

**Senate Substitute for HOUSE BILL No. 2131**

By Committee on Utilities

2-18

1 AN ACT concerning telecommunications; relating to local exchange  
2 carriers; concerning the Kansas universal service fund; concerning  
3 wireless communications, siting of equipment; relating to  
4 municipalities and state entities, public lands and public right-of-way;  
5 amending K.S.A. 17-1902 and 66-2004 and K.S.A. 2015 Supp. 66-  
6 2005, 66-2007, 66-2008 and 66-2017 and repealing the existing  
7 sections.  
8

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

10 New Section 1. (a) The Kansas legislature finds and declares that:

11 (1) The permitting, construction, modification, maintenance and  
12 operation of wireless facilities are critical to ensuring that all citizens in  
13 the state have true access to broadband and other advanced technology and  
14 information;

15 (2) these facilities are critical to ensuring that businesses and schools  
16 throughout the state remain competitive in the global economy;

17 (3) wireless telecommunications facilities that enable broadband  
18 services have a significant economic benefit; and

19 (4) the permitting, construction, modification, maintenance and  
20 operation of these facilities, to the extent specifically addressed in this  
21 section, are declared to be matters of statewide concern and interest.

22 (b) As used in this section:

23 (1) "Accessory equipment" means any equipment serving or being  
24 used in conjunction with a wireless facility or wireless support structure  
25 including, but not limited to, utility or transmission equipment, power  
26 supplies, generators, batteries, cables, equipment buildings, cabinets and  
27 storage sheds, shelters or similar structures.

28 (2) "Antenna" means communications equipment that transmits or  
29 receives electromagnetic radio signals used in the provision of wireless  
30 services.

31 (3) "Applicant" means any person or entity that is engaged in the  
32 business of providing wireless services or the wireless infrastructure  
33 required for wireless services and that submits an application.

34 (4) "Application" means a request submitted by an applicant to an  
35 authority for: (A) The construction of a new wireless support structure or  
36 new wireless facility;

1 (B) the substantial modification of a wireless support structure or  
2 wireless facility; or

3 (C) collocation of a wireless facility or replacement of a wireless  
4 facility.

5 (5) "Authority" means any governing body, board, agency, office or  
6 commission of a city, county or the state that is authorized by law to make  
7 legislative, quasi judicial or administrative decisions concerning an  
8 application. "Authority" shall not include any school district as defined in  
9 K.S.A. 72-8301, and amendments thereto, or any court having jurisdiction  
10 over land use, planning, zoning or other decisions made by an authority.

11 (6) "Base station" means a station that includes a structure that  
12 currently supports or houses an antenna, transceiver, coaxial cables, power  
13 cables or other associated equipment at a specific site that is authorized to  
14 communicate with mobile stations, generally consisting of radio  
15 transceivers, antennas, coaxial cables, power supplies and other associated  
16 electronics. "Base station" does not mean a tower or equipment associated  
17 with a tower and does not include any structure that, at the time the  
18 relevant application is filed with the authority, does not support or house  
19 equipment described in this paragraph.

20 (7) "Collocation" means the mounting or installation of wireless  
21 facilities on a building, structure, wireless support structure, tower, utility  
22 pole, base station or existing structure for the purposes of transmitting or  
23 receiving radio frequency signals for communication purposes.

24 (8) "Distributed antenna system" means a network that distributes  
25 radio frequency signals and consisting of: (A) Remote communications or  
26 antenna nodes deployed throughout a desired coverage area, each  
27 including at least one antenna for transmission and reception;

28 (B) a high capacity signal transport medium that is connected to a  
29 central communications hub site; and

30 (C) radio transceivers located at the hub's site to process or control  
31 the communications signals transmitted and received through the antennas  
32 to provide wireless or mobile service within a geographic area or structure.

33 (9) "Existing structure" means a structure that exists at the time an  
34 application to collocate wireless facilities on a structure is filed with an  
35 authority. The term includes any structure that is currently supporting or  
36 designed to support the attachment of wireless facilities, including, but not  
37 limited to, towers, buildings and water towers.

38 (10) "Public lands, buildings and facilities" does not include any real  
39 property, structures or facilities under the ownership, control or  
40 jurisdiction of the secretary of transportation.

41 (11) "Public right-of-way" means only the area of real property in  
42 which the authority has a dedicated or acquired right-of-way interest in the  
43 real property. It shall include the area on, below or above the present and

1 future streets, alleys, avenues, roads, highways, parkways or boulevards  
2 dedicated or acquired as right-of-way. "Public right-of-way" does not  
3 include any state, federal or interstate highway right-of-way, which  
4 generally includes the area that runs contiguous to, parallel with, and is  
5 generally equidistant from the center of that portion of the highway  
6 improved, designed or ordinarily used for public travel.

7 (12) "Replacement" includes constructing a new wireless support  
8 structure of comparable proportions and of comparable height or such  
9 other height that would not constitute a substantial modification to an  
10 existing structure in order to support wireless facilities or to accommodate  
11 collocation and includes the associated removal of the pre-existing  
12 wireless facilities, if any, or wireless support structure.

13 (13) "Small cell facility" means a wireless facility that meets both of  
14 the following qualifications: (A) Each antenna is located inside an  
15 enclosure of no more than six cubic feet in volume, or in the case of an  
16 antenna that has exposed elements, the antenna and all of the antenna's  
17 exposed elements could fit within an imaginary enclosure of no more than  
18 six cubic feet; and

19 (B) primary equipment enclosures that are no larger than 17 cubic  
20 feet in volume, or facilities comprised of such higher limits as the federal  
21 communications commission has excluded from review pursuant to 54  
22 U.S.C. § 306108. Associated equipment may be located outside the  
23 primary equipment, and if so located, is not to be included in the  
24 calculation of equipment volume. Associated equipment includes, but is  
25 not limited to, any electric meter, concealment, telecommunications  
26 demarcation box, ground-based enclosures, back-up power systems,  
27 grounding equipment, power transfer switch, cut-off switch and vertical  
28 cable runs for the connection of power and other services.

29 (14) "Small cell network" means a collection of interrelated small cell  
30 facilities designed to deliver wireless service.

31 (15) "Substantial modification" means a proposed modification to an  
32 existing wireless support structure or base station that will substantially  
33 change the physical dimensions of the wireless support structure or base  
34 station under the objective standard for substantial change, established by  
35 the federal communications commission pursuant to 47 C.F.R. 1.40001.

36 (16) "Transmission equipment" means equipment that facilitates  
37 transmission for a wireless service licensed or authorized by the federal  
38 communications commission including, but not limited to, radio  
39 transceivers, antennas, coaxial or fiber optic cable and regular and backup  
40 power supply. "Transmission equipment" includes equipment associated  
41 with wireless services including, but not limited to, private, broadcast and  
42 public safety services such as wireless local area network services, and  
43 services utilizing a set of specifications developed by the institute of

1 electrical and electronics engineers for interface between a wireless client  
2 and a base station or between two wireless clients, as well as unlicensed  
3 wireless services and fixed wireless services, such as microwave backhaul.

4 (17) "Wireless facility" means equipment at a fixed location that  
5 enables wireless communications between user equipment and a  
6 communications network, including, but not limited to: (A) Equipment  
7 associated with wireless services such as private, broadcast and public  
8 safety services, as well as unlicensed wireless services and fixed wireless  
9 services such as microwave backhaul; and

10 (B) radio transceivers, antennas, coaxial or fiber-optic cable, regular  
11 and backup power supplies and comparable equipment, regardless of  
12 technological configuration.

13 "Wireless facility" does not mean any wired connections from a  
14 wireless support structure or base station to a hub or switching location.

15 (18) "Wireless services" means "personal wireless services" and  
16 "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)  
17 (C), including commercial mobile services as defined in 47 U.S.C. §  
18 332(d), provided to personal mobile communication devices through  
19 wireless facilities or any fixed or mobile wireless services provided using  
20 wireless facilities.

21 (19) "Wireless infrastructure provider" means any person that builds  
22 or installs transmission equipment, wireless facilities or wireless support  
23 structures, but that is not a wireless services provider.

24 (20) "Wireless support structure" means a freestanding structure, such  
25 as a monopole, guyed or self-supporting tower or other suitable existing or  
26 alternative structure designed to support or capable of supporting wireless  
27 facilities. "Wireless support structure" shall not include any telephone or  
28 electrical utility pole or any tower used for the distribution or transmission  
29 of electrical service.

30 (21) "Utility pole" means a structure owned or operated by a public  
31 utility as defined in K.S.A. 66-104, and amendments thereto, a  
32 municipality as defined in K.S.A. 75-6102, and amendments thereto, or an  
33 electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and  
34 amendments thereto, that is designed specifically for and used to carry  
35 lines, cables or wires for telecommunications, cable, electricity or to  
36 provide lighting.

37 (22) "Water tower" means a water storage tank or a standpipe, or an  
38 elevated tank situated on a support structure that was originally  
39 constructed for use as a reservoir or facility to store or deliver water.

40 (23) "Wireless services provider" means a provider of wireless  
41 services.

42 (c) (1) An authority shall not charge an application fee, consulting fee  
43 or other fee associated with the submission, review, processing and

1 approval of an application that is not required for other wireless  
2 infrastructure providers or wireline telecommunications or broadband  
3 providers within the authority's jurisdiction.

4 (2) An authority shall only assess fees or charges for the actual costs  
5 relating to the granting or processing of an application that are directly  
6 incurred by the authority and the authority shall not charge any market-  
7 based or value-based fees for the processing of an application. Such fees  
8 and charges shall be reasonably related in time to the occurrence of such  
9 costs.

10 (3) An authority or any third-party entity shall not include any travel  
11 expenses incurred in the review of an application for more than one trip  
12 per application to the authority's jurisdiction and an applicant shall not be  
13 required to pay or reimburse an authority for a consultant or other third-  
14 party fees based on a contingency-based or results-based arrangement.  
15 Any travel expenses included must be reasonable and directly related to  
16 the application.

17 (4) The total charges and fees assessed by the authority shall not  
18 exceed:

19 (A) \$500 for a collocation application, that is not a substantial  
20 modification, small cell facility application or distributed antenna system  
21 application; or

22 (B) \$2,000 for an application for a new wireless support structure or  
23 for a collocation application that is a substantial modification of a wireless  
24 support structure.

25 (d) (1) An authority may not charge a wireless services provider or  
26 wireless infrastructure provider any rental, license or other fee to locate a  
27 wireless facility or wireless support structure on any public right-of-way  
28 controlled by the authority, if the authority does not charge other  
29 telecommunications or video service providers, alternative infrastructure  
30 or wireless services providers or any investor-owned utilities or  
31 municipally-owned commercial broadband providers for the use of public  
32 right-of-way. If an authority does assess a charge, including a charge or  
33 rental fee for attachment to the facilities owned by the authority in the  
34 right-of-way, any such charge must be competitively neutral, with regard  
35 to other users of the public right-of-way, including investor-owned utilities  
36 or municipally-owned commercial broadband providers, and may not be  
37 unreasonable or discriminatory or violate any applicable state or federal  
38 law, rule or regulation.

