

SUBSTITUTE FOR SENATE BILL No. 72

AN ACT concerning telecommunications; amending K.S.A. 50-6,103 and 66-1,187 and K.S.A. 2010 Supp. 66-2005 and repealing the existing sections.

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

Section 1. K.S.A. 50-6,103 is hereby amended to read as follows: 50-6,103. (a) As used in this section:

(1) "Express authorization" means an express, affirmative act by a consumer clearly agreeing to a change in the consumer's telecommunications carrier or local exchange carrier to another carrier.

(2) "Supplemental telecommunication services" means any property or services for which any charge or assessment appears on a billing statement directed to a consumer by a local exchange carrier or telecommunications carrier, including but not limited to personal 800 number services, calling card plans, internet advertisement and website services, voice mail services, paging services, psychic services, psychic memberships, dating services or memberships, travel club memberships, internet access services and service maintenance plans. "Supplemental telecommunication services" does not include direct dial services to which a per use charge applies.

(3) "Telecommunications services" has the meaning provided by K.S.A. 66-1,187, and amendments thereto.

(b) No local exchange carrier or telecommunications carrier shall submit or cause to be submitted to a local exchange carrier an order to change a consumer's telecommunications carrier or local exchange carrier to another carrier without having obtained the express authorization of the consumer authorized to make the change. The local exchange carrier or telecommunications carrier requesting the change shall have the burden of proving the express authorization by a preponderance of the evidence. It shall not be a violation of this subsection for a local exchange carrier to assign a consumer to a telecommunications carrier for purposes of intra-LATA services pursuant to order of the state corporation commission.

(c) No supplier shall:

(1) Engage in any activity, conduct or representation that has the capacity to mislead, deceive or confuse the consumer, while soliciting or verifying a change in a consumer's telecommunications carrier or local exchange carrier to another carrier;

(2) employ a box or container used to collect entries for sweepstakes, contests or drawings to gather letters of agency or other documents that constitute authorizations by consumers to change the consumers' telecommunications carrier or local exchange carrier to another carrier or to change or add to the consumers' accounts any supplemental telecommunications services;

(3) use any methods not approved by statute, regulations of the federal communications commission or federal trade commission (as in effect on the effective date of this act) or state corporation commission rules and regulations to change a consumer's telecommunications carrier or local exchange carrier to another carrier; or

(4) employ a check, draft or other negotiable instrument that constitutes authorization to change or add to the consumer's accounts any supplemental telecommunications services.

(d) Any supplier that violates subsection (b) or (c) shall be subject to a civil penalty of not less than \$5,000 nor more than \$20,000 for each such violation instead of the penalty provided for in subsection (a) of K.S.A. 50-636, and amendments thereto.

(e) Any violation of this section is a deceptive and unconscionable act or practice under the provisions of the Kansas consumer protection act and shall be subject to any and all of the enforcement provisions of the Kansas consumer protection act. Nothing in this section shall preclude the state corporation commission from exerting its authority as it pertains to intra-state services nor the attorney general from pursuing violations of any other provisions of the Kansas consumer protection act by a supplier.

(f) All local exchange carriers *and electing carriers* shall offer consumers the option of notifying the local exchange carrier in writing that they do not desire any change of telecommunications carrier regardless of any orders to the contrary submitted by any third party. The consumer shall be permitted to cancel such notification or to change its telecommunications carrier by notifying the consumer's local exchange carrier *or electing carrier* accordingly. *For the purposes of this section, a letter of agency, as described in 47 CFR 64.1130, as in effect on the effective date of this act, that is signed by the consumer shall satisfy the notification requirement for*

purposes of making changes to the consumer's telecommunications carrier. All local exchange carriers *and electing carriers* shall annually notify the consumers of the carrier's telecommunications services of the availability of this option.

(g) Any person alleging a violation of this section may bring a private action to seek relief pursuant to K.S.A. 50-634, 50-636 and this section, and amendments thereto, and such person may be defined as a consumer pursuant to K.S.A. 50-624, and amendments thereto, for the purposes of such private action.

