

SECOND REGULAR SESSION

HOUSE BILL NO. 1084

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES EMERY (Sponsor), RECTOR, WILLOUGHBY, SAGER,
WHORTON, WALKER, YOUNG, DEMPSEY, SCHLOTTACH, ENGLER, YATES, LEMBKE, NIEVES,
RICHARD AND BIVINS (Co-sponsors).

Read 1st time January 14, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3751L.011

AN ACT

To repeal section 392.200, RSMo, and to enact in lieu thereof one new section relating to telecommunications service including customer specific pricing.

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

Section A. Section 392.200, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.200, to read as follows:

392.200. 1. Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

2. No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions. Promotional programs for

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.

16 telecommunications services may be offered by telecommunications companies for periods of
17 time so long as the offer is otherwise consistent with the provisions of this chapter and approved
18 by the commission. Neither this subsection nor subsection 3 of this section shall be construed
19 to prohibit an economy rate telephone service offering. This section and section 392.220 to the
20 contrary notwithstanding, the commission is authorized to approve tariffs filed by local exchange
21 telecommunications companies which elect to provide reduced charges for residential
22 telecommunications connection services pursuant to the lifeline connection assistance plan as
23 promulgated by the federal communications commission. Eligible subscribers for such
24 connection services shall be those as defined by participating local exchange telecommunications
25 company tariffs.

26 3. No telecommunications company shall make or give any undue or unreasonable
27 preference or advantage to any person, corporation or locality, or subject any particular person,
28 corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect
29 whatsoever except that telecommunications messages may be classified into such classes as are
30 just and reasonable, and different rates may be charged for the different classes of messages.

31 4. (1) No telecommunications company may define a telecommunications service as a
32 different telecommunications service based on the geographic area or other market segmentation
33 within which such telecommunications service is offered or provided, unless the
34 telecommunications company makes application and files a tariff or tariffs which propose relief
35 from this subsection. Any such tariff shall be subject to the provisions of sections 392.220 and
36 392.230 and in any hearing thereon the burden shall be on the telecommunications company to
37 show, by clear and convincing evidence, that the definition of such service based on the
38 geographic area or other market within which such service is offered is reasonably necessary to
39 promote the public interest and the purposes and policies of this chapter.

40 (2) It is the intent of this act to bring the benefits of competition to all customers and to
41 ensure that incumbent and alternative local exchange telecommunications companies have the
42 opportunity to price and market telecommunications services to all prospective customers in any
43 geographic area in which they compete. To promote the goals of the federal
44 Telecommunications Act of 1996, for an incumbent local exchange telecommunications
45 company in any exchange where an alternative local exchange telecommunications company has
46 been certified and is providing basic local telecommunications services or switched exchange
47 access services, or for an alternative local exchange telecommunications company, the
48 commission shall review and approve or reject, within forty-five days of filing, tariffs for
49 proposed different services as follows:

50 (a) For services proposed on an exchange-wide basis, it shall be presumed that a tariff
51 which defines and establishes prices for a local exchange telecommunications service or

52 exchange access service as a different telecommunications service in the geographic area, no
53 smaller than an exchange, within which such local exchange telecommunications service or
54 exchange access service is offered is reasonably necessary to promote the public interest and the
55 purposes and policies of this chapter;

56 (b) For services proposed in a geographic area smaller than an exchange or other market
57 segmentation within which or to whom such telecommunications service is proposed to be
58 offered, a local exchange telecommunications company may petition the commission to define
59 and establish a local exchange telecommunications service or exchange access service. The
60 commission shall approve such a proposal if it finds, based upon clear and convincing evidence,
61 that such service in a smaller geographic area or such other market segmentation is in the public
62 interest and is reasonably necessary to promote competition and the purposes of this chapter.
63 Upon approval of such a smaller geographic area or such other market segmentation for a
64 different service for one local exchange telecommunications company, all other local exchange
65 telecommunications companies certified to provide service in that exchange may file a tariff to
66 use such smaller geographic area or such other market segmentation to provide that service;