39 (2) (A) Subject to the provisions of this subsection, a wireless  
40 services provider or wireless infrastructure provider, subject to an  
41 application, shall have the right to construct, maintain and operate wireless  
42 support structures, utility poles, small cell wireless facilities or distributed  
43 antenna systems along, across, upon, under or above the public right-of-

1 way. The authority must be competitively neutral with regard to other  
2 users of the public right-of-way, may not be unreasonable or  
3 discriminatory and may not violate any applicable state or federal law, rule  
4 or regulation.

5 (B) Nothing in this subsection (d) shall be interpreted as granting a  
6 wireless services provider or wireless infrastructure provider the right to  
7 construct, maintain or operate any facility or related appurtenance on  
8 property owned by the authority outside of the public right-of-way.

9 (C) The right of a wireless services provider or wireless infrastructure  
10 provider to use and occupy the public right-of-way shall always be subject  
11 and subordinate to the reasonable public health, safety and welfare  
12 requirements and regulations of the authority. An authority may exercise  
13 its home rule powers in its administration and regulation related to the  
14 management of the public right-of-way provided that any such exercise  
15 must be competitively neutral and may not be unreasonable or  
16 discriminatory.

17 (D) The authority shall have the right to prohibit the use or  
18 occupation of a specific portion of public right-of-way by a provider due  
19 to a reasonable public interest necessitated by public health, safety and  
20 welfare so long as such interest is exercised in a competitively neutral  
21 manner and is not unreasonable or discriminatory.

22 (E) A wireless services provider or wireless infrastructure provider  
23 shall comply with all laws and rules and regulations governing the use of  
24 public right-of-way.

25 (F) An authority may require a wireless services provider or wireless  
26 infrastructure provider to repair all damage to a public right-of-way caused  
27 by the activities of that provider, or of any agent, affiliate, employee or  
28 subcontractor of that provider, while occupying, installing, repairing or  
29 maintaining facilities in a public right-of-way and to return the right-of-  
30 way to its functional equivalence before the damage pursuant to the  
31 reasonable requirements and specifications of the authority. If a wireless  
32 services provider or wireless infrastructure provider fails to make the  
33 repairs required by an authority, the authority may effect those repairs and  
34 charge the provider the reasonable cost of those repairs.

35 (G) If requested by an authority, in order to accomplish construction  
36 and maintenance activities directly related to improvements for the health,  
37 safety and welfare of the public, a wireless services provider or wireless  
38 infrastructure provider shall relocate or adjust its facilities within the  
39 public right-of-way at no cost to the authority, as long as such request  
40 similarly binds all users of such right-of-way. Such relocation or  
41 adjustment shall be completed as soon as reasonably possible within the  
42 time set forth in any written request by the authority for such relocation or  
43 adjustment, as long as the authority provides the wireless services provider

1 or wireless infrastructure provider with a minimum of 180 days advance  
2 written notice to comply with such relocation or adjustment, unless  
3 circumstances beyond the authority's control require a shorter period of  
4 advance notice. If any such relocation or adjustment is for private benefit,  
5 the provider shall not bear the cost of the relocation or adjustment to the  
6 extent of such private benefit and the provider shall not be obligated to  
7 commence the relocation or adjustment until receipt of funds for such  
8 relocation or adjustment. The provider shall have no liability for any  
9 delays caused by a failure to receive funds for the cost of such relocation  
10 or adjustment and the authority shall have no obligation to collect such  
11 funds.

12 (H) Wireless services providers and wireless infrastructure providers  
13 shall indemnify and hold the authority and its officers and employees  
14 harmless against any and all claims, lawsuits, judgments, costs, liens,  
15 losses, expenses, fees to include reasonable attorney fees and costs of  
16 defense, proceedings, actions, demands, causes of action, liability and suits  
17 of any kind and nature, including personal or bodily injury or death,  
18 property damage or other harm for which recovery of damages is sought,  
19 to the extent that it is found by a court of competent jurisdiction to be  
20 caused by the negligence of the wireless services provider or wireless  
21 infrastructure provider, any agent, officer, director, representative,  
22 employee, affiliate or subcontractor of the provider, or their respective  
23 officers, agents, employees, directors or representatives, while installing,  
24 repairing or maintaining facilities in a public right-of-way. The indemnity  
25 provided by this paragraph does not apply to any liability resulting from  
26 the negligence of an authority, its officers, employees, contractors or  
27 subcontractors. If a provider and the authority are found jointly liable by a  
28 court of competent jurisdiction, liability shall be apportioned  
29 comparatively in accordance with the laws of this state, without waiving  
30 any governmental immunity available to the authority under state law and  
31 without waiving any defenses of the parties under state or federal law. This  
32 paragraph is solely for the benefit of the authority and the wireless services  
33 provider or wireless infrastructure provider and does not create or grant  
34 any rights, contractual or otherwise, to any other person or entity.

35 (I) A wireless services provider or wireless infrastructure provider or  
36 authority shall promptly advise the other in writing of any known claim or  
37 demand against the provider or the authority related to or arising out of the  
38 provider's activities in a public right-of-way.

39 (3) The provisions of this subsection shall not apply to or affect any  
40 authority's jurisdiction over the activities of wireless services providers or  
41 wireless infrastructure providers in public utility easements, private  
42 easements or on privately owned property.

43 (4) Nothing in this subsection shall be construed to prevent wireless

1 structures and wireless facilities from being located on state, federal or  
2 interstate highway right-of-way in accordance with reasonable policies and  
3 procedures adopted by the manager of the state, federal and interstate  
4 highway right-of-way under applicable federal and state law.

5 (e) (1) An authority may enter into a lease with an applicant for the  
6 applicant's use of public lands, buildings and facilities. When entering into  
7 a lease for use of publicly owned lands, an authority shall offer leases or  
8 contracts for applicants to use publicly owned lands that are at least 10  
9 years in duration, unless otherwise agreed to by both the applicant and the  
10 authority, and at market rates. Any lease renewals shall be negotiated in  
11 good faith. Due to the benefit of increased broadband and wireless services  
12 to the citizens of the authority, an authority may choose not to charge for  
13 the placement of wireless facilities on public lands. If an authority does  
14 charge, any such charges for use of publicly owned lands and facilities  
15 must be competitively neutral with regard to other users of the publicly  
16 owned lands and facilities, including any investor-owned utilities or  
17 municipally owned commercial broadband providers, may not be  
18 unreasonable or discriminatory and may not violate any applicable state or  
19 federal law, rule or regulation.

20 (2) If the applicant and the authority do not agree on the applicable  
21 market rate for the use or lease of public land and are unable to agree on a  
22 process to determine the applicable market rate for any such public land,  
23 then the market rate will be determined by a panel of three appraisers. The  
24 panel will consist of one appraiser appointed by each party and a third  
25 appraiser selected by the two appointed appraisers. Each appraiser will  
26 independently appraise the appropriate lease rate and the market rate shall  
27 be set at the mean between the highest and lowest market rates among all  
28 three independent appraisals, unless the mean between the highest and  
29 lowest appraisals is greater than or less than 10% of the appraisal of the  
30 third appraiser chosen by the parties' appointed appraisers, in which case  
31 the third appraisal will determine the rate for the lease. The appraisal  
32 process shall be concluded within 150 calendar days from the date the  
33 applicant first tenders a proposed lease rate to the authority. Each party  
34 will bear the cost of the party's own appointed appraiser, and the parties  
35 shall share equally the cost of the third appraiser chosen by the two  
36 appointed appraisers.

37 (3) Nothing in this subsection shall be construed to prevent wireless  
38 structures and wireless facilities from being located on real property,  
39 structures or facilities under the ownership, control or jurisdiction of the  
40 secretary of transportation in accordance with reasonable policies and  
41 procedures adopted by the secretary of transportation under applicable  
42 federal and state law.

43 (4) This subsection (e) shall not apply to public rights-of-way



1 governed by subsection (d).

2 (f) To ensure uniformity across the state with respect to consideration  
3 of every application, an authority shall not:

4 (1) Require an applicant to submit information about, or evaluate an  
5 applicant's business decisions with respect to, the applicant's designed  
6 service, customer demand for service or quality of the applicant's service  
7 to or from a particular area or site. An authority may require an applicant  
8 filing an application for a new wireless support structure to state in such  
9 application that the applicant conducted an analysis of available  
10 collocation opportunities on existing wireless support structures within the  
11 same search ring defined by the applicant, solely for the purpose of  
12 confirming that an applicant undertook such analysis;

13 (2) require information that concerns the specific need for the  
14 wireless support structure, including if the service to be provided from the  
15 wireless support structure is to add additional wireless coverage or  
16 additional wireless capacity. An authority may not require proprietary,  
17 confidential or other business information to justify the need for the new  
18 wireless support structure, including propagation maps and  
19 telecommunications traffic studies;

20 (3) evaluate an application based on the availability of other potential  
21 locations for the placement of wireless support structures or wireless  
22 facilities including, but not limited to, the option to collocate, instead of  
23 construct, a new wireless support structure or for substantial modifications  
24 of a support structure;

25 (4) dictate the type of transmission equipment or technology to be  
26 used by the applicant including, but not limited to, requiring an applicant  
27 to construct a distributed antenna system or small cell facility in lieu of  
28 constructing a new wireless support structure or discriminate between  
29 different types of infrastructure or technology;

30 (5) require the removal of existing wireless support structures or  
31 wireless facilities, wherever located, as a condition for approval of an  
32 application. This paragraph shall not preclude an authority from adopting  
33 reasonable rules with respect to the removal of abandoned wireless support  
34 structures or wireless facilities;

35 (6) impose any restrictions at or near airports or military installations  
36 with respect to objects in navigable airspace height limitations, proximity  
37 to airports or markings and lighting on wireless support structures or base  
38 stations that are greater than, or in conflict with, any restrictions imposed  
39 by the federal aviation administration, except that this paragraph shall not  
40 be construed so as to impact any existing height restrictions adopted by an  
41 authority as of the effective date of this section on wireless support  
42 structures or base stations located at or near airport or military  
43 installations;

1 (7) establish or enforce regulations or procedures for radio frequency  
2 signal strength or the adequacy of service quality;

3 (8) impose surety requirements, including bonds, escrow deposits,  
4 letters of credit or any other type of financial surety to ensure that  
5 abandoned or unused facilities can be removed, unless the authority  
6 imposes similar requirements on other permits for other types of  
7 commercial development or land uses, and any such instrument cannot  
8 exceed a reasonable estimate of the direct cost of the removal of the  
9 facility. If surety requirements are imposed, any such requirements shall be  
10 competitively neutral, non-discriminatory, reasonable in amount and  
11 commensurate with the historical record for local facilities and structures  
12 that are abandoned;

13 (9) discriminate or create a preference on the basis of the ownership  
14 of any property, structure, base station or wireless support structure when  
15 promulgating rules or procedures for siting wireless facilities or for  
16 evaluating applications or require the placement of wireless support  
17 structures or wireless facilities on property owned or leased by the  
18 authority, but an authority may develop a process to encourage the  
19 placement of wireless support structures or wireless facilities on property  
20 owned or leased by the authority, including an expedited approval process.  
21 Nothing in this subsection shall be construed to hinder or restrict the siting  
22 of public safety communications towers, including, but not limited to,  
23 police and fire;

24 (10) impose any unreasonable requirements or obligations regarding  
25 the presentation, appearance or function of the wireless facilities and  
26 equipment including, but not limited to, those relating to any kinds of  
27 materials used and those relating to arranging, screening or landscaping of  
28 facilities;

29 (11) impose any requirements that an applicant purchase, subscribe  
30 to, use or employ facilities, networks or services owned, provided or  
31 operated by an authority, in whole or in part, or by any entity in which the  
32 authority has a competitive, economic, financial, governance or other  
33 interest;

34 (12) impose environmental testing, sampling or monitoring  
35 requirements that exceed federal law;

36 (13) impose any compliance measures for radio frequency emissions  
37 or exposure from wireless facilities that exceed the requirements of the  
38 federal communications commission rules for radio frequency;

39 (14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject an  
40 application, in whole or in part, based on perceived or alleged  
41 environmental effects of radio frequency emissions or exposure;

42 (15) prohibit the use of emergency power systems that comply with  
43 federal and state environmental requirements and do not violate local

1 health and safety requirements and local noise control ordinances, but no  
2 local regulations shall prevent the provision of emergency power during an  
3 actual emergency;

4 (16) condition or require the approval of an application based on the  
5 applicant's agreement to permit any wireless facilities provided or  
6 operated, in whole or in part, by an authority or by any other entity to be  
7 placed at, or collocated with, the applicant's wireless support structure;

8 (17) impose a greater setback or fall-zone requirement for a wireless  
9 support structure than for other types of commercial structure of a similar  
10 size; or

11 (18) limit, for less than 10 years, the duration of the approval of an  
12 application. Any renewals shall be negotiated in good faith. Construction  
13 of the approved structure or facilities shall commence within one year of  
14 final approval and shall be diligently pursued to completion.

