

FIRST REGULAR SESSION

# SENATE BILL NO. 209

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time February 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1143S.011

## 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Section A. Section 392.460, RSMo, is repealed and one new section  
2 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  
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;

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

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, a local exchange carrier obligated under this section to serve as**  
37 **the carrier of last resort in greenfield areas shall automatically be**  
38 **relieved of such obligation and shall not be obligated to provide basic**  
39 **local voice service or any telecommunications service to any occupants**  
40 **of real property if the owner or developer of the real property, or a**  
41 **person acting on behalf of the owner or developer of real property,**  
42 **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 of this section and  
85 the conditions that form the basis for relief under subsection 5 of this  
86 section cease to exist at the property, no company is providing local  
87 voice service there, and the owner or developer requests in writing that  
88 the local exchange carrier make local voice service available to  
89 occupants of the real property and confirms in writing that all  
90 conditions described in subsections 3 and 5 of this section have ceased  
91 to exist at the property, the carrier of last resort obligation under this  
92 section shall again apply to the local exchange carrier at the real  
93 property. The local exchange carrier shall provide notice to the

94 commission that it is assuming the carrier of last resort obligation. The  
95 local exchange carrier may require that the owner or developer pay the  
96 local exchange carrier in advance a reasonable fee to recover costs that  
97 exceed the costs that would have been incurred to construct or acquire  
98 facilities to serve customers at the real property initially. The  
99 commission may verify that the fee enables the local exchange carrier  
100 to recover its costs that exceed the costs that would have been incurred  
101 to construct or acquire facilities to serve customers at the real property  
102 initially, including, but not limited to, amounts necessary to install or  
103 retrofit any facilities or equipment, to cut or trench sidewalks and  
104 streets, and to restore roads, sidewalks, block walls, or landscapes to  
105 original conditions. The local exchange carrier shall have a reasonable  
106 period of time following the request from the owner or developer to  
107 make arrangements for local voice service availability. If the  
108 conditions described in subsection 3 of this section or the conditions  
109 that form the basis for relief under subsection 5 of this section again  
110 exist at the real property, the relief in subsection 3 or 5 of this section  
111 shall again 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, a telecommunications company may meet its carrier of last resort  
138 obligations and its obligations to offer basic local or basic  
139 interexchange telecommunications service by providing local voice  
140 service using any technology.

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

146 13. When a local exchange carrier is relieved of the carrier of  
147 last resort obligation to serve in a designated area, in no instance shall  
148 the carrier of last resort obligation be transferred to any alternative  
149 service provider or provider of local voice service, including  
150 interconnected voice over internet protocol service in that designated  
151 service area.

152 14. Notwithstanding other provisions of this chapter or chapter  
153 386, any telecommunications company may, upon notice to the  
154 commission, elect to no longer be designated as a carrier of last resort  
155 for any telecommunications service within any county in this state  
156 having a charter form of government and having a population of eight  
157 hundred thousand or more inhabitants and within any city in this state  
158 having a population of at least two hundred-fifty thousand or more  
159 inhabitants. Upon such election, a telecommunications company shall  
160 not be required to provide or offer basic local or basic interexchange  
161 telecommunications service and may provide local voice service using  
162 any technology.

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