

SECOND REGULAR SESSION

# SENATE BILL NO. 785

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR SCHAEFER.

Read 1st time January 14, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal section 392.248, RSMo, and to enact in lieu thereof two new sections relating to telecommunications.

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

Section A. Section 392.248, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 392.248 and 392.249, to read as  
3 follows:

392.248. 1. In order to ensure just, reasonable, and affordable rates for  
2 reasonably comparable essential local telecommunications services throughout the  
3 state, there is hereby established the "Universal Service Board" which shall  
4 consist of the members of the public service commission and the public counsel,  
5 and which shall be incorporated as a not-for-profit, public benefit corporation in  
6 the manner provided pursuant to chapter 355, RSMo, except as otherwise  
7 provided in this section. Consistent with rules adopted by the commission, the  
8 universal service board shall create a universal service fund. The universal  
9 service board shall supervise the management of the universal service  
10 fund. Funds deposited in the universal service fund are not state funds. The  
11 commission shall adopt rules governing the operations of the state universal  
12 service fund within three months of the adoption of the rules adopted by the  
13 Federal Communication Commission for the federal Universal Service  
14 Fund. Nothing in the rules adopted by the commission shall be inconsistent with  
15 the support mechanisms established for the federal Universal Service Fund, but  
16 the commission may adopt any additional definitions and standards it believes  
17 are necessary to preserve and advance universal service in the state of  
18 Missouri. The commission shall adopt rules governing the operations of the

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

19 universal service fund and the operation of the universal service board. Meetings  
20 of the universal service board shall be open meetings pursuant to chapter 610,  
21 RSMo. The universal service board shall also retain an independent neutral fund  
22 administrator who will be responsible for the day-to-day operations of the  
23 universal service fund. The fund administrator shall be a fiduciary with trust  
24 company powers. The universal service board shall provide for periodic review  
25 of the fund administrator and the opportunity for selection of an alternate fund  
26 administrator no less frequently than every four years. The agency, individual,  
27 firm, partnership, or corporation that is selected by the commission as the neutral  
28 administrator of the universal service fund may neither contribute to nor receive  
29 disbursements from the universal service fund, except as provided in subsection  
30 2 of this section. The administrator may not have any financial interest in a  
31 telecommunications company, as defined in section 386.020, RSMo. The  
32 commission shall cause the books and records of the universal service fund  
33 administrator to be independently audited on an annual basis. The independent  
34 audit shall be paid for from funds held in the universal service fund.

35 2. The commission shall adopt and enforce rules to be implemented by the  
36 universal service board, governing the system of funding and disbursing funds  
37 from the universal service fund in a manner that does not grant a preference or  
38 competitive advantage to any telecommunications company or subject a  
39 telecommunications company to prejudice or disadvantage. Funds from the  
40 universal service fund shall only be used:

41 (1) To ensure the provision of reasonably comparable essential local  
42 telecommunications service, as that definition may be updated by the commission  
43 by rule, throughout the state including high-cost areas, at just, reasonable and  
44 affordable rates. **For purposes of this section and section 392.249, any**  
45 **benchmark rate for residential basic local telecommunications service**  
46 **set by the commission shall be deemed a just, reasonable, and**  
47 **affordable rate;**

48 (2) **To ensure adequate high-cost support while maintaining just,**  
49 **reasonable and affordable rates for essential local telecommunications**  
50 **services when a telecommunications company is required to eliminate**  
51 **its intrastate carrier common line charge as required by section**  
52 **392.249;**

53 (3) To assist low-income customers and disabled customers in obtaining  
54 affordable essential telecommunications services; and

55            [(3)] (4) To pay the reasonable, audited costs of administering the  
56 universal service fund.

