

CHAPTER 101 (HB 477)

AN ACT relating to the provision of telecommunication services by municipalities and municipal utilities.

WHEREAS, the legislature finds and determines that:

(1) The United States Congress has passed sweeping legislation, known as the Telecommunications Act of 1996, that has opened the local exchange telecommunications market to competition;

(2) The Act requires, among other things, that incumbent local exchange carriers negotiate interconnection agreements with new competitive carriers covering the resale of retail services, the purchase of network facilities, and the interconnection of facilities;

(3) States have authority under the Act to arbitrate and approve interconnection agreements between carriers and to create a universal service fund supported by all competing carriers to advance and support universal service;

(4) The Kentucky Public Service Commission is the administrative agency created by the legislature to regulate telecommunications services in Kentucky;

(5) Municipalities and municipal utilities have begun to enter into the field of providing telecommunications services to the public for compensation;

(6) The provision of services by municipalities and municipal utilities creates a new participant into the increasingly competitive but regulated industry;

(7) Any competitive entry into the telecommunications market by municipalities or municipal utilities, which may create benefits for the citizens of the Commonwealth, correspondingly creates risks for existing providers of telecommunications services; and

(8) A statutory framework for the regulation of entry into the telecommunications market and provision of telecommunications services by municipalities and municipal utilities is in the best interest of the citizens of the Commonwealth;

NOW THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 96 IS CREATED TO READ AS FOLLOWS:

Any legislative body of any city of the first through the fifth class may provide telecommunications service. Any city that owns, operates or controls, either directly or indirectly, a municipal utility that provides telecommunications services as defined in subsection (3)(e) of Section 5 of this Act shall, as to telephone service solely, be subject to the provisions of KRS Chapter 278 in the same manner as other nonmunicipal providers of telephone services.

Section 2. KRS 96.170 is amended to read as follows:

The legislative body of any city of the third class may, by ordinance, provide the city and its inhabitants with water, light, power, **and** heat ~~and telephone service~~, by contract or by works of its own, located either within or beyond the boundaries of the city; make regulations for the management thereof, and fix and regulate the prices to private consumers and customers.

Telecommunication service may be provided by any legislative body of any city of the third class by contract or by works of its own, except that any city of the third class that establishes municipal telephone service shall, for purposes of that service solely, be deemed a utility under KRS 278.010 and shall be regulated, as to telephone service, by the Public Service Commission.

Section 3. KRS 96.190 is amended to read as follows:

- (1) The legislative body of any city of the fourth class may provide the city and all persons in the city with water, gas, electric power, light, ***and*** heat, ~~telephone and telegraph service,~~ by contract with any person or by works and facilities owned or leased by the city and located within or beyond the city boundaries. ***Telecommunication service may be provided by any legislative body of any city of the fourth class by contract or by works of its own, except that any city of the fourth class that establishes municipal telephone service shall, for that service solely, be deemed a utility under KRS 278.010 and shall be regulated as to the telephone service, by the Public Service Commission.***
- (2) In all cases where the person furnishing the services is operating under a charter or franchise granted by the General Assembly prior to the adoption of the present Constitution of Kentucky the city legislative body may make and enforce rules and regulations for the furnishing and sale of such services, fix and regulate the quality, character and standards of such services, and fix and regulate the rates charged consumers for such services.

Section 4. KRS 96.520 is amended to read as follows:

- (1) Any city of the second, third, fourth, fifth, or sixth class may purchase, establish, erect, maintain, and operate electric light, heat, and power plants, with extensions and necessary appurtenances, within or without the corporate limits of the city, for the purpose of supplying the city and its inhabitants with electric light, heat, power, and telecommunications. ***Any city-owned utility created under this section that provides telecommunications services shall be regulated as to that service by KRS Chapter 278. For the*** ~~and, for this~~ ***purpose of providing electric light, heat, power, and telephone services, a city of the second, third, fourth, fifth, or sixth class*** may enter into and fulfill the terms of an interconnection agreement with any electric or combination electric or gas utility whose rates and service are regulated by the Public Service Commission of Kentucky (or, if not so regulated, operating and having customers only outside of Kentucky), or an affiliate entirely owned by or under complete common ownership with an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky. ***Any city of the second, third, fourth, fifth, or sixth class*** ~~and~~ may establish, erect, maintain, and operate plants, individually or jointly with any of these utilities or utility affiliate. In the case of any joint action, a city and utility or utility affiliate may provide by contract for their respective responsibilities, for operation and maintenance and for the allocation of expenses, revenues, and power. If in the accomplishment of this purpose a city at any time has capacity or energy surplus to the immediate needs of the city and its inhabitants, the surplus, if not disposed of for consumption outside this state, may be disposed of only to an electric or combination electric and gas utility whose rates and service are regulated by the Public Service Commission of Kentucky, or to an affiliate entirely owned by or under complete common ownership with such a utility.
- (2) The city shall proceed in the same manner and be governed by the same conditions as are set forth in KRS 96.360 to 96.510 for the acquisition and operation of a water system, with the following exceptions:

- (a) A petition calling for an election on the proposition of purchasing an existing plant shall be signed by at least two hundred (200) qualified voters of the city, rather than by twenty-five percent (25%) of the qualified voters of the city who voted at the last preceding regular election.
 - (b) Notwithstanding any other laws, bonds may be issued bearing interest at a rate or rates and may be sold on a basis to yield interest at a rate or rates as may be determined upon the sale of the bonds.
 - (c) Bonds of an issue, or bonds of two (2) or more issues consolidated for the purposes of sale, which equal or exceed \$10,000,000 in the aggregate principal amount may be sold at public or private sale without compliance with KRS 424.360.
- (3) This section constitutes a method for the acquisition of an electric light, heat, and power plant by any city of the second, third, fourth, fifth, or sixth class in addition or as an alternate to any other method authorized by statute, provided that the city was operating an electric plant on June 1, 1942, and has not elected to operate under KRS 96.550 to 96.900. No proceedings shall be required for the acquisition of any electric light, heat, or power plant or the issuance of bonds under this section except the proceedings required by KRS 96.360 to 96.510.

Section 5. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except, *for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection*, a city, who owns, controls, ~~or~~ operates, or manages any facility used or to be used for or in connection with:
 - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
 - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
 - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
 - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
 - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
 - (f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district;

- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
- (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
- (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
- (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
- (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
- (9) "Generation and transmission cooperative", or "G&T", means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
- (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility;
- (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15) "Commission" means the Public Service Commission of Kentucky;
- (16) "Commissioner" means one (1) of the members of the commission; and
- (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand.

Approved March 14, 2000