15 (g) An applicant for a small cell network involving no greater than 25  
16 individual small cell facilities of a substantially similar design within the  
17 jurisdiction of a single authority shall be permitted, upon request by the  
18 applicant, to file a consolidated application and receive a single permit for  
19 the installation, construction, maintenance and repair of a small cell  
20 network instead of filing separate applications for each individual small  
21 cell facility, except that the authority may require a separate application for  
22 any small cell facilities that are not of a substantially similar design. The  
23 authority shall render a decision no later than 60 days after the submission  
24 of an application regarding small cell facilities that satisfies the authority's  
25 requirements in a single administrative proceeding.

26 (h) (1) Within 150 calendar days of receiving an application for a new  
27 wireless support structure and within 90 calendar days of receiving an  
28 application for a substantial modification to an existing wireless support  
29 structure or base station, or any other application for placement,  
30 installation or construction of transmission equipment that does not  
31 constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a),  
32 an authority shall: (A) Review the application in light of the application's  
33 conformity with applicable local zoning regulations;

34 (B) make a final decision to approve or disapprove the application;  
35 and

36 (C) advise the applicant in writing of the authority's final decision,  
37 supported by substantial evidence contained in a written record and issued  
38 contemporaneously. If an authority denies an application, there must be a  
39 reasonable basis for the denial. An authority may not deny an application if  
40 such denial discriminates against the applicant with respect to the  
41 placement of the facilities of other investor-owned utilities, wireless  
42 service providers, wireless infrastructure providers or wireless carriers.

43 (2) (A) The time period for approval of applications shall begin when

1 the application is submitted and may be tolled within the first 30 days after  
2 the submission of the application if the authority notifies the applicant that  
3 such application is incomplete, identifies all missing information and  
4 specifies the code provision, ordinance, application instruction or  
5 otherwise publicly stated procedures that require the information to be  
6 submitted.

7 (B) The time period for approval of applications shall begin running  
8 again when the applicant provides the necessary supplemental information.  
9 Additionally, the time period for approval of applications may be tolled by  
10 the express agreement in writing by both the applicant and the authority.

11 (3) An application shall be deemed approved if an authority fails to  
12 act on an application for a: (A) New wireless support structure within the  
13 150-calendar day review period specified; or

14 (B) substantial modification to an existing wireless support structure  
15 or base station or any other applications for placement, installation or  
16 construction of transmission equipment that does not constitute an eligible  
17 facilities request as defined by 47 U.S.C. § 1455(a) within the 90 calendar  
18 days review period specified.

19 (4) An authority shall approve applications for eligible facilities  
20 requests, as defined by 47 U.S.C. § 1455(a), within 60 days according to  
21 the procedures established by federal law under 47 C.F.R. 1.40001.

22 (5) An application shall be deemed approved once an applicant has  
23 provided notice to the authority that the applicable time periods provided  
24 in this section have lapsed.

25 (6) Within 30 days of the notice provided pursuant to subsection (h)  
26 (5), a party aggrieved by the final action of an authority, either by the  
27 authority affirmatively denying an application or by the authority's  
28 inaction, may bring an action for review in any court of competent  
29 jurisdiction.

30 (i) An authority may not institute any moratorium on the filing,  
31 consideration or approval of applications, permitting or the construction of  
32 new wireless support structures, substantial modifications of wireless  
33 support structures or collocations.

34 (j) Subject to the provisions of this section and applicable federal law,  
35 an authority may continue to exercise zoning, land use, planning and  
36 permitting authority within the authority's territorial boundaries with  
37 regard to the siting of new or the modification of wireless support  
38 structures, wireless facilities, small cell facilities or utility poles, except  
39 that no authority shall have or exercise any zoning or siting jurisdiction,  
40 authority or control over the construction, installation or operation of any  
41 small cell facility or distributed antennae system located in an interior  
42 structure or upon the site of any campus, stadium or athletic facility.

43 (k) The provisions of this section shall take effect and be in force on

1 and after October 1, 2016.

2 Sec. 2. On and after October 1, 2016, K.S.A. 17-1902 is hereby  
3 amended to read as follows: 17-1902. (a) (1) "Public right-of-way" means  
4 only the area of real property in which the city has a dedicated or acquired  
5 right-of-way interest in the real property. It shall include the area on, below  
6 or above the present and future streets, alleys, avenues, roads, highways,  
7 parkways or boulevards dedicated or acquired as right-of-way. The term  
8 does not include the airwaves above a right-of-way with regard to wireless  
9 telecommunications or other nonwire telecommunications or broadcast  
10 service, easements obtained by utilities or private easements in platted  
11 subdivisions or tracts.

12 (2) "Provider" means a local exchange carrier as defined in  
13 ~~subsection (h) of K.S.A. 66-1,187(h), and amendments thereto, or a~~  
14 ~~telecommunications carrier as defined in subsection (m) of K.S.A. 66-~~  
15 ~~1,187(m), and amendments thereto, or a video service provider as defined~~  
16 ~~in K.S.A. 2007 2015 Supp. 12-2022, and amendments thereto, but does~~  
17 ~~not include an applicant as defined in section 1, and amendments thereto.~~

18 (3) "Telecommunications services" means providing the means of  
19 transmission, between or among points specified by the user, of  
20 information of the user's choosing, without change in the form or content  
21 of the information as sent and received.

22 (4) "Competitive infrastructure provider" means an entity which  
23 leases, sells or otherwise conveys facilities located in the right-of-way, or  
24 the capacity or bandwidth of such facilities for use in the provision of  
25 telecommunications services, internet services or other intrastate and  
26 interstate traffic, but does not itself provide services directly to end users  
27 within the corporate limits of the city.

28 (b) Any provider shall have the right pursuant to this act to construct,  
29 maintain and operate poles, conduit, cable, switches and related  
30 appurtenances and facilities along, across, upon and under any public  
31 right-of-way in this state. Such appurtenances and facilities shall be so  
32 constructed and maintained as not to obstruct or hinder the usual travel or  
33 public safety on such public ways or obstruct the legal use by other  
34 utilities.

35 (c) Nothing in this act shall be interpreted as granting a provider the  
36 authority to construct, maintain or operate any facility or related  
37 appurtenance on property owned by a city outside of the public right-of-  
38 way.

39 (d) The authority of a provider to use and occupy the public right-of-  
40 way shall always be subject and subordinate to the reasonable public  
41 health, safety and welfare requirements and regulations of the city. A city  
42 may exercise its home rule powers in its administration and regulation  
43 related to the management of the public right-of-way provided that any

1 such exercise must be competitively neutral and may not be unreasonable  
2 or discriminatory. Nothing herein shall be construed to limit the authority  
3 of cities to require a competitive infrastructure provider to enter into a  
4 contract franchise ordinance.

5 (e) The city shall have the authority to prohibit the use or occupation  
6 of a specific portion of public right-of-way by a provider due to a  
7 reasonable public interest necessitated by public health, safety and welfare  
8 so long as the authority is exercised in a competitively neutral manner and  
9 is not unreasonable or discriminatory. A reasonable public interest shall  
10 include the following:

11 (1) The prohibition is based upon a recommendation of the city  
12 engineer, is related to public health, safety and welfare and is  
13 nondiscriminatory among providers, including incumbent providers;

14 (2) the provider has rejected a reasonable, competitively neutral and  
15 nondiscriminatory justification offered by the city for requiring an  
16 alternate method or alternate route that will result in neither unreasonable  
17 additional installation expense nor a diminution of service quality;

18 (3) the city reasonably determines, after affording the provider  
19 reasonable notice and an opportunity to be heard, that a denial is necessary  
20 to protect the public health and safety and is imposed on a competitively  
21 neutral and nondiscriminatory basis; or

22 (4) the specific portion of the public right-of-way for which the  
23 provider seeks use and occupancy is environmentally sensitive as defined  
24 by state or federal law or lies within a previously designated historic  
25 district as defined by local, state or federal law.

26 (f) A provider's request to use or occupy a specific portion of the  
27 public right-of-way shall not be denied without reasonable notice and an  
28 opportunity for a public hearing before the city governing body. A city  
29 governing body's denial of a provider's request to use or occupy a specific  
30 portion of the public right-of-way may be appealed to a district court.

31 (g) A provider shall comply with all laws and rules and regulations  
32 governing the use of public right-of-way.

33 (h) A city may not impose the following regulations on providers:

34 (1) Requirements that particular business offices or other  
35 telecommunications facilities be located in the city;

36 (2) requirements for filing applications, reports and documents that  
37 are not reasonably related to the use of a public right-of-way or this act;

38 (3) requirements for city approval of transfers of ownership or control  
39 of the business or assets of a provider's business, except that a city may  
40 require that such entity maintain current point of contact information and  
41 provide notice of a transfer within a reasonable time; and

42 (4) requirements concerning the provisioning of or quality of  
43 customer services, facilities, equipment or goods in-kind for use by the

1 city, political subdivision or any other provider or public utility.

2 (i) Unless otherwise required by state law, in the exercise of its lawful  
3 regulatory authority, a city shall promptly, and in no event more than 30  
4 days, with respect to facilities in the public right-of-way, process each  
5 valid and administratively complete application of a provider for any  
6 permit, license or consent to excavate, set poles, locate lines, construct  
7 facilities, make repairs, effect traffic flow, obtain zoning or subdivision  
8 regulation approvals, or for other similar approvals, and shall make  
9 reasonable effort not to unreasonably delay or burden that provider in the  
10 timely conduct of its business. The city shall use its best reasonable efforts  
11 to assist the provider in obtaining all such permits, licenses and other  
12 consents in an expeditious and timely manner.

13 (j) If there is an emergency necessitating response work or repair, a  
14 provider may begin that repair or emergency response work or take any  
15 action required under the circumstances, provided that the provider  
16 notifies the affected city promptly after beginning the work and timely  
17 thereafter meets any permit or other requirement had there not been such  
18 an emergency.