67 (c) For proposed different services described in paragraphs (a) and (b) of this
68 subdivision, the local exchange telecommunications company which files a tariff to provide such
69 service shall provide the service to all similarly situated customers, upon request in accordance
70 with that company's approved tariff, in the exchange or geographic area smaller than an exchange
71 or such other market segmentation for which the tariff was filed, and no price proposed for such
72 service by an incumbent local exchange telecommunications company, other than for a
73 competitive service, shall be lower than its long-run incremental cost, as defined in section
74 386.020, RSMo;

75 (3) The commission, on its own motion or upon motion of the public counsel, may by
76 order, after notice and hearing, define a telecommunications service offered or provided by a
77 telecommunications company as a different telecommunications service dependent upon the
78 geographic area or other market within which such telecommunications service is offered or
79 provided and apply different service classifications to such service only upon a finding, based
80 on clear and convincing evidence, that such different treatment is reasonably necessary to
81 promote the public interest and the purposes and policies of this chapter.

82 5. No telecommunications company may charge a different price per minute or other unit
83 of measure for the same, substitutable, or equivalent interexchange telecommunications service
84 provided over the same or equivalent distance between two points without filing a tariff for the
85 offer or provision of such service pursuant to sections 392.220 and 392.230. In any proceeding
86 under sections 392.220 and 392.230 wherein a telecommunications company seeks to charge a
87

88 different price per minute or other unit of measure for the same, substitutable, or equivalent
89 interexchange service, the burden shall be on the subject telecommunications company to show
90 that such charges are in the public interest and consistent with the provisions and purposes of this
91 chapter. The commission may modify or prohibit such charges if the subject telecommunications
92 company fails to show that such charges are in the public interest and consistent with the
93 provisions and purposes of this chapter. This subsection shall not apply to reasonable price
94 discounts based on the volume of service provided, so long as such discounts are
95 nondiscriminatory and offered under the same rates, terms, and conditions throughout a
96 telecommunications company's certificated or service area.

97 6. Every telecommunications company operating in this state shall receive, transmit and
98 deliver, without discrimination or delay, the conversations and messages of every other
99 telecommunications company with whose facilities a connection may have been made.

100 7. The commission shall have power to provide the limits within which
101 telecommunications messages shall be delivered without extra charge.

102 8. Customer-specific pricing is authorized for:

103 (1) Dedicated, nonswitched, private line and special access services; and [for]

104 (2) Central office-based switching systems which substitute for customer premise,
105 private branch exchange (PBX) services[.];and

106 (3) **DS-1-related retail services, which for the purposes of this section is any tariffed**
107 **retail service offered to business customers which is provided via facilities capable of**
108 **operating at speeds of 1.544 megabytes per second or higher, including ISDN PRI, and DSI**
109 **trunk services;** provided such customer-specific pricing shall be equally available to incumbent
110 and alternative local exchange telecommunications companies. **When a business service**
111 **offered by an incumbent local exchange telecommunications company has been classified**
112 **as a competitive in an exchange pursuant to subsection 5 of section 392.245, customer-**
113 **specific pricing for that business service shall be equally available to incumbent and**
114 **alternative local exchange telecommunications companies.**

115 9. This act shall not be construed to prohibit the commission, upon determining that it
116 is in the public interest, from altering local exchange boundaries, provided that the incumbent
117 local exchange telecommunications company or companies serving each exchange for which the
118 boundaries are altered provide notice to the commission that the companies approve the
119 alteration of exchange boundaries.

120 10. Notwithstanding any other provision of this section, every telecommunications
121 company is authorized to offer term agreements of up to five years on any of its
122 telecommunications services.

123 11. Notwithstanding any other provision of this section, every telecommunications

124 company is authorized to offer discounted rates or other special promotions on any of its
125 telecommunications services to any **existing**, new and/or former customers.