

Amendment - 1st Reading-white - Requested by: Katie Zolnikov - (H) Energy, Technology and Federal Relations

- 2023

68th Legislature 2023

Drafter: Trevor Graff, 406-444-4975

HB0492.001.002

1 HOUSE BILL NO. 492
2 INTRODUCED BY K. ZOLNIKOV, D. ZOLNIKOV
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TELECOMMUNICATIONS
5 REGULATION; ELIMINATING PUBLIC SERVICE COMMISSION RATE REGULATION; ELIMINATING THE
6 MONTANA STATE UNIVERSAL FUND; REPEALING THE PERFORMANCE ASSURANCE PLAN STATE
7 ACCOUNT AND THE ASSOCIATED STATUTORY APPROPRIATION; AMENDING SECTIONS 15-53-129, 17-
8 7-502, ~~45-8-213~~, 69-3-225, 69-3-302, 69-3-305, ~~AND 69-3-803~~, AND 69-3-805, MCA; REPEALING SECTIONS
9 69-3-806, 69-3-807, 69-3-808, 69-3-809, 69-3-810, 69-3-821, 69-3-841, 69-3-842, 69-3-843, 69-3-844, 69-3-
10 845, 69-3-846, 69-3-870, 69-3-901, 69-3-902, 69-3-903, 69-3-904, 69-3-905, 69-3-906, 69-3-907, AND 69-3-
11 910, ~~AND 69-6-104~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 15-53-129, MCA, is amended to read:
16 **"15-53-129. (Temporary) Definitions.** As used in this part, unless the context requires otherwise, the
17 following definitions apply:

- 18 (1) "Call-by-call basis" means any method of charging for telecommunications services that
19 measures the price by individual calls.
- 20 (2) (a) "Charges for mobile telecommunications services" means any charge for, or associated
21 with, the provision of commercial mobile radio service, as defined in 47 CFR 20.3, as in effect on June 1, 1999,
22 or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service
23 that is billed to the customer by or for the customer's home service provider regardless of whether individual
24 transmissions originate or terminate within the licensed service area of the home service provider.
- 25 (b) The term does not include one-way radio communications as included in 47 CFR 20.3, as in
26 effect on June 1, 1999.
- 27 (3) (a) "Customer" or "purchaser" means, except as provided in subsection (3)(b), a person who

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1 pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

2

3 **Section 3.** ~~Section 45-8-213, MCA, is amended to read:~~

4 **"45-8-213. Privacy in communications.** ~~(1) Except as provided in 69-6-104, a A person commits the~~
5 ~~offense of violating privacy in communications if the person knowingly or purposely:~~

6 ~~(a) with the purpose to terrify, intimidate, threaten, harass, or injure, communicates with a person~~
7 ~~by electronic communication and threatens to inflict injury or physical harm to the person or property of the~~
8 ~~person or makes repeated use of obscene, lewd, or profane language or repeated lewd or lascivious~~
9 ~~suggestions;~~

10 ~~(b) uses an electronic communication to attempt to extort money or any other thing of value from a~~
11 ~~person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place~~
12 ~~where the communications are received;~~

13 ~~(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical~~
14 ~~device that reproduces a human conversation without the knowledge of all parties to the conversation; or~~

15 ~~(d) with the purpose to terrify, intimidate, threaten, harass, or injure, publishes or distributes printed~~
16 ~~or electronic photographs, pictures, images, or films of an identifiable person without the consent of the person~~
17 ~~depicted that show:~~

18 ~~(i) the visible genitals, anus, buttocks, or female breast if the nipple is exposed; or~~

19 ~~(ii) the person depicted engaged in a real or simulated sexual act.~~

20 ~~(2) (a) Subsection (1)(c) does not apply to:~~

21 ~~(i) elected or appointed public officials or to public employees when the transcription or recording~~
22 ~~is done in the performance of official duty;~~

23 ~~(ii) persons speaking at public meetings;~~

24 ~~(iii) persons given warning of the transcription or recording. If one person provides the warning,~~
25 ~~either party may record.~~

