

SECOND REGULAR SESSION

HOUSE BILL NO. 1643

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BERRY.

5441H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 386.020, RSMo, and to enact in lieu thereof three new sections relating to public utilities.

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

Section A. Section 386.020, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 386.020, 393.018, and 393.360, to read as follows:

386.020. As used in this chapter, the following words and phrases mean:

- 2 (1) "Alternative local exchange telecommunications company", a local exchange
3 telecommunications company certified by the commission to provide basic or nonbasic local
4 telecommunications service or switched exchange access service, or any combination of such
5 services, in a specific geographic area subsequent to December 31, 1995;
- 6 (2) "Alternative operator services company", any certificated interexchange
7 telecommunications company which receives more than forty percent of its annual Missouri
8 intrastate telecommunications service revenues from the provision of operator services pursuant
9 to operator services contracts with traffic aggregators;
- 10 (3) "Basic interexchange telecommunications service" includes, at a minimum, two-way
11 switched voice service between points in different local calling scopes as determined by the
12 commission and shall include other services as determined by the commission by rule upon
13 periodic review and update;
- 14 (4) "Basic local telecommunications service", two-way switched voice service within
15 a local calling scope as determined by the commission comprised of any of the following
16 services and their recurring and nonrecurring charges:

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.

- 17 (a) Multiparty, single line, including installation, touchtone dialing, and any applicable
18 mileage or zone charges;
- 19 (b) Assistance programs for installation of, or access to, basic local telecommunications
20 services for qualifying economically disadvantaged or disabled customers or both, including, but
21 not limited to, lifeline services and link-up Missouri services for low-income customers or
22 dual-party relay service for the hearing impaired and speech impaired;
- 23 (c) Access to local emergency services including, but not limited to, 911 service
24 established by local authorities;
- 25 (d) Access to basic local operator services;
- 26 (e) Access to basic local directory assistance;
- 27 (f) Standard intercept service;
- 28 (g) Equal access to interexchange carriers consistent with rules and regulations of the
29 Federal Communications Commission;
- 30 (h) One standard white pages directory listing.
- 31
- 32 Basic local telecommunications service does not include optional toll-free calling outside a local
33 calling scope but within a community of interest, available for an additional monthly fee or the
34 offering or provision of basic local telecommunications service at private shared-tenant service
35 locations;
- 36 (5) "Cable television service", the one-way transmission to subscribers of video
37 programming or other programming service and the subscriber interaction, if any, which is
38 required for the selection of such video programming or other programming service;
- 39 (6) "Carrier of last resort", any telecommunications company which is obligated to offer
40 basic local telecommunications service to all customers who request service in a geographic area
41 defined by the commission and cannot abandon this obligation without approval from the
42 commission;
- 43 (7) "Commission", the "Public Service Commission" hereby created;
- 44 (8) "Commissioner", one of the members of the commission;
- 45 (9) "Competitive telecommunications company", a telecommunications company which
46 has been classified as such by the commission pursuant to section 392.245 or 392.361;
- 47 (10) "Competitive telecommunications service", a telecommunications service which
48 has been classified as such by the commission pursuant to section 392.245 or to section 392.361,
49 or which has become a competitive telecommunications service pursuant to section 392.370;
- 50 (11) "Corporation" includes a corporation, company, association and joint stock
51 association or company;

52 (12) "Customer-owned pay telephone", a privately owned telecommunications device
53 that is not owned, leased or otherwise controlled by a local exchange telecommunications
54 company and which provides telecommunications services for a use fee to the general public;

55 (13) "Effective competition" shall be determined by the commission based on:

56 (a) The extent to which services are available from alternative providers in the relevant
57 market;

58 (b) The extent to which the services of alternative providers are functionally equivalent
59 or substitutable at comparable rates, terms and conditions;

60 (c) The extent to which the purposes and policies of chapter 392, including the
61 reasonableness of rates, as set out in section 392.185, are being advanced;

62 (d) Existing economic or regulatory barriers to entry; and

63 (e) Any other factors deemed relevant by the commission and necessary to implement
64 the purposes and policies of chapter 392;

65 (14) "Electric plant" includes all real estate, fixtures and personal property operated,
66 controlled, owned, used or to be used for or in connection with or to facilitate the generation,
67 transmission, distribution, sale or furnishing of electricity for light, heat or power; and any
68 conduits, ducts or other devices, materials, apparatus or property for containing, holding or
69 carrying conductors used or to be used for the transmission of electricity for light, heat or power;

