billed on a billing account that does not also contain another service, feature, or product that is sold by the LEC or an affiliate of the LEC and that is billed on a recurring basis on the LEC’s bill.

 (c) “Preelection date” means the date immediately before the effective date of the LEC’s election under this subsection.

 (d) “LEC’s preelection state USF withdrawal” means the amount of annual distributions or payments the LEC receives from the state USF as of the preelection date.

 (e) “LEC’s state USF reduction” means an amount equal to twenty percent of the LEC’s preelection state USF withdrawal.

 (f) “LEC’s preelection Interim LEC fund withdrawal” means the amount of annual distributions or payments the LEC receives from the Interim LEC Fund as of the preelection date.

 (g) “LEC’s Interim LEC fund reduction” means twenty percent of the LEC’s preelection Interim LEC fund withdrawal.

 (h) “LEC” has the same meaning as provided for in Section 58‑9‑10(12).

 (2)(a) Beginning on the date that the LEC’s election, pursuant to this subsection, becomes effective, the LEC may increase its rates for its stand alone basic residential lines that were in service on the preelection date on an annual basis by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index, as reported by the United States Department of Labor, Bureau of Labor Statistics. If the customer of record for a stand alone basic residential line that was in service on the preelection date dies or moves from the residence, the provisions of this subitem will continue to apply to the stand alone basic residential line at the residence if a spouse, family member, or cotenant of that customer of record provides documentation showing that he resided at the location and requests to have the stand alone basic residential line continued in his name. With the sole exception of ensuring the LEC’s compliance with the preceding sentences, the commission must not:

 (i) impose any requirements related to the terms, conditions, rates, or availability of any of the LEC’s stand alone basic residential lines that were in service on the preelection date; or

 (ii) otherwise regulate any of the LEC’s stand alone basic residential lines that were in service on the preelection date.

 (b) Except as provided in subsection (C)(2)(c), for any LEC that elected to operate under Section 58‑9‑576(C) prior to January 1, 2016, the commission must not:

 (i) impose any requirements related to the terms, conditions, rates, or availability of any of the LEC’s stand alone basic residential lines that were in service on the preelection date; or

 (ii) otherwise regulate any of the LEC’s stand alone basic residential lines that were in service on the preelection date.

 (c)(i) As used in this subsection, “voice service” means retail service provided through any technology or service arrangement that includes the applicable functionalities described in 47 C.F.R. Section 54.101(a). Notwithstanding anything in subsection (C)(2)(b), the following provisions apply to each customer receiving a stand alone basic residential line from any LEC described in subsection (C)(2)(b), both on the preelection date and on the effective date of this subsubitem. For a period ending four years after the effective date of this subsubitem, if the customer cannot receive voice service from any provider through any technology at the customer’s residence where the customer received a stand alone basic residential line, the customer may file a request for service with the commission. Following an investigation by the commission, if the commission determines a reasonable request for service has been made and that no voice service is available to the customer, the commission may:

 (1) make a determination that the LEC is best able to provide voice service to the customer’s residence and it may order the LEC to provide the voice service to the customer’s residence. If ordered by the commission to provide voice service, the LEC shall do so directly or through an affiliate; or

 (2) conduct a competitive procurement process to identify a willing provider of voice service to provide voice service to the customer’s residence. The willing provider of voice service selected shall provide the voice service directly or through an affiliate.

 (ii) The LEC or willing provider of voice service may provide the voice service through any voice technology.

 (iii) Other than ordering the provision of voice service pursuant to this subsection, the commission may not regulate any aspect of the voice service. The commission shall issue a final order disposing of any request filed pursuant to this subsection within ninety days of the filing of the request, and all aspects of the commission’s order shall expire four years after the effective date of the order and may not be renewed.

 (iv) Before terminating service to a customer described in subsection (C)(2)(c) whose residence uses a stand alone basic residential line, the LEC described shall provide written notice to the customer informing him of his rights under this subsection. This written notice shall direct the customer where to file the request and include the commission’s contact information. The LEC shall provide this written notice at least ninety days prior to terminating service at the customer’s residence.

 (3) Except to the extent provided for in item (2), beginning on the date that the LEC’s election, pursuant to this subsection, becomes effective, the commission must not:

 (a) impose any requirements related to the terms, conditions, rates, or availability of any of the LEC’s retail services; or

 (b) otherwise regulate any of the LEC’s retail services, including without limitation any stand‑alone basic residential lines put into service after the preelection date.

 (4) Beginning on the date that the LEC’s election, pursuant to this subsection, becomes effective, the commission must not:

 (a) impose any requirements related to the terms, conditions, rates, or availability of any retail interexchange services offered by the LEC or any of its affiliated entities; or

 (b) otherwise regulate any of the retail interexchange services of the LEC or any of its affiliates.

 (5) Beginning on the date that the LEC’s election, pursuant to this subsection, becomes effective, the LEC is not required to file schedules as required by Section 58‑9‑230 for any of its billing and collection services. Nothing in this subsection otherwise diminishes, and nothing in this subsection expands the commission’s jurisdiction as it exists on the effective date of this subsection over wholesale services, including without limitation switched access services, carrier‑to‑carrier agreements, and carrier‑to‑carrier complaints regarding nonretail services.

 (6) A LEC’s election, pursuant to this subsection, does not affect obligations of an incumbent local exchange carrier, as defined by Section 251(h) of the federal Telecommunications Act of 1996, pursuant to Sections 251 and 252 of the federal act or any Federal Communications Commission regulation relating to Sections 251 and 252 of the federal act.

 (7) A LEC’s election, pursuant to the provisions of this subsection, does not affect the commission’s jurisdiction to enforce federal requirements on the LEC’s marketing activities. The commission must not adopt, impose, or enforce other requirements on the LEC’s marketing activities, including without limitation any requirements of Orders No. 2001‑1036 and 2002‑2 the South Carolina Public Service Commission entered in Docket No. 2000‑378C.

 (8) Nothing in this section affects the commission’s certification authority pursuant to Section 58‑9‑280 (A) or (B), or the commission’s authority under federal or state law to make appropriate determinations with respect to market entry or other matters in areas served by small LECs.

 (9) Nothing in this subsection affects any obligation of the LEC and its affiliates to provide contributions to the state USF and Interim LEC fund, and the commission must ensure that contributions to the state USF and Interim LEC fund, pursuant to the provisions of Section 58‑9‑280(E), (L), and (M), are maintained at appropriate levels.

 (a) For the one‑year period beginning on the date that the LEC’s election, pursuant to this subsection, becomes effective, the LEC is entitled to withdraw from the Interim LEC fund an amount equal to the LEC’s preelection Interim LEC fund withdrawal less the LEC’s Interim LEC fund reduction. For the subsequent one‑year period, the amount the LEC is entitled to withdraw from the Interim LEC fund is reduced by the LEC’s Interim LEC fund reduction. Beginning at the expiration of the second year after the date that the LEC’s election, pursuant to this subsection, becomes effective, the LEC is no longer entitled to withdraw any funds from the Interim LEC fund.

 (b) Except as otherwise provided in subitem (c) of this item, for the one‑year period beginning on the date that the LEC’s election, pursuant to this subsection, becomes effective, the LEC is entitled to withdraw from the state USF an amount equal to the LEC’s preelection state USF withdrawal less the LEC’s state USF reduction. For the subsequent one‑year period, the amount the LEC is entitled to withdraw from the state USF is reduced by the LEC’s state USF reduction amount. At the end of the second year after the date that the LEC’s election, pursuant to this subsection, becomes effective, the LEC is no longer entitled to withdraw any funds from the state USF.

 (c) Before the end of the second year after the date that the LEC’s election, pursuant to this subsection, becomes effective, the LEC may petition the commission to withdraw from the state USF an amount that differs from the amount determined pursuant to subitem (b) of this item. Upon the filing of this petition, the commission, after notice and opportunity for a hearing, must determine the amount of distributions or payments from the state USF the LEC is entitled to receive, based only on the LEC’s stand‑alone basic residential lines that were in service on the preelection date and that remain in service as of the date of the LEC’s petition. The commission also must establish a process for annually reducing the amount of distributions or payments from the state USF based on the LEC’s stand‑alone basic residential lines that were in service on the preelection date and that remain in service as of the adjustment date.

 (d) In addition to any amounts the LEC is entitled to withdraw pursuant to subitems (a), (b), and (c) of this item, the LEC also is entitled to withdraw from the state USF all amounts needed to fund any state Lifeline match that is necessary to ensure that persons enrolled in the Lifeline program receive the maximum federally funded Lifeline credit amounts available, including without limitation, federal baseline credit amounts and federal supplemental credit amounts.

 (10) For those LECs that have not elected to have rates, terms, and conditions for their services determined pursuant to the plan described in this subsection, the Interim LEC fund and state USF shall continue to operate in accordance with Sections 58‑9‑280(E), (L), and (M).

 (11) For those LECs that have not elected to operate under this section, nothing contained in this section or any subsection shall affect the current administration of the state USF nor does any provision thereof constitute a determination or suggestion that only stand‑alone basic residential lines should be entitled to support from the state USF.

 (12)(a) In order to transition to the changes effectuated by items (2), (3), and (4), the rates, terms, and conditions for products and services no longer subject to regulation by the commission, which were in effect with a specific term on the preelection date, remain in effect for the duration of the specific term as to customers who subscribed to those products or services on or before the preelection date. If no term applied to the products or services as of the preelection date, then the rates, terms, and conditions governing those products or services remain in effect until a written customer service agreement becomes effective as provided for in subitem (b) of this item.

 (b) Except as provided in subitem(a) of this item, the LEC and the LEC’s affiliates offering interexchange services must offer existing and new customers a written customer service agreement, which in the case of new customers must be delivered no later than thirty days after the initiation of service. The customer service agreement must include a provision advising the customer that he has thirty days from receipt in which to elect to:

 (i) terminate service with the LEC or the LEC’s affiliates offering interexchange services by contacting the entity within the thirty‑day time period, in which case the customer has the right to pay off the account in the same manner and under the same rates, terms, and conditions as set forth in the written customer service agreement provided to the customer, which written customer service agreement must relate back in its entirety to the date of a new customer’s request for service or the date the agreement was sent to an existing customer, as applicable, and is in effect until termination through pay off. The written customer service agreement must not impose termination charges, transfer charges, or similar charges or limitations that did not apply to the customer’s service on the preelection date; or

 (ii) use the services of the LEC or the LEC’s affiliates offering interexchange services, or to otherwise continue the account with the LEC or the LEC’s affiliates offering interexchange services after the thirty‑day time period has elapsed, either of which constitutes the customer’s assent to all the rates, terms, and conditions of the written customer service agreement. The written customer service agreement must not impose a term commitment, termination charges, transfer charges, or similar charges or limitations that did not apply to the customer’s service on the preelection date. The customer service agreement is deemed received three business days after deposit in the United States mail, first‑class delivery.

 (13) The LEC’s assessments pursuant to Sections 58‑3‑100, 58‑3‑540, and 58‑4‑60, and the assessments of the LEC’s affiliates offering interexchange services pursuant to Sections 58‑3‑100, 58‑3‑540, and 58‑4‑60, continue to be based upon gross income from operation in this State in the same manner as such assessments were calculated before the effective date of this subsection.

 (14) With respect to electing LECs, the Office of Regulatory Staff must maintain copies of all written complaints it receives regarding the following: (a) allegations regarding the inability of residential and business customers to obtain the functional equivalent of basic local exchange service; (b) allegations of anticompetitive practices; and (c) allegations regarding violations of contract terms and conditions by an electing LEC.

 (15) No later than five years from the effective date of this act and every five years following the submission of the first report, the Office of Regulatory Staff must submit to the General Assembly a report examining the effect of this act on residential and business consumers in areas served by the LECs that elect to operate under this subitem. These reports shall include details of any pattern or practice by the electing LEC of violating the terms and conditions of its contract with residential or commercial customers or engaging in anticompetitive activities. These reports must be based on all records in the possession of the Office of Regulatory Staff, including without limitation, information obtained by the Office of Regulatory Staff pursuant to Section 58‑4‑55. The reports must not disclose any proprietary or confidential information about individual providers.

 (16) When considered in the public interest by the Executive Director of the Office of Regulatory Staff, the Office of Regulatory Staff may file an action, in the name of the State and in any court of competent jurisdiction, against a LEC that elects to have its rates, terms, and conditions for its services determined pursuant to the plan described in Section 58‑9‑576(C), seeking to restrain by temporary restraining order, temporary injunction, or permanent injunction, a pattern or practice by the electing LEC of violating the terms and conditions of its contract with residential or business customers or of engaging in anticompetitive activities.

HISTORY: 1996 Act No. 354, Section 3, eff May 29, 1996; 2005 Act No. 5, Section 4, eff July 1, 2004 [subsections (B)(1) and (B)(4) to (7)] and October 1, 2004 [subsections (A) and (B)(2), (3) and (8)]; 2006 Act No. 318, Section 47, eff May 24, 2006; 2009 Act No. 7, Section 1, eff May 6, 2009; 2016 Act No. 181 (S.277), Sections 6, 9, eff May 25, 2016.

Effect of Amendment

2016 Act No. 181, Sections 6, 9, in (C)(1)(a), deleted “with touch tone” following “voice grade local service”; and rewrote (C)(2).

CROSS REFERENCES

Universal Service Fund, sum determination, contribution remittances and collections, fee retentions, distributions, see Section 58‑9‑280.

Library References

Telecommunications 938.

Westlaw Topic No. 372.

**SECTION 58‑9‑577.** Approval of alternative form of regulation; conditions and effect of approval.

 Notwithstanding Sections 58‑9‑575 and 58‑9‑576, any small LEC may elect to have the rates, terms, and conditions of its services determined pursuant to alternative forms of regulation, which may differ among companies and may include, but not be limited to, price regulation, rather than rate of return or other forms of earning regulation. Upon application filed with the commission and served upon the Office of Regulatory Staff, the commission shall approve such alternative regulation or price regulation, which may differ among local exchange companies, upon finding that the plan as proposed:

 (1) protects the affordability of basic local exchange telephone service, as such service is defined by the commission;

 (2) reasonably assures the continuation of basic local exchange telephone service that meets reasonable service standards that the commission may adopt;

 (3) will not unreasonably prejudice any class of telephone customers, including telecommunications companies;

 (4) is not inconsistent with the federal Telecommunications Act of 1996; and

 (5) is otherwise consistent with the public interest.

 Upon approval of a price regulation plan, price regulation shall be the sole form of regulation imposed upon the electing local exchange carrier, and the commission shall regulate the electing local exchange carrier’s prices rather than its earnings. The small LEC shall file a tariff with the commission for its local exchange services that sets out the terms and conditions of the services and the rates for these services. The small LEC also must provide a copy of the tariffs to the Office of Regulatory Staff. The tariff shall be presumed valid and shall become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services, subject to a process in accordance with guidelines to be adopted by the commission. The commission shall issue an order denying or approving the proposed plan for alternative regulation or price regulation, with or without modification, not more than ninety days from the filing of the application. However, the commission may extend the time period for an additional sixty days, in the discretion of the commission. If the commission approves the application with modifications, the local exchange carrier, subject to such approval, may accept the modifications and implement the proposed plan as modified or may at its option:

 (1) withdraw its application and continue to be regulated under the form of regulation that existed immediately before the filing of the application; or

 (2) file another proposed plan for price regulation.

HISTORY: 1996 Act No. 354, Section 3, eff May 29, 1996; 2006 Act No. 318, Section 48, eff May 24, 2006.

Library References

Telecommunications 938.

Westlaw Topic No. 372.

**SECTION 58‑9‑585.** Alternative means of regulating interexchange telecommunications carrier.

 (A) Notwithstanding any other provision of this chapter, the commission, on the request of an interexchange telecommunications carrier, may consider, in lieu of the procedures outlined in this chapter, alternative means of regulating that carrier. If the commission first determines, after notice and hearing, that the substantial evidence of record shows that a particular service is competitive in the relevant geographic market, the commission may implement regulatory alternatives including, but not limited to, the provisions outlined in this section.

 (B) If the commission determines that an interexchange telecommunications carrier service is competitive, the commission shall not fix or prescribe the rates, tolls, charges, or rate structures for that service. In determining whether a service is competitive, the commission shall consider, at a minimum, the availability, market share, and price of comparable service alternatives. The commission shall require that the interexchange telecommunications carriers file with the commission and maintain with the Office of Regulatory Staff price lists for competitive telecommunications services.

 (C) The commission is authorized to reclassify a telecommunications service provided by an interexchange carrier as noncompetitive if, after notice and hearing, the substantial evidence of record shows that sufficient competition does not exist for that service.

 (D) For an interexchange telecommunications carrier service found to be noncompetitive, the commission may implement other regulatory alternatives including, but not limited to, price caps.

 (E) Nothing in this section limits any authority of the commission or the Office of Regulatory Staff with respect to the reporting requirements of interexchange telecommunications carriers to establish standards for the quality of service, resolution of complaints, privacy, and the ordering, installation, restoration, and disconnection of interexchange service.

 (F) For the purposes of this section, the term “interexchange telecommunications carrier service” is limited to toll services provided by telephone utilities.

HISTORY: 1994 Act No. 332, Section 1, eff April 20, 1994; 2006 Act No. 318, Section 49, eff May 24, 2006.

Library References

Telecommunications 624.

Westlaw Topic No. 372.

