WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED
Committee Substitute for
SENATE BILL NO. 520

(By Senators Kerdelhue, R. President
Harman, by request of the Executive.)

PASSED March 7, 1990
In Effect January 1, 1991 Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 520
(BY SENATORS BURDETT, MR. PRESIDENT, AND HARMAN,
BY REQUEST OF THE EXECUTIVE)

[Passed March 9, 1990; to take effect January 1, 1991.]

AN ACT to amend article two, chapter twenty-four of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new
section, designated section three-c, relating to public
service commissions; cessation of jurisdiction over rates
for certain services of telephone utilities subject to
competition.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-four of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, be amended by adding thereto a new section,
designated section three-c, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE
COMMISSION.

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

1 (a) Upon the application of any telephone utility, the
2 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 regula-
tion of the rates charged for such commodity or
service. Evidence of ease of market entry, the pres-
ence 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 deter-
mination, 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 compet-
itive commodities or services is less than the contribu-
tion 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;

(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 semi-public 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 advocates 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 the first day of January, one thousand nine
hundred ninety-one.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Pake  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originated in the Senate.

To take effect January 1, 1991.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 30th day of March, 1990.

Governor