

FIRST REGULAR SESSION

HOUSE BILL NO. 495

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PARSON (Sponsor), WALSH, JONES (117), HOBBS,
JONES (89), BRUNS, SCHOELLER AND TILLEY (Co-sponsors).

1386L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 392.460, RSMo, and to enact in lieu thereof one new section relating to telecommunications.

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

Section A. Section 392.460, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.460, to read as follows:

392.460. **1. As used in this section, the following words shall mean:**

- (1) **"Alternative service provider", any person or entity providing local telecommunications services, or any person or entity allowing another person or entity to use its equipment or facilities to provide local telecommunications services, or any person or entity securing rights to select an alternative service provider for a property owner or developer. Alternative service provider shall not include a local exchange carrier providing service within its commission-approved local exchange service area;**
- (2) **"Alternative technology", any technology that offers local telecommunications service and functionality comparable to that provided through an existing alternative service provider's facilities. Alternative technology may include a technology that does not require the use of a public right-of-way;**
- (3) **"Greenfield area", an area that requires entirely new construction of local loops in addition to the deployment of any necessary switching and other network equipment to serve new real property developments;**

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 (4) **"Local telecommunications service", two-way voice service capable of being**
16 **originated and terminated within a local exchange service area regardless of the technology**
17 **used to provision voice service;**

18 (5) **"Owner or developer", the owner or developer of a business or residential**
19 **property, any condominium association or homeowner's association thereof, any person**
20 **or entity having ownership in or control over the property, or any person acting on behalf**
21 **of such owner or developer;**

22 (6) **"Real property", any single tenant or multitenant business or residential**
23 **property, subdivisions, condominiums, apartments, office building, or office parks.**

24 **2. No telecommunications company authorized by the commission to provide or offer**
25 **basic local or basic interexchange telecommunications service within the state of Missouri on**
26 **January 1, 1984, shall abandon such service until and unless it shall demonstrate, and the**
27 **commission finds, after notice and hearing, that such abandonment will not deprive any**
28 **customers of basic local or basic interexchange telecommunications service or access thereto and**
29 **is not otherwise contrary to the public interest.**

30 **3. A local exchange carrier obligated under this section to serve as the carrier of**
31 **last resort shall be relieved of such obligation and shall not be obligated to provide basic**
32 **local telecommunications service to any occupants of real property if the owner or**
33 **developer of the real property, or a person acting on behalf of the owner or developer of**
34 **real property, engages in any of the following acts:**

35 (1) **Permits an alternative service provider to install its facilities or equipment used**
36 **to provide local telecommunications service based on a condition of exclusion of the local**
37 **exchange carrier during the construction phase of the real property;**

38 (2) **Accepts or agrees to accept incentives or rewards from an alternative service**
39 **provider that are contingent upon the provision of any or all local telecommunications**
40 **services by one or more alternative service providers to the exclusion of the local exchange**
41 **carrier; or**

42 (3) **Collects from the occupants or residents of the real property mandatory charges**
43 **for the provision of any local telecommunications service provided by an alternative service**
44 **provider to the occupants or residents in any manner, including, but not limited to,**
45 **collection through rent, fees, or dues.**

46 **3. The local exchange carrier relieved of its carrier of last resort obligation to**
47 **provide basic local telecommunications service to the occupants of real property under**
48 **subsection 2 of this section shall notify the commission of that fact within one hundred**
49 **twenty days after receiving knowledge of the existence of such fact.**

50 **4. A local exchange carrier that is not automatically relieved of its carrier of last**
51 **resort obligation under subsections 2 and 3 of this section may seek a waiver of its carrier**
52 **of last resort obligation from the commission for good cause shown based on the facts and**
53 **circumstances of the provision of local telecommunications service or Internet access**
54 **service to a particular real property. Upon petition for such relief, notice shall be given by**
55 **the local exchange carrier at the same time to the relevant owner or developer. The**
56 **commission shall make a determination concerning the petition on or before ninety days**
57 **after such petition is filed.**

58 **5. If all conditions described in subsection 2, 3, or 4 of this section cease to exist at**
59 **the property and the owner or developer requests in writing that the local exchange carrier**
60 **make local telecommunications service available to occupants of the real property and**
61 **confirms in writing that all conditions described in subsection 2, 3, or 4 of this section have**
62 **ceased to exist at the property, the carrier of last resort obligation under this section shall**
63 **again apply to the local exchange carrier at the real property. The local exchange carrier**
64 **shall provide notice to the commission that it is assuming the carrier of last resort**
65 **obligation. The local exchange carrier may require that the owner or developer pay the**
66 **local exchange carrier in advance a reasonable fee to recover costs that exceed the costs**
67 **that would have been incurred to construct or acquire facilities to serve customers at the**
68 **real property initially. The commission may verify that the fee enables the local exchange**
69 **carrier to recover its costs that exceed the costs that would have been incurred to construct**
70 **or acquire facilities to serve customers at the real property initially, including, but not**
71 **limited to, amounts necessary to install or retrofit any facilities or equipment, to cut or**
72 **trench sidewalks and streets, and to restore roads, sidewalks, block walls, or landscapes**
73 **to original conditions. The local exchange carrier shall have a reasonable period of time**
74 **following the request from the owner or developer to make arrangements for local**
75 **telecommunications service availability. If a local exchange carrier is relieved of its carrier**
76 **of last resort obligation under subsection 2, 3, or 4 of this section, the owner or developer**
77 **shall notify all occupants and any subsequent owner of the specific real property of the**
78 **following:**

79 **(1) That the incumbent local exchange carrier does not have facilities installed to**
80 **serve the specific real property, and that such carrier has been relieved of its carrier of last**
81 **resort obligations; and**

82 **(2) The name of the person that will be providing local telecommunications service**
83 **to the real property, and the type of technology that will be used to provide such service.**
84

85 If any conditions described in subsection 2 or 4 of this section again exist at the real
86 property, the relief in subsection 2 or 4 of this section shall again apply.

87 6. When real property is located in a greenfield area, a carrier of last resort shall
88 not automatically be excused from its obligations under subsection 2 of this section unless
89 the alternative service provider possess or will possess at the time of commencement of
90 service the capability to provide local telecommunications service or the functional
91 equivalent of such service through any form of technology.

92 7. If an owner or developer of real property permits an alternative service provider
93 to install its facilities or equipment used to provide local telecommunications service to
94 such property based on a condition of exclusion of the local exchange carrier, the owner
95 or developer shall provide written notice to the purchaser of any such real property that
96 there is an exclusion of that local exchange carrier and that the alternative service provider
97 is the exclusive provider of service to such property.

98 8. An incumbent local exchange carrier shall have the right to require a payment
99 from an owner or developer in cases where the costs of extending facilities to serve a
100 multitenant business or residential property, including, but not limited to, apartments,
101 condominiums, subdivisions, office buildings, or office parks are not economically
102 reasonable. The terms and conditions applicable to such payments shall be specified in the
103 incumbent local exchange carrier's tariffs. An incumbent local exchange carrier shall not
104 be obligated to provide basic local exchange service or any other communications service
105 without payment specified in the incumbent local exchange carrier's tariff.

106 9. An incumbent local exchange carrier may meet its carrier of last resort
107 obligations under this section using any available alternative technology with the
108 functionalities to provide basic telecommunications services.

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