57            3. The universal service fund shall be funded through assessments on all  
58 telecommunications companies in the state, **interconnected voice over**  
59 **Internet protocol service providers registered to provide service under**  
60 **section 392.550 and commercial mobile radio service providers as**  
61 **identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24**  
62 **providing service in the state**, which shall be based on Missouri jurisdictional  
63 **retail** telecommunications services revenue and other nondiscriminatory factors  
64 as determined by the commission. Such assessments shall be paid to the  
65 universal service board. **Notwithstanding the limitations imposed by**  
66 **section 392.245**, a telecommunications company regulated [under section  
67 392.245 may, upon providing written notice to the commission, increase the  
68 maximum allowable prices for any or all of its telecommunications services except  
69 residential basic local telecommunications services above those maximum  
70 allowable prices otherwise established in section 392.245 by an amount not to  
71 exceed the amount required to recover fifty percent of its assessment under this  
72 section. Any increases in the maximum allowable prices for exchange access and  
73 basic local telecommunications services other than residential basic local  
74 telecommunications services shall be calculated to recover revenues in the same  
75 percentage as the revenues from such services bear to such company's total  
76 revenues for nonbasic, exchange access and basic local other than residential  
77 telecommunications services for the preceding twelve months. A  
78 telecommunications company regulated under section 392.245 may seek to have  
79 the remaining fifty percent of its assessment under this section included in its  
80 funding requirements under this section.] **by the commission may recover**  
81 **such assessments paid to the universal service board from its retail**  
82 **customers through a surcharge assessed to each access line.** The  
83 commission shall establish the level of the universal service fund funding  
84 requirement necessary to fund the purposes set forth in subsection 2 of this  
85 section. The universal service fund funding requirements shall be paid by the  
86 universal service board in accordance with procedures approved by the  
87 commission. A telecommunications company, **interconnected voice over**  
88 **Internet protocol service provider registered to provide service under**  
89 **section 392.550, or commercial mobile radio service provider as**  
90 **identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24**

91 **providing service in the state**, that fails to pay an assessment that is due and  
92 payable pursuant to this section may have its certificate **or registration** revoked  
93 or be required to pay appropriate penalties under chapter 386, RSMo, after notice  
94 and hearing.

95 4. To facilitate provision of essential local telecommunications service, the  
96 commission shall determine whether and to what extent any telecommunications  
97 company in the state providing essential local telecommunications service in any  
98 part of the state, shall be eligible to receive funding. Eligibility shall be  
99 determined as follows:

100 (1) A telecommunications company's eligibility to receive support for  
101 high-cost areas from the universal service fund shall be conditioned upon:

102 (a) The telecommunications company offering essential local  
103 telecommunications service, using its own facilities, in whole or in part,  
104 throughout an entire high-cost area and having carrier of last resort obligations  
105 in that high-cost area; [and]

106 (b) The telecommunications company charging a rate not in excess of that  
107 set by the commission for essential services in a particular geographic area **or set**  
108 **pursuant to section 392.249 as the benchmark rate for residential basic**  
109 **local telecommunications service**; and

110 (c) **The telecommunications company complying with the**  
111 **requirements set forth in section 392.249; and**

112 (2) A telecommunications company's eligibility to receive support to assist  
113 low-income customers and disabled customers shall be conditioned on the  
114 company's providing essential local telecommunications services to such  
115 customers pursuant to the discounted rate established by the commission for such  
116 customers. Distributions from the universal service fund shall be made by the  
117 universal service board in accordance with rules approved by the commission.

118 5. In local exchange areas subject to competition for essential local  
119 telecommunications service, the incumbent local exchange telecommunications  
120 company shall be designated as a carrier of last resort for essential local  
121 telecommunications service. The commission may, consistent with section  
122 214(e)(2) of the federal Telecommunications Act of 1996, after notice and hearing,  
123 designate one or more additional carriers of last resort for any exchange or other  
124 area designated by the commission upon a finding that such designation is in the  
125 public interest. In exchanges where the commission has designated more than  
126 one carrier of last resort, the commission may permit a local exchange

127 telecommunications company to relinquish such obligation, consistent with  
128 section 214(e)(4) of the federal Telecommunications Act of 1996, upon a finding  
129 that at least one carrier of last resort will continue to serve that area. In local  
130 exchange areas not subject to competition for essential local telecommunications  
131 service, the incumbent local exchange telecommunications company shall continue  
132 to act as the carrier of last resort.

