

CHAPTER 239**(HB 337)**

AN ACT relating to the provision of telecommunications service.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

In addition to the definitions set forth in KRS 278.010 and 278.516(2), the following definitions shall apply to Sections 1 to 4 of this Act:

- (1) *"Basic local exchange service" means a retail telecommunications service consisting of a primary, single, voice-grade line provided to the premises of residential or business customers with the following features and functions only:*
- (a) *Unlimited calls within the telephone utility's local exchange area;*
 - (b) *Dual-tone multi-frequency dialing; and*
 - (c) *Access to the following:*
 - 1. *Emergency 911 telephone service;*
 - 2. *All locally available interexchange companies;*
 - 3. *Directory assistance;*
 - 4. *Operator services;*
 - 5. *Relay services; and*
 - 6. *A standard alphabetical directory listing that includes names, addresses, and telephone numbers at no additional charge.*

With respect to local exchange carriers, basic local exchange service also shall include any mandatory extended area service routes accessible as a local call within that exchange area on or before the effective date of this Act. Basic local exchange service does not include any features or functions other than those listed in this subsection, nor any other communications service, even if such service should include features and functions listed herein;

- (2) *"Electing utility" means a telephone utility that elects to operate under Section 3 of this Act;*
- (3) *"Local exchange carrier" or "LEC" has the same meaning as defined in 47 U.S.C. sec. 153(26);*
- (4) *"Incumbent local exchange carrier" or "ILEC" has the same meaning as defined in 47 U.S.C. sec. 251(h);*
- (5) *"Nonbasic service" means all retail telecommunications services provided to a residential or business customer, all arrangements with respect to those services, and all packages of products or services; provided, however, nonbasic service includes basic local exchange service only if the customer chooses to purchase a package that includes basic local exchange service as a component of the package;*
- (6) *"Optional telephone feature" means any of those central office-based features that were tariffed by a local exchange carrier on or before February 1, 2006, that, where available:*
 - (a) *Are available to a line-side connection in a telephone switch;*
 - (b) *Are available on a stand-alone basis separate from a bundled offering; and*
 - (c) *Enhance the utility of basic local exchange service. The term includes but is not limited to call forwarding, call waiting, and caller ID;*
- (7) *"Package" means combinations of retail products or services offered whether at a single price or with the availability of the price for one product or service contingent on the purchase of others; and*
- (8) *"Telephone utility" includes local exchange carriers and telecommunications carriers as those terms are defined in 47 U.S.C. sec. 153 and any federal regulations implementing that section, except that the definition shall not include commercial mobile radio service providers as defined in 47 U.S.C. sec. 332 and the Federal Communications Commission's lawful regulations promulgated thereunder.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

- (1) *Nothing in Sections 1 to 4 of this Act shall affect the commission's jurisdiction with respect to:*
- (a) *Any agreement or arrangement between or among ILECs;*
 - (b) *Any agreement or arrangement between or among ILECs and other local exchange carriers;*
 - (c) *Consumer complaints as to compliance with basic local exchange service obligations, and the quality of basic voice grade service transmission for basic and nonbasic services, consistent with accepted industry standards for telecommunications services;*
 - (d) *The emergency 911 telephone service as set forth in KRS 65.750 to 65.760 or wireless enhanced emergency 911 systems as set forth in KRS 65.7621 to 65.7643;*
 - (e) *Accuracy of billing for telecommunications services, in accordance with the truth-in-billing regulations prescribed by the Federal Communications Commission;*
 - (f) *Assessments as set forth in KRS 278.130, 278.140, and 278.150;*
 - (g) *Unauthorized change of telecommunications providers or "slamming" under KRS 278.535;*
 - (h) *Billing of telecommunications services not ordered by or on behalf of the consumer or "cramming" to the extent that such services do not comply with the truth-in-billing regulations prescribed by the Federal Communications Commission;*
 - (i) *The federal Universal Service Fund and Lifeline Services Program and any Kentucky state counterpart;*
 - (j) *Any special telephone service programs as set forth in KRS 278.547 to 278.5499;*
 - (k) *Tariffs, except as expressly provided for in Sections 1 to 4 of this Act;*
 - (l) *Setting objectives for performance as to basic local exchange service; except that the objectives shall not exceed existing commission standards or associated penalties as of the effective date of this Act;*
 - (m) *Prohibiting price differences among retail telecommunications customers to the extent that such differences are attributable to race, creed, color, religion, sex or national origin; or*
 - (n) *Ensuring that a telephone utility furnishes safe, adequate, and reasonable basic local exchange service to customers within that utility's service area.*
- (2) *Telephone utilities operating pursuant to Sections 1 to 4 of this Act shall file with the commission a form containing:*
- (a) *The complete name of the telephone utility;*
 - (b) *The physical address of its principal office; and*
 - (c) *The name, title, and telephone number of the person responsible for answering consumer complaints on behalf of the telephone utility.*
- (3) *No telephone utility shall engage in predatory pricing as defined by the United States Supreme Court in Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209 (1993);*
- (4) *Nothing in Sections 1 to 4 of this Act shall affect the alternative regulation process for small telephone utilities as set forth in KRS 278.516.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

