

HOUSE FILE 277
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 50)

Passed House, Date 2-16-05 Passed Senate, Date _____
Vote: Ayes 94 Nays 6 Vote: Ayes _____ Nays _____
Approved March 15, 2005

A BILL FOR

1 An Act relating to the deregulation of communications services
2 including considering market forces, eliminating accounting
3 plan requirements, establishing antitrust procedures and
4 remedies, eliminating reporting requirements, and providing a
5 penalty.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HF 277

- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21

1 Section 1. Section 476.1D, subsections 1, 2, and 3, Code
2 2005, are amended to read as follows:

3 1. Except as provided in this section, the jurisdiction of
4 the board as to the regulation of communications services is
5 not applicable to a service or facility that is provided or is
6 proposed to be provided by a telephone utility that is or
7 becomes subject to effective competition, as determined by the
8 board.

9 a. In determining whether a service or facility is or
10 becomes subject to effective competition, the board shall
11 consider, among other factors, whether a comparable service or
12 facility is available from a supplier other than the telephone
13 utility in the geographic market being considered by the board
14 and whether market forces in that market are sufficient to
15 assure just and reasonable rates without regulation.

16 b. When considering market forces in the market proposed
17 to be deregulated, the board shall consider factors including
18 but not limited to the presence or absence of all of the
19 following:

20 (1) Wireless communications services.

21 (2) Cable telephony services.

22 (3) Voice over internet protocol services.

23 (4) Economic barriers to the entry of competitors or
24 potential competitors in that market.

25 c. In addition to other services or facilities previously
26 deregulated, effective July 1, 2005, and at the election of
27 each telephone utility subject to rate regulation, the
28 jurisdiction of the board is not applicable to the retail rate
29 regulation of business and retail local exchange services
30 provided throughout the state except for single line flat-
31 rated residential and business service rates provided by a
32 telephone utility subject to rate regulation on or after
33 January 1, 2005. For each such telephone utility, the initial
34 single line flat-rated residential and business service rates
35 shall be the corresponding rates charged by the utility as of

1 January 1, 2005. The initial single flat-rated residential
2 service rates may be increased by an amount not to exceed one
3 dollar per twelve-month period beginning July 1, 2005, and
4 ending June 30, 2008. The initial single flat-rated business
5 service rates may be increased by an amount not to exceed two
6 dollars per twelve-month period beginning July 1, 2005, and
7 ending June 30, 2008. However, the single line flat-rated
8 residential service rate shall not exceed nineteen dollars per
9 month and the single line flat-rated business service rate
10 shall not exceed thirty-eight dollars per month prior to July
11 1, 2008, not including charges for extended local calling area
12 service, regulatory charges, taxes, and other fees. If a
13 telephone utility fails to impose the rate increase during any
14 twelve-month period, the utility shall not impose the unused
15 increase in any subsequent year. The rate increases permitted
16 pursuant to this section shall be in addition to any increases
17 permitted pursuant to section 476.97, subsection 11, paragraph
18 "e", subparagraph (1).

19 A telephone utility that elects to increase single line
20 flat-rated residential and business service rates pursuant to
21 this paragraph "c" shall offer digital subscriber line
22 broadband service in all of the telephone utility's exchanges
23 in this state within eighteen calendar months of the first
24 rate increase made pursuant to this paragraph "c" by the
25 telephone utility. The board may extend this deadline by up
26 to nine calendar months for good cause. The board may assess
27 a civil penalty or require a refund of all incremental revenue
28 resulting from the rate increase initiated pursuant to this
29 paragraph "c" if the telephone utility fails to offer digital
30 subscriber line broadband service within the time period
31 required by this unnumbered paragraph.

32 Effective July 1, 2008, the retail rate jurisdiction of the
33 board shall not be applicable to single line flat-rated
34 residential and business service rates unless the board during
35 the first six calendar months of 2008 elects to extend its

1 retail rate jurisdiction over single line flat-rated
2 residential and business service rates provided by a
3 previously rate-regulated telephone utility. The board may
4 extend its jurisdiction pursuant to this paragraph for not
5 more than two years and may do so only after the board finds
6 that such action is necessary for the public interest. The
7 board shall provide the general assembly with a copy of any
8 order to extend its jurisdiction and shall permit any
9 telephone utility subject to the extension to increase single
10 line flat-rated residential and business service rates by an
11 amount up to two dollars during each twelve-month period of
12 the extension. If a telephone utility fails to impose such a
13 rate increase during any twelve-month period, the utility may
14 not impose the unused increase in any subsequent year.

