

FIRST REGULAR SESSION

SENATE BILL NO. 403

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time February 8, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1743S.01I

AN ACT

To repeal section 392.248, RSMo, and to enact in lieu thereof one new section relating to the use of universal service funds for lifeline service providers.

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

Section A. Section 392.248, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 392.248, to read as follows:

392.248. 1. In order to ensure just, reasonable, and affordable rates for
2 reasonably comparable essential local telecommunications services throughout the
3 state, there is hereby established the "Universal Service Board" which shall
4 consist of the members of the public service commission and the public counsel,
5 and which shall be incorporated as a not-for-profit, public benefit corporation in
6 the manner provided pursuant to chapter 355, except as otherwise provided in
7 this section. Consistent with rules adopted by the commission, the universal
8 service board shall create a universal service fund. The universal service board
9 shall supervise the management of the universal service fund. Funds deposited
10 in the universal service fund are not state funds. The commission shall adopt
11 rules governing the operations of the state universal service fund within three
12 months of the adoption of the rules adopted by the Federal Communication
13 Commission for the federal Universal Service Fund. Nothing in the rules adopted
14 by the commission shall be inconsistent with the support mechanisms established
15 for the federal Universal Service Fund, but the commission may adopt any
16 additional definitions and standards it believes are necessary to preserve and
17 advance universal service in the state of Missouri. The commission shall adopt
18 rules governing the operations of the universal service fund and the operation of
19 the universal service board. Meetings of the universal service board shall be open

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

20 meetings pursuant to chapter 610. The universal service board shall also retain
21 an independent neutral fund administrator who will be responsible for the
22 day-to-day operations of the universal service fund. The fund administrator shall
23 be a fiduciary with trust company powers. The universal service board shall
24 provide for periodic review of the fund administrator and the opportunity for
25 selection of an alternate fund administrator no less frequently than every four
26 years. The agency, individual, firm, partnership, or corporation that is selected
27 by the commission as the neutral administrator of the universal service fund may
28 neither contribute to nor receive disbursements from the universal service fund,
29 except as provided in subsection 2 of this section. The administrator may not
30 have any financial interest in a telecommunications company, as defined in
31 section 386.020. The commission shall cause the books and records of the
32 universal service fund administrator to be independently audited on an annual
33 basis. The independent audit shall be paid for from funds held in the universal
34 service fund.

35 2. The commission shall adopt and enforce rules to be implemented by the
36 universal service board, governing the system of funding and disbursing funds
37 from the universal service fund in a manner that does not grant a preference or
38 competitive advantage to any telecommunications company or subject a
39 telecommunications company to prejudice or disadvantage. Funds from the
40 universal service fund shall only be used:

41 (1) To ensure the provision of reasonably comparable essential local
42 telecommunications service, as that definition may be updated by the commission
43 by rule, throughout the state including high-cost areas, at just, reasonable and
44 affordable rates;

45 (2) To assist low-income customers and disabled customers in obtaining
46 affordable essential telecommunications services; and

47 (3) To pay the reasonable, audited costs of administering the universal
48 service fund.

49 3. The universal service fund shall be funded through assessments on all
50 telecommunications companies in the state which shall be based on Missouri
51 jurisdictional telecommunications services revenue and other nondiscriminatory
52 factors as determined by the commission. Such assessments shall be paid to the
53 universal service board. A telecommunications company regulated under section
54 392.245 may, upon providing written notice to the commission, increase the
55 maximum allowable prices for any or all of its telecommunications services except

56 residential basic local telecommunications services above those maximum
57 allowable prices otherwise established in section 392.245 by an amount not to
58 exceed the amount required to recover fifty percent of its assessment under this
59 section. Any increases in the maximum allowable prices for exchange access and
60 basic local telecommunications services other than residential basic local
61 telecommunications services shall be calculated to recover revenues in the same
62 percentage as the revenues from such services bear to such company's total
63 revenues for nonbasic, exchange access and basic local other than residential
64 telecommunications services for the preceding twelve months. A
65 telecommunications company regulated under section 392.245 may seek to have
66 the remaining fifty percent of its assessment under this section included in its
67 funding requirements under this section. The commission shall establish the
68 level of the universal service fund funding requirement necessary to fund the
69 purposes set forth in subsection 2 of this section. The universal service fund
70 funding requirements shall be paid by the universal service board in accordance
71 with procedures approved by the commission. A telecommunications company
72 that fails to pay an assessment that is due and payable pursuant to this section
73 may have its certificate revoked or be required to pay appropriate penalties under
74 chapter 386 after notice and hearing.

75 4. **(1)** To facilitate provision of essential local telecommunications service,
76 the commission shall determine whether and to what extent any
77 telecommunications company in the state providing essential local
78 telecommunications service in any part of the state, shall be eligible to receive
79 funding. Eligibility shall be determined as follows:

80 **[(1)] (a)** A telecommunications company's eligibility to receive support
81 for high-cost areas from the universal service fund shall be conditioned upon:

82 **[(a)] a.** The telecommunications company offering essential local
83 telecommunications service, using its own facilities, in whole or in part,
84 throughout an entire high-cost area and having carrier of last resort obligations
85 in that high-cost area; and

86 **[(b)] b.** The telecommunications company charging a rate not in excess
87 of that set by the commission for essential services in a particular geographic
88 area; and