(h) The attorney general and the state corporation commission shall enter into a memorandum of understanding providing for the cooperation and sharing of information necessary to enforce this section against suppliers and to assist consumers under federal and state law.

(i) This section shall be part of and supplemental to the Kansas consumer protection act.

Sec. 2. K.S.A. 66-1,187 is hereby amended to read as follows: 66-1,187. As used in this act:

(a) "Broadband" means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second.

(b) "CLASS services" means custom local area signaling services, which include automatic callback, automatic recall, calling number identification, selective call rejection, selective call acceptance, selective call forwarding, distinctive ringing and customer originated trace.

(c) "Commission" means the state corporation commission.

(d) "Dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications carrier of the customer's designation from among two or more telecommunications carriers, including such local exchange carrier.

(e) "Federal act" means the federal telecommunications act of 1996, P.L. 104-104 (amending the communications act of 1934, 47 U.S.C. § 151, et seq.)

(f) "ISDN" means integrated services digital network which is a network and associated technology that provides simultaneous voice and data communications over a single communications channel.

(g) "LATA" has the meaning ascribed to it in the federal act.

(h) "Local exchange carrier" means any telecommunications public utility or its successor providing switched telecommunications service within any local exchange service area, as approved by the commission on or before January 1, 1996. However, with respect to the Hill City exchange area, in which multiple carriers were certified by the commission prior to January 1, 1996, the commission's determination, subject to any court appeals, of which authorized carrier shall serve as the carrier of last resort will determine which carrier shall be deemed the local exchange carrier for that exchange.

(i) "Number portability" has the meaning ascribed to it in the federal act.

(j) "1+ intraLATA dialing parity" means the ability of a local exchange service customer to specify the telecommunications or local exchange carrier that will carry the intraLATA long distance messages when that customer dials either "1" or "0" plus a 10-digit number.

(k) "Operating area" means:

(1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal communications commission;

(2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission.

(l) "Rural telephone company" has the meaning ascribed to it in the federal act, excluding any local exchange carrier which together with all of its affiliates has 20,000 or more access lines in the state.

(m) "Telecommunications carrier" means a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local

exchange carriers certified before January 1, 1996, *except for electing carriers*.

(n) “Telecommunications public utility” means any public utility, as defined in K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages, as defined in K.S.A. 66-104, and amendments thereto, or the provision of telecommunications services in or throughout any part of Kansas.

(o) “Telecommunications service” means the provision of a service for the transmission of telephone messages, or two-way video or data messages.

(p) “Universal service” means telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services.

(q) “Enhanced universal service” means telecommunications services, in addition to those included in universal service, which shall include: Signaling system seven capability, with CLASS service capability; basic and primary rate ISDN capability, or the technological equivalent; full-fiber interconnectivity, or the technological equivalent, between central offices; and broadband capable facilities to: All schools accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services.

Sec. 3. K.S.A. 2010 Supp. 66-2005 is hereby amended to read as follows: 66-2005. (a) Each local exchange carrier shall file a network infrastructure plan with the commission on or after January 1, 1997, and prior to January 1, 1998. Each plan, as a part of universal service protection, shall include schedules, which shall be approved by the commission, for deployment of universal service capabilities by July 1, 1998, and the deployment of enhanced universal service capabilities by July 1, 2003, as defined pursuant to subsections (p) and (q) of K.S.A. 66-1,187, and amendments thereto, respectively. With respect to enhanced universal service, such schedules shall provide for deployment of ISDN, or its technological equivalent, or broadband facilities, only upon a firm customer order for such service, or for deployment of other enhanced universal services by a local exchange carrier. After receipt of such an order and upon completion of a deployment plan designed to meet the firm order or otherwise provide for the deployment of enhanced universal service, a local exchange carrier shall notify the commission. The commission shall approve the plan unless the commission determines that the proposed deployment plan is unnecessary, inappropriate, or not cost effective, or would create an unreasonable or excessive demand on the KUSF. The commission shall take action within 90 days. If the commission fails to take action within 90 days, the deployment plan shall be deemed approved. This approval process shall continue until July 1, 2000. Each plan shall demonstrate the capability of the local exchange carrier to comply on an ongoing basis with quality of service standards to be adopted by the commission no later than January 1, 1997.

