

48:2-21.16

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 48:2-21.16

LAWS OF: 1991 CHAPTER: 428

BILL NO: S3617

SPONSOR(S) Menendez

DATE INTRODUCED: July 15, 1991

COMMITTEE: ASSEMBLY: ---
SENATE: Transportation & Public
Utilities

AMENDED DURING PASSAGE: No Senate committee substitute enacted

DATE OF PASSAGE: ASSEMBLY: January 10, 1992
SENATE: January 6, 1992

DATE OF APPROVAL: January 17, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

974.90 New Jersey. Legislature. Senate.
P976 Transportation and Public Utilities Committee.
1991 Committee meeting on S3617, held 12-10-91, Trenton,
1991.

See newspaper clippings -- attached

KBG/pp

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P.L.1991, CHAPTER 428, approved January 17, 1992
Senate Committee Substitute for
1991 Senate No. 3617

1 AN ACT concerning the regulation of telecommunications
2 carriers and supplementing chapter 2 of Title 48 of the Revised
3 Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. a. The Legislature finds and declares that it is the policy of
8 the State to:

9 (1) Maintain universal telecommunications service at
10 affordable rates;

11 (2) Ensure that customers pay only reasonable charges for
12 local exchange telecommunications services, which shall be
13 available on a non-discriminatory basis;

14 (3) Ensure that rates for noncompetitive telecommunications
15 services do not subsidize the competitive ventures of providers of
16 telecommunications service;

17 (4) Provide diversity in the supply of telecommunications
18 services and products in telecommunications markets throughout
19 the State;

20 (5) Permit the board the authority to approve alternative
21 forms of regulation in order to address changes in technology and
22 the structure of the telecommunications industry; to modify the
23 regulation of competitive services; and to promote economic
24 development.

25 b. The Legislature further finds and declares that:

26 (1) In a competitive marketplace, traditional utility regulation
27 is not necessary to protect the public interest and that
28 competition will promote efficiency, reduce regulatory delay, and
29 foster productivity and innovation.

30 (2) Whether measured by the number of interexchange
31 companies operating in New Jersey, the variety and number of
32 services and/or competitive alternatives, or barriers to entry, the
33 interexchange telecommunications marketplace in New Jersey is
34 sufficiently competitive to relieve interexchange
35 telecommunications carriers from traditional utility regulation.

36 (3) Permitting the competitive interexchange
37 telecommunications marketplace to operate without traditional
38 utility regulation will produce a wider selection of services at
39 competitive market-based prices.

40 (4) The board has found the interexchange telecommunications

1 market place sufficiently competitive to relieve interexchange
2 carriers from traditional utility regulation but found it lacked the
3 authority to eliminate unnecessary regulatory constraints under
4 the existing public utility statute.

5 (5) It is in the public interest to relieve interexchange
6 telecommunications carriers from traditional utility regulation.

7 2. As used in this act:

8 "Alternative form of regulation" means a form of regulation of
9 telecommunications services other than traditional rate base,
10 rate of return regulation to be determined by the board and may
11 include, but not be limited to, the use of an index, formula, price
12 caps, or zone of rate freedom.

13 "Assess" means, in relation to the Director of the Division of
14 Rate Counsel, the making of any assessment or statement of the
15 compensation and expense of counsel, experts and assistants
16 employed by rate counsel and billed by the Director of the
17 Division of Rate Counsel as a final agency order or determination
18 to a local exchange telecommunications company or an
19 interexchange telecommunications carrier filing a petition with
20 the Board of Regulatory Commissioners pursuant to the
21 provisions of this act.

22 "Board" means the Board of Regulatory Commissioners or its
23 predecessor agency.

24 "Competitive service" means any telecommunications service
25 determined by the board to be competitive prior to the effective
26 date of this act or determined to be competitive pursuant to
27 sections 4 or 5 of this act, or any telecommunications service not
28 regulated by the board.

29 "Interexchange telecommunications carrier" means a carrier,
30 other than a local exchange telecommunications company,
31 authorized by the board to provide long-distance
32 telecommunications services.

33 "LATA" means Local Access Transport Area as defined by the
34 board in conformance with applicable federal law.

