

SECOND REGULAR SESSION

# HOUSE BILL NO. 2053

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE RECTOR.

Read 1st time March 28, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

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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Section A. Section 392.245, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.245, to read as follows: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. Any rate, charge, toll, or rental that does not exceed the maximum allowable price under this section shall be deemed to be just, reasonable, and lawful. 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

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.

16 telecommunications service and is providing such service, or if two or more commercial mobile  
17 service providers providing wireless two-way voice communications services are providing  
18 services, in any part of the small incumbent company's service area, and the incumbent company  
19 shall remain subject to regulation under this section after such election.

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

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

36         (a) By the change in the telephone service component of the Consumer Price Index  
37 (CPI-TS), as published by the United States Department of Commerce or its successor agency  
38 for the preceding twelve months; **provided however, that if such a change in the CPI-TS for**  
39 **the preceding twelve months is negative, upon request by the company and approval by**  
40 **the commission for good cause shown, the commission may waive any requirement to**  
41 **reduce prices of exchange access and basic local telecommunications service, and those**  
42 **existing prices shall remain the maximum allowable prices for purposes of this section until**  
43 **the next annual change. All revenues that are attributable to a CPI-TS reduction waiver**  
44 **shall be used for the purposes approved by the commission to benefit local exchange**  
45 **ratepayers, including, but not limited to expanded local calling scopes or improvements in**  
46 **facilities or services in a specific exchange or exchanges; or**

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

52 (2) The commission shall approve a change to a maximum allowable price **or make a**  
53 **determination regarding a request for waiver** filed pursuant to paragraph (a) of subdivision  
54 (1) of this subsection within forty-five days of filing of notice by the local exchange  
55 telecommunications company. An incumbent local exchange telecommunications company shall  
56 file a tariff to reduce the rates charged for any service in any case in which the current rate  
57 exceeds the maximum allowable price established under this subsection.

58 (3) As a part of its request under paragraph (b) of subdivision (1) of this subsection, a  
59 company may seek commission approval to use a different productivity offset in lieu of the  
60 productivity offset established by the Federal Communication Commission. An adjustment  
61 under paragraph (b) of subdivision (1) of this subsection shall not be implemented if the  
62 commission determines, after notice and hearing to be conducted within forty-five days of the  
63 filing of the notice of a change to a maximum allowable price, that it is not in the public interest.  
64 In making such a determination, the commission shall consider the relationship of the proposed  
65 price of service to its cost and the impact of competition on the incumbent local exchange  
66 telecommunications company's intrastate revenues from regulated telecommunications services.  
67 Any adjustments for exogenous factors shall be allocated to the maximum allowable prices for  
68 exchange access and basic local telecommunications service in the same percentage as the  
69 revenues for such company bears to such company's total revenues from basic local, nonbasic  
70 and exchange access services for the preceding twelve months.

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

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

83 5. Each telecommunications service offered to business customers, other than exchange  
84 access service, of an incumbent local exchange telecommunications company regulated under  
85 this section shall be classified as competitive in any exchange in which at least two nonaffiliated  
86 entities in addition to the incumbent local exchange company are providing basic local  
87 telecommunications service to business customers within the exchange. Each  
88 telecommunications service offered to residential customers, other than exchange access service,

89 of an incumbent local exchange telecommunications company regulated under this section shall  
90 be classified as competitive in an exchange in which at least two nonaffiliated entities in addition  
91 to the incumbent local exchange company are providing basic local telecommunications service  
92 to residential customers within the exchange. For purposes of this subsection:

93 (1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1)  
94 and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local  
95 telecommunications service, provided that only one such nonaffiliated provider shall be  
96 considered as providing basic local telecommunications service within an exchange;

