

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR

HOUSE BILL NO. 331

97TH GENERAL ASSEMBLY

1283S.04T

2013

AN ACT

To repeal sections 67.1830, 67.1836, 67.1838, 67.1842, 392.415, 392.420, and 392.461, RSMo, and to enact in lieu thereof twenty-two new sections relating to telecommunications.

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

Section A. Sections 67.1830, 67.1836, 67.1838, 67.1842, 392.415, 392.420, and
2 392.461, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known
3 as sections 67.1830, 67.1836, 67.1838, 67.1842, 67.5090, 67.5092, 67.5094, 67.5096, 67.5098,
4 67.5100, 67.5102, 67.5103, 389.585, 389.586, 389.587, 389.588, 389.589, 389.591, 392.415,
5 392.420, 392.461, and 392.611, to read as follows:

67.1830. As used in sections 67.1830 to 67.1846, the following terms shall mean:

- 2 (1) "Abandoned equipment or facilities", any equipment materials, apparatuses, devices
3 or facilities that are:
- 4 (a) Declared abandoned by the owner of such equipment or facilities;
- 5 (b) No longer in active use, physically disconnected from a portion of the operating
6 facility or any other facility that is in use or in service, and no longer capable of being used for
7 the same or similar purpose for which the equipment, apparatuses or facilities were installed; or
8 (c) No longer in active use and the owner of such equipment or facilities fails to respond
9 within thirty days to a written notice sent by a political subdivision;
- 10 (2) "Degradation", the actual or deemed reduction in the useful life of the public right-of-
11 way resulting from the cutting, excavation or restoration of the public right-of-way;
- 12 (3) "Emergency", includes but is not limited to the following:

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.

13 (a) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public
14 utility facility that prevents or significantly jeopardizes the ability of a public utility to provide
15 service to customers;

16 (b) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public
17 utility facility that results or could result in danger to the public or a material delay or hindrance
18 to the provision of service to the public if the outage, cut, rupture, leak or any other such failure
19 of public utility facilities is not immediately repaired, controlled, stabilized or rectified; or

20 (c) Any occurrence involving a public utility facility that a reasonable person could
21 conclude under the circumstances that immediate and undelayed action by the public utility is
22 necessary and warranted;

23 (4) "Excavation", any act by which earth, asphalt, concrete, sand, gravel, rock or any
24 other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced,
25 by means of any tools, equipment or explosives, except that the following shall not be deemed
26 excavation:

27 (a) Any de minimis displacement or movement of ground caused by pedestrian or
28 vehicular traffic;

29 (b) The replacement of utility poles and related equipment at the existing general
30 location that does not involve either a street or sidewalk cut; or

31 (c) Any other activity which does not disturb or displace surface conditions of the earth,
32 asphalt, concrete, sand, gravel, rock or any other material in or on the ground;

33 (5) "Management costs" or "rights-of-way management costs", the actual costs a political
34 subdivision reasonably incurs in managing its public rights-of-way, including such costs, if
35 incurred, as those associated with the following:

36 (a) Issuing, processing and verifying right-of-way permit applications;

37 (b) Inspecting job sites and restoration projects;

38 (c) Protecting or moving public utility right-of-way user construction equipment after
39 reasonable notification to the public utility right-of-way user during public right-of-way work;

40 (d) Determining the adequacy of public right-of-way restoration;

41 (e) Restoring work inadequately performed after providing notice and the opportunity
42 to correct the work; and

43 (f) Revoking right-of-way permits.

44

45 Right-of-way management costs shall be the same for all entities doing similar work.
46 Management costs or rights-of-way management costs shall not include payment by a public
47 utility right-of-way user for the use or rent of the public right-of-way, degradation of the public
48 right-of-way or any costs as outlined in paragraphs (a) to (h) of this subdivision which are

49 incurred by the political subdivision as a result of use by users other than public utilities, the
50 **attorneys'** fees and cost of litigation relating to the interpretation of this section or section
51 67.1832, or litigation, interpretation or development of any ordinance enacted pursuant to this
52 section or section 67.1832, **or attorneys' fees and costs in connection with issuing,**
53 **processing, or verifying right-of-way permit or other applications or agreements,** or the
54 political subdivision's fees and costs related to appeals taken pursuant to section 67.1838. In
55 granting or renewing a franchise for a cable television system, a political subdivision may impose
56 a franchise fee and other terms and conditions permitted by federal law;

57 (6) "Managing the public right-of-way", the actions a political subdivision takes, through
58 reasonable exercise of its police powers, to impose rights, duties and obligations on all users of
59 the right-of-way, including the political subdivision, in a reasonable, competitively neutral and
60 nondiscriminatory and uniform manner, reflecting the distinct engineering, construction,
61 operation, maintenance and public work and safety requirements applicable to the various users
62 of the public right-of-way, provided that such rights, duties and obligations shall not conflict
63 with any federal law or regulation. In managing the public right-of-way, a political subdivision
64 may:

65 (a) Require construction performance bonds or insurance coverage or demonstration of
66 self-insurance at the option of the political subdivision or if the public utility right-of-way user
67 has twenty-five million dollars in net assets and does not have a history of permitting
68 noncompliance within the political subdivision as defined by the political subdivision, then the
69 public utility right-of-way user shall not be required to provide such bonds or insurance;

70 (b) Establish coordination and timing requirements that do not impose a barrier to entry;

71 (c) Require public utility right-of-way users to submit, for right-of-way projects
72 commenced after August 28, 2001, requiring excavation within the public right-of-way, whether
73 initiated by a political subdivision or any public utility right-of-way user, project data in the form
74 maintained by the user and in a reasonable time after receipt of the request based on the amount
75 of data requested;

76 (d) Establish right-of-way permitting requirements for street excavation;

77 (e) Establish removal requirements for abandoned equipment or facilities, if the
78 existence of such facilities prevents or significantly impairs right-of-way use, repair, excavation
79 or construction;

80 (f) Establish permitting requirements for towers and other structures or equipment for
81 wireless communications facilities in the public right-of-way, notwithstanding the provisions of
82 section 67.1832;

83 (g) Establish standards for street restoration in order to lessen the impact of degradation
84 to the public right-of-way; and

- 85 (h) Impose permit conditions to protect public safety;
- 86 (7) "Political subdivision", a city, town, village, county of the first classification or
87 county of the second classification;
- 88 (8) "Public right-of-way", the area on, below or above a public roadway, highway, street
89 or alleyway in which the political subdivision has an ownership interest, but not including:
- 90 (a) The airwaves above a public right-of-way with regard to cellular or other nonwire
91 telecommunications or broadcast service;
- 92 (b) Easements obtained by utilities or private easements in platted subdivisions or tracts;
- 93 (c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or
- 94 (d) [Poles,] Pipes, cables, conduits, wires, optical cables, or other means of transmission,
95 collection or exchange of communications, information, substances, data, or electronic or
96 electrical current or impulses utilized by a municipally owned or operated utility pursuant to
97 chapter 91 or pursuant to a charter form of government;
- 98 (9) "Public utility", every cable television service provider, every pipeline corporation,
99 gas corporation, electrical corporation, rural electric cooperative, telecommunications company,
100 water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction
101 of the public service commission; every municipally owned or operated utility pursuant to
102 chapter 91 or pursuant to a charter form of government or cooperatively owned or operated
103 utility pursuant to chapter 394; every street light maintenance district; every privately owned
104 utility; and every other entity, regardless of its form of organization or governance, whether for
105 profit or not, which in providing a public utility type of service for members of the general
106 public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission,
107 collection or exchange of communications, information, substances, data, or electronic or
108 electrical current or impulses, in the collection, exchange or dissemination of its product or
109 services through the public rights-of-way;
- 110 (10) "Public utility right-of-way user", a public utility owning or controlling a facility
111 in the public right-of-way; and
- 112 (11) "Right-of-way permit", a permit issued by a political subdivision authorizing the
113 performance of excavation work in a public right-of-way.