15 2. Deregulation Except as provided in subsection 1,
16 paragraph "c", deregulation of a service or facility for a
17 utility is effective only after ~~all-of-the-following~~:

18 a--~~A~~ a finding of effective competition by the board.

19 b--~~Election-by-a-utility-providing-the-service-or-facility~~
20 ~~to-file-a-deregulation-accounting-plan~~

21 c--~~Approval-of-a-utility's-deregulation-accounting-plan-by~~
22 ~~the-board~~

23 3. If the board determines finds that a service or
24 facility is subject to effective competition ~~and-approves-the~~
25 ~~utility's-deregulation-accounting-plan~~, the board shall
26 deregulate the service or facility within a reasonable time.

27 Sec. 2. Section 476.55, Code 2005, is amended to read as
28 follows:

29 476.55 COMPLAINT OF ANTITRUST ACTIVITIES.

30 1. An application for new or changed rates, charges,
31 schedules or regulations filed under this chapter, or an
32 application for a certificate or an amendment to a certificate
33 submitted under chapter 476A, by an electric transmission line
34 utility or a gas pipeline utility or a subsidiary of either
35 shall not be approved by the board if, upon complaint by an

1 Iowa electric or gas utility, the board finds activities which
2 create or maintain a situation inconsistent with antitrust
3 laws and the policies which underlie them. The board may
4 grant the rate or facility certification request once it
5 determines that those activities which led to the antitrust
6 complaint have been eliminated. However, this subsection does
7 not apply to an application for new or changed rates, charges,
8 schedules or regulations after the expiration of the ten-
9 month limitation and applicable extensions.

10 2. Notwithstanding section 476.1D, the board may receive a
11 complaint that a local exchange service provider has engaged
12 in an activity that is inconsistent with antitrust laws and
13 the policies which underlie them. If, after notice and
14 opportunity for hearing, the board finds that a local exchange
15 service provider has engaged in an activity that is
16 inconsistent with antitrust laws and the policies which
17 underlie them, the board may order any of the following:

18 a. The local exchange service provider to adjust retail
19 rates in an amount sufficient to correct the antitrust
20 activity.

21 b. The local exchange service provider to pay actual
22 damages and any other costs incurred by the complainant for
23 the pursuit of the complaint.

24 c. Either the local exchange provider or the complainant
25 to pay the costs of the complaint proceeding before the board,
26 and the other party's reasonable attorney fees.

27 Sec. 3. Section 476.98, Code 2005, is repealed.

28 EXPLANATION

29 This bill relates to the deregulation of communications
30 services by the utilities board of the utilities division of
31 the department of commerce.

32 Under current law, before deregulating communications
33 services, the board must determine whether the communications
34 service or facility provided is subject to effective
35 competition by considering whether a comparable service is

1 being provided by another supplier in the same geographic
2 market and whether market forces in that market are sufficient
3 to assure just and reasonable rates without regulation. The
4 bill directs the board to consider, when considering market
5 forces in a market proposed to be deregulated, the presence or
6 absence of wireless communications services, cable telephony
7 services, voice over internet protocol services, and economic
8 barriers to the entry of competitors or potential competitors
9 in that market.

10 The bill provides that effective July 1, 2005, all retail
11 rates of business and retail local exchange services shall no
12 longer be regulated by the board except for single line flat-
13 rated residential and business service rates provided by a
14 telephone utility. The single line flat-rated residential
15 service rates may be increased by \$1 each 12-month period
16 beginning July 1, 2005, and ending June 30, 2008. The single
17 line flat-rated business service rates may be increased by \$2
18 each 12-month period beginning July 1, 2005, and ending June
19 30, 2008. The rate increases may not exceed \$19 per month for
20 residential rates and \$38 for the business rates. The rate
21 increases allowed by the bill are in addition to rate
22 increases allowed under current law for inflation as measured
23 by the gross domestic product price index. A telephone
24 utility which increases its rates as allowed by the bill is
25 required to offer broadband internet service in all exchanges
26 of the utility within 18 months of the first rate increase.
27 The board may assess a civil penalty or require refunds of a
28 telephone utility that fails to offer broadband service as
29 required.

30 The bill provides that effective July 1, 2008, all retail
31 rates of single line flat-rated residential and business
32 services shall not be regulated by the board unless the board
33 elects to extend its jurisdiction for not more than two years
34 and only if the extension is necessary for the public
35 interest. The bill eliminates the requirement that a

1 deregulation accounting plan be filed with the board prior to
2 deregulation.