NOTES OF DECISIONS

In general 1

Notice 2

1. In general

Public Service Commission (PSC) had statutory authority to remove price caps for certain of interexchange telecommunications carrier’s (IXC) services after determining that carrier had failed to prove that services were “competitive” within meaning of statute prohibiting price caps for competitive services; another portion of statute, which allowed Commission to implement regulatory alternatives for noncompetitive services, and statutes vesting Commission with general rate powers over telephone utilities authorized Commission to remove price caps. Porter v. South Carolina Public Service Com’n (S.C. 1997) 327 S.C. 220, 489 S.E.2d 467. Telecommunications 950

2. Notice

Interexchange telecommunications carrier’s (IXC) petition requesting removal of price caps for certain of its services was sufficient to put Consumer Advocate on notice that modification of Public Service Commission’s (PSC) prior order setting forth price caps for interexchange telecommunications carriers would be required if price caps were removed and, thus, requirement of notice before Commission modification of its order was met, despite carrier’s failure to specifically plead modification of prior order; although it requested relief under statute governing alternative means of regulation, petition clearly requested removal of price caps. Porter v. South Carolina Public Service Com’n (S.C. 1997) 327 S.C. 220, 489 S.E.2d 467. Telecommunications 870(1)

ARTICLE 7

Telephone Companies ‑ Powers of Commission Generally

**SECTION 58‑9‑710.** Orders for more reasonable, adequate and efficient service.

 Whenever the commission, after hearing, finds that the service of any telephone utility is not reasonably adequate and efficient, the commission shall make its findings and issue an order thereon requiring such telephone utility to provide reasonable, adequate, and efficient service.

HISTORY: 1962 Code Section 58‑421; 1952 Code Section 58‑421; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 751, 898.

Westlaw Topic No. 372.

**SECTION 58‑9‑720.** Miscellaneous regulations.

 The commission may ascertain and fix just and reasonable classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all telephone utilities, prescribe reasonable regulations for the examination and testing of such service and for the measurement thereof, establish or approve reasonable rules, regulations, specifications, and standards and provide for the examination and testing of any and all appliances used for the service of any telephone utility.

HISTORY: 1962 Code Section 58‑422; 1952 Code Section 58‑422; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 751, 850.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 52 to 56, 103.

NOTES OF DECISIONS

In general 1

1. In general

Public Service Commission (PSC) had statutory authority to remove price caps for certain of interexchange telecommunications carrier’s (IXC) services after determining that carrier had failed to prove that services were “competitive” within meaning of statute prohibiting price caps for competitive services; another portion of statute, which allowed Commission to implement regulatory alternatives for noncompetitive services, and statutes vesting Commission with general rate powers over telephone utilities authorized Commission to remove price caps. Porter v. South Carolina Public Service Com’n (S.C. 1997) 327 S.C. 220, 489 S.E.2d 467. Telecommunications 950

**SECTION 58‑9‑730.** Fixing value of utility.

 The commission may after hearing ascertain and fix the value of the whole or any part of the property of any telephone utility insofar as it is material to the exercise of the jurisdiction of the commission.

HISTORY: 1962 Code Section 58‑423; 1952 Code Section 58‑423; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 753.

Westlaw Topic No. 372.

**SECTION 58‑9‑740.** Reparation orders.

 When petition has been made to the commission concerning any rate or charge for service performed by any telephone utility, and the commission has found after hearing that the telephone utility has charged an unreasonable, excessive, or discriminatory amount for such service, the commission may order that the telephone utility make due reparation to the petitioner therefor, with interest from the date of collection, if such reparation will not result in establishing unreasonable discrimination. No order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate or charge in question has been authorized by law. All petitions concerning unreasonable, excessive, or discriminatory charges on which reparation orders may be made shall be filed with the commission and provided to the Office of Regulatory Staff within two years from the time the cause of action accrues. No assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in case of death, insanity, bankruptcy, receivership, or order of court. The commission must not be a party to any reparation action.

 The remedy in this section provided shall be cumulative and in addition to any other remedy in Articles 1 through 13 of this chapter provided in case of failure of a telephone utility to obey an order or decision of the commission.

HISTORY: 1962 Code Section 58‑424; 1952 Code Section 58‑424; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 973, 997(3).

Westlaw Topic No. 372.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 49, Public Utilities and Transportation.

S.C. Jur. Telecommunications Section 6, Types of Franchises Granted.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Under Section 58‑9‑740, the Public Service Commission may order reparation for unreasonable, excessive, or discriminatory charges made by a telephone company and under this section, a complaint must be made to the PSC within two years from the accrual of the cause of action. Tunstall v. United Telephone Co., Inc. (S.C. 1985) 283 S.C. 588, 325 S.E.2d 61.

2. Review

A telephone company’s rate increase application should have been remanded to the Public Service Commission with instructions to order the company to refund with interest the monies collected pursuant to the illegally approved order, where the Supreme Court had “reversed” the circuit court’s order affirming the commission’s order granting the increase, and had found that a remand for the purpose of making findings of fact was unnecessary as there was no factual basis in the record which the commission could point to in support of its decision; returning the case to the commission for it to act in accordance with the opinion of the Supreme Court would have been the only reasonable interpretation of the law. Hamm v. Southern Bell Tel. & Tel. Co. (S.C. 1991) 305 S.C. 1, 406 S.E.2d 157.

**SECTION 58‑9‑750.** Suit to enforce reparation order.

 If the telephone utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover such reparation and upon trial of such suit a duly certified copy of the order of the commission shall be prima facie evidence of the facts therein set forth. The suit for enforcement of the order shall be commenced in the court within one year from the date of the order of the commission.

HISTORY: 1962 Code Section 58‑425; 1952 Code Section 58‑425; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 997(3).

Westlaw Topic No. 372.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 49, Public Utilities and Transportation.

**SECTION 58‑9‑760.** Joint investigations, hearings and orders with other state or Federal boards or commissions.

 The commission may hold joint hearings and issue joint or concurrent orders in conjunction or concurrence with any official board or commission of any state or of the United States. The Office of Regulatory Staff may make joint investigations with any official board or commission of any state or of the United States.

HISTORY: 1962 Code Section 58‑426; 1952 Code Section 58‑426; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 751.

Westlaw Topic No. 372.

**SECTION 58‑9‑770.** Suits to discontinue or prevent violation of law or order.

 Whenever it shall appear that any telephone utility is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the commission or is doing anything, or about to do anything, or permitting anything, or about to permit anything, to be done contrary to or in violation of law or of any order of the commission, an action or proceeding shall be prosecuted by the regulatory staff in any court of competent jurisdiction in the name of the Office of Regulatory Staff or the State for the purpose of having such violation or threatened violation discontinued or prevented, either by mandamus, injunction, or other appropriate relief and in such action or proceeding it shall be permissible to join such other persons or corporations as parties thereto as may be reasonably necessary to make the order of the court in all respects effective.

HISTORY: 1962 Code Section 58‑427; 1952 Code Section 58‑427; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 900, 975.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 12, 14, 91 to 92.

**SECTION 58‑9‑780.** Investigations.

 The Office of Regulatory Staff may, whenever it may be appropriate in the performance of its duties, investigate and examine the condition and operation of telephone utilities or any particular telephone utility.

HISTORY: 1962 Code Section 58‑428; 1952 Code Section 58‑428; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 751, 896, 969.

Westlaw Topic No. 372.

**SECTION 58‑9‑790.** Inspections of property; audits of records; examinations of officers and employees.

 The Office of Regulatory Staff may, after due notice to officers or managers of the company, inspect the property, plant, and facilities of any telephone utility at any and all times and inspect or audit at reasonable times the accounts, books, papers, and documents of any telephone utility. For such purposes an officer, employee, or agent of the Office of Regulatory Staff may during all reasonable hours enter upon any premises occupied by or under the control of any telephone utility. An officer, employee, or agent of the Office of Regulatory Staff authorized to administer oaths may examine under oath any officer, agent, or employee of such telephone utility in relation to the business and affairs of such telephone utility, but written record of the testimony or statement must be given under oath.

HISTORY: 1962 Code Section 58‑429; 1952 Code Section 58‑429; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 751, 896, 969.

Westlaw Topic No. 372.

**SECTION 58‑9‑800.** Inspection and copying of tax returns, reports and other information.

 In the performance of its duties under Articles 1 through 13 of this chapter, any employee or agent of the Office of Regulatory Staff may inspect or make copies of all income, property, or other tax returns, reports or other information filed by telephone utilities with or otherwise obtained by any other department, commission, board, or agency of the state government and all such other departments, commissions, boards, or agencies of the state government shall permit such inspection or the making of such copies.

HISTORY: 1962 Code Section 58‑430; 1952 Code Section 58‑430; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 751, 896, 969.

Westlaw Topic No. 372.

**SECTION 58‑9‑810.** Promulgation of rules and regulations.

 The commission may make such rules and regulations not inconsistent with law as may be proper in the exercise of its powers or for the performance of the duties set forth in Articles 1 through 13 of this chapter, all of which shall have the force of law.

HISTORY: 1962 Code Section 58‑431; 1952 Code Section 58‑431; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

CROSS REFERENCES

Public Service Commission regulations pertaining to telecommunications utilities, see S.C. Code of Regulations R. 103‑600 et seq.

Library References

Telecommunications 756.

Westlaw Topic No. 372.

**SECTION 58‑9‑820.** Enforcement powers generally.

 In addition to the foregoing expressly enumerated powers, the commission shall carry out by its order, ruling, or regulation and the Office of Regulatory Staff shall enforce, execute, and administer the provisions of Articles 1 through 13 of this chapter relating to the powers, duties, limitations, and restrictions imposed upon telephone utilities by Articles 1 through 13 of this chapter or any other provisions of the law of this State regulating telephone utilities.

HISTORY: 1962 Code Section 58‑432; 1952 Code Section 58‑432; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 751.

Westlaw Topic No. 372.

**SECTION 58‑9‑830.** Enumeration of powers not exclusive.

 The enumeration of the powers of the commission as herein set forth shall not be construed to exclude the exercise of any power which the commission would otherwise have under the provisions of law.

HISTORY: 1962 Code Section 58‑433; 1952 Code Section 58‑433; 1950 (46) 2466; 2006 Act No. 318, Section 50, eff May 24, 2006.

Library References

Telecommunications 751.

Westlaw Topic No. 372.

ARTICLE 9

Telephone Companies ‑ Commission Hearings, Investigations and Proceedings

**SECTION 58‑9‑1010.** Hearing before one or more commissioners; approval of determination, ruling or order.

 Any hearing which the commission has power to hold, except matters pertaining to rate changes, may be held before any one or more of the commissioners, upon condition, however, that such commissioner or commissioners shall have been authorized by the commission to hold such hearing. Each hearing before any such commissioner or commissioners shall be deemed to be the hearing of the commission. Any determination, ruling, or order of a commissioner or commissioners, upon any such hearing held by him or them shall not become effective until due notice has been given to the commission and the Office of Regulatory Staff and it has been approved and confirmed by at least a quorum of the commission and ordered to be filed in its office with a copy to the Office of Regulatory Staff and any determination, ruling, or order involving the fixing or regulation of a general schedule of rates shall not become effective until due notice has been given the telephone utility concerned and an opportunity has been given the utility and the Office of Regulatory Staff to be heard before at least a quorum of the commission, and the determination, ruling, or order has been approved and confirmed by, at least a quorum of the commission. Upon such confirmation and order, such determination, ruling, or order shall be the determination, ruling, or order of the commission.

HISTORY: 1962 Code Section 58‑441; 1952 Code Section 58‑441; 1950 (46) 2466; 2006 Act No. 318, Section 51, eff May 24, 2006.

Library References

Telecommunications 803, 897.

Westlaw Topic No. 372.

**SECTION 58‑9‑1020.** Employment and duties of special agent or examiner.

 In any hearing the commission may employ a special agent or examiner, who may administer oaths, examine witnesses consistent with the Judicial Code of Conduct, and receive evidence in any locality which the commission, having regard to the public convenience and the proper discharge of its functions and duties, may designate. The testimony and evidence so taken or received shall have the same force and effect as if taken or received by the commission or any one or more of the commissioners as provided in Section 58‑9‑1010. But any hearing involving rates of any telephone utility shall be held before a majority of the full commission.

HISTORY: 1962 Code Section 58‑442; 1952 Code Section 58‑442; 1950 (46) 2466; 2006 Act No. 318, Section 52, eff May 24, 2006.

Library References

Telecommunications 803, 897.

Westlaw Topic No. 372.

**SECTION 58‑9‑1030.** Administration of oaths, examination of witnesses and certification of official acts.

 Each of the commissioners, for the purposes mentioned in Articles 1 through 13 of this chapter, may administer oaths, examine witnesses, and certify official acts.

HISTORY: 1962 Code Section 58‑443; 1952 Code Section 58‑443; 1950 (46) 2466; 2006 Act No. 318, Section 53, eff May 24, 2006.

Library References

Telecommunications 803, 897.

Westlaw Topic No. 372.

**SECTION 58‑9‑1040.** Issuance of subpoenas and other process.

 The commission and each commissioner may issue subpoenas, subpoenas duces tecum, and all other necessary processes in proceedings pending before it and these processes extend to all parts of the State and may be served by any person authorized by law to serve processes.

HISTORY: 1962 Code Section 58‑444; 1952 Code Section 58‑444; 1950 (46) 2466; 2006 Act No. 318, Section 54, eff May 24, 2006.

Library References

Telecommunications 803, 897.

Westlaw Topic No. 372.

**SECTION 58‑9‑1050.** Self‑incrimination; immunity.

 No person shall be excused from testifying or from producing any book, document, paper, or account in any hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture. But no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for or on account of any act, transaction, matter, or thing concerning which he shall have been compelled under oath to testify or produce documentary evidence, except that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

HISTORY: 1962 Code Section 58‑445; 1952 Code Section 58‑445; 1950 (46) 2466; 2006 Act No. 318, Section 55, eff May 24, 2006.

Library References

Witnesses 293.5.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 590 to 592, 594 to 595.

**SECTION 58‑9‑1060.** Taking of depositions.

 The Office of Regulatory Staff or any party to any proceedings before the commission may, in any hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for taking depositions in civil actions in the courts of this State.

HISTORY: 1962 Code Section 58‑446; 1952 Code Section 58‑446; 1950 (46) 2466; 2006 Act No. 318, Section 56, eff May 24, 2006.

Library References

Telecommunications 896, 897, 969.

Westlaw Topic No. 372.

**SECTION 58‑9‑1070.** Production of books and other records.

 The commission or Office of Regulatory Staff may require the production within this State at such time and place as it may designate of any books, accounts, papers, or records of the telephone utility relating to its business or affairs within the State, pertinent to any lawful inquiry and kept by the telephone utility in any office or place within or without this State or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the Office of Regulatory Staff or under its direction.

HISTORY: 1962 Code Section 58‑447; 1952 Code Section 58‑447; 1950 (46) 2466; 2006 Act No. 318, Section 57, eff May 24, 2006.

Library References

Telecommunications 897, 969.

Westlaw Topic No. 372.

**SECTION 58‑9‑1080.** Filing of petitions.

 The Office of Regulatory Staff or any person or corporation having an interest in the subject matter, including any telephone utility concerned, may petition in writing to the commission, setting forth any act or thing done or omitted to be done by any telephone utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer or of any order or rule of the commission.

HISTORY: 1962 Code Section 58‑448; 1952 Code Section 58‑448; 1950 (46) 2466; 2006 Act No. 318, Section 58, eff May 24, 2006.

Library References

Telecommunications 894, 967.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 88 to 89.

**SECTION 58‑9‑1090.** Service of petition.

 Upon the filing of a petition pursuant to Section 58‑9‑1080, the commission shall cause a copy thereof to be served upon the person, corporation, or telephone utility complained of.

HISTORY: 1962 Code Section 58‑449; 1952 Code Section 58‑449; 1950 (46) 2466; 2006 Act No. 318, Section 59, eff May 24, 2006.

Library References

Telecommunications 895, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1100.** Service of pleadings or notices.

 Service of all pleadings or notices in all hearings and proceedings pending before the commission, except service of the processes provided for by Section 58‑9‑1040, may be made personally or by mail as the commission may direct.

HISTORY: 1962 Code Section 58‑450; 1952 Code Section 58‑450; 1950 (46) 2466; 2006 Act No. 318, Section 60, eff May 24, 2006.

Library References

Telecommunications 895, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1110.** Dismissal of petition without hearing.

 The commission may dismiss any petition filed pursuant to Section 58‑9‑1080 without a hearing if in its opinion a hearing is not necessary in the public interest or for the protection of substantial rights.

HISTORY: 1962 Code Section 58‑451; 1952 Code Section 58‑451; 1950 (46) 2466; 2006 Act No. 318, Section 61, eff May 24, 2006.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1120.** Types of hearings.

 The commission may, in addition to the hearings specifically provided for by Articles 1 through 13 of this chapter, conduct such other hearings as may be required in the administration of the powers and duties conferred by Articles 1 through 13 of this chapter and by other laws relating to telephone utilities.

HISTORY: 1962 Code Section 58‑452; 1952 Code Section 58‑452; 1950 (46) 2466; 2006 Act No. 318, Section 62, eff May 24, 2006.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1130.** Conduct of hearings and proceedings.

 All commission hearings and proceedings shall be governed by law and by rules of practice and procedure adopted by the commission.

HISTORY: 1962 Code Section 58‑453; 1952 Code Section 58‑453; 1950 (46) 2466; 2006 Act No. 318, Section 63, eff May 24, 2006.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1140.** Time and place of hearing; notice.

 The Commission shall fix the time and place of all hearings, if any is required, and shall serve notice thereof not less than twenty days before the time set for such hearing, unless the Commission shall find that public necessity requires that such hearing be held at an earlier date, in which event the notice shall be reasonable in view of all the circumstances.