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

(1) A commitment to provide existing and newly ordered point-to-point broadband services to: Any hospital as defined in K.S.A. 65-425, and amendments thereto; any school accredited pursuant to K.S.A. 72-1101 et

seq., and amendments thereto; any public library; or other state and local government facilities at discounted prices close to, but not below, long-run incremental cost; and

(2) a commitment to provide basic rate ISDN service, or the technological equivalent, at prices which are uniform throughout the carrier's service area. Local exchange carriers shall not be required to allow retail customers purchasing the foregoing discounted services to resell those services to other categories of customers. Telecommunications carriers may purchase basic rate ISDN services, or the technological equivalent, for resale in accordance with K.S.A. 66-2003, and amendments thereto. The commission may reduce prices charged for services outlined in provisions (1) and (2) of this subsection, if the commitments of the local exchange carrier set forth in those provisions are not being kept.

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

(1) Any reduction of a rural telephone company's cost recovery due to reduction of its interstate access revenue shall be recovered from the KUSF;

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

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

(d) Beginning March 1, 1997, each rural telephone company shall have the authority to increase annually its monthly basic local residential and business service rates by an amount not to exceed \$1 in each 12-month period until such monthly rates reach an amount equal to the statewide rural telephone company average rates for such services. The statewide rural telephone company average rates shall be the arithmetic mean of the lowest flat rate as of March 1, 1996, for local residential service and for local business service offered by each rural telephone company within the state. In the case of a rural telephone company which increases its local residential service rate or its local business service rate, or both, to reach the statewide rural telephone company average rate for such services, the amount paid to the company from the KUSF shall be reduced by an amount equal to the additional revenue received by such company through such rate increase. In the case of a rural telephone company which elects to maintain a local residential service rate or a local business service rate, or both, below the statewide rural telephone company average, the amount paid to the company from the KUSF shall be reduced by an amount equal to the difference between the revenue the company could receive if it elected to increase such rate to the average rate and the revenue received by the company.

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

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

(A) If a rural telephone company's present residential rate, including

any separate charge for tone dialing, is at or above such weighted mean, such rate shall be deemed affordable prior to March 1, 2007.

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

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

(2) For single line business service at any time, an affordable rate shall be the existing rate or an amount \$3 greater than the affordable rate for residential service as determined under provision (1) of this subsection, whichever is higher, except that any increase in the business service affordable rate exceeding \$2 may be satisfied by increases in a rural telephone company's business monthly service rate not exceeding \$2 per year, effective March 1 of the year when such rate is determined, with the remainder applied at the rate of \$2 per year, but not to exceed the affordable rate.

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

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

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

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

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

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

(f) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: Residential and single-line business, including touch-tone; switched access services; and miscellaneous services. The commission shall establish price caps at the prices existing

when the regulatory plan is filed subject to rate rebalancing as provided in subsection (c) for residential services, including touch-tone services, and for single-line business services, including touch-tone services, within the residential and single-line business service basket. The commission shall establish a formula for adjustments to the price caps. The commission also shall establish price caps at the prices existing when the regulatory plan is filed for the miscellaneous services basket. The commission shall approve any adjustments to the price caps for the miscellaneous service basket, as provided in subsection (g).

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

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

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

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

(k) A price cap is a maximum price for all services taken as a whole in a given basket. Prices for individual services may be changed within the service categories, if any, established by the commission within a basket. An entire service category, if any, within the residential and single-line business basket or miscellaneous services basket may be priced below the cap for such category. Unless otherwise approved by the commission, no service shall be priced below the price floor which will be long-run incremental cost and imputed access charges. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by local exchange carriers on a toll service basis.

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

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

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

(o) Subsequent to the adoption of guidelines pursuant to subsection (n), the commission shall initiate a petitioning procedure under which the local exchange carrier may request rate range pricing. The commission shall act upon a petition within 21 days, subject to a 30-day extension. The prices

within a rate range shall be tariffed and shall apply to all customers in a nondiscriminatory manner in an exchange or group of exchanges.

