

1 HB196  
2 135793-4  
3 By Representatives Hill and Robinson (O)  
4 RFD: Commerce and Small Business  
5 First Read: 07-FEB-12

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ENROLLED, An Act,

To amend Sections 37-2A-2 and 37-2A-8 of the Code of Alabama 1975, to further define basic telephone service and to provide that a local exchange carrier would not be required to provide basic telephone service subject to certain exceptions.  
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 37-2A-2 and 37-2A-8 of the Code of Alabama 1975, are amended to read as follows:

"§37-2A-2.

"When used in this chapter, the following words have the following meanings:

~~"(1) BASIC TELEPHONE SERVICE. A retail service that provides to the premises of residential customers or to the premises of business customers the following features and functions only:~~

~~"a. Dial tone.~~

~~"b. Access to other lines for the transmission of two-way switched or dedicated communication within a local calling area without additional usage sensitive charges.~~

~~"c. A primary directory listing.~~

~~"d. Dual-tone multi-frequency signaling.~~

~~"e. Access to operator services.~~

~~"f. Access to directory assistance services.~~

1           ~~"g. Access to telecommunications relay services for~~  
2 ~~the deaf or hard-of-hearing.~~

3           ~~"h. Access to E-911 service where provided by a~~  
4 ~~local governmental authority or multi-jurisdictional~~  
5 ~~authority.~~

6           ~~"i. Access to inter-exchange long distance service.~~

7           ~~"The term does not include service that includes any~~  
8 ~~feature and function other than those listed in paragraphs a.~~  
9 ~~through i. or that includes any other communications service,~~  
10 ~~even as to the features and functions that are listed in~~  
11 ~~paragraphs a. through i. The term also does not include~~  
12 ~~service to a residential customer or a business customer who~~  
13 ~~subscribes to more than one line of basic telephone service.~~  
14 ~~An incumbent local exchange carrier's rate for residential~~  
15 ~~basic telephone service and for a business customer who~~  
16 ~~subscribes to no more than one line of basic telephone service~~  
17 ~~shall be the same in rural areas as in urban areas of the~~  
18 ~~state or no higher than the rates for basic service in~~  
19 ~~existence on August 1, 2009.~~

20           ~~"(1) BASIC TELEPHONE SERVICE. "Voice telephony~~  
21 ~~service" as defined in 47 C.F.R. 54.101(a), provided by an~~  
22 ~~incumbent local exchange carrier through any technology and~~  
23 ~~through any affiliate or service arrangement.~~

24           ~~"(1) BASIC TELEPHONE SERVICE. Refers to a service~~  
25 ~~that, as provided by an incumbent local exchange carrier, may~~

1 be through any technology and through any affiliate or service  
2 arrangement and includes the functionalities described in 47  
3 C.F.R. 54.101(a).

4 "(2) BROADBAND SERVICE or BROADBAND ENABLED SERVICE.  
5 Any service that consists of or includes a high-speed access  
6 capability to transmit at a rate that is not less than 200  
7 kilobits per second either in the upstream or downstream  
8 direction, and either of the following:

9 "a. Provides computer processing, information  
10 storage, information content or protocol conversion, including  
11 any service applications or information service provided over  
12 such high-speed access service.

13 "b. Is used to provide access to the Internet.

14 "(3) BUNDLED OFFERING. A combination of retail  
15 services offered as a package, whether at a single price or  
16 with the availability of the price for one service contingent  
17 on the purchase of other services. A bundled offering must be  
18 advertised and sold as a bundled offering at rates, terms, or  
19 conditions that are different than if the services are  
20 purchased separately and may be comprised of any  
21 telecommunications services offered by a local exchange  
22 carrier in combination with any other telecommunications  
23 services or with any nontelecommunications services, including  
24 services offered by an affiliate of the local exchange carrier  
25 or a nonaffiliated third party provider.

1           "(4) COMMISSION. The Public Service Commission of  
2 the State of Alabama.

3           "(5) COMMUNICATIONS SERVICE. Any service that is  
4 either a telecommunications service or an information service.

5           "(6) CONTRACT OFFERING. Any retail contractual  
6 agreement, whether or not memorialized in writing, by which a  
7 local exchange or inter-exchange carrier offers any  
8 communications service to any existing customer or potential  
9 customer.