19 (k) A city may require a provider to repair all damage to a public  
20 right-of-way caused by the activities of that provider, or of any agent  
21 affiliate, employee, or subcontractor of that provider, while occupying,  
22 installing, repairing or maintaining facilities in a public right-of-way and  
23 to return the right-of-way, to its functional equivalence before the damage  
24 pursuant to the reasonable requirements and specifications of the city. If  
25 the provider fails to make the repairs required by the city, the city may  
26 effect those repairs and charge the provider the cost of those repairs. If a  
27 city incurs damages as a result of a violation of this subsection, then the  
28 city shall have a cause of action against a provider for violation of this  
29 subsection, and may recover its damages, including reasonable attorney  
30 fees, if the provider is found liable by a court of competent jurisdiction.

31 (l) If requested by a city, in order to accomplish construction and  
32 maintenance activities directly related to improvements for the health,  
33 safety and welfare of the public, a provider shall promptly remove its  
34 facilities from the public right-of-way or shall relocate or adjust its  
35 facilities within the public right-of-way at no cost to the political  
36 subdivision. Such relocation or adjustment shall be completed as soon as  
37 reasonably possible within the time set forth in any request by the city for  
38 such relocation or adjustment. Any damages suffered by the city or its  
39 contractors as a result of such provider's failure to timely relocate or adjust  
40 its facilities shall be borne by such provider.

41 (m) No city shall create, enact or erect any unreasonable condition,  
42 requirement or barrier for entry into or use of the public rights-of-way by a  
43 provider.

1 (n) A city may assess any of the following fees against a provider, for  
2 use and occupancy of the public right-of-way, provided that such fees  
3 reimburse the city for its reasonable, actual and verifiable costs of  
4 managing the city right-of-way, and are imposed on all such providers in a  
5 nondiscriminatory and competitively neutral manner:

6 (1) A permit fee in connection with issuing each construction permit  
7 to set fixtures in the public right-of-way within that city as provided in  
8 K.S.A. 17-1901, and amendments thereto, to compensate the city for  
9 issuing, processing and verifying the permit application;

10 (2) an excavation fee for each street or pavement cut to recover the  
11 costs associated with construction and repair activity of the provider, their  
12 assigns, contractors ~~and/or~~ or subcontractors, *or both*, with the exception  
13 of construction and repair activity required pursuant to subsection (l) of  
14 this act related to construction and maintenance activities directly related  
15 to improvements for the health, safety and welfare of the public; provided,  
16 however, imposition of such excavation fee must be based upon a regional  
17 specific or other appropriate study establishing the basis for such costs  
18 which takes into account the life of the city street prior to the construction  
19 or repair activity and the remaining life of the city street. Such excavation  
20 fee is expressly limited to activity that results in an actual street or  
21 pavement cut;

22 (3) inspection fees to recover all reasonable costs associated with city  
23 inspection of the work of the provider in the right-of-way;

24 (4) repair and restoration costs associated with repairing and restoring  
25 the public right-of-way because of damage caused by the provider, its  
26 assigns, contractors, ~~and/or~~ or subcontractors, *or both*, in the right-of-way;  
27 and

28 (5) a performance bond, in a form acceptable to the city, from a  
29 surety licensed to conduct surety business in the state of Kansas, insuring  
30 appropriate and timely performance in the construction and maintenance  
31 of facilities located in the public right-of-way.

32 (o) A city may not assess any additional fees against providers for use  
33 or occupancy of the public right-of-way other than those specified in  
34 subsection (n).

35 (p) This act may not be construed to affect any valid taxation of a  
36 provider's facilities or services.

37 (q) Providers shall indemnify and hold the city and its officers and  
38 employees harmless against any and all claims, lawsuits, judgments, costs,  
39 liens, losses, expenses, fees ~~(including~~ *to include* reasonable attorney fees  
40 and costs of defense), proceedings, actions, demands, causes of action,  
41 liability and suits of any kind and nature, including personal or bodily  
42 injury ~~(including or death)~~, property damage or other harm for which  
43 recovery of damages is sought, to the extent that it is found by a court of



1 competent jurisdiction to be caused by the negligence of the provider, any  
2 agent, officer, director, representative, employee, affiliate or subcontractor  
3 of the provider, or their respective officers, agents, employees, directors or  
4 representatives, while installing, repairing or maintaining facilities in a  
5 public right-of-way. The indemnity provided by this subsection does not  
6 apply to any liability resulting from the negligence of the city, its officers,  
7 employees, contractors or subcontractors. If a provider and the city are  
8 found jointly liable by a court of competent jurisdiction, liability shall be  
9 apportioned comparatively in accordance with the laws of this state  
10 without, however, waiving any governmental immunity available to the  
11 city under state law and without waiving any defenses of the parties under  
12 state or federal law. This section is solely for the benefit of the city and  
13 provider and does not create or grant any rights, contractual or otherwise,  
14 to any other person or entity.

15 (r) A provider or city shall promptly advise the other in writing of any  
16 known claim or demand against the provider or the city related to or  
17 arising out of the provider's activities in a public right-of-way.

18 (s) Nothing contained in K.S.A. 17-1902, and amendments thereto, is  
19 intended to affect the validity of any franchise fees collected pursuant to  
20 state law or a city's home rule authority.

21 (t) Any ordinance enacted prior to the effective date of this act  
22 governing the use and occupancy of the public right-of-way by a provider  
23 shall not conflict with the provisions of this act.

24 Sec. 3. K.S.A. 66-2004 is hereby amended to read as follows: 66-  
25 2004. (a) Pursuant to ~~subsection (f)(1) of section 251 of the federal act 47~~  
26 *U.S.C. § 251(f)(1)*, the obligations of an incumbent local exchange carrier,  
27 which include the duty to negotiate interconnection, unbundled access,  
28 resale, notice of changes and collocation, shall not apply to a rural  
29 telephone company unless such company has received a bona fide request  
30 for interconnection, services or network elements and the commission  
31 determines that such request is not unduly economically burdensome, is  
32 technically feasible and preserves and enhances universal service.

33 (b) On July 1, 1996, the commission shall initiate a rulemaking  
34 procedure to adopt guidelines to ensure that all telecommunications  
35 carriers and local exchange carriers preserve and enhance universal  
36 service, protect the public safety and welfare, ensure the continued quality  
37 of telecommunications services and safeguard the rights of consumers. The  
38 preservation and advancement of universal service shall be a primary  
39 concern. The commission shall issue the guidelines no later than  
40 December 31, 1996.

41 (c) Pursuant to ~~subsection (f) of section 253 of the federal act 47~~  
42 *U.S.C. § 253(f)*, any telecommunications carrier that seeks to provide  
43 telephone exchange service or local exchange access in a service area

1 served by a rural telephone company shall meet the requirements of  
2 ~~subsection (e)(1) of section 214 of the federal act 47 U.S.C. § 214(e)(1)~~ for  
3 designation as an eligible telecommunications carrier for that area before  
4 being permitted by the commission to provide such service; however, the  
5 guidelines shall be consistent with the provisions of ~~subsection (f) (1) and~~  
6 ~~(2) of section 253 of the federal act 47 U.S.C. § 253(f)(1) and (2).~~

7 (d) The commission may grant a certificate to provide local exchange  
8 or exchange access service in the service area of a rural telephone  
9 company if, among other issues to be considered by the commission, the  
10 application for such certificate complies with commission guidelines  
11 issued pursuant to subsection (b).

12 (e) Any restrictions established by the commission for rural entry of  
13 competitors or for resale and unbundling of services shall not apply to any  
14 service area of a rural telephone company if such company, or an entity in  
15 which such company directly or indirectly owns an equity interest of 10%  
16 or more, provides local exchange or exchange access service, as  
17 authorized under K.S.A. ~~2002 Supp. 60-2003, and amendments thereto,~~  
18 and this section, in any area of the state outside of its local exchange areas,  
19 as approved by the commission on or before January 1, 1996, and outside  
20 of any area in which it is the successor to the local exchange carrier  
21 serving such area on or before January 1, 1996.

22 (f) (1) *Any local exchange carrier electing pursuant to K.S.A. 66-*  
23 *2005(b), and amendments thereto, to operate under traditional rate of*  
24 *return regulation, or an entity in which such carrier directly or indirectly*  
25 *owns an equity interest of 10% or more, shall not use KUSF funding,*  
26 *except for Kansas lifeline service program purposes pursuant to K.S.A.*  
27 *66-2006, and amendments thereto, for the purposes of providing*  
28 *telecommunication services in an area outside of the carrier's authorized*  
29 *service area.*

30 (2) *The provisions of this subsection shall not be construed to affect a*  
31 *competitive eligible telecommunications carrier's eligibility for KUSF*  
32 *support pursuant to K.S.A. 66-2008(c)(4), and amendments thereto.*

33 Sec. 4. K.S.A. 2015 Supp. 66-2005 is hereby amended to read as  
34 follows: 66-2005. (a) Each local exchange carrier shall file a network  
35 infrastructure plan with the commission on or after January 1, 1997, and  
36 prior to January 1, 1998. Each plan, as a part of universal service  
37 protection, shall include schedules, which shall be approved by the  
38 commission, for deployment of universal service capabilities by July 1,  
39 1998, and the deployment of enhanced universal service capabilities by  
40 July 1, 2003, as defined pursuant to ~~subsections (p) and (q) of K.S.A. 66-~~  
41 ~~1,187(p) and (q),~~ and amendments thereto, respectively. With respect to  
42 enhanced universal service, such schedules shall provide for deployment  
43 of ISDN, or its technological equivalent, or broadband facilities, only upon

1 a firm customer order for such service, or for deployment of other  
2 enhanced universal services by a local exchange carrier. After receipt of  
3 such an order and upon completion of a deployment plan designed to meet  
4 the firm order or otherwise provide for the deployment of enhanced  
5 universal service, a local exchange carrier shall notify the commission.  
6 The commission shall approve the plan unless the commission determines  
7 that the proposed deployment plan is unnecessary, inappropriate, or not  
8 cost effective, or would create an unreasonable or excessive demand on the  
9 KUSF. The commission shall take action within 90 days. If the  
10 commission fails to take action within 90 days, the deployment plan shall  
11 be deemed approved. This approval process shall continue until July 1,  
12 2000. Each plan shall demonstrate the capability of the local exchange  
13 carrier to comply on an ongoing basis with quality of service standards to  
14 be adopted by the commission no later than January 1, 1997.

