

HOUSE BILL No. 2104

By Committee on Utilities and Telecommunications

1-24

1 AN ACT concerning telecommunications; relating to the use of alternative
2 technology, carrier of last resort; amending K.S.A. 2012 Supp. 66-2009
3 and repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 66-2009 is hereby amended to read as
7 follows: 66-2009. (a) Local exchange carriers that provided switched local
8 exchange services in the state prior to January 1, 1996, or their successors,
9 shall serve as the carrier of last resort in their exchanges and shall be
10 eligible to receive KUSF funding. However, with respect to the Hill City
11 exchange area in which multiple carriers were certified prior to January 1,
12 1996, the commission's determination, subject to court appeals, shall
13 determine which authorized carrier shall serve as carrier of last resort. The
14 local exchange carrier serving as the carrier of last resort shall remain the
15 carrier of last resort and shall be entitled to recover the costs of serving as
16 carrier of last resort.

17 (b) Beginning March 1, 1997, the amount of KUSF funds owed to
18 each qualifying telecommunications carrier, telecommunications public
19 utility or wireless telecommunications service provider in the state, based
20 upon the revenue requirements assigned to the funds for such qualifying
21 utility, carrier or provider, shall be allocated by the fund administrator in
22 equal monthly installments.

23 (c) (1) For the purposes of this subsection:

24 (A) "Alternative service provider" means any person or entity
25 providing local telecommunications services or any person or entity
26 allowing another person or entity to use its equipment or facilities to
27 provide local telecommunications services or any person or entity securing
28 rights to select an alternative service provider for a property owner or
29 developer, and does not include a local exchange carrier providing service
30 within its commission-approved local exchange service area.

31 (B) "Alternative technology" means any technology that offers local
32 telecommunications service and functionality comparable to that provided
33 through an ~~existing~~ *alternative existing* service provider's facilities, and may
34 include a technology that does not require the use of any public right-of-
35 way. *Such technology shall meet all quality of service requirements*
36 *established pursuant to K.S.A. 66-2002, and amendments thereto, provide*

1 *universal service pursuant to K.S.A. 66-1,187, and amendments thereto,*
2 *and provide a minimum of three hours of voice service in the event of an*
3 *electric power outage.*

4 (C) "Greenfield area" means an area that requires entirely new
5 construction of local loops, in addition to the deployment of any necessary
6 switching and other network equipment, to serve new real property
7 developments.

8 (D) "Local telecommunications service" means two-way voice
9 service capable of being originated and terminated within a local exchange
10 service area, regardless of the technology used to provision the voice
11 service.

12 (E) "Owner or developer" means the owner or developer of a
13 business or residential property, any condominium association or
14 homeowners' association thereof, any other person or entity having
15 ownership in, or control over, the property, or any person acting on behalf
16 of such owner or developer.

17 (F) "Real property" includes, but is not limited to, any single tenant or
18 multi-tenant business or residential property, subdivisions, condominiums,
19 apartments, office buildings or office parks.

20 (2) A local exchange carrier obligated by this section to serve as the
21 carrier of last resort is hereby relieved of that obligation, and shall not be
22 obligated to provide basic local telecommunications service to any
23 occupants of real property if the owner or developer of the real property, or
24 a person acting on behalf of the owner or developer of real property,
25 engages in any of the following acts:

26 (A) Permits an alternative service provider to install its facilities or
27 equipment used to provide local telecommunications service based on a
28 condition of exclusion of the local exchange carrier, during the
29 construction phase of the real property;

30 (B) accepts or agrees to accept incentives or rewards from an
31 alternative service provider that are contingent upon the provision of any
32 or all local telecommunications services by one or more alternative service
33 providers to the exclusion of the local exchange carrier; or

34 (C) collects from the occupants or residents of the real property
35 mandatory charges for the provision of any local telecommunications
36 service provided by an alternative service provider to the occupants or
37 residents in any manner, including, but not limited to, collection through
38 rent, fees or dues.

39 (3) The local exchange carrier relieved of its carrier of last resort
40 obligation to provide basic local telecommunications service to the
41 occupants of the real property, pursuant to subsection (c), shall notify the
42 commission of that fact within 120 days after receiving knowledge of the
43 existence of such fact.

1 (4) A local exchange carrier that is not automatically relieved of its
2 carrier of last resort obligation pursuant to paragraph (2) of subsection (c)
3 may seek a waiver of its carrier of last resort obligation from the
4 commission for good cause shown based on the facts and circumstances of
5 the provision of local telecommunications service or internet access
6 service to a particular real property. Upon petition for such relief, notice
7 shall be given by the local exchange carrier at the same time to the
8 relevant owner or developer. The commission shall make a determination
9 concerning the petition on or before 90 days after such petition is filed.

