

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 495

95TH GENERAL ASSEMBLY

1386L.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 190.308 and 392.460, RSMo, and to enact in lieu thereof two new sections relating to telecommunications, with a penalty provision.

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

Section A. Sections 190.308 and 392.460, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 190.308 and 392.460, to read as follows:

190.308. 1. In any county that has established an emergency telephone service pursuant
2 to sections 190.300 to 190.320, it shall be unlawful for any person to misuse the emergency
3 telephone service. For the purposes of this section, "emergency" means any incident involving
4 danger to life or property that calls for an emergency response dispatch of police, fire, EMS or
5 other public safety organization, "misuse the emergency telephone service", includes, but is not
6 limited to, repeatedly calling the "911" for nonemergency situations causing operators or
7 equipment to be in use when emergency situations may need such operators or equipment and
8 "repeatedly" means three or more times within a one-month period.

9 2. Any violation of this section is a class B misdemeanor.

10 3. **No political subdivision shall impose any fine or penalty on the owner of a pay**
11 **telephone or on the owner of any property upon which a pay telephone is located for calls**
12 **by another party to the emergency telephone service made from the pay telephone. Any**
13 **such fine or penalty is hereby void.**

392.460. 1. As used in this section, the following words shall mean:

2 (1) **"Alternative service provider", any person or entity providing local voice**
3 **services, or any person or entity allowing another person or entity to use its equipment or**
4 **facilities to provide local voice services, or any person or entity securing rights to select an**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 **alternative service provider for a property owner or developer. Alternative service**
6 **provider shall not include an incumbent local exchange carrier providing service within**
7 **its commission-approved local exchange service area;**

8 (2) **"Greenfield area", real property that requires entirely new construction of local**
9 **loops or local connectivity in addition to the deployment of any necessary switching and**
10 **other network equipment to serve new real property developments;**

11 (3) **"Local voice service" or "local voice services", any two-way voice service**
12 **offered through any form of technology that is capable of placing calls to or receiving calls**
13 **from a provider of basic local telecommunications services, including voice over internet**
14 **protocol services;**

15 (4) **"Owner or developer", an entity that owns or develops a business or residential**
16 **property, any condominium association or homeowner's association thereof, any person**
17 **or entity having ownership in or control over the property, or any person acting on behalf**
18 **of such owner or developer;**

19 (5) **"Real property", any single tenant or multitenant business or residential**
20 **property, subdivisions, condominiums, apartments, office building, or office parks.**

21 **2. No telecommunications company authorized by the commission to provide or offer**
22 **basic local or basic interexchange telecommunications service within the state of Missouri on**
23 **January 1, 1984, shall abandon such service until and unless it shall demonstrate, and the**
24 **commission finds, after notice and hearing, that such abandonment will not deprive any**
25 **customers of basic local or basic interexchange telecommunications service or [access thereto]**
26 **access to local voice service and is not otherwise contrary to the public interest.**

27 **3. Notwithstanding other provisions of this chapter or chapter 386, RSMo, a local**
28 **exchange carrier obligated under this section to serve as the carrier of last resort in**
29 **greenfield areas shall automatically be relieved of such obligation and shall not be**
30 **obligated to provide basic local voice service or any telecommunications service to any**
31 **occupants of real property if the owner or developer of the real property, or a person**
32 **acting on behalf of the owner or developer of real property, engages in any of the following**
33 **acts:**

34 (1) **Permits an alternative service provider to install its facilities or equipment used**
35 **to provide local voice services based on a condition of exclusion of the local exchange**
36 **carrier during the construction phase of the real property;**

37 (2) **Accepts or agrees to accept incentives or rewards from an alternative service**
38 **provider that are contingent upon the provision of any or all local voice services by one or**
39 **more alternative service providers to the exclusion of the local exchange carrier; or**

40 **(3) Collects from the occupants or residents of the real property mandatory charges**
41 **for the provision of any local voice service provided by an alternative service provider to**
42 **the occupants or residents in any manner, including, but not limited to, collection through**
43 **rent, fees, or dues.**

44 **4. The local exchange carrier relieved of its carrier of last resort obligation to**
45 **provide basic local telecommunications service to the occupants of real property under**
46 **subsection 3 of this section shall notify the commission in writing of that fact within one**
47 **hundred twenty days after receiving knowledge of the existence of such fact.**