3 The bill provides for antitrust or what are commonly known
4 as predatory pricing protections by permitting the board to
5 receive a complaint that a local exchange service provider has
6 engaged in antitrust activities. The board shall provide an
7 opportunity for a hearing on the issue and upon finding
8 antitrust activities the board may require a local exchange
9 provider to adjust its retail rates to correct the antitrust
10 activities and pay actual damages and other costs incurred by
11 the complainant. The court may award costs and attorney fees
12 to either the complainant or the local exchange service
13 provider.

14 The bill repeals Code section 476.98 requiring the consumer
15 advocate to calculate an estimate of the return of a local
16 exchange carrier operating under price regulation as if the
17 carrier were subject to rate-of-return regulation, and to
18 provide a report to the general assembly regarding the results
19 of the calculation and a recommendation as to requiring a
20 different form of rate regulation.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 277

H-1025

1 Amend House File 277 as follows:

2 1. Page 4, by striking line 11 and inserting the
3 following: "complaint from a local exchange carrier
4 that another local exchange carrier has engaged".

5 2. Page 4, line 13, by inserting after the word
6 "them." the following: "For purposes of this
7 subsection, "local exchange carrier" means the same as
8 defined in section 476.96 and includes a city utility
9 authorized pursuant to section 388.2 to provide local
10 exchange services."

11 3. Page 4, line 15, by striking the words
12 "service provider" and inserting the following:
13 "carrier".

14 4. Page 4, line 18, by striking the words
15 "service provider" and inserting the following:
16 "carrier".

17 5. Page 4, lines 21 and 22, by striking the words
18 "service provider to pay actual damages and any other"
19 and inserting the following: "carrier to pay any".

20 6. Page 4, by inserting after line 23 the
21 following:

22 "c. The local exchange carrier to pay a civil
23 penalty."

24 7. Page 4, line 24, by striking the figure "c."
25 and inserting the following: "d."

26 8. Page 4, line 24, by striking the word
27 "provider" and inserting the following: "carrier".

28 9. Page 4, by inserting after line 26 the
29 following:

30 "This subsection shall not be construed to modify,
31 restrict, or limit the right of a person to bring a
32 complaint under any other provision of this chapter."

By WATTS of Dallas
WISE of Lee

H-1025 FILED FEBRUARY 14, 2005

HOUSE FILE 277

H-1024

1 Amend House File 277 as follows:

2 1. Page 4, by inserting before line 27 the
3 following:

4 "Sec. ____ . Section 476.97, subsection 12, Code
5 2005, is amended by striking the subsection."

6 2. Title page, line 4, by inserting after the
7 word "requirements," the following: "eliminating the
8 Iowa broadband initiative,".

9 3. By renumbering as necessary.

By WATTS of Dallas

SODERBERG of Plymouth

H-1024 FILED FEBRUARY 14, 2005

HOUSE FILE 277

H-1028

1 Amend the amendment, H-1025, to House File 277 as
2 follows:

3 1. Page 1, line 8, by inserting after the word
4 "includes" the following: "a competitive local
5 exchange service provider as defined in section 476.96
6 and".

7 2. Page 1, by inserting after line 32 the
8 following:

9 "An antitrust activity for which a complaint may be
10 filed with the board pursuant to this subsection
11 includes but is not limited to a reduction of a
12 deregulated retail service rate below the
13 corresponding rate for wholesale unbundled network
14 elements after July 1, 2005."

By WHITAKER of Van Buren

H-1028 FILED FEBRUARY 16, 2005

LOST

HOUSE FILE 277

H-1029

- 1 Amerd House File 277 as follows:
2 1. Page 1, line 32, by striking the words "or
3 after".
4 2. Page 2, line 2, by inserting before the word
5 "service" the following: "monthly".
6 3. Page 2, line 5, by inserting before the word
7 "service" the following: "monthly".
8 4. Page 2, line 11, by striking the words "local
9 calling".
10 5. Page 2, line 12, by inserting after the word
11 "fees." the following: "Each telephone utility's
12 extended area service rates shall not be greater than
13 the corresponding rates charged by the telephone
14 utility as of January 31, 2005. The board shall
15 determine a telephone utility's extended area service
16 rates for new extended area service established on or
17 after July 1, 2005."
18 6. Page 2, line 15, by striking the word "The"
19 and inserting the following: "In addition to the".
20 7. Page 2, by striking lines 16 through 18, and
21 inserting the following: "pursuant to this section,
22 the telephone utility may adjust its single line flat-
23 rated residential and business service rates by a
24 percentage equal to the most recent annual percentage
25 change in the gross domestic product price index as
26 published by the federal government. The board may
27 also authorize additional changes in the monthly rates
28 for single line flat-rated residential and business
29 services to reflect exogenous factors beyond the
30 control of the telephone utility."
31 8. Page 2, line 20, by striking the word "and"
32 and inserting the following: "or".
33 9. Page 2, line 35, by striking the words "elects
34 to extend" and inserting the following: "extends".
35 10. Page 3, line 10, by inserting after the word
36 "business" the following: "monthly".