97 (2) Any entity providing local voice service in whole or in part over telecommunications  
98 facilities or other facilities in which it or one of its affiliates have an ownership interest shall be  
99 considered as a basic local telecommunications service provider regardless of whether such  
100 entity is subject to regulation by the commission. A provider of local voice service that requires  
101 the use of a third party, unaffiliated broadband network or dial-up Internet network for the  
102 origination of local voice service shall not be considered a basic local telecommunications  
103 service provider. For purposes of this subsection only, a "broadband network" is defined as a  
104 connection that delivers services at speeds exceeding two hundred kilobits per second in at least  
105 one direction;

106 (3) Regardless of the technology utilized, local voice service shall mean two-way voice  
107 service capable of receiving calls from a provider of basic local telecommunications services as  
108 defined by subdivision (4) of section 386.020, RSMo;

109 (4) Telecommunications companies only offering prepaid telecommunications service  
110 or only reselling telecommunications service as defined in subdivision (46) of section 386.020,  
111 RSMo, in the exchange being considered for competitive classification shall not be considered  
112 entities providing basic telecommunications service; and

113 (5) "Prepaid telecommunications service" shall mean a local service for which payment  
114 is made in advance that excludes access to operator assistance and long distance service;

115 (6) Upon request of an incumbent local exchange telecommunications company seeking  
116 competitive classification of business service or residential service, or both, the commission  
117 shall, within thirty days of the request, determine whether the requisite number of entities are  
118 providing basic local telecommunications service to business or residential customers, or both,  
119 in an exchange and if so shall approve tariffs designating all such business or residential services  
120 other than exchange access service, as competitive within such exchange. Notwithstanding any  
121 other provision of this subsection, any incumbent local exchange company may petition the  
122 commission for competitive classification within an exchange based on competition from any  
123 entity providing local voice service in whole or in part by using its own telecommunications  
124 facilities or other facilities or the telecommunications facilities or other facilities of a third party,  
125 including those of the incumbent local exchange company as well as providers that rely on an

unaffiliated third-party Internet service. The commission shall approve such petition within sixty days unless it finds that such competitive classification is contrary to the public interest. The commission shall maintain records of regulated providers of local voice service, including those regulated providers who provide local voice service over their own facilities, or through the use of facilities of another provider of local voice service. In reviewing an incumbent local exchange telephone company's request for competitive status in an exchange, the commission shall consider their own records concerning ownership of facilities and shall make all inquiries as are necessary and appropriate from regulated providers of local voice service to determine the extent and presence of regulated local voice providers in an exchange. If the services of an incumbent local exchange telecommunications company are classified as competitive under this subsection, the local exchange telecommunications company may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment, upon filing tariffs which shall become effective within the time lines identified in section 392.500. The commission shall, at least every two years, or where an incumbent local exchange telecommunications company increases rates for basic local telecommunications services in an exchange classified as competitive, review those exchanges where an incumbent local exchange carrier's services have been classified as competitive, to determine if the conditions of this subsection for competitive classification continue to exist in the exchange and if the commission determines, after hearing, that such conditions no longer exist for the incumbent local exchange telecommunications company in such exchange, it shall reimpose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.

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

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

8. An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of

the year preceding the year in which the company is first subject to regulation under this section. Absent commission action under subsection 10 of this section, an incumbent local exchange telecommunications company regulated under this section shall have four years from the date the company becomes subject to regulation under this section to make the adjustments authorized under this subsection and subsection 9 of this section. Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to regulation under this section.

