

SECOND REGULAR SESSION

# HOUSE BILL NO. 2342

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SPENCER.

6034H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 392.248, RSMo, and to enact in lieu thereof one new section relating to the use of universal service funds for lifeline service providers.

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

Section A. Section 392.248, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.248, to read as follows:

392.248. 1. In order to ensure just, reasonable, and affordable rates for reasonably comparable essential local telecommunications services throughout the state, there is hereby established the "Universal Service Board" which shall consist of the members of the public service commission and the public counsel, and which shall be incorporated as a not-for-profit, public benefit corporation in the manner provided pursuant to chapter 355, except as otherwise provided in this section. Consistent with rules adopted by the commission, the universal service board shall create a universal service fund. The universal service board shall supervise the management of the universal service fund. Funds deposited in the universal service fund are not state funds. The commission shall adopt rules governing the operations of the state universal service fund within three months of the adoption of the rules adopted by the Federal Communication Commission for the federal Universal Service Fund. Nothing in the rules adopted by the commission shall be inconsistent with the support mechanisms established for the federal Universal Service Fund, but the commission may adopt any additional definitions and standards it believes are necessary to preserve and advance universal service in the state of Missouri. The commission shall adopt rules governing the operations of the universal service fund and the operation of the universal service board. Meetings of the universal service board shall be open meetings pursuant to chapter 610. The universal service board shall also retain 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.

18 independent neutral fund administrator who will be responsible for the day-to-day operations of  
19 the universal service fund. The fund administrator shall be a fiduciary with trust company  
20 powers. The universal service board shall provide for periodic review of the fund administrator  
21 and the opportunity for selection of an alternate fund administrator no less frequently than every  
22 four years. The agency, individual, firm, partnership, or corporation that is selected by the  
23 commission as the neutral administrator of the universal service fund may neither contribute to  
24 nor receive disbursements from the universal service fund, except as provided in subsection 2  
25 of this section. The administrator may not have any financial interest in a telecommunications  
26 company, as defined in section 386.020. The commission shall cause the books and records of  
27 the universal service fund administrator to be independently audited on an annual basis. The  
28 independent audit shall be paid for from funds held in the universal service fund.

29         2. The commission shall adopt and enforce rules to be implemented by the universal  
30 service board, governing the system of funding and disbursing funds from the universal service  
31 fund in a manner that does not grant a preference or competitive advantage to any  
32 telecommunications company or subject a telecommunications company to prejudice or  
33 disadvantage. Funds from the universal service fund shall only be used:

34             (1) To ensure the provision of reasonably comparable essential local telecommunications  
35 service, as that definition may be updated by the commission by rule, throughout the state  
36 including high-cost areas, at just, reasonable and affordable rates;

37             (2) To assist low-income customers and disabled customers in obtaining affordable  
38 essential telecommunications services; and

39             (3) To pay the reasonable, audited costs of administering the universal service fund.

40         3. The universal service fund shall be funded through assessments on all  
41 telecommunications companies in the state which shall be based on Missouri jurisdictional  
42 telecommunications services revenue and other nondiscriminatory factors as determined by the  
43 commission. Such assessments shall be paid to the universal service board. A  
44 telecommunications company regulated under section 392.245 may, upon providing written  
45 notice to the commission, increase the maximum allowable prices for any or all of its  
46 telecommunications services except residential basic local telecommunications services above  
47 those maximum allowable prices otherwise established in section 392.245 by an amount not to  
48 exceed the amount required to recover fifty percent of its assessment under this section. Any  
49 increases in the maximum allowable prices for exchange access and basic local  
50 telecommunications services other than residential basic local telecommunications services shall  
51 be calculated to recover revenues in the same percentage as the revenues from such services bear  
52 to such company's total revenues for nonbasic, exchange access and basic local other than  
53 residential telecommunications services for the preceding twelve months. A telecommunications

54 company regulated under section 392.245 may seek to have the remaining fifty percent of its  
55 assessment under this section included in its funding requirements under this section. The  
56 commission shall establish the level of the universal service fund funding requirement necessary  
57 to fund the purposes set forth in subsection 2 of this section. The universal service fund funding  
58 requirements shall be paid by the universal service board in accordance with procedures  
59 approved by the commission. A telecommunications company that fails to pay an assessment  
60 that is due and payable pursuant to this section may have its certificate revoked or be required  
61 to pay appropriate penalties under chapter 386 after notice and hearing.

62 4. **(1)** To facilitate provision of essential local telecommunications service, the  
63 commission shall determine whether and to what extent any telecommunications company in the  
64 state providing essential local telecommunications service in any part of the state, shall be  
65 eligible to receive funding. Eligibility shall be determined as follows:

66 ~~[(1)]~~ **(a)** A telecommunications company's eligibility to receive support for high-cost  
67 areas from the universal service fund shall be conditioned upon:

68 ~~[(a)]~~ **a.** The telecommunications company offering essential local telecommunications  
69 service, using its own facilities, in whole or in part, throughout an entire high-cost area and  
70 having carrier of last resort obligations in that high-cost area; and

71 ~~[(b)]~~ **b.** The telecommunications company charging a rate not in excess of that set by the  
72 commission for essential services in a particular geographic area; and