By WATTS of Dallas

H-1029 FILED FEBRUARY 16, 2005

ADOPTED

HOUSE FILE 277
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 50)

(As Amended and Passed by the House February 16, 2005)

Re- Passed House, Date 3-7-05 Passed Senate, Date 3-3-05
Vote: Ayes 93 Nays 6 Vote: Ayes 47 Nays 1
Approved _____

A BILL FOR

1 An Act relating to the deregulation of communications services
2 including considering market forces, eliminating accounting
3 plan requirements, establishing antitrust procedures and
4 remedies, eliminating reporting requirements, eliminating the
5 Iowa broadband initiative, and providing a penalty.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

7
8
9
10
11
12
13
14
15
16
17
18
19
20

Deleted Language *
House Amendments _____

1 Section 1. Section 476.1D, subsections 1, 2, and 3, Code
2 2005, are amended to read as follows:

3 1. Except as provided in this section, the jurisdiction of
4 the board as to the regulation of communications services is
5 not applicable to a service or facility that is provided or is
6 proposed to be provided by a telephone utility that is or
7 becomes subject to effective competition, as determined by the
8 board.

9 a. In determining whether a service or facility is or
10 becomes subject to effective competition, the board shall
11 consider, among other factors, whether a comparable service or
12 facility is available from a supplier other than the telephone
13 utility in the geographic market being considered by the board
14 and whether market forces in that market are sufficient to
15 assure just and reasonable rates without regulation.

16 b. When considering market forces in the market proposed
17 to be deregulated, the board shall consider factors including
18 but not limited to the presence or absence of all of the
19 following:

20 (1) Wireless communications services.

21 (2) Cable telephony services.

22 (3) Voice over internet protocol services.

23 (4) Economic barriers to the entry of competitors or
24 potential competitors in that market.

25 c. In addition to other services or facilities previously
26 deregulated, effective July 1, 2005, and at the election of
27 each telephone utility subject to rate regulation, the
28 jurisdiction of the board is not applicable to the retail rate
29 regulation of business and retail local exchange services
30 provided throughout the state except for single line flat-
31 rated residential and business service rates provided by a
* 32 telephone utility subject to rate regulation on January 1,
33 2005. For each such telephone utility, the initial single
34 line flat-rated residential and business service rates shall
35 be the corresponding rates charged by the utility as of

1 January 1, 2005. The initial single flat-rated residential
2 monthly service rates may be increased by an amount not to
3 exceed one dollar per twelve-month period beginning July 1,
4 2005, and ending June 30, 2008. The initial single flat-rated
5 business monthly service rates may be increased by an amount
6 not to exceed two dollars per twelve-month period beginning
7 July 1, 2005, and ending June 30, 2008. However, the single
8 line flat-rated residential service rate shall not exceed
9 nineteen dollars per month and the single line flat-rated
10 business service rate shall not exceed thirty-eight dollars
11 per month prior to July 1, 2008, not including charges for
* 12 extended area service, regulatory charges, taxes, and other
13 fees. Each telephone utility's extended area service rates
14 shall not be greater than the corresponding rates charged by
15 the telephone utility as of January 31, 2005. The board shall
16 determine a telephone utility's extended area service rates
17 for new extended area service established on or after July 1,
18 2005. If a telephone utility fails to impose the rate
19 increase during any twelve-month period, the utility shall not
20 impose the unused increase in any subsequent year. In
21 addition to the rate increases permitted pursuant to this
22 section, the telephone utility may adjust its single line
23 flat-rated residential and business service rates by a
24 percentage equal to the most recent annual percentage change
25 in the gross domestic product price index as published by the
26 federal government. The board may also authorize additional
27 changes in the monthly rates for single line flat-rated
28 residential and business services to reflect exogenous factors
29 beyond the control of the telephone utility.

30 A telephone utility that elects to increase single line
31 flat-rated residential or business service rates pursuant to
32 this paragraph "c" shall offer digital subscriber line
33 broadband service in all of the telephone utility's exchanges
34 in this state within eighteen calendar months of the first
35 rate increase made pursuant to this paragraph "c" by the

1 telephone utility. The board may extend this deadline by up
2 to nine calendar months for good cause. The board may assess
3 a civil penalty or require a refund of all incremental revenue
4 resulting from the rate increase initiated pursuant to this
5 paragraph "c" if the telephone utility fails to offer digital
6 subscriber line broadband service within the time period
7 required by this unnumbered paragraph.

