

## STATE OF TENNESSEE

## PUBLIC CHAPTER NO. 278

## SENATE BILL NO. 1954

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Substituted for: House Bill No. 1698

By McCormick, Mike Turner, Ulysses Jones, McDaniel, Fitzhugh, Harwell,  
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AN ACT to amend Tennessee Code Annotated, Section 65-5-109, relative to regulation  
of telecommunications.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Market Regulation  
Act of 2009".

SECTION 2. Tennessee Code Annotated, Section 65-5-109, is amended to add  
new subsections (l) – (r) as follows:

(l)(1) Any non-incumbent certificated provider of local exchange  
telephone or intrastate long distance telephone service or any incumbent  
certificated provider of local exchange or intrastate long distance  
telephone service that has elected price regulation pursuant to  
subsections (a) through (k) may, in its sole discretion, elect to operate  
pursuant to market regulation, by filing notice of its intent to do so with the  
authority, which shall be effective immediately upon filing.

(2) For purposes of the rural exemption under 47 U.S.C. § 251  
only, the election to operate pursuant to market regulation by a rural  
incumbent certificated provider of local exchange or intrastate long  
distance telephone service, as provided in this section, shall constitute an  
acknowledgement that a bona fide request for interconnection or services  
is not unduly economically burdensome, is technically feasible, will not  
present a risk of a significant adverse economic impact on users of  
telecommunications services generally, is consistent with 47 U.S.C. §  
254, and is consistent with the public interest, convenience and necessity.  
This subdivision shall not apply to any telephone cooperative organized  
pursuant to § 65-29-102.

(m) Upon election of market regulation by a certificated provider, the  
provider shall be exempt from all authority jurisdiction, including, but not limited

to, state-based regulation of retail pricing or retail operations, except as defined in subsection (n). Notwithstanding the limitations on authority jurisdiction over market-regulated companies under state law as set forth herein, it is the express intent of the general assembly that the Tennessee regulatory authority is authorized as a matter of state law to receive any jurisdiction delegated to it by the federal 1996 Telecommunications Act, 47 U.S.C. § 214(e), or Federal Communications Commission ("FCC") orders or rules, including, without limitation, jurisdiction granted to hear complaints regarding anti-competitive practices, to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements. In addition to the foregoing, the authority shall continue to exercise its jurisdiction in its role as a dispute resolution forum to hear complaints between certificated carriers, including complaints to prohibit anti-competitive practices, and to issue orders to resolve such complaints. The authority shall interpret and apply federal, not state, substantive law which is hereby adopted so that such law is applicable to intrastate services for the purpose of adjudicating such state complaints. The authority shall adjudicate and enforce such claims in accordance with state procedural law and rules, including the enforcement and penalty provisions of § 65-4-120. No claim shall be brought to the Tennessee regulatory authority as to which the FCC has exclusive jurisdiction. All complaints brought between carriers pursuant to this section shall be resolved by final order of the authority within one hundred eighty (180) days of the filing of such complaint.

(n) A certificated provider electing market regulation shall be subject to the jurisdiction of the authority only when:

(i) The authority is exercising its jurisdiction as described in subsection (m) of this section;

(ii) The authority is acting with respect to enforcement or modification of any wholesale Self Effectuating Enforcement Mechanism Plan in place as of January 1, 2009, provided such actions are consistent with federal telecommunications law;

(iii) The authority is assessing and collecting inspection fees calculated in accordance with § 65-4-301 *et seq.*, and election of market regulation shall not alter the character of any intrastate revenue, or remove any source of intrastate revenue formerly included within gross receipts and used for purposes of assessment of such fees;

(iv) The authority is exercising jurisdiction over video service franchises pursuant to the Competitive Cable and Video Services Act, § 7-59-301 *et seq.*;

(v) The authority is exercising jurisdiction respecting underground facilities damage prevention;

(vi) The authority is exercising jurisdiction respecting the Tennessee Relay Service Center or the Tennessee Devices Access Program pursuant to § 65-21-115;

(vii) The authority is exercising jurisdiction respecting the Life Line or Link Up programs consistent with FCC rules including, but not limited to, 47 CFR 54.403(a)(3) as amended from time to time and relevant Tennessee Public Service Commission orders on file with the authority as of January 1, 2009;

(viii) The authority is exercising jurisdiction respecting the Small and Minority-Owned Business Participation Plan pursuant to § 65-5-112;

(ix) The authority is responding to a specific customer complaint regarding a residential telecommunications service from the provider. In such cases, the authority may act using the powers available under the law as it existed January 1, 2009;

(x) The authority is exercising jurisdiction respecting Universal Service Funding pursuant to § 65-5-107;

(xi) The authority is exercising jurisdiction respecting intrastate switched access service;

(xii) The authority is exercising jurisdiction respecting the requirement of certificates pursuant to § 65-4-201;

(xiii) The authority is exercising jurisdiction respecting extensions of facilities pursuant to § 65-4-114(2) or requiring extensions of facilities in accordance with the terms of the A5 and B5 tariffs of any carrier who serves more than one million (1,000,000) access lines in Tennessee regarding construction, as such tariffs existed on January 1, 2009; or

(xiv) The authority is exercising jurisdiction pursuant to § 65-4-125; provided, however, that the authority shall exercise its jurisdiction under subsections (a) or (b) only in connection with a complaint.