67.1836. 1. A political subdivision may deny an application for a right-of-way permit
2 if:

3 (1) The public utility right-of-way user fails to provide all the necessary information
4 requested by the political subdivision for managing the public right-of-way;

5 (2) The public utility right-of-way user has failed to return the public right-of-way to its
6 previous condition under a previous permit;

7 (3) The political subdivision has provided the public utility right-of-way user with a
8 reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative
9 method for performing the work identified in the permit application or a reasonable alternative
10 route that will result in neither additional installation expense up to ten percent to the public
11 utility right-of-way user nor a declination of service quality;

12 (4) The political subdivision determines that the denial is necessary to protect the public
13 health and safety, provided that the authority of the political subdivision does not extend to those
14 items under the jurisdiction of the public service commission, such denial shall not interfere with
15 a public utility's right of eminent domain of private property, and such denials shall only be
16 imposed on a competitively neutral and nondiscriminatory basis; or

17 (5) The area is environmentally sensitive as defined by state statute or federal law or is
18 a historic district as defined by local ordinance.

19 2. A political subdivision may, after reasonable notice and an opportunity to cure, revoke
20 a right-of-way permit granted to a public utility right-of-way user, with or without fee refund,
21 and/or impose a penalty as established by the political subdivision until the breach is cured, but
22 only in the event of a substantial breach of the terms and material conditions of the permit. A
23 substantial breach by a permittee includes but is not limited to:

24 (1) A material violation of a provision of the right-of-way permit;

25 (2) An evasion or attempt to evade any material provision of the right-of-way permit, or
26 the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its
27 citizens;

28 (3) A material misrepresentation of fact in the right-of-way permit application;

29 (4) A failure to complete work by the date specified in the right-of-way permit, unless
30 a permit extension is obtained or unless the failure to complete the work is due to reasons beyond
31 the permittee's control; and

32 (5) A failure to correct, within the time specified by the political subdivision, work that
33 does not conform to applicable national safety codes, industry construction standards, or local
34 safety codes that are no more stringent than national safety codes, upon inspection and
35 notification by the political subdivision of the faulty condition.

36 3. Any political subdivision that requires public utility right-of-way users to obtain a
37 right-of-way permit, except in an emergency, prior to performing excavation work within a
38 public right-of-way shall promptly, but not longer than thirty-one days, process all completed
39 permit applications. **If a political subdivision fails to act on an application for a right-of-way**
40 **permit within thirty-one days, the application shall be deemed approved.** In order to avoid
41 excessive processing and accounting costs to either the political subdivision or the public utility

42 right-of-way user, the political subdivision may establish procedures for bulk processing of
43 permits and periodic payment of permit fees.

67.1838. [1.] A public utility right-of-way user that has been denied a right-of-way
2 permit, has had its right-of-way permit revoked, believes that the fees imposed on the public
3 right-of-way user by the political subdivision do not conform to the requirements of section
4 67.1840, **believes the political subdivision has violated any provision of sections 67.1830 to**
5 **67.1848**, or asserts any other issues related to the use of the public right-of-way, [shall have,
6 upon written request, such denials, revocations, fee impositions, or other disputes reviewed by
7 the governing body of the political subdivision or an entity assigned by the governing body for
8 this purpose. The governing body of the political subdivision or its delegated entity shall specify,
9 in its permit processing schedules, the maximum number of days by which the review request
10 shall be filed in order to be reviewed by the governing body of the political subdivision or its
11 delegated entity. A decision affirming the denial, revocation, fee imposition or dispute resolution
12 shall be in writing and supported by written findings establishing the reasonableness of the
13 decision.

14 2. Upon affirmation by the governing body of the denial, revocation, fee imposition or
15 dispute resolution, the public utility right-of-way user may, in addition to all other remedies and
16 if both parties agree, have the right to have the matter resolved by mediation or binding
17 arbitration. Binding arbitration shall be before an arbitrator agreed to by both the political
18 subdivision and the public utility right-of-way user. The costs and fees of a single arbitrator shall
19 be borne equally by the political subdivision and the public utility right-of-way user.

20 3. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-
21 person arbitration panel consisting of one arbitrator selected by the political subdivision, one
22 arbitrator selected by the public utility right-of-way user, and one person selected by the other
23 two arbitrators. In the event that a three-person arbitrator panel is necessary, each party shall
24 bear the expense of its own arbitrator and shall jointly and equally bear with the other party the
25 expense of the third arbitrator and of the arbitration.

26 4. Each party to the arbitration shall pay its own costs, disbursements and attorney fees]
27 **may bring an action for review in any court of competent jurisdiction. The court shall rule**
28 **on any such petition for review in an expedited manner by moving the petition to the head**
29 **of the docket. Nothing shall deny the authority of its right to a hearing before the court.**

67.1842. 1. In managing the public right-of-way and in imposing fees pursuant to
2 sections 67.1830 to 67.1846, no political subdivision shall:

- 3 (1) Unlawfully discriminate among public utility right-of-way users;
- 4 (2) Grant a preference to any public utility right-of-way user;

5 (3) Create or erect any unreasonable requirement for entry to the public right-of-way by
6 public utility right-of-way users;

7 (4) Require a telecommunications company to obtain a franchise or require a public
8 utility right-of-way user to pay for the use of the public right-of-way, except as provided in
9 sections 67.1830 to 67.1846; [or]

10 (5) Enter into a contract or any other agreement for providing for an exclusive use,
11 occupancy or access to any public right-of-way; **or**

12 **(6) Require any public utility that has legally been granted access to the political**
13 **subdivision's right-of-way prior to August 28, 2001, to enter into an agreement or obtain**
14 **a permit for general access to or the right to remain in the right-of-way of the political**
15 **subdivision.**

16 2. A public utility right-of-way user shall not be required to apply for or obtain right-of-
17 way permits for projects commenced prior to August 28, 2001, requiring excavation within the
18 public right-of-way, for which the user has obtained the required consent of the political
19 subdivision, or that are otherwise lawfully occupying or performing work within the public right-
20 of-way. The public utility right-of-way user may be required to obtain right-of-way permits prior
21 to any excavation work performed within the public right-of-way after August 28, 2001.