70 (15) "Electrical corporation" includes every corporation, company, association, joint
71 stock company or association, partnership and person, their lessees, trustees or receivers
72 appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation
73 generating electricity solely for railroad, light rail or street railroad purposes or for the use of its
74 tenants and not for sale to others, owning, operating, controlling or managing any electric plant
75 except where electricity is generated or distributed by the producer solely on or through private
76 property for railroad, light rail or street railroad purposes or for its own use or the use of its
77 tenants and not for sale to others;

78 (16) "Exchange", a geographical area for the administration of telecommunications
79 services, established and described by the tariff of a telecommunications company providing
80 basic local telecommunications service;

81 (17) "Exchange access service", a service provided by a local exchange
82 telecommunications company which enables a telecommunications company or other customer
83 to enter and exit the local exchange telecommunications network in order to originate or
84 terminate interexchange telecommunications service;

85 (18) "Gas corporation" includes every corporation, company, association, joint stock
86 company or association, partnership and person, their lessees, trustees or receivers appointed by
87 any court whatsoever, owning, operating, controlling or managing any gas plant operating for

88 public use under privilege, license or franchise now or hereafter granted by the state or any
89 political subdivision, county or municipality thereof;

90 (19) "Gas plant" includes all real estate, fixtures and personal property owned, operated,
91 controlled, used or to be used for or in connection with or to facilitate the manufacture,
92 distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power;

93 (20) **"Generation costs", the costs associated with energy production, not including**
94 **energy transmission costs;**

95 (21) "Heating company" includes every corporation, company, association, joint stock
96 company or association, partnership and person, their lessees, trustees or receivers, appointed by
97 any court whatsoever, owning, operating, managing or controlling any plant or property for
98 manufacturing and distributing and selling, for distribution, or distributing hot or cold water,
99 steam or currents of hot or cold air for motive power, heating, cooking, or for any public use or
100 service, in any city, town or village in this state; provided, that no agency or authority created by
101 or operated pursuant to an interstate compact established pursuant to section 70.370 shall be a
102 heating company or subject to regulation by the commission;

103 [~~(21)~~] (22) "High-cost area", a geographic area, which shall follow exchange boundaries
104 and be no smaller than an exchange nor larger than a local calling scope, where the cost of
105 providing basic local telecommunications service as determined by the commission, giving due
106 regard to recovery of an appropriate share of joint and common costs as well as those costs
107 related to carrier of last resort obligations, exceeds the rate for basic local telecommunications
108 service found reasonable by the commission;

109 [~~(22)~~] (23) "Incumbent local exchange telecommunications company", a local exchange
110 telecommunications company authorized to provide basic local telecommunications service in
111 a specific geographic area as of December 31, 1995, or a successor in interest to such a company;

112 (24) **"Industrial energy user", a facility with a minimum annual peak demand of**
113 **one megawatt; provided that, a single industrial energy user may aggregate multiple**
114 **metered delivery locations to satisfy the minimum megawatt threshold;**

115 [~~(23)~~] (25) "Interconnected voice over internet protocol service", service that:

116 (a) Enables real-time, two-way voice communications;

117 (b) Requires a broadband connection from the user's location;

118 (c) Requires internet protocol-compatible customer premises equipment; and

119 (d) Permits users generally to receive calls that originate on the public switched
120 telephone network and to terminate calls to the public switched telephone network;

121 [~~(24)~~] (26) "Interexchange telecommunications company", any company engaged in the
122 provision of interexchange telecommunications service;

123 ~~[(25)]~~ **(27)** "Interexchange telecommunications service", telecommunications service
124 between points in two or more exchanges;

125 ~~[(26)]~~ **(28)** "InterLATA", interexchange telecommunications service between points in
126 different local access and transportation areas;

127 ~~[(27)]~~ **(29)** "IntraLATA", interexchange telecommunications service between points
128 within the same local access and transportation area;

129 ~~[(28)]~~ **(30)** "Light rail" includes every rail transportation system in which one or more
130 rail vehicles are propelled electrically by overhead catenary wire upon tracks located
131 substantially within an urban area and are operated exclusively in the transportation of
132 passengers and their baggage, and including all bridges, tunnels, equipment, switches, spurs,
133 tracks, stations, used in connection with the operation of light rail;

134 ~~[(29)]~~ **(31)** "Line" includes route;

