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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 with touchtone, 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 area. 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 any service that is used to deliver video or to provide access to 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) any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services.

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

**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.

**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.

**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.

**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.

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.

Prohibited agreements; civil penalties

**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.

**SECTION 58‑9‑220.** Repealed by 1983 Act No. 138 Section 21, eff June 15, 1983.

**SECTION 58‑9‑230.** Schedules shall be adhered to.

(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.

**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.

**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.

**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.

**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.

**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/or cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort. The commission shall issue its final order adopting such guidelines as may be 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 shall 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.

(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) The size of the USF shall be determined by the commission and shall be the sum of the difference, for each carrier of last resort, between its costs of providing basic local exchange services and the maximum amount it may charge for the services. The commission may use estimates to establish the size of the USF on an annual basis, provided it establishes a mechanism for adjusting any inaccuracies in the estimates.

(5) Monies in the USF shall be distributed to a carrier of last resort upon application and demonstration of the amount of the difference between its cost of providing basic local exchange services and the maximum amount it may charge for such services.

(6) The commission shall require any carrier of last resort seeking reimbursement from the fund to file with the commission and provide to the Office of Regulatory Staff the information necessary to determine the costs of providing basic local exchange telephone services. In the event that a carrier of last resort does not currently conduct detailed cost studies relating to such services, the commission shall allow for an appropriate surrogate for such study.

(7) The commission shall have the authority to make adjustments to the contribution or distribution levels based on yearly reconciliations and to order further contributions or distributions as needed.

(8) After notice and an opportunity for hearing to all affected carriers and the Office of Regulatory Staff, the commission by rule may expand the set of services within the definition of universal service based on a finding that the uniform statewide demand for such additional service is such that including the service within the definition of universal service will further the public interest; provided, however, that before implementing any such finding, the commission shall provide for recovery of unrecovered costs through the USF of such additional service by the affected carrier of last resort.

(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.

(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.

**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.

Election as to regulation of a local exchange carrier

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**SECTION 58‑9‑550.** Repealed by 1983 Act No. 138, eff June 15, 1983.

**SECTION 58‑9‑560.** Repealed by 1983 Act No. 138, Section 21, eff June 15, 1983.

**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.

**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.

**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 with touch tone 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) 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 co‑tenant 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:

(a) 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

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

(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.

**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.

**SECTION 58‑9‑580.** Repealed by 1983 Act No. 138, Section 21, eff June 15, 1983.

**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.

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**SECTION 58‑9‑840.** Repealed by 2006 Act No. 318, Section 233, eff May 24, 2006.

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

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

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

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

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

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.

**SECTION 58‑9‑1420.** Repealed by 2006 Act No. 387, Section 54, eff. July 1, 2006.

**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.

**SECTION 58‑9‑1440.** Repealed by 2006 Act No. 387, Section 54, eff. July 1, 2006.

**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.

**SECTIONS 58‑9‑1460 to 58‑9‑1480.** Repealed by 2006 Act No. 387, Section 54, eff. July 1, 2006.

**SECTIONS 58‑9‑1460 to 58‑9‑1480.** Repealed by 2006 Act No. 387, Section 54, eff. July 1, 2006.

**SECTIONS 58‑9‑1460 to 58‑9‑1480.** Repealed by 2006 Act No. 387, Section 54, eff. July 1, 2006.

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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**SECTIONS 58‑9‑2040 to 58‑9‑2140.** Repealed by 1987 Act No. 173, Section 55, eff nine months from approval by Governor (approved by Governor June 30, 1987).

**SECTIONS 58‑9‑2040 to 58‑9‑2140.** Repealed by 1987 Act No. 173, Section 55, eff nine months from approval by Governor (approved by Governor June 30, 1987).

**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.

**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.

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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”.

ARTICLE 19.

 TELEGRAPH AND EXPRESS COMPANIES ‑ COMMON PROVISIONS

**SECTION 58‑9‑2310.** Repealed by 1989 Act No. 184, Section 10, eff June 8, 1989.

**SECTION 58‑9‑2320.** Repealed by 1989 Act No. 184, Section 10, eff June 8, 1989.

ARTICLE 21.

 TELEPHONE SERVICE FOR HEARING AND SPEECH IMPAIRED PERSONS

**SECTION 58‑9‑2510.** Definitions.

As used in this article:

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

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

(3) “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.

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

(4) “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.

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

(6) “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.

(7) “Regulatory staff” means the executive director or the executive director and the employees of the Office of Regulatory Staff.

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

(9) “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.

**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.

**SECTION 58‑9‑2530.** Funding; telephone surcharge; relay service user charges.

(A) The commission may require all local exchange telephone companies operating in this State to impose a monthly charge not to exceed twenty‑five cents on all residential and business local exchange access facilities 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 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. If assessed, the local exchange companies shall collect the charge from their customers and transfer the monies collected to the operating fund, which must be administered by the Office of Regulatory Staff. The charge collected and remitted by the local exchange companies is not subject to any tax, fee, or assessment, nor may it be considered revenue of the local exchange companies. 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.

**SECTION 58‑9‑2540.** Advisory committee.

(A) The commission may appoint an advisory committee to monitor the statewide telecommunications relay access service and advise and make recommendations to the commission in pursuing services which meet the needs of the hearing or speech impaired and others similarly impaired in communicating with other users of telecommunications services.