22 3. A political subdivision shall not collect a fee imposed pursuant to section 67.1840
23 through the provision of in-kind services by a public utility right-of-way user, nor require the
24 provision of in-kind services as a condition of consent to use the political subdivision's public
25 right-of-way; however, nothing in this subsection shall preclude requiring services of a cable
26 television operator, open video system provider or other video programming provider as
27 permitted by federal law.

67.5090. Sections 67.5090 to 67.5102 shall be known and may be cited as the
2 **"Uniform Wireless Communications Infrastructure Deployment Act" and is intended to**
3 **encourage and streamline the deployment of broadband facilities and to help ensure that**
4 **robust wireless communication services are available throughout Missouri.**

67.5092. As used in sections 67.5090 to 67.5102, the following terms mean:

2 **(1) "Accessory equipment", any equipment serving or being used in conjunction**
3 **with a wireless facility or wireless support structure. The term includes utility or**
4 **transmission equipment, power supplies, generators, batteries, cables, equipment**
5 **buildings, cabinets and storage sheds, shelters, or similar structures;**

6 **(2) "Antenna", communications equipment that transmits or receives**
7 **electromagnetic radio signals used in the provision of any type of wireless communications**
8 **services;**

9 (3) "Applicant", any person engaged in the business of providing wireless
10 communications services or the wireless communications infrastructure required for
11 wireless communications services who submits an application;

12 (4) "Application", a request submitted by an applicant to an authority to construct
13 a new wireless support structure, for the substantial modification of a wireless support
14 structure, or for collocation of a wireless facility or replacement of a wireless facility on an
15 existing structure;

16 (5) "Authority", each state, county, and municipal governing body, board, agency,
17 office, or commission authorized by law and acting in its capacity to make legislative,
18 quasi-judicial, or administrative decisions relative to zoning or building permit review of
19 an application. The term shall not include state courts having jurisdiction over land use,
20 planning, or zoning decisions made by an authority;

21 (6) "Base station", a station at a specific site authorized to communicate with
22 mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power
23 supplies, and other associated electronics, and includes a structure that currently supports
24 or houses an antenna, a transceiver, coaxial cables, power supplies, or other associated
25 equipment;

26 (7) "Building permit", a permit issued by an authority prior to commencement of
27 work on the collocation of wireless facilities on an existing structure, the substantial
28 modification of a wireless support structure, or the commencement of construction of any
29 new wireless support structure, solely to ensure that the work to be performed by the
30 applicant satisfies the applicable building code;

31 (8) "Collocation", the placement or installation of a new wireless facility on existing
32 structure, including electrical transmission towers, water towers, buildings, and other
33 structures capable of structurally supporting the attachment of wireless facilities in
34 compliance with applicable codes;

35 (9) "Electrical transmission tower", an electrical transmission structure used to
36 support high voltage overhead power lines. The term shall not include any utility pole;

37 (10) "Equipment compound", an area surrounding or near a wireless support
38 structure within which are located wireless facilities;

39 (11) "Existing structure", a structure that exists at the time a request to place
40 wireless facilities on a structure is filed with an authority. The term includes any structure
41 that is capable of supporting the attachment of wireless facilities in compliance with
42 applicable building codes, National Electric Safety Codes, and recognized industry
43 standards for structural safety, capacity, reliability, and engineering, including, but not
44 limited to, towers, buildings, and water towers. The term shall not include any utility pole;

45 (12) **"Replacement"**, includes constructing a new wireless support structure of
46 equal proportions and of equal height or such other height that would not constitute a
47 substantial modification to an existing structure in order to support wireless facilities or
48 to accommodate collocation and includes the associated removal of the pre-existing wireless
49 facilities or wireless support structure;

50 (13) **"Substantial modification"**, the mounting of a proposed wireless facility on a
51 wireless support structure which, as applied to the structure as it was originally
52 constructed:

53 (a) Increases the existing vertical height of the structure by:

54 a. More than ten percent; or

55 b. The height of one additional antenna array with separation from the nearest
56 existing antenna not to exceed twenty feet, whichever is greater; or

57 (b) Involves adding an appurtenance to the body of a wireless support structure
58 that protrudes horizontally from the edge of the wireless support structure more than
59 twenty feet or more than the width of the wireless support structure at the level of the
60 appurtenance, whichever is greater (except where necessary to shelter the antenna from
61 inclement weather or to connect the antenna to the tower via cable);

62 (c) Involves the installation of more than the standard number of new outdoor
63 equipment cabinets for the technology involved, not to exceed four new equipment
64 cabinets; or

65 (d) Increases the square footage of the existing equipment compound by more than
66 two thousand five hundred square feet;

67 (14) **"Utility"**, any person, corporation, county, municipality acting in its capacity
68 as a utility, municipal utility board, or other entity, or department thereof or entity related
69 thereto, providing retail or wholesale electric, natural gas, water, waste water, data, cable
70 television, or telecommunications or internet protocol-related services;

71 (15) **"Utility pole"**, a structure owned or operated by a utility that is designed
72 specifically for and used to carry lines, cables, or wires for telephony, cable television, or
73 electricity, or to provide lighting;

74 (16) **"Water tower"**, a water storage tank, or a standpipe or an elevated tank
75 situated on a support structure, originally constructed for use as a reservoir or facility to
76 store or deliver water;

77 (17) **"Wireless facility"**, the set of equipment and network components, exclusive
78 of the underlying wireless support structure, including, but not limited to, antennas,
79 accessory equipment, transmitters, receivers, power supplies, cabling and associated
80 equipment necessary to provide wireless communications services;

81 **(18) "Wireless support structure", a structure, such as a monopole, tower, or**
82 **building capable of supporting wireless facilities. This definition does not include utility**
83 **poles.**

67.5094. In order to ensure uniformity across the state of Missouri with respect to
2 **the consideration of every application, an authority shall not:**

3 **(1) Require an applicant to submit information about, or evaluate an applicant's**
4 **business decisions with respect to its designed service, customer demand for service, or**
5 **quality of its service to or from a particular area or site;**

6 **(2) Evaluate an application based on the availability of other potential locations for**
7 **the placement of wireless support structures or wireless facilities, including without**
8 **limitation the option to collocate instead of construct a new wireless support structure or**
9 **for substantial modifications of a support structure, or vice versa; provided, however, that**
10 **solely with respect to an application for a new wireless support structure, an authority may**
11 **require an applicant to state in its application that it conducted an analysis of available**
12 **collocation opportunities on existing wireless towers within the same search ring defined by**
13 **the applicant, solely for the purpose of confirming that an applicant undertook such an**
14 **analysis;**