(p) A local exchange carrier may petition the commission to designate an individual service or service category, if any, within the miscellaneous services basket, the switched access services basket or the residential and single-line business basket for reduced regulation. The commission shall act upon a petition for reduced regulation within 21 days, subject to an extension period of an additional 30 days, and upon a good cause showing of the commission in the extension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21-day period or within a 51-day period if an extension has been issued. Following an order granting reduced regulation of an individual service or service category, the commission shall act on any request for price reductions within seven days subject to a 30-day extension. The commission shall act on other requests for price cap adjustments, adjustments within price cap plans and on new service offerings within 21 days subject to a 30-day extension. Such a change will be presumed lawful unless it is determined the prices are below the price floor or that the price cap for a category, if any, within the entire basket has been exceeded.

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

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

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

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

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

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

(F) up to and continuing until July 1, 2008, rates for the initial residential local exchange access line and up to four business local exchange access lines at one location shall remain subject to price cap regulation. On and after July 1, 2008, the local exchange carrier shall be authorized to adjust such rates without commission approval by not more than the percentage increase in the consumer price index for all urban consumers, as

officially reported by the bureau of labor statistics of the United States department of labor, or its successor index, in any one year period and such rates shall not be adjusted below the price floor established in subsection (k). Such rates shall not be affected by purchase of one or more of the following: Call management services, intraLATA long distance service or interLATA long distance service; and

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

(2) For the purposes of this subsection:

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

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

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

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

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

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

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

(7) Prior to January 1, 2007, the commission shall determine the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2006. Prior to January 1, 2007, and annually thereafter, the commission shall determine the weighted, average rate of nonwireless basic local telecommunications services in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D). The commission shall report its findings on or before February 1, 2007, and annually thereafter to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues. The commission shall also provide in such annual report ~~any additional information it deems useful in determining the impact of price deregulation on consumers and the competitive environment, including, but not limited to, the rates recorded under paragraph (6) of this subsection,~~ *on the current rates for services provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used to provide service in price deregulated exchanges, changes in service offerings provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used and available in price deregulated exchanges and the change in the number of competitors in price deregulated exchanges including, but not limited to, facilities based carriers, commercial mobile radio service or broadband based service providers. If the commission finds that the weighted, average rate of nonwireless basic local telecommunications service, in exchanges that have been price deregulated pursuant to subsection (q)(1)(B), (C) or (D) in any one year period is greater*

~~than the weighted, statewide average rate of nonwireless basic local telecommunications service as of July 1, 2008, multiplied by one plus the percentage increase in the consumer price index for goods and services for the study periods, or the commission believes that changes in state law are warranted due to the status of competition, the commission shall recommend to the governor, the legislature and each member of the standing committees of the house of representatives and the senate which are assigned telecommunications issues such changes in state law as the commission deems appropriate and the commission shall also send a report of such findings to each member of the legislature.~~

(8) For the purposes of this subsection:

(A) “Packages or bundles of services” means the offering of a local telecommunications service with one or more of the following, subscribed together, as one service option offered at one price, one or more call management services, intraLATA long distance service, interLATA long distance service, internet access, video services or wireless services. Packages or bundles of services shall not include only a single residential local exchange access line or up to four business local exchange access lines at one location and intraLATA long distance service or interLATA long distance service, or both;

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

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

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

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

(F) “call management services” means optional telecommunications services that allow a customer to manage call flow generated over the customer’s local exchange access line.

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

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

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

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

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

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

(u) A local exchange carrier may petition for individual customer pricing. The commission shall respond expeditiously to the petition within a period of not more than 30 days subject to a 30-day extension.

