

## SENATE BILL No. 47

By Committee on Utilities

1-20

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9 AN ACT concerning utilities; relating to telecommunications; concerning  
10 local exchange carriers satisfaction of carrier of last resort obligations;  
11 amending K.S.A. 2008 Supp. 66-2009 and repealing the existing  
12 section.  
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2008 Supp. 66-2009 is hereby amended to read as  
16 follows: 66-2009. (a) Local exchange carriers that provided switched local  
17 exchange services in the state prior to January 1, 1996, or their successors,  
18 shall serve as the carrier of last resort in their exchanges and shall be  
19 eligible to receive KUSF funding. However, with respect to the Hill City  
20 exchange area in which multiple carriers were certified prior to January  
21 1, 1996, the commission's determination, subject to court appeals, shall  
22 determine which authorized carrier shall serve as carrier of last resort.  
23 The local exchange carrier serving as the carrier of last resort shall remain  
24 the carrier of last resort and shall be entitled to recover the costs of serving  
25 as carrier of last resort.

26 (b) Beginning March 1, 1997, the amount of KUSF funds owed to  
27 each qualifying telecommunications carrier, telecommunications public  
28 utility or wireless telecommunications service provider in the state, based  
29 upon the revenue requirements assigned to the funds for such qualifying  
30 utility, carrier or provider, shall be allocated by the fund administrator in  
31 equal monthly installments.

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

33 (A) "Alternative service provider" means any person or entity provid-  
34 ing local telecommunications services or any person or entity allowing  
35 another person or entity to use its equipment or facilities to provide local  
36 telecommunications services or any person or entity securing rights to  
37 select an alternative service provider for a property owner or developer,  
38 and does not include a local exchange carrier providing service within its  
39 commission-approved local exchange service area.

40 (B) "Alternative technology" means any technology that offers local  
41 telecommunications service and functionality comparable to that pro-  
42 vided through an exiting alternative service provider's facilities, and may  
43 include a technology that does not require the use of any public right-of-

1 way.

2 (C) “Greenfield area” means an area that requires entirely new con-  
3 struction of local loops, in addition to the deployment of any necessary  
4 switching and other network equipment, to serve new real property  
5 developments.

6 (D) “Local telecommunications service” means two-way voice service  
7 capable of being originated and terminated within a local exchange service  
8 area, regardless of the technology used to provision the voice service.

9 (E) “Owner or developer” means the owner or developer of a busi-  
10 ness or residential property, any condominium association or homeown-  
11 ers’ association thereof, any other person or entity having ownership in,  
12 or control over, the property, or any person acting on behalf of such owner  
13 or developer.

14 (F) “Real property” includes, but is not limited to, any single tenant  
15 or multi-tenant business or residential property, subdivisions, condomin-  
16 iums, apartments, office buildings or office parks.

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

23 (A) Permits an alternative service provider to install its facilities or  
24 equipment used to provide local telecommunications service based on a  
25 condition of exclusion of the local exchange carrier, during the construc-  
26 tion phase of the real property;

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

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

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

41 (4) A local exchange carrier that is not automatically relieved of its  
42 carrier of last resort obligation pursuant to paragraph (2) of subsection  
43 (c) may seek a waiver of its carrier of last resort obligation from the

1 commission for good cause shown based on the facts and circumstances  
2 of the provision of local telecommunications service or internet access  
3 service to a particular real property. Upon petition for such relief, notice  
4 shall be given by the local exchange carrier at the same time to the rel-  
5 evant owner or developer. The commission shall make a determination  
6 concerning the petition on or before 90 days after such petition is filed.

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

42 (6) When real property is located in a greenfield area, a carrier of last  
43 resort shall not automatically be excused from its obligations under par-

1 agraph (2) of subsection (c) unless the alternative service provider pos-  
2 sesses or shall possess at the time of commencement of service the ca-  
3 pability to provide local telecommunications service or the functional  
4 equivalent of such service through any form of technology.

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

12 (d) (1) *A providing local exchange carrier may satisfy its carrier of*  
13 *last resort obligation to provide basic voice service in an exchange by using*  
14 *any alternative technology, either in combination with traditional, land*  
15 *line based telephone service or as a stand-alone technology. When a pro-*  
16 *viding local exchange carrier uses alternative technology to satisfy its car-*  
17 *rier of last resort obligation in an exchange, such carrier shall provide a*  
18 *service functionally comparable to traditional land line local telecommu-*  
19 *nications service.*

20 (2) *Such functionally comparable service shall be offered at a price*  
21 *comparable to the monthly service charge for basic voice service in that*  
22 *exchange or the providing local exchange carrier's nearest exchange not*  
23 *using alternative technology.*

24 (3) *Except as provided in this subsection, nothing in this section shall*  
25 *grant any jurisdiction to the commission over any alternative technology*  
26 *used by a providing local exchange carrier to satisfy its carrier of last*  
27 *resort obligation, unless such authority exists under federal law.*

28 (4) *In areas where basic voice service, as defined in this section, are*  
29 *available from only a single providing local exchange carrier, and such*  
30 *carrier uses an alternative technology to provide the basic voice service,*  
31 *such carrier shall report to the commission regarding its quality of service*  
32 *with respect to applicable quality of service standards adopted by the*  
33 *commission pursuant to subsection (l) of K.S.A. 66-2002, and amendments*  
34 *thereto.*

35 (5) *For purposes of this subsection, an alternative technology shall be*  
36 *deemed to be functionally comparable to traditional, land line telephone*  
37 *service if such alternative technology provides all of the following func-*  
38 *tionalties: (1) Single party; (2) two-way voice grade calling and access to*  
39 *the public switched telephone network; (3) touchtone dialing; (4) access*  
40 *to E-911 emergency services; (5) access to operator services; (6) access to*  
41 *directory assistance services; (7) access to 8YY or "800" services; (8) access*  
42 *to telephone relay service; and (9) can be used to provide Kansas lifeline*  
43 *service program services to eligible customers.*

1       (6) *The commission shall have the authority to exempt any providing*  
2 *local exchange carrier over which the commission has jurisdiction from*  
3 *any of the requirements of this subsection. Such exemption shall be con-*  
4 *sistent with the public interest, convenience and necessity, when appro-*  
5 *priate to promote competition in the Kansas telecommunications market,*  
6 *or when the commission otherwise deems such exemption necessary.*

7       (7) *For purposes of this subsection, “Basic voice service” means local*  
8 *telecommunications service with the functionalities prescribed in para-*  
9 *graph (5) of this subsection without additional optional services.*

10       Sec. 2. K.S.A. 2008 Supp. 66-2009 is hereby repealed.

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