



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB3605

Introduced 2/28/2007, by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

220 ILCS 5/13-203	from Ch. 111 2/3, par. 13-203
220 ILCS 5/13-502	from Ch. 111 2/3, par. 13-502
220 ILCS 5/13-504	from Ch. 111 2/3, par. 13-504
220 ILCS 5/13-518	
220 ILCS 5/13-701	from Ch. 111 2/3, par. 13-701

Amends the Public Utilities Act. Provides that service offered by wireless service providers and voice-over-Internet protocol (VoIP) providers shall be deemed reasonably available competitive alternatives for local exchange and interexchange service offered by an incumbent local exchange carrier. Provides that an incumbent local exchange carrier may elect to classify local exchange service in one or more of its exchanges as competitive in accordance with certain standards and procedures. Provides that a service shall be classified as competitive if for any identifiable class or group of customers in that exchange, local exchange service, or its functional competitive alternative is offered by at least 3 providers that are not affiliated with the incumbent local exchange carrier. Provides that if a local exchange service provided by an incumbent local exchange carrier is properly classified as competitive in at least one exchange within a particular market service area under certain provisions, that incumbent local exchange carrier may classify its local exchange services in each of the other exchanges within the same market service area as competitive without any further showing or review by the Commission following specified procedures. In a Section concerning optional services packages, provides that certain service packages shall be classified as competitive services if they meet certain criteria. Makes other changes. Effective immediately.

LRB095 09676 MJR 32109 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Sections 13-203, 13-502, 13-504, 13-518, and 13-701 as follows:

6 (220 ILCS 5/13-203) (from Ch. 111 2/3, par. 13-203)

7 (Section scheduled to be repealed on July 1, 2007)

8 Sec. 13-203. Telecommunications service.

9 "Telecommunications service" means the provision or
10 offering for rent, sale or lease, or in exchange for other
11 value received, of the transmittal of information, by means of
12 electromagnetic, including light, transmission with or without
13 benefit of any closed transmission medium, including all
14 instrumentalities, facilities, apparatus, and services
15 (including the collection, storage, forwarding, switching, and
16 delivery of such information) used to provide such transmission
17 and also includes access and interconnection arrangements and
18 services.

19 "Telecommunications service" does not include, however:

20 (a) the rent, sale, or lease, or exchange for other
21 value received, of customer premises equipment except for
22 customer premises equipment owned or provided by a
23 telecommunications carrier and used for answering 911

1 calls, and except for customer premises equipment provided
2 under Section 13-703;

3 (b) telephone or telecommunications answering
4 services, paging services, and physical pickup and
5 delivery incidental to the provision of information
6 transmitted through electromagnetic, including light,
7 transmission;

8 (c) community antenna television service which is
9 operated to perform for hire the service of receiving and
10 distributing video and audio program signals by wire, cable
11 or other means to members of the public who subscribe to
12 such service, to the extent that such service is utilized
13 solely for the one-way distribution of such entertainment
14 services with no more than incidental subscriber
15 interaction required for the selection of such
16 entertainment service; -

17 (d) public mobile service, as defined under Section
18 13-214 of this Act, or commercial mobile service, as
19 defined under 47 U.S.C. 332.

20 The Commission may, by rulemaking, exclude (1) private line
21 service which is not directly or indirectly used for the
22 origination or termination of switched telecommunications
23 service, (2) cellular radio service, (3) high-speed
24 point-to-point data transmission at or above 9.6 kilobits, or
25 (4) the provision of telecommunications service by a company or
26 person otherwise subject to Section 13-202 (c) to a

1 telecommunications carrier, which is incidental to the
2 provision of service subject to Section 13-202 (c), from active
3 regulatory oversight to the extent it finds, after notice,
4 hearing and comment that such exclusion is consistent with the
5 public interest and the purposes and policies of this Article.
6 To the extent that the Commission has excluded cellular radio
7 service from active regulatory oversight for any provider of
8 cellular radio service in this State pursuant to this Section,
9 the Commission shall exclude all other providers of cellular
10 radio service in the State from active regulatory oversight
11 without an additional rulemaking proceeding where there are 2
12 or more certified providers of cellular radio service in a
13 geographic area.

14 (Source: P.A. 90-185, eff. 7-23-97.)