9. Other provisions of this section to the contrary notwithstanding and no earlier than January 1, 1997, the commission shall allow an incumbent local exchange telecommunications company regulated under this section which reduces its intrastate access service rates pursuant to subsection 8 of this section to offset the revenue loss resulting from the first year's access service rate reduction by increasing its monthly maximum allowable prices applicable to basic local exchange telecommunications services by an amount not to exceed one dollar fifty cents. A large incumbent local exchange telecommunications company shall not increase its monthly rates applicable to basic local telecommunications service under this subsection unless it also reduces its rates for intraLATA interexchange telecommunications services by at least ten percent. No later than one year after the date the incumbent local exchange telecommunications company becomes subject to regulation under this section, the commission shall complete an investigation of the cost justification for the reduction of intrastate access rates and the increase of maximum allowable prices for basic local telecommunications service. If the commission determines that the company's monthly maximum allowable average statewide prices for basic local telecommunications service after adjustment pursuant to this subsection will be equal to or less than the long run incremental cost, as defined in section 386.020, RSMo, of providing basic local telecommunications service and that the company's intrastate access rates after adjustment pursuant to this subsection will exceed the long run incremental cost, as defined in section 386.020, RSMo, of providing intrastate access services, the commission shall allow the company to offset the revenue loss resulting from the remaining three-quarters of the total needed to bring that company's intrastate access rates to one hundred fifty percent of the interstate level by increasing the company's monthly maximum allowable prices applicable to basic local telecommunications service by an amount not to exceed one dollar fifty cents on each of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction of intrastate access rates and the increase of monthly maximum allowable prices for basic local telecommunications services to be terminated at the levels the commission determines to be cost-justified. The total revenue increase due to the increase to the monthly maximum allowable

199 prices for basic local telecommunications service shall not exceed the total revenue loss resulting  
200 from the reduction to intrastate access service rates.

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

207         11. The maximum allowable prices for nonbasic telecommunications services of a small,  
208 incumbent local exchange telecommunications company regulated under this section shall not  
209 be changed until twelve months after the date the company is subject to regulation under this  
210 section or, on an exchange-by-exchange basis, until an alternative local exchange  
211 telecommunications company is certified and providing basic local telecommunications service  
212 in such exchange, whichever is earlier. The maximum allowable prices for nonbasic  
213 telecommunications services of a large, incumbent local exchange telecommunications company  
214 regulated under this section shall not be changed until January 1, 1999, or on an  
215 exchange-by-exchange basis, until an alternative local exchange telecommunications company  
216 is certified and providing basic local telecommunications service in such exchange, whichever  
217 is earlier. Thereafter, the maximum allowable prices for nonbasic telecommunications services  
218 of an incumbent local exchange telecommunications company may be annually increased by up  
219 to five percent for each of the following twelve-month periods upon providing notice to the  
220 commission and filing tariffs establishing the rates for such services in such exchanges at such  
221 maximum allowable prices. This subsection shall not preclude an incumbent local exchange  
222 telecommunications company from proposing new telecommunications services and establishing  
223 prices for such new services. An incumbent local exchange telecommunications company may  
224 change the rates for its services, consistent with the provisions of subsections 2 through 5 of  
225 section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall  
226 be approved by the commission within thirty days, provided that any such rate is not in excess  
227 of the maximum allowable price established for such service under this section.

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

233         13. Prior to January 1, 2006, the commission shall determine the weighted, statewide  
234 average rate of nonwireless basic local telecommunications services as of August 28, 2005. The  
235 commission shall likewise determine the weighted, statewide average rate of nonwireless basic

236 local telecommunications services two years and five years after August 28, 2005. The  
237 commission shall report its findings to the general assembly by January 30, 2008, and provide  
238 a second study by January 30, 2011. If the commission finds that the weighted, statewide  
239 average rate of nonwireless basic local telecommunications service in 2008 or 2011 is greater  
240 than the weighted, statewide average rate of nonwireless basic local telecommunications service  
241 in 2006 multiplied by one plus the percentage increase in the Consumer Price Index for all goods  
242 and services for the study periods, the commission shall recommend to the general assembly such  
243 changes in state law as the commission deems appropriate to achieve the purposes set forth in  
244 section 392.185. In determining the weighted, statewide average rate of nonwireless basic local  
245 telecommunications service, the commission shall exclude rate increases to nonwireless basic  
246 telecommunications service permitted under subsections 8 and 9 of this section and section  
247 392.240 or exogenous costs incurred by the providers of nonwireless basic local  
248 telecommunications service.

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