

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 355
100TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 25, 2019, with recommendation that the Senate Committee Substitute do pass.

0874S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 386.020, 386.510, and 386.515, RSMo, and to enact in lieu thereof four new sections relating to matters within the scope of the public service commission.

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

Section A. Sections 386.020, 386.510, and 386.515, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 386.020,
3 386.510, 386.515, and 386.805, 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
3 exchange telecommunications company certified by the commission to provide
4 basic or nonbasic local telecommunications service or switched exchange access
5 service, or any combination of such services, in a specific geographic area
6 subsequent to December 31, 1995;

7 (2) "Alternative operator services company", any certificated
8 interexchange telecommunications company which receives more than forty
9 percent of its annual Missouri intrastate telecommunications service revenues
10 from the provision of operator services pursuant to operator services contracts
11 with traffic aggregators;

12 (3) "Basic interexchange telecommunications service" includes, at a
13 minimum, two-way switched voice service between points in different local calling
14 scopes as determined by the commission and shall include other services as
15 determined by the commission by rule upon periodic review and update;

16 (4) "Basic local telecommunications service", two-way switched voice

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 service within a local calling scope as determined by the commission comprised
18 of any of the following services and their recurring and nonrecurring charges:

19 (a) Multiparty, single line, including installation, touchtone dialing, and
20 any applicable mileage or zone charges;

21 (b) Assistance programs for installation of, or access to, basic local
22 telecommunications services for qualifying economically disadvantaged or
23 disabled customers or both, including, but not limited to, lifeline services and
24 link-up Missouri services for low-income customers or dual-party relay service for
25 the hearing impaired and speech impaired;

26 (c) Access to local emergency services including, but not limited to, 911
27 service established by local authorities;

28 (d) Access to basic local operator services;

29 (e) Access to basic local directory assistance;

30 (f) Standard intercept service;

31 (g) Equal access to interexchange carriers consistent with rules and
32 regulations of the Federal Communications Commission;

33 (h) One standard white pages directory listing.

34 Basic local telecommunications service does not include optional toll-free calling
35 outside a local calling scope but within a community of interest, available for an
36 additional monthly fee or the offering or provision of basic local
37 telecommunications service at private shared-tenant service locations;

38 (5) "Cable television service", the one-way transmission to subscribers of
39 video programming or other programming service and the subscriber interaction,
40 if any, which is required for the selection of such video programming or other
41 programming service;

42 (6) "Carrier of last resort", any telecommunications company which is
43 obligated to offer basic local telecommunications service to all customers who
44 request service in a geographic area defined by the commission and cannot
45 abandon this obligation without approval from the commission;

46 (7) "Commission", the "Public Service Commission" hereby created;

47 (8) "Commissioner", one of the members of the commission;

48 (9) "Competitive telecommunications company", a telecommunications
49 company which has been classified as such by the commission pursuant to section
50 392.245 or 392.361;

51 (10) "Competitive telecommunications service", a telecommunications
52 service which has been classified as such by the commission pursuant to section

53 392.245 or to section 392.361, or which has become a competitive
54 telecommunications service pursuant to section 392.370;

55 (11) "Corporation" includes a corporation, company, association and joint
56 stock association or company;

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

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

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

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

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

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

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

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

79 (15) "Electrical corporation" includes every corporation, company,
80 association, joint stock company or association, partnership and person, their
81 lessees, trustees or receivers appointed by any court whatsoever, other than a
82 railroad, light rail or street railroad corporation generating electricity solely for
83 railroad, light rail or street railroad purposes or for the use of its tenants and not
84 for sale to others, owning, operating, controlling or managing any electric plant
85 except where electricity is generated or distributed by the producer solely on or
86 through private property for railroad, light rail or street railroad purposes or for
87 its own use or the use of its tenants and not for sale to others. **The term**
88 **"electrical corporation" shall not include:**

89 **(a) Municipally owned electric utilities operating under chapter**
90 **91;**

91 **(b) Rural electric cooperatives operating under chapter 394;**

92 **(c) Persons or corporations not otherwise engaged in the sale of**
93 **electricity at wholesale or retail that own, control, operate, or manage**
94 **a facility that supplies electricity for the service of charging an electric**
95 **vehicle;**

96 **(16) "Electric vehicle charging station", electric plant used for the**
97 **sale of electricity to the public for the propulsion of battery-operated**
98 **or hybrid motor vehicles, vessels, railroads, or other related equipment**
99 **and services;**