48 **5. A local exchange carrier that is not relieved of its carrier of last resort obligation**
49 **under subsections 2 and 3 of this section may seek a waiver of its carrier of last resort**
50 **obligation from the commission for good cause shown based on the facts and circumstances**
51 **of the provision of local voice service or Internet access services or video services to a**
52 **particular real property. Upon petition for such relief, notice shall be given by the local**
53 **exchange carrier at the same time to the relevant owner or developer. The commission**
54 **shall make a determination concerning the petition on or before ninety days after such**
55 **petition is filed, unless the commission determines that good cause exists to delay the**
56 **determination for an additional ninety days and that such delay is not likely to have a**
57 **materially adverse effect upon consumers of telecommunications services.**

58 **6. If a local exchange carrier is relieved of its carrier of last resort obligation under**
59 **subsection 3 or 5 of this section, the owner or developer shall notify all occupants and any**
60 **subsequent owner of the specific real property of the following:**

61 **(1) That the incumbent local exchange carrier does not have facilities installed to**
62 **serve the specific real property, and that such carrier has been relieved of its carrier of last**
63 **resort obligations; and**

64 **(2) The name of the person that will be providing local telecommunications service**
65 **to the real property, and the type of technology that will be used to provide such service.**

66 **7. If all conditions described in subsection 3 and the conditions that form the basis**
67 **for relief under subsection 5 of this section cease to exist at the property, no company is**
68 **providing local voice service there, and the owner or developer requests in writing that the**
69 **local exchange carrier make local voice service available to occupants of the real property**
70 **and confirms in writing that all conditions described in subsections 3 and 5 of this section**
71 **have ceased to exist at the property, the carrier of last resort obligation under this section**
72 **shall again apply to the local exchange carrier at the real property. The local exchange**
73 **carrier shall provide notice to the commission that it is assuming the carrier of last resort**
74 **obligation. The local exchange carrier may require that the owner or developer pay the**
75 **local exchange carrier in advance a reasonable fee to recover costs that exceed the costs**

76 that would have been incurred to construct or acquire facilities to serve customers at the
77 real property initially. The commission may verify that the fee enables the local exchange
78 carrier to recover its costs that exceed the costs that would have been incurred to construct
79 or acquire facilities to serve customers at the real property initially, including, but not
80 limited to, amounts necessary to install or retrofit any facilities or equipment, to cut or
81 trench sidewalks and streets, and to restore roads, sidewalks, block walls, or landscapes
82 to original conditions. The local exchange carrier shall have a reasonable period of time
83 following the request from the owner or developer to make arrangements for local voice
84 service availability.

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86 If the conditions described in subsection 3 or the conditions that form the basis for relief
87 under subsection 5 of this section again exist at the real property, the relief in subsection
88 3 or 5 of this section shall again apply.

89 8. When real property is located in a greenfield area, a carrier of last resort shall
90 not automatically be excused from its obligations under subsection 3 of this section unless
91 the alternative service provider possesses or will possess at the time of commencement of
92 service the capability to provide local voice service or the functional equivalent of such
93 service through any form of technology.

94 9. If an owner or developer of real property permits an alternative service provider
95 to install its facilities or equipment used to provide local voice service to such property
96 based on a condition of exclusion of the local exchange carrier, the owner or developer
97 shall provide written notice to the purchaser of any such real property that there is an
98 exclusion of that local exchange carrier and that the alternative service provider is the
99 exclusive provider of service to such property.

100 10. An incumbent local exchange carrier shall have the right to require a payment
101 from an owner or developer in cases where the costs of extending facilities to serve a
102 multitenant business or residential property, including, but not limited to, apartments,
103 condominiums, subdivisions, office buildings, or office parks are not economically
104 reasonable. The terms and conditions applicable to such payments shall be specified in the
105 incumbent local exchange carrier's tariffs. An incumbent local exchange carrier shall not
106 be obligated to provide local voice service or any other telecommunications service without
107 payment specified in the incumbent local exchange carrier's tariff.

108 11. Notwithstanding other provisions of this chapter or chapter 386, RSMo, an
109 incumbent local exchange carrier may meet its carrier of last resort obligations by
110 providing local voice service using any technology.

111 **12. Any local exchange carrier relieved of its carrier of last resort obligation in a**
112 **particular area under subsection 3 or 5 of this section shall not be deemed to have lost its**
113 **general designation as carrier of last resort for essential local telecommunications service**
114 **outside that area for purposes of subsection 5 of section 392.248.**

115 **13. When a local exchange carrier is relieved of the carrier of last resort obligation**
116 **to serve in a designated area, in no instance shall the carrier of last resort obligation be**
117 **transferred to any alternative service provider or provider of local voice service, including**
118 **interconnected voice over internet protocol service in that designated service area.**

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