

## WEST VIRGINIA CODE: §24-2-3C

### **§24-2-3c. Cessation of jurisdiction over rates for certain services subject to competition.**

(a) Upon the application of any telephone utility, the commission shall, unless it finds that the continued availability of adequate, economical and reliable local exchange telephone service will be adversely affected thereby, permanently cease its regulation of the rates charged by the telephone utility for any commodity or service, except carrier access service, which the commission determines to be subject to workable competition: Provided, That if any such commodity or service thereafter ceases being subject to workable competition by reason of lawful governmental action, or, if the market forces fail to constrain monopolistic practices or anticompetitive behavior, the commission shall upon notice and hearing, reinstitute its regulation of the rates charged for such commodity or service. Evidence of ease of market entry, the presence of other competitors and the availability of like or substitute services shall, for purposes of this section, be sufficient to show that a commodity or service is subject to workable competition. In making its determination, the commission shall not be bound by any previous determination of competitiveness for any other purpose. The furnishing of all such commodities and services shall in all other respects remain fully subject to the commission's jurisdiction.

(b) The commission shall ensure through such accounting system as it deems appropriate that the costs and revenues associated with the furnishing of those commodities and services that the commission determines to be subject to workable competition are not charged against or credited to the utility's cost of furnishing other services; except, however, that the commission may, in connection with any general increase in local exchange telephone rates proposed by the telephone utility within ten years from the effective date of this section, credit to the utility's cost of furnishing local exchange telephone service the contribution, if any, then being yielded by those competitive commodities or services that such utility was offering as of the effective date of this section: Provided, That if the contribution from such competitive commodities or services is less than the contribution that was being yielded by those commodities or services during the year preceding the year in which such commodities or services were determined to be subject to workable competition, the commission may, in order to eliminate such deficiency, further credit to the cost of furnishing local exchange telephone service any contribution that is then being yielded by those competitive commodities or services that were not being offered by the utility as of the effective date of this section. In no case, however, shall the additional contribution so credited exceed the contribution that is actually being yielded by such new commodities or services, nor shall the commission, in connection with the crediting of any contribution under the provisions of this subsection, credit any amount of contribution that exceeds that which is reasonably necessary to the continued availability of adequate, economical, and reliable local exchange telephone service. Contribution shall be defined to mean the excess of revenues over costs.

(c) The application of the telephone utility shall be in such form as the commission may prescribe and shall contain:

(1) A designation of the commodities or services that are the subject of the application;

(2) A statement explaining why the applicant believes that each commodity or service so designated is subject to workable competition; and

(3) Such other information as the applicant may deem relevant or the commission may require.

(d) Within sixty days after the filing of the application, or if hearing shall be held thereon, within ninety days after final submission upon oral argument or brief, but in no event longer than one hundred eighty days after the filing of the application, the commission shall enter a final order granting, in whole or in part, or denying the application.

(e) Nothing in this section limits the commission's power to require telephone utilities to maintain uniform, statewide toll rates, or to require that public and multipublic coin telephone service be offered at a flat per message rate. Nothing in this section limits the commission's power to continue to engage in incentive or other innovative forms of ratemaking in connection with its regulation of those services which it has not determined to be subject to workable competition.

Nothing in this section limits the power or right of the consumer advocate division to petition to decrease rates and tariffs in the event of decreases in costs of service.

(f) The provisions of this section do not go into effect until January 1, 1991.