100 **(17) "Exchange", a geographical area for the administration of**
101 **telecommunications services, established and described by the tariff of a**
102 **telecommunications company providing basic local telecommunications service;**

103 **[(17)] (18) "Exchange access service", a service provided by a local**
104 **exchange telecommunications company which enables a telecommunications**
105 **company or other customer to enter and exit the local exchange**
106 **telecommunications network in order to originate or terminate interexchange**
107 **telecommunications service;**

108 **[(18)] (19) "Gas corporation" includes every corporation, company,**
109 **association, joint stock company or association, partnership and person, their**
110 **lessees, trustees or receivers appointed by any court whatsoever, owning,**
111 **operating, controlling or managing any gas plant operating for public use under**
112 **privilege, license or franchise now or hereafter granted by the state or any**
113 **political subdivision, county or municipality thereof;**

114 **[(19)] (20) "Gas plant" includes all real estate, fixtures and personal**
115 **property owned, operated, controlled, used or to be used for or in connection with**
116 **or to facilitate the manufacture, distribution, sale or furnishing of gas, natural**
117 **or manufactured, for light, heat or power;**

118 **[(20)] (21) "Heating company" includes every corporation, company,**
119 **association, joint stock company or association, partnership and person, their**
120 **lessees, trustees or receivers, appointed by any court whatsoever, owning,**
121 **operating, managing or controlling any plant or property for manufacturing and**
122 **distributing and selling, for distribution, or distributing hot or cold water, steam**
123 **or currents of hot or cold air for motive power, heating, cooking, or for any public**
124 **use or service, in any city, town or village in this state; provided, that no agency**

125 or authority created by or operated pursuant to an interstate compact established
126 pursuant to section 70.370 shall be a heating company or subject to regulation by
127 the commission;

128 [(21)] **(22)** "High-cost area", a geographic area, which shall follow
129 exchange boundaries and be no smaller than an exchange nor larger than a local
130 calling scope, where the cost of providing basic local telecommunications service
131 as determined by the commission, giving due regard to recovery of an appropriate
132 share of joint and common costs as well as those costs related to carrier of last
133 resort obligations, exceeds the rate for basic local telecommunications service
134 found reasonable by the commission;

135 [(22)] **(23)** "Incumbent local exchange telecommunications company", a
136 local exchange telecommunications company authorized to provide basic local
137 telecommunications service in a specific geographic area as of December 31, 1995,
138 or a successor in interest to such a company;

139 [(23)] **(24)** "Interconnected voice over internet protocol service", service
140 that:

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

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

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

144 and

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

148 [(24)] **(25)** "Interexchange telecommunications company", any company
149 engaged in the provision of interexchange telecommunications service;

150 [(25)] **(26)** "Interexchange telecommunications service",
151 telecommunications service between points in two or more exchanges;

152 [(26)] **(27)** "InterLATA", interexchange telecommunications service
153 between points in different local access and transportation areas;

154 [(27)] **(28)** "IntraLATA", interexchange telecommunications service
155 between points within the same local access and transportation area;

156 [(28)] **(29)** "Light rail" includes every rail transportation system in which
157 one or more rail vehicles are propelled electrically by overhead catenary wire
158 upon tracks located substantially within an urban area and are operated
159 exclusively in the transportation of passengers and their baggage, and including
160 all bridges, tunnels, equipment, switches, spurs, tracks, stations, used in

161 connection with the operation of light rail;

162 [(29)] (30) "Line" includes route;

163 [(30)] (31) "Local access and transportation area" or "LATA", contiguous
164 geographic area approved by the U.S. District Court for the District of Columbia
165 in United States v. Western Electric, Civil Action No. 82-0192 that defines the
166 permissible areas of operations for the Bell Operating companies;

167 [(31)] (32) "Local exchange telecommunications company", any company
168 engaged in the provision of local exchange telecommunications service. A local
169 exchange telecommunications company shall be considered a "large local exchange
170 telecommunications company" if it has at least one hundred thousand access lines
171 in Missouri and a "small local exchange telecommunications company" if it has
172 less than one hundred thousand access lines in Missouri;

173 [(32)] (33) "Local exchange telecommunications service",
174 telecommunications service between points within an exchange;

175 [(33)] (34) "Long-run incremental cost", the change in total costs of the
176 company of producing an increment of output in the long run when the company
177 uses least cost technology, and excluding any costs that, in the long run, are not
178 brought into existence as a direct result of the increment of output. The relevant
179 increment of output shall be the level of output necessary to satisfy total current
180 demand levels for the service in question, or, for new services, demand levels that
181 can be demonstrably anticipated;

