

1 AN ACT relating to telecommunications.

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

3 ➔Section 1. KRS 278.5462 is amended to read as follows:

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

1 (3) The commission may assist in the resolution of consumer service complaints.

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

6 **(5) Records of the following information shall be retained by every broadband**
7 **service provider for at least one hundred eighty (180) consecutive days:**

8 **(a) Electronic mail address;**

9 **(b) Internet username;**

10 **(c) Internet protocol address;**

11 **(d) Name of account holder;**

12 **(e) Billing and service address;**

13 **(f) Telephone number;**

14 **(g) Account status;**

15 **(h) Method of access to the Internet; and**

16 **(i) Automatic number identification records if access is by modem.**

17 ➔Section 2. KRS 500.120 is amended to read as follows:

18 (1) (a) In any investigation relating to an offense involving KRS 510.155,
19 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340,
20 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an
21 Internet service account **or cellular phone account** has been used in the
22 exploitation or attempted exploitation of children, or in any investigation of a
23 violation of KRS 17.546, 508.140, 508.150, 525.070, or 525.080 where there
24 is reasonable cause to believe that an Internet service account has been used in
25 the commission of the offense, the Attorney General may issue in writing and
26 cause to be served a subpoena requiring the production and testimony
27 described in subsection (2) of this section.

1 (b) In any investigation relating to an offense involving KRS 510.155,
2 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340,
3 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an
4 Internet service account or cellular phone account has been used in the
5 exploitation or attempted exploitation of children, the commissioner of the
6 Department of Kentucky State Police may issue in writing and cause to be
7 served a subpoena requiring the production and testimony described in
8 subsection (2) of this section.

9 (2) Except as provided in subsection (3) of this section, a subpoena issued under this
10 section may require the production of any records or other documentation relevant
11 to the investigation including:

- 12 (a) Electronic mail address;
- 13 (b) Internet username;
- 14 (c) Internet protocol address;
- 15 (d) Name of account holder;
- 16 (e) Billing and service address;
- 17 (f) Telephone number;
- 18 (g) Account status;
- 19 (h) Method of access to the Internet; and
- 20 (i) Automatic number identification records if access is by modem.

21 (3) The provider of electronic communication service or remote computing service
22 shall not disclose the following pursuant to a subpoena issued under this section but
23 shall disclose the information in obedience to a warrant:

- 24 (a) In-transit electronic communications;
- 25 (b) Account memberships related to Internet groups, newsgroups, mailing lists or
26 specific areas of interest;
- 27 (c) Account passwords; and

- 1 (d) Account content including:
- 2 1. Electronic mail in any form;
- 3 2. Address books, contacts, or buddy lists;
- 4 3. Financial records;
- 5 4. Internet proxy content or Web surfing history; and
- 6 5. Files or other digital documents stored with the account or pursuant to
- 7 use of the account.
- 8 (4) At any time before the return date specified on the subpoena, the person summoned
- 9 may, in the District Court in which the person resides or does business, petition for
- 10 an order modifying or setting aside the subpoena, or a prohibition of disclosure by a
- 11 court.
- 12 (5) A subpoena under this section shall describe the objects required to be produced
- 13 and shall prescribe a return date with a reasonable period of time within which the
- 14 objects can be assembled and made available.
- 15 (6) If no case or proceeding arises from the production of records or other
- 16 documentation pursuant to this section within a reasonable time after those records
- 17 or documentation is produced, the Attorney General shall either destroy the records
- 18 and documentation or return them to the person who produced them.
- 19 (7) A subpoena issued under this section may be served by any person who is at least
- 20 eighteen (18) years of age and who is designated in the subpoena to serve it. Service
- 21 upon a natural person may be made by personal delivery of the subpoena to him.
- 22 Service may be made upon a corporation or partnership or other unincorporated
- 23 association which is subject to suit under its common name, by delivering the
- 24 subpoena to an officer, to a managing or general agent, or to any other agent
- 25 authorized by appointment or by law to receive service of process. The affidavit of
- 26 the person serving the subpoena together with a true copy thereof shall be proof of
- 27 service.

- 1 (8) Except as provided in this section any information, records or data reported or
- 2 obtained pursuant to subpoena under this section shall remain confidential and shall
- 3 not be further disclosed unless in connection with a criminal case related to the
- 4 subpoenaed materials.