HISTORY: 1962 Code Section 58‑454; 1952 Code Section 58‑454; 1950 (46) 2466.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1150.** Parties who may participate in hearings.

 At the time fixed for any hearing before the commission or a commissioner or the time to which such hearing may have been continued, the complainant, the Office of Regulatory Staff, and the person, corporation, or telephone utility complained of shall be entitled in person or by attorney to be heard and to introduce evidence.

HISTORY: 1962 Code Section 58‑455; 1952 Code Section 58‑455; 1950 (46) 2466; 2006 Act No. 318, Section 64, eff May 24, 2006.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1160.** Findings and orders; sufficiency; service.

 After the conclusion of a hearing, the commission shall make and file its findings and order with its opinion, if any. Its findings shall be in sufficient detail to enable a court on review to determine the controverted question presented by the proceeding and whether proper weight was given to the evidence. A copy of the order, certified under the seal of the commission, shall be served either personally or by registered mail upon the person, corporation, or telephone utility against whom it runs, or his or its attorney and the Office of Regulatory Staff, and notice thereof shall be given either personally or by mail to the other parties to the proceedings or their attorneys.

HISTORY: 1962 Code Section 58‑456; 1952 Code Section 58‑456; 1950 (46) 2466; 2006 Act No. 318, Section 65, eff May 24, 2006.

Library References

Telecommunications 898, 973.

Westlaw Topic No. 372.

NOTES OF DECISIONS

In general 1

1. In general

An administrative body must make findings which are sufficiently detailed to enable the Supreme Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings; overruling Greyhound Lines, Inc. v. South Carolina Pub. Serv. Comm’n, 274 S.C. 168, 262 S.E.2d 22, Atlantic Coast Line R.R. Co. v. South Carolina Pub. Serv. Comm’n, 245 S.C. 229, 139 S.E.2d 911, Hamm v. South Carolina Pub. Serv. Comm’n, 315 S.C. 119, 432 S.E.2d 454, and Hamm v. American Tel. & Tel. Co., 302 S.C. 210, 394 S.E.2d 842. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Administrative Law And Procedure 486

An administrative agency is not required to present its findings of fact and reasoning in any particular format, although the better practice is to present them in an organized and regimented manner. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Administrative Law And Procedure 484.1; Administrative Law And Procedure 507

An administrative agency’s recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues. Porter v. South Carolina Public Service Com’n (S.C. 1998) 333 S.C. 12, 507 S.E.2d 328. Administrative Law And Procedure 486

Where Commission found that telephone company presented evidence supporting a fair rate of return on a rate base of 9.72 percent but concluded that a fair rate of return on the rate base should be fixed at 8.57 percent, it was the duty of the Commission to make specific and definite findings from the evidence to support its conclusion that 8.57 percent was a fair rate of return on the rate base. United Tel. Co. of Carolinas v. South Carolina Public Service Commission (S.C. 1975) 264 S.C. 212, 213 S.E.2d 738.

**SECTION 58‑9‑1170.** Effective date of order.

 The order shall take effect and become operative twenty days after the service thereof, unless otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or revoked by the Commission. If an order cannot, in the judgment of the Commission, be complied with within twenty days, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order and may, on application and for good cause shown, extend the time for compliance fixed in its order.

HISTORY: 1962 Code Section 58‑457; 1952 Code Section 58‑457; 1950 (46) 2466.

Library References

Telecommunications 898, 973.

Westlaw Topic No. 372.

**SECTION 58‑9‑1180.** Rescission or amendment of orders or decisions.

 The Commission may at any time, except in those cases provided for in Section 58‑9‑1200, after notice and after opportunity to be heard as provided in the case of compliance, rescind or amend any order or decision made by it. Any order rescinding or amending a prior order or decision, after notice thereof, either personal or by mail, is given to the telephone utility affected and to the other parties to the proceedings, shall have the same effect as is herein provided for original orders or decisions, but no such order shall affect the legality or validity of any acts done pursuant to the original order before service of notice of such change.

HISTORY: 1962 Code Section 58‑458; 1952 Code Section 58‑458; 1950 (46) 2466.

Library References

Telecommunications 898, 973.

Westlaw Topic No. 372.

NOTES OF DECISIONS

In general 1

1. In general

Public Service Commission could properly issue order which retroactively rescinded previous orders by requiring that all interexchange carriers (IXC) file modified surveillance reports on a streamlined basis beginning four years previous to time at which order was issued; modification and allowance of noncomplying IXC’s to file information for prior years on a modified basis was not an impermissible retroactive ratemaking type activity, but an administrative, discretionary decision relating to filing of information as required by the Commission for its own purpose. Code 1976, Sections 58‑9‑370, 58‑9‑1180. Hamm v. American Tel. & Tel. Co. (S.C. 1990) 302 S.C. 210, 394 S.E.2d 842. Telecommunications 969

**SECTION 58‑9‑1190.** Record of proceedings.

 A full and complete record shall be kept of all proceedings had before the Commission or any commissioner on any formal hearing and all testimony shall be taken down by a reporter appointed by the Commission.

HISTORY: 1962 Code Section 58‑459; 1952 Code Section 58‑459; 1950 (46) 2466.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1200.** Rehearings.

 After an order or decision has been made by the Commission, any party to the proceedings may within ten days after service of notice of the entry of the order or decision apply for a rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing and the Commission may, in case it appears to it to be proper, grant and hold such rehearing. The Commission shall either grant or refuse an application for a rehearing within twenty days and a failure by the Commission to act upon such application within that period shall be deemed a refusal thereof. If the application be granted the Commission’s order shall be deemed vacated and the Commission shall enter a new order after the rehearing has been concluded.

HISTORY: 1962 Code Section 58‑460; 1952 Code Section 58‑460; 1950 (46) 2466.

Library References

Telecommunications 897, 972.

Westlaw Topic No. 372.

NOTES OF DECISIONS

In general 1

1. In general

Interexchange telecommunications carrier’s (IXC) petition requesting removal of price caps for certain of its services was sufficient to put Consumer Advocate on notice that modification of Public Service Commission’s (PSC) prior order setting forth price caps for interexchange telecommunications carriers would be required if price caps were removed and, thus, requirement of notice before Commission modification of its order was met, despite carrier’s failure to specifically plead modification of prior order; although it requested relief under statute governing alternative means of regulation, petition clearly requested removal of price caps. Porter v. South Carolina Public Service Com’n (S.C. 1997) 327 S.C. 220, 489 S.E.2d 467. Telecommunications 870(1)

**SECTION 58‑9‑1210.** Contempt of Commission.

 In case of failure on the part of any person to comply with any lawful order of the Commission or of any commissioner or with any subpoena or subpoenas duces tecum or in case of the refusal of any witness to testify concerning any matter on which he may be interrogated lawfully, any court of record of general jurisdiction, or a judge thereof, may on application of the Commission or of a commissioner compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

HISTORY: 1962 Code Section 58‑461; 1952 Code Section 58‑461; 1950 (46) 2466.

Library References

Public Utilities 172.

Westlaw Topic No. 317A.

C.J.S. Public Utilities Sections 110, 242.

**SECTION 58‑9‑1220.** Fees and mileage allowances of witnesses and officers.

 Witnesses who are summoned before the Commission, a special agent or an examiner shall be paid by the party at whose instance they are summoned the same fees and mileages as are paid to witnesses in the courts of common pleas of this State and witnesses whose depositions are taken pursuant to the provisions of Articles 1 through 13 of this chapter and the officer taking them shall be entitled to be paid by the party at whose instance the deposition is taken the same fees as are paid for like services in the courts of common pleas of this State.

HISTORY: 1962 Code Section 58‑463; 1952 Code Section 58‑463; 1950 (46) 2466.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1230.** Certified copies of documents and orders as evidence.

 Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the chief clerk of the commission under its official seal to be true copies of the original, shall be evidence in like manner as the originals in all matters before the commission and in the courts of this State. The commission may prescribe reasonable charges to be paid for furnishing authenticated copies of such documents and orders. Copies of documents that are not filed with the commission but are deposited with the Office of Regulatory Staff may be certified by the Executive Director of the Office of Regulatory Staff under its official seal to be true copies of the original and shall be evidence in like manner as the originals in all matters before the commission and in the courts of this State. The Office of Regulatory Staff may prescribe reasonable charges to be paid for furnishing authenticated copies of such documents.

HISTORY: 1962 Code Section 58‑464; 1952 Code Section 58‑464; 1950 (46) 2466; 2006 Act No. 318, Section 66, eff May 24, 2006.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

**SECTION 58‑9‑1240.** Rules governing pleadings, practice and procedure.

 The Commission may prescribe rules governing pleadings, practice and procedure before it not inconsistent with the provisions of Articles 1 through 13 of this chapter or any other provisions of law.

HISTORY: 1962 Code Section 58‑462; 1952 Code Section 58‑462; 1950 (46) 2466.

Library References

Telecommunications 897, 971.

Westlaw Topic No. 372.

ARTICLE 11

Telephone Companies ‑ Review of Commission Orders

**SECTION 58‑9‑1410.** Appeals; vacating or setting aside order of commission.

 A party in interest dissatisfied with an order of the commission may appeal to the Supreme Court or court of appeals as provided by statute and the South Carolina Appellate Court Rules. No right of appeal accrues to vacate or set aside, either in whole or in part, an order of the commission except an order on a rehearing, unless a petition to the commission for a rehearing is filed and refused or considered refused because of the commission’s failure to act within twenty days. The commission must not be named as a party to an action.

HISTORY: 1962 Code Section 58‑471; 1952 Code Section 58‑471; 1950 (46) 2466; 2006 Act No. 318, Section 67, eff May 24, 2006; 2006 Act No. 387, Section 41, eff July 1, 2006.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Library References

Telecommunications 899, 974.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 12 to 14, 57, 91 to 97.

NOTES OF DECISIONS

In general 1

Limitation of actions 2

1. In general

Findings of Public Service Commission are presumptively correct and order of commission will not be set aside except upon convincing showing that it is not supported by evidence, or that it embodies arbitrary or capricious action as matter of law. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Public Utilities 187

Scope of review of rates set by public service commission is limited; court may not set aside order of commission except on convincing showing that it is without evidentiary support or that it is arbitrary or capricious as a matter of law, even if court might have found different rate of return to be fair and reasonable. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Public Utilities 187

2. Limitation of actions

Since action is commenced under Code 1962 Section 58‑124 [Code 1976 Section 58‑3‑340] upon service of summons, and since said Section 58‑124 is the apparent precursor of Code 1962 Section 58‑471 [Code 1976 Section 58‑9‑1410], an action is likewise commenced for the purpose of the latter statute by service of summons, and therefore the 30‑day limitation period provided in Code 1962 Section 58‑472 [Code 1976 Section 58‑9‑1420] begins to run on the date summons is served. Morris Communications, Inc. v. South Carolina Public Service Commission (S.C. 1976) 267 S.C. 207, 226 S.E.2d 892.

Action under Code 1962 Section 58‑471 [Code 1976 Section 58‑9‑1410] to vacate and set aside order of public service commission granting certificate of convenience and necessity to operate a mobile telephone service was deemed commenced by service of summons, and thus failure of party to follow this procedure within 30 days from service of the commission’s order as provided in Code 1962 Section 58‑472 [Code 1976 Section 58‑9‑1420] deprived court of jurisdiction. Morris Communications, Inc. v. South Carolina Public Service Commission (S.C. 1976) 267 S.C. 207, 226 S.E.2d 892.

**SECTION 58‑9‑1430.** Stay or suspension of order pending review.

 The pendency of proceedings to review shall not of itself stay or suspend the operation of the order of the Commission, but during the pendency of such proceedings the court, upon reasonable notice and after hearing, in its discretion may stay or suspend, either in whole or in part, the operation of the Commission’s order on such terms as it deems just and in accordance with the practice of the court. Any party may secure from the court in which the review of the order of the Commission is in good faith sought an order suspending or staying the operation of the order of the Commission, pending a review of such order, by adequately securing all persons or corporations who will be affected by such suspension or stay against loss due to the delay in the enforcement of the order, in case the order under review is affirmed, the security to be approved and to be in such form and amount as shall be directed by the court granting the stay or suspension.

HISTORY: 1962 Code Section 58‑473; 1952 Code Section 58‑473; 1950 (46) 2466.

**SECTION 58‑9‑1450.** Commission’s orders presumed lawful and reasonable.

 All orders of the Commission shall be deemed prima facie just and reasonable and in all actions and proceedings arising under Articles 1 through 13 of this chapter or growing out of the exercise of the powers herein granted to the Commission the burden of proof shall be on the party attacking any order of the Commission to show that the order is unlawful or unreasonable.

HISTORY: 1962 Code Section 58‑475; 1952 Code Section 58‑475; 1950 (46) 2466.

Library References

Telecommunications 910, 986.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 13, 94 to 95.

NOTES OF DECISIONS

In general 1

1. In general

Evidence supported public service commission order stating telephone company was entitled to return on common equity between 8% and 11%, and such order was neither capricious nor arbitrary. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Telecommunications 943; Telecommunications 964

In denying proposed rate increase public service commission properly observed that telephone company could achieve return on common equity which fell within the 8% to 11% range through cost reductions and improved efficiency, and such observation was not improper. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Telecommunications 964

Property held for future use by telephone company, if in fact bought in good faith for future utility use rather than for speculation, should properly be included in computing telephone company’s rate base. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278.

Public service commission improperly refused to permit adjustment to be made in telephone company’s net operating income for increased wages where commission improperly determined adjustment on that ground would not materially affect its decision to refuse proposed rate increase. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278.

Public service commission improperly determined cost of short term debt of telephone company, if cost figure used represented use of “spot date” such as March 31, 1976, since acceptance of such figure would have been arbitrary and capricious. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Public Utilities 128

Court may not reverse commission determination of reasonable rate of return on common equity unless commission’s rate is so low as to force conclusion there is deprivation of property without due process of law. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Constitutional Law 4370

Scope of review of rates set by public service commission is limited; court may not set aside order of commission except on convincing showing that it is without evidentiary support or that it is arbitrary or capricious as a matter of law, even if court might have found different rate of return to be fair and reasonable. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Public Utilities 187

Findings of Public Service Commission are presumptively correct, and order of commission will not be set aside except upon convincing showing that it is not supported by evidence, or that it embodies arbitrary or capricious action as matter of law. Southern Bell Tel. & Tel. Co. v. Public Service Commission (S.C. 1978) 270 S.C. 590, 244 S.E.2d 278. Public Utilities 187

ARTICLE 13

Telephone Companies ‑ Penalties

**SECTION 58‑9‑1610.** Penalties for violation of Articles 1 through 13 of this chapter.

 Any person or corporation violating any provision of Articles 1 through 13 of this chapter or failing, omitting or neglecting to obey, observe or comply with any lawful order of the Commission or any part or provision thereof may be subject to a penalty of not less than twenty‑five dollars nor more than five hundred dollars for each offense and reasonable expenses including attorneys’ fees.

HISTORY: 1962 Code Section 58‑491; 1952 Code Section 58‑491; 1950 (46) 2466.

Library References

Telecommunications 1000.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 136 to 137.

**SECTION 58‑9‑1620.** Each violation and each day of continuing violation deemed a separate offense.

 Every violation of the provisions of Articles 1 through 13 of this chapter or of any lawful order of the Commission, or any part thereof, by any corporation or person is a separate and distinct offense and in case of a continuing violation each day’s continuance thereof shall be deemed to be a separate and distinct offense.

HISTORY: 1962 Code Section 58‑492; 1952 Code Section 58‑492; 1950 (46) 2466.

Library References

Telecommunications 1000.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 136 to 137.

**SECTION 58‑9‑1630.** Principals responsible for acts of agents.

 In enforcing the provisions of Articles 1 through 13 of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation or person, acting within the scope of his official duties or employment, shall in every case be deemed to be also the act, omission or failure of such corporation or person.

HISTORY: 1962 Code Section 58‑493; 1952 Code Section 58‑493; 1950 (46) 2466.

Library References

Telecommunications 1000.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 136 to 137.

**SECTION 58‑9‑1640.** Penalties shall be cumulative.

 All penalties accruing under Articles 1 through 13 of this chapter shall be cumulative and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any telephone utility or any officer, director, agent or employee thereof or any other corporation or person.

HISTORY: 1962 Code Section 58‑494; 1952 Code Section 58‑494; 1950 (46) 2466.

Library References

Telecommunications 1000.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 136 to 137.

**SECTION 58‑9‑1650.** Actions to recover penalties.

 Actions to recover penalties under Articles 1 through 13 of this chapter shall be brought in the name of the Office of Regulatory Staff or the State in any court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑495; 1952 Code Section 58‑495; 1950 (46) 2466; 2006 Act No. 318, Section 69, eff May 24, 2006.

Library References

Telecommunications 1005.

Westlaw Topic No. 372.

ARTICLE 15

Telegraph Companies ‑ General Provisions

**SECTION 58‑9‑1810.** Duty to receive and transmit telegrams.

 Every electric telegraph company with a line of wires, wholly or partly in this State, and engaged in telegraphing for the public shall, during the usual office hours, receive dispatches, whether from other telegraphic lines or from individuals, and, on payment of the usual charges according to the regulations of such company, shall transmit and deliver them with impartiality and good faith, and with due diligence, under penalty of one hundred dollars. Such penalty may be recovered by suit before a magistrate or in any other court having jurisdiction thereof by either the sender of the dispatch or the person to whom it was sent or directed, whichever may first sue. Nothing herein shall be construed as impairing or in any way modifying the right of any person to recover damages for any such breach of contract or duty by any telegraph company and such penalty and such damages may, if the party so elect, be recovered in the same suit.