15 (b) In order to protect universal service, facilitate the transition to  
16 competitive markets and stimulate the construction of an advanced  
17 telecommunications infrastructure, each local exchange carrier shall file a  
18 regulatory reform plan at the same time as it files the network  
19 infrastructure plan required in subsection (a). As part of its regulatory  
20 reform plan, a local exchange carrier may elect traditional rate of return  
21 regulation or price cap regulation. Carriers that elect price cap regulation  
22 shall be exempt from rate base, rate of return and earnings regulation and  
23 shall not be subject to the provisions of K.S.A. 66-136 and 66-127, and  
24 amendments thereto, except as otherwise provided in such sections.  
25 However, the commission may resume such regulation upon finding, after  
26 a hearing, that a carrier that is subject to price cap regulation has: Violated  
27 minimum quality of service standards pursuant to ~~subsection (l)~~ of K.S.A.  
28 66-2002(l), and amendments thereto; been given reasonable notice and an  
29 opportunity to correct the violation; and failed to do so. Regulatory reform  
30 plans also shall include:

31 (1) A commitment to provide existing and newly ordered point-to-  
32 point broadband services to: Any hospital as defined in K.S.A. 65-425, and  
33 amendments thereto; any school accredited pursuant to K.S.A. 72-1101 et  
34 seq., and amendments thereto; any public library; or other state and local  
35 government facilities at discounted prices close to, but not below, long-run  
36 incremental cost; and

37 (2) a commitment to provide basic rate ISDN service, or the  
38 technological equivalent, at prices which are uniform throughout the  
39 carrier's service area. Local exchange carriers shall not be required to  
40 allow retail customers purchasing the foregoing discounted services to  
41 resell those services to other categories of customers. Telecommunications  
42 carriers may purchase basic rate ISDN services, or the technological  
43 equivalent, for resale in accordance with K.S.A. 66-2003, and amendments

1 thereto. The commission may reduce prices charged for services outlined  
2 in ~~provisions~~ *paragraphs* (1) and (2) of this subsection, if the  
3 commitments of the local exchange carrier set forth in those provisions are  
4 not being kept.

5 (c) Subject to the commission's approval, all local exchange carriers  
6 shall reduce intrastate access charges to interstate levels as provided  
7 herein. Rates for intrastate switched access, and the imputed access portion  
8 of toll, shall be reduced over a three-year period with the objective of  
9 equalizing interstate and intrastate rates in a revenue neutral, specific and  
10 predictable manner. The commission is authorized to rebalance local  
11 residential and business service rates to offset the intrastate access and toll  
12 charge reductions. Any remaining portion of the reduction in access and  
13 toll charges not recovered through local residential and business service  
14 rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008, and  
15 amendments thereto. Each rural telephone company shall adjust its  
16 intrastate switched access rates on March 1 of each odd-numbered year to  
17 match its interstate switched access rates, subject to the following:

18 (1) Any reduction of a rural telephone company's cost recovery due to  
19 reduction of its intrastate access revenue, except such revenue recovered  
20 from another support mechanism, shall be recovered from the KUSF;

21 (2) any portion of rural telephone company reductions in intrastate  
22 switched access rates which would result in an increase in KUSF recovery  
23 in a single year which exceeds .75% of intrastate retail revenues used in  
24 determining sums which may be recovered from Kansas  
25 telecommunications customers pursuant to ~~subsection (a)~~ of K.S.A. 66-  
26 2008(a), and amendments thereto, shall be deferred until March 1 of the  
27 next following odd-numbered year; and

28 (3) no rural company shall be required at any time to reduce its  
29 intrastate switched access rates below the level of its interstate switched  
30 access rates.

31 (d) Beginning March 1, 1997, each rural telephone company shall  
32 have the authority to increase annually its monthly basic local residential  
33 and business service rates by an amount not to exceed \$1 in each 12-month  
34 period until such monthly rates reach an amount equal to the statewide  
35 rural telephone company average rates for such services. The statewide  
36 rural telephone company average rates shall be the arithmetic mean of the  
37 lowest flat rate as of March 1, 1996, for local residential service and for  
38 local business service offered by each rural telephone company within the  
39 state. In the case of a rural telephone company which increases its local  
40 residential service rate or its local business service rate, or both, to reach  
41 the statewide rural telephone company average rate for such services, the  
42 amount paid to the company from the KUSF shall be reduced by an  
43 amount equal to the additional revenue received by such company through

1 such rate increase. In the case of a rural telephone company which elects  
2 to maintain a local residential service rate or a local business service rate,  
3 or both, below the statewide rural telephone company average, the amount  
4 paid to the company from the KUSF shall be reduced by an amount equal  
5 to the difference between the revenue the company could receive if it  
6 elected to increase such rate to the average rate and the revenue received  
7 by the company.

8 (e) For purposes of determining sufficient KUSF support, an  
9 affordable rate for local exchange service provided by a rural telephone  
10 company subject to traditional rate of return regulation shall be determined  
11 as follows:

12 (1) For residential service, an affordable rate shall be the arithmetic  
13 mean of residential local service rates charged in this state in all exchanges  
14 served by rural telephone companies and in all exchanges in rate groups 1  
15 through 3 as of February 20, 2002, of all other local exchange carriers, but  
16 not including electing carriers, weighted by the number of residential  
17 access lines to which each such rate applies, and thereafter rounded to the  
18 nearest quarter-dollar, subject to the following provisions:

19 (A) If a rural telephone company's present residential rate, including  
20 any separate charge for tone dialing, is at or above such weighted mean,  
21 such rate shall be deemed affordable prior to March 1, 2007.

22 (B) If a rural telephone company's present residential rate, including  
23 any separate charge for tone dialing, is below such average: (i) Such rate  
24 shall be deemed affordable prior to March 1, 2003; (ii) as of March 1,  
25 2003, and prior to March 1, 2004, a rate \$2 higher than the company's  
26 present residential monthly rate, but not exceeding such weighted mean,  
27 shall be deemed affordable; (iii) as of March 1, 2004, and prior to March  
28 1, 2005, a rate \$4 higher than the company's present residential monthly  
29 rate, but not exceeding such weighted mean, shall be deemed affordable;  
30 and (iv) as of March 1, 2005, and prior to March 1, 2006, a rate \$6 higher  
31 than the company's present residential monthly rate, but not exceeding  
32 such weighted mean, shall be deemed affordable.

33 (C) As of March 1, 2007, and each two years thereafter, an affordable  
34 residential service rate shall be the weighted arithmetic mean of local  
35 service rates determined as of October 1 of the preceding year in the  
36 manner hereinbefore specified, except that any increase in such mean  
37 exceeding \$2 may be satisfied by increases in a rural telephone company's  
38 residential monthly service rate not exceeding \$2 per year, effective March  
39 1 of the year when such mean is determined, with the remainder applied at  
40 the rate of \$2 per year, but not to exceed the affordable rate.

41 (2) For single line business service at any time, an affordable rate  
42 shall be the existing rate or an amount \$3 greater than the affordable rate  
43 for residential service as determined under ~~provision~~ *paragraph* (1) of this

1 subsection, whichever is higher, except that any increase in the business  
2 service affordable rate exceeding \$2 may be satisfied by increases in a  
3 rural telephone company's business monthly service rate not exceeding \$2  
4 per year, effective March 1 of the year when such rate is determined, with  
5 the remainder applied at the rate of \$2 per year, but not to exceed the  
6 affordable rate.

7 (3) Any flat fee or charge imposed per line on all residential service  
8 or single line business service, or both, other than a fee or charge for  
9 contribution to the KUSF or imposed by other governmental authority,  
10 shall be added to the basic service rate for purposes of determining an  
11 affordable rate pursuant to this subsection.

12 (4) Not later than March 1, 2003, tone dialing shall be made available  
13 to all local service customers of each rural telephone company at no charge  
14 additional to any increase in the local service rate to become effective on  
15 that date. The amount of revenue received as of March 1, 2002, by a rural  
16 telephone company from the provision of tone dialing service shall be  
17 excluded from reductions in the company's KUSF support otherwise  
18 resulting pursuant to this subsection.

19 (5) A rural telephone company which raises one or more local service  
20 rates on application made after February 20, 2002, and pursuant to  
21 ~~subsection (b) of K.S.A. 66-2007(b)~~, and amendments thereto, shall have  
22 the level of its affordable rate increased by an amount equal to the amount  
23 of the increase in such rate.

24 (6) Upon motion by a rural telephone company, the commission may  
25 determine a higher affordable local residential or business rate for such  
26 company if such higher rate allows the company to provide additional or  
27 improved service to customers, but any increase in a rural telephone  
28 company's local rate attributable to the provision of increased calling  
29 scope shall not be included in any subsequent recalculation of affordable  
30 rates as otherwise provided in this subsection.

31 (7) A uniform rate for residential and single line business local  
32 service adopted by a rural telephone company shall be deemed an  
33 affordable rate for purposes of this subsection if application of such  
34 uniform rate generates revenue equal to that which would be generated by  
35 application of residential and business rates which are otherwise deemed  
36 affordable rates for such company under this subsection.

37 (8) The provisions of this subsection relating to the implementation of  
38 an affordable rate shall not apply to rural telephone companies which do  
39 not receive KUSF support. When recalculating affordable rates as  
40 provided in this subsection, the rates used shall include the actual rates  
41 charged by rural companies that do not receive KUSF support.

42 (f) For regulatory reform plans in which price cap regulation has been  
43 elected, price cap plans shall have three baskets: Residential and single-

1 line business, including touch-tone; switched access services; and  
2 miscellaneous services. The commission shall establish price caps at the  
3 prices existing when the regulatory plan is filed subject to rate rebalancing  
4 as provided in subsection (c) for residential services, including touch-tone  
5 services, and for single-line business services, including touch-tone  
6 services, within the residential and single-line business service basket. The  
7 commission shall establish a formula for adjustments to the price caps. The  
8 commission also shall establish price caps at the prices existing when the  
9 regulatory plan is filed for the miscellaneous services basket. The  
10 commission shall approve any adjustments to the price caps for the  
11 miscellaneous service basket, as provided in subsection (g).

12 (g) On or before January 1, 1997, the commission shall issue a final  
13 order in a proceeding to determine the price cap adjustment formula that  
14 shall apply to the price caps for the local residential and single-line  
15 business and the miscellaneous services baskets and for sub-categories, if  
16 any, within those baskets. In determining this formula, the commission  
17 shall balance the public policy goals of encouraging efficiency and  
18 promoting investment in a quality, advanced telecommunications network  
19 in the state. The commission also shall establish any informational filing  
20 requirements necessary for the review of any price cap tariff filings,  
21 including price increases or decreases within the caps, to verify such caps  
22 would not be exceeded by any proposed price change. The adjustment  
23 formula shall apply to the price caps for the local residential and single-  
24 line business basket after December 31, 1999, and to the miscellaneous  
25 services basket after December 31, 1997. The price cap formula, but not  
26 actual prices, shall be reviewed every five years.

27 (h) The price caps for the residential and single-line business service  
28 basket shall be capped at their initial level until January 1, 2000, except for  
29 any increases authorized as a part of the revenue neutral rate rebalancing  
30 under subsection (c). The price caps for this basket and for the categories  
31 in this basket, if any, shall be adjusted annually after December 31, 1999,  
32 based on the formula determined by the commission under subsection (g).

33 (i) The price cap for the switched access service basket shall be set  
34 based upon the local exchange carrier's intrastate access tariffs as of  
35 January 1, 1997, except for any revenue neutral rate rebalancing  
36 authorized in accordance with subsection (c). Thereafter, the cap for this  
37 basket shall not change except in connection with any subsequent revenue  
38 neutral rebalancing authorized by the commission under subsection (c).

39 (j) The price caps for the miscellaneous services basket shall be  
40 adjusted annually after December 31, 1997, based on the adjustment  
41 formula determined by the commission under subsection (g).

42 (k) A price cap is a maximum price for all services taken as a whole  
43 in a given basket. Prices for individual services may be changed within the

1 service categories, if any, established by the commission within a basket.  
2 An entire service category, if any, within the residential and single-line  
3 business basket or miscellaneous services basket may be priced below the  
4 cap for such category. Unless otherwise approved by the commission, no  
5 service shall be priced below the price floor which will be long-run  
6 incremental cost and imputed access charges. Access charges equal to  
7 those paid by telecommunications carriers to local exchange carriers shall  
8 be imputed as part of the price floor for toll services offered by local  
9 exchange carriers on a toll service basis.