15 (220 ILCS 5/13-502) (from Ch. 111 2/3, par. 13-502)

16 (Section scheduled to be repealed on July 1, 2007)

17 Sec. 13-502. Classification of services.

18 (a) All telecommunications services offered or provided
19 under tariff by telecommunications carriers shall be
20 classified as either competitive or noncompetitive. A
21 telecommunications carrier may offer or provide either
22 competitive or noncompetitive telecommunications services, or
23 both, subject to proper certification and other applicable
24 provisions of this Article. Any tariff filed with the
25 Commission as required by Section 13-501 shall indicate whether

1 the service to be offered or provided is competitive or
2 noncompetitive.

3 (b) A service shall be classified as competitive only if,
4 and only to the extent that, for some identifiable class or
5 group of customers in an exchange, group of exchanges, or some
6 other clearly defined geographical area, such service, or its
7 functional equivalent, or a substitute service, is reasonably
8 available from more than one provider, whether or not any such
9 provider is a telecommunications carrier subject to regulation
10 under this Act. All telecommunications services not properly
11 classified as competitive shall be classified as
12 noncompetitive. The Commission shall have the power to
13 investigate the propriety of any classification of a
14 telecommunications service on its own motion and shall
15 investigate upon complaint. In any hearing or investigation,
16 the burden of proof as to the proper classification of any
17 service shall rest upon the telecommunications carrier
18 providing the service. After notice and hearing, the Commission
19 shall order the proper classification of any service in whole
20 or in part. The Commission shall make its determination and
21 issue its final order no later than 180 days from the date such
22 hearing or investigation is initiated. If the Commission enters
23 into a hearing upon complaint and if the Commission fails to
24 issue an order within that period, the complaint shall be
25 deemed granted unless the Commission, the complainant, and the
26 telecommunications carrier providing the service agree to

1 extend the time period.

2 (c) In determining whether a service should be reclassified
3 as competitive, the Commission shall, at a minimum, consider
4 the following factors:

5 (1) the number, size, and geographic distribution of
6 other providers of the service;

7 (2) the availability of functionally equivalent
8 services in the relevant geographic area and the ability of
9 telecommunications carriers or other persons to make the
10 same, equivalent, or substitutable service readily
11 available in the relevant market at comparable rates,
12 terms, and conditions;

13 (3) the existence of economic, technological, or any
14 other barriers to entry into, or exit from, the relevant
15 market;

16 (4) the extent to which other telecommunications
17 companies must rely upon the service of another
18 telecommunications carrier to provide telecommunications
19 service; and

20 (5) any other factors that may affect competition and
21 the public interest that the Commission deems appropriate.

22 (d) No tariff classifying a new telecommunications service
23 as competitive or reclassifying a previously noncompetitive
24 telecommunications service as competitive, which is filed by a
25 telecommunications carrier which also offers or provides
26 noncompetitive telecommunications service, shall be effective

1 unless and until such telecommunications carrier offering or
2 providing, or seeking to offer or provide, such proposed
3 competitive service prepares and files a study of the long-run
4 service incremental cost underlying such service and
5 demonstrates that the tariffed rates and charges for the
6 service and any relevant group of services that includes the
7 proposed competitive service and for which resources are used
8 in common solely by that group of services are not less than
9 the long-run service incremental cost of providing the service
10 and each relevant group of services. Such study shall be given
11 proprietary treatment by the Commission at the request of such
12 carrier if any other provider of the competitive service, its
13 functional equivalent, or a substitute service in the
14 geographical area described by the proposed tariff has not
15 filed, or has not been required to file, such a study.

16 (e) In the event any telecommunications service has been
17 classified and filed as competitive by the telecommunications
18 carrier, and has been offered or provided on such basis, and
19 the Commission subsequently determines after investigation
20 that such classification improperly included services which
21 were in fact noncompetitive, the Commission shall have the
22 power to determine and order refunds to customers for any
23 overcharges which may have resulted from the improper
24 classification, or to order such other remedies provided to it
25 under this Act, or to seek an appropriate remedy or relief in a
26 court of competent jurisdiction.