26 ~~(iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health~~
27 ~~care if the recording is of a health care emergency telephone communication made to the facility or agency.~~

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1 ~~(b) — Subsection (1)(d) does not apply to:~~

2 ~~(i) — images involving the voluntary exposure of a person's genitals or intimate parts in public or~~
3 ~~commercial settings;~~

4 ~~(ii) — disclosures made in the public interest, including but not limited to the reporting of unlawful~~
5 ~~conduct;~~

6 ~~(iii) — disclosures made in the course of performing duties related to law enforcement, including~~
7 ~~reporting to authorities, criminal or news reporting, legal proceedings, or medical treatment; or~~

8 ~~(iv) — disclosures concerning historic, artistic, scientific, or educational materials.~~

9 ~~(3) — Except as provided in 69-6-104, a A person commits the offense of violating privacy in~~
10 ~~communications if the person purposely intercepts an electronic communication. This subsection does not~~
11 ~~apply to elected or appointed public officials or to public employees when the interception is done in the~~
12 ~~performance of official duty or to persons given warning of the interception.~~

13 ~~(4) — (a) A person convicted of the offense of violating privacy in communications shall be fined an~~
14 ~~amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~

15 ~~(b) — On a second conviction of subsection (1)(a), (1)(b), or (1)(d), a person shall be imprisoned in~~
16 ~~the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.~~

17 ~~(c) — On a third or subsequent conviction of subsection (1)(a), (1)(b), or (1)(d), a person shall be~~
18 ~~imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or~~
19 ~~both.~~

20 ~~(5) — Nothing in this section may be construed to impose liability on an interactive computer service~~
21 ~~for content provided by another person.~~

22 ~~(6) — As used in this section, the following definitions apply:~~

23 ~~(a) — "Electronic communication" means any transfer between persons of signs, signals, writing,~~
24 ~~images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,~~
25 ~~electromagnetic, photoelectronic, or photo-optical system.~~

26 ~~(b) — "Interactive computer service" means any information service, system, or access software~~
27 ~~provider that provides or enables computer access by multiple users to a computer server, including specifically~~

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1 ~~a service or system that provides access to the internet and this type of service or system as operated or~~
2 ~~offered by a library or educational institution."~~

3

4 **Section 3.** Section 69-3-225, MCA, is amended to read:

5 **"69-3-225. Overbilling of regulated telecommunications tariff charges -- statute of limitations**

6 **for recovery.** (1) A person or entity alleging overbilling of tariffed telecommunications charges by a regulated
7 telecommunications company shall file the action before the commission or a court of competent jurisdiction
8 within 2 years of the date of overbilling.

9 (2) This section is intended to be consistent with limitations on actions as provided in 47 U.S.C. 415.

10 (3) For purposes of this section, the following definitions apply:

11 (a) "Overbilling" means presenting a bill to a customer of a regulated telecommunications company
12 that includes charges that overstate the amount owed by the customer pursuant to the tariff for the service as
13 approved by and on file with the commission.

14 (b) "Regulated telecommunications company" means all public utility companies that are regulated
15 pursuant to 69-3-101(1)(f), Title 69, chapter 3, part 8, and ~~69-3-803(10)~~ 69-3-803(9).

16 (c) "Tariffed telecommunications charges" means all charges and fees for regulated services billed by
17 a regulated telecommunications company as authorized by a tariff that has been approved by and filed with the
18 commission."

19

20 **Section 4.** Section 69-3-302, MCA, is amended to read:

21 **"69-3-302. Changes in schedules.** (1) Except as provided in 69-3-308, a change may not be made
22 in any schedule, including schedules of joint rates, except as approved by the commission, ~~upon~~ or on the
23 passage of 9 months, ~~or by operation of 69-3-907(1)~~. If the 9-month time period expires prior to commission
24 approval of a schedule, a utility may waive the time period.

25 (2) Notwithstanding any provision of this title to the contrary, other than rate adjustments made
26 pursuant to 69-3-308, the rates, tolls, or charges set forth in any schedule filed with the commission pursuant to
27 69-3-301 must become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months

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1 ~~(15)~~(14) "Terminating carrier" means a telecommunications carrier upon whose network
2 telecommunications traffic terminates.

