

SECOND REGULAR SESSION

# HOUSE BILL NO. 1156

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BYRD (Sponsor) AND RECTOR (Co-sponsor).

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STEPHEN S. DAVIS, Chief Clerk

3746L.011

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### AN ACT

To repeal section 392.245, RSMo, and to enact in lieu thereof one new section relating to telecommunications companies.

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

Section A. Section 392.245, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.245, to read as follows:

392.245. 1. The commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation. As used in this chapter, "price cap regulation" shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section.

2. A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area. A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area, and the incumbent company shall remain subject to regulation under this section after such election.

3. Except as otherwise provided in this section, the maximum allowable prices established for a company under subsection 1 of this section shall be those in effect on December

19 thirty-first of the year preceding the year in which the company is first subject to regulation under  
20 this section. Tariffs authorized under subsection 9 of this section shall be phased in as provided  
21 under such tariffs as approved by the commission.

22 4. (1) Except as otherwise provided in subsections 8 and 9 of this section and section  
23 392.248, the maximum allowable prices for exchange access and basic local telecommunications  
24 services of a small, incumbent local exchange telecommunications company regulated under this  
25 section shall not be changed for a period of twelve months after the date the company is subject  
26 to regulation under this section. Except as otherwise provided in subsections 8 and 9 of this  
27 section and section 392.248, the maximum allowable prices for exchange access and basic local  
28 telecommunications services of a large, incumbent local exchange telecommunications company  
29 regulated under this section shall not be changed prior to January 1, 2000. Thereafter, the  
30 maximum allowable prices for exchange access and basic local telecommunications services of  
31 an incumbent local exchange telecommunications company shall be annually changed by one of  
32 the following methods:

33 (a) By the change in the telephone service component of the Consumer Price Index  
34 (CPI-TS), as published by the United States Department of Commerce or its successor agency  
35 for the preceding twelve months; or

36 (b) Upon request by the company and approval by the commission, by the change in the  
37 Gross Domestic Product Price Index (GDP-PI), as published by the United States Department  
38 of Commerce or its successor agency for the preceding twelve months, minus the productivity  
39 offset established for telecommunications service by the Federal Communication Commission  
40 and adjusted for exogenous factors;

41 (2) The commission shall approve a change to a maximum allowable price filed pursuant  
42 to paragraph (a) of subdivision (1) of this subsection within forty-five days of filing of notice by  
43 the local exchange telecommunications company. An incumbent local exchange  
44 telecommunications company shall file a tariff to reduce the rates charged for any service in any  
45 case in which the current rate exceeds the maximum allowable price established under this  
46 subsection.

47 (3) As a part of its request under paragraph (b) of subdivision (1) of this subsection, a  
48 company may seek commission approval to use a different productivity offset in lieu of the  
49 productivity offset established by the Federal Communication Commission. An adjustment  
50 under paragraph (b) of subdivision (1) of this subsection shall not be implemented if the  
51 commission determines, after notice and hearing to be conducted within forty-five days of the  
52 filing of the notice of a change to a maximum allowable price, that it is not in the public interest.  
53 In making such a determination, the commission shall consider the relationship of the proposed  
54 price of service to its cost and the impact of competition on the incumbent local exchange

55 telecommunications company's intrastate revenues from regulated telecommunications services.  
56 Any adjustments for exogenous factors shall be allocated to the maximum allowable prices for  
57 exchange access and basic local telecommunications service in the same percentage as the  
58 revenues for such company bears to such company's total revenues from basic local, nonbasic  
59 and exchange access services for the preceding twelve months.

60 (4) For the purposes of this section, the term "exogenous factor" shall mean a cumulative  
61 impact on a local exchange telecommunications company's intrastate regulated revenue  
62 requirement of more than three percent, which is attributable to federal, state or local government  
63 laws, regulations or policies which change the revenue, expense or investment of the company,  
64 and the term "exogenous factor" shall not include the effect of competition on the revenue,  
65 expense or investment of the company nor shall the term include any assessment made under  
66 section 392.248.