135 ~~[(30)]~~ **(32)** "Local access and transportation area" or "LATA", contiguous geographic
136 area approved by the U.S. District Court for the District of Columbia in United States v. Western
137 Electric, Civil Action No. 82-0192 that defines the permissible areas of operations for the Bell
138 Operating companies;

139 ~~[(31)]~~ **(33)** "Local exchange telecommunications company", any company engaged in
140 the provision of local exchange telecommunications service. A local exchange
141 telecommunications company shall be considered a "large local exchange telecommunications
142 company" if it has at least one hundred thousand access lines in Missouri and a "small local
143 exchange telecommunications company" if it has less than one hundred thousand access lines
144 in Missouri;

145 ~~[(32)]~~ **(34)** "Local exchange telecommunications service", telecommunications service
146 between points within an exchange;

147 ~~[(33)]~~ **(35)** "Long-run incremental cost", the change in total costs of the company of
148 producing an increment of output in the long run when the company uses least cost technology,
149 and excluding any costs that, in the long run, are not brought into existence as a direct result of
150 the increment of output. The relevant increment of output shall be the level of output necessary
151 to satisfy total current demand levels for the service in question, or, for new services, demand
152 levels that can be demonstrably anticipated;

153 ~~[(34)]~~ **(36)** "Municipality" includes a city, village or town;

154 ~~[(35)]~~ **(37)** "Nonbasic telecommunications services" shall be all regulated
155 telecommunications services other than basic local and exchange access telecommunications
156 services, and shall include the services identified in paragraphs (d) and (e) of subdivision (4) of
157 this section. Any retail telecommunications service offered for the first time after August 28,

158 1996, shall be classified as a nonbasic telecommunications service, including any new service
159 which does not replace an existing service;

160 ~~[(36)]~~ **(38)** "Noncompetitive telecommunications company", a telecommunications
161 company other than a competitive telecommunications company or a transitionally competitive
162 telecommunications company;

163 ~~[(37)]~~ **(39)** "Noncompetitive telecommunications service", a telecommunications service
164 other than a competitive or transitionally competitive telecommunications service;

165 ~~[(38)]~~ **(40)** "Operator services", operator-assisted interexchange telecommunications
166 service by means of either human or automated call intervention and includes, but is not limited
167 to, billing or completion of calling card, collect, person-to-person, station-to-station or third
168 number billed calls;

169 ~~[(39)]~~ **(41)** "Operator services contract", any agreement between a traffic aggregator and
170 a certificated interexchange telecommunications company to provide operator services at a traffic
171 aggregator location;

172 ~~[(40)]~~ **(42)** "Person" includes an individual, and a firm or copartnership;

173 ~~[(41)]~~ **(43)** "Private shared tenant services" includes the provision of telecommunications
174 and information management services and equipment within a user group located in discrete
175 private premises as authorized by the commission by a commercial-shared services provider or
176 by a user association, through privately owned customer premises equipment and associated data
177 processing and information management services and includes the provision of connections to
178 the facilities of local exchange telecommunications companies and to interexchange
179 telecommunications companies;

180 ~~[(42)]~~ **(44)** "Private telecommunications system", a telecommunications system
181 controlled by a person or corporation for the sole and exclusive use of such person, corporation
182 or legal or corporate affiliate thereof;

183 ~~[(43)]~~ **(45)** "Public utility" includes every pipeline corporation, gas corporation, electrical
184 corporation, telecommunications company, water corporation, heat or refrigerating corporation,
185 and sewer corporation, as these terms are defined in this section, and each thereof is hereby
186 declared to be a public utility and to be subject to the jurisdiction, control and regulation of the
187 commission and to the provisions of this chapter;

188 ~~[(44)]~~ **(46)** "Railroad" includes every railroad and railway, other than street railroad or
189 light rail, by whatsoever power operated for public use in the conveyance of persons or property
190 for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations,
191 real estate and terminal facilities of every kind used, operated, controlled or owned by or in
192 connection with any such railroad;

193 ~~[(45)]~~ **(47)** "Railroad corporation" includes every corporation, company, association,
194 joint stock company or association, partnership and person, their lessees, trustees or receivers
195 appointed by any court whatsoever, owning, holding, operating, controlling or managing any
196 railroad or railway as defined in this section, or any cars or other equipment used thereon or in
197 connection therewith;

198 ~~[(46)]~~ **(48)** "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge,
199 switching charge, rental or other compensation of any corporation, person or public utility, or any
200 two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching
201 charges, rentals or other compensations of any corporation, person or public utility or any
202 schedule or tariff thereof;