8 Effective July 1, 2008, the retail rate jurisdiction of the
9 board shall not be applicable to single line flat-rated
10 residential and business service rates unless the board during
11 the first six calendar months of 2008 extends its retail rate
12 jurisdiction over single line flat-rated residential and
13 business service rates provided by a previously rate-regulated
14 telephone utility. The board may extend its jurisdiction
15 pursuant to this paragraph for not more than two years and may
16 do so only after the board finds that such action is necessary
17 for the public interest. The board shall provide the general
18 assembly with a copy of any order to extend its jurisdiction
19 and shall permit any telephone utility subject to the
20 extension to increase single line flat-rated residential and
21 business monthly service rates by an amount up to two dollars
22 during each twelve-month period of the extension. If a
23 telephone utility fails to impose such a rate increase during
24 any twelve-month period, the utility may not impose the unused
25 increase in any subsequent year.

26 2. Deregulation Except as provided in subsection 1,
27 paragraph "c", deregulation of a service or facility for a
28 utility is effective only after ~~all-of-the-following:~~

29 ~~a--A a finding of effective competition by the board.~~

30 ~~b--Election-by-a-utility-providing-the-service-or-facility~~
31 ~~to-file-a-deregulation-accounting-plan-~~

32 ~~c--Approval-of-a-utility's-deregulation-accounting-plan-by~~
33 ~~the-board-~~

34 3. If the board determines finds that a service or
35 facility is subject to effective competition and-approves-the

1 ~~utility's-deregulation-accounting-plan~~, the board shall
2 deregulate the service or facility within a reasonable time.

3 Sec. 2. Section 476.55, Code 2005, is amended to read as
4 follows:

5 476.55 COMPLAINT OF ANTITRUST ACTIVITIES.

6 1. An application for new or changed rates, charges,
7 schedules or regulations filed under this chapter, or an
8 application for a certificate or an amendment to a certificate
9 submitted under chapter 476A, by an electric transmission line
10 utility or a gas pipeline utility or a subsidiary of either
11 shall not be approved by the board if, upon complaint by an
12 Iowa electric or gas utility, the board finds activities which
13 create or maintain a situation inconsistent with antitrust
14 laws and the policies which underlie them. The board may
15 grant the rate or facility certification request once it
16 determines that those activities which led to the antitrust
17 complaint have been eliminated. However, this subsection does
18 not apply to an application for new or changed rates, charges,
19 schedules or regulations after the expiration of the ten-
20 month limitation and applicable extensions.

21 2. Notwithstanding section 476.1D, the board may receive a
22 complaint from a local exchange carrier that another local
23 exchange carrier has engaged in an activity that is
24 inconsistent with antitrust laws and the policies which
25 underlie them. For purposes of this subsection, "local
26 exchange carrier" means the same as defined in section 476.96
27 and includes a city utility authorized pursuant to section
28 388.2 to provide local exchange services. If, after notice
29 and opportunity for hearing, the board finds that a local
30 exchange carrier has engaged in an activity that is
31 inconsistent with antitrust laws and the policies which
32 underlie them, the board may order any of the following:

33 a. The local exchange carrier to adjust retail rates in an
34 amount sufficient to correct the antitrust activity.

35 b. The local exchange carrier to pay any costs incurred by

1 the complainant for the pursuit of the complaint.

2 c. The local exchange carrier to pay a civil penalty.

3 d. Either the local exchange carrier or the complainant to
4 pay the costs of the complaint proceeding before the board,
5 and the other party's reasonable attorney fees.

6 This subsection shall not be construed to modify, restrict,
7 or limit the right of a person to bring a complaint under any
8 other provision of this chapter.

9 Sec. 3. Section 476.97, subsection 12, Code 2005, is
10 amended by striking the subsection.

11 Sec. 4. Section 476.98, Code 2005, is repealed.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

**EIGHTY FIRST GENERAL ASSEMBLY
2005 REGULAR SESSION
DAILY
SENATE CLIP SHEET**

FEBRUARY 28, 2005

HOUSE FILE 277

S-3003

- 1 Amend House File 277, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 2, line 1, by striking the word and
- 4 figure "January 1," and inserting the following:
- 5 "January 31,".

COMMITTEE ON COMMERCE
JERRY BEHN, CO-CHAIRPERSON
STEVEN H. WARNSTADT, CO-CHAIRPERSON

S-3003 FILED FEBRUARY 24, 2005

HOUSE FILE 277

S-3007

- 1 Amend House File 277, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 4, line 28, by inserting after the word
- 4 "services" the following: "and a facility-based
- 5 wireline service provider competing in the same
- 6 exchange as another local exchange carrier".

