

**CHAPTER NO. 270**

**SENATE BILL NO. 182**

**By McLeary, Burks**

**Substituted for: House Bill No. 593**

**By Curtiss**

AN ACT to amend Tennessee Code Annotated, Title 65.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, is amended by adding Sections 2 through 5 of this act as a new, appropriately designated chapter.

SECTION 2. (a) It is the policy of the General Assembly to encourage and not prohibit or delay attractive discount pricing and special promotional offers for telecommunications services.

(b) To implement the policy articulated in this section and to encourage low prices, notwithstanding any other provisions of law, all telecommunications providers shall be permitted to offer promotional incentives for telecommunications services, including rebates and limited free service offerings, with such promotions not extending more than six (6) months. Any such free service promotions shall not provide more than one (1) month of free local exchange service in any twelve (12) month period. Any such free service promotion available for the full six (6) month period may not be reinstated for thirty (30) days after expiration of such period.

SECTION 3. (a) Price differences among retail telecommunications customers shall be strictly prohibited to the extent that such differences are attributable to race, creed, color, religion, sex or national origin. All other differences in pricing among retail telecommunications customers, as of the effective date of this act, shall be presumed to be a function of the competitive market. This presumption may be rebutted by evidence of price discrimination as prohibited by Tennessee law.

(b) Nothing in this section shall alter or expand the jurisdiction of the Tennessee Regulatory Authority (hereinafter referred to as the TRA) to hear complaints alleging price discrimination as prohibited by Tennessee law in retail telecommunications services within its jurisdiction as its jurisdiction existed immediately prior to the effective date of this act, except to the extent that such jurisdiction is reduced pursuant to exemption by the TRA subsequent to the effective date of this act. This act does not confer jurisdiction on the TRA relating to services outside its jurisdiction as of the effective date of the act. In determining whether differences in pricing among retail telecommunications customers constitute price discrimination as prohibited by Tennessee law, the TRA shall consider all relevant factors including but not limited to, the following:

- (1) Whether customers have been or will be injured as a result of the alleged price differences;
- (2) Whether there is a legitimate business reason to distinguish between the customers who are being treated differently;
- (3) Whether the customers who are being treated differently are similarly situated;
- (4) Whether customers may choose a functionally equivalent service from an alternative service provider at substantially the same price and terms; and
- (5) Whether the TRA has determined previously that existing and potential competition is an effective regulator of the price of the service that is the subject of the complaint.

SECTION 4.

(a)(1) The TRA shall retain regulatory jurisdiction established in this title for specific, individual telecommunications services. Except as provided in this section, the TRA shall not assert regulatory jurisdiction over the retail offering of combinations or bundles of products or services, whether or not such combinations or bundles of products or services are subject to a tariff or other regulatory filing with the TRA as of the effective date of this act and whether or not comprised of products or services provided by a local exchange carrier alone or with another company. Nothing in this

section shall require any company to engage in joint marketing with another company when it does not choose to do so.

(2) In order to transition to the changes in regulatory jurisdiction established by this part, telecommunications carriers shall provide customers with the following notice, as part of the terms and conditions for bundles or combinations: "This offer contains telecommunications services that are also available separately. Should you desire to purchase only the telecommunications services included in this offer, without additional products or services, you may purchase those telecommunications services individually at prices posted on [company website] or filed with the Tennessee Regulatory Authority."

(3) The Tennessee Regulatory Authority shall issue a statewide public service announcement, no less than once per year, to inform Tennesseans that telecommunications services they purchase may be available at different prices, depending upon whether they are bought individually or bought bundled, and to inform Tennesseans that functionally equivalent services may be available from providers who do not offer service using wire line technology. Scripts for these announcements shall be posted for comments from industry and consumers or their representatives before being used and shall not favor any one provider or technology over others.

(b) Unless otherwise agreed by the end-user, the terms and conditions established by tariffs or other filings at the TRA for combinations or bundles of products or services shall remain effective as to end-users who have selected such combinations or bundles prior to enactment of this section for the duration of a term selected by the end-user. If no term was selected by the end-user for a combination or bundle of products or services, or if no term limit applied to such combination or bundle, then the terms and conditions governing that combination or bundle of products or services, at the time the end-user subscribed, shall remain in effect until the end-user agrees or elects otherwise or until the end-user is noticed of a change in terms by the service provider. Terms and conditions originally established by approved tariffs, which are changed and noticed to customers subsequent to the enactment of this act, shall bind end-users. End-users who terminate service within thirty (30) days of issuance of the notice of a change in such terms and conditions, shall not be affected by such changed terms and conditions for the period between issuance of the notice and termination of service.

(c) Nothing in this section shall affect, alter or be construed to affect or alter the applicability of state or federal antitrust law or federal telecommunications law or the TRA's authority under federal telecommunications laws.

(d) Any provider of local exchange service shall permit any end-user of basic local exchange telephone service to terminate that service upon request and shall take all administrative steps necessary, including "porting", as that term is used in 47 USC § 153(30), of the end-user's existing telephone number, to permit such end-user to begin receiving replacement service from another certificated provider in a timely manner.

(e) Nothing in this section shall alter or expand the TRA's jurisdiction to hear complaints alleging price discrimination as prohibited by Tennessee law or anti-competitive practices regarding the provision of retail telecommunications services within its jurisdiction as its jurisdiction existed immediately prior to the effective date of this act, except to the extent that such jurisdiction is reduced pursuant to exemption by the TRA subsequent to the effective date of this act. This act does not confer jurisdiction on the TRA relating to services outside its jurisdiction as of the effective date of the act. In evaluating claims of anti-competitive practices in any retail telecommunications services market, the TRA shall apply applicable federal or state law and shall consider all relevant factors including, but not limited to, the following:

(1) The geographical and economic extent of commercial demand for functionally-equivalent services;

(2) The number and relative longevity of companies providing functionally-equivalent services;

(3) The relative gain or loss of revenues attributable to functionally-equivalent services and customers who purchase functionally-equivalent services;

(4) The relative increase or decrease in facilities-based investment attributable to providing functionally-equivalent services;

(5) The degree to which marketing, pricing and business strategies are utilized to acquire or maintain revenues attributable to functionally-equivalent services and customers who purchase functionally-equivalent services; and

(6) The relationship between pricing policies and costs of functionally-equivalent services.

(f) Nothing in this section shall alter the TRA's jurisdiction to review price regulation filings or conduct rate of return ratemaking analysis, as applicable, for ILEC telecommunications providers. Revenue for telecommunications services provided in combinations or bundles shall be considered regulated revenue for purposes of price regulation or rate of return rate analysis.

SECTION 5. The TRA shall not establish or impose upon price-regulated carriers subject to this title state-specific financial information or financial reporting requirements or a uniform system of accounts. Price-regulated carriers subject to this title may be required to file with the TRA only that financial information or financial reports that are required to be filed with the Federal Communications Commission. Such TRA filing requirements may be satisfied by the carrier by the submission to the TRA of a letter explicitly identifying a publicly-available government website on which the information is posted. The inspection, control and supervision fee established in § 65-4-301 shall be based on the financial information contained in such federal reports.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: May 16, 2005**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 28<sup>th</sup> day of May 2005**

  
PHIL BREDESEN, GOVERNOR