

278.5435 Modification of price regulation plan -- Permitted and prohibited actions -- Jurisdiction of commission -- Exemptions.

- (1) Notwithstanding any other provision of law, a telephone utility operating under a price regulation plan pursuant to KRS 278.543 may, at any time after the expiration of the applicable rate cap period set forth in that section, elect to operate under the modifications to that plan contained in this section. The election of this modification by the utility shall become effective upon the filing of a notice with the commission. The notice shall identify all exchanges served by the modifying utility which, as of January 1, 2015, contained fifteen thousand (15,000) or more housing units based on United States Census data current as of January 1, 2015.
- (2) As used in this section:
 - (a) "Basic local exchange service" has the same meaning as in KRS 278.541;
 - (b) "Exchange" means a geographical area established by a telephone utility for the administration of telephone service. An exchange may embrace a city, town, or village and its environs or a portion thereof, and may consist of one (1) or more central offices together with the associated plant used in furnishing communication services in that area;
 - (c) "IP-enabled service," as used in the context of subsection (4)(c) of this section, means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol that enables an end user to send or receive voice communication, either separately or in conjunction with data communication, video communication, or both, in Internet protocol format, or any successor format;
 - (d) "Modifying utility" means a utility that makes an election to adopt the modified price regulation plan set out in this section; and
 - (e) "Voice service" means a retail service provided through any technology or service arrangement that includes the applicable functionalities described in 47 C.F.R. sec. 54.101(a).
- (3) In exchanges with fifteen thousand (15,000) or more housing units as of January 1, 2015, based on United States Census data current as of January 1, 2015, and after September 1, 2017, in all exchanges:
 - (a) The commission shall not impose any requirements or otherwise regulate the terms, conditions, rates, or availability of any retail service of the modifying utility; and
 - (b) For exchanges with fifteen thousand (15,000) or more housing units, the tariffs of a modifying utility which are in effect on June 24, 2015, shall remain binding until such tariffs are withdrawn by the utility. For all exchanges, the tariffs of a modifying utility which are in effect on September 1, 2017, shall remain binding until they are withdrawn by the utility.
- (4) (a) The provisions of this subsection shall apply until September 1, 2017, to all areas that are not described in subsection (3) of this section and in which the modifying utility is operating as an incumbent local exchange carrier, as defined in 47 U.S.C. sec. 251(h), as of June 24, 2015.

- (b) In response to a request for service at a location to which the modifying utility or any predecessor in interest has not installed landline facilities necessary to provide basic local exchange service, the modifying utility shall offer voice service either directly or through an affiliate. The modifying utility is not obligated to offer basic local exchange service at the location. The commission shall not impose any requirements or otherwise regulate the terms, conditions, rates, or availability of the voice service.
- (c)
 - 1. In response to all other requests for service, the modifying utility may offer the requesting customer an IP-enabled service or a wireless service either directly or through an affiliate.
 - 2. If the requesting customer does not order an IP-enabled service or a wireless service, the modifying utility, upon request by the customer, shall provide basic local exchange service at that location. The commission retains the jurisdiction to enforce this obligation.
 - 3. If the requesting customer orders an IP-enabled service or a wireless service, the modifying utility shall notify the customer in writing that:
 - a. It is providing service using an IP-enabled service or a wireless service provided by the modifying utility or an affiliate; and
 - b. The customer has sixty (60) days from service initiation to notify the modifying utility in writing that the customer no longer wants the service.
 - 4. If the customer gives written notice within sixty (60) days that the service is no longer wanted, the modifying utility, upon request by the customer, shall provide basic local exchange service at that location. The commission retains the jurisdiction to enforce this obligation.
 - 5. If the customer does not give written notice that the service is no longer wanted within sixty (60) days, the modifying utility shall offer voice service, either directly or through an affiliate, at the requested location. The modifying utility shall not be obligated to offer basic local exchange service at that location. The commission shall not impose any requirements or otherwise regulate the terms, conditions, rates, or availability of the voice service.
- (5) Nothing in this section:
 - (a) Shall affect the obligations of a modifying utility under federal law, including without limitation any obligation to maintain existing voice service in compliance with rules and orders of the Federal Communications Commission; or
 - (b) Diminishes or expands the commission's jurisdiction over wholesale rights, duties, and obligations of carriers or over complaints regarding anti-competitive practices under federal and state law, including subsequent rules and orders of the Federal Communications Commission that address carrier-to-carrier issues in and applicable to this state. Unless otherwise directed by federal law or regulation, carrier-to-carrier

complaints within the commission's jurisdiction shall be resolved by final commission order within one hundred eighty (180) days of the filing of the complaint.

Effective: June 29, 2017

History: Amended 2017 Ky. Acts ch. 43, sec. 1, effective June 29, 2017. -- Created 2015 Ky. Acts ch. 2, sec. 1, effective June 24, 2015.