182 [(34)] (35) "Municipality" includes a city, village or town;

183 [(35)] (36) "Nonbasic telecommunications services" shall be all regulated
184 telecommunications services other than basic local and exchange access
185 telecommunications services, and shall include the services identified in
186 paragraphs (d) and (e) of subdivision (4) of this section. Any retail
187 telecommunications service offered for the first time after August 28, 1996, shall
188 be classified as a nonbasic telecommunications service, including any new service
189 which does not replace an existing service;

190 [(36)] (37) "Noncompetitive telecommunications company", a
191 telecommunications company other than a competitive telecommunications
192 company or a transitionally competitive telecommunications company;

193 [(37)] (38) "Noncompetitive telecommunications service", a
194 telecommunications service other than a competitive or transitionally competitive
195 telecommunications service;

196 [(38)] (39) "Operator services", operator-assisted interexchange

197 telecommunications service by means of either human or automated call
198 intervention and includes, but is not limited to, billing or completion of calling
199 card, collect, person-to-person, station-to-station or third number billed calls;

200 [(39)] (40) "Operator services contract", any agreement between a traffic
201 aggregator and a certificated interexchange telecommunications company to
202 provide operator services at a traffic aggregator location;

203 [(40)] (41) "Person" includes an individual, and a firm or copartnership;

204 [(41)] (42) "Private shared tenant services" includes the provision of
205 telecommunications and information management services and equipment within
206 a user group located in discrete private premises as authorized by the commission
207 by a commercial-shared services provider or by a user association, through
208 privately owned customer premises equipment and associated data processing and
209 information management services and includes the provision of connections to the
210 facilities of local exchange telecommunications companies and to interexchange
211 telecommunications companies;

212 [(42)] (43) "Private telecommunications system", a telecommunications
213 system controlled by a person or corporation for the sole and exclusive use of such
214 person, corporation or legal or corporate affiliate thereof;

215 [(43)] (44) "Public utility" includes every pipeline corporation, gas
216 corporation, electrical corporation, telecommunications company, water
217 corporation, [heat] **heating company** or refrigerating corporation, and sewer
218 corporation, as these terms are defined in this section, and each thereof is hereby
219 declared to be a public utility and to be subject to the jurisdiction, control and
220 regulation of the commission and to the provisions of this chapter;

221 [(44)] (45) "Railroad" includes every railroad and railway, other than
222 street railroad or light rail, by whatsoever power operated for public use in the
223 conveyance of persons or property for compensation, with all bridges, ferries,
224 tunnels, equipment, switches, spurs, tracks, stations, real estate and terminal
225 facilities of every kind used, operated, controlled or owned by or in connection
226 with any such railroad;

227 [(45)] (46) "Railroad corporation" includes every corporation, company,
228 association, joint stock company or association, partnership and person, their
229 lessees, trustees or receivers appointed by any court whatsoever, owning, holding,
230 operating, controlling or managing any railroad [or railway] as defined in this
231 section, or any cars or other equipment used thereon or in connection therewith;

232 [(46)] (47) "Rate", every individual or joint rate, fare, toll, charge,

233 reconsigning charge, switching charge, rental or other compensation of any
234 corporation, person or public utility, or any two or more such individual or joint
235 rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or
236 other compensations of any corporation, person or public utility or any schedule
237 or tariff thereof;

238 [(47)] (48) "Resale of telecommunications service", the offering or
239 providing of telecommunications service primarily through the use of services or
240 facilities owned or provided by a separate telecommunications company, but does
241 not include the offering or providing of private shared tenant services;

242 [(48)] (49) "Service" includes not only the use and accommodations
243 afforded consumers or patrons, but also any product or commodity furnished by
244 any corporation, person or public utility and the plant, equipment, apparatus,
245 appliances, property and facilities employed by any corporation, person or public
246 utility in performing any service or in furnishing any product or commodity and
247 devoted to the public purposes of such corporation, person or public utility, and
248 to the use and accommodation of consumers or patrons;

249 [(49)] (50) "Sewer corporation" includes every corporation, company,
250 association, joint stock company or association, partnership or person, their
251 lessees, trustees or receivers appointed by any court, owning, operating,
252 controlling or managing any sewer system, plant or property, for the collection,
253 carriage, treatment, or disposal of sewage anywhere within the state for gain,
254 except that the term shall not include sewer systems with fewer than twenty-five
255 outlets;