10           "(7) ELIGIBLE TELECOMMUNICATIONS CARRIER. A  
11 telecommunications carrier which qualifies for universal  
12 service support under 47 U.S.C. §214(e) as a common carrier  
13 and provides the services supported by the federal universal  
14 support mechanisms under 47 U.S.C. §254(c) throughout the  
15 service area for which eligible telecommunications carrier  
16 designation is received.

17           "(8) EXCHANGE ACCESS. The offering of access to  
18 telephone exchange services or facilities for the purpose of  
19 origination or termination of telephone toll services.

20           "(9) EXISTING BUNDLED OFFERING. A bundled offering  
21 subscribed to by the customer before September 1, 2006.

22           "(10) EXISTING CONTRACT OFFERING. Any contract  
23 offering executed by the customer before September 1, 2006.

24           "(11) INCUMBENT LOCAL EXCHANGE CARRIER. With respect  
25 to an area, the local exchange carrier that, on the date of

1 enactment of the Federal Telecommunications Act of 1996,  
2 provided telephone exchange service in the area and was deemed  
3 to be a member of the Exchange Carrier Association pursuant to  
4 Section 69.601(b) of the Federal Communications Commission's  
5 regulations (47 CFR §69.601(b)) or, on or after that date of  
6 enactment, became a successor or assignee of a member of the  
7 Exchange Carrier Association.

8 "(12) INFORMATION SERVICE. The offering of a  
9 capability for generating, acquiring, storing, transforming,  
10 processing, retrieving, utilizing, or making available  
11 information via telecommunications, and includes electronic  
12 publishing, but does not include any use of any such  
13 capability for the management, control, or operation of a  
14 telecommunications system or the management of a  
15 telecommunications service.

16 "(13) INTER-EXCHANGE CARRIER. Any company certified  
17 by the commission to provide intrastate inter-exchange  
18 telecommunications service in this state.

19 "(14) LIFELINE. A program designed to increase the  
20 availability of communications services to low income  
21 subscribers by providing a credit to monthly recurring local  
22 service to qualifying residential subscribers. The terms and  
23 conditions of the program shall be in compliance with the  
24 Federal Communications Commission's rules and with the  
25 Telecommunications Act of 1996.

1           "(15) LINK-UP. A program designed to increase the  
2           availability of communications services to low income  
3           subscribers by providing a credit to the non-recurring  
4           installation and service charges to qualifying residential  
5           subscribers. The terms and conditions of the program shall be  
6           in compliance with the Federal Communications Commission's  
7           rules and with the Telecommunications Act of 1996.

8           "(16) LOCAL EXCHANGE CARRIER. Any provider of  
9           telecommunications service that is engaged in the provision of  
10          telephone exchange service or exchange access.

11          "(17) NEW BUNDLED OFFERING. A bundled offering  
12          subscribed to by the customer on or after September 1, 2006.

13          "(18) NEW CONTRACT OFFERING. Any contract offering  
14          executed by the customer on or after September 1, 2006.

15          "(19) OPTIONAL TELEPHONE FEATURES. Those central  
16          office-based features that were tariffed by a local exchange  
17          carrier on or before February 1, 2005, that, where available:

18                "a. Are available to a line-side connection in a  
19                telephone switch;

20                "b. Are available on a stand-alone basis separate  
21                from a bundled offering; and

22                "c. Enhance the utility of basic telephone service.  
23                The term includes, but is not limited to, call forwarding,  
24                call waiting, and caller ID.

1           "(20) TELECOMMUNICATIONS. As defined in the  
2 Telecommunications Act of 1996, 47 U.S.C. §153(43).

3           "(21) TELECOMMUNICATIONS CARRIER. Any provider of  
4 telecommunications services. A telecommunications carrier  
5 shall be treated as subject to this chapter only to the extent  
6 that it is engaged in providing telecommunications service.

7           "(22) TELECOMMUNICATIONS SERVICE. The offering of  
8 telecommunications for a fee directly to the public, or to any  
9 classes of users as to be effectively available directly to  
10 the public, regardless of the facilities used. The term does  
11 not include the provision of commercial mobile service under  
12 Section 332(c) of the Federal Communications Act of 1934.