HISTORY: 1962 Code Section 58‑251; 1952 Code Section 58‑251; 1942 Code Section 8548; 1932 Code Section 8548; Civ. C. ‘22 Section 5031; 1920 (31) 725.

CROSS REFERENCES

Regulation of publicly owned utilities and privately owned utilities serving the public, see SC Const. Art. IX, Section 1.

Library References

Telecommunications 687, 693, 715.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 136 to 137.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 3, Telegraph Company Defined.

S.C. Jur. Telecommunications Section 9, Telegraph.

NOTES OF DECISIONS

In general 1

1. In general

A public utility whose duty it is to transmit messages for the public is privileged to transmit an obviously defamatory message unless the agents who transmit it know or have reason to know that sender is not privileged to send message, but utility is liable for transmitting such defamatory message if its agents knew or should have known that sender was acting in bad faith for purpose of defaming another and was not acting in exercise of a legitimate or privileged interest. W.U. Tel. Co. v. Lesesne (C.A.4 (S.C.) 1950) 182 F.2d 135.

**SECTION 58‑9‑1820.** Liability for messages in cipher.

 In all cases the liability of the companies for messages in cipher, in whole or in part, shall be the same as though they were not in cipher.

HISTORY: 1962 Code Section 58‑252; 1952 Code Section 58‑252; 1942 Code Section 8552; 1932 Code Section 8552; Civ. C. ‘22 Section 5035; 1920 (31) 725.

Library References

Telecommunications 696.

Westlaw Topic No. 372.

**SECTION 58‑9‑1830.** Common carriers of intelligence shall not require contract limiting its liability.

 It shall be unlawful for any common carrier of intelligence for hire doing business in this State to require the sender of any message over its lines to enter into any agreement limiting such carrier’s liability from any loss or damage to the sender of any message.

HISTORY: 1962 Code Section 58‑253; 1952 Code Section 58‑253; 1942 Code Section 8554; 1932 Code Section 8554; Civ. C. ‘22 Section 5037; 1921 (32) 120.

Library References

Telecommunications 700.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 120.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 9, Telegraph.

NOTES OF DECISIONS

In general 1

1. In general

The statute prohibiting telegraph company from limiting its liability from any loss or damages to the sender of any message did not apply to liability asserted by the sendee of an allegedly delayed death message, so as to render void company’s contract stipulation that company would not be liable for damages unless written claim was presented within 60 days after message was filed for transmission. Code 1942, Sections 8553, 8554. Phillips v. Western Union Telegraph Co. (S.C. 1940) 194 S.C. 317, 9 S.E.2d 736, 129 A.L.R. 397.

**SECTION 58‑9‑1840.** Delivery of certain messages.

 Such companies shall deliver all dispatches to the persons to whom they are addressed or to their agents, on payment of any charge due for them if such persons or agents reside within one mile of the telegraphic station or within the city or town in which such station is.

HISTORY: 1962 Code Section 58‑254; 1952 Code Section 58‑254; 1942 Code Section 8549; 1932 Code Section 8549; Civ. C. ‘22 Section 5032; 1920 (31) 725.

Library References

Telecommunications 693.

Westlaw Topic No. 372.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 3, Telegraph Company Defined.

**SECTION 58‑9‑1850.** Free delivery of messages in certain cities.

 Any electric telegraph company operating within this State shall deliver messages within the limits of any city in this State which had a population of more than thirty thousand on March 4, 1921 free of delivery charges and without additional cost to the consignees of such messages, notwithstanding any rules or regulations then in force by any of such companies. Any company requiring or collecting a delivery charge in violation of any of the provisions of this section shall be subject to a penalty of at least three hundred dollars upon conviction thereof, one half of which shall be paid to the person aggrieved and the other half into the general school fund of the county in which such city is located.

HISTORY: 1962 Code Section 58‑256; 1952 Code Section 58‑256; 1942 Code Sections 8550, 8551; 1932 Code Sections 8550, 8551; Civ C. ‘22 Sections 5033, 5034; 1921 (32) 209.

Library References

Telecommunications 694.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 58 to 59, 62 to 102.

**SECTION 58‑9‑1860.** Liability for negligence causing mental anguish or suffering.

 All telegraph companies doing business in this State shall be liable in damages for mental anguish or suffering, even in the absence of bodily injury, for negligence in receiving, transmitting or delivering messages, without regard to relationship by blood or marriage or whether such messages afforded notice of such relationship or otherwise or that injury or damage would result if such anguish or suffering resulted as a matter of fact. In all actions under this section the jury may award such damages as they conclude resulted from negligence, wantonness, wilfulness or recklessness of the telegraph companies. And when a telegram shows on its face that it relates to sickness or death, the real party for whose benefit the telegram was sent and who suffered mental anguish by reason of the negligence or wilfulness of the telegraph company may recover damages as herein provided without being required to allege or prove that the telegraph company had notice or knowledge at the time the message was sent of his relation to it or of the extent or scope of his damage.

 Nothing contained in this section shall abridge their rights or remedies otherwise provided by law against telegraph companies and the rights and remedies provided by this section shall be in addition to those otherwise existing.

HISTORY: 1962 Code Section 58‑255; 1952 Code Section 58‑255; 1942 Code Section 8553; 1932 Code Section 8553; Civ. C. ‘22 Section 5036; Civ. C. ‘12 Section 3330; Civ. C. ‘02 Section 2223; 1901 (23) 748; 1909 (26) 84; 1911 (27) 226.

Library References

Damages 57.12.

Telecommunications 699.

Westlaw Topic Nos. 115, 372.

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Encyclopedias

S.C. Jur. Telecommunications Section 9, Telegraph.

NOTES OF DECISIONS

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1. In general

Cited in Lott v Western Union Tel. Co., 127 SC 238, 119 SE 870 (1923). Cook v Atlantic Coast Line R. Co., 183 SC 279, 190 SE 923 (1937).

Applied in Bush v Western Union Tel. Co., 93 SC 176, 76 SE 197 (1912). Graham v Western Union Tel. Co., 93 SC 173, 76 SE 200 (1912).

Office hours. Smith v Western Union Tel. Co., 77 SC 378, 58 SE 6 (1907). Ogilvie v Western Union Tel. Co., 83 SC 8, 64 SE 860 (1909).

Delay in delivery. Dempsey v Western Union Tel. Co., 77 SC 399, 58 SE 9 (1907). Kirby v Western Union Tel. Co., 77 SC 404, 58 SE 10 (1907). Cloy v Western Union Tel. Co., 78 SC 109, 58 SE 972 (1907). Fail v Western Union Tel. Co., 80 SC 207, 60 SE 697, 61 SE 258 (1908). Johnson v Western Union Tel. Co., 82 SC 87, 63 SE 1 (1908).

Failure to deliver telegram. Balderston v Western Union Tel. Co., 79 SC 160, 60 SE 435 (1908). Martin v Western Union Tel. Co., 81 SC 432, 62 SE 833 (1908).

Delivery. Delivery must be to the addressee or one having authority to receive. Glover v. Western Union Tel. Co. (S.C. 1907) 78 S.C. 502, 59 S.E. 526.

2. Constitutional issues

This section [Code 1962 Section 58‑255] is constitutional. Simmons v Western Union Tel. Co., 63 SC 425, 41 SE 521 (1902). Butler v Western Union Tel. Co., 62 SC 222, 40 SE 162 (1901).

The statute of South Carolina making mental anguish caused by the negligent nondelivery of a telegram a cause of action is, as applied to telegrams, the negligent nondelivery of which occurred in the District of Columbia, an unconstitutional attempt to regulate conduct within territory wholly under the jurisdiction of the United States. Such statute is also unconstitutional, as to messages sent from that State to be delivered in another state, as an attempt to regulate interstate commerce. Western Union Telegraph Co. v. Brown (U.S.S.C. 1914) 34 S.Ct. 955, 234 U.S. 542, 58 L.Ed. 1457.

Where telegraphic message from one point in state to another, if sent, would have been routed via points outside state, and there was no direct and practical route wholly within state, transaction held “interstate commerce,” precluding recovery of damages for mental anguish and of punitive damages for failure to transmit message, notwithstanding statute. Code 1942, Sections 8545‑8547, 8553; Interstate Commerce Act Section 1, 49 U.S.C.A. Section 1; Const.U.S. art. 1, Section 8, cl. 3. Ingram v. Hughes (S.C. 1933) 170 S.C. 1, 169 S.E. 425, 87 A.L.R. 1325.

It is not in violation of the due process and equal protection clauses of the State and Federal Constitutions. Melvin v. Western Union Telegraph Co. (S.C. 1927) 140 S.C. 244, 138 S.E. 673.

It does not deprive telegraph companies of the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. Stewart v. Western Union Telegraph Co. (S.C. 1912) 93 S.C. 119, 76 S.E. 111. Constitutional Law 3035; Constitutional Law 3058

It is not retrospective. As this section [Code 1962 Section 58‑255] created new liabilities and extended existing liabilities, it was not retrospective. For a statute should not be construed as retrospective, unless so required by express words or necessary implication. Harrelson v. Western Union Tel. Co. (S.C. 1911) 90 S.C. 132, 72 S.E. 882.

3. Actions

Conditions precedent to suit. Smith v Western Union Tel Co., 77 SC 378, 58 SE 6 (1907). Toale v Western Union Tel. Co., 83 SC 41, 64 SE 963 (1909).

Sufficiency of filing claim within sixty days. Toale v Western Union Tel. Co., 76 SC 248, 57 SE 117 (1907). Smith v Western Union Tel. Co., 77 SC 378, 58 SE 6 (1907).

Limitation of time to present claim. Broom v Western Union Tel. Co., 71 SC 506, 51 SE 259 (1905). Eaker v Western Union Tel. Co., 75 SC 97, 55 SE 129 (1906).

Waiver. Toale v Western Union Tel. Co., 76 SC 248, 57 SE 117 (1907). Edgefield Mfg. Co. v Maryland Cas. Co., 78 SC 73, 58 SE 969 (1907). McMillan & Son v Ins. Co. of North America, 78 SC 433, 58 SE 1020, 1135 (1907). Roberts v Western Union Tel. Co., 73 SC 520, 53 SE 985 (1906). Campbell v Western Union Tel. Co., 74 SC 300, 54 SE 571 (1906).

Evidence to show agency of operator. Fail v Western Union Tel. Co., 80 SC 207, 60 SE 697, 61 SE 258 (1908). Mitchiner v Western Union Tel. Co., 75 SC 182, 55 SE 222 (1906). DuBose v Western Union Tel. Co., 73 SC 218, 53 SE 175 (1906).

Action on contract. Poteet v Western Union Tel. Co, 74 SC 491, 55 SE 113 (1906). Hughes v Western Union Tel. Co., 72 SC 516, 52 SE 107 (1905). Rogers v Western Union Tel. Co., 72 SC 290, 51 SE 773 (1905).

Common‑law action for actual damages. Wallingford v Western Union Tel. Co., 60 SC 201, 38 SE 443, 629 (1901). Gist v Western Union Tel. Co., 45 SC 344, 23 SE 143 (1895). Hill v Western Union Tel. Co., 42 SC 367, 20 SE 135 (1894). Mood v Western Union Tel. Co., 40 SC 524, 19 SE 67 (1893).

A company stipulation requiring written claim for damages within sixty days is reasonable and valid, and ordinarily binding upon the sendee in his action under the “mental anguish” statute. Phillips v. Western Union Telegraph Co. (S.C. 1940) 194 S.C. 317, 9 S.E.2d 736, 129 A.L.R. 397. Telecommunications 700

Action at common law after judgment under section. Judgment for defendant, in an action under this section [Code 1962 Section 58‑255], for mental anguish from defendant’s failure to deliver a telegram, is a bar to action for any common‑law cause of action for willful failure to deliver the telegram; as the same transaction may not be split into several suits. Greer v. Western Union Telegraph Co. (S.C. 1916) 105 S.C. 147, 89 S.E. 782. Judgment 597

Reading section to jury. In an action for mental anguish, caused by the failure to deliver promptly a telegram announcing the death of plaintiff’s father, it was not error for the court, in charging the jury, to read this section [Code 1962 Section 58‑255]. Gossett v. Western Union Telegraph Co. (S.C. 1913) 95 S.C. 397, 79 S.E. 309. Trial 241

Proof that telegram was sent for benefit of party suing. A party suing for mental anguish must allege and prove that the telegram was sent for her benefit, and that she suffered mental anguish through the company’s negligence or willfulness. Stewart v. Western Union Telegraph Co. (S.C. 1912) 93 S.C. 119, 76 S.E. 111.

4. Mental anguish

Ordinary suspense and suffering due to the relationship of the parties is not mental anguish. Ogilvie v Western Union Tel. Co., 83 SC 8, 64 SE 860 (1909). Talbert v Western Union Tel. Co., 83 SC 68, 64 SE 862, 916 (1909). Johnson v Western Union Tel. Co., 81 SC 235, 62 SE 244 (1908).

Failure to deliver telegraph messages. Toale v Western Union Tel. Co., 76 SC 248, 57 SE 117 (1907). Roberts v Western Union Tel. Co., 76 SC 275, 56 SE 960 (1907). Key v Western Union Tel. Co., 76 SC 301, 56 SE 962 (1907). Amos v Western Union Tel. Co., 79 SC 259, 60 SE 660 (1908). Little v Western Union Tel. Co., 79 SC 255, 60 SE 663 (1908). McDowell v Western Union Tel. Co., 79 SC 257, 60 SE 662 (1908).

Mental anguish confined to social and personal matters. Capers v Western Union Tel. Co., 71 SC 29, 50 SE 537 (1905). Amos v Western Union Tel. Co., 79 SC 259, 60 SE 660 (1908).

Complaint for mental anguish. Bonner v Western Union Tel. Co., 71 SC 303, 51 SE 117 (1905). Harrison v Western Union Tel. Co., 71 SC 386, 51 SE 119 (1905)2. Fass v Western Union Tel. Co., 82 SC 461, 64 SE 235 (1909). Arial v Western Union Tel. Co., 70 SC 418, 50 SE 6 (1905). Willis v Western Union Tel. Co., 69 SC 531, 48 SE 538 (1904). Willis v Western Union Tel. Co., 73 SC 379, 53 SE 639 (1906). Butler v Western Union Tel. Co., 62 SC 222, 40 SE 162 (1901). Poteet v Western Union Tel. Co., 74 SC 491, 55 SE 113 (1906). Carter v Western Union Tel. Co., 73 SC 430, 53 SE 539 (1906).

Negligence and willfulness causing mental anguish. Roberts v Western Union Tel. Co., 73 SC 520, 53 SE 985 (1906). Smith v Western Union Tel. Co., 72 SC 116, 51 SE 537 (1905). Walker v Western Union Tel. Co., 75 SC 512, 56 SE 38 (1906). Machen v Western Union Tel. Co., 72 SC 256, 51 SE 697 (1905). Tinsley v Western Union Tel. Col, 72 SC 350, 51 SE 913 (1905). Hughes v Western Union Tel. Co., 72 SC 516, 52 SE 107 (1905). Smith v Western Union Tel. Co., 77 SC 378, 58 SE 6 (1907). Dempsey v Western Union Tel. Co., 77 SC 399, 58 SE 9 (1907). Kirby v Western Union Tel. Co., 77 SC 404, 58 SE 10 (1907). Doster v Western Union Tel. Co., 77 SC 56, 57 SE 671 (1907). Bowen v Western Union Tel. Co., 77 SC 122, 57 SE 674 (1907). Butler v Western Union Tel. Co., 77 SC 148, 57 SE 757 (1907). Foster v Western Union Tel. Co., 77 SC 155, 57 SE 760 (1907). Cason v Western Union Tel. Co., 77 SC 157, 57 SE 722 (1907). Lyles v Western Union Tel. Co., 77 SC 174, 57 SE 725 (1907). Marsh v Western Union Tel. Co., 65 SC 430, 43 SE 953 (1903).

Mental anguish caused by suffering of relative. Jones v Western Union Tel. Co., 70 SC 539, 50 SE 198 (1905). Doster v. Western Union Tel. Co. (S.C. 1907) 77 S.C. 56, 57 S.E. 671.

Mental distress caused by or prolonged by negligence. There is no difference between negligence which originates the suffering and that which prolongs it. Willis v. Western Union Tel. Co. (S.C. 1904) 69 S.C. 531, 48 S.E. 538, 104 Am.St.Rep. 828.

Physical suffering caused by intentional wrong. Marsh v. Western Union Tel. Co. (S.C. 1903) 65 S.C. 430, 43 S.E. 953.

5. Damages

Nonsuit for damages too remote. Bird v Western Union Tel. Co., 76 SC 345, 56 SE 973 (1907). Johnson v Western Union Tel. Co., 75 SC 54, 54 SE 826 (1906). Clio Gin Co. v Western Union Tel. Co., 82 SC 405, 64 SE 426 (1909).

Special damages for delay. Cloy v Western Union Tel. Co., 78 SC 109, 58 SE 972 (1907). Amos v Western Union Tel. Co., 79 SC 259, 60 SE 660 (1908). McDowell v Western Union Tel. Co., 79 SC 257, 60 SE 662 (1908). Little v Western Union Tel. Co., 79 SC 255, 60 SE 663 (1908). Johnson v Western Union Tel. Co., 81 SC 235, 62 SE 244 (1908). Fass v Western Union Tel. Co., 82 SC 461, 64 SE 235 (1909).

Measure of damages. Key v Western Union Tel. Co., 76 SC 301, 56 SE 962 (1907). Lathan v Western Union Tel. Co., 75 SC 129, 55 SE 134 (1906). Bowie v Western Union Tel. Co., 78 SC 424, 59 SE 65 (1907).

