

FIRST REGULAR SESSION

HOUSE BILL NO. 339

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES POLLOCK (Sponsor), TILLEY, SCHOELLER, SCHARNHORST,
WEBB, JONES (89), DIEHL, DIEHL, NETH, RIDDLE AND DUGGER (Co-sponsors).

1159L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 392.460, RSMo, and to enact in lieu thereof one new section relating to telecommunications.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 392.460, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.460, to read as follows:

392.460. **1. As used in this section, the following words shall mean:**

(1) **"Alternative service provider", any person or entity providing local voice services, or any person or entity allowing another person or entity to use its equipment or facilities to provide local voice services, or any person or entity securing rights to select an alternative service provider for a property owner or developer. Alternative service provider shall not include an incumbent local exchange carrier providing service within its commission-approved local exchange service area;**

(2) **"Greenfield area", real property that requires entirely new construction of local loops or local connectivity in addition to the deployment of any necessary switching and other network equipment to serve new real property developments;**

(3) **"Local voice service" or "local voice services", any two-way voice service offered through any form of technology that is capable of placing calls to or receiving calls from a provider of basic local telecommunications services, including voice over internet protocol services;**

(4) **"Owner or developer", an entity that owns or develops a business or residential property, any condominium association or homeowner's association thereof, any person**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 or entity having ownership in or control over the property, or any person acting on behalf
18 of such owner or developer;

19 (5) "Real property", any single tenant or multitenant business or residential
20 property, subdivisions, condominiums, apartments, office buildings, or office parks.

21 2. No telecommunications company authorized by the commission to provide or offer
22 basic local or basic interexchange telecommunications service within the state of Missouri on
23 January 1, 1984, shall abandon such service until and unless it shall demonstrate, and the
24 commission finds, after notice and hearing, that such abandonment will not deprive any
25 customers of basic local or basic interexchange telecommunications service or [access thereto]
26 access to local voice service and is not otherwise contrary to the public interest.

27 3. Notwithstanding other provisions of this chapter or chapter 386, a local exchange
28 carrier obligated under this section to serve as the carrier of last resort in greenfield areas
29 shall automatically be relieved of such obligation and shall not be obligated to provide
30 basic local voice service or any telecommunications service to any occupants of real
31 property if the owner or developer of the real property, or a person acting on behalf of the
32 owner or developer of real property, engages in any of the following acts:

33 (1) Permits an alternative service provider to install its facilities or equipment used
34 to provide local voice services based on a condition of exclusion of the local exchange
35 carrier during the construction phase of the real property;

36 (2) Accepts or agrees to accept incentives or rewards from an alternative service
37 provider that are contingent upon the provision of any or all local voice services by one or
38 more alternative service providers to the exclusion of the local exchange carrier; or

39 (3) Collects from the occupants or residents of the real property mandatory charges
40 for the provision of any local voice service provided by an alternative service provider to
41 the occupants or residents in any manner, including, but not limited to, collection through
42 rent, fees, or dues.

43 4. The local exchange carrier relieved of its carrier of last resort obligation to
44 provide basic local telecommunications service to the occupants of real property under
45 subsection 3 of this section shall notify the commission in writing of that fact within one
46 hundred twenty days after receiving knowledge of the existence of such fact.

47 5. A local exchange carrier that is not relieved of its carrier of last resort obligation
48 under subsections 2 and 3 of this section may seek a waiver of its carrier of last resort
49 obligation from the commission for good cause shown based on the facts and circumstances
50 of the provision of local voice service or internet access services or video services to a
51 particular real property. Upon petition for such relief, notice shall be given by the local
52 exchange carrier at the same time to the relevant owner or developer. The commission

53 shall make a determination concerning the petition on or before ninety days after such
54 petition is filed, unless the commission determines that good cause exists to delay the
55 determination for an additional ninety days and that such delay is not likely to have a
56 materially adverse effect upon consumers of telecommunications services.