15 **(3) Dictate the type of wireless facilities, infrastructure or technology to be used by**
16 **the applicant, including, but not limited to, requiring an applicant to construct a**
17 **distributed antenna system in lieu of constructing a new wireless support structure;**

18 **(4) Require the removal of existing wireless support structures or wireless facilities,**
19 **wherever located, as a condition for approval of an application;**

20 **(5) With respect to radio frequency emissions, impose environmental testing,**
21 **sampling, or monitoring requirements or other compliance measures on wireless facilities**
22 **that are categorically excluded under the Federal Communication Commission's rules for**
23 **radio frequency emissions under 47 CFR 1.1307(b)(1) or other applicable federal law, as**
24 **the same may be amended or supplemented;**

25 **(6) Establish or enforce regulations or procedures for RF signal strength or the**
26 **adequacy of service quality;**

27 **(7) In conformance with 47 U.S.C. Section 332(c)(7)(b)(4), reject an application, in**
28 **whole or in part, based on perceived or alleged environmental effects of radio frequency**
29 **emissions;**

30 **(8) Impose any restrictions with respect to objects in navigable airspace that are**
31 **greater than or in conflict with the restrictions imposed by the Federal Aviation**
32 **Administration;**

33 **(9) Prohibit the placement of emergency power systems that comply with federal**
34 **and state environmental requirements;**

35 **(10) Charge an application fee, consulting fee, or other fee associated with the**
36 **submission, review, processing, and approval of an application that is not required for**
37 **similar types of commercial development within the authority's jurisdiction. Fees imposed**
38 **by an authority for or directly by a third-party entity providing review or technical**
39 **consultation to the authority must be based on actual, direct, and reasonable**
40 **administrative costs incurred for the review, processing, and approval of an application.**
41 **Except when mutually agreeable to the applicant and the authority, total charges and fees**
42 **shall not exceed five hundred dollars for a collocation application or one thousand five**
43 **hundred dollars for an application for a new wireless support structure or for a substantial**
44 **modification of a wireless support structure. Notwithstanding the foregoing, in no event**
45 **shall an authority or any third party entity include within its charges any travel expenses**
46 **incurred in a third-party's review of an application and in no event shall an applicant be**
47 **required to pay or reimburse an authority for consultation or other third-party fees based**
48 **on a contingency or result-based arrangement;**

49 **(11) Impose surety requirements, including bonds, escrow deposits, letters of credit,**
50 **or any other type of financial surety, to ensure that abandoned or unused facilities can be**
51 **removed unless the authority imposes similar requirements on other permits for other**
52 **types of commercial development or land uses;**

53 **(12) Condition the approval of an application on the applicant's agreement to**
54 **provide space on or near the wireless support structure for authority or local governmental**
55 **services at less than the market rate for space or to provide other services via the structure**
56 **or facilities at less than the market rate for such services;**

57 **(13) Limit the duration of the approval of an application;**

58 **(14) Discriminate or create a preference on the basis of the ownership, including**
59 **ownership by the authority, of any property, structure, or tower when promulgating rules**
60 **or procedures for siting wireless facilities or for evaluating applications;**

61 **(15) Impose any requirements or obligations regarding the presentation or**
62 **appearance of facilities, including, but not limited to, those relating to the kind or type of**
63 **materials used and those relating to arranging, screening, or landscaping of facilities if**
64 **such regulations or obligations are unreasonable;**

65 **(16) Impose any requirements that an applicant purchase, subscribe to, use, or**
66 **employ facilities, networks, or services owned, provided, or operated by an authority, in**
67 **whole or in part, or by any entity in which an authority has a competitive, economic,**
68 **financial, governance, or other interest;**

69 **(17) Condition the approval of an application on, or otherwise require, the**
70 **applicant's agreement to indemnify or insure the authority in connection with the**
71 **authority's exercise of its police power-based regulations; or**

72 **(18) Condition or require the approval of an application based on the applicant's**
73 **agreement to permit any wireless facilities provided or operated, in whole or in part, by an**
74 **authority or by any entity in which an authority has a competitive, economic, financial,**
75 **governance, or other interest, to be placed at or collocated with the applicant's wireless**
76 **support structure.**

67.5096. 1. Authorities may continue to exercise zoning, land use, planning, and
2 **permitting authority within their territorial boundaries with regard to the siting of new**
3 **wireless support structures, subject to the provisions of sections 67.5090 to 67.5103,**
4 **including without limitation section 67.5094, and subject to federal law.**

5 **2. Any applicant that proposes to construct a new wireless support structure within**
6 **the jurisdiction of any authority, planning or otherwise, that has adopted planning and**
7 **zoning regulations in accordance with sections 67.5090 to 67.5103 shall:**

8 **(1) Submit the necessary copies and attachments of the application to the**
9 **appropriate authority. Each application shall include a copy of a lease, letter of**
10 **authorization or other agreement from the property owner evidencing applicant's right to**
11 **pursue the application; and**

12 **(2) Comply with applicable local ordinances concerning land use and the**
13 **appropriate permitting processes.**

14 **3. Disclosure of records in the possession or custody of authority personnel,**
15 **including but not limited to documents and electronic data, shall be subject to chapter 610.**

16 **4. The authority, within one hundred twenty calendar days of receiving an**
17 **application to construct a new wireless support structure or within such additional time**
18 **as may be mutually agreed to by an applicant and an authority, shall:**

19 **(1) Review the application in light of its conformity with applicable local zoning**
20 **regulations. An application is deemed to be complete unless the authority notifies the**
21 **applicant in writing, within thirty calendar days of submission of the application, of the**
22 **specific deficiencies in the application which, if cured, would make the application**
23 **complete. Upon receipt of a timely written notice that an application is deficient, an**
24 **applicant may take thirty calendar days from receiving such notice to cure the specific**
25 **deficiencies. If the applicant cures the deficiencies within thirty calendar days, the**
26 **application shall be reviewed and processed within one hundred twenty calendar days**
27 **from the initial date the application was received. If the applicant requires a period of time**

28 beyond thirty calendar days to cure the specific deficiencies, the one hundred twenty
29 calendar days deadline for review shall be extended by the same period of time;

30 (2) Make its final decision to approve or disapprove the application; and

31 (3) Advise the applicant in writing of its final decision.

32 5. If the authority fails to act on an application to construct a new wireless support
33 structure within the one hundred twenty calendar days review period specified under
34 subsection 4 of this section or within such additional time as may be mutually agreed to by
35 an applicant and an authority, the application shall be deemed approved.

36 6. A party aggrieved by the final action of an authority, either by its affirmatively
37 denying an application under the provisions of this section or by its inaction, may bring an
38 action for review in any court of competent jurisdiction.

67.5098. 1. Authorities may continue to exercise zoning, land use, planning, and
2 permitting authority within their territorial boundaries with regard to applications for
3 substantial modifications of wireless support structures, subject to the provisions of
4 sections 67.5090 to 67.5103, including without limitation section 67.5094, and subject to
5 federal law.