(B) The advisory committee consists of seven members as follows:

(1) one representative from the South Carolina School for the Deaf and the Blind;

(2) one representative from the South Carolina Association of the Deaf, Inc.;

(3) one representative from the South Carolina Telephone Association;

(4) one representative from the provider of the dual party relay service;

(5) one representative from the Office of Regulatory Staff;

(6) one representative from the office of the Chief Information Officer, State Budget and Control Board; and

(7) one hearing‑impaired person who is an active member of Self‑Help for Hard of Hearing People (SHHH).

The advisory committee must be appointed by the commission upon the recommendations of the applicable agency or organization. The commission shall prescribe regulations which set forth guidelines for the responsibilities, duties, and authority of the committee. Members shall serve at the pleasure of the commission and vacancies must be filled in the manner of the original appointment.

**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 Budget and Control Board 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.

ARTICLE 23.

 GOVERNMENT‑OWNED TELECOMMUNICATIONS SERVICE PROVIDERS

**SECTION 58‑9‑2600.** Purpose of article.

This article regulates the provision of telecommunications service by an agency or entity of the State or a political subdivision of this State, excluding the State Budget and Control Board for services provided as of this article’s effective date.

**SECTION 58‑9‑2610.** Definitions.

As used in this article:

(1) “Government‑owned telecommunications service provider” means a state or local political subdivision or person or entity providing telecommunications 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 or entity of the State or any local government. “Government‑owned telecommunications service provider’ does not include the State Budget and Control Board for services provided as of this article’s effective date.

The term “government‑owned telecommunications service provider” does not include any state or local governmental entity or agency that obtains or derives financial benefit solely from leasing or renting, to any person or entity, property that is not, in and of itself, a facility used to provide telecommunications service.

(2) “Telecommunications service” for the purpose of this section is defined in Section 58‑9‑2200(1).

(3) “Person” as defined in Section 58‑9‑10(4) includes a “government‑owned telecommunications service provider”.

(4) “Public” means the public generally or any limited portion of the public, including a person or corporation. The term “public” excludes governmental agencies or entities when they receive telecommunications service from the Budget and Control Board pursuant to its statutory authority or other legal requirements.

**SECTION 58‑9‑2620.** Duties and restrictions; cost and rate computations; accounting requirements.

Notwithstanding any other provision of law, a government‑owned telecommunications service provider shall:

(1) be subject to the same local, state, and federal regulatory, statutory, and other legal requirements that nongovernment‑owned telecommunications service providers are subject to, including regulation and other legal requirements by the Public Service Commission and the Office of Regulatory Staff;

(2) not be the recipient of any financial benefits of any type that nongovernment‑owned telecommunications service providers are not recipients of 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 telecommunications service with funds from any other nontelecommunications service, operation, or other revenue source. If a determination is made that a direct or indirect subsidy has occurred, the government‑owned telecommunications service provider immediately shall increase prices for telecommunications service in a manner that ensures that the subsidy shall not continue, and any amounts used directly or indirectly to subsidize the past operations shall be reimbursed to the general treasury of the appropriate state or local government;

(4) impute, in calculating the cost incurred and in the rates to be charged for the provision of telecommunications services, the following:

(a) cost of capital component that is the equivalent to the cost of capital available to nongovernment‑owned telecommunications 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 telecommunications 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 telecommunications 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 shall 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 telecommunications provider. Records demonstrating compliance with the provisions of this section shall be filed with the Public Service Commission and provided to the Office of Regulatory Staff and be made available for public inspection and copying. The compliance shall be overseen by the Office of Regulatory Staff pursuant to and not inconsistent with its power and jurisdiction set forth by law.

**SECTION 58‑9‑2630.** Tax collections and payments.

(A) A government‑owned telecommunications service provider shall pay or collect taxes each year in a manner equivalent to taxes paid by nongovernment‑owned telecommunications service providers 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 telecommunication services.

(B) A government‑owned telecommunications service provider shall be required to compute, collect, and remit taxes in the same manner as a nongovernment‑owned telecommunications service provider and shall be entitled to the same deductions.

(C) A government‑owned telecommunications service provider shall annually remit to the general fund of the government entity owning the telecommunications service provider an amount equivalent to any and all taxes or fees a private sector telecommunications provider would be required to pay.

(D) The taxpayer confidentiality provisions contained in Title 12 shall not apply to the filings of government‑owned telecommunications service providers. Provided, however, the Department of Revenue shall require an annual report of all telecommunications providers. The report shall require any telecommunications company licensed in this State to report the total gross of retail telecommunications, to which the business license tax is applicable, pursuant to Section 58‑9‑2220. This information shall be available to any entity authorized to collect a tax on retail telecommunications or their agent. Information provided to an entity or agent authorized to collect a tax may not be disclosed or provided in any manner to any other person. Such 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.

**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 telecommunications operations. In order to have government‑owned and nongovernment‑owned telecommunications service providers in the same competitive position, to the extent possible, the rate paid for liability insurance for government‑owned telecommunications 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 telecommunications service provider pays less than the average market rate for this insurance established by the Department of Insurance, the difference shall be remitted by the government‑owned telecommunications service provider to the general fund of the government owning the telecommunications provider. Provided, however, nothing in this section shall be construed to mean that government‑owned telecommunication providers are not covered by the South Carolina Tort Claims Act.