10 (l) A local exchange carrier may offer promotions within an exchange  
11 or group of exchanges. All promotions shall be approved by the  
12 commission and may not be unjust, unreasonably discriminatory or unduly  
13 preferential.

14 (m) Unless the commission authorizes price deregulation at an earlier  
15 date, intrastate toll services within the miscellaneous services basket shall  
16 continue to be regulated until the affected local exchange carrier begins to  
17 offer 1+ intraLATA dialing parity throughout its service territory, at which  
18 time intrastate toll will be price deregulated, except that prices cannot be  
19 set below the price floor.

20 (n) On or before July 1, 1997, the commission shall establish  
21 guidelines for reducing regulation prior to price deregulation of price cap  
22 regulated services in the miscellaneous services basket, the switched  
23 access services basket, and the residential and single-line business basket.

24 (o) Subsequent to the adoption of guidelines pursuant to subsection  
25 (n), the commission shall initiate a petitioning procedure under which the  
26 local exchange carrier may request rate range pricing. The commission  
27 shall act upon a petition within 21 days, subject to a 30-day extension. The  
28 prices within a rate range shall be tariffed and shall apply to all customers  
29 in a nondiscriminatory manner in an exchange or group of exchanges.

30 (p) A local exchange carrier may petition the commission to designate  
31 an individual service or service category, if any, within the miscellaneous  
32 services basket, the switched access services basket or the residential and  
33 single-line business basket for reduced regulation. The commission shall  
34 act upon a petition for reduced regulation within 21 days, subject to an  
35 extension period of an additional 30 days, and upon a good cause showing  
36 of the commission in the extension order, or within such shorter time as  
37 the commission shall approve. The commission shall issue a final order  
38 within the 21-day period or within a 51-day period if an extension has  
39 been issued. Following an order granting reduced regulation of an  
40 individual service or service category, the commission shall act on any  
41 request for price reductions within seven days subject to a 30-day  
42 extension. The commission shall act on other requests for price cap  
43 adjustments, adjustments within price cap plans and on new service



1 offerings within 21 days subject to a 30-day extension. Such a change will  
2 be presumed lawful unless it is determined the prices are below the price  
3 floor or that the price cap for a category, if any, within the entire basket has  
4 been exceeded.

5 (q) (1) Beginning July 1, 2006, price regulation of  
6 telecommunications services in the residential and single-line business  
7 service basket and the miscellaneous services basket for local exchange  
8 carriers subject to price cap regulation shall be as follows:

9 (A) Packages or bundles of services shall be price deregulated  
10 statewide, however the individual telecommunication service components  
11 of such packages or bundles shall remain available for purchase on an  
12 individual basis at prices subject to price cap regulation in any exchange in  
13 which the standards in subsection (q)(1)(B), (C) or (D) have not been met.  
14 If standards in subsection (q)(1)(B), (C) or (D) have been met, the  
15 individual telecommunication service components of such packages or  
16 bundles shall remain available for purchase on an individual basis and  
17 prices for packages or bundles shall not exceed the sum of the highest  
18 prices of the a la carte components of the package or bundle;

19 (B) in any exchange in which there are 75,000 or more local  
20 exchange access lines served by all providers, rates for all  
21 telecommunications services shall be price deregulated;

22 (C) in any exchange in which there are fewer than 75,000 local  
23 exchange access lines served by all providers, the commission shall price  
24 deregulate all business telecommunication services upon a demonstration  
25 by the requesting local telecommunications carrier that there are two or  
26 more nonaffiliated telecommunications carriers or other entities, that are  
27 nonaffiliated with the local exchange carrier, providing local  
28 telecommunications service to business customers, regardless of whether  
29 the entity provides local service in conjunction with other services in that  
30 exchange area. One of such nonaffiliated carriers or entities shall be  
31 required to be a facilities-based carrier or entity and not more than one of  
32 such nonaffiliated carriers or entities shall be a provider of commercial  
33 mobile radio services in that exchange;

34 (D) in any exchange in which there are fewer than 75,000 local  
35 exchange access lines served by all providers, the commission shall price  
36 deregulate all residential telecommunication services upon a  
37 demonstration by the requesting local telecommunications carrier that  
38 there are two or more nonaffiliated telecommunications carriers or other  
39 entities, that are nonaffiliated with the local exchange carrier, providing  
40 local telecommunications service to residential customers, regardless of  
41 whether the entity provides local service in conjunction with other services  
42 in that exchange area. One of such nonaffiliated carriers or entities shall be  
43 required to be a facilities-based carrier or entity and not more than one of

1 such nonaffiliated carriers or entities shall be a provider of commercial  
2 mobile radio services in that exchange;

3 (E) rates for lifeline services shall remain subject to price cap  
4 regulation;

5 (F) up to and continuing until July 1, 2008, rates for the initial  
6 residential local exchange access line and up to four business local  
7 exchange access lines at one location shall remain subject to price cap  
8 regulation *and all other rates, except rates for switched access services,*  
9 *are deemed price deregulated.* On and after July 1, 2008, the local  
10 exchange carrier shall be authorized to adjust such rates without  
11 commission approval by not more than the *greater of the* percentage  
12 increase in the consumer price index for all urban consumers, as officially  
13 reported by the bureau of labor statistics of the United States department  
14 of labor, or its successor index, *or the amount necessary to maintain the*  
15 *local rate floor as determined by the federal communications commission*  
16 *or its successor;* in any one year period and such rates shall not be adjusted  
17 below the price floor established in subsection (k). Such rates shall not be  
18 affected by purchase of one or more of the following: Call management  
19 services, intraLATA long distance service or interLATA long distance  
20 service; and

21 (G) local exchange carriers shall offer a uniform price throughout  
22 each such exchange for services subject to price deregulation, under this  
23 subsection, including packages or bundles of services, except as provided  
24 in subsection (1) or as otherwise approved by the commission.

25 (2) For the purposes of this subsection:

26 (A) Any entity providing voice service shall be considered as a local  
27 telecommunications service provider regardless of whether such entity is  
28 subject to regulation by the commission;

29 (B) a provider of local telecommunications service that requires the  
30 use of a third party, unaffiliated broadband network or dial-up internet  
31 network for the origination of local voice service shall not be considered a  
32 local telecommunications service provider;

33 (C) telecommunications carriers offering only prepaid  
34 telecommunications service shall not be considered entities providing local  
35 telecommunications service.

36 (3) If the services of a local exchange carrier are classified as price  
37 deregulated under this subsection, the carrier may thereafter adjust its rates  
38 for such price deregulated services upward or downward as it determines  
39 appropriate in its competitive environment, with tariffs for such services  
40 deemed effective upon filing with the commission. Price deregulated  
41 services shall be subject to the price floor in subsection (k), and shall not  
42 be unreasonably discriminatory or unduly preferential within an exchange.

43 (4) The commission shall act upon a petition filed pursuant to

1 subsection (q)(1)(C) or (D) within 21 days, subject to an extension period  
2 of an additional 30 days, and upon a good cause showing of the  
3 commission in the extension order, or within such shorter time as the  
4 commission shall approve. The commission shall issue a final order within  
5 the 21-day period or within a 51-day period if an extension order has been  
6 issued.

7 (5) The commission may resume price cap regulation of a local  
8 exchange carrier, deregulated under this subsection upon finding, after a  
9 hearing, that such carrier has: Violated minimum quality of service  
10 standards pursuant to ~~subsection (1) of K.S.A. 66-2002(l)~~, and  
11 amendments thereto; been given reasonable notice and an opportunity to  
12 correct the violation; and failed to do so.

13 (6) The commission on July 1, 2006, and on each date that any  
14 service is deregulated, shall record the rates of each service which has  
15 been price deregulated in each exchange.

16 ~~(7) Prior to January 1, 2007, the commission shall determine the~~  
17 ~~weighted, statewide average rate of nonwireless basic local~~  
18 ~~telecommunications service as of July 1, 2006. Prior to January 1, 2007,~~  
19 ~~and annually thereafter, the commission shall determine the weighted,~~  
20 ~~average rate of nonwireless basic local telecommunications services in~~  
21 ~~exchanges that have been price deregulated pursuant to subsection (q)(1)~~  
22 ~~(B), (C) or (D). The commission shall report its findings on or before~~  
23 ~~February 1, 2007, and annually thereafter to the governor, the legislature~~  
24 ~~and each member of the standing committees of the house of~~  
25 ~~representatives and the senate which are assigned telecommunications~~  
26 ~~issues. The commission shall also provide in such annual report~~  
27 ~~information on the current rates for services provided by all~~  
28 ~~telecommunications carriers or other telecommunications service~~  
29 ~~providers regardless of the technology used to provide service in price~~  
30 ~~deregulated exchanges, service offerings provided by all~~  
31 ~~telecommunications carriers or other telecommunications service~~  
32 ~~providers regardless of the technology used and available in price~~  
33 ~~deregulated exchanges and the number of competitors in price deregulated~~  
34 ~~exchanges including, but not limited to, facilities based carriers,~~  
35 ~~commercial mobile radio service or broadband based service providers.~~

36 (8) For the purposes of this subsection:

37 (A) "Packages or bundles of services" means the offering of a local  
38 telecommunications service with one or more of the following, subscribed  
39 together, as one service option offered at one price, one or more call  
40 management services, intraLATA long distance service, interLATA long  
41 distance service, internet access, video services or wireless services.  
42 Packages or bundles of services shall not include only a single residential  
43 local exchange access line or up to four business local exchange access

1 lines at one location and intraLATA long distance service or interLATA  
2 long distance service, or both;

3 (B) "local telecommunications service" means two-way voice service  
4 capable of being originated and terminated within the exchange of the  
5 local exchange telecommunications company seeking price deregulation of  
6 its services, regardless of the technology used to provision the voice  
7 service;

8 (C) "broadband network" means a connection that delivers services at  
9 speeds exceeding two hundred kilobits per second in both directions;

10 (D) "prepaid telecommunications service" means a local service for  
11 which payment is made in advance that excludes access to operator  
12 assistance and long distance service;

13 (E) "facilities based carrier" means a telecommunications carrier or  
14 entity providing local telecommunications service either wholly or  
15 partially over its own network. Facilities based carrier shall not include  
16 any radio communication services provider licensed by the federal  
17 communications commission to provide commercial mobile radio services;  
18 and

19 (F) "call management services" means optional telecommunications  
20 services that allow a customer to manage call flow generated over the  
21 customer's local exchange access line.

22 (r) (1) Upon complaint or request, the commission may investigate a  
23 price deregulated service.

24 (2) The commission shall resume price cap regulation of a service  
25 provided in any exchange area by placing it in the appropriate service  
26 basket, as approved by the commission, upon a determination by the  
27 commission that the conditions in subsection (q)(1)(C) or (D) are no  
28 longer satisfied in that exchange area.