10 (5) If all conditions described in paragraph (2) or (4) of subsection (c)
11 cease to exist at the property, and the owner or developer requests in
12 writing that the local exchange carrier make local telecommunications
13 service available to occupants of the real property and confirms in writing
14 that all conditions described in paragraph (2) or (4) of subsection (c) have
15 ceased to exist at the property, the carrier of last resort obligation under
16 this section shall again apply to the local exchange carrier at the real
17 property. The local exchange carrier shall provide notice to the
18 commission that it is assuming the carrier of last resort obligation. The
19 local exchange carrier may require that the owner or developer pay to the
20 local exchange carrier in advance a reasonable fee to recover costs that
21 exceed the costs that would have been incurred to construct or acquire
22 facilities to serve customers at the real property initially. The commission
23 may verify that the fee enables the local exchange carrier to recover its
24 costs that exceed the costs that would have been incurred to construct or
25 acquire facilities to serve customers at the real property initially, including,
26 but not limited to, amounts necessary to install or retrofit any facilities or
27 equipment, to cut or trench sidewalks and streets and to restore roads,
28 sidewalks, block walls or landscapes to original conditions. The local
29 exchange carrier shall have a reasonable period of time following the
30 request from the owner or developer to make arrangements for local
31 telecommunications service availability. If a local exchange carrier is
32 relieved of its carrier of last resort obligation under paragraph (2) or (4) of
33 subsection (c), the owner or developer shall notify all occupants and any
34 subsequent owner of the specific real property of the following: (1) That
35 the incumbent local exchange carrier does not have facilities installed to
36 serve the specific real property, and that such carrier has been relieved of
37 its carrier of last resort obligations; and (2) the name of the person that will
38 be providing local telecommunications service to the real property, and the
39 type of technology that will be used to provide such service. An incumbent
40 local exchange carrier may meet the carrier's obligations under this section
41 using any available alternative technology. If any conditions described in
42 paragraph (2) or (4) of subsection (c) again exist at the real property, the
43 relief in paragraph (2) or (4) of subsection (c) shall again apply.

1 (6) When real property is located in a greenfield area, a carrier of last
2 resort shall not automatically be excused from its obligations under
3 paragraph (2) of subsection (c) unless the alternative service provider
4 possesses or shall possess at the time of commencement of service the
5 capability to provide local telecommunications service or the functional
6 equivalent of such service through any form of technology.

7 (7) If an owner or developer of real property permits an alternative
8 service provider to install its facilities or equipment used to provide local
9 telecommunications service to such property based on a condition of
10 exclusion of the local exchange carrier, the owner or developer must
11 provide written notice to the purchaser of any such real property that there
12 is an exclusion of that local exchange carrier, and that the alternative
13 service provider is the exclusive provider of service to such property.

14 (8) *A local exchange carrier shall be relieved of carrier of last resort*
15 *obligations in any exchange in which the carrier is not receiving federal*
16 *universal service fund or KUSF moneys if there are at least two other*
17 *telecommunications providers in each such exchange and at least one of*
18 *such providers, in addition to the local exchange carrier, is able to serve*
19 *each residential and commercial location within each such exchange.*
20 *Such providers may use alternative technology. The commission may*
21 *require that a local exchange carrier:*

22 (A) *Validate the availability of two additional telecommunications*
23 *providers in each such exchange;*

24 (B) *maintain quality of service standards; and*

25 (C) *ensure that the fees and rates of the other telecommunications*
26 *providers are fair and reasonable in comparison to the local exchange*
27 *carrier's charges.*

28 (9) (A) *A local exchange carrier with a carrier of last resort*
29 *obligation may provide telecommunications service through an alternative*
30 *technology. The carrier shall assist any customer unable to receive service*
31 *through the proposed alternative technology to receive service from an*
32 *alternative service provider. If such a provider is unavailable, then the*
33 *carrier shall continue to provide service to such customer. A carrier may*
34 *not charge any expenses for customers transitioning to an alternative*
35 *technology at the request or requirement of the carrier. The carrier shall*
36 *provide the state corporation commission with 60 days' notice prior to*
37 *transitioning customers to an alternative technology and five days' notice*
38 *prior to the transition of a customer to an alternative service provider.*
39 *Prior to notifying the commission, the carrier shall negotiate exit fees with*
40 *all local public safety answering point operators and emergency medical*
41 *service providers within the affected exchange and ensure that E-911*
42 *service, as defined in K.S.A. 12-5363, and amendments thereto, shall*
43 *remain in effect. In the event that an agreement can not be reached, the*

1 *commission shall select the exit fees from the proposals offered by the*
2 *carrier and the affected local government, but may not establish any*
3 *additional fees or rates. Such selection shall be based on what is*
4 *determined to be fair and reasonable to all parties. A carrier may appeal a*
5 *final decision by the commission to reject a carrier's application to use*
6 *alternative technologies or to abandon the carrier's carrier of last resort*
7 *obligations pursuant to the Kansas judicial review act.*

8 *(B) Customers of a local exchange carrier may not refuse an*
9 *alternative technology provided by the carrier, but may require the carrier*
10 *to assist them in finding an alternative service provider. If no alternative*
11 *service provider is available, the customer shall accept the alternative*
12 *technology or the carrier will be relieved of carrier of last resort*
13 *obligations to that customer.*

14 *(C) A local exchange carrier transitioning customers to an*
15 *alternative technology shall not be eligible to receive KUSF funds for*
16 *customers in that exchange. The state corporation commission shall have*
17 *no jurisdiction over any alternative technology employed by a local*
18 *exchange carrier if such technology is regulated by the federal*
19 *communications commission.*

20 Sec. 2. K.S.A. 2012 Supp. 66-2009 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.