203 ~~[(47)]~~ **(49)** "Resale of telecommunications service", the offering or providing of
204 telecommunications service primarily through the use of services or facilities owned or provided
205 by a separate telecommunications company, but does not include the offering or providing of
206 private shared tenant services;

207 ~~[(48)]~~ **(50)** "Service" includes not only the use and accommodations afforded consumers
208 or patrons, but also any product or commodity furnished by any corporation, person or public
209 utility and the plant, equipment, apparatus, appliances, property and facilities employed by any
210 corporation, person or public utility in performing any service or in furnishing any product or
211 commodity and devoted to the public purposes of such corporation, person or public utility, and
212 to the use and accommodation of consumers or patrons;

213 ~~[(49)]~~ **(51)** "Sewer corporation" includes every corporation, company, association, joint
214 stock company or association, partnership or person, their lessees, trustees or receivers appointed
215 by any court, owning, operating, controlling or managing any sewer system, plant or property,
216 for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain,
217 except that the term shall not include sewer systems with fewer than twenty-five outlets;

218 ~~[(50)]~~ **(52)** "Sewer system" includes all pipes, pumps, canals, lagoons, plants, structures
219 and appliances, and all other real estate, fixtures and personal property, owned, operated,
220 controlled or managed in connection with or to facilitate the collection, carriage, treatment and
221 disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

222 ~~[(51)]~~ **(53)** "Street railroad" includes every railroad by whatsoever type of power
223 operated, and all extensions and branches thereof and supplementary facilities thereto by
224 whatsoever type of vehicle operated, for public use in the conveyance of persons or property for
225 compensation, mainly providing local transportation service upon the streets, highways and
226 public places in a municipality, or in and adjacent to a municipality, and including all cars, buses
227 and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits, cables,
228 subways, tunnels, stations, terminals and real estate of every kind used, operated or owned in

229 connection therewith but this term shall not include light rail as defined in this section; and the
230 term "street railroad" when used in this chapter shall also include all motor bus and trolley bus
231 lines and routes and similar local transportation facilities, and the rolling stock and other
232 equipment thereof and the appurtenances thereto, when operated as a part of a street railroad or
233 trolley bus local transportation system, or in conjunction therewith or supplementary thereto, but
234 such term shall not include a railroad constituting or used as part of a trunk line railroad system
235 and any street railroad as defined above which shall be converted wholly to motor bus operation
236 shall nevertheless continue to be included within the term street railroad as used herein;

237 ~~[(52)]~~ **(54)** "Telecommunications company" includes telephone corporations as that term
238 is used in the statutes of this state and every corporation, company, association, joint stock
239 company or association, partnership and person, their lessees, trustees or receivers appointed by
240 any court whatsoever, owning, operating, controlling or managing any facilities used to provide
241 telecommunications service for hire, sale or resale within this state;

242 ~~[(53)]~~ **(55)** "Telecommunications facilities" includes lines, conduits, ducts, poles, wires,
243 cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real
244 estate, easements, apparatus, property and routes used, operated, controlled or owned by any
245 telecommunications company to facilitate the provision of telecommunications service;

246 ~~[(54)]~~ **(56)** "Telecommunications service", the transmission of information by wire,
247 radio, optical cable, electronic impulses, or other similar means. As used in this definition,
248 "information" means knowledge or intelligence represented by any form of writing, signs,
249 signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

250 (a) The rent, sale, lease, or exchange for other value received of customer premises
251 equipment except for customer premises equipment owned by a telephone company certificated
252 or otherwise authorized to provide telephone service prior to September 28, 1987, and provided
253 under tariff or in inventory on January 1, 1983, which must be detariffed no later than December
254 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and
255 except for customer premises equipment owned or provided by a telecommunications company
256 and used for answering 911 or emergency calls;

257 (b) Answering services and paging services;

258 (c) The offering of radio communication services and facilities when such services and
259 facilities are provided under a license granted by the Federal Communications Commission
260 under the commercial mobile radio services rules and regulations;

261 (d) Services provided by a hospital, hotel, motel, or other similar business whose
262 principal service is the provision of temporary lodging through the owning or operating of
263 message switching or billing equipment solely for the purpose of providing at a charge
264 telecommunications services to its temporary patients or guests;

