

AMENDMENT NO. \_\_\_\_\_

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**Signature of Sponsor**

<b>FILED</b>
Date _____
Time _____
Clerk _____
Comm. Amdt. _____
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**AMEND Senate Bill No. 0891**

**House Bill No. 0695**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the following as a new section to be appropriately designated:

Section \_\_\_\_\_. (a) It is hereby declared to be the policy of this state to foster and facilitate the development of an efficient, technologically advanced, statewide telecommunications system based on reasonable competition, while preserving and advancing universal service, protecting the public safety and welfare, assuring the continued quality of telecommunications services, and safeguarding the interests of consumers.

(b) In considering the issuance of certificates of convenience and necessity to providers of telecommunications services pursuant to Part 2 of this Chapter, notwithstanding other provisions thereof, in order to foster reasonable competition, the Commission shall issue a certificate to any applicant possessing adequate financial, technical and managerial capabilities; provided, however, that this subsection shall not be applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing provider of telecommunications services or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on the effective date of this Act.

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(c) In order to assure the development and continuation of reasonable competition:

(i) All providers of telecommunications services regulated under this section shall provide non-discriminatory interconnection to their public networks under reasonable rates, terms, and conditions to authorized competing providers of telecommunications services.

(ii) Any provider of telecommunications services having dominant control over access to, or interconnection with, the telecommunications network shall not, either directly or through affiliated companies, engage in any anti-competitive act or practice including, without limitation, price squeezing, price discrimination, predatory pricing, or tying arrangements; shall not cross-subsidize non-regulated services with revenue created by regulated services; and shall not give any preference to affiliated companies.

(iii) To protect the public interest, the Commission shall have primary jurisdiction to enforce the provisions of this subsection in accordance with powers and procedures provided by law. In addition, any person aggrieved by any violation of this subsection, and suffering direct injury as a proximate result thereby, may bring a civil action in any court of competent jurisdiction, wherein the court may grant injunctive relief, award damages and the recovery of full costs, including reasonable attorneys' fees to an aggrieved party who prevails.

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(d) Promptly after the effective date of this Act, the Commission shall commence a rulemaking proceeding, in accordance with Title 4, Chapter 5, for the purpose of adopting rules to foster and facilitate the development of a competitive telecommunications system; including, without limitation, the unbundling and purchase of service elements and functions on a non-discriminatory basis reflecting underlying costs, the resale of telecommunications services, number portability, presubscription plans, and the prohibition of unfair and deceptive practices injurious to consumers. The Commission shall take all reasonable means to expedite that proceeding, and the Attorney General and Reporter in reviewing such rules pursuant to § 4-5-211 shall proceed as expeditiously as practicable, in order that such rules may become effective as soon as practicable.

(e) As soon as practicable after the effective date of this Act, the Commission shall convene a generic contested case universal service proceeding in which all authorized local exchange telephone companies shall be parties and in which other interested parties may intervene as provided by law, for the purpose of establishing a mechanism for the support of universal service. The Commission shall monitor the continued functioning of universal service mechanisms and shall conduct investigations, issue show cause orders, entertain petitions or complaints, or adopt rules in order to enforce or modify the initial universal service mechanism adopted pursuant to this subsection.

(f) Other provisions of Chapters 1 through 5 of this Title shall apply to providers of telecommunications services where not inconsistent with this section or any rules adopted

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pursuant to this section; including, without limitation, the power of the Commission to conduct investigations; issue show cause orders; impose penalties; entertain, hear and decide petitions and complaints with respect to the implementation and administration of this section and any rules adopted pursuant to this section; and enforce its regulations and orders.

(g) The Commission is not required to follow rate base/rate of return regulation for any provider of telecommunications services. The Commission may adopt price flexibility plans for incumbent local exchange telephone companies. In adopting such plans, however, the Commission shall assure that: (i) affordable basic local telephone service remains available; (ii) consumers benefit from declining costs; (iii) no category of consumer is required to bear an inequitable burden imposed through market power; and (iv) no category of provider of telecommunications services is isolated from the effects of reasonable competition.

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(h) For the purposes of this section, unless the context requires otherwise:

(1) "Telecommunications" means the transmission, between or among points specified by the user, or information of the user's choosing, without change in the form or content of the information as sent and received, by means of electromagnetic transmission, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the receipt, switching, and delivery of such information) essential to such transmission.

(2) "Telecommunications services" means the offering for profit to the public or to such classes and eligible users as to be effectively available to a substantial portion of the public of telecommunications or telecommunications facilities.

(3) "Providers of telecommunications services" means an entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or other telecommunications service; but does not include non-utilities as defined in § 65-4-101(a).

SECTION 2. Tennessee Code Annotated, Section 65-4-101(a), is amended in the first sentence by inserting the language "telecommunications," between the language "telegraph," and "or any other like system"; in order to include "telecommunications" within the definition of public utility and exclude non-utilities.

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SECTION 3. Tennessee Code Annotated Title 65, Chapter 4, is amended by adding the following as a new section to be appropriately designated:

Section \_\_\_\_\_. In the conduct of investigations, contested cases and rulemaking proceedings, the Commission, its staff and all parties shall proceed as expeditiously as practicable. To that end, the Commission shall adopt rules of practice and procedures facilitating such expeditious disposition; may adopt rules and issue orders protecting the confidentiality of proprietary information, while assuring reasonable access by persons having a legitimate need therefor and the development of an adequate public record; and may issue orders compelling discovery and imposing sanctions as a court is authorized under the Tennessee Rules of Civil Procedure.

SECTION 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end, the provisions of this Act are declared to be severable.

SECTION 5. This Act shall take effect upon becoming law, the public welfare requiring it.