67 (5) An incumbent local exchange telecommunications company may change the rates  
68 for its services, consistent with the provisions of **subsections 2 to 5 of** section 392.200, but not  
69 to exceed the maximum allowable prices, by filing tariffs which shall be approved by the  
70 commission within thirty days, provided that any such rate is not in excess of the maximum  
71 allowable price established for such service under this section.

72 5. Each telecommunications service of an incumbent local exchange telecommunications  
73 company shall be classified as competitive in any exchange in which at least one alternative local  
74 exchange telecommunications company has been certified under section 392.455 and has  
75 provided basic local telecommunications service in that exchange for at least five years, unless  
76 the commission determines, after notice and a hearing, that effective competition does not exist  
77 in the exchange for such service. The commission shall, from time to time, on its own motion  
78 or motion by an incumbent local exchange telecommunications company, investigate the state  
79 of competition in each exchange where an alternative local exchange telecommunication  
80 company has been certified to provide local exchange telecommunications service and shall  
81 determine, no later than five years following the first certification of an alternative local  
82 exchange telecommunication company in such exchange, whether effective competition exists  
83 in the exchange for the various services of the incumbent local exchange telecommunications  
84 company. If the commission determines that effective competition exists in the exchange, the  
85 local exchange telecommunications company may thereafter adjust its rates for such competitive  
86 services upward or downward as it determines appropriate in its competitive environment. If the  
87 commission determines that effective competition does not exist in the exchange, the provisions  
88 of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum  
89 allowable prices established by the provisions of subsections 4 and 11 of this section shall  
90 continue to apply. The commission shall from time to time, but no less than every five years,

91 review the state of competition in those exchanges where it has previously found the existence  
92 of effective competition, and if the commission determines, after hearing, that effective  
93 competition no longer exists for the incumbent local exchange telecommunications company in  
94 such exchange, it shall reimpose upon the incumbent local exchange telecommunications  
95 company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4  
96 of section 392.200 and the maximum allowable prices established by the provisions of  
97 subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices  
98 established for the telecommunications services of such incumbent local exchange  
99 telecommunications company shall reflect all index adjustments which were or could have been  
100 filed from all preceding years since the company's maximum allowable prices were first adjusted  
101 pursuant to subsection 4 or 11 of this section.

102         6. Nothing in this section shall be interpreted to alter the commission's jurisdiction over  
103 quality and conditions of service or to relieve telecommunications companies from the obligation  
104 to comply with commission rules relating to minimum basic local and interexchange  
105 telecommunications service.

106         7. A company regulated under this section shall not be subject to regulation under  
107 subsection 1 of section 392.240.

108         8. An incumbent local exchange telecommunications company regulated under this  
109 section may reduce intrastate access rates, including carrier common line charges, subject to the  
110 provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of  
111 the company's interstate rates for similar access services in effect as of December thirty-first of  
112 the year preceding the year in which the company is first subject to regulation under this section.  
113 Absent commission action under subsection 10 of this section, an incumbent local exchange  
114 telecommunications company regulated under this section shall have four years from the date the  
115 company becomes subject to regulation under this section to make the adjustments authorized  
116 under this subsection and subsection 9 of this section. Nothing in this subsection shall preclude  
117 an incumbent local exchange telecommunications company from establishing its intrastate access  
118 rates at a level lower than one hundred fifty percent of the company's interstate rates for similar  
119 access services in effect as of December thirty-first of the year preceding the year in which the  
120 company is first subject to regulation under this section.

121         9. Other provisions of this section to the contrary notwithstanding and no earlier than  
122 January 1, 1997, the commission shall allow an incumbent local exchange telecommunications  
123 company regulated under this section which reduces its intrastate access service rates pursuant  
124 to subsection 8 of this section to offset the revenue loss resulting from the first year's access  
125 service rate reduction by increasing its monthly maximum allowable prices applicable to basic  
126 local exchange telecommunications services by an amount not to exceed one dollar fifty cents.