57 **6. If a local exchange carrier is relieved of its carrier of last resort obligation under**
58 **subsection 3 or 5 of this section, the owner or developer shall notify all occupants and any**
59 **subsequent owner of the specific real property of the following:**

60 **(1) That the incumbent local exchange carrier does not have facilities installed to**
61 **serve the specific real property, and that such carrier has been relieved of its carrier of last**
62 **resort obligations; and**

63 **(2) The name of the person that will be providing local telecommunications service**
64 **to the real property, and the type of technology that will be used to provide such service.**

65 **7. If all conditions described in subsection 3 and the conditions that form the basis**
66 **for relief under subsection 5 of this section cease to exist at the property, no company is**
67 **providing local voice service there, and the owner or developer requests in writing that the**
68 **local exchange carrier make local voice service available to occupants of the real property**
69 **and confirms in writing that all conditions described in subsections 3 and 5 of this section**
70 **have ceased to exist at the property, the carrier of last resort obligation under this section**
71 **shall again apply to the local exchange carrier at the real property. The local exchange**
72 **carrier shall provide notice to the commission that it is assuming the carrier of last resort**
73 **obligation. The local exchange carrier may require that the owner or developer pay the**
74 **local exchange carrier in advance a reasonable fee to recover costs that exceed the costs**
75 **that would have been incurred to construct or acquire facilities to serve customers at the**
76 **real property initially. The commission may verify that the fee enables the local exchange**
77 **carrier to recover its costs that exceed the costs that would have been incurred to construct**
78 **or acquire facilities to serve customers at the real property initially, including, but not**
79 **limited to, amounts necessary to install or retrofit any facilities or equipment, to cut or**
80 **trench sidewalks and streets, and to restore roads, sidewalks, block walls, or landscapes**
81 **to original conditions. The local exchange carrier shall have a reasonable period of time**
82 **following the request from the owner or developer to make arrangements for local voice**
83 **service availability.**

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85 **If the conditions described in subsection 3 of this section or the conditions that form the**
86 **basis for relief under subsection 5 of this section again exist at the real property, the relief**
87 **in subsection 3 or 5 of this section shall again apply.**

88 **8. When real property is located in a greenfield area, a carrier of last resort shall**
89 **not automatically be excused from its obligations under subsection 3 of this section unless**
90 **the alternative service provider possesses or will possess at the time of commencement of**
91 **service the capability to provide local voice service or the functional equivalent of such**
92 **service through any form of technology.**

93 **9. If an owner or developer of real property permits an alternative service provider**
94 **to install its facilities or equipment used to provide local voice service to such property**
95 **based on a condition of exclusion of the local exchange carrier, the owner or developer**
96 **shall provide written notice to the purchaser of any such real property that there is an**
97 **exclusion of that local exchange carrier and that the alternative service provider is the**
98 **exclusive provider of service to such property.**

99 **10. An incumbent local exchange carrier shall have the right to require a payment**
100 **from an owner or developer in cases where the costs of extending facilities to serve a multi**
101 **tenant business or residential property, including, but not limited to, apartments,**
102 **condominiums, subdivisions, office buildings, or office parks are not economically**
103 **reasonable. The terms and conditions applicable to such payments shall be specified in the**
104 **incumbent local exchange carrier's tariffs. An incumbent local exchange carrier shall not**
105 **be obligated to provide local voice service or any other telecommunications service without**
106 **payment specified in the incumbent local exchange carrier's tariff.**

107 **11. Notwithstanding other provisions of this chapter or chapter 386, a**
108 **telecommunications company may meet its carrier of last resort obligations and its**
109 **obligations to offer basic local or basic interexchange telecommunications service by**
110 **providing local voice service using any technology.**

111 **12. Any local exchange carrier relieved of its carrier of last resort obligation in a**
112 **particular area under subsection 3 or 5 of this section shall not be deemed to have lost its**
113 **general designation as carrier of last resort for essential local telecommunications service**
114 **outside that area for purposes of subsection 5 of section 392.248.**

115 **13. When a local exchange carrier is relieved of the carrier of last resort obligation**
116 **to serve in a designated area, in no instance shall the carrier of last resort obligation be**
117 **transferred to any alternative service provider or provider of local voice service, including**
118 **interconnected voice over internet protocol service in that designated service area.**

119 **14. Notwithstanding other provisions of this chapter or chapter 386, any**
120 **telecommunications company may, upon notice to the commission, elect to no longer be**
121 **designated as a carrier of last resort for any telecommunications service within any county**
122 **with a charter form of government and with more than one million inhabitants, any city**
123 **not within a county, and any home rule city with more than four hundred thousand**

124 **inhabitants and located in more than one county. Upon such election, a**
125 **telecommunications company shall not be required to provide or offer basic local or basic**
126 **interexchange telecommunications service and may provide local voice service using any**
127 **technology.**

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