89 **[(2)] (b)** A telecommunications company's eligibility to receive support
90 to assist low-income customers and disabled customers shall be conditioned on
91 the company's providing essential local telecommunications services to such

92 customers pursuant to the discounted rate established by the commission for such
93 customers. Distributions from the universal service fund shall be made by the
94 universal service board in accordance with rules approved by the commission;

95 **(2) Notwithstanding subdivision (1) of this section, a wireless**
96 **telecommunications provider offering lifeline service shall be eligible**
97 **to receive distributions from the universal service fund created under**
98 **this section to offer such lifeline service, whether or not such lifeline**
99 **service provider is a facilities-based or nonfacilities-based provider.**

100 5. In local exchange areas subject to competition for essential local
101 telecommunications service, the incumbent local exchange telecommunications
102 company shall be designated as a carrier of last resort for essential local
103 telecommunications service. The commission may, consistent with section
104 214(e)(2) of the federal Telecommunications Act of 1996, after notice and hearing,
105 designate one or more additional carriers of last resort for any exchange or other
106 area designated by the commission upon a finding that such designation is in the
107 public interest. In exchanges where the commission has designated more than
108 one carrier of last resort, the commission may permit a local exchange
109 telecommunications company to relinquish such obligation, consistent with
110 section 214(e)(4) of the federal Telecommunications Act of 1996, upon a finding
111 that at least one carrier of last resort will continue to serve that area. In local
112 exchange areas not subject to competition for essential local telecommunications
113 service, the incumbent local exchange telecommunications company shall continue
114 to act as the carrier of last resort.

115 6. In determining whether, and to what extent, universal service fund
116 funding is required to facilitate provision of essential local telecommunications
117 service, the commission shall:

118 (1) Determine the definition of essential local telecommunications service
119 no later than three months after the adoption of the essential local exchange
120 telecommunications service definition for the federal Universal Service Fund, and
121 consider revision of the definition on a periodic basis not to exceed every three
122 years thereafter, with the goal that every citizen of this state shall have access
123 to a wider range of services, that are reasonably comparable between urban and
124 rural areas, at rates that are reasonably comparable between urban and rural
125 areas;

126 (2) Upon request from an eligible telecommunications company for
127 assistance from the universal service fund for a high-cost area, determine if the

128 high-cost area qualifies for assistance from the universal service fund. The
129 commission shall review its determination that a high-cost area qualifies for
130 assistance from the universal service fund no less frequently than once every five
131 years;

132 (3) Determine for each requesting, eligible local exchange
133 telecommunications company, by high-cost area, the costs of providing essential
134 local telecommunications services in those high-cost areas and establish support
135 payments necessary to such companies to ensure just, reasonable and affordable
136 rates for essential telecommunications service. The commission shall review such
137 support payments no less frequently than once every five years; provided,
138 however, that if the commission adopts a different definition of essential local
139 telecommunications service, pursuant to subdivision (1) of this subsection, then
140 the commission shall review and adjust accordingly the previously authorized
141 support payments in order to ensure just, reasonable and affordable rates for
142 essential telecommunications service, as revised by commission rule. In
143 determining and reviewing such support payments, the commission shall ensure
144 that no telecommunications company receives more or less support than
145 necessary to further the purposes established in subsection 2 of this section;

146 (4) Establish a standard to determine whether and to what extent
147 particular end-user customers, without regard to location within the state, may
148 be eligible for assistance in paying for essential local telecommunications service.

149 7. The commission shall arrange for the time and place for the initial
150 organizational meeting of the universal service board.

151 8. The universal service board shall submit to the commission a plan of
152 operation. After notice and hearing, the commission shall approve the plan of
153 operation, provided that it does not grant a preference or competitive advantage
154 to any telecommunications company or subject a telecommunications company to
155 prejudice or disadvantage. In its plan, the universal service board shall establish
156 procedures for the handling and accounting of assets and establish procedures for
157 the collection of assessments from all telecommunications companies to provide
158 for universal service payments and for administrative expenses.

159 9. The universal service board shall have authority to:

160 (1) Enter into contracts as are necessary or proper to carry out the
161 provisions of this section; and

162 (2) Sue or be sued, including taking any legal actions necessary or proper
163 for recovery of any assessments.

164 10. No member of the universal service board shall be civilly liable, either
165 jointly or separately, as a result of any act, omission or decision in performance
166 of the member's duties as specifically required by this section. Such immunity
167 shall not attach for any intentional or reckless act affecting the property or rights
168 of any person.

169 11. Nothing in this section shall require the commission, the universal
170 service board, the universal service fund administrator, or any other person or
171 agency to take any actions that are inconsistent with federal statutes,
172 administrative rules, or court decisions concerning provision of essential local
173 telecommunications service.

174 12. The commission and the universal service board may do all things
175 necessary and convenient to implement and administer the universal service
176 fund.

177 13. In the event of a Federal Communications Commission order, rule or
178 policy announced no later than December 31, 1997, pursuant to section 254(a)(2)
179 of the federal Telecommunications Act of 1996, the effect of which is to change the
180 federal Universal Service Fund revenues of an incumbent local exchange
181 telecommunications company, the commission shall either increase the maximum
182 allowable prices for basic local telecommunications service or increase the
183 company's recovery from the state universal service fund or a combination thereof
184 to replace the reasonably projected change in revenues. The commission shall
185 review the continuing need for such revenues in its periodic reviews pursuant to
186 subdivision (3) of subsection 6 of this section.

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