

By Mr. MacLean, a petition (accompanied by bill, Senate, No. 425) of William Q. MacLean, Jr., for legislation to ensure regulatory flexibility in the interlata telecommunications markets. Government Regulations.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT TO ENSURE REGULATORY FLEXIBILITY IN THE INTERLATA TELECOMMUNICATIONS MARKETS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 159 of the General Laws is hereby
2 amended by inserting the following new section:

3 Section 12E. (a) In this section, unless the context otherwise
4 requires, the following words shall have the following meanings:

5 "Department", the Department of Public Utilities.

6 "Local Access and Transport Area (LATA)", means a
7 geographic area designated by the Modification of Final
8 Judgement in *U.S. v. AT&T*, 552 F. Supp. 131 (DDC 1982), as
9 may be modified from time to time.

10 "Sufficiently competitive", the situation where a market
11 currently has more than one company providing to customers a
12 service or a sufficient quantity of services at prices, terms and
13 conditions which make such service or services a reasonable
14 alternative to the service or services of other providers, and where
15 no one provider has the ability to set and maintain the market
16 price.

17 "Subsidy", the failure of a service to cover its relevant costs as
18 determined by the department.

19 "Universal service", the provision to virtually all residential
20 customers of access to the local exchange network with a
21 reasonable level of usage at affordable rates.

22 (b) In reviewing or investigating any matter under this chapter

23 relating to the transmission of intelligence by electricity, the
24 department shall act to ensure universal service, and to ensure that
25 the price of such telecommunications service or services which are
26 found to be sufficiently competitive by the department shall not
27 be priced below cost by use of a subsidy from customers of another
28 service or services.

29 (c) Any telecommunications common carrier as defined by
30 Section 12 of this chapter providing telecommunications services
31 between LATAs, or any radio utility as defined by Section 12A
32 of this chapter, or the Department of the Attorney General, or
33 other interested party, may petition the department for a
34 determination that a particular service is sufficiently competitive.
35 Any interLATA carrier making such a request shall serve a copy
36 of the petition on the Department of the Attorney General on the
37 same day the petition is filed with the department. The
38 department, after receipt of such a petition, shall review and
39 determine whether the market for any service provided by a tele-
40 communications carrier or radio utility within the meaning of
41 section 12A of this chapter, is sufficiently competitive. Upon such
42 determination, the department may, by regulation or otherwise,
43 reduce or refrain from the investigation and establishment of
44 rates, joint rates, tolls, classifications and charges, and relieve such
45 telecommunications carrier or radio utility from any requirement
46 imposed by this chapter for such service; provided, further, that
47 the department determines that such reduced regulation would
48 not negatively affect the requirements set forth in section 12E (b).

49 In addition to the above and notwithstanding such determina-
50 tion that the market for a service is sufficiently competitive, the
51 department may impose such terms, conditions and other
52 requirements, as it determines are consistent with the public
53 interest. The department, after notice and public hearing, may
54 reimpose any such measure or requirement eliminated, reduced,
55 or modified pursuant to this section, upon a finding that the
56 investigation and establishment of rates or other requirement
57 previously imposed by this chapter, is consistent with the public
58 interest.

59 (d) In determining whether a market is sufficiently competitive
60 and whether a lesser degree of regulation would serve the public
61 interest, the department shall consider each of the following
62 factors:

63 (I) The extent of economic, technological, or other barriers to
64 market entry and exit;

65 (II) The number of other providers offering similar services;

66 (III) The ability of consumers to obtain the service or services
67 from other providers at prices, terms and conditions which make
68 such service or services a reasonable alternative to that of other
69 providers;

70 (IV) The ability of any provider of such telecommunications
71 service or services to set and maintain prices or deter competition;
72 and

73 (V) Such other factors as the department deems appropriate and
74 necessary.

75 (e) In any hearing on a petition filed pursuant to this section,
76 the burden shall be on the petitioner to prove that a service is
77 sufficiently competitive and that the requirements enumerated in
78 section 12E (b) have been met. The department may issue written
79 findings of fact on each of the above factors and on any other
80 factors it considered in acting on the petition. The issuance of
81 written findings shall be a final order for purposes of section 5
82 of chapter 25.

1 SECTION 2. Section 24 of said chapter 159 is hereby amended
2 by adding at the end thereof the following sentence: Upon other
3 written complaint regarding the transmission of intelligence by
4 electricity, the department shall determine if sufficient cause exists
5 to warrant the opening of an investigation. Such a determination
6 shall be in writing and shall be served upon the complainant within
7 ninety days of the filing of the complaint.

1 SECTION 3. Said chapter 159 is hereby further amended by
2 adding to said chapter the following section:

3 Section 105. A common carrier of intelligence by electricity
4 may petition the department of authority to acquire land by
5 eminent domain to construct and use or to continue to use as
6 constructed or with altered construction a line or facility for the
7 transmission of such intelligence for distribution, transmission or
8 interconnection within and without the Commonwealth, and shall
9 represent that such line or facility will or does serve the public
10 convenience and is consistent with the public interest. The
11 common carrier shall forward at the time of filing such petition

12 a copy thereof to each city and town within such area. In seeking
13 and exercising such authority, such common carrier shall have the
14 rights, powers, duties and obligations, and shall be subject, as an
15 electric company, to the provisions of sections seventy-two,
16 seventy-two A, seventy-three, seventy-four and seventy-five of
17 chapter one hundred sixty-four; and the department, in granting
18 such authority, shall have the same powers and be subject to the
19 same duties and obligations as it does with respect to electric
20 companies under said sections.