3 ~~(16)~~(15) (a) "Transit traffic" means telecommunications traffic that an originating carrier delivers to a
4 transiting carrier or carriers for delivery to a terminating carrier.

5 (b) The term does not mean traffic carried by interlocal access transport area carriers or providers
6 of intralocal access transport area toll services.

7 ~~(17)~~(16) "Transiting carrier" means a telecommunications carrier or carriers that transport transit traffic
8 from an originating carrier to a terminating carrier and that do not originate or terminate telecommunications
9 traffic."
10

11 **Section 7.** Section 69-3-805, MCA, is amended to read:

12 **"69-3-805. Registration of telecommunications providers.** (1) Before any person or entity provides
13 telecommunications service within the state of Montana, it shall file with the commission a notice including:

14 (a) the name, address, and telephone number of the provider;

15 (b) the name, address, and telephone number of the person responsible for regulatory contacts
16 and customer dispute resolution on behalf of the provider;

17 (c) a description of the provider's existing operations and general service and operating areas in
18 any other jurisdictions;

19 (d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal
20 addresses and telephone numbers of each;

21 (e) ~~initial tariffs or price lists for regulated telecommunications services, including~~ a narrative
22 description of the regulated telecommunications to be offered and the geographic area and markets to be
23 served;

24 (f) a general description of the facilities and equipment that will be used to provide services,
25 including whether the service will be offered on a facilities basis, a resale basis, or a combination of both of
26 them;

27 (g) a statement of whether the provider intends to draw from the federal or state universal service

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1 fund or other explicit support funds, including a statement of whether the provider intends to seek the
2 commission's designation as an eligible telecommunications carrier;
3 (h) disclosure of any formal actions against it by any court or state or federal regulatory agency
4 that resulted in any type of penalty or sanction within the 5 years prior to the date of filing the notice;
5 (i) if the provider is other than a corporation, a description of the form of ownership, the names
6 and addresses of all principal owners and managers, the provider's agent for service of process in Montana,
7 and the date of creation of the business entity; and
8 (j) other information from regulated telecommunications carriers as the commission may require to
9 accomplish the purposes of this chapter.
10 (2) The commission may waive any of the requirements set forth in subsection (1).
11 (3) The provider shall file with the commission a report of any judgment, penalty, or sanction
12 entered in any other jurisdiction that could adversely affect the provider's ability to provide communications
13 services in Montana."
14

15 **NEW SECTION. Section 8. Repealer.** The following sections of the Montana Code Annotated are
16 repealed:
17 69-3-806. Prohibition against cross-subsidization.
18 69-3-807. Regulation of rates and charges.
19 69-3-808. Forbearance of rate regulation to facilitate competition.
20 69-3-809. Alternative forms of regulation.
21 69-3-810. New service -- withdrawal of services.
22 69-3-821. Examination of books and records.
23 69-3-841. Universal service policies.
24 69-3-842. Universal service fund established -- purpose.
25 69-3-843. Fund administrator -- commission rulemaking authority.
26 69-3-844. Contributions to fund.
27 69-3-845. Payments from fund -- costs.

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- 1 69-3-846. Discounts for schools, libraries, and health care providers.
- 2 69-3-870. Performance assurance state special revenue account -- statutory appropriation.
- 3 69-3-901. Definitions.
- 4 69-3-902. Rate regulation of small telecommunications provider.
- 5 69-3-903. Notice of rate increase or decrease.
- 6 69-3-904. Commission review and determination of rate increases or decreases.
- 7 69-3-905. Investigations by commission.
- 8 69-3-906. Petition for review of proposed rate increase or decrease.
- 9 69-3-907. Proposed increase or decrease effective unless requisite petitions received by commission.
- 10 69-3-910. Regulatory flexibility upon petition by small telecommunications provider.
- 11 ~~69-6-104. Control of telephone communications to and from a person holding hostages -- nonliability of~~
- 12 ~~telephone company officials.~~

13

14 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

15

- END -