133           6. In determining whether, and to what extent, universal service fund  
134 funding is required to facilitate provision of essential local telecommunications  
135 service, the commission shall:

136           (1) Determine the definition of essential local telecommunications service  
137 no later than three months after the adoption of the essential local exchange  
138 telecommunications service definition for the federal Universal Service Fund, and  
139 consider revision of the definition on a periodic basis not to exceed every three  
140 years thereafter, with the goal that every citizen of this state shall have access  
141 to a wider range of services, that are reasonably comparable between urban and  
142 rural areas, at rates that are reasonably comparable between urban and rural  
143 areas;

144           (2) [Upon request from an eligible telecommunications company for  
145 assistance from the universal service fund for a high-cost area, determine if the  
146 high-cost area qualifies for assistance from the universal service fund. The  
147 commission shall review its determination that a high-cost area qualifies for  
148 assistance from the universal service fund no less frequently than once every five  
149 years;

150           (3) Determine for each requesting, eligible local exchange  
151 telecommunications company, by high-cost area, the costs of providing essential  
152 local telecommunications services in those high-cost areas and establish support  
153 payments necessary to such companies to ensure just, reasonable and affordable  
154 rates for essential telecommunications service. The commission shall review such  
155 support payments no less frequently than once every five years; provided,  
156 however, that if the commission adopts a different definition of essential local  
157 telecommunications service, pursuant to subdivision (1) of this subsection, then  
158 the commission shall review and adjust accordingly the previously authorized  
159 support payments in order to ensure just, reasonable and affordable rates for  
160 essential telecommunications service, as revised by commission rule. In  
161 determining and reviewing such support payments, the commission shall ensure  
162 that no telecommunications company receives more or less support than

163 necessary to further the purposes established in subsection 2 of this section;

164           (4)] **Determine eligibility for high-cost support pursuant to the**  
165 **requirements of subdivision (1) of subsection 4 of this section and**  
166 **section 392.249;**

167           (3) Establish a standard to determine whether and to what extent  
168 particular end-user customers, without regard to location within the state, may  
169 be eligible for assistance in paying for essential local telecommunications service.

170           7. The commission shall arrange for the time and place for the initial  
171 organizational meeting of the universal service board.

172           8. The universal service board shall submit to the commission a plan of  
173 operation. After notice and hearing, the commission shall approve the plan of  
174 operation, provided that it does not grant a preference or competitive advantage  
175 to any telecommunications company or subject a telecommunications company to  
176 prejudice or disadvantage. In its plan, the universal service board shall establish  
177 procedures for the handling and accounting of assets and establish procedures for  
178 the collection of assessments from all telecommunications companies to provide  
179 for universal service payments and for administrative expenses.

180           9. The universal service board shall have authority to:

181           (1) Enter into contracts as are necessary or proper to carry out the  
182 provisions of this section; and

183           (2) Sue or be sued, including taking any legal actions necessary or proper  
184 for recovery of any assessments.

185           10. No member of the universal service board shall be civilly liable, either  
186 jointly or separately, as a result of any act, omission or decision in performance  
187 of the member's duties as specifically required by this section. Such immunity  
188 shall not attach for any intentional or reckless act affecting the property or rights  
189 of any person.

190           11. Nothing in this section shall require the commission, the universal  
191 service board, the universal service fund administrator, or any other person or  
192 agency to take any actions that are inconsistent with federal statutes,  
193 administrative rules, or court decisions concerning provision of essential local  
194 telecommunications service.

195           12. The commission and the universal service board may do all things  
196 necessary and convenient to implement and administer the universal service  
197 fund.