35 "Local exchange telecommunications company" means a
36 carrier authorized by the board to provide local
37 telecommunications services.

38 "Protected telephone services" means any of the following
39 telecommunications services provided by a local exchange
40 telecommunications company, unless the board determines, after
41 notice and hearing, that any of these services is competitive or
42 should no longer be a protected telephone service:
43 telecommunications services provided to business or residential
44 customers for the purpose of completing local calls; touch-tone
45 service or similar service; access services other than those
46 services that the board has previously found to be competitive;
47 toll service provided by a local exchange telecommunications
48 company; and the ordering, installation and restoration of these
49 services.

1 "Rate counsel" means the Division of Rate Counsel in the
2 Department of the Public Advocate acting pursuant to section 19
3 of P.L.1974, c.27 (C.52:27E-18).

4 "Telecommunications service" means any telecommunications
5 service which is subject to regulation by the board pursuant to
6 Title 48 of the Revised Statutes.

7 3. a. A local exchange telecommunications company may
8 petition the board to be regulated under an alternative form of
9 regulation. The company shall submit its plan for an alternative
10 form of regulation with its petition. The company shall also file
11 its petition and plan concurrently with the Director of the
12 Division of Rate Counsel. The board shall review the plan and
13 may approve the plan, or approve with modifications, if it finds,
14 after notice and hearing, that the plan:

15 (1) will ensure the affordability of protected telephone
16 services;

17 (2) will produce just and reasonable rates for
18 telecommunications services;

19 (3) will not unduly or unreasonably prejudice or disadvantage
20 a customer class or providers of competitive services;

21 (4) will reduce regulatory delay and costs;

22 (5) is in the public interest;

23 (6) will enhance economic development in the State while
24 maintaining affordable rates;

25 (7) contains a comprehensive program of service quality
26 standards, with procedures for board monitoring and review; and

27 (8) specifically identifies the benefits to be derived from the
28 alternative form of regulation.

29 b. Notwithstanding the provisions of R.S.48:2-18, R.S.48:2-21,
30 R.S.48:3-1.1 and section 31 of P.L.1962, c.198 (C.48:2-21.2) or
31 any other law to the contrary, in determining just and reasonable
32 rates, the board may authorize a local exchange
33 telecommunications company to set rates based on an alternative
34 form of regulation pursuant to a plan approved under subsection
35 a. of this section.

36 c. No local exchange telecommunications company may use
37 revenues earned or expenses incurred in conjunction with
38 noncompetitive services to subsidize competitive services.

39 d. The board shall have the power to require an independent
40 audit or such accounting and reporting systems from local
41 exchange telecommunications companies as are necessary to
42 allow a proper allocation of investments, costs or expenses for all
43 telecommunications services, competitive or noncompetitive,
44 subject to the jurisdiction of the board.

45 4. a. Notwithstanding the provisions of R.S.48:2-18,
46 R.S.48:2-21, section 31 of P.L.1962, c.198 (C.48:2-21.2),
47 R.S.48:3-1, or any other law to the contrary, the board shall not
48 regulate, fix or prescribe the rates, tolls, charges, rate
49 structures, terms and conditions of service, rate base, rate of

1 return, and cost of service, of competitive services. The board
2 may require the local exchange telecommunications company or
3 interexchange telecommunications carrier to file and maintain
4 tariffs for competitive telecommunications services.

5 b. The board is authorized to determine, after notice and
6 hearing, whether a telecommunications service is a competitive
7 service. In making such a determination, the board shall develop
8 standards of competitive service which, at a minimum, shall
9 include evidence of ease of market entry; presence of other
10 competitors; and the availability of like or substitute services in
11 the relevant geographic area.

12 c. The board may determine, by rule, order, or in accordance
13 with the provisions of a plan filed pursuant to subsection a. of
14 section 3 of this act, what reports are necessary to monitor the
15 competitiveness of any telecommunications service.