29 (3) The commission shall resume price cap regulation of business  
30 services in any exchange meeting the conditions of subsection (q)(1)(B) by  
31 placing it in the appropriate service basket, as approved by the  
32 commission, upon a determination by the commission that the following  
33 condition is not met: There are at least two nonaffiliated  
34 telecommunications carriers or other entities, that are nonaffiliated with  
35 the local exchange carrier, providing local telecommunications service to  
36 business customers, regardless of whether the entity provides local service  
37 in conjunction with other services in that exchange area. One of such  
38 nonaffiliated carriers or entities shall be required to be a facilities-based  
39 carrier or entity and not more than one such nonaffiliated carriers or  
40 entities shall be a provider of commercial mobile radio services in that  
41 exchange.

42 (4) The commission shall resume price cap regulation of residential  
43 services in any exchange meeting the conditions of subsection (q)(1)(B) by

1 placing it in the appropriate service basket, as approved by the  
2 commission, upon a determination by the commission that the following  
3 condition is not met: There are at least two or more nonaffiliated  
4 telecommunications carriers or other entities, that are nonaffiliated with  
5 the local exchange carrier, providing local telecommunications service to  
6 residential customers, regardless of whether the entity provides local  
7 service in conjunction with other services in that exchange area. One of  
8 such nonaffiliated carriers or entities shall be required to be a facilities-  
9 based carrier or entity and not more than one such nonaffiliated carriers or  
10 entities shall be a provider of commercial mobile radio services in that  
11 exchange.

12 (s) The commission shall require that for all local exchange carriers  
13 all such price deregulated basic intraLATA toll services be geographically  
14 averaged statewide and not be priced below the price floor established in  
15 subsection (k).

16 (t) Cost studies to determine price floors shall be performed as  
17 required by the commission in response to complaints. In addition,  
18 notwithstanding the exemption in subsection (b), the commission may  
19 request information necessary to execute any of its obligations under the  
20 act. In response to a complaint that a price deregulated service is priced  
21 below the price floor set forth in subsection (k), the commission shall issue  
22 an order within 60 days after the filing of the complaint unless the  
23 complainant agrees to an extension.

24 (u) A local exchange carrier may ~~petition for offer~~ individual  
25 customer pricing. ~~The commission shall respond expeditiously to the~~  
26 ~~petition within a period of not more than 30 days subject to a 30-day~~  
27 ~~extension without prior approval by the commission. In response to a~~  
28 ~~complaint that an individual customer pricing agreement is priced below~~  
29 ~~the price floor set forth in subsection (k), the commission shall issue an~~  
30 ~~order within 60 days after the filing of the complaint, unless the~~  
31 ~~complainant agrees to an extension.~~

32 (v) No audit, earnings review or rate case shall be performed with  
33 reference to the initial prices filed as required herein.

34 (w) As required under K.S.A. 66-131, and amendments thereto, and  
35 except as provided for in ~~subsection (e) of~~ K.S.A. 66-2004(c), and  
36 amendments thereto, telecommunications carriers that were not authorized  
37 to provide switched local exchange telecommunications services in this  
38 state as of July 1, 1996, including cable television operators who have not  
39 previously offered telecommunications services, must receive a certificate  
40 of convenience based upon a demonstration of technical, managerial and  
41 financial viability and the ability to meet quality of service standards  
42 established by the commission. Any telecommunications carrier or other  
43 entity seeking such certificate shall file a statement, which shall be subject

1 to the commission's approval, specifying with particularity the areas in  
2 which it will offer service, the manner in which it will provide the service  
3 in such areas and whether it will serve both business customers and  
4 residential customers in such areas. Any structurally separate affiliate of a  
5 local exchange carrier that provides telecommunications services shall be  
6 subject to the same regulatory obligations and oversight as a  
7 telecommunications carrier, as long as the local exchange carrier's affiliate  
8 obtains access to any services or facilities from its affiliated local  
9 exchange carrier on the same terms and conditions as the local exchange  
10 carrier makes those services and facilities available to other  
11 telecommunications carriers.

12 (x) Any local exchange carrier with a majority of the carrier's local  
13 exchange access lines in the state price deregulated pursuant to subsection  
14 (q) may elect to no longer be regulated as a local exchange carrier and, not  
15 withstanding any other provisions, upon such election shall instead be  
16 regulated as a telecommunications carrier, except as provided in this  
17 subsection. A local exchange carrier making such election shall be referred  
18 to as an "electing carrier." A local exchange carrier may make such  
19 election by providing the commission with at least 90 days' written notice  
20 of election. The notice of election shall include a verified statement that a  
21 majority of the carrier's local exchange access lines are price deregulated.  
22 Such notification shall include information regarding the number of access  
23 lines the carrier serves in each of the carrier's exchanges. Within 45 days  
24 of receipt of such a notification, the commission shall review the  
25 information concerning the carrier's local exchange access lines and upon  
26 failure of the commission, within 45 days of receipt of the notification, to  
27 determine that a majority of such lines of the carrier are not price  
28 deregulated the commission shall designate the carrier as an electing  
29 carrier.

30 (y) Notwithstanding the provisions of this act, and subject to any  
31 applicable exemption from interconnection generally, a  
32 telecommunications carrier is entitled to interconnection with a local  
33 exchange carrier or an electing carrier to transmit and route voice traffic  
34 between both the telecommunications carrier and the local exchange  
35 carrier or electing carrier regardless of the technology by which the voice  
36 traffic is originated by and terminated to a consumer. The commission  
37 shall afford such telecommunications carrier all substantive and procedural  
38 rights available to such carrier regarding interconnection pursuant to 47  
39 U.S.C. §§ 251 and 252 as in effect on the effective date of this act.  
40 Nothing in this subsection shall be construed to confer jurisdiction upon  
41 the commission for services that are exempt from or otherwise not subject  
42 to commission jurisdiction.

43 (z) (1) Telecommunications carriers and electing carriers shall not be

1 subject to regulation by the commission for the provision of  
2 telecommunications services, except that the commission shall retain the  
3 authority and jurisdiction to authorize applications, suspension or  
4 cancellation of certificates of public convenience and necessity to provide  
5 local exchange or exchange access service in the state of Kansas, but the  
6 commission may not use this certification authority to regulate  
7 telecommunications carriers or electing carriers beyond the jurisdiction  
8 provided the commission in this subsection.

9 (2) Nothing in this section shall be construed to restrict the  
10 commission's authority and jurisdiction to:

11 (A) Carry out the commission's obligations established in 47 U.S.C.  
12 §§ 251 and 252;

13 (B) implement rules delegated to the state by the federal  
14 communications commission or federal law; or

15 (C) regulate intrastate switched access rates, terms and conditions,  
16 including the implementation of federal law concerning intercarrier  
17 compensation.

18 (3) The commission shall retain the authority and jurisdiction to:

19 (A) Carry out the commission's obligations pursuant to the  
20 underground utilities damage prevention act, K.S.A. 66-1801 et seq., and  
21 amendments thereto, and the overhead power line accident prevention act,  
22 K.S.A. 66-1709 et seq., and amendments thereto;

23 (B) require the reasonable resale of retail telecommunications  
24 services, as well as unbundling and interconnection obligations as required  
25 by K.S.A. 66-2003, and amendments thereto;

26 (C) administer the Kansas lifeline service program pursuant to K.S.A.  
27 66-2006, and amendments thereto;

28 (D) administer contributions to the Kansas universal service fund  
29 pursuant to ~~subsection (a) of~~ K.S.A. 66-2008(a), and amendments thereto;

30 (E) assess costs and expenses pursuant to K.S.A. 66-1501 et seq., and  
31 amendments thereto, but the commission shall not use this authority to  
32 regulate telecommunications carriers or electing carriers beyond the  
33 jurisdiction provided the commission in this subsection;

34 (F) request information from telecommunications carriers and  
35 electing carriers pursuant to K.A.R. 82-1-234a(b) and subject to the  
36 provisions of K.A.R. 82-1-221a and K.S.A. 66-1220a, and amendments  
37 thereto, but the commission shall not use this authority to regulate  
38 telecommunications carriers or electing carriers beyond the jurisdiction  
39 provided the commission in this subsection; and

40 (G) administer consumer complaints against telecommunications  
41 carriers and electing carriers to investigate fraud, undue discrimination and  
42 other practices harmful to consumers, but the commission shall not use  
43 this authority to regulate telecommunications carriers or electing carriers

1 beyond the jurisdiction provided the commission in this subsection.

2 Sec. 5. K.S.A. 2015 Supp. 66-2007 is hereby amended to read  
3 as follows: 66-2007. (a) All local exchange carriers, not including electing  
4 carriers, providing long distance service in Kansas shall reduce their  
5 statewide averaged basic long distance rates to reflect the net reductions in  
6 access charges; however, such carriers shall be allowed to increase long  
7 distance rates to reflect the KUSF funding requirements set forth in K.S.A.  
8 66-2008, and amendments thereto.

9 (b) The commission shall approve, upon not more than 120 days'  
10 notice, any basic local exchange price increases that in the aggregate in  
11 any one year are \$1.50 or less per access line per month, that are proposed  
12 by any rural telephone company which is subject to traditional rate of  
13 return regulation and that comply with the requirements of this section.  
14 Any such proposed price increases shall be presumed reasonable and not  
15 subject to commission investigation and review if the rural telephone  
16 company has followed the notice requirements set forth below. However,  
17 the commission shall initiate an investigation if more than 15% of the  
18 subscribers subject to the rate increase request such an investigation within  
19 60 days of the date of distribution of the notice of the proposed change.  
20 Upon filing such an application for a rate increase, any rural telephone  
21 company seeking expedited approval of the proposed rate under this  
22 section shall send a notice to its subscribers by regular mail, which may be  
23 included with regular subscriber mailings. Such mailings shall include the  
24 name, mailing address and telephone number of the commission. The  
25 notice shall include a schedule of the proposed local exchange rates, the  
26 effective date of the rates and a description of the procedures by which the  
27 subscribers can petition the commission to determine the reasonableness of  
28 the proposed rates, including a provision specifically stating that protest by  
29 15% or more of subscribers subject to the proposed rate increase would  
30 require the commission to initiate an investigation concerning the  
31 reasonableness of the proposed rate increase.

32 (c) The commission shall have the right to investigate and determine  
33 the reasonableness of an increase in local exchange rates and charges  
34 under subsection (b) by any rural telephone company within one year of  
35 the time local exchange rates or charges are increased. If the commission  
36 determines such rate or charge increases are unreasonable, the commission  
37 shall have the authority to order a rate hearing and, after such hearing,  
38 shall have the authority to rescind all or any portion of the increases found  
39 to be unreasonable.

40 (d) *The commission shall approve each application, within 45 days of*  
41 *such application, by a rural telephone company to increase the company's*  
42 *local service rates in an amount necessary for such company to maintain*  
43 *eligibility for full federal universal service support. If the commission does*



1 *not order approval of such application within 45 days, the application*  
2 *shall be deemed approved.*

3 Sec. 6. K.S.A. 2015 Supp. 66-2008 is hereby amended to read as  
4 follows: 66-2008. On or before January 1, 1997, the commission shall  
5 establish the Kansas universal service fund, hereinafter referred to as the  
6 KUSF.

