

AN ACT relating to telecommunications.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(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 contain fifteen thousand (15,000) or more housing units based on United States Census data current as of the date of modification.

(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; and

(d) "Modifying utility" means a utility that makes an election to adopt the modified price regulation plan set out in this section;

- (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 based on United States Census data current as of the date of modification:
- (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) The tariffs of a modifying utility which are in effect on the effective date of this Act shall remain binding until such tariffs are withdrawn by the utility.
- (4) (a) The provisions of this subsection shall apply 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 the effective date of this Act.
- (b) In response to a request for service at a location to which the modifying utility has not installed landline facilities 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 thirty (30) 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 thirty (30) 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 thirty (30) 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; 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.

➔Section 2. KRS 278.54611 is amended to read as follows:

- (1) The provision of commercial mobile radio services shall be market-based and not subject to Public Service Commission regulation. Notwithstanding any other provision of law to the contrary, except as provided in subsections (2) to (5) of this section, the commission shall not impose any requirement upon a commercial mobile radio services provider with respect to the following:
 - (a) The availability of facilities or equipment used to provide commercial mobile radio services; or
 - (b) The rates, terms, and conditions for, or entry into, the provision of commercial mobile radio service.
- (2) The provisions of this section do not limit or modify the commission's authority to arbitrate and enforce interconnection agreements.
- (3) The commission **may**~~[shall retain jurisdiction to]~~ assist in the resolution of consumer complaints.
- (4) ~~[The commission may develop standards that are generally applicable to companies that are designated and operate as eligible telecommunications carriers, pursuant to 47 U.S.C. sec. 214(e), or as carriers of last resort.]~~The commission may exercise its authority to ensure that **companies that are designated and operate as eligible telecommunications carriers under 47 U.S.C. sec. 214(e)**~~[these carriers]~~, including commercial mobile radio service providers that receive eligible telecommunications carrier status, comply with **the Federal Communications Commission's rules in 47 C.F.R. pt. 54, which govern eligible telecommunications carriers, to the extent consistent with federal and state law**~~[those standards]~~.
- (5) The commission shall retain jurisdiction over cellular towers pursuant to KRS 278.665.

➔Section 3. KRS 278.5462 is amended to read as follows:

- (1) The provision of broadband services shall be market-based and not subject to state administrative regulation. Notwithstanding any other provision of law to the contrary except as provided in subsections (3) and (4) of this section, no agency of the state shall impose or implement any requirement upon a broadband service provider with respect to the following:
 - (a) The availability of facilities or equipment used to provide broadband services;
or
 - (b) The rates, terms or conditions for, or entry into, the provision of broadband service.
- (2) Any requirement imposed upon broadband service in existence as of July 15, 2004, is hereby voided upon enactment of KRS 278.546 to 278.5462. The provisions of this section do not limit or modify the duties of a local exchange carrier or an affiliate of a local exchange carrier to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements, including provisions related to remote terminals and central office facilities, to the extent required under 47 U.S.C. secs. 251 and 252, and any regulations issued by the Federal Communications Commission at rates determined in accordance with the standards established by the Federal Communications Commission pursuant to 47 C.F.R. secs. 51.503 to 51.513, inclusive of any successor regulations. Nothing contained in KRS 278.546 to 278.5462 shall be construed to preclude the application of access or other lawful rates and charges to broadband providers. Nothing contained in KRS 278.546 to 278.5462 shall preclude, with respect to broadband services, access for those service providers that use or make use of the publicly switched network.
- (3) The commission may assist in the resolution of~~shall have jurisdiction to investigate and resolve~~ consumer service complaints.

- (4) No telephone utility shall refuse to provide wholesale digital subscriber line service to competing local exchange carriers on the same terms and conditions, filed in tariff with the Federal Communications Commission, that it provides to Internet service providers.