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LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature First Regular Session - 2015

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1 AN ACT
2 RELATING TO TELECOMMUNICATIONS; AMENDING SECTION 61-121, IDAHO CODE, TO RE-
3 VISE THE DEFINITION OF "TELEPHONE CORPORATION" AND "TELECOMMUNICATION
4 SERVICE" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 62-603,
5 IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS;
6 AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
7 TION 62-618A, IDAHO CODE, TO CLARIFY THAT NO STATE GOVERNMENT ENTITY
8 OR POLITICAL SUBDIVISION SHALL REGULATE VOIP AND IP-ENABLED SERVICES
9 WITH EXCEPTIONS; AND AMENDING SECTIONS 18-6609, 26-2239, 61-1302 AND
10 62-609, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Section 61-121, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 61-121. TELEPHONE CORPORATION -- TELECOMMUNICATION SERVICES. (1) The
15 term "telephone corporation" when used in title 61, Idaho Code, means every
16 corporation or person, their lessees, trustees, receivers or trustees ap-
17 pointed by any court whatsoever, providing telecommunication services for
18 compensation within this state. Except as otherwise provided by statute,
19 telephone corporations providing : (a) radio paging, mobile radio telecom-
20 munication services, answering services, ~~(including computerized or other-~~
21 ~~wise automated answering or voice message services)~~; (b) one-way trans-
22 mission to subscribers of: (i) video programming; ~~or~~ (ii) other program-
23 ming service ~~and~~ subscriber interaction, if any, which is required for the
24 selection of such video programming or other programming service or survey-
25 ing; or (c) voice over internet protocol service or internet protocol-en-
26 abled service are exempt from any requirement of title 61, or chapter 6, ti-
27 tle 62, Idaho Code, in the provision of such services.

28 (2) "Telecommunication service" means the transmission of two-way in-
29 teractive switched signs, signals, writing, images, sounds, messages, data,
30 or other information of any nature by wire, radio, lightwaves, or other elec-
31 tromagnetic means ~~(which that~~ includes message telecommunication service
32 and access service), which originate and terminate in this state, and are
33 offered to or for the public, or some portion thereof, for compensation. Ex-
34 cept as otherwise provided by statute, "telecommunication service" does not
35 include: (a) the one-way transmission to subscribers of: (i) video program-
36 ming; ~~or~~ (ii) other programming service ~~and~~ subscriber interaction, if
37 any, which is required for the selection of such video programming or other
38 programming service ~~or~~ surveying; ~~or~~ (b) the provision of radio paging,
39 mobile radio telecommunication services, answering services, ~~(including~~
40 ~~computerized or otherwise automated answering or voice message services)~~;
41 or (c) voice over internet protocol service or internet protocol-enabled

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1 service, and such services shall not be subject to the provisions of title
2 61, Idaho Code, or title 62, Idaho Code.

3 SECTION 2. That Section 62-603, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 62-603. DEFINITIONS. As used in this chapter:

6 (1) "Basic local exchange service" means the provision of access lines
7 to residential and small business customers with the associated transmis-
8 sion of two-way interactive switched voice communication within a local ex-
9 change calling area.

10 (2) "Basic local exchange rate" shall mean the monthly charge imposed
11 by a telephone corporation for basic local exchange service, but shall not
12 include any charges resulting from action by a federal agency or taxes or
13 surcharges imposed by a governmental body which are separately itemized and
14 billed by a telephone corporation to its customers.

15 (3) "Chapter" as used herein shall mean chapter 6, title 62, Idaho Code.

16 (4) "Commission" means the Idaho public utilities commission.

17 (5) "Facilities-based competitor" means a local exchange carrier that
18 offers basic local exchange service either: (a) exclusively over its own
19 telecommunications service facilities; or (b) predominantly over its own
20 facilities in combination with the resale of telecommunications services of
21 another carrier.

22 (6) "Incumbent telephone corporation" means a telephone corporation or
23 its successor which was providing basic local exchange service on or before
24 February 8, 1996.