256 [(50)] (51) "Sewer system" includes all pipes, pumps, canals, lagoons,
257 plants, structures and appliances, and all other real estate, fixtures and personal
258 property, owned, operated, controlled or managed in connection with or to
259 facilitate the collection, carriage, treatment and disposal of sewage for municipal,
260 domestic or other beneficial or necessary purpose;

261 [(51)] (52) "Street railroad" includes every railroad by whatsoever type
262 of power operated, and all extensions and branches thereof and supplementary
263 facilities thereto by whatsoever type of vehicle operated, for public use in the
264 conveyance of persons or property for compensation, mainly providing local
265 transportation service upon the streets, highways and public places in a
266 municipality, or in and adjacent to a municipality, and including all cars, buses
267 and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits,
268 cables, subways, tunnels, stations, terminals and real estate of every kind used,

269 operated or owned in connection therewith but this term shall not include light
270 rail as defined in this section; and the term "street railroad" when used in this
271 chapter shall also include all motor bus and trolley bus lines and routes and
272 similar local transportation facilities, and the rolling stock and other equipment
273 thereof and the appurtenances thereto, when operated as a part of a street
274 railroad or trolley bus local transportation system, or in conjunction therewith or
275 supplementary thereto, but such term shall not include a railroad constituting or
276 used as part of a trunk line railroad system and any street railroad as defined
277 above which shall be converted wholly to motor bus operation shall nevertheless
278 continue to be included within the term street railroad as used herein;

279 [(52)] **(53)** "Telecommunications company" includes telephone
280 corporations as that term is used in the statutes of this state and every
281 corporation, company, association, joint stock company or association, partnership
282 and person, their lessees, trustees or receivers appointed by any court
283 whatsoever, owning, operating, controlling or managing any facilities used to
284 provide telecommunications service for hire, sale or resale within this state;

285 [(53)] **(54)** "Telecommunications facilities" includes lines, conduits, ducts,
286 poles, wires, cables, crossarms, receivers, transmitters, instruments, machines,
287 appliances and all devices, real estate, easements, apparatus, property and routes
288 used, operated, controlled or owned by any telecommunications company to
289 facilitate the provision of telecommunications service;

290 [(54)] **(55)** "Telecommunications service", the transmission of information
291 by wire, radio, optical cable, electronic impulses, or other similar means. As used
292 in this definition, "information" means knowledge or intelligence represented by
293 any form of writing, signs, signals, pictures, sounds, or any other
294 symbols. Telecommunications service does not include:

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

303 (b) Answering services and paging services;

304 (c) The offering of radio communication services and facilities when such

305 services and facilities are provided under a license granted by the Federal
306 Communications Commission under the commercial mobile radio services rules
307 and regulations;

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

313 (e) Services provided by a private telecommunications system;

314 (f) Cable television service;

315 (g) The installation and maintenance of inside wire within a customer's
316 premises;

317 (h) Electronic publishing services;

318 (i) Services provided pursuant to a broadcast radio or television license
319 issued by the Federal Communications Commission; or

320 (j) Interconnected voice over internet protocol service;

321 [(55)] **(56)** "Telephone cooperative", every corporation defined as a
322 telecommunications company in this section, in which at least ninety percent of
323 those persons and corporations subscribing to receive local telecommunications
324 service from the corporation own at least ninety percent of the corporation's
325 outstanding and issued capital stock and in which no subscriber owns more than
326 two shares of the corporation's outstanding and issued capital stock;

327 [(56)] **(57)** "Traffic aggregator", any person, firm, partnership or
328 corporation which furnishes a telephone for use by the public and includes, but
329 is not limited to, telephones located in rooms, offices and similar locations in
330 hotels, motels, hospitals, colleges, universities, airports and public or
331 customer-owned pay telephone locations, whether or not coin operated;

332 [(57)] **(58)** "Transitionally competitive telecommunications company", an
333 interexchange telecommunications company which provides any noncompetitive
334 or transitionally competitive telecommunications service, except for an
335 interexchange telecommunications company which provides only noncompetitive
336 telecommunications service;

337 [(58)] **(59)** "Transitionally competitive telecommunications service", a
338 telecommunications service offered by a noncompetitive or transitionally
339 competitive telecommunications company and classified as transitionally
340 competitive by the commission pursuant to section 392.361 or 392.370;