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

(w) Telecommunications carriers shall not be subject to price regulation, except that: Access charge reductions shall be passed through to consumers by reductions in basic intrastate toll prices; and basic toll prices shall remain geographically averaged statewide. As required under K.S.A. 66-131, and amendments thereto, and except as provided for in subsection (c) of K.S.A. 66-2004, and amendments thereto, telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission's approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas. Any structurally separate affiliate of a local exchange carrier that provides telecommunications services shall be subject to the same regulatory obligations and oversight as a telecommunications carrier, as long as the local exchange carrier's affiliate obtains access to any services or facilities from its affiliated local exchange carrier on the same terms and conditions as the local exchange carrier makes those services and facilities available to other telecommunications carriers. The commission shall oversee telecommunications carriers to prevent fraud and other practices harmful to consumers and to ensure compliance with quality of service standards adopted for all local exchange carriers and telecommunications carriers in the state.

(x) (1) *Any local exchange carrier with a majority of the carrier's local exchange access lines in the state price deregulated pursuant to subsection (q) may elect to no longer be regulated as a local exchange carrier and, notwithstanding any other provisions, upon such election shall instead be regulated as a telecommunications carrier, except as provided in this subsection. A local exchange carrier making such election shall be referred to as an "electing carrier." A local exchange carrier may make such election by providing the commission with at least 90 days' written notice of election. The notice of election shall include a verified statement that a majority of the carrier's local exchange access lines are price deregulated. Such notification shall include information regarding the number of access lines the carrier serves in each of the carrier's exchanges. Within 45 days of receipt of such a notification, the commission shall review the information concerning the carrier's local exchange access lines and upon failure of the commission, within 45 days of receipt of the notification, to determine that a majority of such lines of the carrier are not price deregulated the commission shall designate the carrier as an electing carrier.*

(2) *An electing carrier shall not be subject to price regulation and shall be subject to nondiscriminatory regulation by the commission in the same manner as and subject to no more regulation than other telecommunications carriers operating in the state, except that the carrier shall remain subject to:*

(A) *The reasonable resale of retail telecommunications services, as well*

as unbundling and interconnection obligations as required by K.S.A. 66-2003, and amendments thereto;

(B) the requirements of subsection (c) concerning intrastate access charges;

(C) the requirements of the KLSP, as required by K.S.A. 66-2006, and amendments thereto;

(D) price cap regulation for lifeline services; and

(E) shall remain eligible to receive KUSF funding.

(3) An electing carrier's rates for single residential or business local exchange access lines in its rural exchanges shall be no higher than the average of such rates for single residential or business local exchange access lines respectively in its urban exchanges.

(4) An electing carrier may elect to be relieved of the requirement to serve as carrier of last resort, as required by K.S.A. 66-2009, and amendments thereto, by providing written notification to the commission of the specific urban exchanges for which the electing carrier is electing to be relieved of carrier of last resort obligations, in the electing carrier's urban exchanges.

(5) Notwithstanding any other provision of law to the contrary, an electing carrier that notifies the commission that the electing carrier chooses to be relieved of carrier of last resort obligations in specific urban exchanges or any local exchange carrier that does not have a carrier of last resort obligation in a specific exchange shall not be eligible for KUSF funding for carrier of last resort obligations, as required by K.S.A. 66-2009, and amendments thereto, or high cost support in those specific exchanges, but would remain eligible for KUSF support for Kansas lifeline service program purposes.

(6) Notwithstanding the provisions of this subsection (x), an electing carrier shall offer single residential local exchange access lines in the electing carrier's exchanges.

(7) For the purposes of this subsection:

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

(B) "rural exchange" means any exchange in which there are fewer than 6,000 local exchange access lines served by the electing carrier and all facilities based carriers; and

(C) "urban exchange" means any exchange in which there are 75,000 or more local exchange access lines served by the electing carrier and all facilities based carriers.

(y) Notwithstanding the provisions of this act, a telecommunications carrier is entitled to interconnection with an electing carrier to transmit and route voice traffic between both the telecommunications carrier and the electing carrier regardless of the technology by which the voice traffic is originated by and terminated to a consumer. The commission shall afford such telecommunications carrier all substantive and procedural rights available to such carrier regarding interconnection pursuant to 47 U.S.C. §§ 251 and 252 as in effect on the effective date of this act.

Sec. 4. K.S.A. 50-6,103 and 66-1,187 and K.S.A. 2010 Supp. 66-2005 are hereby repealed.

SUBSTITUTE FOR SENATE BILL No. 72—page 12

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.