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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - TELEPHONE REGULATION
MODERNIZATION ACT

Introduced By: Senator Roger Picard

Date Introduced: February 15, 2012

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings. The General Assembly finds and declares that:

2 (1) Wireless communications and broadband technology are economic forces that
3 contribute to the growth and stability of the Rhode Island economy; and

4 (2) Policies in Rhode Island have, for many years, established robust competition in the
5 wireless communications market without unreasonable, industry-specific regulation as the best
6 means of promoting universal service, economic efficiency, technological innovation, expanded
7 consumer choice and empowerment, and investment in and deployment of advanced
8 communications services in the state; and

9 (3) Stating such policies in statute will provide additional certainty and continuity of this
10 policy and is necessary to attract new investment in wireless, broadband and other advanced
11 networks, encourage technology deployment and promote the creation of new jobs in Rhode
12 Island, while at the same time ensuring that consumers of wireless service continue to benefit
13 from the consumer protection laws that apply to consumers generally; and

14 (4) The great majority of other states have already enshrined similar policies in statute;
15 and

16 (5) Rhode Island's wireless marketplace is one of the most open and competitive in the
17 nation, with over 99% of residents having access to three or more wireless providers; and

18 (6) Countless other industries, trades, and businesses in Rhode Island benefit from this

1 open and competitive wireless market; and

2 (7) A leading-edge wireless industry with investments in up-to-date technology is a
3 competitive advantage for Rhode Island businesses and the state's economy; and

4 (8) The interstate, and often international, nature of the wireless communication industry
5 makes a state-by-state regulatory approach problematic and may limit access and increase costs
6 for consumers.

7 SECTION 2. Section 39-1-2 of the General Laws in Chapter 39-1 entitled "Public
8 Utilities Commission" is hereby amended to read as follows:

9 **39-1-2. Definitions.** -- Terms used in this title shall be construed as follows, unless
10 another meaning is expressed or is clearly apparent from the language or context:

11 (1) "Administrator" means the administrator of the division of public utilities and
12 carriers;

13 (2) "Airport" and "landing field" mean and include all airports and landing fields other
14 than those owned by the state;

15 (3) "Chairperson" means the chairperson of the public utilities commission;

16 (4) "Charter carrier" means and includes all carriers for hire or compensation within this
17 state not included in the definition of common carrier;

18 (5) "Commission" means the public utilities commission;

19 (6) "Commissioner" means a member of the public utilities commission;

20 (7) "Common carrier", except when used in chapters 12, 13, and 14 of this title, means
21 and includes all carriers for hire or compensation including railroads, street railways, express,
22 freight and freight line companies, dining car companies, steam boat, motor boat, power boat,
23 hydrofoil, and ferry companies and all other companies operating any agency or facility for
24 public use in this conveyance over fixed routes, or between fixed termini within this state or
25 persons or property by or by a combination of land, air, or water;

26 (8) "Company" means and includes a person, firm, partnership, corporation, quasi-
27 municipal corporation, association, joint stock association or company, and his, her, its, or their
28 lessees, trustees, or receivers appointed by any court;

29 (9) "Customer" means a company taking service from an electric distribution company at
30 a single point of delivery or meter location;

31 (10) "Distribution facility" means plant or equipment used for the distribution of
32 electricity and which is not a transmission facility;

33 (11) "Division" means the division of public utilities and carriers;

34 (12) "Electric distribution company" means a company engaging in the distribution of

1 electricity or owning, operating, or controlling distribution facilities and shall be a public utility
2 pursuant to section 39-1-2(20);

3 (13) "Electric transmission company" means a company engaging in the transmission of
4 electricity or owning, operating, or controlling transmission facilities. An electric transmission
5 company shall not be subject to regulation as a public utility except as specifically provided in the
6 general laws, but shall be regulated by the federal energy regulatory commission and shall
7 provide transmission service to all nonregulated power producers and customers, whether
8 affiliated or not, on comparable, nondiscriminatory prices and terms. Electric transmission
9 companies shall have the power of eminent domain exercisable following a petition to the
10 commission pursuant to section 39-1-31;

11 (14) "Liquefied natural gas" means a fluid in the liquid state composed predominantly of
12 methane and which may contain minor quantities of ethane, propane, nitrogen, or other
13 components normally found in natural gas;

14 (15) "Manufacturing customers" means all customers that have on file with an electric
15 distribution company a valid certificate of exemption from the Rhode Island sales tax indicating
16 the customer's status as a manufacturer pursuant to section 44-18-30;

17 (16) "Motor carriers" means any carrier regulated by the administrator pursuant to
18 Chapters 3, 11, 12, 13 and 14 of this title;