25 (7) "Internet protocol-enabled service" or "IP-enabled service"
26 means, except as provided in the definition of "voice over internet proto-
27 col service" herein, any service capability, functionality, or application
28 provided using internet protocol or any successor protocol, that enables an
29 end user to send or receive a communication in internet protocol format or
30 any successor format regardless of whether the communication is voice, data
31 or video.

32 (8) "Local exchange calling area" means a geographic area encompass-
33 ing one (1) or more local communities as described in maps, tariffs, rate
34 schedules, price lists, or other descriptive material filed with the com-
35 mission by a telephone corporation, within which area basic local exchange
36 rates rather than message telecommunication service rates apply.

37 (9) "Message telecommunication service" (MTS) means the transmis-
38 sion of two-way interactive switched voice communication between local ex-
39 change calling areas for which charges are made on a per-unit basis, not in-
40 cluding wide area telecommunications service (WATS), or its equivalent, or
41 individually negotiated contracts for telecommunication services.

42 (10) "Residential customers" shall mean persons to whom telecommuni-
43 cation services are furnished at a dwelling and which are used for personal
44 or domestic purposes and not for business, professional or institutional
45 purposes.

46 (11) "Rural telephone company" means a local exchange carrier operat-
47 ing entity to the extent that the entity:

- 1 (a) Provides common carrier service to any local exchange carrier study
2 area that does not include either:
- 3 (i) ~~a~~Any incorporated place of ten thousand (10,000) inhabitants
4 or more, or any part thereof, based on the most recently available
5 population statistics of the bureau of the census; or
6 (ii) ~~a~~Any territory, incorporated or unincorporated, included in
7 an urbanized area, as defined by the bureau of the census as of Au-
8 gust 10, 1993;
- 9 (b) Provides telephone exchange service, including exchange access, to
10 fewer than fifty thousand (50,000) access lines;
- 11 (c) Provides telephone exchange service to any local exchange carrier
12 study area with fewer than one hundred thousand (100,000) access lines;
13 or
- 14 (d) Has less than fifteen percent (15%) of its access lines in communi-
15 ties of more than fifty thousand (50,000) on the date of enactment of the
16 federal telecommunications act of 1996.
- 17 (112) "Small business customers" shall mean a business entity, whether
18 an individual, partnership, corporation or any other business form, to whom
19 telecommunication services are furnished for occupational, professional or
20 institutional purposes, and which business entity does not subscribe to more
21 than five (5) access lines which are billed to a single billing location.
- 22 (123) "Telecommunications act of 1996" means the federal telecommuni-
23 cations act of 1996, ~~p~~Public ~~L~~aw ~~n~~No. 104-104 as enacted effective February
24 8, 1996.
- 25 (134) "Telecommunication service" means the transmission of two-way
26 interactive switched signs, signals, writing, images, sounds, messages,
27 data, or other information of any nature by wire, radio, lightwaves, or other
28 electromagnetic means ~~(which that includes message telecommunication ser-~~
29 ~~vice and access service)~~, which originate and terminate in this state, and
30 are offered to or for the public, or some portion thereof, for compensation.
31 Except as otherwise provided by statute, "telecommunication service" does
32 not include: (a) the one-way transmission to subscribers of: (i) video
33 programming~~;~~; or (ii) other programming service, and subscriber interac-
34 tion, if any, which is required for the selection of such video programming
35 or other programming service~~,~~ or surveying~~;~~ ~~or~~; (b) the provision of ra-
36 dio paging, mobile radio telecommunication services, answering services,
37 (including computerized or otherwise automated answering or voice message
38 services)~~;~~; or (c) voice over internet protocol service or internet proto-
39 col-enabled service and such services shall not be subject to the provisions
40 of title 61, Idaho Code, or title 62, Idaho Code.
- 41 (145) "Telephone corporation" means every corporation or person, their
42 lessees, trustees, receivers or trustees appointed by any court whatso-
43 ever, providing telecommunication services for compensation within this
44 state, provided that municipal, cooperative, or mutual nonprofit telephone
45 companies shall be included in this definition only for the purposes of
46 sections 62-610 and 62-617 through 62-620, Idaho Code. Except as otherwise
47 provided by statute, telephone corporations providing: (a) radio paging,
48 mobile radio telecommunications services, answering services, ~~(including~~
49 ~~computerized or otherwise automated answering or voice message services)~~
50 ~~or~~; (b) one-way transmission to subscribers of: (i) video programming~~;~~; or

1 (ii) other programming service, and subscriber interaction, if any, which
2 is required for the selection of such video programming or other programming
3 service or surveying; or (c) voice over internet protocol service or inter-
4 net protocol-enabled service are exempt from any requirement of this chapter
5 or title 61, Idaho Code, in the provision of such services; provided, that
6 the providers of these exempted services shall have the benefits given them
7 under section 62-608, Idaho Code.