16 d. The board shall have the authority to reclassify any
17 telecommunications service that it has previously found to be
18 competitive if, after notice and hearing, it determines that
19 sufficient competition is no longer present, upon application of
20 the criteria set forth in subsection b. of this section. Upon such a
21 reclassification, subsection a. of this section shall no longer apply
22 and the board may determine such rates for that
23 telecommunications service which it finds to be just and
24 reasonable. The board, however, shall continue to monitor the
25 telecommunications service and, whenever the board shall find
26 that the telecommunications service has again become
27 sufficiently competitive pursuant to subsection b. of this section,
28 the board shall again apply the provisions of subsection a. of this
29 section.

30 e. Notwithstanding the provisions of subsection a. of this
31 section, the following safeguards shall apply to the offering of
32 any competitive service by a local exchange telecommunications
33 company:

34 (1) the local exchange telecommunications company shall
35 unbundle each noncompetitive service which is incorporated in
36 the competitive service and shall make all such noncompetitive
37 services separately available to any customer under tariffed
38 terms and conditions, including price, that are identical to those
39 used by the local exchange telecommunications company in
40 providing its competitive service;

41 (2) the rate which a local exchange telecommunications
42 company charges for a competitive service shall exceed the rates
43 charged to others for any noncompetitive services used by the
44 local exchange telecommunications company to provide the
45 competitive service;

46 (3) tariffs for competitive services filed with the board shall
47 either be in the public records, or, if the board determines that
48 the rates are proprietary, shall be filed under seal and made
49 available under the terms of an appropriate protective

1 agreement, such as those used in cases before the board; and

2 (4) nothing in this act shall limit the authority of the board,
3 pursuant to R.S.48:3-1, to ensure that local exchange
4 telecommunications companies do not make or impose unjust
5 preferences, discriminations, or classifications for
6 noncompetitive services.

7 5. a. For purposes of subsection a. of section 4 of this act,
8 telecommunications services provided by interexchange
9 telecommunications carriers are deemed to be competitive
10 services.

11 b. Nothing in this act shall affect the board's authority to
12 determine whether and under what terms and conditions it will
13 permit interexchange telecommunications carriers to offer
14 intraLATA services within the State.

15 c. The board may establish service quality standards for
16 interexchange telecommunications carriers and nothing in this
17 act shall limit the authority of the board to promulgate service
18 quality standards for interexchange telecommunications carriers
19 or to resolve complaints regarding the quality of interexchange
20 telecommunications carrier service.

21 d. Nothing in the act shall limit the authority of the board to
22 determine whether an interexchange telecommunications carrier
23 should be extended the privilege of operating within this State.

24 6. Whenever rate counsel represents the public interest
25 pursuant to its statutory authority in the review of the petition
26 and plan filed by a local exchange telecommunications company
27 or an interexchange telecommunications carrier with the board
28 pursuant to the provisions of this act, the Director of the Division
29 of Rate Counsel may assess each participating local exchange
30 telecommunications company or interexchange carrier for
31 reimbursement to the Treasurer of the State of New Jersey
32 pursuant to section 20 of P.L.1974, c.27 (C.52:17E-19).

33 7. Not later than two years following the effective date of this
34 act, the board shall submit a report to the Governor and the
35 Legislature reviewing the implementation of the provisions of
36 this act, which shall include, but not be limited to, an evaluation
37 of any alternative form of regulation approved by the board, any
38 plan of such alternative form of regulation and the success of the
39 deregulation of competitive services required and permitted by
40 this act. In its recommendations, the board may also propose any
41 legislative or other changes to the Legislature and the Governor
42 which it deems appropriate.

43 8. This act shall take effect immediately

44
45
46 COMMUNICATIONS

47
48 Revises regulatory scheme for telecommunications services.

SENATE, No. 3617

STATE OF NEW JERSEY

INTRODUCED JULY 15, 1991

By Senator MENENDEZ

1 AN ACT concerning the regulation of telecommunications
2 carriers and supplementing chapter 2 of Title 48 of the Revised
3 Statutes.

4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. The Legislature finds and declares that the development of
8 a state-of-the-art telecommunications infrastructure is essential
9 to attracting businesses, promoting economic development,
10 expanding educational opportunities, and improving the delivery
11 of health care services within the State, and the 1911 statutory
12 scheme which currently governs telecommunications regulation
13 should be modified to be flexible enough to address changes in
14 technology which have occurred in the last eighty years,
15 recognize the need for modified regulation of competitive
16 services, and permit the implementation of programs of economic
17 development and rate stabilization free from the constraints and
18 inefficiencies of rate base, rate of return regulation.

