

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 495
95TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 23, 2009, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

1386S.05C

AN ACT

To repeal sections 190.308 and 392.460, RSMo, and to enact in lieu thereof three new sections relating to telecommunications, with a penalty provision.

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

Section A. Sections 190.308 and 392.460, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 190.308, 392.460,
3 and 392.600, to read as follows:

190.308. 1. In any county that has established an emergency telephone
2 service pursuant to sections 190.300 to 190.320, it shall be unlawful for any
3 person to misuse the emergency telephone service. For the purposes of this
4 section, "emergency" means any incident involving danger to life or property that
5 calls for an emergency response dispatch of police, fire, EMS or other public
6 safety organization, "misuse the emergency telephone service", includes, but is not
7 limited to, repeatedly calling the "911" for nonemergency situations causing
8 operators or equipment to be in use when emergency situations may need such
9 operators or equipment and "repeatedly" means three or more times within a
10 one-month period.

11 2. Any violation of this section is a class B misdemeanor.

12 **3. No political subdivision shall impose any fine or penalty on**
13 **the owner of a pay telephone or on the owner of any property upon**
14 **which a pay telephone is located for calls by another party to the**
15 **emergency telephone service made from the pay telephone. Any such**
16 **fine or penalty is hereby void.**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

3 (1) "Alternative service provider", any person or entity providing
4 local voice services, or any person or entity allowing another person or
5 entity to use its equipment or facilities to provide local voice services,
6 or any person or entity securing rights to select an alternative service
7 provider for a property owner or developer. Alternative service
8 provider shall not include an incumbent local exchange carrier
9 providing service within its commission-approved local exchange
10 service area;

11 (2) "Greenfield area", real property that requires entirely new
12 construction of local loops or local connectivity in addition to the
13 deployment of any necessary switching and other network equipment
14 to serve new real property developments;

15 (3) "Local voice service" or "local voice services", any two-way
16 voice service offered through any form of technology that is capable of
17 placing calls to or receiving calls from a provider of basic local
18 telecommunications services, including voice over Internet protocol
19 services;

20 (4) "Owner or developer", an entity that owns or develops a
21 business or residential property, any condominium association or
22 homeowner's association thereof, any person or entity having
23 ownership in or control over the property, or any person acting on
24 behalf of such owner or developer;

25 (5) "Real property", any single tenant or multitenant business or
26 residential property, subdivisions, condominiums, apartments, office
27 building, or office parks.

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

35 3. Notwithstanding other provisions of this chapter or chapter
36 386, RSMo, a local exchange carrier obligated under this section to
37 serve as the carrier of last resort in greenfield areas shall

38 automatically be relieved of such obligation and shall not be obligated
39 to provide basic local voice service or any telecommunications service
40 to any occupants of real property if the owner or developer of the real
41 property, or a person acting on behalf of the owner or developer of real
42 property, engages in any of the following acts:

43 (1) Permits an alternative service provider to install its facilities
44 or equipment used to provide local voice services based on a condition
45 of exclusion of the local exchange carrier during the construction
46 phase of the real property;

47 (2) Accepts or agrees to accept incentives or rewards from an
48 alternative service provider that are contingent upon the provision of
49 any or all local voice services by one or more alternative service
50 providers to the exclusion of the local exchange carrier; or

51 (3) Collects from the occupants or residents of the real property
52 mandatory charges for the provision of any local voice service provided
53 by an alternative service provider to the occupants or residents in any
54 manner, including, but not limited to, collection through rent, fees, or
55 dues.

56 4. The local exchange carrier relieved of its carrier of last resort
57 obligation to provide basic local telecommunications service to the
58 occupants of real property under subsection 3 of this section shall
59 notify the commission in writing of that fact within one hundred
60 twenty days after receiving knowledge of the existence of such fact.

61 5. A local exchange carrier that is not relieved of its carrier of
62 last resort obligation under subsections 2 and 3 of this section may seek
63 a waiver of its carrier of last resort obligation from the commission for
64 good cause shown based on the facts and circumstances of the
65 provision of local voice service or Internet access services or video
66 services to a particular real property. Upon petition for such relief,
67 notice shall be given by the local exchange carrier at the same time to
68 the relevant owner or developer. The commission shall make a
69 determination concerning the petition on or before ninety days after
70 such petition is filed, unless the commission determines that good
71 cause exists to delay the determination for an additional ninety days
72 and that such delay is not likely to have a materially adverse effect
73 upon consumers of telecommunications services.

74 6. If a local exchange carrier is relieved of its carrier of last

75 resort obligation under subsection 3 or 5 of this section, the owner or
76 developer shall notify all occupants and any subsequent owner of the
77 specific real property of the following:

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

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

84 7. If all conditions described in subsection 3 and the conditions
85 that form the basis for relief under subsection 5 of this section cease to
86 exist at the property, no company is providing local voice service there,
87 and the owner or developer requests in writing that the local exchange
88 carrier make local voice service available to occupants of the real
89 property and confirms in writing that all conditions described in
90 subsections 3 and 5 of this section have ceased to exist at the property,
91 the carrier of last resort obligation under this section shall again apply
92 to the local exchange carrier at the real property. The local exchange
93 carrier shall provide notice to the commission that it is assuming the
94 carrier of last resort obligation. The local exchange carrier may
95 require that the owner or developer pay the local exchange carrier in
96 advance a reasonable fee to recover costs that exceed the costs that
97 would have been incurred to construct or acquire facilities to serve
98 customers at the real property initially. The commission may verify
99 that the fee enables the local exchange carrier to recover its costs that
100 exceed the costs that would have been incurred to construct or acquire
101 facilities to serve customers at the real property initially, including,
102 but not limited to, amounts necessary to install or retrofit any facilities
103 or equipment, to cut or trench sidewalks and streets, and to restore
104 roads, sidewalks, block walls, or landscapes to original conditions. The
105 local exchange carrier shall have a reasonable period of time following
106 the request from the owner or developer to make arrangements for
107 local voice service availability.

