

Telecommunications Law

History of Federal Regulation

Originally regulated by the Interstate Commerce Commission (“ICC”)

1934 Telecommunications Act ¹

- Congress created the Federal Communications Commission (“FCC”) to regulate telephone, telegraph, and radio.

1996 Telecommunications Act ²

- Deregulation of telecommunications industry.
- Allowed anyone to enter the telecommunications market. Previously, regions had been provincially carved out through franchise agreements.
- This was a response to the states’ deregulation of their respective marketplaces after cable companies demonstrated their ability to deliver local telephone services.³



1. P.L. 73-416 (JUN. 19, 1934).

2. P.L. 104-14 (FEB. 8, 1996).

3. A

Types of Carriers

Local Exchange Carriers (“LEC”):

- The term “**local exchange carrier**” refers to any person engaged in providing telephone exchange service or exchange access. This does not include commercial mobile service under section 332(c) [47 USCS § 332(c)], except to the extent that the Commission finds that such service should be included in the definition of such term.¹
- Local exchange carrier (LEC) is a regulatory term in telecommunications for the local telephone company. In the United States, wireline telephone companies are divided into two large categories: Long distance (interexchange carrier, or IXCs) and local (local exchange carrier, or LECs). This structure is a result of 1984 divestiture of then regulated monopoly carrier American Telephone & Telegraph. Local telephone companies at the time of the divestiture are also known as Incumbent Local Exchange Carriers (ILEC).²

Incumbent Local Exchange Carrier (“ILEC”):

- This refers to the local exchange carrier that on February 8, 1996, provided telephone exchange service in the area and was considered a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.³

Competitive Local Exchange Carrier (“CLEC”):

- A “CLEC” is not an ILEC, i.e., a telecommunications entrant after the 1996 Telecommunications Act. CLECs make use of ILEC’s networks in three ways: (1) Purchasing local telephone services at wholesale rates for resale to end users; (2) Leasing elements of the ILEC's network 'on an unbundled basis; (3) Interconnecting its own facilities with the ILEC's network.⁴

1. 47 U.S.C. § 153(32);

2. 7 C.F.R. § 1734.3

3. MONT. CODE ANN. § 69-3-803(5).

4. *BELL ATL. CORP. V. TWOMBLY*, 550 U.S. 544, 549, 127 S. CT. 1955, 1961 (2007)

The Montana Telecommunication Act

- Available at Title 69, Chp. 3, Sect. 8
- The Legislature delegated regulatory authority to the Montana Public Service Commission (“Commission”) over “regulated telecommunication services.”¹
- This means ILEC’s **must furnish reasonably adequate services and facilities at just and reasonable rates.**²
- The Legislature granted the Commission rulemaking authority over “regulated telecommunication services.”
- The Montana Telecommunication Act incorporates three important procedures from the 1996 Telecommunication Act:
 1. Authority over interconnection agreements between ILECs and CLECs³
 2. Rates LEC’s provide CLECs⁴
 3. Authority to mediate and arbitrate interconnection disputes⁵

1. Mont. Code Ann. § 69-3-101(1)

2. Mont. Code Ann. § 69-3-201

3. Telecommunications Act § 252(5); Mont. Code Ann. § 69-3-832 to -835

4. Telecommunications Act § 252(c)(2), (d); Mont. Code Ann. § 69-3-832 to -835

5. Telecommunications Act § 252(b)-(c); Mont. Code Ann. § 69-3-836 to -840

Legislative Role in Telecommunications

General Session:

- The House regulates telecommunication through its delegation of power to the Commission through the Energy, Technology, and Federal Relations Committee
- The Senate regulates telecommunication through its delegation of power to the Commission through the Energy and Telecommunications Committee

Interim Session

- Due to Montana's bi-annual session schedule, the state Congress regulates telecommunication in the interim through its delegation of power to the Commission through the Interim Energy and Telecommunications Committee

Administrative Committees, such as the Consumer Committee, do not regulate telecommunications in Montana because they have delegated no power to the Commission

The Commission's Rulemaking Authority

- Available at Title 38, Chp. 5. Sub-Chps. 27 and 33
- Sub-Chp. 27: The Telecommunications Act
 - Incorporates “regulated telecommunications service” into administrative rules.¹
 - Creates a presumption telecommunications service is regulated by the Commission.²
 - Prescribes notice requirements.
- Sub-Chp. 33: Service Quality Requirements
 - The purpose of these rules is to establish certain minimum standards for determining if telecommunications service provided on a retail basis is adequate. The commission will liberally construe these rules and may require additional standards when necessary to provide adequate service. Waivers from the rule require the carrier or customer to demonstrate the rule creates an unreasonable hardship.³
 - These rules set trouble reporting, inspection and test requirements, service interruption reconnection standards, and service requirements.⁴

1. ARM 38.5.2702

2. ARM 38.5.2704, 38.5.2707

3. ARM 38.5.3301

4. ARM 38.5.3360 to 62, 38.5.3371