198           13. In the event of a Federal Communications Commission order, rule or

199 policy announced no later than December 31, 1997, pursuant to section 254(a)(2)  
200 of the federal Telecommunications Act of 1996, the effect of which is to change the  
201 federal Universal Service Fund revenues of an incumbent local exchange  
202 telecommunications company, the commission shall either increase the maximum  
203 allowable prices for basic local telecommunications service or increase the  
204 company's recovery from the state universal service fund or a combination thereof  
205 to replace the reasonably projected change in revenues. [The commission shall  
206 review the continuing need for such revenues in its periodic reviews pursuant to  
207 subdivision (3) of subsection 6 of this section.]

**392.249. 1. For purposes of this section, intrastate carrier  
2 common line charges are defined as charges that compensate an  
3 incumbent local exchange telecommunications company for the  
4 provision of common lines to non-retail customers for access to end-  
5 users in furnishing intrastate communications.**

**6 2. Within the universal service fund established in section  
7 392.248, the commission shall establish a "Missouri High-Cost Support  
8 Mechanism" to offset the revenue reductions expected to result from the  
9 elimination of the intrastate carrier common line charges as set forth  
10 in this section.**

**11 3. The commission shall determine the amount of assessments  
12 under subsection 3 of section 392.248 that are necessary to allow the  
13 Missouri high-cost support mechanism to meet the funding obligations  
14 required under this section. The commission shall open a formal  
15 proceeding no later than October 1, 2010, which shall conclude no later  
16 than one-hundred eighty days from the date of its opening. In the  
17 proceeding, the commission shall determine:**

**18 (1) A reasonable benchmark rate for residential basic local  
19 telecommunications service, as defined in subdivision (4) of section  
20 386.020; and**

**21 (2) The amount of intrastate carrier common line revenue  
22 reductions that an eligible incumbent local exchange  
23 telecommunications company may recover from the Missouri high-cost  
24 support mechanism by determining for each incumbent local exchange  
25 telecommunications company whether the average forward-looking cost  
26 of providing basic local telecommunications service in its wire centers  
27 exceeds the statewide average forward-looking cost per line. The  
28 Missouri high-cost support mechanism shall provide support in an**

29 amount as calculated in subsection 5 of this section to each incumbent  
30 local exchange telecommunications company whose average forward-  
31 looking cost of providing service in its wire centers exceeds the  
32 statewide average forward-looking cost per line, provided the  
33 incumbent local exchange telecommunications company also meets the  
34 eligibility criteria under subdivision (1) of subsection 4 of section  
35 392.248. In making the determination required by this subdivision, the  
36 commission shall employ the forward-looking economic cost model  
37 adopted by the Federal Communications Commission for the  
38 determination of high-cost support using standard inputs as contained  
39 in that model and access line counts for each incumbent local exchange  
40 company in Missouri. Notwithstanding the foregoing, an incumbent  
41 local exchange telecommunications company may propose for approval  
42 by the commission, a forward-looking economic cost model different  
43 than that adopted by the Federal Communications Commission. Any  
44 proposed alternative cost model may include company-specific inputs.  
45 If approved by the commission, the alternative cost model shall be used  
46 to determine the proposing company's eligibility to participate in the  
47 Missouri high-cost support mechanism.

48 4. Each incumbent local exchange telecommunications company  
49 with more than twenty-five thousand Missouri access lines as of  
50 January 1, 2010, shall reduce its intrastate carrier common line charge  
51 to zero no sooner than thirty days following the close of the  
52 commission's proceeding under subsection 3 of this section, or when the  
53 commission fully implements the required funding in the proceeding  
54 under subsection 3 of this section, whichever occurs  
55 later. Notwithstanding the limitations imposed under the provisions of  
56 subsections 8 and 9 of section 392.245, for purposes of recovering the  
57 decrease in revenue caused by the elimination of a company's  
58 intrastate carrier common line charge, an incumbent local exchange  
59 telecommunications company with more than twenty-five thousand  
60 Missouri access lines as of January 1, 2010, may increase residential  
61 basic local telecommunications service rates by the amount equal to the  
62 annual revenue that would be generated by the difference between the  
63 benchmark rate established under subdivision (1) of subsection 3 of this  
64 section and the rates it charged for residential basic local  
65 telecommunications services as of January 1, 2010, that are less than