By DAVID JOHNSON

S-3007 FILED MARCH 2, 2005

**SENATE AMENDMENT TO
HF 277**

H-1048

- 1 Amend House File 277, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 2, line 1, by striking the word and
- 4 figure "January 1," and inserting the following:
- 5 "January 31,".

RECEIVED FROM THE SENATE

H-1048 FILED MARCH 4, 2005

WATTS, CH
PETERSEN
STRUYK
WISE
SANDS
QUIRK
MAY

Succeeded By
SF 0277

HSB 50

COMMERCE, REGULATION & LABOR

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON COMMERCE,
REGULATION AND LABOR BILL
BY CHAIRPERSON JENKINS)

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the deregulation of communications services
2 including determining comparable services, considering market
3 forces, providing for expedited deregulation proceedings,
4 eliminating accounting plan requirements, eliminating
5 reporting requirements to the general assembly, and providing
6 effective and retroactive applicability dates.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

TLSB 1748HC 81

kk/sh/8

1 Section 1. Section 476.1D, subsections 1, 2, and 3, Code
2 2005, are amended to read as follows:

3 1. Except as provided in this section, the jurisdiction of
4 the board as to the regulation of communications services is
5 not applicable to a service or facility that is provided or is
6 proposed to be provided by a telephone utility that is or
7 becomes subject to effective competition, as determined by the
8 board.

9 a. In determining whether a service or facility is or
10 becomes subject to effective competition, the board shall
11 consider, among other factors, whether a comparable service or
12 facility is or may reasonably be expected to become available
13 from a supplier other than the telephone utility in the
14 geographic market being considered by the board and whether
15 market forces in that market are sufficient to assure just and
16 reasonable rates without regulation.

17 b. The board shall consider all of the following services
18 as comparable services or facilities to wireline
19 communications services:

20 (1) Wireless communications services.

21 (2) Cable telephony services.

22 (3) Voice over internet protocol services.

23 c. When considering market forces in the market proposed
24 to be deregulated, the board shall consider factors including
25 but not limited to the presence or absence of all of the
26 following:

27 (1) Wireless communications services.

28 (2) Cable telephony services.

29 (3) Voice over internet protocol services.

30 (4) Economic barriers to the entry of competitors or
31 potential competitors in that market.

32 d. If one or more telephone utilities providing wireline
33 or cable telephony services, other than an incumbent telephone
34 utility, offers services using the utility's own switching or
35 loop facilities in at least two-thirds of a given geographic

1 market served by an incumbent telephone utility, a rebuttable
2 presumption is established that effective competition exists
3 for that geographic market and the incumbent utility may file
4 a request for expedited deregulation proceedings for the
5 geographic markets affected. The request for expedited
6 deregulation shall describe the geographic markets alleged to
7 be affected. Within thirty days after the request is filed
8 and after opportunity for a hearing, the board shall issue an
9 order granting or denying the request.

10 e. In addition to other services or facilities previously
11 deregulated, effective March 1, 2005, the jurisdiction of the
12 board is not applicable to the regulation of any of the
13 following services:

14 (1) Business local exchange services provided throughout
15 the state.

16 (2) Residential additional line services provided
17 throughout the state.

18 (3) Except as regulation may be reimposed pursuant to
19 subsection 6, residential local exchange services provided in
20 the cities of Ames, Ankeny, Burlington, Cedar Falls, Cedar
21 Rapids, Clinton, Council Bluffs, Davenport, Des Moines,
22 Dubuque, Fort Dodge, Iowa City, Marshalltown, Mason City,
23 Muscatine, Ottumwa, Sioux City, and Waterloo, as those cities
24 are reflected in territory maps of the incumbent
25 telecommunications provider for the applicable exchange.

26 2. Deregulation Except as provided in subsection 1,
27 paragraph "e", deregulation of a service or facility for a
28 utility is effective only after all of the following:

29 a. A finding of effective competition by the board.

30 b. Election by a utility providing the service or facility
31 to file a deregulation accounting plan but only if the utility
32 providing the service or facility is subject to rate-of-return
33 regulation at the time deregulation becomes effective. A
34 deregulation accounting plan shall not be required for a
35 utility operating under a price plan for the service or

1 facility proposed to be deregulated.

2 c. Approval of a utility's deregulation accounting plan by
3 the board, if a plan is required.

4 3. If the board determines a service or facility is
5 subject to effective competition and approves the utility's
6 deregulation accounting plan, if a plan is required, the board
7 shall deregulate the service or facility within a reasonable
8 time.