7 (a) The commission shall require every telecommunications carrier,  
8 telecommunications public utility and wireless telecommunications service  
9 provider that provides intrastate telecommunications services and, to the  
10 extent not prohibited by federal law, every provider of interconnected VoIP  
11 service, as defined by ~~47 C.F.R. § 9.3 (October 1, 2005)~~ 47 C.F.R. 9.3, to  
12 contribute to the KUSF *based upon the provider's intrastate*  
13 *telecommunications services net retail revenues* on an equitable and  
14 nondiscriminatory basis. *The commission shall not require any provider to*  
15 *contribute to the KUSF under a different contribution methodology than*  
16 *such provider uses for purposes of the federal universal service fund,*  
17 *including for bundled offerings.* Any telecommunications carrier,  
18 telecommunications public utility, wireless telecommunications service  
19 provider or provider of interconnected VoIP service which contributes to  
20 the KUSF may collect from customers an amount equal to such carrier's,  
21 utility's or provider's contribution, but such carrier, provider or utility may  
22 collect a lesser amount from its customer.

23 Any contributions in excess of distributions collected in any reporting  
24 year shall be applied to reduce the estimated contribution that would  
25 otherwise be necessary for the following year.

26 (b) Pursuant to the federal act, distributions from the KUSF shall be  
27 made in a competitively neutral manner to qualified telecommunications  
28 public utilities, telecommunications carriers and wireless  
29 telecommunications providers, that are deemed eligible both under  
30 subsection (e)(1) of section 214 of the federal act and by the commission.

31 (c) Beginning January 1, 2014:

32 (1) Annual distributions from the KUSF for a local exchange carrier  
33 subject to price cap regulation pursuant to K.S.A. 66-2005, and  
34 amendments thereto, shall be capped at the lesser of:

35 (A) 90% of KUSF support the carrier received for the 12-month  
36 period ending February 28, 2013; or

37 (B) \$11,400,000.

38 The amounts prescribed in subparagraph (A) or (B) shall not include  
39 KUSF support for Kansas lifeline service program purposes, pursuant to  
40 K.S.A. 66-2006, and amendments thereto.

41 (2) Local exchange carriers subject to price cap regulation pursuant to  
42 K.S.A. 66-2005, and amendments thereto, shall not receive KUSF support  
43 for any residential or business lines within an exchange that the

1 commission has granted price deregulation pursuant to ~~subsections (q)(1)~~  
2 ~~(B), (C) or (D)~~ of K.S.A. 66-2005(q)(1)(B), (C) or (D), and amendments  
3 thereto, except for areas within any census block in such an exchange in  
4 which there is no wireline carrier providing local exchange access lines  
5 that does not receive KUSF support, not including KUSF support for  
6 Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and  
7 amendments thereto, for such access lines.

8 (3) Local exchange carriers subject to price cap regulation pursuant to  
9 K.S.A. 66-2005, and amendments thereto, shall receive the same per line,  
10 per month KUSF support as established in the April 13, 2000 notice in  
11 commission docket numbers 99-GIMT-326-GIT and 00-GIMT-236-GIT  
12 subject to the cap percentage in subsection (c)(1), not including KUSF  
13 support for Kansas lifeline service program purposes pursuant to K.S.A.  
14 66-2006, and amendments thereto, except that the amount shall be reduced  
15 by any funding received by such carrier from the federal communication  
16 commission's connect America fund II for the same household, if feasible,  
17 or for the same census block.

18 (4) The commission shall discontinue the use of the "identical  
19 support" rule and shall cap all competitive eligible telecommunications  
20 carriers' KUSF high cost support as of March 1, 2013, and beginning  
21 March 1, 2014, over a period of four years in annual equal increments,  
22 reduce to zero, beginning March 1, 2018, the amount of KUSF high cost  
23 support received by competitive eligible telecommunications carriers.  
24 Nothing in this section shall be construed to affect competitive eligible  
25 telecommunications carriers' eligibility for Kansas lifeline service program  
26 purposes pursuant to K.S.A. 66-2006, and amendments thereto. For the  
27 purposes of this subsection, "competitive eligible telecommunications  
28 carrier" means a telecommunications carrier designated by the commission  
29 as an eligible telecommunications carrier after January 1, 1998.  
30 "Competitive eligible telecommunications carrier" shall not mean any  
31 local exchange carrier or any electing carrier designated by the  
32 commission as an eligible telecommunications carrier by order dated  
33 December 5, 1997, in docket No. 98-GIMT-241-GIT, or any such local  
34 exchange carrier's or electing carrier's successors or assigns.

35 (5) An electing carrier shall no longer be eligible to receive high cost  
36 support from the KUSF.

37 (d) (1) Subject to paragraph (2), the commission may periodically  
38 review the KUSF to determine if the costs of qualified telecommunications  
39 public utilities, telecommunications carriers and wireless  
40 telecommunications service providers to provide local service justify  
41 modification of the KUSF. If the commission determines that any changes  
42 are needed, the commission shall modify the KUSF accordingly and  
43 annually report such changes to the senate standing committee on utilities

1 and the house standing committee on utilities and telecommunications.

2 (2) The commission shall undertake a review of the capped amount of  
3 KUSF support available for each local exchange carrier operating under  
4 price cap regulation that receives such support, not including Kansas  
5 lifeline service program purposes pursuant to K.S.A. 66-2006, and  
6 amendments thereto, and determine if a lesser amount is appropriate for  
7 KUSF distributions after March 1, 2019. Reviews of such carriers shall be  
8 based on the forward-looking costs of providing basic voice service, using  
9 inputs that reflect the actual geography being served and that reflect the  
10 scale and scope of the local exchange carrier providing basic local voice  
11 service within each exchange.

12 (e) (1) For each local exchange carrier electing pursuant to ~~subsection~~  
13 ~~(b) of K.S.A. 66-2005(b)~~, and amendments thereto, to operate under  
14 traditional rate of return regulation, all KUSF support, including any  
15 adjustment thereto pursuant to this section, shall ~~be based on~~ *ensure the*  
16 *reasonable opportunity for recovery of* such carrier's intrastate embedded  
17 costs, revenue requirements, investments and expenses, *subject to the*  
18 *annual cap established pursuant to subsection (e)(3).* ~~Until at least March~~  
19 ~~1, 2017,~~ Any modification of such support shall be made only as a direct  
20 result of changes in those factors enumerated in this subsection. Nothing in  
21 this subsection shall prohibit the commission from conducting a general  
22 investigation regarding effects of federal universal service reform on  
23 KUSF support and the telecommunications public policy of the state of  
24 Kansas as expressed in K.S.A. 66-2001, and amendments thereto. The  
25 commission may present any findings and recommendations to the  
26 telecommunications study committee established in K.S.A. 2015 Supp. 66-  
27 2018, and amendments thereto.

28 (2) Notwithstanding any other provision of law, no KUSF support  
29 received by a local exchange carrier electing pursuant to ~~subsection (b) of~~  
30 ~~K.S.A. 66-2005(b)~~, and amendments thereto, to operate under traditional  
31 rate of return regulation shall be used to offset any ~~loss reduction of~~  
32 federal universal service fund support *for recovery of such carrier, except*  
33 ~~that such limitation on KUSF support shall not preclude recovery of~~  
34 ~~reductions in intrastate access revenue pursuant to subsection (e) of K.S.A.~~  
35 ~~66-2005, and amendments thereto~~ *carrier's interstate costs and*  
36 *investments.*

37 (3) Notwithstanding any other provision of law, the total KUSF  
38 distributions, *not to include KUSF support for Kansas lifeline service*  
39 *program purposes, pursuant to K.S.A. 66-2006, and amendments thereto,*  
40 made to all local exchange carriers operating under traditional rate of  
41 return regulation pursuant to ~~subsection (b) of K.S.A. 66-2005(b)~~, and  
42 amendments thereto, shall not exceed an annual \$30,000,000 cap. *In any*  
43 *year that the total KUSF support for such carriers would exceed the*

1 *annual cap, each carrier's KUSF support shall be proportionately based*  
2 *on the amount of support each such carrier would have received absent*  
3 *the cap. A waiver of the cap shall be granted based on a demonstration by*  
4 *a carrier that such carrier would experience significant hardship due to*  
5 *force majeure or natural disaster as determined by the commission.*

6 (f) Additional supplemental funding from the KUSF, other than as  
7 provided in subsection (e), may be authorized at the discretion of the  
8 commission. However, the commission may require approval of such  
9 funding to be based upon a general rate case filing. With respect to any  
10 request for additional supplemental funding from the KUSF and to any  
11 audit of a rural telephone company's KUSF support, the commission shall  
12 act expeditiously, and shall be subject to the 240-day deadline for rate case  
13 applications pursuant to K.S.A. 66-117, and amendments thereto.

14 Sec. 7. K.S.A. 2015 Supp. 66-2017 is hereby amended to read as  
15 follows: 66-2017. (a) Except as otherwise provided in this section, no VoIP  
16 service, IP-enabled service, or any combination thereof, shall be subject to  
17 the jurisdiction of, regulation by, supervision of or control by any state  
18 agency or political subdivision of the state.

19 (b) VoIP services shall be subject to:

20 (1) The requirements of K.S.A. 66-2008, and amendments thereto,  
21 pertaining to the Kansas universal service fund (KUSF). The provisions of  
22 subsection (a) shall not affect or restrict eligibility for KUSF support; and

23 (2) the requirements of the Kansas 911 act, K.S.A. 2015 Supp. 12-  
24 5362 et seq., and amendments thereto.

25 (c) No provision of this section shall be construed to modify:

26 (1) The requirements of the video competition act, K.S.A. 2015 Supp.  
27 12-2021 et seq., and amendments thereto;

28 (2) the state corporation commission's authority under 47 U.S.C. §§  
29 251 and 252, as in effect on the effective date of this act. For the purposes  
30 of this paragraph, the term "state commission" used in 47 U.S.C. §§ 251  
31 and 252 shall mean the state corporation commission established pursuant  
32 to K.S.A. 74-601, and amendments thereto;

33 (3) the authority of the state of Kansas or a political subdivision  
34 thereof to manage the use of public rights of way pursuant to K.S.A. 17-  
35 1902, and amendments thereto; ~~or~~

36 (4) the rights and obligations of ~~subsection (y) of K.S.A. 66-2005(y),~~  
37 and amendments thereto; *or*

38 (5) *the regulation of any rural telephone company.*

39 (d) For the purposes of this section:

40 (1) "Internet protocol enabled service" or "IP-enabled service" means  
41 any service, capability, functionality, or application using an internet  
42 protocol (IP) that enables an end user to send or receive a voice, data or  
43 video communication in an IP format.

1 (2) "Political subdivision" shall have the meaning ascribed to such  
2 term in K.S.A. 28-137b, and amendments thereto.

3 (3) "State agency" shall have the meaning ascribed to such term in  
4 K.S.A. 75-3701, and amendments thereto.

5 (4) "Voice over Internet Protocol" or "VoIP" is any service that:

6 (A) Uses an internet protocol (IP) to enable real-time, two-way voice  
7 communication that originates from, or terminates at, the user's location in  
8 an IP;

9 (B) utilizes a broadband connection from the user's location; and

10 (C) permits a user to receive a call that originates on the public  
11 switched telephone network (PSTN) and to terminate a call to the PSTN.

12 Sec. 8. K.S.A. 66-2004 and K.S.A. 2015 Supp. 66-2005, 66-2007, 66-  
13 2008 and 66-2017 are hereby repealed.

14 Sec. 9. On and after October 1, 2016, K.S.A. 17-1902 is hereby  
15 repealed.

16 Sec. 10. This act shall take effect and be in force from and after its  
17 publication in the statute book.