66 the benchmark rate. If a company's rates as of January 1, 2010 for  
67 residential basic local telecommunications service customers are  
68 greater than the benchmark rate, on a per month basis, then no such  
69 calculation shall be required and the company may recover the full  
70 amount from the high-cost support mechanism in accordance with  
71 subdivision (4) of subsection 5 of this section. A company may increase  
72 its residential basic local telecommunications service rates under this  
73 subsection as follows:

74 (1) In the first year the company reduces its intrastate carrier  
75 common line charge to zero; or

76 (2) In equal increments over a period of five years beginning  
77 June 1, 2011, and ending June 30, 2015; or

78 (3) On such other incremental basis as approved by the  
79 commission.

80 If a company elects to increase residential basic local  
81 telecommunications rates on an incremental basis under subdivisions  
82 (2) or (3) of this subsection, it shall file its election with the commission  
83 prior to the close of the proceeding under subsection 3 of this section.

84 5. Upon a finding that an eligible company has established a  
85 need for support pursuant to subdivision (2) of subsection 3 of this  
86 section, the commission shall allocate monthly support payments from  
87 the Missouri high-cost support mechanism to such incumbent local  
88 exchange carrier to ensure just, reasonable, and affordable rates for  
89 basic local telecommunications service. The support payments shall be  
90 calculated as follows:

91 (1) If the company elects to increase its residential basic local  
92 telecommunications rates to the benchmark amount in the first year,  
93 the support payments shall be an amount equal to the annual revenue  
94 generated by the company's intrastate carrier common line charge as  
95 of December 31, 2010 for the full year, less the annual revenue that  
96 would be generated by the difference between the benchmark rate and  
97 the rates charged for residential basic local telecommunications  
98 services as of January 1, 2010, that are less than the benchmark rate;

99 (2) If the company elects to increase its basic local residential  
100 telecommunications rates on an incremental basis, the support  
101 payments shall be an amount equal to the annual revenue generated by  
102 the company's intrastate carrier common line charge as of December

103 31, 2010 for the full year, less the annual revenue that would be  
104 generated by the difference between the benchmark rate and the rates  
105 charged for residential basic local telecommunications services as of  
106 January 1, 2010, that are less than the benchmark rate, plus the amount  
107 of revenue generated from the annual incremental increase to  
108 residential basic local telecommunications service. The commission  
109 shall adjust the support payments annually to reflect the incremental  
110 increase in revenue that each company realizes through its annual  
111 increase to basic local residential telecommunications service;

112 (3) If the company declines to increase its residential basic local  
113 telecommunications service rates to the benchmark set by the  
114 commission, the support payments shall be limited to an amount equal  
115 to the annual revenue generated by the company's intrastate carrier  
116 common line charge as of December 31, 2010, for the full year, less the  
117 annual revenue that would be generated by the difference between the  
118 benchmark rate and the rates charged for residential basic local  
119 telecommunications services as of January 1, 2010, that are less than  
120 the benchmark rate as if the company had actually increased its rates  
121 for residential basic local telecommunications service;

122 (4) If the company's rates as of January 1, 2010, for residential  
123 basic local telecommunications service customers are greater than the  
124 benchmark rate, on a per month basis, the support payments shall be  
125 an amount equal to the annual revenue generated by the company's  
126 intrastate carrier common line charge as of December 31, 2010, for the  
127 full year.

128 6. In order to further the purposes established in this section,  
129 the commission shall review the continued need for high-cost support  
130 pursuant to the provisions of subsection 3 of this section no more  
131 frequently than once every five years.

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