9 Sec. 2. Section 476.98, Code 2005, is repealed.

10 Sec. 3. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

11 This Act, being deemed of immediate importance, takes effect
12 upon enactment and is retroactively applicable to March 1,
13 2005.

14 EXPLANATION

15 This bill relates to the deregulation of communications
16 services by the utilities board of the utilities division of
17 the department of commerce.

18 Under current law, before deregulating communications
19 services, the board must determine whether the communications
20 service or facility provided is subject to effective
21 competition by considering whether a comparable service is
22 being provided by another supplier in the same geographic
23 market and whether market forces in that market are sufficient
24 to assure just and reasonable rates without regulation. The
25 bill requires the board to consider whether a comparable
26 service may reasonably be expected to become available from
27 another supplier rather than only whether the service is
28 actually available from another supplier. The bill also
29 directs the board to consider wireless communications
30 services, cable telephony services, and voice over internet
31 protocol services to be services or facilities comparable to
32 wireline communications services. The bill directs the board
33 to consider, when considering market forces in a market
34 proposed to be deregulated, the presence or absence of
35 wireless communications services, cable telephony services,

1 voice over internet protocol services, and economic barriers
2 to the entry of competitors or potential competitors in that
3 market. The bill creates a rebuttable presumption of
4 effective competition where a wireline or cable telephony
5 provider other than an incumbent provider offers service using
6 its own switching or loop facilities in two-thirds of a
7 geographic market of an incumbent telephone utility. Where
8 such a rebuttable presumption exists, the incumbent telephone
9 utility can request an expedited deregulation proceeding
10 before the board.

11 The bill provides that effective March 1, 2005, all
12 business local exchange services, residential additional line
13 services, and residential local exchange services provided in
14 certain exchanges shall no longer be regulated by the board.

15 The bill provides that a deregulation accounting plan shall
16 be filed only if the utility is subject to rate-of-return
17 regulation. A deregulation accounting plan is not required
18 for a utility operating under a price plan for the service or
19 facility proposing to be deregulated.

20 The bill repeals Code section 476.98 requiring the consumer
21 advocate to calculate an estimate of the return of a local
22 exchange carrier operating under price regulation as if the
23 carrier were subject to rate-of-return regulation, and to
24 provide a report to the general assembly regarding the results
25 of the calculation and a recommendation as to requiring a
26 different form of rate regulation.

27 The bill takes effect upon enactment and is retroactively
28 applicable to March 1, 2005.

29
30
31
32
33
34
35

HOUSE FILE 277

AN ACT

RELATING TO THE DEREGULATION OF COMMUNICATIONS SERVICES
INCLUDING CONSIDERING MARKET FORCES, ELIMINATING ACCOUNTING
PLAN REQUIREMENTS, ESTABLISHING ANTITRUST PROCEDURES AND
REMEDIES, ELIMINATING REPORTING REQUIREMENTS, ELIMINATING THE
IOWA BROADBAND INITIATIVE, AND PROVIDING A PENALTY.

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

Section 1. Section 476.1D, subsections 1, 2, and 3, Code
2005, are amended to read as follows:

1. Except as provided in this section, the jurisdiction of
the board as to the regulation of communications services is
not applicable to a service or facility that is provided or is
proposed to be provided by a telephone utility that is or
becomes subject to effective competition, as determined by the
board.

a. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility in the geographic market being considered by the board and whether market forces in that market are sufficient to assure just and reasonable rates without regulation.

b. When considering market forces in the market proposed to be deregulated, the board shall consider factors including but not limited to the presence or absence of all of the following:

- (1) Wireless communications services.
- (2) Cable telephony services.
- (3) Voice over internet protocol services.
- (4) Economic barriers to the entry of competitors or potential competitors in that market.

c. In addition to other services or facilities previously deregulated, effective July 1, 2005, and at the election of each telephone utility subject to rate regulation, the jurisdiction of the board is not applicable to the retail rate regulation of business and retail local exchange services provided throughout the state except for single line flat-rated residential and business service rates provided by a telephone utility subject to rate regulation on January 1, 2005. For each such telephone utility, the initial single line flat-rated residential and business service rates shall be the corresponding rates charged by the utility as of January 31, 2005. The initial single flat-rated residential monthly service rates may be increased by an amount not to exceed one dollar per twelve-month period beginning July 1, 2005, and ending June 30, 2008. The initial single flat-rated business monthly service rates may be increased by an amount not to exceed two dollars per twelve-month period beginning July 1, 2005, and ending June 30, 2008. However, the single line flat-rated residential service rate shall not exceed