- 265 (e) Services provided by a private telecommunications system;
- 266 (f) Cable television service;
- 267 (g) The installation and maintenance of inside wire within a customer's premises;
- 268 (h) Electronic publishing services;
- 269 (i) Services provided pursuant to a broadcast radio or television license issued by the
270 Federal Communications Commission; or
- 271 (j) Interconnected voice over internet protocol service;
- 272 [~~55~~] (57) "Telephone cooperative", every corporation defined as a telecommunications
273 company in this section, in which at least ninety percent of those persons and corporations
274 subscribing to receive local telecommunications service from the corporation own at least ninety
275 percent of the corporation's outstanding and issued capital stock and in which no subscriber owns
276 more than two shares of the corporation's outstanding and issued capital stock;
- 277 [~~56~~] (58) "Traffic aggregator", any person, firm, partnership or corporation which
278 furnishes a telephone for use by the public and includes, but is not limited to, telephones located
279 in rooms, offices and similar locations in hotels, motels, hospitals, colleges, universities, airports
280 and public or customer-owned pay telephone locations, whether or not coin operated;
- 281 **(59) "Transmission costs", the costs associated with energy delivery and the upkeep
282 of associated infrastructure, not including generation costs;**
- 283 [~~57~~] (60) "Transitionally competitive telecommunications company", an interexchange
284 telecommunications company which provides any noncompetitive or transitionally competitive
285 telecommunications service, except for an interexchange telecommunications company which
286 provides only noncompetitive telecommunications service;
- 287 [~~58~~] (61) "Transitionally competitive telecommunications service", a
288 telecommunications service offered by a noncompetitive or transitionally competitive
289 telecommunications company and classified as transitionally competitive by the commission
290 pursuant to section 392.361 or 392.370;
- 291 [~~59~~] (62) "Water corporation" includes every corporation, company, association, joint
292 stock company or association, partnership and person, their lessees, trustees, or receivers
293 appointed by any court whatsoever, owning, operating, controlling or managing any plant or
294 property, dam or water supply, canal, or power station, distributing or selling for distribution, or
295 selling or supplying for gain any water;
- 296 [~~60~~] (63) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
297 headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and
298 personal property, owned, operated, controlled or managed in connection with or to facilitate the
299 diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for
300 municipal, domestic or other beneficial use.

2 **393.018. When any electrical corporation files with the public service commission**
3 **any schedule stating a new tariff, rate, or charge, such filing shall include a separate**
4 **itemization of transmission costs and generation costs, as such terms are defined in section**
5 **386.020. Such costs shall be verified by the commission.**

6 **393.360. 1. The provisions of this section shall be known and may be cited as the**
7 **"Power Purchasing and Resale Act".**

8 **2. The provisions of section 386.020 defining words, phrases, and terms shall apply**
9 **to and determine the meaning of all such words, phrases, or terms as used in this section.**

10 **3. Notwithstanding any provision of law to the contrary, an industrial energy user**
11 **may submit an application to the commission for the approval of a direct power purchase**
12 **agreement for the direct purchase of power from any electric corporation or regional**
13 **entity, or part thereof, approved by the Federal Energy Regulatory Commission.**

14 **4. Any application or contract submitted under subsection 3 of this section shall set**
15 **forth the rates, terms, and conditions for service to the industrial energy user.**

16 **5. If such an agreement is approved by the commission, the commission shall retain**
17 **the authority to modify or eliminate any associated rates, terms, or conditions during any**
18 **specified term.**

19 **6. Any electrical corporation or municipal utility servicing an industrial energy**
20 **user shall facilitate any approved power purchase agreement by transmitting any**
21 **associated energy when requested. Such electrical corporation or municipal utility shall**
22 **be entitled to compensation limited to transmission costs plus three percent of the**
23 **transmission costs.**

24 **7. The commission's authority to regulate any industrial energy user shall be**
25 **limited to the powers expressly conferred to the commission under the provisions of this**
26 **section.**

27 **8. The commission shall have the authority to promulgate rules and regulations for**
28 **the implementation of this section. Any rule or portion of a rule, as that term is defined**
29 **in section 536.010, that is created under the authority delegated in this section shall become**
30 **effective only if it complies with and is subject to all of the provisions of chapter 536 and,**
31 **if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any**
32 **of the powers vested with the general assembly pursuant to chapter 536 to review, to delay**
33 **the effective date, or to disapprove and annul a rule are subsequently held**
34 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
35 **after the effective date of this section shall be invalid and void.**

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