127 A large incumbent local exchange telecommunications company shall not increase its monthly  
128 rates applicable to basic local telecommunications service under this subsection unless it also  
129 reduces its rates for intraLATA interexchange telecommunications services by at least ten  
130 percent. No later than one year after the date the incumbent local exchange telecommunications  
131 company becomes subject to regulation under this section, the commission shall complete an  
132 investigation of the cost justification for the reduction of intrastate access rates and the increase  
133 of maximum allowable prices for basic local telecommunications service. If the commission  
134 determines that the company's monthly maximum allowable average statewide prices for basic  
135 local telecommunications service after adjustment pursuant to this subsection will be equal to  
136 or less than the long run incremental cost, as defined in section 386.020, RSMo, of providing  
137 basic local telecommunications service and that the company's intrastate access rates after  
138 adjustment pursuant to this subsection will exceed the long run incremental cost, as defined in  
139 section 386.020, RSMo, of providing intrastate access services, the commission shall allow the  
140 company to offset the revenue loss resulting from the remaining three-quarters of the total  
141 needed to bring that company's intrastate access rates to one hundred fifty percent of the  
142 interstate level by increasing the company's monthly maximum allowable prices applicable to  
143 basic local telecommunications service by an amount not to exceed one dollar fifty cents on each  
144 of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction  
145 of intrastate access rates and the increase of monthly maximum allowable prices for basic local  
146 telecommunications services to be terminated at the levels the commission determines to be  
147 cost-justified. The total revenue increase due to the increase to the monthly maximum allowable  
148 prices for basic local telecommunications service shall not exceed the total revenue loss resulting  
149 from the reduction to intrastate access service rates.

150 10. Any telecommunications company whose intrastate access costs are reduced pursuant  
151 to subsections 8 and 9 of this section shall decrease its rates for intrastate toll  
152 telecommunications service to flow through such reduced costs to its customers. The  
153 commission may permit a telecommunications company to defer a rate reduction required by this  
154 subdivision until such reductions, on a cumulative basis, reach a level that is practical to flow  
155 through to its customers.

156 11. The maximum allowable prices for nonbasic telecommunications services of a small,  
157 incumbent local exchange telecommunications company regulated under this section shall not  
158 be changed until twelve months after the date the company is subject to regulation under this  
159 section or, on an exchange-by-exchange basis, until an alternative local exchange  
160 telecommunications company is certified and providing basic local telecommunications service  
161 in such exchange, whichever is earlier. The maximum allowable prices for nonbasic  
162 telecommunications services of a large, incumbent local exchange telecommunications company

163 regulated under this section shall not be changed until January 1, 1999, or on an exchange-  
164 by-exchange basis, until an alternative local exchange telecommunications company is certified  
165 and providing basic local telecommunications service in such exchange, whichever is earlier.  
166 Thereafter, the maximum allowable prices for nonbasic telecommunications services of an  
167 incumbent local exchange telecommunications company may be annually increased by up to  
168 eight percent for each of the following twelve-month periods upon providing notice to the  
169 commission and filing tariffs establishing the rates for such services in such exchanges at such  
170 maximum allowable prices. This subsection shall not preclude an incumbent local exchange  
171 telecommunications company from proposing new telecommunications services and establishing  
172 prices for such new services. An incumbent local exchange telecommunications company may  
173 change the rates for its services, consistent with the provisions of **subsections 2 to 5 of** section  
174 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be  
175 approved by the commission within thirty days, provided that any such rate is not in excess of  
176 the maximum allowable price established for such service under this section.

177         12. The commission shall permit an incumbent local exchange telecommunications  
178 company regulated under this section to determine and set its own depreciation rates which shall  
179 be used for all intrastate regulatory purposes. Provided, however, that such a determination is  
180 not binding on the commission in determining eligibility for or reimbursement under the  
181 universal service fund established under section 392.248.