8 (16) "Voice over internet protocol service" or "VoIP service" means an
9 internet protocol-enabled service that facilitates real time, two-way voice
10 communication that originates from, or terminates at, a user's location and
11 permits the user to receive a call that originates from the public switched
12 telephone network and terminates a call on the public switched telephone
13 network. "Voice over internet protocol service" does not include a service
14 that uses ordinary customer premises' equipment with no enhanced function-
15 ality that originates from and terminates on the public switched telephone
16 network, undergoes no net protocol conversion, and provides no enhanced
17 functionality to end users due to the provider's use of internet protocol
18 technology.

19 SECTION 3. That Chapter 6, Title 62, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 62-618A, Idaho Code, and to read as follows:

22 62-618A. VOIP AND IP-ENABLED SERVICES. No department, agency, commis-
23 sion or political subdivision of the state shall enact, adopt or enforce,
24 either directly or indirectly, any law, rule, regulation, ordinance, stan-
25 dard, order or other provision having the force or effect of law that regu-
26 lates or has the effect of regulating the entry, rates, terms or conditions
27 of VoIP service or IP-enabled service. Nothing in this title, or title 61,
28 Idaho Code, shall be construed to:

29 (1) Affect any assessment on VoIP service for nondiscriminatory emer-
30 gency communications fees pursuant to the provisions of chapter 48, title
31 31, Idaho Code, telecommunications relay service fees, Idaho telecommunica-
32 tions service assistance program fees or state universal service fund fee;

33 (2) Exempt VoIP service or IP-enabled service from the Idaho consumer
34 protection act, chapter 6, title 48, Idaho Code, or affect the attorney gen-
35 eral's authority to apply and enforce that chapter;

36 (3) Modify or affect the rights or obligations of any entity, includ-
37 ing the Idaho public utilities commission, arising from 47 U.S.C. section
38 214(e), 47 U.S.C. section 251 or 47 U.S.C. section 252, including a wholesale
39 communications provider certification granted by the Idaho public utilities
40 commission; or

41 (4) To the extent that the Idaho video service act, chapter 30, title
42 50, Idaho Code, is applicable to video services provided using internet
43 protocol-enabled service, or IP-enabled service, this act shall not be con-
44 strued to affect the continued applicability of the Idaho video service act
45 to the provision of such video services.