73 ~~[(2)]~~ **(b)** A telecommunications company's eligibility to receive support to assist  
74 low-income customers and disabled customers shall be conditioned on the company's providing  
75 essential local telecommunications services to such customers pursuant to the discounted rate  
76 established by the commission for such customers. Distributions from the universal service fund  
77 shall be made by the universal service board in accordance with rules approved by the  
78 commission;

79 **(2) Notwithstanding subdivision (1) of this subsection, a wireless**  
80 **telecommunications provider offering lifeline service shall be eligible to receive**  
81 **distributions from the universal service fund created under this section to offer such**  
82 **lifeline service, whether such lifeline service provider is a facilities-based or non-facilities-**  
83 **based provider.**

84 5. In local exchange areas subject to competition for essential local telecommunications  
85 service, the incumbent local exchange telecommunications company shall be designated as a  
86 carrier of last resort for essential local telecommunications service. The commission may,  
87 consistent with section 214(e)(2) of the federal Telecommunications Act of 1996, after notice  
88 and hearing, designate one or more additional carriers of last resort for any exchange or other  
89 area designated by the commission upon a finding that such designation is in the public interest.

90 In exchanges where the commission has designated more than one carrier of last resort, the  
91 commission may permit a local exchange telecommunications company to relinquish such  
92 obligation, consistent with section 214(e)(4) of the federal Telecommunications Act of 1996,  
93 upon a finding that at least one carrier of last resort will continue to serve that area. In local  
94 exchange areas not subject to competition for essential local telecommunications service, the  
95 incumbent local exchange telecommunications company shall continue to act as the carrier of  
96 last resort.

97 6. In determining whether, and to what extent, universal service fund funding is required  
98 to facilitate provision of essential local telecommunications service, the commission shall:

99 (1) Determine the definition of essential local telecommunications service no later than  
100 three months after the adoption of the essential local exchange telecommunications service  
101 definition for the federal Universal Service Fund, and consider revision of the definition on a  
102 periodic basis not to exceed every three years thereafter, with the goal that every citizen of this  
103 state shall have access to a wider range of services, that are reasonably comparable between  
104 urban and rural areas, at rates that are reasonably comparable between urban and rural areas;

105 (2) Upon request from an eligible telecommunications company for assistance from the  
106 universal service fund for a high-cost area, determine if the high-cost area qualifies for assistance  
107 from the universal service fund. The commission shall review its determination that a high-cost  
108 area qualifies for assistance from the universal service fund no less frequently than once every  
109 five years;

110 (3) Determine for each requesting, eligible local exchange telecommunications company,  
111 by high-cost area, the costs of providing essential local telecommunications services in those  
112 high-cost areas and establish support payments necessary to such companies to ensure just,  
113 reasonable and affordable rates for essential telecommunications service. The commission shall  
114 review such support payments no less frequently than once every five years; provided, however,  
115 that if the commission adopts a different definition of essential local telecommunications service,  
116 pursuant to subdivision (1) of this subsection, then the commission shall review and adjust  
117 accordingly the previously authorized support payments in order to ensure just, reasonable and  
118 affordable rates for essential telecommunications service, as revised by commission rule. In  
119 determining and reviewing such support payments, the commission shall ensure that no  
120 telecommunications company receives more or less support than necessary to further the  
121 purposes established in subsection 2 of this section;

122 (4) Establish a standard to determine whether and to what extent particular end-user  
123 customers, without regard to location within the state, may be eligible for assistance in paying  
124 for essential local telecommunications service.

125           7. The commission shall arrange for the time and place for the initial organizational  
126 meeting of the universal service board.

127           8. The universal service board shall submit to the commission a plan of operation. After  
128 notice and hearing, the commission shall approve the plan of operation, provided that it does not  
129 grant a preference or competitive advantage to any telecommunications company or subject a  
130 telecommunications company to prejudice or disadvantage. In its plan, the universal service  
131 board shall establish procedures for the handling and accounting of assets and establish  
132 procedures for the collection of assessments from all telecommunications companies to provide  
133 for universal service payments and for administrative expenses.

134           9. The universal service board shall have authority to:

135           (1) Enter into contracts as are necessary or proper to carry out the provisions of this  
136 section; and

137           (2) Sue or be sued, including taking any legal actions necessary or proper for recovery  
138 of any assessments.

139           10. No member of the universal service board shall be civilly liable, either jointly or  
140 separately, as a result of any act, omission or decision in performance of the member's duties as  
141 specifically required by this section. Such immunity shall not attach for any intentional or  
142 reckless act affecting the property or rights of any person.

143           11. Nothing in this section shall require the commission, the universal service board, the  
144 universal service fund administrator, or any other person or agency to take any actions that are  
145 inconsistent with federal statutes, administrative rules, or court decisions concerning provision  
146 of essential local telecommunications service.

147           12. The commission and the universal service board may do all things necessary and  
148 convenient to implement and administer the universal service fund.

149           13. In the event of a Federal Communications Commission order, rule or policy  
150 announced no later than December 31, 1997, pursuant to section 254(a)(2) of the federal  
151 Telecommunications Act of 1996, the effect of which is to change the federal Universal Service  
152 Fund revenues of an incumbent local exchange telecommunications company, the commission  
153 shall either increase the maximum allowable prices for basic local telecommunications service  
154 or increase the company's recovery from the state universal service fund or a combination thereof  
155 to replace the reasonably projected change in revenues. The commission shall review the  
156 continuing need for such revenues in its periodic reviews pursuant to subdivision (3) of  
157 subsection 6 of this section.

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