

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 142

92ND GENERAL ASSEMBLY

Reported from the Committee on Communications, Energy and Technology, April 3, 2003, with recommendation that the House Committee Substitute for House Bill No. 142 Do Pass.

Taken up for Perfection April 15, 2003. House Committee Substitute for House Bill No. 142 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

0755L.07P

AN ACT

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

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Section A. Section 386.020, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 386.020 and 392.261, to read as follows: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

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

13 periodic review and update;

14 (4) "Basic local telecommunications service", two-way switched voice service within
15 a local calling scope as determined by the commission comprised of any of the following
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.

31

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 related thereto, to the extent utilized to provide upstream, from**
109 **customer to provider, or downstream, from provider to customer, transmission in excess**
110 **of one hundred forty-four kilobits per second to or from the Internet, or are utilized to**
111 **transmit information, in excess of one hundred forty-four kilobits per second, regardless**
112 **of the technology or medium used, including but not limited to, wireless, copper wire, fiber**
113 **optic cable, or coaxial cable, to provide such service;**

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

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

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

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

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

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

130 [(28)] (29) "Line" includes route;

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

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

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

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

149 [(33)] (34) "Municipality" includes a city, village or town;

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

156 [(35)] (36) "Noncompetitive telecommunications company", a telecommunications

157 company other than a competitive telecommunications company or a transitionally competitive
158 telecommunications company;

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

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

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

168 [(39)] (40) "Person" includes an individual, and a firm or copartnership;

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

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

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

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

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

193 connection therewith;

194 [(45)] **(46)** "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge,
195 switching charge, rental or other compensation of any corporation, person or public utility, or any
196 two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching
197 charges, rentals or other compensations of any corporation, person or public utility or any
198 schedule or tariff thereof;

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

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

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

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

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

229 trolley bus local transportation system, or in conjunction therewith or supplementary thereto, but
230 such term shall not include a railroad constituting or used as part of a trunk line railroad system
231 and any street railroad as defined above which shall be converted wholly to motor bus operation
232 shall nevertheless continue to be included within the term "street railroad" as used herein;

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

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

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

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

253 (b) Answering services and paging services;

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

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

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

262 (f) Cable television service;

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

264 (h) Electronic publishing services; or

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

267 [(54)] (55) "Telephone cooperative", every corporation defined as a telecommunications
268 company in this section, in which at least ninety percent of those persons and corporations
269 subscribing to receive local telecommunications service from the corporation own at least ninety
270 percent of the corporation's outstanding and issued capital stock and in which no subscriber owns
271 more than two shares of the corporation's outstanding and issued capital stock;

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

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

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

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

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

**392.261. 1. A provider of high-speed Internet access service or broadband service
2 may elect, upon providing written notice to the commission, to provide high-speed Internet
3 access service or broadband service on a nonregulated basis. With regard to those
4 providers electing to provide high-speed Internet access service or broadband service on
5 a nonregulated basis, the commission or any political subdivision shall not, by entering any
6 order, adopting any rule, or otherwise taking any agency action, impose any regulation
7 upon a provider of high-speed Internet access service or broadband service in its provision**

8 of such service, regardless of technology or medium used to provide such service. Nothing
9 in this section shall affect the commission's authority to regulate the rates, terms, and
10 conditions of any voice telecommunications service as otherwise authorized under chapter
11 386, RSMo, and this chapter. Nothing in this section is intended to affect the commission's
12 authority to regulate voice telecommunications services or the commission's authority to
13 regulate copper loops for use by telecommunications providers pursuant to Federal
14 Communications Commission's regulations.

15 2. An incumbent local exchange telecommunications company subject to the
16 provisions of 47 U.S.C. Section 251(c) shall be required to provide access to unbundled
17 network elements related to high-speed Internet access service or broadband service,
18 including but not limited to loops, subloops, and collocation space within the facilities of
19 the incumbent local exchange telecommunication company only to the extent required to
20 implement the Federal Communications Commission regulations.

21 3. Notwithstanding any provision of this section to the contrary, nothing in this
22 section shall affect the commission's authority, to the extent otherwise provided in chapter
23 386, RSMo, and this chapter:

24 (1) To consider whether high-speed Internet access service and broadband service
25 should be included in its definition of essential local telecommunications service pursuant
26 to section 392.248;

27 (2) To establish or approve rates, terms, or conditions, in accordance with chapter
28 386, RSMo, and this chapter, for the use of a telecommunications company's facilities by
29 a provider of high-speed Internet service or broadband service for the origination,
30 termination, or transport of telecommunications services; or

31 (3) To consider whether revenues received by a telecommunications company from
32 the provision of high-speed Internet access service or broadband service should be included
33 in Missouri jurisdictional telecommunications services revenues for the purposes of
34 imposing assessments in accordance with law, including but not limited to section 386.370,
35 RSMo, and section 392.248.

36 4. A telecommunications company offering telecommunications services to Internet
37 service providers shall make such offerings available to all Internet service providers on
38 a nondiscriminatory basis as set forth in section 392.200.

39 5. Nothing in this section shall prevent a political subdivision from regulating the
40 physical facilities of a provider of high-speed Internet access service or broadband service
41 to the extent authorized to do so under sections 67.1830 to 67.1846.

42 6. Nothing in this section shall prevent a political subdivision from requiring
43 entering into or enforcing the terms of a franchise, license or other agreement.