46 SECTION 4. That Section 18-6609, Idaho Code, be, and the same is hereby
47 amended to read as follows:

- 1 18-6609. CRIME OF VIDEO VOYEURISM. (1) As used in this section:
2 (a) "Broadcast" means the electronic transmittal of a visual image with
3 the intent that it be viewed by a person or persons.
4 (b) "Disseminate" means to make available by any means to any person.
5 (c) "Imaging device" means any instrument capable of recording, stor-
6 ing, viewing or transmitting visual images.
7 (d) "Intimate areas" means the buttocks, genitals or genital areas of
8 males or females, and the breast area of females.
9 (e) "Person" means any natural person, corporation, partnership, firm,
10 association, joint venture or any other recognized legal entity or any
11 agent or servant thereof.
12 (f) "Place where a person has a reasonable expectation of privacy"
13 means:
14 (i) A place where a reasonable person would believe that he could
15 undress, be undressed or engage in sexual activity in privacy,
16 without concern that he is being viewed, photographed, filmed or
17 otherwise recorded by an imaging device; or
18 (ii) A place where a person might reasonably expect to be safe from
19 casual or hostile surveillance by an imaging device; or
20 (iii) Any public place where a person, by taking reasonable
21 steps to conceal intimate areas, should be free from the viewing,
22 recording, storing or transmitting of images obtained by imaging
23 devices designed to overcome the barriers created by a person's
24 covering of intimate areas.
25 (g) "Publish" means to:
26 (i) Disseminate with the intent that such image or images be made
27 available by any means to any person; or
28 (ii) Disseminate with the intent that such images be sold by an-
29 other person; or
30 (iii) Post, present, display, exhibit, circulate, advertise or
31 allow access by any means so as to make an image or images available
32 to the public; or
33 (iv) Disseminate with the intent that an image or images be
34 posted, presented, displayed, exhibited, circulated, advertised
35 or made accessible by any means and to make such image or images
36 available to the public.
37 (h) "Sell" means to disseminate to another person, or to publish, in ex-
38 change for something of value.
39 (2) A person is guilty of video voyeurism when:
40 (a) With the intent of arousing, appealing to or gratifying the lust
41 or passions or sexual desires of such person or another person, or for
42 his own or another person's lascivious entertainment or satisfaction of
43 prurient interest, or for the purpose of sexually degrading or abusing
44 any other person, he uses, installs or permits the use or installation
45 of an imaging device at a place where a person would have a reasonable
46 expectation of privacy, without the knowledge or consent of the person
47 using such place; or
48 (b) He either intentionally or with reckless disregard disseminates,
49 publishes or sells or conspires to disseminate, publish or sell any im-
50 age or images of the intimate areas of another person or persons without

1 the consent of such other person or persons and he knows or reasonably
2 should have known that one (1) or both parties agreed or understood that
3 the images should remain private.

4 (3) A violation of this section is a felony.

5 (4) This section does not apply to an interactive computer service, as
6 defined in 47 U.S.C. section 230(f)(2), an information service, as defined
7 in 47 U.S.C. section 153 or a telecommunication service, as defined in sec-
8 tion 61-121(2) or 62-603(134), Idaho Code, for content provided by another
9 person, unless the provider intentionally aids or abets video voyeurism.

10 SECTION 5. That Section 26-2239, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 26-2239. EXEMPTIONS. The provisions of this act shall not apply to the
13 following:

14 (1) Persons licensed to practice law in this state, to the extent that
15 they are retained by their clients to engage in activities authorized by this
16 act, and such activities are incidental to the practice of law. Such exemp-
17 tion shall not apply to an attorney engaged in a separate business conducting
18 the activities authorized by this act;

19 (2) Any regulated lender as defined in section 28-41-301, Idaho Code,
20 and its subsidiary, affiliate or agent to the extent that the regulated
21 lender, subsidiary, affiliate or agent collects for the regulated lender or
22 engages in acts governed by this act which are incidental to the business of
23 a regulated lender;

24 (3) Any bank, trust company, credit union, insurance company or indus-
25 trial loan company authorized to do business in this state;

26 (4) Any federal, state or local governmental agency or instrumental-
27 ity;

28 (5) Any real estate broker or real estate salesman licensed under the
29 laws of and residing within this state while engaged in acts authorized by
30 his real estate license;

31 (6) Any person authorized to engage in escrow business in this state
32 while engaged in authorized escrow business;

33 (7) Any mortgage company engaged in the regular business of a mortgage
34 company as defined in section 26-2802, Idaho Code, except a mortgage company
35 engaged in a separate business conducting the activities authorized by this
36 act;

37 (8) Any court appointed trustee, receiver or conservator;

38 (9) Any telephone corporation, as defined in subsection (105) of sec-
39 tion 62-603, Idaho Code, whose initial request for payment on behalf of such
40 telephone corporation or on behalf of another person is made by the tele-
41 phone corporation as a part of regular telecommunications billings to its
42 customers and at a time before the account, bill, claim or other indebtedness
43 becomes past due or delinquent;

44 (10) Any person while acting as a debt collector for another person,
45 both of whom are related by common ownership or affiliated by corporate
46 control, if the person acting as a debt collector does so only for persons
47 to whom he is so related or affiliated and if the principal business of such
48 person is not the collection of debts.