Punitive damages. Actual damages need not be shown to support a recovery for punitive damages based on mental anguish for the nondelivery of a telegram. Melvin v Western Union Tel. Co., 140 SC 244, 138 SE 673 (1927). Cloy v Western Union Tel. Co., 78 SC 109, 58 SE 972 (1907). Glover v Western Union Tel. Co., 78 SC 502, 59 SE 526 (1907). Balderston v Western Union Tel. Co., 79 SC 160, 60 SE 435 (1908). Ogilvie v Western Union Tel. Co., 83 SC 8, 64 SE 860 (1909). Strauss v Postal Tel.‑Cable Co., 83 SC 22, 64 SE 913 (1909). Mims v Western Union Tel. Co., 82 SC 247, 64 SE 236 (1909). Oxner v Western Union Tel. Co., 82 SC 510, 63 SE 545 (1909). Sullivan v Western Union Tel. Co., 82 SC 569, 64 SE 752 (1909). Hellams v Western Union Tel. Co., 70 SC 83, 49 SE 12 (1904). Toale v Western Union Tel. Co., 76 SC 248, 57 SE 117 (1907). Lathan v Western Union Tel. Co., 75 SC 129, 55 SE 134 (1906). Mitchiner v Western Union Tel. Co., 75 SC 182, 55 SE 222 (1906). Harrison v Western Union Tel. Co., 75 SC 267, 55 SE 450 (1906). Murray v Western Union Tel. Co., 74 SC 64, 54 SE 209 (1906).

Limitation on recovery of damages. The legislative intention clearly shows that recovery of damages should be limited to cases where mental suffering resulted as a matter of fact from the delict of the telegraph company. Jones v. Atlantic Coast Line R. Co. (S.C. 1917) 108 S.C. 217, 94 S.E. 490.

Notice to defendant where damages are special. The damages sustained by one who is related to a deceased person by affinity, by reason of negligence in the delivery of a telegram, are special and cannot be recovered unless defendant has notice of the facts from which the damages might reasonably be expected to arise at the time the message is delivered for transmission. Lewis v. Western Union Tel. Co. (S.C. 1909) 84 S.C. 54, 65 S.E. 941. Telecommunications 699

Special damages for mistake in transmitting commercial telegrams. Baird v. Western Union Telegraph Co. (S.C. 1908) 79 S.C. 310, 60 S.E. 695.

ARTICLE 17

Telephone and Telegraph Companies ‑ Common Provisions

**SECTION 58‑9‑2010.** Telephone and telegraph wires shall be erected and maintained so as to protect persons and property.

 No telegraph or telephone wire shall be erected or maintained within fifty yards of any public road or highway in this State unless it shall be so constructed, erected and maintained and provided with sufficient lightning guards and arresters as may be necessary for the protection of persons and property. Any person erecting or maintaining any such wire in violation of the provisions hereof shall forfeit and pay as a penalty therefor five dollars a day for each day such default continues after he shall have been given thirty days’ written notice specifying the fault or defect in the manner of erection, construction or maintenance thereof, to be recovered at the suit of any citizen of any county in which such violation occurs. The sum so recovered, after paying therefrom all the expenses incurred in the prosecution of such suit, shall be paid into the county treasury for ordinary county purposes.

HISTORY: 1962 Code Section 58‑7; 1952 Code Section 58‑7; 1942 Code Section 8531; 1932 Code Section 8531; Civ. C. ‘22 Section 5015; Civ. C. ‘12 Section 3317; Civ. C. ‘02 Section 2211; 1899 (23) 61; 1904 (24) 490.

Editor’s Note

2006 Act No. 318, Section 234 , provides as follows:

“Nothing in this act shall be deemed to repeal or modify any prior act of the General Assembly that removes or modifies the regulation of any service provided by any telephone utility.”

CROSS REFERENCES

Authorization to construct lines of telegraph and telephone companies, see Section 58‑9‑2020.

Library References

Telecommunications 813, 828.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 38, 43 to 45, 47 to 49.

**SECTION 58‑9‑2020.** Authorization to construct, maintain and operate lines in State.

 Any telegraph or telephone company incorporated under the laws of this State and any such company incorporated under the laws of any other state, upon complying with the laws of this State regulating the doing of business in this State by foreign corporations and by becoming a domestic corporation, may construct, maintain and operate its line through, upon, over and under any of the public lands of this State, under, over, along and upon any of the highways or public roads of the State, over, through or under any of the waters of this State, on, over and under the lands of any person in this State and along, upon and over the right of way of any railroad or railway company in this State; provided, that such line is constructed so as not to endanger the safety of persons or to interfere with the use of such highways or public roads, the navigation of such waters or the operation and running of the engines and cars of such railroads or railways and that just compensation is first paid such landowners and railroad or railway companies for such right and privilege, to be ascertained in the manner herein provided. Any person erecting or maintaining any such wire in violation of the provisions hereof shall forfeit and pay as a penalty therefor the sum of five dollars per day for each day such default continues after he shall have been given thirty days’ written notice specifying the default or defect in the manner of erection, construction or maintenance thereof, to be recovered at the suit of any citizen of any county in which such violation occurs. The sum so recovered, after paying therefrom all the expenses incurred in the prosecution of such suit, shall be paid into the county treasury for ordinary county purposes.

HISTORY: 1962 Code Section 58‑301; 1952 Code Section 58‑301; 1942 Code Section 8531; 1932 Code Section 8531; Civ. C. ‘22 Section 5015; Civ. C. ‘12 Section 3317; Civ. C. ‘02 Section 2211; 1899 (23) 61; 1904 (24) 490.

CROSS REFERENCES

Authority of electric companies, State authorities and electric cooperatives to acquire property under Sections 58‑9‑2020 to 58‑9‑2140, see Section 58‑27‑130.

Power of utility company to prohibit operation of certain motor vehicles on utility rights‑of‑way, see Section 16‑11‑755.

Regulation of publicly owned utilities and privately owned utilities serving the public, see SC Const. Art. IX, Section 1.

Library References

Telecommunications 668, 800.

Westlaw Topic No. 372.

RESEARCH REFERENCES

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S.C. Jur. Telecommunications Section 6, Types of Franchises Granted.

LAW REVIEW AND JOURNAL COMMENTARIES

A Constitutional and Statutory History of the Telephone Business in South Carolina. 51 S.C. L. Rev. 290.

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

Attorney General’s Opinions

But telephone company is not relieved from special damages to landowner caused thereby. Telephone company is not relieved from any special damages caused to the landowner by reason of the erection of poles and construction of lines within the right of way. 1962‑63 Op.Atty.Gen., No 1573, p 142 (1963 WL 8885).

Erection of poles and construction of lines on highway right of way does not constitute additional servitude on which additional compensation can be had by the abutting landowner. 1962‑63 Op.Atty.Gen., No 1573, p 142 (1963 WL 8885).

NOTES OF DECISIONS

In general 1

Constitutional issues 3

Construction with other laws 2

Instructions 5

Negligence actions 4

1. In general

Foreign corporation cannot exercise the right of eminent domain, unless domesticated. Baldwin v Postal Tel.‑Cable Co., 78 SC 419, 59 SE 67 (1907). Duke v Postal Tel.‑Cable Co., 71 SC 95, 50 SE 675 (1905).

This section [Code 1962 Section 58‑301] and related sections clothe foreign telegraph and telephone corporations with the same powers, rights and privileges, and impose upon them the same liabilities and duties, as domestic corporations. Leppard v. Central Carolina Telephone Co. (S.C. 1944) 205 S.C. 1, 30 S.E.2d 755.

Compensation to abutting property owner. There is nothing in this section [Code 1962 Section 58‑301] to support a contention that telegraph and telephone companies shall pay compensation to an abutting property owner for the privilege of erecting their lines along a street or public highway. Leppard v. Central Carolina Telephone Co. (S.C. 1944) 205 S.C. 1, 30 S.E.2d 755. Telecommunications 816

Cited in Woody v. South Carolina Power Co. (S.C. 1943) 202 S.C. 73, 24 S.E.2d 121.

Shade trees around a home should not be wantonly destroyed for a power line, unless it clearly appears that the destruction is reasonably necessary. Seabrook v. Carolina Power & Light Co. (S.C. 1930) 159 S.C. 1, 156 S.E. 1. Electricity 6

Unnecessary condemnation. The only method for a landowner to protect himself against unnecessary condemnation by a power company is to contest its right by an independent action in equity. Seabrook v. Carolina Power & Light Co. (S.C. 1930) 159 S.C. 1, 156 S.E. 1. Eminent Domain 266

Rights of private individuals. A private individual has no right by permission of the county authorities to construct a telephone line for his own private use along a public highway, over protest of the owner of the fee. Benton v. Yarborough (S.C. 1924) 128 S.C. 481, 123 S.E. 204, 34 A.L.R. 402. Constitutional Law 4076; Eminent Domain 47(1)

Damages. Phillips v. American Tel. & Tel. Co. (S.C. 1905) 71 S.C. 571, 51 S.E. 247.

Equal facilities. A telephone company may be required by mandamus to afford equal facilities to persons desiring to use same. State v. Citizens’ Tel. Co. (S.C. 1901) 61 S.C. 83, 39 S.E. 257, 85 Am.St.Rep. 870.

2. Construction with other laws

Franchise fee that telephone company was required to pay to city in exchange for using the public streets for poles, wires, cables, and other equipment did not violate the company’s statutory right to construct and maintain its line on public highways; a subsequent statute specifically delegates to municipalities the power to grant franchises for the use of public streets and to make charges. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Telecommunications 800

Statute allowing telephone utilities to construct, maintain, and operate their lines under public highways of state does not grant telephone utility right without payment of fee to construct and operate in public rights‑of‑way beneath municipality streets interstate fiber optic cable that provides no direct service to local residents, if fee is condition of municipality’s consent required by state constitutional provision requiring municipality’s consent before General Assembly may pass law granting right to construct and operate telephone utility in public street. City of Cayce v. AT&T Communications of Southern States, Inc. (S.C. 1997) 326 S.C. 237, 486 S.E.2d 92, answer to certified question conformed to 116 F.3d 1473. Telecommunications 799

3. Constitutional issues

Franchise fee that telephone company was required to pay to city in exchange for using the public streets for poles, wires, cables, and other equipment did not impair the obligation of contracts; the company had no contractual right based on statute entitling it to construct and maintain its line on public highways. BellSouth Telecommunications, Inc. v. City of Orangeburg (S.C. 1999) 337 S.C. 35, 522 S.E.2d 804, rehearing denied. Constitutional Law 2715; Telecommunications 800

It does not violate SC Const, Art 9, Section 20, inasmuch as the erection and maintenance of poles and wires do not create an additional burden upon the fee of the abutting landowner. Leppard v. Central Carolina Telephone Co. (S.C. 1944) 205 S.C. 1, 30 S.E.2d 755.

This section [Code 1962 Section 58‑301] is constitutional. Southern Power Co. v. Walker (S.C. 1911) 89 S.C. 84, 71 S.E. 356.

4. Negligence actions

Telephone company that received a permit from Department of Transportation (DOT) to install underground cable along highway and hired an independent contractor to complete the work did not have a nondelegable duty that made it vicariously liable for negligence of subcontractor hired by independent contractor; terms in permit were enforceable only as between DOT and telephone company, not telephone company and a remote independent contractor, and statute and regulation governing telephone company imposed a duty of reasonable care, not an absolute, nondelegable duty. Rock Hill Telephone Co., Inc. v. Globe Communications, Inc. (S.C. 2005) 363 S.C. 385, 611 S.E.2d 235. Telecommunications 825

5. Instructions

The trial court did not err by charging the jury with the language of both Section 56‑5‑1030, the general vandalism statute, and Section 58‑9‑2020, relating to telephone lines, where a stop sign was removed for repairs to a telephone line, the sign was not properly replaced, a driver failed to stop at the intersection where the stop sign should have been and struck the plaintiff’s vehicle, which had the right of way; when statutes are not in conflict, one need not govern the other. Gamble v. Stevenson (S.C. 1991) 305 S.C. 104, 406 S.E.2d 350.

**SECTION 58‑9‑2030.** Condemnation powers generally.

 Whenever any telegraph or telephone company desires to construct its lines on, over, or under the lands of any person, including a railroad or railway, and fails to agree with the owner of the lands upon the compensation to be paid as damages for the right and use, the company may secure the right and privilege by condemnation actions against the condemnees; provided, however, in condemning railroad or railway property, the telegraph or telephone company agrees to remove at its own expense, any of its poles, wires, structures, or appurtenances if at any time their existence interferes with the right of the defendant railroad or railway company to construct additional tracks, switches, crossings, warehouses, depots, turntables, water tanks, or any other structures for the use of such railroad or railway company upon reasonable notice given it, at its expense, to such other points or places upon such right‑of‑way as may be agreed by such companies and agreeing not to interfere or come in contact with any other telegraph or telephone lines already constructed on such right‑of‑way.

HISTORY: 1962 Code Section 58‑302; 1952 Code Section 58‑302; 1942 Code Section 8532; 1932 Code Section 8532; Civ. C. ‘22 Section 5016; Civ. C. ‘12 Section 3318; Civ. C. ‘02 Section 2212; 1899 (23) 61; 1987 Act No. 173 Section 45, eff nine months from approval by Governor (approved by Governor on June 30, 1987).

CROSS REFERENCES

Procedures for the condemnation of property, Eminent Domain Procedure Act, see Section 28‑2‑10 et seq.

Library References

Eminent Domain 36.

Westlaw Topic No. 148.

C.J.S. Eminent Domain Section 34.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 18, Corporations.

NOTES OF DECISIONS

Admissibility of evidence 1

Sufficiency of evidence 2

1. Admissibility of evidence

Admission of testimony of expert witnesses of landowner in condemnation action was improper where it appeared that such witnesses blended into their appraisals not only the fair market value, but also profits which might have been brought into being by promotion and development of the condemned property as a rural residential subdivision. Const. art. 1, Section 17; Code 1962, Sections 24‑12, 58‑302, 58‑779. Carolina Power & Light Co. v. Copeland (S.C. 1972) 258 S.C. 206, 188 S.E.2d 188.

Evidence as to how much money had been expended in repairing and restoring family residence lying south of highway until abandonment of that project upon condemnation of right‑of‑way for pipeline to north of highway was irrelevant and inadmissible on issue of just compensation for easement taken 8 years later for right‑of‑way also north of the highway approximately parallel to first right‑of‑way. Code 1962, Sections 58‑6, 58‑302, 58‑771 et seq. Bagwell v. Transcontinental Gas Pipe Line Corp. (S.C. 1965) 246 S.C. 569, 145 S.E.2d 17. Eminent Domain 203(1)

2. Sufficiency of evidence

$2,966 awarded as compensation for acquisition of 75‑foot right‑of‑way for 36‑inch underground pipeline across tract of several hundred acres was adequately supported by evidence including testimony of condemnor’s experts. Code 1962, Sections 58‑6, 58‑302, 58‑771 et seq. Bagwell v. Transcontinental Gas Pipe Line Corp. (S.C. 1965) 246 S.C. 569, 145 S.E.2d 17. Eminent Domain 149(6)

**SECTION 58‑9‑2150.** Delivery of messages between points in this State.

 Any message delivered to a telegraph or telephone company within this State for transmission to any other point within this State shall be as a matter of fact, and regarded as a matter of law, as and for an intrastate transaction and shall be transmitted by such company by the most direct and practical route within this State. Any violation of the provisions of this section by any such corporation shall be subject to a penalty of five hundred dollars for each violation, to be recovered by the party aggrieved and shall forfeit the right of such corporation to do business in the State.

HISTORY: 1962 Code Section 58‑314; 1952 Code Section 58‑314; 1942 Code Sections 8545, 8546; 1932 Code Sections 8545, 8546; Civ. C. ‘22 Sections 5028, 5029; 1919 (31) 651.

Library References

Telecommunications 693, 853.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 103, 106, 108.

NOTES OF DECISIONS

In general 1

1. In general

The word “practical” is used in the sense of being practicable, feasible. In such sense it excludes the idea that the legislature intended to say that a line composed of poles and wires, over which it might be possible eventually to transmit a message, even though in doing so vexatious delays, trouble, and extra expense be incurred, is practical and must be used. Ingram v. Hughes (S.C. 1933) 170 S.C. 1, 169 S.E. 425, 87 A.L.R. 1325.

This section [Code 1962 Section 58‑314] does not undertake to say arbitrarily that every message with both termini within the State shall be wholly within the State, but it only commands that the message shall be confined to a route wholly within the State when that route is practical; otherwise this section [Code 1962 Section 58‑314] would be a burden on interstate commerce and therefore unconstitutional. Ingram v. Hughes (S.C. 1933) 170 S.C. 1, 169 S.E. 425, 87 A.L.R. 1325.

When interstate route adopted. If message from one point within State to another can be more promptly, safely, and correctly sent by route partly outside State rather than by route wholly therein, it is the telegraph company’s duty to adopt an interstate route, notwithstanding this section [Code 1962 Section 58‑314]. Ingram v. Hughes (S.C. 1933) 170 S.C. 1, 169 S.E. 425, 87 A.L.R. 1325. Commerce 59

**SECTION 58‑9‑2160.** Action for damages for failure to deliver message between points in this State.

 Nothing herein contained shall bar any action for actual or punitive damages growing out of any violations of the provisions of Section 58‑9‑2150 and any such cause of action may be united in the same complaint as an action for the recovery of the penalty provided in said section.