19 (17) "Natural gas" means the combustible gaseous mixture of low-molecular-weight,
20 paraffin hydrocarbons, generated below the surface of the earth containing mostly methane and
21 ethane with small amounts of propane, butane, and hydrocarbons, and sometimes nitrogen,
22 carbon dioxide, hydrogen sulfide, and helium;

23 (18) "Nonprofit housing development corporation" means a nonprofit corporation, which
24 has been approved as a section 501(c)(3), 26 U.S.C. section 501(c)(3), corporation by the internal
25 revenue service, and which is organized and operated primarily for the purpose of providing
26 housing for low and moderate income persons;

27 (19) "Nonregulated power producer" means a company engaging in the business of
28 producing, manufacturing, generating, buying, aggregating, marketing or brokering electricity for
29 sale at wholesale or for retail sale to the public; provided however, that companies which
30 negotiate the purchase of electric generation services on behalf of customers and do not engage in
31 the purchase and resale of electric generation services shall be excluded from this definition. A
32 nonregulated power producer shall not be subject to regulation as a public utility except as
33 specifically provided in the general laws;

34 (20) "Public utility" means and includes every company that is an electric distribution

1 company and every company operating or doing business in intrastate commerce and in this state
2 as a railroad, street railway, common carrier, gas, liquefied natural gas, water, telephone,
3 telegraph, and pipeline company, and every company owning, leasing, maintaining, managing, or
4 controlling any plant or equipment or any part of any plant or equipment within this state for
5 manufacturing, producing, transmitting, distributing, delivering, or furnishing natural or
6 manufactured gas, directly or indirectly to or for the public, or any cars or equipment employed
7 on or in connection with any railroad or street railway for public or general use within this state,
8 or any pipes, mains, poles, wires, conduits, fixtures, through, over, across, under, or along any
9 public highways, parkways or streets, public lands, waters, or parks for the transmission,
10 transportation, or distribution of gas for sale to the public for light, heat, cooling, or power for
11 providing audio or visual telephonic or telegraphic communication service within this state or any
12 pond, lake, reservoir, stream, well, or distributing plant or system employed for the distribution of
13 water to the consuming public within this state including the water supply board of the city of
14 Providence; provided, that, except as provided in section 39-16-9 and in chapter 2072 of the
15 public laws, 1933, as amended, this definition shall not be construed to apply to any public
16 waterworks or water service owned and furnished by any city, town, water district, fire district, or
17 any other municipal or quasi-municipal corporation, excepting the water supply board of the city
18 of Providence, unless any city, town, water district, fire district, municipal, or quasi-municipal
19 corporation obtains water from a source owned or leased by the water resources board, either
20 directly or indirectly, or obtains a loan from the board pursuant to the provisions of chapter 15 of
21 title 46, or sells water, on a wholesale or retail basis, inside and outside the territorial limits of the
22 city or town, water district, fire district, municipal or quasi-municipal corporation, except,
23 however, that a public waterworks or water service owned and furnished by any city, town, water
24 district, fire district, or any other municipal or quasi-municipal corporation which sells water, on
25 a wholesale or retail basis, inside and outside its territorial limits shall not be construed as a
26 public utility if it has fewer than one-thousand five hundred (1500) total customer service
27 connections and provided outside sales do not exceed ten percent (10%) of the total water service
28 connections or volumetric sales and provided the price charged to outside customers, per unit of
29 water, is not greater than the price charged to inside customers for the same unit of water, nor to
30 the Rhode Island public transit authority, or to the production and/or distribution of steam, heat,
31 or water by Rhode Island port authority and economic development corporation in the town of
32 North Kingstown; and the term "public utility" shall also mean and include the Narragansett Bay
33 water quality management district commission; and provided that the ownership or operation of a
34 facility by a company which dispenses alternative fuel or energy sources at retail for use as a

1 motor vehicle fuel or energy source, and the dispensing of alternative fuel or energy sources at
2 retail from such a facility, does not make the company a public utility within the meaning of this
3 title solely because of that ownership, operation, or sale; and provided further that this exemption
4 shall not apply to presently regulated public utilities which sell natural gas or are dispensers of
5 other energy sources; and provided further, that the term "public utility" shall not include any
6 company;

7 (i) Producing or distributing steam or heat from a fossil fuel fired cogeneration plant
8 located at the university of Rhode Island South Kingstown, Rhode Island ~~and~~; or

9 (ii) Producing and/or distributing thermal energy and/or electricity to a state owned
10 facility from a plant located on an adjacent site regardless of whether steam lines cross a public
11 highway; or

12 (iii) Providing wireless service; provided, however, that wireless technology used to
13 provide heretofore regulated local residential exchange service (colloquially known as "plan old
14 telephone service" (POTS)) shall remain subject to the regulatory authority of the commission
15 and division;