108 If the conditions described in subsection 3 or the conditions that form
109 the basis for relief under subsection 5 of this section again exist at the
110 real property, the relief in subsection 3 or 5 of this section shall again
111 apply.

112 8. When real property is located in a greenfield area, a carrier
113 of last resort shall not automatically be excused from its obligations
114 under subsection 3 of this section unless the alternative service
115 provider possesses or will possess at the time of commencement of
116 service the capability to provide local voice service or the functional
117 equivalent of such service through any form of technology.

118 9. If an owner or developer of real property permits an
119 alternative service provider to install its facilities or equipment used
120 to provide local voice service to such property based on a condition of
121 exclusion of the local exchange carrier, the owner or developer shall
122 provide written notice to the purchaser of any such real property that
123 there is an exclusion of that local exchange carrier and that the
124 alternative service provider is the exclusive provider of service to such
125 property.

126 10. An incumbent local exchange carrier shall have the right to
127 require a payment from an owner or developer in cases where the costs
128 of extending facilities to serve a multitenant business or residential
129 property, including, but not limited to, apartments, condominiums,
130 subdivisions, office buildings, or office parks are not economically
131 reasonable. The terms and conditions applicable to such payments
132 shall be specified in the incumbent local exchange carrier's tariffs. An
133 incumbent local exchange carrier shall not be obligated to provide local
134 voice service or any other telecommunications service without payment
135 specified in the incumbent local exchange carrier's tariff.

136 11. Notwithstanding other provisions of this chapter or chapter
137 386, RSMo, an incumbent local exchange carrier may meet its carrier
138 of last resort obligations by providing local voice service using any
139 technology.

140 12. Any local exchange carrier relieved of its carrier of last
141 resort obligation in a particular area under subsection 3 or 5 of this
142 section shall not be deemed to have lost its general designation as
143 carrier of last resort for essential local telecommunications service
144 outside that area for purposes of subsection 5 of section 392.248.

145 13. When a local exchange carrier is relieved of the carrier of
146 last resort obligation to serve in a designated area, in no instance shall
147 the carrier of last resort obligation be transferred to any alternative
148 service provider or provider of local voice service, including

149 interconnected voice over Internet protocol service in that designated
150 service area.

392.600. 1. The general assembly finds and declares it to be
2 beneficial to Missouri consumers and the competitive market to change
3 historical public policy and bring more transparency to rates for
4 telecommunications services by reducing hidden subsidies within the
5 intrastate switched exchange access compensation system through the
6 reduction of switched exchange access rates paid from one company to
7 another to originate and terminate telephone calls.

8 2. As used in this section, "composite" shall mean, when referring
9 to intrastate or interstate switched exchange access rates, the sum of
10 all of the traffic sensitive and non-traffic sensitive tariffed rate
11 elements included in originating and terminating intrastate and
12 interstate switched exchange access service, including, but not limited
13 to, carrier common line, but excluding any subscriber line charges
14 approved by the Federal Communications Commission.

15 3. Originating and terminating intrastate switched exchange
16 access rates shall be reduced by all incumbent local exchange
17 telecommunications companies, except that the provisions of this
18 subsection shall not apply to any incumbent local exchange
19 telecommunications company regulated under section 392.240. Each
20 incumbent local exchange telecommunications company subject to this
21 subsection shall decrease its composite originating and terminating
22 intrastate switched exchange access rates each year by twenty percent
23 of the difference between its current composite intrastate switched
24 exchange access rate and its composite interstate switched exchange
25 access rate, such that by December 31, 2013, the composite intrastate
26 switched exchange access rate shall be equal to the composite
27 interstate switched exchange access rate. The first twenty percent
28 reduction shall occur by December 31, 2009, and each subsequent
29 twenty percent reduction shall occur by December thirty-first of each
30 subsequent year thereafter.

31 4. Beginning August 28, 2009, each incumbent local exchange
32 telecommunications company regulated under section 392.240 shall
33 have the option to reduce its composite intrastate switched exchange
34 access rates. Each year a company makes such an optional rate
35 reduction, it may file tariff revisions, effective concurrent with the rate

36 reduction, to increase its rates for basic local telecommunications
37 service by up to two dollars per month to balance the decrease in its
38 composite intrastate switched exchange access rate reduction. The
39 public service commission's review of such tariffs shall be limited to
40 verifying the rate increase does not recover more revenue than the
41 amount of the company's voluntary revenue reduction and the
42 commission shall not conduct an earnings review or a review of all
43 relevant factors pursuant to sections 392.230 or 392.240.

✓