13           "(23) TELEPHONE EXCHANGE SERVICE. Either of the  
14 following:

15           "a. Service within a telephone exchange, or within a  
16 connected system of telephone exchanges within the same  
17 exchange area operated to furnish to subscribers  
18 intercommunicating service of the character ordinarily  
19 furnished by a single exchange, and which is covered by the  
20 exchange service charge.

21           "b. Comparable service provided through a system of  
22 switches, transmission equipment, or other facilities, or  
23 combination thereof, by which a subscriber can originate and  
24 terminate telecommunications service.



1           "(24) VOICE OVER INTERNET PROTOCOL (VoIP) SERVICE.

2           An interconnected voice over Internet (VoIP) service, as  
3           defined in 47 C.F.R. §9.3, as amended, that does all of the  
4           following:

5                 "a. Enables real-time, two-way voice communications.

6                 "b. Requires a broadband connection from the user's  
7           location.

8                 "c. Requires Internet protocol-compatible customer  
9           premises equipment (CPE).

10                "d. Permits users generally to receive calls that  
11           originate on the public switched telephone network and to  
12           terminate calls to the public switched telephone network.

13                "§37-2A-8.

14                "(a) (1) Notwithstanding any provision of law to the  
15           contrary, an entity that is not an incumbent local exchange  
16           carrier shall not be obligated to tariff or otherwise provide  
17           basic telephone service. An incumbent local exchange carrier  
18           shall provide, upon reasonable request, basic telephone  
19           service to the premises of a permanent residence within its  
20           franchised service territory, if the costs, including, but not  
21           limited to costs of facilities, rights-of-way, and equipment,  
22           of providing basic telephone service to the requesting party  
23           does not exceed eight thousand dollars (\$8,000).

24                "(2) If the cost exceeds eight thousand dollars  
25           (\$8,000), as provided in subdivision (1), an incumbent local

1 exchange carrier may not deny service on the basis of cost so  
2 long as sufficient funds to provide that service are available  
3 from the Alabama portion of the applicable federal universal  
4 service fund program.

5 "(3) An incumbent local exchange carrier obligated  
6 by this section to serve as the carrier of last resort is  
7 relieved of that obligation and shall not be obligated to  
8 provide basic telephone service to any occupants of real  
9 property if the owner or developer of the real property, or a  
10 person acting on behalf of the owner or developer of real  
11 property, engages in any of the following acts:

12 "a. Permits an alternative communications service  
13 provider to install its facilities or equipment used to  
14 provide communications services based on a condition of  
15 exclusion of the incumbent local exchange carrier during the  
16 construction phase of the real property.

17 "b. Accepts or agrees to accept incentives or  
18 rewards from an alternative communications services provider  
19 that are contingent upon the provision of any or all local  
20 communications services by one or more alternative  
21 communications services providers to the exclusion of the  
22 incumbent local exchange carrier.

23 "c. Collects from the occupants or residents of the  
24 real property mandatory charges for the provision of any local  
25 communications services provided by an alternative

1 communications services provider to the occupants or residents  
2 in any manner, including, but not limited to, collection  
3 through rent, fees, or dues.

4 "d. Prohibits an incumbent local exchange carrier  
5 from providing the full range of its communications services,  
6 including video services, to the premises of potential  
7 customers.

8 "(4) If the alternative communications services  
9 provider in paragraphs a. through c. of subdivision (3) goes  
10 out of business and is unable to provide service to the  
11 property and there is no other provider willing or able to  
12 provide, or actually providing voice service to the property,  
13 then the incumbent local exchange carrier, subject to the  
14 limitations in subdivisions (1) and (2), shall provide voice  
15 service to the property utilizing any available technology  
16 through any affiliated companies, provided the incumbent local  
17 exchange carrier has reasonable access to the property.

18 "(5)a. Notwithstanding subdivisions (1), (2), (3),  
19 and (4), on the effective date of the act adding this  
20 subdivision, an incumbent local exchange carrier is relieved  
21 of its obligation to provide basic telephone service unless  
22 the incumbent local exchange carrier elects to retain the  
23 obligation and notifies the Public Service Commission not  
24 later than 30 days after the effective date of the act adding  
25 this subdivision.