16 (21) "Purchasing cooperatives" shall mean any association of electricity consumers which
17 join for the purpose of negotiating the purchase of power from a nonregulated power producer,
18 provided however, that purchasing cooperatives shall not be required to be legal entities and are
19 prohibited from being engaged in the re-sale of electric power;

20 (22) "Railroad" means and includes every railroad other than a street railway, by
21 whatsoever power operated for public use in the conveyance in this state of persons or property
22 for compensation, with all bridges, ferries, tunnels, switches, spurs, tracks, stations, wharves, and
23 terminal facilities of every kind, used, operated, controlled, leased, or owned by or in connection
24 with any railroad;

25 (23) "Retail access" means the use of transmission and distribution facilities owned by
26 an electric transmission company or an electric distribution company to transport electricity sold
27 by a nonregulated power producer to retail customers pursuant to section 39-1-27.3;

28 (24) "Street railway" means and includes every railway by whatsoever power operated or
29 any extension or extensions, branch, or branches thereof, for public use in the conveyance in this
30 state of persons or property for compensation, being mainly upon, along, above, or below any
31 street, avenue, road, highway, bridge, or public place in any city or town, and including all
32 switches, spurs, tracks, rights of trackage, subways, tunnels, stations, terminals and terminal
33 facilities of every kind, used, operated, controlled, or owned by or in connection with any street
34 railway;

1 (25) "Transmission facility" means plant or equipment used for the transmission of
2 electricity as determined by the federal energy regulatory commission pursuant to federal law as
3 of the date of the property transfers pursuant to section39-1-27(c);

4 (26) Notwithstanding any provision of this section or any provision of the act entitled,
5 "An Act Relating to the Utility Restructuring Act of 1996" (hereinafter "Utility Restructuring
6 Act"), upon request by the affected electric utility, the commission may exempt from the Utility
7 Restructuring Act or any provision(s) thereof, an electric utility which meets the following
8 requirements: (i) the utility is not selling or distributing electricity outside of the service territory
9 in effect for that utility on the date of passage of the Utility Restructuring Act; and (ii) the number
10 of kilowatt hours sold or distributed annually by the utility to the public is less than five percent
11 (5%) of the total kilowatt hours consumed annually by the state. Provided however that nothing
12 contained in this section shall prevent the commission from allowing competition in the
13 generation of electricity in service territories of utilities exempted in whole or in part from the
14 Utility Restructuring Act pursuant to this section, as long as such allowance of competition is
15 conditioned upon payment to the exempted electric utility of a nonbypassable transition charge
16 calculated to recover the elements comparable in nature to the elements in section39-1-27.4(b)
17 and (c) taking into consideration any unique circumstances applicable to the exempted electric
18 utility.

19 (27) "Wireless service" means communication services provided over spectrum licensed
20 by or subject to the jurisdiction of the federal communications commission.

21 SECTION 3. Title 39 of the General Laws entitled "PUBLIC UTILITIES AND
22 CARRIERS" is hereby amended by adding thereto the following chapter:

23 CHAPTER 29

24 TELEPHONE REGULATION MODERNIZATION ACT

25 **39-29-1. Jurisdiction over wireless service.** -- Notwithstanding any general or public
26 law to the contrary, the commission and the division shall have no jurisdiction or authority over
27 wireless service.

28 **39-29-2. Authority unaffected.** – Nothing in this chapter shall be construed to modify or
29 affect the jurisdiction or authority of the commission or the division over exchange access rates or
30 the rights or obligations of any carrier pursuant to 47 U.S.C. section 251 or 47 U.S.C. section 252.
31 Nor shall this chapter be construed to modify or affect the authority of the commission to
32 designate eligible telecommunications carriers pursuant to federal law.

33 **39-29-3. Consumer Protection.** – Nothing in this chapter shall derogate from or be
34 construed as a limitation on the common law or statutory authority of the attorney general to

1 enforce consumer protection or unfair or deceptive trade practice statutes and regulations.

2 **39-29-4. Unaffected fees.** – Nothing in this chapter shall be construed to affect, mandate
3 or prohibit the assessment of nondiscriminatory enhanced 911 fees, telecommunications
4 education access fund fees, or telecommunications relay service fees.

5 **39-29-5. No effect on tax obligations.** – Nothing in this chapter shall be construed to
6 modify or affect any tax obligations imposed by section 44-13-4.

7 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - TELEPHONE REGULATION
MODERNIZATION ACT

- 1 This act would provide that the public utilities commission not the division of public
- 2 utilities and carriers would have jurisdiction and authority over wireless providers.
- 3 This act would take effect upon passage.

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