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1 SECTION 6. That Section 61-1302, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 61-1302. DEFINITIONS. In this chapter:

4 (1) "Administrator" means the person with whom the Idaho public utili-
5 ties commission contracts to administer the program for delivery of telecom-
6 munications relay services.

7 (2) "Commission" means the Idaho public utilities commission.

8 (3) "Communications impaired" mean individuals who are hearing-im-
9 paired or speech-impaired as defined in title IV, section 401, Americans
10 with disabilities act of 1990, public law 101-336, 104 stat. 327, 336-69 (47
11 U.S.C. section 225) or regulations promulgated pursuant thereto.

12 (4) "Local exchange company" means a telephone corporation which pro-
13 vides access lines to residential and business customers with the associ-
14 ated transmission of two (2) way interactive switched voice communication
15 within a geographic area where basic local exchange rates rather than mes-
16 sage telecommunications service rates apply.

17 (5) "Message telecommunications service" shall have the meaning pre-
18 scribed in section 62-603(~~69~~), Idaho Code.

19 (6) "Program" means the effort directed by the administrator pursuant
20 to this chapter to establish and operate an Idaho system to provide telecom-
21 munications relay services.

22 (7) "Telephone corporation" shall have the meaning prescribed in sec-
23 tion 62-603(1~~0~~5), Idaho Code.

24 (8) "Telecommunications relay services (TRS)" mean services through
25 which a communications impaired person, using specialized telecommunica-
26 tions equipment, may send and receive messages to and from a noncommuni-
27 cations impaired person whose telephone is not equipped with specialized
28 telecommunications equipment and through which a noncommunications im-
29 paired person may, by using voice communication, send and receive messages
30 to and from a communications impaired person.

31 SECTION 7. That Section 62-609, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 62-609. IMPUTED AND NONDISCRIMINATORY ACCESS CHARGES -- COMMISSION
34 AUTHORITY. (1) A telephone corporation, which provides basic local exchange
35 service, and which also provides message telecommunications service shall
36 impute to itself its prices of special access or private line access and
37 switched access for the use of essential facilities used in the provision of
38 message telecommunications service, special access or private line access
39 services and WATS service or their equivalents. Such imputation shall be in
40 the aggregate on a service by service basis. All other providers of message
41 telecommunications service, special access or private line access services
42 and WATS service or their equivalents shall impute to themselves, in the
43 aggregate on a service by service basis, their individual cost of special or
44 switched access or its equivalent in their pricing.

45 The commission shall define in an appropriate proceeding what are es-
46 sential facilities for the purpose of this subsection and shall resolve any
47 dispute which may arise under this subsection.

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1 (2) Telecommunication services which are subject to the provisions
2 of this chapter and which services utilize special or switched access,
3 shall be made available by the telephone corporation for resale. No tele-
4 phone corporation shall, as to its prices or charges for or the provision of
5 such services, make or grant any preference or advantage to any telephone
6 corporation or to a provider of services exempted from regulation under sec-
7 tion 62-603(134), Idaho Code, or subject any telephone corporation or any
8 provider of services exempted from regulation under section 62-603(134),
9 Idaho Code, to any prejudice or competitive disadvantage with respect to its
10 prices or charges for providing access to its local exchange network nor es-
11 tablish or maintain any unreasonable difference as to its prices or charges
12 for access to its local exchange network.

13 (3) Notwithstanding the provisions of section 62-614, Idaho Code, if,
14 after negotiation, a dispute under this section exists between or among
15 telephone corporations or between or among telephone corporation(s) and
16 provider(s) of services exempted from regulation under section 62-603(134),
17 Idaho Code, such dispute shall be determined by the commission upon petition
18 of any affected telephone corporation or provider(s) of services exempted
19 from regulation under section 62-603(134), Idaho Code.

20 Information disclosed to the commission for resolution of disputes un-
21 der this section shall be provided by the telephone corporations with appro-
22 priate safeguards for the protection of business or trade secrets.

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1 TELECOMMUNICATIONS - Amends and adds to existing law to provide that the In-
2 ternet and all of its applications are regulated at the federal level and to
3 prohibit the state or political subdivisions from regulating certain Inter-
4 net services with exceptions.