6 2. Any applicant that applies for a substantial modification of a wireless support
7 structure within the jurisdiction of any authority, planning or otherwise, that has adopted
8 planning and zoning regulations in accordance with sections 67.5090 to 67.5103 shall:

9 (1) Submit the necessary copies and attachments of the application to the
10 appropriate authority. Each application shall include a copy of a lease, letter of
11 authorization or other agreement from the property owner evidencing applicant's right to
12 pursue the application; and

13 (2) Comply with applicable local ordinances concerning land use and the
14 appropriate permitting processes.

15 3. Disclosure of records in the possession or custody of authority personnel,
16 including but not limited to documents and electronic data, shall be subject to chapter 610.

17 4. The authority, within ninety calendar days of receiving an application for a
18 substantial modification of wireless support structures, shall:

19 (1) Review the application in light of its conformity with applicable local zoning
20 regulations. An application is deemed to be complete unless the authority notifies the
21 applicant in writing, within thirty calendar days of submission of the application, of the
22 specific deficiencies in the application which, if cured, would make the application
23 complete. Upon receipt of a timely written notice that an application is deficient, an
24 applicant may take thirty calendar days from receiving such notice to cure the specific
25 deficiencies. If the applicant cures the deficiencies within thirty calendar days, the

26 application shall be reviewed and processed within ninety calendar days from the initial
27 date the application was received. If the applicant requires a period of time beyond thirty
28 calendar days to cure the specific deficiencies, the ninety calendar days deadline for review
29 shall be extended by the same period of time;

30 (2) Make its final decision to approve or disapprove the application; and

31 (3) Advise the applicant in writing of its final decision.

32 5. If the authority fails to act on an application for a substantial modification within
33 the ninety calendar days review period specified under subsection 4 of this section, or
34 within such additional time as may be mutually agreed to by an applicant and an
35 authority, the application for a substantial modification shall be deemed approved.

36 6. A party aggrieved by the final action of an authority, either by its affirmatively
37 denying an application under the provisions of this section or by its inaction, may bring an
38 action for review in any court of competent jurisdiction.

67.5100. 1. Subject to the provisions of sections 67.5090 to 67.5103, including
2 section 67.5094, collocation applications and applications for replacement of wireless
3 facilities shall be reviewed for conformance with applicable building permit requirements,
4 National Electric Safety Codes, and recognized industry standards for structural safety,
5 capacity, reliability, and engineering, but shall not otherwise be subject to zoning or land
6 use requirements, including design or placement requirements, or public hearing review.

7 2. The authority, within forty-five calendar days of receiving a collocation
8 application or application for replacement of wireless facilities, shall:

9 (1) Review the collocation application or application to replace wireless facilities
10 in light of its conformity with applicable building permit requirements and consistency
11 with sections 67.5090 to 67.5103. A collocation application or application to replace
12 wireless facilities is deemed to be complete unless the authority notifies the applicant in
13 writing, within fifteen calendar days of submission of the application, of the specific
14 deficiencies in the application which, if cured, would make the application complete. Each
15 collocation application or application to replace wireless facilities shall include a copy of
16 a lease, letter of authorization or other agreement from the property owner evidencing
17 applicant's right to pursue the application. Upon receipt of a timely written notice that a
18 collocation application or application to replace wireless facilities is deficient, an applicant
19 may take fifteen calendar days from receiving such notice to cure the specific deficiencies.
20 If the applicant cures the deficiencies within fifteen calendar days, the application shall be
21 reviewed and processed within forty-five calendar days from the initial date the application
22 was received. If the applicant requires a period of time beyond fifteen calendar days to

23 cure the specific deficiencies, the forty-five calendar days deadline for review shall be
24 extended by the same period of time;

25 (2) Make its final decision to approve or disapprove the collocation application or
26 application for replacement of wireless facilities; and

27 (3) Advise the applicant in writing of its final decision.

28 3. If the authority fails to act on a collocation application or application to replace
29 wireless facilities within the forty-five calendar days review period specified in subsection
30 2 of this section, the application shall be deemed approved.

31 4. The provisions of sections 67.5090 to 67.5103 shall not:

32 (1) Authorize an authority, except when acting solely in its capacity as a utility, to
33 mandate, require, or regulate the placement, modification, or collocation of any new
34 wireless facility on new, existing, or replacement poles owned or operated by a utility;

35 (2) Expand the power of an authority to regulate any utility; or

36 (3) Restrict any utility's rights or authority, or negate any utility's agreement,
37 regarding requested access to, or the rates and terms applicable to placement of any
38 wireless facility on new, existing, or replacement poles, structures, or existing structures
39 owned or operated by a utility.

40 5. A party aggrieved by the final action of an authority, either by its affirmatively
41 denying an application under the provisions of this section or by its inaction, may bring an
42 action for review in any court of competent jurisdiction.

67.5102. In accordance with the policies of this state to further the deployment of
2 wireless communications infrastructure:

3 (1) An authority may not institute any moratorium on the permitting, construction,
4 or issuance of approval of new wireless support structures, substantial modifications of
5 wireless support structures, or collocations if such moratorium exceeds six months in
6 length and if the legislative act establishing it fails to state reasonable grounds and good
7 cause for such moratorium. No such moratorium shall affect an already pending
8 application;

9 (2) To encourage applicants to request construction of new wireless support
10 structures on public lands and to increase local revenues:

11 (a) An authority may not charge a wireless service provider or wireless
12 infrastructure provider any rental, license, or other fee to locate a wireless support
13 structure on an authority's property in excess of the current market rates for rental or use
14 of similarly situated property. If the applicant and the authority do not agree on the
15 applicable market rate for any such public land and cannot agree on a process by which
16 to derive the applicable market rate for any such public land, then the market rate will be

17 **determined by a panel of three certified appraisers licensed under chapter 339, using the**
18 **following process. Each party will appoint one certified appraiser to the panel, and the two**
19 **certified appraisers so appointed will appoint a third certified appraiser. Each appraiser**
20 **will independently appraise the appropriate lease rate, and the market rate shall be set at**
21 **the mid-point between the highest and lowest market rates among the three independent**
22 **appraisals, provided the mid-point between the highest and lowest appraisals is greater**
23 **than or less than ten percent of the appraisal of the third appraiser chosen by the parties'**
24 **appointed appraisers. In such case, the third appraisal will determine the rate for the**
25 **lease. The appraisal process shall be concluded within ninety calendar days from the date**
26 **the applicant first tenders its proposed lease rate to the authority. Each party will bear the**
27 **cost of its own appointed appraiser, and the parties shall share equally the cost of the third**
28 **appraiser chosen by the two appointed appraisers. Nothing in this paragraph shall bar an**
29 **applicant and an authority from agreeing to reasonable, periodic reviews and adjustments**
30 **of current market rates during the term of a lease or contract to use an authority's**
31 **property; and**

32 **(b) An authority may not offer a lease or contract to use public lands to locate a**
33 **wireless support structure on an authority's property that is less than fifteen years in**
34 **duration unless the applicant agrees to accept a lease or contract of less than fifteen years**
35 **in duration;**