19 2. As used in this act:

20 "Basic telephone services" means telecommunications services
21 provided by a local exchange telephone company to business and
22 residential customers for the purpose of completing local calls;
23 the ordering, installation and restoration of those services; access
24 services other than those which the board has found to be
25 competitive; touch-tone service; and toll service provided by a
26 local exchange telephone company, unless the board determines
27 that any of the above services are competitive.

28 "Board" means the Board of Public Utilities.

29 "Competitive service" means any service not regulated by the
30 board on the effective date of this act; any telecommunications
31 service already determined by statute or by the board to be
32 competitive on or before the effective date of this act; services
33 provided by interexchange telecommunications carriers; and any
34 other telecommunications service which the board may determine
35 to be competitive pursuant to section 3 of this act.

36 "Interexchange telecommunications carrier" means a carrier,
37 other than a local exchange telephone company, authorized by
38 the board to provide long distance interexchange
39 telecommunications services.

40 "Local exchange telephone company" means a public utility
41 authorized by the board to provide basic telephone services and
42 other telecommunications services.

43 "Telecommunications service" means any service provided

1 within the State which is subject to regulation by the board
2 pursuant to Title 48 of the Revised Statutes on the effective date
3 of this act.

4 3. a. Notwithstanding the provisions of R.S.48:2-18,
5 R.S.48:2-21, section 31 of P.L.1962, c.198 (C.48:2-21.2) or any
6 other law to the contrary, in determining just and reasonable
7 rates for telecommunications services, the board shall not be
8 limited to rate base, rate of return regulation of the rates, rate
9 structures and terms and conditions of service when
10 implementing a plan or program to promote economic
11 development, recognizing competition, or ensuring the
12 availability or affordability of telecommunications services of
13 local exchange telephone companies.

14 b. Notwithstanding the provisions of R.S.48:2-18, R.S.48:2-21,
15 section 31 of P.L.1962, c.198 (C.48:2-21.2), R.S.48:3-1 or any
16 other law to the contrary, the board shall not regulate the rates,
17 rate structures, terms and conditions of service, rate base, rate
18 of return, and cost of service of competitive services. The board
19 may require the local exchange telephone company or
20 interexchange telecommunications carrier to file and maintain
21 tariffs for competitive telecommunications services.

22 Upon petition of a local exchange telephone company, the
23 board shall determine whether any additional telecommunications
24 services should be classified as competitive. In making such a
25 determination, the board shall consider evidence of ease of
26 market entry and exit; presence of other competitors; and the
27 availability of like or substitute services.

28 c. Nothing in this act shall affect the board's authority to
29 determine whether and under what terms and conditions it will
30 permit interexchange telecommunications carriers to offer
31 intraLATA services within the State.

32 4. In order to provide appropriate incentives to encourage
33 economic development and investment in the telecommunications
34 infrastructure, the board shall have the authority to approve an
35 economic development program proposed by a local exchange
36 telephone company which is designed to develop a
37 state-of-the-art telecommunications infrastructure. Any
38 economic development program must, at minimum, include:

39 a. A comprehensive, long-term program of infrastructure
40 development for the local exchange telephone company extending
41 over a fixed term of years.

42 b. A rate stability plan of the same duration as the
43 infrastructure development program which shall permit
44 formula-based rate adjustments but shall not permit:

45 (1) any increase in the rates for basic telephone services for
46 one-half the term of the plan;

47 (2) any increase in the rates for low-use message rate
48 residence service for the duration of the plan; and

49 (3) any increase in the rates for programs designed to
50 facilitate the establishment of telephone service to low or

- 1 limited income households for the duration of the plan.
2 c. An expedited procedure for making rate adjustments within
3 60 days of a request for a rate adjustment.
4 d. Notwithstanding the provisions of subsection b. of this
5 section, the local exchange telephone company plan may permit
6 rate adjustments in order to recognize extraordinary events or
7 exogenous circumstances beyond the control of the local
8 exchange telephone company, including, but not limited to, tax
9 and accounting changes, governmental actions and changes in the
10 board's policy with respect to the provisions of intraLATA
11 services by interexchange telecommunications carriers.
12 5. This act shall take effect immediately.
13