nineteen dollars per month and the single line flat-rated business service rate shall not exceed thirty-eight dollars per month prior to July 1, 2008, not including charges for extended area service, regulatory charges, taxes, and other fees. Each telephone utility's extended area service rates shall not be greater than the corresponding rates charged by the telephone utility as of January 31, 2005. The board shall determine a telephone utility's extended area service rates for new extended area service established on or after July 1, 2005. If a telephone utility fails to impose the rate increase during any twelve-month period, the utility shall not impose the unused increase in any subsequent year. In addition to the rate increases permitted pursuant to this section, the telephone utility may adjust its single line flat-rated residential and business service rates by a percentage equal to the most recent annual percentage change in the gross domestic product price index as published by the federal government. The board may also authorize additional changes in the monthly rates for single line flat-rated residential and business services to reflect exogenous factors beyond the control of the telephone utility.

A telephone utility that elects to increase single line flat-rated residential or business service rates pursuant to this paragraph "c" shall offer digital subscriber line broadband service in all of the telephone utility's exchanges in this state within eighteen calendar months of the first rate increase made pursuant to this paragraph "c" by the telephone utility. The board may extend this deadline by up to nine calendar months for good cause. The board may assess a civil penalty or require a refund of all incremental revenue resulting from the rate increase initiated pursuant to this paragraph "c" if the telephone utility fails to offer digital subscriber line broadband service within the time period required by this unnumbered paragraph.

Effective July 1, 2008, the retail rate jurisdiction of the board shall not be applicable to single line flat-rated residential and business service rates unless the board during the first six calendar months of 2008 extends its retail rate jurisdiction over single line flat-rated residential and business service rates provided by a previously rate-regulated telephone utility. The board may extend its jurisdiction pursuant to this paragraph for not more than two years and may do so only after the board finds that such action is necessary for the public interest. The board shall provide the general assembly with a copy of any order to extend its jurisdiction and shall permit any telephone utility subject to the extension to increase single line flat-rated residential and business monthly service rates by an amount up to two dollars during each twelve-month period of the extension. If a telephone utility fails to impose such a rate increase during any twelve-month period, the utility may not impose the unused increase in any subsequent year.

2. Deregulation Except as provided in subsection 1, paragraph "c", deregulation of a service or facility for a utility is effective only after all-of-the-following:

- a---A a finding of effective competition by the board.
- b---Election-by-a-utility-providing-the-service-or-facility to-file-a-deregulation-accounting-plan
- c---Approval-of-a-utility's-deregulation-accounting-plan-by the-board

3. If the board determines finds that a service or facility is subject to effective competition and approves the utility's deregulation-accounting-plan, the board shall deregulate the service or facility within a reasonable time.

Sec. 2. Section 476.55, Code 2005, is amended to read as follows:

476.55 COMPLAINT OF ANTITRUST ACTIVITIES.

1. An application for new or changed rates, charges, schedules or regulations filed under this chapter, or an

application for a certificate or an amendment to a certificate submitted under chapter 476A, by an electric transmission line utility or a gas pipeline utility or a subsidiary of either shall not be approved by the board if, upon complaint by an Iowa electric or gas utility, the board finds activities which create or maintain a situation inconsistent with antitrust laws and the policies which underlie them. The board may grant the rate or facility certification request once it determines that those activities which led to the antitrust complaint have been eliminated. However, this subsection does not apply to an application for new or changed rates, charges, schedules or regulations after the expiration of the ten-month limitation and applicable extensions.

2. Notwithstanding section 476.1D, the board may receive a complaint from a local exchange carrier that another local exchange carrier has engaged in an activity that is inconsistent with antitrust laws and the policies which underlie them. For purposes of this subsection, "local exchange carrier" means the same as defined in section 476.96 and includes a city utility authorized pursuant to section 388.2 to provide local exchange services. If, after notice and opportunity for hearing, the board finds that a local exchange carrier has engaged in an activity that is inconsistent with antitrust laws and the policies which underlie them, the board may order any of the following:

- a. The local exchange carrier to adjust retail rates in an amount sufficient to correct the antitrust activity.
- b. The local exchange carrier to pay any costs incurred by the complainant for the pursuit of the complaint.
- c. The local exchange carrier to pay a civil penalty.
- d. Either the local exchange carrier or the complainant to pay the costs of the complaint proceeding before the board, and the other party's reasonable attorney fees.

This subsection shall not be construed to modify, restrict, or limit the right of a person to bring a complaint under any other provision of this chapter.

Sec. 3. Section 476.97, subsection 12, Code 2005, is amended by striking the subsection.

Sec. 4. Section 476.98, Code 2005, is repealed.

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 277, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved *March 15, 2005*

THOMAS J. VILSACK
Governor