HISTORY: 1962 Code Section 58‑315; 1952 Code Section 58‑315; 1942 Code Section 8547; 1932 Code Section 8547; Civ. C. ‘22 Section 5030; 1919 (31) 651.

Library References

Telecommunications 703, 916(1).

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 57, 115.

ARTICLE 20

Municipal Charges to Telecommunications Providers

**SECTION 58‑9‑2200.** Definitions.

 As used in this article:

 (1) “Telecommunications service” means the provision, transmission, conveyance, or routing for a consideration of voice, data, video, or any other information or signals of the purchaser’s choosing to a point, or between or among points, specified by the purchaser, by or through any electronic, radio, or similar medium or method now in existence or hereafter devised. The term “telecommunications service” includes, but is not limited to, local telephone services, toll telephone services, telegraph services, teletypewriter services, teleconferencing services, private line services, channel services, Internet protocol telephony, and mobile telecommunications services and to the extent not already provided herein, those services described in North American Industry Classification System Manual (NAICS) 5171, 5172, 5173, 5174, and 5179, except satellite services exempted by law.

 (2) “Retail telecommunications service” includes telecommunications services as defined in item (1) of this section but shall not include:

 (a) telecommunications services which are used as a component part of a telecommunications service, are integrated into a telecommunications service, or are otherwise resold by another provider to the ultimate retail purchaser who originates or terminates the end‑to‑end communication including, but not limited to, the following:

 (i) carrier access charges;

 (ii) right of access charges;

 (iii) interconnection charges paid by the providers of mobile telecommunications services or other telecommunications services;

 (iv) charges paid by cable service providers for the transmission by another telecommunications provider of video or other programming;

 (v) charges for the sale of unbundled network elements;

 (vi) charges for the use of intercompany facilities; and

 (vii) charges for services provided by shared, not‑for‑profit public safety radio systems approved by the FCC;

 (b) information and data services including the storage of data or information for subsequent retrieval, the retrieval of data or information, or the processing, or reception and processing, of data or information intended to change its form or content;

 (c) cable or video services that are subject to franchise fees;

 (d) satellite television broadcast services.

 (3) “Telecommunications company” means a provider of one or more telecommunications services.

 (4) “Cable service” includes, but is not limited to, the provision of video programming or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video programming or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other telecommunications service providers.

 (5) “Mobile telecommunications service” includes, but is not limited to, any one‑way or two‑way radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves, through cellular telecommunications services, personal communications services, paging services, specialized mobile radio services, and any other form of mobile one‑way or two‑way communications service.

 (6) “Service address” means the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a retail customer. If this location is not a defined location, as in the case of mobile phones, paging systems, maritime systems, and the like, “service address” means the location of the retail customer’s primary use of the telecommunications equipment or the billing address the customer gives to the service provider, provided that the billing address is within the licensed service area of the service provider. A sale of postpaid calling services is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller’s telecommunications system; or (ii) information received by the seller from its service provider, if the system used to transport such signals is not that of the seller.

 (7) “Bad debt” means any portion of a debt that is related to a sale of telecommunications services and which has become worthless or uncollectible, as determined under applicable federal income tax standards.

 (8) “Postpaid calling service” means the telecommunications service obtained by making a payment on a call‑by‑call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

HISTORY: 1999 Act No. 112, Section 1, eff June 30, 1999; 2003 Act No. 69, Section 3.TT, eff January 1, 2005; 2005 Act No. 8, Section 1, eff January 13, 2005; 2005 Act No. 8, Section 2, eff January 13, 2005; 2007 Act No. 8, Section 3, eff March 30, 2007.

Editor’s Note

The preamble to 1999 Act No. 112, effective June 30, 1999, provides as follows:

“Whereas, Congress enacted the Telecommunications Act of 1996 to open local telephone markets to competition, and the telecommunications industry is in a state of transition; and

“Whereas, in addition to new competitors in traditional local exchange telecommunications markets, a number of new technologies has developed and is developing at a rapid pace, expanding the array of telecommunications providers and services available to consumers; and

“Whereas, since the passage of the Telecommunications Act of 1996, competition in telecommunications services and the number of competitors in the telecommunications industry in South Carolina has grown and continues to grow, as evidenced by the hundreds of new entrants into the industry. In South Carolina, over four hundred companies have been authorized to provide long distance service and over seventy companies have been authorized to provide local telephone service. South Carolina now has over one thousand authorized pay phone service providers and numerous digital and analog wireless and paging providers. Telephony may also now be provided over Internet protocol and cable modems; and

“Whereas, the citizens of municipalities in South Carolina have long enjoyed the public benefit of dependable local exchange and long distance telecommunications service provided to them by telecommunications carriers that have constructed, operated, and maintained telecommunications facilities to serve those citizens, and that currently occupy the municipal rights‑of‑way in the State; and

“Whereas, Congress has stated that nothing in Section 253 of the Telecommunications Act of 1996 affects the authority of the state or local government to manage the public rights‑of‑way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights‑of‑way on a nondiscriminatory basis, if the compensation required is disclosed by such government. The General Assembly finds that shifting of current taxation and fees from a franchise fee basis to the basis outlined in the attached article is necessary and appropriate due to the transition of the telecommunications industry and is fair and reasonable, and taxes and fees exceeding such amount, except upon extraordinary circumstances, would be unreasonable. Now, therefore,”

CROSS REFERENCES

“Telecommunications service” defined, government‑owned communications service providers, see Section 58‑9‑2610.

Library References

Telecommunications 622.

Westlaw Topic No. 372.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 10, Telephone.

**SECTION 58‑9‑2210.** Cable service franchise agreement authority.

 Nothing in this article shall limit a municipality’s authority to enter into and charge for franchise agreements with respect to cable services as governed by 47 U.S.C. Section 542.

HISTORY: 1999 Act No. 112, Section 1, eff June 30, 1999.

Library References

Telecommunications 1215.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 178, 184 to 185.

**SECTION 58‑9‑2220.** Retail telecommunications services business license taxes; maximum rates.

 Notwithstanding any provision of law to the contrary:

 (1) A business license tax levied by a municipality upon retail telecommunications services for the years 1999 through the year 2003 shall not exceed three‑tenths of one percent of the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The business license tax levied by a municipality upon retail telecommunications services for the year 2004 and every year thereafter shall not exceed the business license tax rate as established in Section 58‑9‑2220(2). For a business in operation for less than one year, the amount of business license tax authorized by this section must be computed based on a twelve‑month projected income.

 (2) The maximum business license tax that may be levied by a municipality on the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality for a business license tax year beginning after 2003 is one percent of gross income derived from the sale of retail telecommunication services.

 (3) A business license tax levied by a municipality upon the retail telecommunications services provided by a telecommunications company must be levied in a competitively neutral and nondiscriminatory manner upon all providers of retail telecommunications services.

 (4) The measurement of the amounts derived from the retail sale of telecommunications services does not include:

 (a) an excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local government including, but not limited to, emergency telephone surcharges, upon the purchase, sale, use, or consumption of a telecommunications service, which is permitted or required to be added to the purchase price of the service; and

 (b) bad debts.

 (5) A business license tax levied by a municipality upon a telecommunications company must be reported and remitted on an annual basis. The municipality may inspect the records of the telecommunications company as they relate to payments under this article.

 (6) The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality.

HISTORY: 1999 Act No. 112, Section 1, eff June 30, 1999; 2005 Act No. 8, Section 3, eff January 13, 2005.

Library References

Telecommunications 620.

Westlaw Topic No. 372.

LAW REVIEW AND JOURNAL COMMENTARIES

A Constitutional and Statutory History of the Telephone Business in South Carolina. 51 S.C. L. Rev. 290.

**SECTION 58‑9‑2230.** Public rights‑of‑way franchise, consent and administrative fees; authorized taxes; mobile telecommunications services.

 (A) A municipality shall manage its public rights‑of‑way on a competitively neutral and nondiscriminatory basis and may impose a fair and reasonable franchise or consent fee on a telecommunications company for use of the public streets and public property to provide telecommunications service unless the telecommunications company has an existing contractual, constitutional, statutory, or other right to construct or operate in the public streets and public property including, but not limited to, consent previously granted by a municipality. A fair and reasonable franchise or consent fee imposed upon a telecommunications company shall not exceed the annual sum set forth in the following schedule based on population:

 Tier I—1—1,000—$ 100.00

 Tier II—1,001—3,000—$ 200.00

 Tier III—3,001—5,000—$ 300.00

 Tier IV—5,001—10,000—$ 500.00

 Tier V—10,001—25,000—$ 750.00

 Tier VI—Over 25,000—$1,000.00

 This franchise or consent fee is in lieu of any permit fee, encroachment fee, degradation fee, or other fee assessed on a telecommunications provider for its occupation of or work within the public right of way.

 (B) A municipality shall manage its public rights‑of‑way on a competitively neutral and nondiscriminatory basis and may impose an administrative fee upon a telecommunications company that is not subject to subsection (A) in this section and that constructs or installs or has previously constructed or installed facilities in the public streets and public property to provide telecommunications service. The fee imposed on a telecommunications company shall not exceed the annual sum set forth in the following schedule based on population:

 Tier I—1—1,000—$ 100.00

 Tier II—1,001—3,000—$ 200.00

 Tier III—3,001—5,000—$ 300.00

 Tier IV—5,001—10,000—$ 500.00

 Tier V—10,001—25,000—$ 750.00

 Tier VI—Over 25,000—$1,000.00

 This administrative fee is in lieu of any permit fee, encroachment fee, degradation fee, or other fee assessed on a telecommunications provider for its occupation of or work within the public right of way.

 (C) A municipality shall not levy any tax, license, fee, or other assessment on a telecommunications service, other than (1) the business license tax authorized by this article, and (2) franchise fees as defined and regulated under 47 U.S.C. Section 542; provided, however, that nothing in this subsection restricts the right of a municipality to impose ad valorem taxes, sales taxes, or other taxes lawfully imposed on other businesses within the municipalities. This subsection does not prohibit a municipality from assessing upon a telecommunications company fees of general applicability such as sanitation fees, building permit fees, and zoning permit fees that are not related to the telecommunications company’s occupation of or work within the public right of way.

 (D) A telecommunications company, including a mobile telecommunications company providing mobile telecommunications services, is not considered to be using public streets or public property unless it has constructed or installed physical facilities in public streets or on public property. The use of public streets or public property under lease, site license, or other similar contractual arrangement between a municipality and a telecommunications company does not constitute the use of public streets or public property for purposes of this article. Without limiting the generality of the foregoing, a telecommunications company is not considered to be using public streets or public property for purposes of this article solely because of its use of airwaves within a municipality. If a telecommunications company, including a telecommunications company providing mobile telecommunications services, requests of a municipality permission to construct or install physical facilities in public streets or on public property, that request must be considered by the municipality in a manner that is competitively neutral and nondiscriminatory as among all telecommunications companies.

HISTORY: 1999 Act No. 112, Section 1, eff June 30, 1999; 2005 Act No. 8, Section 4, eff January 13, 2005.

Library References

Telecommunications 620.

Westlaw Topic No. 372.

**SECTION 58‑9‑2240.** Regulatory control by local government.

 A municipality may not use its authority over the public streets and public property as a basis for asserting or exercising regulatory control over telecommunications companies regarding matters within the jurisdiction of the Public Service Commission or the Federal Communications Commission or the authority of the Office of Regulatory Staff, including, but not limited to, the operations, systems, service quality, service territory, and prices of a telecommunications company. Nothing in this section shall be construed to limit the authority of a local governmental entity over a cable television company providing cable service as permitted by 47 U.S.C. Section 542.

HISTORY: 1999 Act No. 112, Section 1, eff June 30, 1999; 2006 Act No. 318, Section 70, eff May 24, 2006.

Library References

Telecommunications 609, 622, 624.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 3 to 5.

**SECTION 58‑9‑2250.** Existing consent agreements.

 A telecommunications company, its successors or assigns, that is occupying the public streets and public property of a municipality on the effective date of this article with the consent of the municipality to use such public streets and public property shall not be required to obtain additional consent to continue the occupation of those public streets and public property.

HISTORY: 1999 Act No. 112, Section 1, eff June 30, 1999.

Library References

Telecommunications 619.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 19.

**SECTION 58‑9‑2260.** Enforcement of ordinances or practices conflicting with article.

 (A) No municipality may enforce an ordinance or practice which is inconsistent or in conflict with the provisions of this article, except that:

 (1) As of the time of the effective date of this article, any municipality which had entered into a franchise agreement or other contractual agreement with a telecommunications provider prior to December 31, 1997, may continue to collect fees under the franchise agreement or other contractual agreement through December 31, 2003, regardless of whether the franchise agreement or contractual agreement expires prior to December 31, 2003.

 (2) Nothing in this article shall be interpreted to interfere with continuing obligations of any franchise or other contractual agreement in the event that the franchise agreement or other contractual agreement should expire after December 31, 2003.

 (3) In the event that a municipality collects these fees under a franchise agreement or other contractual agreement herein, the fees shall be in lieu of fees or taxes that might otherwise be authorized by this article.

 (4) Any municipality that, as of the effective date of this article, has in effect a business license tax ordinance, adopted prior to December 31, 1997, under which the municipality has been imposing and a telecommunications company has been paying a business license tax higher than that permitted under this article but less than five percent may continue to collect the tax under the ordinance through December 31, 2003, instead of the business license tax permitted under this article.

 (5) Any municipality which, by ordinance adopted prior to December 31, 1997, has imposed a business license tax and/or franchise fee on telecommunications companies of five percent or higher of gross income derived from the sale of telecommunications services in the municipality, to which tax and/or fee a telecommunications company has objected, failed to accept, filed suit to oppose, failed to pay any license taxes or franchise fees required thereunder, or paid license taxes or franchise fees under protest, may enforce the ordinance and the ordinance shall continue in full force and effect until December 31, 2003, unless a court of competent jurisdiction declares the ordinance unlawful or invalid. In this event, the municipality is authorized until December 31, 2003, to collect business license taxes and/or franchise fees thereunder, not exceeding three percent of gross income derived from the sale of telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality instead of the business license tax permitted under this article; however, this proviso applies to any business license ordinance and/or telecommunications franchise ordinance notwithstanding that same is amended or has been amended subsequent to December 31, 1997.

 (B) The exception to this article described in subsection (A)(5) no longer applies after December 31, 2003.

HISTORY: 1999 Act No. 112, Section 1, eff June 30, 1999.

Library References

Telecommunications 609, 620.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 3 to 5.

**SECTION 58‑9‑2270.** Customer bill disclosure of business license tax.

 A telecommunications company may include the following statement or substantially similar language in any municipal customer’s bill when that customer’s municipality charges a business license tax to the telecommunications company under this chapter: “Please note that included in this bill there may be a line‑item charge for a business license tax assessed by your municipality”.

HISTORY: 1999 Act No. 112, Section 1, eff June 30, 1999.

Library References

Telecommunications 620, 624.

Westlaw Topic No. 372.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 10, Telephone.

ARTICLE 21

Telephone Service for Hearing and Speech Impaired Persons

**SECTION 58‑9‑2510.** Definitions.

 As used in this article:

 (1) “CMRS connection” means each mobile number assigned to a CMRS customer.

 (2) “Commercial Mobile Radio Service” (CMRS) means commercial mobile radio service under Sections 3(27) and 332(d), Federal Telecommunications Act of 1996, 47 U.S.C. Section 151, et seq., Federal Communications Commission Rules, and the Omnibus Budget Reconciliation Act of 1993. The term includes any wireless two‑way communication device, including radio‑telephone communications used in cellular telephone service, personal communication service, or the functional and/or competitive equivalent of a radio‑telephone communications line used in cellular telephone service, a personal communication service, or a network radio access line. The term does not include services that do not provide access to 911 service, a communication channel suitable only for data transmission, a wireless roaming service or other nonlocal radio access line service, or a private telecommunications system.

 (3) “Commission” means the Public Service Commission.

 (4) “Deaf person” means an individual who is unable to hear and understand oral communication, with or without the assistance of amplification devices.

 (5) “Department” means the Department of Revenue.

 (6) “Dual party relay system” or “DPR” means a procedure in which a deaf, hearing, or speech impaired TDD user can communicate with an intermediary party, who then orally relays the first party’s message or request to a third party, or a procedure in which a party who is not deaf or hearing or speech impaired can communicate with an intermediary party who then relays the message or request to a TDD user.

 (7) “Dual sensory impaired person” means an individual who is deaf/blind or has both a permanent hearing impairment and a permanent visual impairment.

 (8) “Exchange access facility” means the access from a particular telephone subscriber’s premises to the telephone system of a service supplier. Exchange access facilities include service supplier provided access lines, PBX trunks, and Centrex network access registers, all as defined by the South Carolina Public Service Commission. Exchange access facilities do not include service supplier owned and operated telephone pay station lines, or wide area telecommunications service (wats), foreign exchange (fx), or incoming lines.

 (9) “Hard of hearing person” means an individual who has suffered a permanent hearing loss which is severe enough to necessitate the use of amplification devices to hear oral communication.

 (10) “Hearing impaired person” means a person who is deaf or hard of hearing.

 (11) “Local exchange provider” means a local exchange telephone company operating in this State.

 (12) “Operating fund” means the Dual Party Relay Service Operating Fund which is a specific fund to be created by the commission and established, invested, managed, and maintained for the exclusive purpose of implementing the provisions of this chapter according to commission regulations.

 (13) “Prepaid wireless consumer” means a person or entity that purchases prepaid wireless telecommunications service in a prepaid wireless retail transaction.

 (14) “Prepaid wireless provider” means a person or entity that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

 (15) “Prepaid wireless retail transaction” means the purchase of prepaid wireless telecommunications service from a prepaid wireless seller for any purpose other than resale.