1 (f) If no hearing or investigation regarding the propriety
2 of a competitive classification of a telecommunications
3 service is initiated within 180 days after a telecommunications
4 carrier files a tariff listing such telecommunications service
5 as competitive, no refunds to customers for any overcharges
6 which may result from an improper classification shall be
7 ordered for the period from the time the telecommunications
8 carrier filed such tariff listing the service as competitive up
9 to the time an investigation of the service classification is
10 initiated by the Commission's own motion or the filing of a
11 complaint. Where a hearing or an investigation regarding the
12 propriety of a telecommunications service classification as
13 competitive is initiated after 180 days from the filing of the
14 tariff, the period subject to refund for improper
15 classification shall begin on the date such investigation or
16 hearing is initiated by the filing of a Commission motion or a
17 complaint.

18 (g) For purposes of this Section:

19 "Wireless services providers" means providers of public
20 mobile services as defined in Section 13-214 of this Act or
21 commercial mobile services as defined at 47 U.S.C. 332 (d) (1).

22 Service offered by wireless service providers and
23 voice-over-Internet protocol (VoIP) providers shall be deemed
24 reasonably available competitive alternatives for both local
25 exchange and interexchange service offered by an incumbent
26 local exchange carrier.

1 (h) Notwithstanding any other provision of this Section, an
2 incumbent local exchange carrier may elect to classify local
3 exchange service in one or more of its exchanges as competitive
4 in accordance with the standards and procedures described in
5 this subsection (h). All local exchange service provided by an
6 incumbent local exchange carrier in a particular exchange that
7 the carrier elects to proceed under this subsection (h) shall
8 be classified as competitive upon the filing of a tariff with
9 the Commission that classifies the service as competitive and a
10 verified statement as described in this subsection (h).

11 A service shall be classified as competitive under this
12 subsection (h) if, for any identifiable class or group of
13 customers in that exchange, local exchange service, or its
14 reasonably available competitive alternative is offered by at
15 least 3 providers that are not affiliated with the incumbent
16 local exchange carrier whether or not each provider is a
17 telecommunication carrier subject to regulation under this
18 Act. No more than one of the alternative providers relied on
19 for the classification of local exchange service as competitive
20 in a particular exchange under this subsection (h) may be a
21 wireless service provider and no more than one of such
22 alternative providers may be a VoIP provider that does not own
23 or lease network facilities in the exchange.

24 An incumbent local exchange carrier that classifies a local
25 exchange service in a particular exchange as competitive
26 pursuant to this subsection (h) shall, at the same time that it

1 files a tariff implementing that classification, also file with
2 the Commission a verified statement (i) informing the
3 Commission of its classification; (ii) identifying each of 3 or
4 more alternative providers meeting the standards under this
5 subsection (h); and (iii) listing the source or sources upon
6 which the incumbent carrier relied on in identifying each
7 alternative provider. The burden of proof shall be on the
8 incumbent local exchange carrier seeking to classify its local
9 exchange service as competitive. The Commission shall review
10 the statement without a hearing for the sole purpose of
11 determining whether the verified statement is complete and
12 accurately identifies at least 3 alternative service providers
13 that meet the standards set forth in this subsection (h).

14 A review of the verified statement conducted pursuant to
15 this subsection (h) shall not be considered a contested case
16 defined in Section 1-30 of the Illinois Administrative
17 Procedures Act, notwithstanding any contrary provision. Within
18 15 days after filing the verified statement, the Commission
19 shall notify the carrier in writing whether the statement is
20 complete or incomplete. If the Commission determines that the
21 verified statement is incomplete, it shall state in the notice
22 the reasons that is incomplete and the carrier may submit a
23 revised verified statement.

24 Within 30 days after filing a complete verified statement,
25 the Commission shall notify the carrier in writing as to
26 whether or not the standards set forth in this subsection (h)

1 have been met. If the Commission determines that the statement
2 does not accurately identify at least 3 alternative carriers,
3 it shall issue an order stating the reasons for that
4 determination and direct that local exchange service in the
5 affected exchange be reclassified as noncompetitive. If,
6 however, the local exchange service in that exchange has been
7 qualified as competitive pursuant to subsection (i) of this
8 Section, no reclassification shall be required if the incumbent
9 continues to comply with the requirements of subsection (i) of
10 this Section.

