

SECOND REGULAR SESSION

# HOUSE BILL NO. 2514

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE RIGGS.

5307H.011

DANA RADEMAN MILLER, 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 universal service board.

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Section A. Section 392.248, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 392.248, to read as follows: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

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 chapter 610. The universal service board shall also retain an independent neutral fund  
19 administrator who will be responsible for the day-to-day operations of the universal service  
20 fund. The fund administrator shall be a fiduciary with trust company powers. The universal  
21 service board shall provide for periodic review of the fund administrator and the opportunity  
22 for selection of an alternate fund administrator no less frequently than every four years. The  
23 agency, individual, firm, partnership, or corporation that is selected by the commission as the  
24 neutral administrator of the universal service fund may neither contribute to nor receive  
25 disbursements from the universal service fund, except as provided in subsection 2 of this  
26 section. The administrator may not have any financial interest in a telecommunications  
27 company, as defined in section 386.020. The commission shall cause the books and records  
28 of the universal service fund administrator to be independently audited on an annual basis.  
29 The independent audit shall be paid for from funds held in the universal service fund.

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

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

38 (2) To assist low-income customers and disabled customers in obtaining affordable  
39 essential telecommunications services **or broadband internet access service. For the**  
40 **purposes of this section, "broadband internet access service" is defined as a retail**  
41 **service that enables users to connect to the internet to access content, information, or**  
42 **other services at speeds of at least twenty-five megabits per second download and three**  
43 **megabits per second upload; and**

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

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

55 telecommunications services other than residential basic local telecommunications services  
56 shall be calculated to recover revenues in the same percentage as the revenues from such  
57 services bear to such company's total revenues for nonbasic, exchange access and basic local  
58 other than residential telecommunications services for the preceding twelve months. A  
59 telecommunications company regulated under section 392.245 may seek to have the  
60 remaining fifty percent of its assessment under this section included in its funding  
61 requirements under this section. The commission shall establish the level of the universal  
62 service fund funding requirement necessary to fund the purposes set forth in subsection 2 of  
63 this section. The universal service fund funding requirements shall be paid by the universal  
64 service board in accordance with procedures approved by the commission. A  
65 telecommunications company that fails to pay an assessment that is due and payable  
66 pursuant to this section may have its certificate revoked or be required to pay appropriate  
67 penalties under chapter 386 after notice and hearing.

68 4. To facilitate provision of essential local telecommunications service, the  
69 commission shall determine whether and to what extent any telecommunications company  
70 in the state providing essential local telecommunications service in any part of the state, shall  
71 be eligible to receive funding. Eligibility shall be determined as follows:

72 (1) A telecommunications company's eligibility to receive support for high-cost areas  
73 from the universal service fund shall be conditioned upon:

74 (a) The telecommunications company offering essential local telecommunications  
75 service, using its own facilities, in whole or in part, throughout an entire high-cost area and  
76 having carrier of last resort obligations in that high-cost area; and

77 (b) The telecommunications company charging a rate not in excess of that set by the  
78 commission for essential services in a particular geographic area; and

79 (2) A telecommunications company's eligibility to receive support to assist low-  
80 income customers and disabled customers shall be conditioned on the company's providing  
81 essential local telecommunications services **or broadband internet access service, or both,**  
82 to such customers pursuant to the discounted rate established by the commission for such  
83 customers. Distributions from the universal service fund shall be made by the universal  
84 service board in accordance with rules approved by the commission.

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

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

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

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

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

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

125         (4) Establish a standard to determine whether and to what extent particular end-user  
126 customers, without regard to location within the state, may be eligible for assistance in paying  
127 for essential local telecommunications service **or broadband internet access service.**

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

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

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

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

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

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

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

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

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

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