 (16) “Prepaid wireless seller” means a person or entity that sells prepaid wireless telecommunications service to another person or entity for any purpose other than resale.

 (17) “Prepaid wireless telecommunications service” means any commercial mobile radio service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in units or dollars which decline with use in a known amount.

 (18) “Speech impaired person” means an individual who has suffered a loss of oral communication ability which prohibits normal use of a standard telephone handset.

 (19) “Subscriber” means any person, company, corporation, business, association, or party who is provided telephone (local exchange access facility) service or CMRS service or VoIP service.

 (20) “Telecommunications device” or “telecommunications device for the deaf, hearing, or speech impaired” or “TDD” or “TTY” means a keyboard mechanism attached to or in place of a standard telephone by some coupling device used to transmit or receive signals through telephone lines.

 (21) “Voice over Internet Protocol (VoIP) service” means interconnected VoIP service as that term is defined in 47 C.F.R. Section 9.3 as may be amended.

 (22) “Voice over Internet Protocol (VoIP) provider” means a person or entity that provides VoIP service.

 (23) “Voice over Internet Protocol (VoIP) subscriber” means a person or entity that purchases VoIP service from a VoIP provider.

 (24) “Voice over Internet Protocol (VoIP) service line” means a VoIP service that offers an active telephone number or successor dialing protocol assigned by a VoIP service provider to a customer that has outbound calling capability.

HISTORY: 1990 Act No. 488, Section 2, eff May 30, 1990; 1996 Act No. 426, Sections 14A and 14B, eff June 18, 1996; 2006 Act No. 318, Section 71, eff May 24, 2006; 2016 Act No. 181 (S.277), Section 7, eff May 25, 2016.

Editor’s Note

1990 Act No. 488, Section 1, eff May 30, 1990, provides as follows:

“The General Assembly finds:

“(1) that telephone service provides a rapid and essential communications link among the general public and with essential offices and organizations such as police, fire, and medical facilities;.

“(2) that all persons should have basic telephone service available to them at a just and reasonable rate;.

“(3) that a significant portion of South Carolina’s hearing and speech impaired population has profound disabilities which render normal telephone equipment useless without additional specialized devices; and.

“(4) that there exists a need for a program in which access to basic telephone service for hearing and speech impaired persons is equal in cost to the amount paid by other telephone customers.”

Effect of Amendment

2016 Act No. 181, Section 7, rewrote the section.

CROSS REFERENCES

Universal Service Fund, sum determination, contribution remittances and collections, fee retentions, distributions, see Section 58‑9‑280.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 10, Telephone.

**SECTION 58‑9‑2515.** Public Service Commission jurisdiction.

 Nothing in this article expands, diminishes, or otherwise affects any existing jurisdiction of the commission over any local exchange provider, prepaid wireless provider, CMRS provider, or VoIP provider; or any services provided by any such provider.

HISTORY: 2016 Act No. 181 (S.277), Section 2, eff May 25, 2016.

**SECTION 58‑9‑2520.** Statewide access program.

 (A) The commission may establish and the Office of Regulatory Staff may administer and promote a statewide program to provide telephone access to persons who are speech or hearing impaired.

 (B) The program may include, but is not limited to:

 (1) a statewide dual party relay service;

 (2) selection by the Office of Regulatory Staff of a service provider to provide a statewide relay system to handle all intrastate TDD calls;

 (3) a distribution system as provided by the Office of Regulatory Staff of TTY’s and other related telecommunications devices; and

 (4) prescribing or promulgating procedures, regulations, guidelines, and criteria to establish, implement, administer, regulate, and promote all aspects of the dual party relay service and the distribution of TTY and other related telecommunications devices, and the establishment of a funding mechanism to cover all associated costs of these services and this article where not prohibited by law.

 The administration, implementation, and promotion of the dual party relay service and the distribution of TTY and other related telecommunications devices is the responsibility of the Office of Regulatory Staff. The administration of the funding mechanism is the responsibility of the Office of Regulatory Staff.

 (C) The commission and the Office of Regulatory Staff may use assistance from state and federal agencies or from private organizations and industry to accomplish the purposes of this article.

HISTORY: 1990 Act No. 488, Section 2, eff May 30, 1990; 1996 Act No. 426, Section 15, eff June 18, 1996; 2006 Act No. 318, Section 71, eff May 24, 2006.

Library References

Telecommunications 850.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 52 to 56, 103.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 10, Telephone.

**SECTION 58‑9‑2530.** Dual party relay charge.

 (A) The commission may require each local exchange provider, CMRS provider, and VoIP provider operating in this State to impose a monthly dual party relay charge not to exceed ten cents, and each prepaid wireless seller to impose a dual party relay charge of the same amount on each wireless retail transaction, as necessary to fund the establishment and operation of a dual party relay system and a distribution system of TTY’s and other related telecommunications devices in this State. The amount of the dual party charge must be determined by the commission based upon the amount of funding necessary to accomplish the purposes of this article and provide dual party telephone relay services on a continuous basis, and the amount of the charge must be uniform among all local exchange providers, CMRS providers, VoIP providers, and prepaid wireless sellers. All dual party relay charge monies collected and remitted to the department in accordance with Section 58‑9‑2535 must be transferred to the operating fund, which must be administered by the Office of Regulatory Staff. The dual party relay charge collected and remitted in accordance with this article is not subject to any tax, fee, or assessment, nor may it be considered revenue of a local exchange provider, CMRS provider, VoIP provider, prepaid wireless provider, or prepaid wireless seller. The commission may provide for the funding of the dual party relay system through contributions from other sources. The fund must be established, invested, and managed for the exclusive purpose of implementing the provisions of this article according to regulations promulgated by the commission.

 (B) Monies in the operating fund must also include appropriations made by the General Assembly for the purpose of this chapter, grants from other governmental or private entities, and contributions or donations received by the commission for the dual party relay service. All monies in the operating fund must be used solely for the administration and operation of a statewide program to provide telecommunications access to persons who are speech and hearing impaired or similarly impaired.

 (C) The users of the relay service must be charged for telephone services, including any authorized commission charge, without additional charges for the use of the relay service. The calling or called party shall bear an expense for making intrastate nonlocal calls considered approved by the commission as being equitable in comparison with non‑TDD or DPR service customers.

HISTORY: 1990 Act No. 488, Section 2, eff May 30, 1990; 1996 Act No. 426, Section 16, eff June 18, 1996; 2006 Act No. 318, Section 71, eff May 24, 2006; 2016 Act No. 181 (S.277), Section 8, eff May 25, 2016.

Editor’s Note

2016 Act No. 181, Section 10, provides as follows:

“SECTION 10. Beginning on the effective date of this act, the Office of Regulatory Staff and the Department of Revenue may take necessary action to accommodate full implementation of SECTIONS 3, 5.A., and 8 of this act, as soon as practicable, provided, however, that full implementation shall not occur earlier than January 1, 2017. The Office of Regulatory Staff and the Department of Revenue shall provide at least thirty days’ public notice of the full implementation date before the full implementation of these SECTIONS occurs, and no person or entity is required to bill, collect, remit, or pay any charges pursuant to SECTION 3, 5.A., or 8 of this act prior to the full implementation date.”

Effect of Amendment

2016 Act No. 181, Section 8, rewrote (A).

CROSS REFERENCES

Dual party relay charge collections, see Section 58‑9‑2535.

Library References

Telecommunications 925.

Westlaw Topic No. 372.

C.J.S. Telecommunications Sections 58 to 59, 62.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Telecommunications Section 10, Telephone.

**SECTION 58‑9‑2535.** Dual party relay charge collections.

 (A) A local exchange provider must collect the dual party relay charge established in Section 58‑9‑2530(A) on each local exchange access facility.

 (1) For bills rendered on or after the effective date of this section, for any individual local exchange access facility that is capable of simultaneously carrying multiple voice and data transmissions, a subscriber must be billed a number of dual party relay charges equal to:

 (a) the number of outward voice transmission paths activated on such a facility in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the assistance of the service supplier; or

 (b) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the service supplier. The total number of dual party relay charges is subject to a maximum of fifty such charges for each account.

 (2) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the local exchange provider. A local exchange provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed.

 (3) Local exchange providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the Office of Regulatory Staff as an administrative fee. Within forty‑five days after the end of the month during which the charges were collected, each local exchange provider shall file with the Office of Regulatory Staff a return showing the total amount of dual party relay charges collected for the month and, at the same time, shall remit to the Office of Regulatory Staff the charges collected for that month less the administrative fee.

 (4) Dual party relay charges imposed under this subsection must be added to the billing by the local exchange provider to its subscriber and may be stated separately.

 (B) A CMRS provider must collect the dual party relay charge established in Section 58‑9‑2530(A) for each CMRS connection for which there is a mobile identification number containing an area code assigned to this State by the North American Numbering Plan Administrator; however, trunks or service lines used to supply service to CMRS providers must not be subject to a dual party relay charge. Prepaid wireless telecommunications service is subject to subsection (D) and not to this subsection.

 (1) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the CMRS provider. A CMRS provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed.

 (2) CMRS providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the department as an administrative fee. On or before the twentieth day of the second month succeeding each monthly collection of the dual party relay charges, every CMRS provider shall file with the department a return under oath, in a form prescribed by the department, showing the total amount of charges collected for the month and, at the same time, shall remit to the department the fees collected for that month. The department shall transfer all charges remitted to the operating fund.

 (3) Dual party relay charges imposed under this subsection must be added to the billing by the CMRS provider to its subscriber and may be stated separately.

 (C) A VoIP provider must collect the dual party relay charge established in Section 58‑9‑2530(A) on each VoIP service line. This dual party relay charge must be sourced at the service address in the case of fixed VoIP service, or in the same manner as CMRS is sourced pursuant to the Mobile Telecommunications Sourcing Act, Public Law 106‑252, codified at 4 U.S.C. Sections 116 through 126.

 (1) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the VoIP provider. A VoIP provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed. For bills rendered on or after the effective date of this section, for any VoIP service line that is capable of simultaneously carrying multiple voice and data transmissions, a VoIP subscriber must be billed a number of dual party relay charges equal to:

 (a) the number of outward voice transmission paths activated on such a VoIP service line in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the assistance of the VoIP provider; or

 (b) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the VoIP provider. The total number of dual party relay charges is subject to a maximum of fifty such charges for each account.

 (2) VoIP providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the department as an administrative fee. On or before the twentieth day of the second month succeeding each monthly collection of the dual party relay charges, each VoIP provider shall file with the department a return under oath, in a form prescribed by the department, showing the total amount of dual party relay charges collected for the month and, at the same time, shall remit to the department the charges collected for that month less the administrative fee. The department shall transfer all charges remitted to the operating fund.

 (3) Dual party relay charges imposed under this subsection must be added to the billing by the VoIP provider to its subscriber and may be stated separately.

 (D) A prepaid wireless seller must collect the dual party relay charge established in Section 58‑9‑2530(A) from a prepaid wireless consumer with respect to each prepaid wireless retail transaction occurring in this State. The amount of the dual party relay charge either must be separately stated on an invoice, receipt, or other similar document that is provided to the prepaid wireless consumer by the prepaid wireless seller; or otherwise disclosed to the prepaid wireless consumer. At the election of the prepaid wireless seller, the dual party relay charge may be combined with the USF contribution charge described in Section 58‑9‑280(E)(2)(b) into a single dual party relay and USF contribution charge for purposes of being stated on the invoice, receipt or other similar document or otherwise disclosed to the prepaid wireless consumer. The prepaid wireless seller shall notify the department as to how much of the amount remitted is for dual party relay and how much of the amount remitted is for USF.

 (1) For the purposes of this subsection, a prepaid wireless retail transaction must be sourced as provided in Section 12‑36‑910(B)(5)(b).

 (2) The dual party relay charge is the liability of the prepaid wireless consumer and not the prepaid wireless seller or of any prepaid wireless provider. However, the prepaid wireless seller is liable for remitting all dual party relay charges that the prepaid wireless seller collects from prepaid wireless consumers as provided in this subsection to the department.

 (3) A prepaid wireless seller is entitled to retain three percent of the gross dual party relay charges remitted to the department as an administrative fee. A prepaid wireless seller must remit the remainder of the dual party relay charges collected to the department on or before the twentieth day of the second month succeeding each monthly collection of the dual party relay charges. The department shall transfer all charges remitted to the operating fund.

 (4) The department shall establish procedures by which a prepaid wireless seller may document that a sale is not a prepaid wireless retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions pursuant to Section 12‑36‑950.

 (E) If a billed subscriber purchases a service that is both a CMRS service and a VoIP service, and there is a single active mobile telephone number or successor dialing protocol associated with the service, then only the CMRS dual party relay charges that are subject to subsection (B) apply to the service. Similarly, if an exchange access facility is also a VoIP service line, then only the dual party relay charges that are subject to subsection (A) shall apply to the service.

 (F) For services for which a bill is rendered prior to the effective date of this subsection, no subscriber or consumer is liable to any person or entity for a different dual party relay charge than the consumer or subscriber has been billed, and no local exchange provider, CMRS provider, VoIP provider, prepaid wireless provider, or prepaid wireless seller is liable to any person or entity for billing, collecting, or remitting a different dual party relay charge than is required by this article, or both.

 (G) Neither the State, any political subdivision of the State, nor an intergovernmental agency may require any service provider to impose, collect, or remit a tax, fee, surcharge, or other charge for dual party relay funding purposes other than the dual party relay charges set forth in this article.

 (H) The dual party relay charge required to be remitted to the department must be administered and collected by the department in the same manner as taxes as defined in Section 12‑60‑30 (27) are administered and collected by the department under the provisions of Title 12.

HISTORY: 2016 Act No. 181 (S.277), Section 3, eff May 25, 2016.

Editor’s Note

2016 Act No. 181, Section 10, provides as follows:

“SECTION 10. Beginning on the effective date of this act, the Office of Regulatory Staff and the Department of Revenue may take necessary action to accommodate full implementation of SECTIONS 3, 5.A., and 8 of this act, as soon as practicable, provided, however, that full implementation shall not occur earlier than January 1, 2017. The Office of Regulatory Staff and the Department of Revenue shall provide at least thirty days’ public notice of the full implementation date before the full implementation of these SECTIONS occurs, and no person or entity is required to bill, collect, remit, or pay any charges pursuant to SECTION 3, 5.A., or 8 of this act prior to the full implementation date.”

**SECTION 58‑9‑2540.** Repealed.

HISTORY: Former Section, titled Advisory committee, had the following history: 1990 Act No. 488, Section 2, eff May 30, 1990; 1992 Act No. 396, Section 1, eff June 1, 1992; 2006 Act No. 318, Section 71, eff May 24, 2006. Repealed by 2016 Act No. 181, Section 11, eff May 25, 2016.

**SECTION 58‑9‑2550.** Distribution systems.

 The Office of Regulatory Staff may establish a distribution system for TTY and other related telecommunications devices. In establishing this program, the Office of Regulatory Staff may:

 (1) select an administrator through the State Fiscal Accountability Authority procurement process to purchase, store, distribute, and maintain telecommunications devices for persons qualified to receive such equipment. In addition, the administrator must be responsible for providing user training and assistance; and

 (2) establish qualifications for eligibility for individuals to receive TTY’s and other related telecommunications devices under a distribution system of TTY’s and other related telecommunications devices. Qualifications shall include certifications as hearing impaired, speech impaired, or dual sensory impaired.

HISTORY: 1996 Act No. 426, Section 13, eff June 18, 1996; 2006 Act No. 318, Section 71, eff May 24, 2006.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Library References

Telecommunications 810.

Westlaw Topic No. 372.

C.J.S. Telecommunications Section 27.

ARTICLE 23

Government‑Owned Communications Service Providers

**SECTION 58‑9‑2600.** Purpose of article.

 This article regulates the provision of communications service by an agency, entity, instrumentality, or a political subdivision of this State, excluding the State Department of Administration, for services provided as of the effective date of this article.

HISTORY: 2002 Act No. 360, Section 1A, eff July 1, 2002; 2012 Act No. 284, Section 4, eff June 29, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

Library References

Telecommunications 625.

Westlaw Topic No. 372.

**SECTION 58‑9‑2610.** Definitions.

 As used in this article:

 (A)(1) “Government‑owned communications service provider” means a state or local political subdivision, instrumentality of the State, person, or entity providing a communications service to the public for hire over a facility, operation, or system that is directly or indirectly owned by, operated by, or a financial benefit obtained by or derived from, an agency, instrumentality, or entity of the State or local government. “Government‑owned communications service provider” does not include the State Department of Administration for services provided as of the effective date of this article.

 (2) The term “government‑owned communications service provider” does not include a state or local governmental entity, instrumentality, or agency that obtains or derives financial benefit solely from leasing or renting, to a person or entity, property that is not, in and of itself, a facility used to provide a communications service.

 (B) “Communications service” means a telecommunications service, a broadband service, or both.

 (C) “Telecommunications service” means a telecommunications service as defined in Section 58‑9‑2200(1).

 (D) “Broadband service” means a service that meets the definition of “broadband service” in Section 58‑9‑10(17) and that has transmission speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband data gathering and reporting. This definition does not modify or otherwise affect the definition of “broadband services” for the purposes of Section 58‑9‑280(G).

 (E) “Person” as defined in Section 58‑9‑10(4) includes a “government‑owned communications service provider”.

 (F) “Public” means the public generally or a limited portion of the public, including a person or corporation. The term “public” excludes governmental agencies or entities when they receive communications service from the State Department of Administration pursuant to its statutory authority or other legal requirements.