11 Notwithstanding any other provision of this Act, the order
12 shall be deemed to be a final order immediately subject to
13 appeal under Section 10-201 of this Act. If the Commission does
14 not notify the carrier regarding the completeness and accuracy
15 of the verified statement within the time periods required
16 under this subsection (h), the verified statement shall be
17 considered complete and accurate. Nothing in this subsection
18 (h) shall be construed to prohibit an incumbent local carrier
19 for which the Commission has rejected a verified statement as
20 inaccurate from making additional attempts to reclassify the
21 local exchange service at issue as competitive under this
22 subsection (h) or subsection (b), (c), or (i).

23 Notwithstanding any other Section of this Article, no
24 wireless service provider, as defined in this subsection (h),
25 shall be compelled to participate in any Commission review
26 conducted pursuant to this subsection (h) or be compelled to

1 assist any incumbent local exchange carrier in the preparation
2 of information for any verified statement filed pursuant to
3 this subsection (h).

4 (i) Notwithstanding any other provision of this Section, if
5 the local exchange service provided by an incumbent local
6 exchange carrier is properly classified as competitive in at
7 least one exchange within a particular market service area
8 either under subsection (b), (c), or (h) of this Section, that
9 incumbent local exchange carrier may classify its local
10 exchange services in each of the other exchanges within the
11 same market service area as competitive without any further
12 showing or review by the Commission upon the filing with the
13 Commission of a binding commitment to comply with the following
14 limitations with respect to the prices charged for local
15 exchange services in each other exchange:

16 (1) For each other exchange in which the local exchange
17 services fall within the same rate group as the local
18 exchange services provided in an established competitive
19 exchange, the prices charged for local exchange services in
20 the other exchange shall not exceed the prices charged for
21 services in the same rate group in the established
22 competitive exchange.

23 (2) For each other exchange within a market service
24 area in which an incumbent local exchange carrier has an
25 established competitive exchange, in which local exchange
26 services fall within a rate group for which there is no

1 established competitive exchange, the prices charged for
2 local exchange services in the other local exchange shall
3 not exceed the tariffed prices in effect in that exchange
4 on the date that local exchange service in that exchange is
5 classified as competitive under this subsection (i) or such
6 higher tariff prices as may be required under subsection
7 (d) of this Section.

8 In the event that local exchange service provided in an
9 exchange classified as competitive under this subsection (i) is
10 subsequently classified as competitive under another provision
11 of this Section, including subsection (h) of this Section, the
12 binding commitment as to pricing described in this subsection
13 (i) shall no longer apply to that exchange.

14 (Source: P.A. 92-22, eff. 6-30-01.)

15 (220 ILCS 5/13-504) (from Ch. 111 2/3, par. 13-504)

16 (Section scheduled to be repealed on July 1, 2007)

17 Sec. 13-504. Application of ratemaking provisions of
18 Article IX.

19 (a) Except where the context clearly renders such
20 provisions inapplicable, the ratemaking provisions of Article
21 IX of this Act relating to public utilities are fully and
22 equally applicable to the rates, charges, tariffs and
23 classifications for the offer or provision of noncompetitive
24 telecommunications services. However, the ratemaking
25 provisions do not apply to any proposed change in rates or

1 charges, any proposed change in any classification or tariff
2 resulting in a change in rates or charges, or the establishment
3 of new services and rates therefor for a noncompetitive local
4 exchange telecommunications service offered or provided by a
5 local exchange telecommunications carrier with no more than
6 35,000 subscriber access lines. Proposed changes in rates,
7 charges, classifications, or tariffs meeting these criteria
8 shall be permitted upon the filing of the proposed tariff and
9 30 days notice to the Commission and all potentially affected
10 customers. The proposed changes shall not be subject to
11 suspension. The Commission shall investigate whether any
12 proposed change is just and reasonable only if a
13 telecommunications carrier that is a customer of the local
14 exchange telecommunications carrier or 10% of the potentially
15 affected access line subscribers of the local exchange
16 telecommunications carrier shall file a petition or complaint
17 requesting an investigation of the proposed changes. When the
18 telecommunications carrier or 10% of the potentially affected
19 access line subscribers of a local exchange telecommunications
20 carrier file a complaint, the Commission shall, after notice
21 and hearing, have the power and duty to establish the rates,
22 charges, classifications, or tariffs it finds to be just and
23 reasonable.