(o) Incumbent local exchange providers that have elected market regulation shall not be entitled to the limitation on authority jurisdiction in subsection (n) with respect to those residential local exchange telecommunications services that are offered in exchanges with less than three thousand (3,000) access lines or, for carriers who serve more than one million (1,000,000) access lines in Tennessee, those exchanges with access line counts and calling areas that would result in classification as rate group 1 or 2 under any such carrier's tariff in effect on January 1, 2009, and that are offered as single, individually priced services at a rate-group specific price rather than a state-wide or territory-wide price, except as follows:

(i) Upon petition by a market-regulated provider, the authority may order that such services shall be subject to the limitations on jurisdiction in subsection (n) by showing that each exchange has at least two (2) non-affiliated telecommunications providers that offer service to customers in each zone rate area of each exchange.

(ii) When counting the number of providers for the purpose of evaluating the competition standard in subsection (o)(i), cable television providers that offer telephone and broadband services to residential customers may be included. Non-affiliated providers of wireless service may be included in the count of providers but shall only count as one (1) provider regardless of the number of wireless providers. Non-affiliated providers of Voice over Internet Protocol service shall not be counted for the purpose of evaluating the competitive exemption for residential service unless the carrier seeking exemption offers a data service capable of supporting Voice over Internet Protocol service and does not require the purchase of voice telephony products to buy the data service. At least one (1) provider must be facilities-based and currently serving residential customers.

(iii) When the petitioning party shows facts satisfying the competition standard set forth in subsection (o)(i), the petitioner shall be entitled to a rebuttable presumption that the competition standard established in this act is satisfied.

(iv) Such petition shall be subject to an accelerated schedule. The authority must issue its decision on the petition, including its reasons, within ninety (90) days of the filing of the petition.

(v) Unregulated providers of service shall not be required to participate in the authority's docket considering the petition, but, to the extent such competitors intervene, they shall be required to provide discovery responses regarding the activities of the unregulated provider in such rate groups or exchanges. To the extent the petitioner seeks but is unable to obtain discovery response from intermodal or unregulated providers regarding the competition present in such rate groups or exchanges, the petitioner shall be entitled to a rebuttable presumption that the unregulated provider is offering service in the area that is the subject of the petition.

(vi) Whether or not such a petition is filed or granted, the limitations on authority jurisdiction set forth in subsection (n) shall automatically become applicable to all services of a market-regulated provider as of January 1, 2015.

(vii) The petition provided for in this subsection (o) shall be filed no earlier than one (1) year following the effective date of this act.

(p) Notwithstanding the provisions of this act, providers that elect market regulation shall remain subject to the Tennessee Consumer Protection Act, compiled in Title 47, Chapter 18.

(q) Each year the authority shall prepare and submit to the general assembly a report describing the competitive nature of the communications market in Tennessee.

(i) The report shall, at a minimum, contain the following information:

(A) The number of telecommunications providers including the technology used to provide service;

(B) The number of providers by county serving residential subscribers;

(C) The number of providers by county serving business subscribers; and

(D) The number of customers by customer type.

(ii) In preparing the report the authority shall rely on information filed with the authority or available as public information. The authority shall invite all providers of telecommunications services, including companies operating under market regulation, price cap regulation pursuant to § 65-5-109, rate of return regulation, competitive carriers, wireless carriers, carriers offering Voice over Internet Protocol service, cable operators, or other carriers known to provide such service in Tennessee, to provide voluntary reports supplying information relating to the items in subsection (q)(i) and relating to the services and products offered in Tennessee and any other information the provider volunteers concerning future plans for deployment, new services, new technology, or the scope of competition.

(r) In the event that a carrier has elected market regulation and later chooses to exit the business of providing local exchange telephone service in an exchange by selling all of its network in such exchange to another entity, then the following shall apply:

(i) If the purchasing entity is a certificated carrier of local exchange telephone service in Tennessee, then no regulatory requirements shall apply, except that nothing in this section shall preclude the exercise of authority jurisdiction as set forth in subsection (m).

(ii) Any purchasing entity that applies for a certificate in connection with a sale of the type described in this section, shall be subject to no greater standards than those applied by the authority for other entities seeking certification pursuant to § 65-4-201, and an authority order granting or denying the certificate, including appropriate findings of fact and conclusions of law, shall be entered no later than thirty (30) days from the filing of the application.

SECTION 3. (a) Tennessee Code Annotated, Section 65-5-109(c), is amended by deleting the language "June 6, 1995" and by substituting instead the language "January 1, 2009" and is further amended by adding the following language at the end of the subsection:

Nothing in this section shall require a company that has elected price regulation prior to 2009 to reapply for price regulation or to reset its rates under its price regulation plan. Such a company is entitled, in its sole discretion, to the 1995 rates upon which its original election was based or may base its price regulation calculation upon rates in effect as of January 1, 2009.

(b) Tennessee Code Annotated, Section 65-5-109(h), is amended by deleting the language "June 6, 1995" and by substituting instead the language "January 1, 2009" and is further amended by adding the following language at the end of the subsection:

"; provided however, such maximum rate shall not apply to companies becoming subject to such regulation after June 1, 2009."

(c) Tennessee Code Annotated, Section 65-5-109(j), is amended by adding the following language at the end of the subsection:

"; provided however, such an audit shall not be conducted for a local exchange telephone company electing price regulation after June 1, 2009."

(d) Tennessee Code Annotated, Section 65-5-109, is amended by adding the following as a new, appropriately designated subsection:

( ) Notwithstanding any other laws to the contrary, including, but not limited to, subsections (c) and (j), the earnings of an incumbent local exchange company operating under rate of return regulation shall not be considered in setting initial rates under this section for an incumbent local exchange company implementing a price regulation plan after January 1, 2009.

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it.

**PASSED: May 7, 2009**



RON RAMSEY  
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 21st day of May 2009



PHIL BREDESEN, GOVERNOR