341 [(59)] **(60)** "Water corporation" includes every corporation, company,
342 association, joint stock company or association, partnership and person, their
343 lessees, trustees, or receivers appointed by any court whatsoever, owning,
344 operating, controlling or managing any plant or property, dam or water supply,
345 canal, or power station, distributing or selling for distribution, or selling or
346 supplying for gain any water;

347 [(60)] **(61)** "Water system" includes all reservoirs, tunnels, shafts, dams,
348 dikes, headgates, pipes, flumes, canals, structures and appliances, and all other
349 real estate, fixtures and personal property, owned, operated, controlled or
350 managed in connection with or to facilitate the diversion, development, storage,
351 supply, distribution, sale, furnishing or carriage of water for municipal, domestic
352 or other beneficial use.

386.510. With respect to commission orders or decisions issued on and
2 after July 1, 2011, within thirty days after the application for a rehearing is
3 denied, or, if the application is granted, then within thirty days after the
4 rendition of the decision on rehearing, the applicant may file a notice of appeal
5 with [the commission, which shall also be served on the parties to the commission
6 proceeding in accordance with section 386.515, and which the commission shall
7 forward to] the appellate court with the territorial jurisdiction over the county
8 where the hearing was held or in which the commission has its principal office
9 for the purpose of having the reasonableness or lawfulness of the original order
10 or decision or the order or decision on rehearing inquired into or determined,
11 **which shall also be served on the commission and the parties to the**
12 **commission proceeding in accordance with section 386.515.** Except with
13 respect to a stay or suspension pursuant to subsection 1 of section 386.520, no
14 new or additional evidence may be introduced in the appellate court but the cause
15 shall be heard by the court without the intervention of a jury on the evidence and
16 exhibits introduced before the commission and certified to by it. The notice of
17 appeal shall include the appellant's application for rehearing, a copy of the
18 reconciliation required by subsection 4 of section 386.420, a concise statement of
19 the issues being appealed, a full and complete list of the parties to the
20 commission proceeding, **all necessary filing fees**, and any other information
21 specified by the rules of the court. Unless otherwise ordered by the court of
22 appeals, the commission shall, within thirty days of the filing of the notice of
23 appeal, certify its record in the case to the court of appeals. The commission and
24 each party to the action or proceeding before the commission shall have the right

25 to intervene and participate fully in the review proceedings. Upon the submission
26 of the case to the court of appeals, the court of appeals shall render its opinion
27 either affirming or setting aside, in whole or in part, the order or decision of the
28 commission under review. In case the order or decision is reversed by reason of
29 the commission failing to receive testimony properly proffered, the court shall
30 remand the cause to the commission, with instructions to receive the testimony
31 so proffered and rejected, and enter a new order or render a new decision based
32 upon the evidence theretofore taken, and such as it is directed to receive. The
33 court may, in its discretion, remand any cause which is reversed by it to the
34 commission for further action. No court in this state, except the supreme court
35 or the court of appeals, shall have jurisdiction or authority to review, reverse,
36 correct or annul any order or decision of the commission or to suspend or delay
37 the executing or operation thereof, or to enjoin, restrain or interfere with the
38 commission in the performance of its official duties. The appellate courts of this
39 state shall always be deemed open for the trial of suits brought to review the
40 orders and decisions of the commission as provided in the public service
41 commission law and the same shall where necessary be tried and determined as
42 suits in equity.

386.515. With respect to commission orders or decisions issued on and
2 after July 1, 2011, an application for rehearing is required to be served on all
3 parties and is a prerequisite to the filing of an appeal under section 386.510. The
4 application for rehearing puts the parties to the proceeding before the commission
5 on notice that an appeal can follow and any such review under the appeal may
6 proceed provided that a copy of the notice of appeal is served on said
7 parties. With respect to commission orders or decisions issued on and after July
8 1, 2011, the review procedure provided for in section 386.510 continues to be
9 exclusive except that a copy of the notice of appeal required by section 386.510
10 shall be served on **the commission and** each party to the proceeding before the
11 commission by the appellant according to the rules established by the court in
12 which the appeal is filed.

**386.805. For purposes of sections 91.025, 386.800, 393.106, 394.080,
2 and 394.315 only, when municipally owned electric utilities or rural
3 electric cooperatives are lawfully providing electric service to a
4 structure outside of the respective service area boundaries, an electric
5 vehicle charging station reasonably proximate to such structure served
6 by such municipally owned electric utility or rural electric cooperative**

7 shall be considered a contiguous or adjacent addition to or an
8 expansion of an existing structure.

✓