36 **(3) Nothing in subsection 2 of this section is intended to limit an authority's lawful**
37 **exercise of zoning, land use, or planning and permitting authority with respect to**
38 **applications for new wireless support structures on an authority's property under**
39 **subsection 1 of section 67.5096.**

67.5103. Notwithstanding any provision of sections 67.5090 to 67.5102, nothing
2 **herein shall provide any applicant the power of eminent domain or the right to compel any**
3 **private or public property owner, or the department of conservation or department of**
4 **natural resources to:**

5 **(1) Lease or sell property for the construction of a new wireless support structure;**

6 **or**

7 **(2) Locate or cause the collocation or expansion of a wireless facility on any existing**
8 **structure or wireless support structure.**

389.585. 1. As used in sections 389.585 to 389.591, the following terms mean:

2 **(1) "Crossing", the construction, operation, repair, or maintenance of a facility**
3 **over, under, or across a railroad right-of-way by a utility when the right-of-way is owned**
4 **by a land management company and not a railroad or railroad corporation;**

5 **(2) "Direct expenses", includes, but is not limited to, any or all of the following:**

- 6 **(a) The cost of inspecting and monitoring the crossing site;**
7 **(b) Administrative and engineering costs for review of specifications and for**
8 **entering a crossing on the railroad's books, maps, and property records and other**
9 **reasonable administrative and engineering costs incurred as a result of the crossing;**
10 **(c) Document and preparation fees associated with a crossing and any engineering**
11 **specifications related to the crossing;**
12 **(d) Damages assessed in connection with the rights granted to a utility with respect**
13 **to a crossing;**
14 **(3) "Facility", any cable, conduit, wire, pipe, casing pipe, supporting poles and**
15 **guys, manhole, or other material or equipment that is used by a utility to furnish any of the**
16 **following:**
17 **(a) Communications, communications-related, wireless communications, video, or**
18 **information services;**
19 **(b) Electricity;**
20 **(c) Gas by piped system;**
21 **(d) Petroleum or petroleum products by piped system;**
22 **(e) Sanitary and storm sewer service;**
23 **(f) Water by piped system;**
24 **(4) "Land management company", an entity that owns, leases, holds by easement,**
25 **holds by adverse possession or otherwise possesses a corridor which is used for rail**
26 **transportation purposes and is not a railroad or railroad corporation;**
27 **(5) "Land management corridor", includes one or more of the following:**
28 **(a) A right-of-way or other interest in real estate that is owned, leased, held by**
29 **easement, held by adverse possession or otherwise possessed by a land management**
30 **company and not a railroad or railroad corporation; and which is used for rail**
31 **transportation purposes. "Land management corridor" does not include yards, terminals**
32 **or stations. "Land management corridor" also does not include railroad tracks or lines**
33 **which have been legally abandoned;**
34 **(b) Any other interest in a right-of-way formerly owned by a railroad or railroad**
35 **corporation that has been acquired by a land management company or similar entity and**
36 **which is used for rail transportation purposes;**
37 **(6) "Notice", a written description of the proposed project. Such notice shall**
38 **include, at a minimum: a description of the proposed crossing including blueprints or**
39 **plats, print copies of the engineering specifications for the crossing, a proposed time line**
40 **for the commencement and completion of work at the crossing, a narrative description of**

41 the work to be performed at the crossing, proof of insurance for the work to be done and
42 other reasonable requirements necessary for the processing of an application;

43 (7) "Railroad" or "railroad corporation", a railroad corporation organized and
44 operating under chapter 388, or any other corporation, trustees of a railroad corporation,
45 company, affiliate, association, joint stock association or company, firm, partnership, or
46 individual, which is an owner, operator, occupant, lessee, manager, or railroad right-of-
47 way agent acting on behalf of a railroad or railroad corporation;

48 (8) "Railroad right-of-way", includes one or more of the following:

49 (a) A right-of-way or other interest in real estate that is owned or operated by a
50 land management company and not a railroad or railroad corporation;

51 (b) Any other interest in a former railroad right-of-way that has been acquired or
52 is operated by a land management company or similar entity;

53 (9) "Special circumstances", includes either or both of the following:

54 (a) The characteristics of a segment of a railroad right-of-way not found in a typical
55 segment of a railroad right-of-way that enhance the value or increase the damages or the
56 engineering or construction expenses for the land management company associated with
57 a proposed crossing, or to the current or reasonably anticipated use by a land management
58 company of the railroad right-of-way, necessitating additional terms and conditions or
59 compensation associated with a crossing;

60 (b) Variances from the standard specifications requested by the land management
61 company;

62 "Special circumstances" may include, but is not limited to, the railroad right-of-way
63 segment's relationship to other property, location in urban or other developed areas, the
64 existence of unique topography or natural resources, or other characteristics or dangers
65 inherent in the particular crossing or segment of the railroad right-of-way;

66 (10) "Telecommunications service", the transmission of information by wire, radio,
67 optical cable, electronic impulses, or other similar means. As used in this definition,
68 "information" means knowledge or intelligence represented by any form of writing, signs,
69 signals, pictures, sounds, or any other symbols;

70 (11) "Utility", shall include:

71 (a) Any public utility subject to the jurisdiction of the public service commission;

72 (b) Providers of telecommunications service, wireless communications, or other
73 communications-related service;

74 (c) Any electrical corporation which is required by its bylaws to operate on the not-
75 for-profit cooperative business plan, with its consumers who receive service as the
76 stockholders of such corporation, and which holds a certificate of public convenience and

77 necessity to serve a majority of its customer-owners in counties of the third classification
78 as of August 28, 2003;

79 (d) Any rural electric cooperative, and

80 (e) Any municipally owned utility.

389.586. 1. After the land management company receives a copy of the notice from
2 the utility, the land management company shall send a complete copy of that notice, by
3 certified mail or by private delivery service which requires a return receipt, to the railroad
4 or railroad corporation within two business days. No utility may commence a crossing
5 until the railroad or railroad corporation has approved the crossing. The railroad or
6 railroad corporation shall have thirty days from the receipt of the notice, to review and
7 approve or reject the proposed crossing. The railroad or railroad corporation shall reject
8 a proposed crossing only if special circumstances exist. If the railroad or railroad
9 corporation rejects a proposed crossing, the utility may submit an amended proposal for
10 a crossing. The railroad or railroad corporation shall have an additional thirty days from
11 receipt of the amended proposal to review and approve or reject the amended crossing
12 proposal. The railroad or railroad corporation shall not unreasonably withhold approval.
13 Once the railroad or railroad corporation grants such approval, and upon payment of the
14 fee and any other payments authorized pursuant to sections 389.586 or 389.587, the utility
15 shall be deemed to have authorization to commence the crossing activity. The utility shall
16 provide the railroad or railroad corporation with written notification of the
17 commencement of the crossing activity before beginning such activity.

18 2. The land management company and the utility shall maintain and repair its own
19 property within the land management corridor and each shall bear responsibility for its
20 own acts and omissions, except that the utility shall be responsible for any bodily injury
21 or property damage arising from the installation, maintenance, repair and its use of the
22 crossing. The railroad or railroad corporation may require the utility and the land
23 management company to obtain reasonable amounts of comprehensive general liability
24 insurance and railroad protective liability insurance coverage for a crossing, and that this
25 insurance coverage name the railroad or railroad corporation as an insured. Further, the
26 land management company and the utility shall provide the railroad or railroad
27 corporation with proof that they have liability insurance coverage which meets such
28 requirements, if any.

29 3. A utility shall have immediate access to a crossing for repair and maintenance
30 of existing facilities in case of an immediate threat to life and upon notification to the
31 applicable railroad or railroad corporation. Before commencing any such work, the utility

32 must first contact the railroad or railroad corporation's dispatch center, command center
33 or other facility which is designated to receive emergency communications.

34 4. The utility shall be provided a crossing, absent a claim of special circumstances,
35 after payment by the utility of the standard crossing fee, submission of completed
36 engineering specifications to the land management company, and approval of the crossing
37 by the railroad or railroad corporation. The engineering specifications shall comply with
38 the clearance requirements as established by the National Electrical Safety Code, the
39 American Railway Engineering and Maintenance of Way Association and the standards
40 of the applicable railroad or railroad corporation which are in effect and which apply to
41 conditions at a particular crossing. The land management company and utility shall
42 further be responsible for any modifications, upgrades or other changes which may be
43 needed to comply with changes in said standards.

44 5. The utility, the railroad or railroad corporation, and the land management
45 company shall agree to such other terms and conditions as may be necessary to provide for
46 reasonable use of a land management corridor by a utility.

389.587. Unless otherwise agreed by the parties and subject to section 389.588, a
2 utility that locates its facilities within the railroad right-of-way for a crossing, other than
3 a crossing along a state highway or other public road, shall pay the land management
4 company a one-time standard crossing fee of one thousand five hundred dollars for each
5 crossing plus the costs associated with modifications to existing insurance contracts of the
6 land management company. The standard crossing fee shall be in lieu of any license,
7 permit, application, plan review, or any other fees or charges to reimburse the land
8 management company for the direct expenses incurred by the land management company
9 as a result of the crossing. The utility shall also reimburse the land management company
10 for any actual flagging expenses associated with a crossing in addition to the standard
11 crossing fee. The railroad or railroad corporation has the right to halt work at the crossing
12 if the flagging does not meet the standards of the railroad or railroad corporation. Nothing
13 in this section is intended to otherwise restrict or limit any authority or right a utility may
14 have to locate facilities at a crossing along a state highway or any other public road or to
15 otherwise enter upon lands where authorized by law.

389.588. 1. Notwithstanding the provisions of section 389.586, nothing shall prevent
2 a land management company and a utility from otherwise negotiating the terms and
3 conditions applicable to a crossing or the resolution of any disputes relating to the crossing
4 so long as they do not interfere with the rights of a railroad or railroad corporation. No
5 agreement between a land management company and a utility shall affect the rights,
6 interests or operations of a railroad or railroad corporation.

7 **2. Notwithstanding subsection 1 of this section, the provisions of this section shall**
8 **not impair the authority of a utility to secure crossing rights by easement pursuant to the**
9 **exercise of the power of eminent domain.**

389.589. 1. If the parties cannot agree that special circumstances exist, the dispute
2 **shall be submitted to binding arbitration.**

3 **2. Either party may give written notice to the other party of the commencement of**
4 **a binding arbitration proceeding in accordance with the commercial rules of arbitration**
5 **in the American Arbitration Association. Any decision by the board of arbitration shall**
6 **be final, binding and conclusive as to the parties. Nothing provided in this section shall**
7 **prevent either party from submission of disputes to the courts. Land management**
8 **companies and utilities may seek enforcement of sections 389.586 through 389.591 in a**
9 **court of proper jurisdiction and shall be entitled to reasonable attorney fees if they prevail.**

10 **3. If the dispute over special circumstances concerns only the compensation**
11 **associated with a crossing, then the utility may proceed with installation of the crossing**
12 **during the pendency of the arbitration.**

389.591. 1. Notwithstanding any provision of law to the contrary, sections 389.585
2 **to 389.591 shall apply in all crossings of land management corridors involving a land**
3 **management company and a utility and shall govern in the event of any conflict with any**
4 **other provision of law, except that sections 389.585 to 389.591 shall not override or nullify**
5 **the condemnation laws of this state nor confer the power of eminent domain on any entity**
6 **not granted such power prior to August 28, 2013.**

7 **2. The provisions of sections 389.585 to 389.591 shall apply to a crossing**
8 **commenced after August 28, 2013. These provisions shall also apply to a crossing**
9 **commenced before August 28, 2013, but only upon the expiration or termination of the**
10 **agreement for such crossing.**

 392.415. 1. Upon request, a telecommunications carrier or commercial mobile service
2 provider as identified in 47 U.S.C. Section 332(d)(1) and 47 CFR Parts 22 or 24 shall provide
3 call location information concerning the user of a telecommunications service or a wireless
4 communications service, in an emergency situation, to a law enforcement official or agency in
5 order to respond to a call for emergency service by a subscriber, customer, or user of such
6 service, or to provide caller location information (or do a ping locate) in an emergency situation
7 that involves danger of death or serious physical injury to any person where disclosure of
8 communications relating to the emergency is required without delay.

9 2. No cause of action shall lie in any court of law against any telecommunications carrier
10 or telecommunications service or commercial mobile service provider, or [against any
11 telecommunications service or wireless communications] **other provider of communications-**

12 **related** service, or its officers, employees, agents, or other specified persons, for providing any
13 information, facilities, or assistance to a law enforcement official or agency [in accordance with
14 the terms of this section] **in response to requests made under the circumstances of subsection**
15 **1 of this section or for providing such information, facilities, or assistance through any plan**
16 **or system required by sections 190.300 to 190.340.** Notwithstanding any other provision of
17 law, nothing in this section prohibits a telecommunications carrier, [or] commercial mobile
18 service provider, **or other provider of communications-related service** from establishing
19 protocols by which such carrier or provider could voluntarily disclose call location information.