 (G) “Unserved area” means:

 (1) within a county that is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of the Census, a nongovernment‑owned communications service provider’s territory within a 2010 Census tract, as designated by the United States Census Bureau, in which at least seventy‑five percent of households have either no access to broadband service or access to broadband service only from a satellite provider; and

 (2) within any other county, a 2010 Census block, as designated by the United States Census Bureau, in which at least ninety percent of households have either no access to broadband service or access to broadband service only from a satellite provider.

 For the purposes of this subsection, “household” has the same meaning as prescribed by the United States Census Bureau.

 (H) “Commission” means the South Carolina Public Service Commission.

HISTORY: 2002 Act No. 360, Section 1A, eff July 1, 2002; 2012 Act No. 284, Section 5, eff June 29, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Editor’s Note

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

CROSS REFERENCES

Petitions to designate unserved areas, notice, objections, see Section 58‑9‑2660.

**SECTION 58‑9‑2620.** Duties and restrictions; cost and rate computations; accounting requirements.

 Notwithstanding any other provision of law, a government‑owned communications service provider must:

 (1) be subject to the same local, state, and federal regulatory, statutory, and other legal requirements to which nongovernment‑owned communications service providers are subject, including regulation and other legal requirements by the commission and the Office of Regulatory Staff;

 (2) not receive a financial benefit that is not available to a nongovernment‑owned communications service provider on the same terms and conditions as it is available to a government‑owned communications service provider, including, but not limited to, tax exemptions and governmental subsidies of any type. Tax exempt capital financing may be used consistent with Sections 58‑9‑2620(4)(a) and 58‑9‑2630(C);

 (3) not be permitted to subsidize the cost of providing a communications service with funds from any other noncommunications service, operation, or other revenue source. If a determination is made that a direct or indirect subsidy has occurred, the government‑owned communications service provider immediately must increase prices for communications service in a manner that ensures that the subsidy will not continue, and any amounts used directly or indirectly to subsidize the past operations will be reimbursed to the general treasury of the appropriate state or local government. This subsection does not prohibit a government‑owned communications service provider from providing matching funds or in‑kind contributions in order to comply with the terms of a federal grant as long as it imputes the matching funds and the value of the in‑kind contributions in calculating the cost incurred and in the rates to be charged for the provision of a communications service;

 (4) impute, in calculating the cost incurred and in the rates to be charged for the provision of a communications service, the following:

 (a) cost of capital component that is the equivalent to the cost of capital available to nongovernment‑owned communications service providers in the same state or locality; and

 (b) an amount equal to all taxes, licenses, fees, and other assessments applicable to a nongovernment‑owned communications provider including, but not limited to, federal, state, and local taxes, rights‑of‑way franchise consent, or administrative fees, and pole attachment fees;

 (5) keep separate books and separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of communications service; and

 (6) be required to prepare and publish an independent annual audit in accordance with generally accepted accounting principles that reflects the full cost of providing the service, including all direct and indirect costs. The indirect costs must include, but are not limited to, amounts for rights‑of‑way franchise, consent, or administrative fees, regulatory fees, occupation taxes, pole attachment fees, and ad valorem taxes. The annual accounting must reflect any direct or indirect subsidies received by the government‑owned communications service provider.

 Notwithstanding any other provision of law, the Office of Regulatory Staff has jurisdiction to investigate, and the commission has authority to enforce, a government‑owned communications service provider to comply with the provisions of this section.

 Records demonstrating compliance with the provisions of this section must be filed with the commission, provided to the Office of Regulatory Staff and made available for public inspection and copying. Nothing in this article expands or restricts the existing jurisdiction of the commission or the Office of Regulatory Staff regarding a service or provider other than a government‑owned communications service provider.

HISTORY: 2002 Act No. 360, Section 1A, eff July 1, 2002; 2006 Act No. 318, Section 72, eff May 24, 2006; 2012 Act No. 284, Section 6, eff June 29, 2012.

Editor’s Note

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

CROSS REFERENCES

Exemptions for government‑owned communications service providers receiving funding for Comprehensive Community Infrastructure project, see Section 58‑9‑2670.

Petitions to designate unserved areas, notice, objections, see Section 58‑9‑2660.

Library References

Telecommunications 625.

Westlaw Topic No. 372.

**SECTION 58‑9‑2630.** Tax collections and payments.

 (A) A government‑owned communications service provider shall pay or collect taxes annually in a manner equivalent to taxes paid by a nongovernment‑owned communications service provider through payment of the following:

 (1) all state taxes, including corporate income taxes under Section 12‑6‑530, and utility license taxes under Section 12‑20‑100;

 (2) all local taxes, including local business license taxes, under Section 58‑9‑2230, together with any franchise fees and other local taxes and fees, including impact, user, service, or permit fees, pole rental fees, and rights‑of‑way franchise, consent, or administrative fees; and

 (3) all property taxes on otherwise exempt real and personal property that are directly used in the provision of a communications service.

 (B) A government‑owned communications service provider shall compute, collect, and remit taxes in the same manner as a nongovernment‑owned communications service provider and must be entitled to the same deductions.

 (C) A government‑owned communications service provider shall annually remit to the general fund of the government entity owning the communications service provider an amount equal to all taxes or fees a private sector communications service provider must pay.

 (D) The taxpayer confidentiality provisions contained in Title 12 do not apply to the filing of a government‑owned communications service provider. However, the Department of Revenue shall require an annual report of all communications service providers. The report must require a communications company licensed in this State to report the total gross of retail communications to which the business license tax is applicable pursuant to Section 58‑9‑2220. This information must be available to any entity authorized to collect a tax on retail communications or its agent. Information provided to an entity or agent authorized to collect a tax must not be disclosed or provided to another person. This information may only be used by an entity or agent of an entity authorized to collect a tax for purposes of determining the accuracy of tax returns, filings, and payment of taxes.

HISTORY: 2002 Act No. 360, Section 1A, eff July 1, 2002; 2012 Act No. 284, Section 7, eff June 29, 2012.

Editor’s Note

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

CROSS REFERENCES

Duties and restrictions, cost and rate computations, accounting requirement, see Section 58‑9‑2620.

Exemptions for government‑owned communications service providers receiving funding for Comprehensive Community Infrastructure project, see Section 58‑9‑2670.

Petitions to designate unserved areas, notice, objections, see Section 58‑9‑2660.

Library References

Telecommunications 625.

Westlaw Topic No. 372.

**SECTION 58‑9‑2650.** Liability insurance rates.

 The Department of Insurance must determine the South Carolina average market rate for private sector liability insurance for communications operations. To have government‑owned and nongovernment‑owned communications service providers in the same competitive position, to the extent possible, the rate paid for liability insurance for government‑owned communications operations must be equal to or greater than the average market rate for private sector liability insurance in South Carolina as determined by the Department of Insurance. To the extent that any government‑owned communications service provider pays less than the average market rate for this insurance established by the Department of Insurance, the difference must be remitted by the government‑owned communications service provider to the general fund of the government owning that communications service provider. However, nothing in this section may be construed to mean a government‑owned communications provider is not covered by the South Carolina Tort Claims Act.

HISTORY: 2002 Act No. 360, Section 1A, eff July 1, 2002; 2012 Act No. 284, Section 8, eff June 29, 2012.

Editor’s Note

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

CROSS REFERENCES

Exemptions for government‑owned communications service providers receiving funding for Comprehensive Community Infrastructure project, see Section 58‑9‑2670.

Petitions to designate unserved areas, notice, objections, see Section 58‑9‑2660.

Library References

Insurance 1541.

Telecommunications 625.

Westlaw Topic Nos. 217, 372.

C.J.S. Insurance Sections 91 to 95, 105 to 107.

**SECTION 58‑9‑2660.** Petitions to designate unserved areas; notice; objections.

 (A) A government‑owned communications service provider may petition the commission to designate one or more areas as an unserved area. The petition must identify with specificity each 2010 Census tract within a persistent poverty county described in Section 58‑9‑2610(G) and each 2010 Census block in any other county for which this designation is sought. The petition also must identify each county that contains any Census tract or block identified in the petition. If an objection is not filed pursuant to subsection (C), the commission must grant the petition and designate each 2010 Census tract or block identified in the petition as an unserved area.

 (B) The commission shall maintain a list, by county, of all broadband service providers who have provided to the commission written notification that they wish to receive notice of petitions to designate unserved areas in a particular county or counties. The commission must serve electronic notice of the petition described in subsection (A) on all broadband service providers in the affected county or counties that requested notice of petitions within five working days of the petition’s filing. The commission also must post public notice of the filing of the petition on its website.

 (C)(1) A broadband service provider that has not notified the commission of its wish to receive notice of petitions pursuant to subsection (B) or a resident of an area designated in a petition filed pursuant to subsection (A) may, within thirty days after the commission posts public notice of the filing of the petition on its website, file with the commission an objection to this designation on the ground that one or more areas designated in the petition is not an unserved area.

 (2) A provider of broadband service in the area designated in a petition filed pursuant to subsection (A) that notified the commission of its wish to receive notice of petitions may, within thirty days after service of the notice required in subsection (B), file with the commission an objection to this designation on the ground that one or more areas designated in the petition is not an unserved area.

 (3) Any provider or resident filing an objection must file testimony supporting the objection within thirty days after the objection is filed. If no testimony is filed in support of the objection, the petition must be granted.

 (D) If an objection is filed pursuant to subsection (C), the commission must:

 (1) give the petitioner an opportunity to submit prefiled testimony responding to the objection;

 (2) hold a hearing on the dispute; and

 (3) rule on the petition within ninety days after the objection is filed.

 (E) Upon a commission designation that an area is an unserved area, the provisions of Sections 58‑9‑2620, 58‑9‑2630, and 58‑9‑2650 must not apply to a broadband service provided by the petitioner in that area until the later of:

 (1) sixty months after the effective date of this act if, at the time an area is designated as an unserved area, the transmission speed requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband gathering and reporting are the same as they were on the effective date;

 (2) thirty‑six months after the effective date of this act if, at the time an area is designated as an unserved area, the transmission speed requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband gathering and reporting are different than they were on the effective date of this act; or

 (3) twelve months after the commission determines pursuant to subsection (F) that the area is no longer an unserved area.

 (F) A provider of broadband service or a resident of an area designated as an unserved area may petition the commission to determine that the area is no longer an unserved area. After notice and an opportunity for a hearing, the commission must grant the petition if, considering only broadband service that is available from providers other than the government‑owned communications service provider that filed the petition resulting in the designation by the commission of the area as an unserved area, the commission determines that the area no longer satisfies the relevant definition of “unserved” in Section 58‑9‑2610(G).

HISTORY: 2012 Act No. 284, Section 2, eff June 29, 2012.

Editor’s Note

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

CROSS REFERENCES

Exemptions for government‑owned communications service providers receiving funding for Comprehensive Community Infrastructure project, see Section 58‑9‑2670.

Library References

Telecommunications 625.

Westlaw Topic No. 372.

**SECTION 58‑9‑2670.** Exemptions for government‑owned communications service providers receiving funding for Comprehensive Community Infrastructure project.

 (A) For any government‑owned communications service provider that, on or before the effective date of this act, was awarded funding for a Comprehensive Community Infrastructure middle‑mile project pursuant to the Broadband Technology Opportunities Program administered by the United States Department of Commerce’s National Telecommunications and Information Administration:

 (1) the provisions of Section 58‑9‑2630 do not apply;

 (2) the provisions of Sections 58‑9‑2620, 58‑9‑2650, and 58‑9‑2660 do not apply to the provision of communications services by a government‑owned communications service provider to the government entity that owns the communications facility, operation, or system; and

 (3) the provisions of Sections 58‑9‑2620, 58‑9‑2650, and 58‑9‑2660 do not apply to the extent that the middle‑mile services it offers are used to actually provide communications services to end users in unserved areas. The provider may use any reasonable methodology to comply with this provision. On an annual basis, the provider must file with the commission and provide to the Office of Regulatory Staff a detailed explanation of the methodology it uses to comply with this section, along with supporting documentation, and the explanation and documentation must be made available for public inspection and copying.

 (B) The provisions of Sections 58‑9‑2620, 58‑9‑2630, 58‑9‑2650, and 58‑9‑2660 do not apply to any government‑owned communications service provider, that, on or before the effective date of this act, was awarded a grant for a last‑mile project pursuant to the Broadband Initiatives Program administered by the United States Department of Agriculture’s Rural Utilities Service, to the extent that the government‑owned communications service provider provides communications services to addresses that are within the area set forth in its application for the grant, referenced above or to addresses that satisfy each of the following five criteria: (i) are within the border of the grant recipient’s county; (ii) are six miles or further from the center point of any incorporated area that, as of December 31, 2011, had a population in excess of ten thousand as determined by the 2010 Census; (iii) are outside any area that, as of December 31, 2011, was served by a rural telephone company, as defined in 47 U.S.C. Section 153(37), that provided service to less than fifteen thousand access lines within its local exchange study area in the State; (iv) are outside the boundaries of any industrial or business park owned in whole or in part by the grant recipient’s county and occupied by one or more persons or entities as of the effective date of this act; and (v) are one mile or further from the center of any incorporated area or unincorporated community with a population of no more than one thousand five hundred as long as the address is, as of December 31, 2011, within an exchange of a rural telephone company as defined in 47 U.S.C. Section 153(37). The provisions of Sections 58‑9‑2620, 58‑9‑2630, 58‑9‑2650, and 58‑9‑2660 apply to the extent that the government‑owned communications service provider provides communications service to any other addresses. In order not to impede efficient network design, nothing in this subsection prohibits the incidental placement of the government‑owned communications service provider’s facilities outside the borders of the grant recipient’s county as long as such facilities are not used to provide any communications services to any addresses outside the grant recipient’s county.

 (C) The provisions of Sections 58‑9‑2620, 58‑9‑2630, 58‑9‑2650, and 58‑9‑2660 do not apply to any municipality that is a government‑owned communications service provider and that: (i) applied, on or before December 31, 2011, for a grant for a last‑mile project pursuant to the Broadband Initiatives Program administered by the United States Department of Agriculture’s Rural Utilities Service; (ii) expended funds in excess of twenty‑five thousand dollars to complete business plans or feasibility studies in support of such application; and (iii) is awarded federal funds to support the project identified in the application referenced in item (i) of this subsection. The exemption provided in this subsection applies only to the extent that the municipality that is a government‑owned communications service provider provides communications services to addresses that are within both the county in which the municipality is located and the area described in its grant application referenced in item (i) of this subsection or to addresses that are within the limits of the municipality that meets the requirements of this subsection, it being the specific intent that this subsection (C) shall apply to the entire geographic area described in any grant application that meets the requirements of this subsection as well as the entire area within the limits of any municipality that meets the requirement of this subsection.

 (D) For any government‑owned communications service provider that, on or before the effective date of this act, also was a charter member institution of the South Carolina LightRail Consortium, the provisions of Sections 58‑9‑2620, 58‑9‑2630, and 58‑9‑2650 do not apply to the institution or any of its affiliated organizations in the provision of connection to national research and educational networks described in 59‑151‑110(A), provided that: (i) the institution and its affiliated organizations use such connection solely for research and education‑related activities; (ii) under no circumstances will the institution or any of its affiliated organizations provide service that connects commercial sites or that carries commercial traffic, commercial Internet traffic or K‑12 traffic originated in South Carolina; and (iii) neither such charter member institution of the South Carolina LightRail Consortium nor any affiliated organization is authorized to otherwise compete with the commercial communications or information offerings of private sector participants. As used in this subsection, “affiliated organization” means an entity formed for the purpose of owning, leasing, providing or operating the facilities used to provide service to the charter member institution and to related entities that support the mission of the charter member institution. For purposes of this subsection, occasional and incidental use of the connection by persons appropriately granted such access to the connection for purposes that are not directly related to the missions of the charter member institutions is not considered as competing with the commercial communications or information offerings of private sector participants.

 (E) Nothing in this act is intended nor may be construed to prohibit MUSC or MUSC Authority from using the South Carolina LightRail, in furtherance of a documented research project, to transmit medical imaging between MUSC and the MUSC Authority and other hospital or health care facilities taking part in the project.

 (F) The provisions of Sections 58‑9‑2620, 58‑9‑2630, 58‑9‑2650, and 58‑9‑2660 do not apply to the provision of wireless fidelity (wi‑fi) service by a county or a municipality as long as the county or municipality does not impose a charge or fee of any kind for the service.

HISTORY: 2012 Act No. 284, Section 9, eff June 29, 2012.

Editor’s Note

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

Library References

Telecommunications 625.

Westlaw Topic No. 372.

**SECTION 58‑9‑2689.** Report of State Regulation of Public Utilities Review Committee.

 No later than five years from the effective date of this act and every five years following the submission of the first report, the State Regulation of Public Utilities Review Committee must submit to the General Assembly a report examining the effect of this act on residential and business consumers in areas served by communication providers. The reports must assess and determine the impact of the amendments to current law in this act on the availability of communications services to rural counties of the State and report whether the amendments to current law incorporated in this act have had an adverse impact on the provision of communications services in such rural areas. The reports must include data describing the extent of capital improvement and investment by communications service providers in rural counties since the adoption of the amendments to current law included in this act and present any recommendations it may have regarding the continuation, amendment, or repeal of the amendments to current law included in the act. The reports must not disclose any proprietary or confidential information about individual communications service providers.

HISTORY: 2012 Act No. 284, Section 10, eff June 29, 2012.

Editor’s Note

2012 Act No. 284, Section 11, provides as follows:

“The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium”

Library References

Telecommunications 625.

Westlaw Topic No. 372.