

**WEST VIRGINIA LEGISLATURE**

**REGULAR SESSION, 1990**

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**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 520**

(By Senators *Burdette, Mr. President and*  
*Harman, By request of the Executive.)*

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**PASSED March 9, 1990**

In Effect January 1, 1991 Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 520**

(BY SENATORS BURDETTE, MR. PRESIDENT, AND HARMAN,  
BY REQUEST OF THE EXECUTIVE)

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

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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

3 availability of adequate, economical and reliable local  
4 exchange telephone service will be adversely affected  
5 thereby, permanently cease its regulation of the rates  
6 charged by the telephone utility for any commodity or  
7 service, except carrier access service, which the  
8 commission determines to be subject to workable  
9 competition: *Provided*, That if any such commodity or  
10 service thereafter ceases being subject to workable  
11 competition by reason of lawful governmental action,  
12 or, if the market forces fail to constrain monopolistic  
13 practices or anticompetitive behavior, the commission  
14 shall upon notice and hearing, reinstitute its regula-  
15 tion of the rates charged for such commodity or  
16 service. Evidence of ease of market entry, the pres-  
17 ence of other competitors and the availability of like or  
18 substitute services shall, for purposes of this section,  
19 be sufficient to show that a commodity or service is  
20 subject to workable competition. In making its deter-  
21 mination, the commission shall not be bound by any  
22 previous determination of competitiveness for any  
23 other purpose. The furnishing of all such commodities  
24 and services shall in all other respects remain fully  
25 subject to the commission's jurisdiction.

26 (b) The commission shall ensure through such  
27 accounting system as it deems appropriate that the  
28 costs and revenues associated with the furnishing of  
29 those commodities and services that the commission  
30 determines to be subject to workable competition are  
31 not charged against or credited to the utility's cost of  
32 furnishing other services; except, however, that the  
33 commission may, in connection with any general  
34 increase in local exchange telephone rates proposed by  
35 the telephone utility within ten years from the  
36 effective date of this section, credit to the utility's cost  
37 of furnishing local exchange telephone service the  
38 contribution, if any, then being yielded by those  
39 competitive commodities or services that such utility  
40 was offering as of the effective date of this section:  
41 *Provided*, That if the contribution from such compet-  
42 itive commodities or services is less than the contribu-  
43 tion that was being yielded by those commodities or  
44 services during the year preceding the year in which

45 such commodities or services were determined to be  
46 subject to workable competition, the commission may,  
47 in order to eliminate such deficiency, further credit to  
48 the cost of furnishing local exchange telephone service  
49 any contribution that is then being yielded by those  
50 competitive commodities or services that were not  
51 being offered by the utility as of the effective date of  
52 this section. In no case, however, shall the additional  
53 contribution so credited exceed the contribution that is  
54 actually being yielded by such new commodities or  
55 services, nor shall the commission, in connection with  
56 the crediting of any contribution under the provisions  
57 of this subsection, credit any amount of contribution  
58 that exceeds that which is reasonably necessary to the  
59 continued availability of adequate, economical, and  
60 reliable local exchange telephone service. Contribution  
61 shall be defined to mean the excess of revenues over  
62 costs.

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

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

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

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

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

80 (e) Nothing in this section limits the commission's  
81 power to require telephone utilities to maintain  
82 uniform, statewide toll rates, or to require that public  
83 and semi-public coin telephone service be offered at a

84 flat per message rate. Nothing in this section limits the  
85 commission's power to continue to engage in incentive  
86 or other innovative forms of ratemaking in connection  
87 with its regulation of those services which it has not  
88 determined to be subject to workable competition.

89 Nothing in this section limits the power or right of  
90 the consumer advocates division to petition to decrease  
91 rates and tariffs in the event of decreases in costs of  
92 service.

93 (f) The provisions of this section do not go into effect  
94 until the first day of January, one thousand nine  
95 hundred ninety-one.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Fredrick L. Perkins*  
.....  
Chairman Senate Committee

*Barnard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect January 1, 1991.

*Parsell E. Allen*  
.....  
Clerk of the Senate

*Daniel L. Foy*  
.....  
Clerk of the House of Delegates

*Willard B. Smith*  
.....  
President of the Senate

*W. C. Aubrey*  
.....  
Speaker House of Delegates

The within is approved this the *20<sup>th</sup>* day of *March* 1990.

*Caston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/14/90

Time 2:44 PM

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE