

FIRST REGULAR SESSION

# HOUSE BILL NO. 142

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DEMPSEY, WRIGHT, WILLOUGHBY, SPRENG,  
SMITH (14), WARD, JOHNSON (90), BIVINS, DIXON, SKAGGS,  
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TED WEDEL, Chief Clerk

0755L.011

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### AN ACT

To repeal section 386.020, RSMo, and to enact in lieu thereof two new sections relating to high-speed Internet access.

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

Section A. Section 386.020, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 386.020 and 392.261, to read as follows:

386.020. As used in this chapter, the following words and phrases mean:

- (1) "Alternative local exchange telecommunications company", a local exchange telecommunications company certified by the commission to provide basic or nonbasic local telecommunications service or switched exchange access service, or any combination of such services, in a specific geographic area subsequent to December 31, 1995;
- (2) "Alternative operator services company", any certificated interexchange telecommunications company which receives more than forty percent of its annual Missouri intrastate telecommunications service revenues from the provision of operator services pursuant to operator services contracts with traffic aggregators;
- (3) "Basic interexchange telecommunications service", includes, at a minimum, two-way switched voice service between points in different local calling scopes as determined by the commission and shall include other services as determined by the commission by rule upon periodic review and update;
- (4) "Basic local telecommunications service", two-way switched voice service within a local calling scope as determined by the commission comprised of any of the following

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

16 services and their recurring and nonrecurring charges:

17 (a) Multiparty, single line, including installation, touchtone dialing, and any applicable  
18 mileage or zone charges;

19 (b) Assistance programs for installation of, or access to, basic local telecommunications  
20 services for qualifying economically disadvantaged or disabled customers or both, including, but  
21 not limited to, lifeline services and link-up Missouri services for low-income customers or  
22 dual-party relay service for the hearing impaired and speech impaired;

23 (c) Access to local emergency services including, but not limited to, 911 service  
24 established by local authorities;

25 (d) Access to basic local operator services;

26 (e) Access to basic local directory assistance;

27 (f) Standard intercept service;

28 (g) Equal access to interexchange carriers consistent with rules and regulations of the  
29 Federal Communications Commission;

30 (h) One standard white pages directory listing.

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32 Basic local telecommunications service does not include optional toll free calling outside a local  
33 calling scope but within a community of interest, available for an additional monthly fee or the  
34 offering or provision of basic local telecommunications service at private shared-tenant service  
35 locations;

36 (5) "Cable television service", the one-way transmission to subscribers of video  
37 programming or other programming service and the subscriber interaction, if any, which is  
38 required for the selection of such video programming or other programming service;

39 (6) "Carrier of last resort", any telecommunications company which is obligated to offer  
40 basic local telecommunications service to all customers who request service in a geographic area  
41 defined by the commission and cannot abandon this obligation without approval from the  
42 commission;

43 (7) "Commission", the "Public Service Commission" hereby created;

44 (8) "Commissioner", one of the members of the commission;

45 (9) "Competitive telecommunications company", a telecommunications company which  
46 has been classified as such by the commission pursuant to section 392.361, RSMo;

47 (10) "Competitive telecommunications service", a telecommunications service which  
48 has been classified as such by the commission pursuant to section 392.361, RSMo, or which has  
49 become a competitive telecommunications service pursuant to section 392.370, RSMo;

50 (11) "Corporation" includes a corporation, company, association and joint stock  
51 association or company;

52 (12) "Customer-owned pay telephone", a privately owned telecommunications device  
53 that is not owned, leased or otherwise controlled by a local exchange telecommunications  
54 company and which provides telecommunications services for a use fee to the general public;

55 (13) "Effective competition" shall be determined by the commission based on:

56 (a) The extent to which services are available from alternative providers in the relevant  
57 market;

58 (b) The extent to which the services of alternative providers are functionally equivalent  
59 or substitutable at comparable rates, terms and conditions;

60 (c) The extent to which the purposes and policies of chapter 392, RSMo, including the  
61 reasonableness of rates, as set out in section 392.185, RSMo, are being advanced;

62 (d) Existing economic or regulatory barriers to entry; and

63 (e) Any other factors deemed relevant by the commission and necessary to implement  
64 the purposes and policies of chapter 392, RSMo;

65 (14) "Electric plant" includes all real estate, fixtures and personal property operated,  
66 controlled, owned, used or to be used for or in connection with or to facilitate the generation,  
67 transmission, distribution, sale or furnishing of electricity for light, heat or power; and any  
68 conduits, ducts or other devices, materials, apparatus or property for containing, holding or  
69 carrying conductors used or to be used for the transmission of electricity for light, heat or power;

70 (15) "Electrical corporation" includes every corporation, company, association, joint  
71 stock company or association, partnership and person, their lessees, trustees or receivers  
72 appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation  
73 generating electricity solely for railroad, light rail or street railroad purposes or for the use of its  
74 tenants and not for sale to others, owning, operating, controlling or managing any electric plant  
75 except where electricity is generated or distributed by the producer solely on or through private  
76 property for railroad, light rail or street railroad purposes or for its own use or the use of its  
77 tenants and not for sale to others;

78 (16) "Exchange", a geographical area for the administration of telecommunications  
79 services, established and described by the tariff of a telecommunications company providing  
80 basic local telecommunications service;

81 (17) "Exchange access service", a service provided by a local exchange  
82 telecommunications company which enables a telecommunications company or other customer  
83 to enter and exit the local exchange telecommunications network in order to originate or  
84 terminate interexchange telecommunications service;

85 (18) "Gas corporation" includes every corporation, company, association, joint stock  
86 company or association, partnership and person, their lessees, trustees or receivers appointed by  
87 any court whatsoever, owning, operating, controlling or managing any gas plant operating for

88 public use under privilege, license or franchise now or hereafter granted by the state or any  
89 political subdivision, county or municipality thereof;

90 (19) "Gas plant" includes all real estate, fixtures and personal property owned, operated,  
91 controlled, used or to be used for or in connection with or to facilitate the manufacture,  
92 distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power;

93 (20) "Heating company" includes every corporation, company, association, joint stock  
94 company or association, partnership and person, their lessees, trustees or receivers, appointed by  
95 any court whatsoever, owning, operating, managing or controlling any plant or property for  
96 manufacturing and distributing and selling, for distribution, or distributing hot or cold water,  
97 steam or currents of hot or cold air for motive power, heating, cooking, or for any public use or  
98 service, in any city, town or village in this state; provided, that no agency or authority created by  
99 or operated pursuant to an interstate compact established pursuant to section 70.370, RSMo, shall  
100 be a heating company or subject to regulation by the commission;

101 (21) "High-cost area", a geographic area, which shall follow exchange boundaries and  
102 be no smaller than an exchange nor larger than a local calling scope, where the cost of providing  
103 basic local telecommunications service as determined by the commission, giving due regard to  
104 recovery of an appropriate share of joint and common costs as well as those costs related to  
105 carrier of last resort obligations, exceeds the rate for basic local telecommunications service  
106 found reasonable by the commission;

107 (22) **"High-speed Internet access service" or "broadband service", those services**  
108 **and underlying facilities that provide upstream, from customer to provider, or**  
109 **downstream, from provider to customer, transmission to or from the Internet, or have the**  
110 **capability to transmit information, in excess of one hundred forty-four (144) kilobits per**  
111 **second, regardless of the technology or medium used, including but not limited to, wireless,**  
112 **copper wire, fiber optic cable, or coaxial cable, to provide such service;**

113 (23) "Incumbent local exchange telecommunications company", a local exchange  
114 telecommunications company authorized to provide basic local telecommunications service in  
115 a specific geographic area as of December 31, 1995, or a successor in interest to such a company;

116 [(23)] (24) "Interexchange telecommunications company", any company engaged in the  
117 provision of interexchange telecommunications service;

118 [(24)] (25) "Interexchange telecommunications service", telecommunications service  
119 between points in two or more exchanges;

120 [(25)] (26) "InterLATA", interexchange telecommunications service between points in  
121 different local access and transportation areas;

122 [(26)] (27) "IntraLATA", interexchange telecommunications service between points  
123 within the same local access and transportation area;

124           [(27)] **(28)** "Light rail" includes every rail transportation system in which one or more  
125 rail vehicles are propelled electrically by overhead catenary wire upon tracks located  
126 substantially within an urban area and are operated exclusively in the transportation of  
127 passengers and their baggage, and including all bridges, tunnels, equipment, switches, spurs,  
128 tracks, stations, used in connection with the operation of light rail;

129           [(28)] **(29)** "Line" includes route;

130           [(29)] **(30)** "Local access and transportation area" or "LATA", contiguous geographic  
131 area approved by the U.S. District Court for the District of Columbia in *United States v. Western*  
132 *Electric*, Civil Action No. 82-0192 that defines the permissible areas of operations for the Bell  
133 Operating companies;

134           [(30)] **(31)** "Local exchange telecommunications company", any company engaged in  
135 the provision of local exchange telecommunications service. A local exchange  
136 telecommunications company shall be considered a "large local exchange telecommunications  
137 company" if it has at least one hundred thousand access lines in Missouri and a "small local  
138 exchange telecommunications company" if it has less than one hundred thousand access lines  
139 in Missouri;

140           [(31)] **(32)** "Local exchange telecommunications service", telecommunications service  
141 between points within an exchange;

142           [(32)] **(33)** "Long-run incremental cost", the change in total costs of the company of  
143 producing an increment of output in the long run when the company uses least cost technology,  
144 and excluding any costs that, in the long run, are not brought into existence as a direct result of  
145 the increment of output. The relevant increment of output shall be the level of output necessary  
146 to satisfy total current demand levels for the service in question, or, for new services, demand  
147 levels that can be demonstrably anticipated;

148           [(33)] **(34)** "Municipality" includes a city, village or town;

149           [(34)] **(35)** "Nonbasic telecommunications services" shall be all regulated  
150 telecommunications services other than basic local and exchange access telecommunications  
151 services, and shall include the services identified in paragraphs (d) and (e) of subdivision (4) of  
152 this section. Any retail telecommunications service offered for the first time after August 28,  
153 1996, shall be classified as a nonbasic telecommunications service, including any new service  
154 which does not replace an existing service;

155           [(35)] **(36)** "Noncompetitive telecommunications company", a telecommunications  
156 company other than a competitive telecommunications company or a transitionally competitive  
157 telecommunications company;

158           [(36)] **(37)** "Noncompetitive telecommunications service", a telecommunications service  
159 other than a competitive or transitionally competitive telecommunications service;

160 [(37)] **(38)** "Operator services", operator-assisted interexchange telecommunications  
161 service by means of either human or automated call intervention and includes, but is not limited  
162 to, billing or completion of calling card, collect, person-to-person, station-to-station or third  
163 number billed calls;

164 [(38)] **(39)** "Operator services contract", any agreement between a traffic aggregator and  
165 a certificated interexchange telecommunications company to provide operator services at a traffic  
166 aggregator location;

167 [(39)] **(40)** "Person" includes an individual, and a firm or copartnership;

168 [(40)] **(41)** "Private shared tenant services" includes the provision of telecommunications  
169 and information management services and equipment within a user group located in discrete  
170 private premises as authorized by the commission by a commercial-shared services provider or  
171 by a user association, through privately owned customer premises equipment and associated data  
172 processing and information management services and includes the provision of connections to  
173 the facilities of local exchange telecommunications companies and to interexchange  
174 telecommunications companies;

175 [(41)] **(42)** "Private telecommunications system", a telecommunications system  
176 controlled by a person or corporation for the sole and exclusive use of such person, corporation  
177 or legal or corporate affiliate thereof;

178 [(42)] **(43)** "Public utility" includes every pipeline corporation, gas corporation, electrical  
179 corporation, telecommunications company, water corporation, heat or refrigerating corporation,  
180 and sewer corporation, as these terms are defined in this section, and each thereof is hereby  
181 declared to be a public utility and to be subject to the jurisdiction, control and regulation of the  
182 commission and to the provisions of this chapter;

183 [(43)] **(44)** "Railroad" includes every railroad and railway, other than street railroad or  
184 light rail, by whatsoever power operated for public use in the conveyance of persons or property  
185 for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations,  
186 real estate and terminal facilities of every kind used, operated, controlled or owned by or in  
187 connection with any such railroad;

188 [(44)] **(45)** "Railroad corporation" includes every corporation, company, association,  
189 joint stock company or association, partnership and person, their lessees, trustees or receivers  
190 appointed by any court whatsoever, owning, holding, operating, controlling or managing any  
191 railroad or railway as defined in this section, or any cars or other equipment used thereon or in  
192 connection therewith;

193 [(45)] **(46)** "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge,  
194 switching charge, rental or other compensation of any corporation, person or public utility, or any  
195 two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching

196 charges, rentals or other compensations of any corporation, person or public utility or any  
197 schedule or tariff thereof;

198 [(46)] **(47)** "Resale of telecommunications service", the offering or providing of  
199 telecommunications service primarily through the use of services or facilities owned or provided  
200 by a separate telecommunications company, but does not include the offering or providing of  
201 private shared tenant services;

202 [(47)] **(48)** "Service" includes not only the use and accommodations afforded consumers  
203 or patrons, but also any product or commodity furnished by any corporation, person or public  
204 utility and the plant, equipment, apparatus, appliances, property and facilities employed by any  
205 corporation, person or public utility in performing any service or in furnishing any product or  
206 commodity and devoted to the public purposes of such corporation, person or public utility, and  
207 to the use and accommodation of consumers or patrons;

208 [(48)] **(49)** "Sewer corporation" includes every corporation, company, association, joint  
209 stock company or association, partnership or person, their lessees, trustees or receivers appointed  
210 by any court, owning, operating, controlling or managing any sewer system, plant or property,  
211 for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain,  
212 except that the term shall not include sewer systems with fewer than twenty-five outlets;

213 [(49)] **(50)** "Sewer system" includes all pipes, pumps, canals, lagoons, plants, structures  
214 and appliances, and all other real estate, fixtures and personal property, owned, operated,  
215 controlled or managed in connection with or to facilitate the collection, carriage, treatment and  
216 disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

217 [(50)] **(51)** "Street railroad" includes every railroad by whatsoever type of power  
218 operated, and all extensions and branches thereof and supplementary facilities thereto by  
219 whatsoever type of vehicle operated, for public use in the conveyance of persons or property for  
220 compensation, mainly providing local transportation service upon the streets, highways and  
221 public places in a municipality, or in and adjacent to a municipality, and including all cars, buses  
222 and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits, cables,  
223 subways, tunnels, stations, terminals and real estate of every kind used, operated or owned in  
224 connection therewith but this term shall not include light rail as defined in this section; and the  
225 term "street railroad" when used in this chapter, shall also include all motor bus and trolley bus  
226 lines and routes and similar local transportation facilities, and the rolling stock and other  
227 equipment thereof and the appurtenances thereto, when operated as a part of a street railroad or  
228 trolley bus local transportation system, or in conjunction therewith or supplementary thereto, but  
229 such term shall not include a railroad constituting or used as part of a trunk line railroad system  
230 and any street railroad as defined above which shall be converted wholly to motor bus operation  
231 shall nevertheless continue to be included within the term "street railroad" as used herein;

232 [(51)] **(52)** "Telecommunications company" includes telephone corporations as that term  
233 is used in the statutes of this state and every corporation, company, association, joint stock  
234 company or association, partnership and person, their lessees, trustees or receivers appointed by  
235 any court whatsoever, owning, operating, controlling or managing any facilities used to provide  
236 telecommunications service for hire, sale or resale within this state;

237 [(52)] **(53)** "Telecommunications facilities" includes lines, conduits, ducts, poles, wires,  
238 cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real  
239 estate, easements, apparatus, property and routes used, operated, controlled or owned by any  
240 telecommunications company to facilitate the provision of telecommunications service;

241 [(53)] **(54)** "Telecommunications service", the transmission of information by wire,  
242 radio, optical cable, electronic impulses, or other similar means. As used in this definition,  
243 "information" means knowledge or intelligence represented by any form of writing, signs,  
244 signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

245 (a) The rent, sale, lease, or exchange for other value received of customer premises  
246 equipment except for customer premises equipment owned by a telephone company certificated  
247 or otherwise authorized to provide telephone service prior to September 28, 1987, and provided  
248 under tariff or in inventory on January 1, 1983, which must be detariffed no later than December  
249 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and  
250 except for customer premises equipment owned or provided by a telecommunications company  
251 and used for answering 911 or emergency calls;

252 (b) Answering services and paging services;

253 (c) The offering of radio communication services and facilities when such services and  
254 facilities are provided under a license granted by the Federal Communications Commission  
255 under the commercial mobile radio services rules and regulations;

256 (d) Services provided by a hospital, hotel, motel, or other similar business whose  
257 principal service is the provision of temporary lodging through the owning or operating of  
258 message switching or billing equipment solely for the purpose of providing at a charge  
259 telecommunications services to its temporary patients or guests;

260 (e) Services provided by a private telecommunications system;

261 (f) Cable television service;

262 (g) The installation and maintenance of inside wire within a customer's premises;

263 (h) Electronic publishing services; or

264 (i) Services provided pursuant to a broadcast radio or television license issued by the  
265 Federal Communications Commission;

266 [(54)] **(55)** "Telephone cooperative", every corporation defined as a telecommunications  
267 company in this section, in which at least ninety percent of those persons and corporations



268 subscribing to receive local telecommunications service from the corporation own at least ninety  
269 percent of the corporation's outstanding and issued capital stock and in which no subscriber owns  
270 more than two shares of the corporation's outstanding and issued capital stock;

271 [(55)] (56) "Traffic aggregator", any person, firm, partnership or corporation which  
272 furnishes a telephone for use by the public and includes, but is not limited to, telephones located  
273 in rooms, offices and similar locations in hotels, motels, hospitals, colleges, universities, airports  
274 and public or customer-owned pay telephone locations, whether or not coin operated;

275 [(56)] (57) "Transitionally competitive telecommunications company", an interexchange  
276 telecommunications company which provides any noncompetitive or transitionally competitive  
277 telecommunications service, except for an interexchange telecommunications company which  
278 provides only noncompetitive telecommunications service;

279 [(57)] (58) "Transitionally competitive telecommunications service", a  
280 telecommunications service offered by a noncompetitive or transitionally competitive  
281 telecommunications company and classified as transitionally competitive by the commission  
282 pursuant to section 392.361 or 392.370, RSMo;

283 [(58)] (59) "Water corporation" includes every corporation, company, association, joint  
284 stock company or association, partnership and person, their lessees, trustees, or receivers  
285 appointed by any court whatsoever, owning, operating, controlling or managing any plant or  
286 property, dam or water supply, canal, or power station, distributing or selling for distribution, or  
287 selling or supplying for gain any water;

288 [(59)] (60) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,  
289 headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and  
290 personal property, owned, operated, controlled or managed in connection with or to facilitate the  
291 diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for  
292 municipal, domestic or other beneficial use.

**392.261. 1. The commission shall not, by entering any order, adopting any rule, or  
2 otherwise taking any agency action, impose any regulation upon a provider of high-speed  
3 Internet access service or broadband service in its provision of such service, regardless of  
4 technology or medium used to provide such service.**

**5 2. An incumbent local exchange telecommunications company subject to the  
6 provisions of 47 U.S.C. Section 251(c) shall be required to provide unbundled access to  
7 network elements, including but not limited to loops, subloops, and collocation space within  
8 the facilities of the incumbent local exchange telecommunications company only to the  
9 extent specifically required under Federal Communications Commission regulations.**