

FIRST REGULAR SESSION

HOUSE BILL NO. 338

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RECTOR (Sponsor), JOHNSON (61), EMERY, FISHER, WILSON (130), SCHLOTTACH, SCHAD, WRIGHT (137), WRIGHT (159), LeVOTA, KRAUS, BYRD, QUINN, MYERS, HOBBS, SKAGGS AND BEARDEN (Co-sponsors).

Read 1st time January 26, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1045L.011

AN ACT

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

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Section A. Section 392.245, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.245, to read as follows: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, **or if two or more commercial**

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.

15 **mobile service providers providing wireless two-way voice communications services are**
16 **providing services**, in any part of the small incumbent company's service area, and the
17 incumbent company shall remain subject to regulation under this section after such election.

18 3. Except as otherwise provided in this section, the maximum allowable prices
19 established for a company under subsection 1 of this section shall be those in effect on December
20 thirty-first of the year preceding the year in which the company is first subject to regulation under
21 this section. Tariffs authorized under subsection 9 of this section shall be phased in as provided
22 under such tariffs as approved by the commission.

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

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

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

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

48 (3) As a part of its request under paragraph (b) of subdivision (1) of this subsection, a
49 company may seek commission approval to use a different productivity offset in lieu of the
50 productivity offset established by the Federal Communication Commission. An adjustment

51 under paragraph (b) of subdivision (1) of this subsection shall not be implemented if the
52 commission determines, after notice and hearing to be conducted within forty-five days of the
53 filing of the notice of a change to a maximum allowable price, that it is not in the public interest.
54 In making such a determination, the commission shall consider the relationship of the proposed
55 price of service to its cost and the impact of competition on the incumbent local exchange
56 telecommunications company's intrastate revenues from regulated telecommunications services.
57 Any adjustments for exogenous factors shall be allocated to the maximum allowable prices for
58 exchange access and basic local telecommunications service in the same percentage as the
59 revenues for such company bears to such company's total revenues from basic local, nonbasic
60 and exchange access services for the preceding twelve months.

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

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

73 5. Each telecommunications service of an incumbent local exchange telecommunications
74 company shall be classified as competitive in any exchange in which at least one alternative local
75 exchange telecommunications company has been certified under section 392.455 and has
76 provided basic local telecommunications service in that exchange for at least five years, unless
77 the commission determines, after notice and a hearing, that effective competition does not exist
78 in the exchange for such service. The commission shall, from time to time, on its own motion
79 or motion by an incumbent local exchange telecommunications company, investigate the state
80 of competition in each exchange where an alternative local exchange telecommunication
81 company has been certified to provide local exchange telecommunications service and shall
82 determine, no later than five years following the first certification of an alternative local
83 exchange telecommunication company in such exchange, whether effective competition exists
84 in the exchange for the various services of the incumbent local exchange telecommunications
85 company. If the commission determines that effective competition exists in the exchange, the
86 local exchange telecommunications company may thereafter adjust its rates for such competitive

87 services upward or downward as it determines appropriate in its competitive environment. If the
88 commission determines that effective competition does not exist in the exchange, the provisions
89 of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum
90 allowable prices established by the provisions of subsections 4 and 11 of this section shall
91 continue to apply. The commission shall from time to time, but no less than every five years,
92 review the state of competition in those exchanges where it has previously found the existence
93 of effective competition, and if the commission determines, after hearing, that effective
94 competition no longer exists for the incumbent local exchange telecommunications company in
95 such exchange, it shall reimpose upon the incumbent local exchange telecommunications
96 company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4
97 of section 392.200 and the maximum allowable prices established by the provisions of
98 subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices
99 established for the telecommunications services of such incumbent local exchange
100 telecommunications company shall reflect all index adjustments which were or could have been
101 filed from all preceding years since the company's maximum allowable prices were first adjusted
102 pursuant to subsection 4 or 11 of this section.

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

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

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

122 9. Other provisions of this section to the contrary notwithstanding and no earlier than

123 January 1, 1997, the commission shall allow an incumbent local exchange telecommunications
124 company regulated under this section which reduces its intrastate access service rates pursuant
125 to subsection 8 of this section to offset the revenue loss resulting from the first year's access
126 service rate reduction by increasing its monthly maximum allowable prices applicable to basic
127 local exchange telecommunications services by an amount not to exceed one dollar fifty cents.
128 A large incumbent local exchange telecommunications company shall not increase its monthly
129 rates applicable to basic local telecommunications service under this subsection unless it also
130 reduces its rates for intraLATA interexchange telecommunications services by at least ten
131 percent. No later than one year after the date the incumbent local exchange telecommunications
132 company becomes subject to regulation under this section, the commission shall complete an
133 investigation of the cost justification for the reduction of intrastate access rates and the increase
134 of maximum allowable prices for basic local telecommunications service. If the commission
135 determines that the company's monthly maximum allowable average statewide prices for basic
136 local telecommunications service after adjustment pursuant to this subsection will be equal to
137 or less than the long run incremental cost, as defined in section 386.020, RSMo, of providing
138 basic local telecommunications service and that the company's intrastate access rates after
139 adjustment pursuant to this subsection will exceed the long run incremental cost, as defined in
140 section 386.020, RSMo, of providing intrastate access services, the commission shall allow the
141 company to offset the revenue loss resulting from the remaining three- quarters of the total
142 needed to bring that company's intrastate access rates to one hundred fifty percent of the
143 interstate level by increasing the company's monthly maximum allowable prices applicable to
144 basic local telecommunications service by an amount not to exceed one dollar fifty cents on each
145 of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction
146 of intrastate access rates and the increase of monthly maximum allowable prices for basic local
147 telecommunications services to be terminated at the levels the commission determines to be
148 cost-justified. The total revenue increase due to the increase to the monthly maximum allowable
149 prices for basic local telecommunications service shall not exceed the total revenue loss resulting
150 from the reduction to intrastate access service rates.

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

157 11. The maximum allowable prices for nonbasic telecommunications services of a small,
158 incumbent local exchange telecommunications company regulated under this section shall not

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

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