Any telephone utility, at its discretion and without commission approval, may elect to adopt the price regulation plan set forth below:

- (1) *An election under this section shall be effective immediately upon written notification from the electing utility to the commission. The election shall remain effective until withdrawn by the electing utility.*
- (2) *The rate for basic local exchange service for an electing utility, other than an electing small telephone utility as defined in KRS 278.516 shall be capped for a period of sixty (60) months from the date of the election. Subject to the limitations in Sections 1 to 4 of this Act, an electing utility may seek a rate*

adjustment for basic local exchange services according to the terms of regulation applicable to the basic local exchange services of any ILEC on June 30, 2006, or a previously approved or new price regulation proposal for basic service pursuant to KRS 278.512. These rate adjustments may become effective on, or after the day following the end of the sixty (60) months.

- (3) *Electing utilities shall retain on file with the commission tariffs for basic local exchange services and intrastate switched access services. Tariffs filed in accordance with subsection (2) of this section shall be deemed valid and binding upon the effective date stated in the tariff.*
- (4) *An electing utility's rates for intrastate switched access service shall not exceed its rates for this service that were in effect on the day prior to the date the utility filed its notice of election.*
- (5) *The commission shall have original jurisdiction over complaints as to basic local exchange service of any electing telephone utility, except that the commission shall not have jurisdiction to set, investigate, or determine rates as to any electing telephone utility other than as set forth in this section. Upon a complaint in writing, made against any electing telephone utility by any person stating that basic local exchange service in which that complainant is directly interested is unreasonable, unsafe, insufficient, or unjustly discriminatory, or that basic local exchange service is inadequate or cannot be obtained, the commission shall proceed with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. No order concerning a complaint shall be entered by the commission without a formal public hearing. A person may intervene in accordance with commission administrative regulations. The commission shall fix the time and place for the hearing and shall provide notice to the electing telephone utility and the complainant not less than twenty (20) days in advance. The commission may dismiss any complaint without a hearing if it decides that a hearing is not necessary, in the public interest, or for the protection of substantial rights. The complainant and the electing telephone utility shall be entitled to be heard in person or by an attorney and to introduce evidence.*
- (6) *An electing utility's rates, charges, earnings, and revenues shall be deemed to be just and reasonable under KRS 278.030 and administrative regulations promulgated thereunder upon election. Except as set forth in paragraphs (a) and (b) of subsection (1) of Section 2 of this Act, an electing telephone utility shall be exempt from KRS 278.190, 278.192, 278.200, 278.230(3), 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder. The utility shall also be exempt from any rules, orders, or regulations of the commission requiring the retention or filing of financial reports, classifications, depreciation or other schedules, or any other information not required by the Federal Communications Commission.*
- (7) *An electing small telephone utility, as defined in KRS 278.516, may withdraw from being so regulated by providing written notice of withdrawal to the commission.*
- (8) *Under the following circumstances, any electing utility may withdraw from being so regulated by providing written notice to the commission:*
 - (a) *Upon the approval pursuant to KRS 278.512 of a company-specific alternative regulation plan; or*
 - (b) *Upon filing notice with the commission of its adoption of the applicable provisions of any alternative regulation plan previously approved by the commission. The adoption shall become effective upon filing of the notice.*
- (9) *The rates for basic local exchange service for an electing small telephone utility as defined in KRS 278.516 shall be capped for a period of twelve (12) months from the date of the election. Annually thereafter, an electing small telephone utility may not increase rates for an individual basic local exchange service by more than the increase in the annual average of the Consumer Price Index for all urban consumers for the most recent calendar year as published by the United States Department of Labor, Bureau of Labor Statistics.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

The following provisions of this section shall apply and be enforced equally to all telephone utilities, unless otherwise specifically stated in this section.

- (1) *Telephone utilities may file with the commission schedules or tariffs reflecting the rates, terms, and conditions for nonbasic services that are generally available to all subscribers qualifying for the rates, terms, and conditions. The rates, terms, and conditions for basic and nonbasic services shall be valid upon*

the effective date stated in the schedule. Tariffs for nonbasic services in effect on the effective date of this Act shall continue to be effective as binding rates, terms, and conditions until withdrawn or modified by the telephone utility.