14 STATEMENT

15
16 This bill changes the regulatory scheme under which
17 telecommunications services are regulated in the State.
18 The bill provides the Board of Public Utilities with regulatory
19 flexibility with respect to telecommunications services provided
20 by local exchange telephone companies. The bill authorizes the
21 board to determine just and reasonable rates for
22 telecommunications services without rate base, rate of return
23 regulation of the rates, rate structures and terms and conditions
24 of service when implementing a plan or program to promote
25 economic development, recognizing competition, or ensuring the
26 availability or affordability of telecommunications services of
27 local exchange telephone companies.
28 In addition, the bill provides that competitive
29 telecommunications services shall not be subject to regulation
30 with respect to rates, rate structures, terms and conditions of
31 service, rate base, rate of return, and cost of service. The bill
32 defines competitive services as those which are not regulated as
33 of the effective date of the act, any telecommunications service
34 determined by statute or by the board to be competitive as of the
35 effective date of the act and any other telecommunications
36 service the board may later determine to be competitive. In
37 determining whether a telecommunications service should be
38 classified as competitive the board would be required to consider
39 the ease of market entry and exit; the presence of other
40 competitors; and the availability of like or substitute services.
41 Finally, the bill authorizes the board to approve plans proposed
42 by local exchange telephone companies which provide for
43 long-term investment in the telecommunications infrastructure
44 and stabilize the rates for basic and other telecommunications
45 services which are not subject to competition over a fixed term
46 of years.
47

48 COMMUNICATIONS

49
50 Revises regulatory scheme for telecommunications services.

SENATE TRANSPORTATION AND PUBLIC UTILITIES
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 3617

STATE OF NEW JERSEY

DATED: DECEMBER 19, 1991

The Senate Transportation and Public Utilities Committee favorably reports a Senate Committee Substitute for Senate Bill No. 3617.

This substitute provides that a local exchange telecommunications company may petition the Board of Regulatory Commissioners to be regulated under an alternative form of regulation and submit a plan for such regulation and submit a plan for such regulation. In order to be approved, the plan must meet certain requirements, such as ensuring the affordability of protected telephone services and producing just and reasonable rates. The substitute defines alternative form of regulation as a form of regulation of telecommunications services other than traditional rate base, rate of return regulation to be determined by the board and may include, but not be limited to, the use of an index, formula, price caps, or zone of rate freedom. The substitute prohibits a local exchange telecommunications company from using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services. The board is given the power to require an independent audit or such accounting and reporting systems as are necessary to allow a proper allocation of investments, costs or expenses for all telecommunications services, competitive or noncompetitive, subject to the jurisdiction of the board.

The board is empowered to determine, after notice and hearing, whether a telecommunications service is a competitive service. In making such a determination, the board is to develop standards of competitive service. Once a service is determined to be competitive, the board shall not regulate its rates, terms and conditions of service, rate of return or cost of service. The board shall, however, have the authority to monitor the competitiveness of any telecommunications service and to reclassify it. Certain safeguards are provided with regard to the offering of any competitive service by a local exchange telecommunications company, such those dealing with the unbundling of noncompetitive services, rates to be charged for

competitive services, the filing of tariffs for competitive services, and the authority of the board to ensure that there are not imposed any unjust or unreasonable preferences, discriminations or classifications for noncompetitive services. The bill provides that telecommunications services provided by interexchange telecommunications carriers are deemed to be competitive services.

The bill provides for the participation of the Division of Rate Counsel in the Department of the Public Advocate in the review of petitions or plans filed by local exchange and interexchange carriers and for the payment of its expenses.

The board is authorized to establish service quality standards for interexchange carriers.

Nothing in this substitute bill shall affect the board's authority to determine whether and under what conditions it will permit interexchange telecommunications carriers to offer intraLATA services within the State.

Finally, the bill provides for the preparation of a report in two years by the board on the implementation of the provisions of this bill.