24 (b) Subsection (c) of Section 13-502 and Sections 13-505.1,
25 13-505.4, 13-505.6, and 13-507 of this Article do not apply to
26 rates or charges or proposed changes in rates or charges for

1 applicable competitive or interexchange services when offered
2 or provided by a local exchange telecommunications carrier with
3 no more than 35,000 subscriber access lines. In addition,
4 Sections 13-406, 13-514, 13-515, and 13-516 do not apply to
5 telecommunications carriers with no more than 35,000
6 subscriber access lines. The Commission may require
7 telecommunications carriers with no more than 35,000
8 subscriber access lines to furnish information that the
9 Commission deems necessary for a determination that rates and
10 charges for any competitive telecommunications service are
11 just and reasonable.

12 (c) For a local exchange telecommunications carrier with no
13 more than 35,000 access lines, the Commission shall consider
14 and adjust, as appropriate, a local exchange
15 telecommunications carrier's depreciation rates only in
16 ratemaking proceedings.

17 (d) Articles ~~Article~~ VI and ~~Sections 7-101 and 7-102 of~~
18 ~~Article~~ VII of this Act pertaining to public utilities, public
19 utility rates and services, and the regulation thereof are not
20 applicable to local exchange telecommunication carriers with
21 no more than 35,000 subscriber access lines.

22 (Source: P.A. 89-139, eff. 1-1-96; 90-185, eff. 7-23-97.)

23 (220 ILCS 5/13-518)

24 (Section scheduled to be repealed on July 1, 2007)

25 Sec. 13-518. Optional service packages.

1 (a) It is the intent of this Section to provide unlimited
2 local service packages at prices that will result in savings
3 for the average consumer. Each telecommunications carrier that
4 provides competitive and noncompetitive services, and that is
5 subject to an alternative regulation plan pursuant to Section
6 13-506.1 of this Article, shall provide, in addition to such
7 other services as it offers, the following optional packages of
8 services for a fixed monthly rate, which, along with the terms
9 and conditions thereof, the Commission shall review, pursuant
10 to Article IX of this Act, to determine whether such rates,
11 terms, and conditions are fair, just, and reasonable.

12 (1) A budget package, which shall consist of
13 residential access service and unlimited local calls.

14 (2) A flat rate package, which shall consist of
15 residential access service, unlimited local calls, and the
16 customer's choice of 2 vertical services as defined in this
17 Section.

18 (3) An enhanced flat rate package, which shall consist
19 of residential access service for 2 lines, unlimited local
20 calls, the customer's choice of 2 vertical services as
21 defined in this Section, and unlimited local toll service.

22 (b) Nothing in this Section or this Act shall be construed
23 to prohibit any telecommunications carrier subject to this
24 Section from charging customers who elect to take one of the
25 groups of services offered pursuant to this Section, any
26 applicable surcharges, fees, and taxes.

1 (c) The term "vertical services", when used in this
2 Section, includes, but is not necessarily limited to, call
3 waiting, call forwarding, 3-way calling, caller ID, call
4 tracing, automatic callback, repeat dialing, and voicemail.

5 (d) The service packages described in this Section shall be
6 classified ~~defined~~ as competitive noncompetitive services in
7 all geographic areas in which any package of basic local
8 exchange services, that contain at a minimum a network access
9 line, of a telecommunications carrier subject to this Section
10 has been or is classified as competitive pursuant to Section
11 13-502 of this Act.

12 (Source: P.A. 92-22, eff. 6-30-01.)

13 (220 ILCS 5/13-701) (from Ch. 111 2/3, par. 13-701)

14 (Section scheduled to be repealed on July 1, 2007)

15 Sec. 13-701. (a) Notwithstanding any other provision of
16 this Act to the contrary, the Commission has no power to
17 supervise or control any telephone cooperative as respects
18 assessment schedules or local service rates made or charged by
19 such a cooperative on a nondiscriminatory basis. In addition,
20 the Commission has no power to inquire into, or require the
21 submission of, the terms, conditions or agreements by or under
22 which telephone cooperatives are financed. A telephone
23 cooperative shall file with the Commission either a copy of the
24 annual financial report required by the Rural Electrification
25 Administration, or the annual financial report required of

1 other public utilities.

2 (b) Sections 13-712 and 13-713 of this Act do not apply to
3 telephone cooperatives.

4 (Source: P.A. 84-1063.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.