1           "b. An incumbent local exchange carrier that elects  
2 to retain the obligation to provide basic telephone service  
3 pursuant to paragraph a. and files a notice with the Public  
4 Service Commission on or before December 1 of any year, shall  
5 be relieved of the obligation on January 1 of any subsequent  
6 year.

7           "(6) The relief specified in subdivision (5) does  
8 not affect an incumbent local exchange carrier's obligations  
9 under federal law.

10           "(7)a. If the premises of a permanent residence in  
11 existence on the effective date of the act adding this  
12 subdivision is within an incumbent local exchange carrier's  
13 franchised service territory and the residence is unable to  
14 receive voice service from any provider through any voice  
15 technology, the owner of the permanent residence or a tenant  
16 may file a request for service with the commission. Following  
17 investigation by the commission, if the commission determines  
18 that a reasonable request for service has been made and that  
19 no voice service is available to the premises of the permanent  
20 residence, the commission may determine whether a incumbent  
21 local exchange carrier is best able to provide voice service  
22 to the residence and may order the carrier to provide voice  
23 service to the residence. Alternatively, the commission may  
24 conduct a competitive procurement process to identify a  
25 willing provider of voice service to provide voice service at

1 the requesting residence. In either case, the incumbent local  
2 exchange carrier or willing provider of voice service may  
3 utilize any voice technology or service arrangement to provide  
4 voice service. The commission shall issue a final order  
5 disposing of any request within 90 days of the filing of the  
6 request.

7 "b. This subdivision and any obligations created  
8 pursuant to it shall be repealed ~~12~~ 18 months after the  
9 effective date of the act adding this subdivision.

10 "(b) (1) Beginning February 1, 2007, the retail price  
11 for basic telephone service to be offered by incumbent local  
12 exchange carriers shall not exceed the highest price charged  
13 by the incumbent local exchange carrier on January 31, 2007.

14 "(2)a. Beginning January 1, 2008, and every  
15 succeeding January 1 through December 31, 2010, the retail  
16 rates for basic telephone service may not be increased by the  
17 incumbent local exchange carrier to exceed the rates of the  
18 previous year as of January 1, plus any increase in the  
19 Consumer Price Index for all urban consumers as reported by  
20 the U.S. Department of Labor, Bureau of Labor Statistics.

21 "b. Beginning August 1, 2009, the commission shall  
22 not have any jurisdiction, right, power, authority, or duty to  
23 regulate, supervise, control, oversee, or monitor, directly or  
24 indirectly, the costs, rates, charges, terms, or conditions,  
25 for any retail telecommunications services provided to

1 businesses or government entities, except as provided in  
2 Section 37-2A-11(b)(6).

3 "c. Beginning January 1, 2011, the commission shall  
4 not have any jurisdiction, right, power, authority, or duty to  
5 regulate, supervise, control, oversee, or monitor, directly or  
6 indirectly, the costs, rates, charges, terms, or conditions  
7 for basic telephone service.

8 "(3)a. Each optional telephone feature in a bundled  
9 offering must be available on a stand-alone basis under a  
10 tariff on file with the commission. If a bundled offering is  
11 offered by a local exchange carrier, the carrier shall have a  
12 basic telephone service tariffed offering for residential  
13 customers on file with the commission.

14 "b. Beginning January 1, 2008, and through December  
15 31, 2010, increases in tariffed rates for optional telephone  
16 features may not exceed five percent per optional telephone  
17 feature per year.

18 "c. Through December 31, 2010, a residential bundled  
19 offering that consists solely of basic telephone service and  
20 optional telephone features must be priced at or below the sum  
21 of the tariffed price of basic telephone service and the  
22 tariffed price of the associated optional telephone features.

23 "d. Beginning January 1, 2011, the commission shall  
24 not have any jurisdiction, right, power, authority, or duty to  
25 regulate, supervise, control, oversee, or monitor, directly or

1 indirectly, the costs, rates, charges, terms, or conditions  
2 for optional telephone features."

3 Section 2. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 06-MAR-12, as amended.

Greg Pappas  
Clerk

Senate	<hr/> 22-MAR-12 <hr/>	Amended and Passed
House	<hr/> 03-APR-12 <hr/>	Concurred in Senate Amendment