- (2) *A telephone utility offering a package that includes any optional telephone features tariffed as of February 1, 2006, shall maintain schedules or tariffs on file with the commission for each such optional telephone feature available on a stand-alone basis to residential customers who purchase basic local exchange service from that telephone utility.*
- (3) *Notwithstanding the terms of any adopted regulation plan or any provision of law to the contrary, telephone utilities may provide nonbasic services pursuant to terms and conditions provided to the customer. Telephone utilities shall not be required to file nonbasic contracts with the commission. Telephone utilities shall permit a residential customer with nonbasic service to purchase basic local exchange service and any optional telephone feature on file in a schedule or tariff at the commission at the current rates, terms, and conditions without incurring termination charges, unless the customer has entered into an agreement containing termination charges and the customer is given thirty (30) days from receipt of the terms and conditions to cancel the agreement. If a customer cancels the agreement within thirty (30) days from receipt of the terms and conditions, termination charges are limited to the price of unreturned equipment or services, including installation, received at that point. Telephone utilities that provide services pursuant to this subsection shall provide customers with notice, as part of the terms and conditions of such services, that basic local exchange service and any optional telephone feature on file in a schedule or tariff with the commission may be purchased separately at the price posted on the company's Web site or on file with the commission.*
- (4) *Notwithstanding any provision of law to the contrary, nonbasic services offered pursuant to the provisions of this section shall be set by the marketplace and are not governed by KRS 278.030 and administrative regulations promulgated thereunder. The nonbasic services are exempt from action or review by the commission under KRS 278.160, 278.170, 278.180, 278.190, 278.192, 278.200, 278.230(3), 278.250, 278.255, 278.260, 278.270, 278.280, 278.290, and 278.300 and administrative regulations promulgated thereunder, except as specifically stated in Sections 1 to 4 of this Act.*

Section 5. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, *in Sections 1 to 4 of this Act, in KRS 278.546 to 278.5462*, and in KRS 278.990, unless the context otherwise requires:

- (1) "Corporation" includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts;
- (2) "Person" includes natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest;
- (3) "Utility" means any person except, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:
 - (a) The generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses;
 - (b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses;
 - (c) The transporting or conveying of gas, crude oil, or other fluid substance by pipeline to or for the public, for compensation;
 - (d) The diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation;
 - (e) The transmission or conveyance over wire, in air, or otherwise, of any message by telephone or telegraph for the public, for compensation; or
 - (f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not

subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

- (4) "Retail electric supplier" means any person, firm, corporation, association, or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;
- (5) "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;
- (6) "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;
- (7) "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;
- (8) "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;
- (9) "Generation and transmission cooperative," or "G&T," means a utility formed under KRS Chapter 279 that provides electric generation and transmission services;
- (10) "Distribution cooperative" means a utility formed under KRS Chapter 279 that provides retail electric service;
- (11) "Facility" includes all property, means, and instrumentalities owned, operated, leased, licensed, used, furnished, or supplied for, by, or in connection with the business of any utility;
- (12) "Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;
- (13) "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure, and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility, **but does not include Voice over Internet Protocol (VoIP) service**;
- (14) "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;
- (15) "Commission" means the Public Service Commission of Kentucky;
- (16) "Commissioner" means one (1) of the members of the commission;
- (17) "Demand-side management" means any conservation, load management, or other utility activity intended to influence the level or pattern of customer usage or demand, including home energy assistance programs;
- (18) "Affiliate" means a person that controls or that is controlled by, or is under common control with, a utility;
- (19) "Control" means the power to direct the management or policies of a person through ownership, by contract, or otherwise;
- (20) "CAM" means a cost allocation manual which is an indexed compilation and documentation of a company's cost allocation policies and related procedures;
- (21) "Nonregulated activity" means the provision of competitive retail gas or electric services or other products or services over which the commission exerts no regulatory authority;
- (22) "Nonregulated" means that which is not subject to regulation by the commission;
- (23) "Regulated activity" means a service provided by a utility or other person, the rates and charges of which are regulated by the commission;
- (24) "USoA" means uniform system of accounts which is a system of accounts for public utilities established by the FERC and adopted by the commission;

- (25) "Arm's length" means the standard of conduct under which unrelated parties, each party acting in its own best interest, would negotiate and carry out a particular transaction;
- (26) "Subsidize" means the recovery of costs or the transfer of value from one (1) class of customer, activity, or business unit that is attributable to another;
- (27) "Solicit" means to engage in or offer for sale a good or service, either directly or indirectly and irrespective of place or audience;
- (28) "USDA" means the United States Department of Agriculture;
- (29) "FERC" means the Federal Energy Regulatory Commission;
- (30) "SEC" means the Securities and Exchange Commission;~~and~~
- (31) "Commercial mobile radio services" has the same meaning as in 47 C.F.R. sec. 20.3 and includes the term "wireless" and service provided by any wireless real time two (2) way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line; *and*
- (32) *"Voice over Internet Protocol" or "VoIP" has the same meaning as in federal law.*

Approved April 22, 2006.