392.420. The commission is authorized, in connection with the issuance or modification
2 of a certificate of interexchange or local exchange service authority or the modification of a
3 certificate of public convenience and necessity for interexchange or local exchange
4 telecommunications service, to entertain a petition to suspend or modify the application of its
5 rules or the application of any statutory provision contained in sections 392.200 to 392.340 if
6 such waiver or modification is otherwise consistent with the other provisions of sections 392.361
7 to 392.520 and the purposes of this chapter. In the case of an application for certificate of service
8 authority to provide basic local telecommunications service filed by an alternative local exchange
9 telecommunications company, and for all existing alternative local exchange telecommunications
10 companies, the commission shall waive, at a minimum, the application and enforcement of its
11 quality of service and billing standards rules, as well as the provisions of subsection 2 of section
12 392.210, subsection 1 of section 392.240, **subsections 1 and 4 of section 392.245**, and sections
13 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. Notwithstanding
14 any other provision of law in this chapter and chapter 386, where an alternative local exchange
15 telecommunications company is authorized to provide local exchange telecommunications
16 services in an incumbent local exchange telecommunications company's authorized service area,
17 the incumbent local exchange telecommunications company may opt into all or some of the
18 above-listed statutory and commission rule waivers by filing a notice of election with the
19 commission that specifies which waivers are elected. In addition, where an interconnected voice
20 over internet protocol service provider is registered to provide service in an incumbent local
21 exchange telecommunications company's authorized service area under section 392.550, the
22 incumbent local exchange telecommunications company may opt into all or some of the
23 above-listed statutory and commission rule waivers by filing a notice of election with the
24 commission that specifies which waivers are elected. The commission may reimpose its quality
25 of service and billing standards rules, as applicable, on an incumbent local exchange
26 telecommunications company but not on a company-granted competitive status under
27 subdivision (7) of subsection 5 of section 392.245 in an exchange where there is no alternative
28 local exchange telecommunications company or interconnected voice over internet protocol

29 service provider that is certificated or registered to provide local voice service only upon a
30 finding, following formal notice and hearing, that the incumbent local exchange
31 telecommunications company has engaged in a pattern or practice of inadequate service. Prior
32 to formal notice and hearing, the commission shall notify the incumbent local exchange
33 telecommunications company of any deficiencies and provide such company an opportunity to
34 remedy such deficiencies in a reasonable amount of time, but not less than sixty days. Should
35 the incumbent local exchange telecommunications company remedy such deficiencies within a
36 reasonable amount of time, the commission shall not reimpose its quality of service or billing
37 standards on such company.

392.461. A telecommunications company may, upon written notice to the commission,
2 elect to be exempt from certain retail rules relating to:

3 (1) The provision of telecommunications service to retail customers and established by
4 the commission which include provisions already mandated by the Federal Communications
5 Commission, including but not limited to federal rules regarding customer proprietary network
6 information, verification of orders for changing telecommunications service providers
7 (slamming), submission or inclusion of charges on customer bills (cramming); or

8 (2) The installation, provisioning, or termination of retail service.
9

10 Notwithstanding any other provision of this section, a telecommunications company shall not
11 be exempt from any commission rule established under authority delegated to the state
12 commission pursuant to federal statute, rule or order, including but not limited to universal
13 service funds, number pooling and conservation efforts, or any authority delegated to the state
14 commission to facilitate or enforce any interconnection obligation or other intercarrier issue,
15 including but not limited to, intercarrier compensation, network configuration or other such
16 matters. Notwithstanding other provisions of this chapter or chapter 386, a telecommunications
17 company may, upon written notice to the commission, elect to be exempt from any requirement
18 to file or maintain with the commission any tariff or schedule of rates, rentals, charges,
19 privileges, facilities, rules, regulations, or forms of contract, **whether in whole or in part**, for
20 telecommunications services offered or provided to residential or business retail end user
21 customers and instead shall publish generally available retail prices for those services available
22 to the public by posting such prices on a publicly accessible website. **A telecommunications**
23 **company may include in a tariff filed with the commission any, all, or none of the rates,**
24 **terms, or conditions for any, all, or none of its retail telecommunications services.** Nothing
25 in this section shall affect the rights and obligations of any entity, including the commission,
26 established pursuant to federal law, including 47 U.S.C. Sections 251 and 252, any state law,

27 rule, regulation, or order related to wholesale rights and obligations, or any tariff or schedule that
28 is filed with and maintained by the commission.

**392.611. 1. A telecommunications company certified under this chapter or holding
2 a state charter authorizing it to engage in the telephone business shall not be subject to any
3 statute in chapter 386 or this chapter (nor any rule promulgated or order issued under
4 such chapters) that imposes duties, obligations, conditions, or regulations on retail
5 telecommunications services provided to end user customers, except to the extent it elects
6 to remain subject to certain statutes, rules, or orders by notification to the commission.
7 Telecommunications companies shall remain subject to general, nontelecommunications-
8 specific statutory provisions other than those in chapters 386 and this chapter to the extent
9 applicable. Telecommunications companies shall:**

10 **(1) Collect from their end users the universal service fund surcharge in the same
11 competitively neutral manner as other telecommunications companies and interconnected
12 voice over internet protocol service providers, remit such collected surcharge to the
13 universal service fund administrator, and receive, as appropriate, funds disbursed from
14 the universal service fund, which may be used to support the provision of local voice
15 service;**

16 **(2) Report to the commission such intrastate telecommunications service revenues
17 as are necessary to calculate the commission assessment, universal service fund surcharge,
18 and telecommunications programs under section 209.255; and**

19 **(3) Continue to comply with the provisions of section 392.415 pertaining to the
20 provision of location information in emergency situations.**

21 **2. Broadband and other Internet protocol-enabled services shall not be subject to
22 regulation under chapter 386 or this chapter, except that interconnected voice over
23 Internet protocol service shall continue to be subject to section 392.550. Nothing in this
24 subsection extends, modifies, or restricts the provisions of subsection 3 of section 392.611.
25 As used in this subsection, "other internet protocol-enabled services" means any services,
26 capabilities, functionalities, or applications using existing internet protocol, or any
27 successor internet protocol, that enable an end user to send or receive a communication in
28 existing internet protocol format, or any successor internet protocol format, regardless of
29 whether the communication is voice, data, or video.**

30 **3. Notwithstanding any other provision of this section, a telecommunications
31 company shall not be exempt from any commission rule established under authority
32 delegated to the state commission under federal statute, rule, or order, including but not
33 limited to universal service funds, number pooling, and conservation efforts.
34 Notwithstanding any other provision of this section, nothing in this section extends,**

35 **modifies, or restricts any authority delegated to the state commission under federal statute,**
36 **rule, or order to require, facilitate, or enforce any interconnection obligation or other**
37 **intercarrier issue including, but not limited to, intercarrier compensation, network**
38 **configuration or other such matters. Notwithstanding any other provision of this section,**
39 **nothing in this section extends, modifies, or restricts any authority the commission may**
40 **have arising under state law relating to interconnection obligations or other intercarrier**
41 **issue including, but not limited to, intercarrier compensation, network configuration, or**
42 **other such matters.**

43 **4. After August 28, 2013, telecommunications companies seeking to provide**
44 **telecommunications service may, in lieu of the process and requirements for certification**
45 **set out in other sections, elect to obtain certification by following the same registration**
46 **process set out in subsection 3 of section 392.550, substituting telecommunications service**
47 **for interconnected voice over internet protocol service in the requirements specified in**
48 **subdivisions (1) to (8) of subsection 3 of section 392.550.**

✓