

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) "Search ring" means a shape drawn on a map to indicate the***
14 ***general area within which a wireless services support structure should***
15 ***be located to meet radio frequency engineering requirements, taking into***
16 ***account other factors, including topography and the demographics of***
17 ***the service area.}***

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

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

34 ~~{(14)}~~ ***{(15)}*** "Small cell network" means a collection of interrelated
35 small cell facilities designed to deliver wireless service.

36 ~~{(15)}~~ ***{(16)}*** "Substantial modification" means a proposed modification
37 to an existing wireless support structure or base station that will
38 substantially change the physical dimensions of the wireless support
39 structure or base station under the objective standard for substantial
40 change, established by the federal communications commission pursuant
41 to 47 C.F.R. 1.40001.

42 ~~{(16)}~~ ***{(17)}*** "Transmission equipment" means equipment that
43 facilitates transmission for a wireless service licensed or authorized by the

1 federal communications commission including, but not limited to, radio
2 transceivers, antennas, coaxial or fiber optic cable and regular and backup
3 power supply. "Transmission equipment" includes equipment associated
4 with wireless services including, but not limited to, private, broadcast and
5 public safety services such as wireless local area network services, and
6 services utilizing a set of specifications developed by the institute of
7 electrical and electronics engineers for interface between a wireless client
8 and a base station or between two wireless clients, as well as unlicensed
9 wireless services and fixed wireless services, such as microwave backhaul.

10 ~~(17)~~ **{(18)}** "Wireless facility" means equipment at a fixed location
11 that enables wireless communications between user equipment and a
12 communications network, including, but not limited to: (A) Equipment
13 associated with wireless services such as private, broadcast and public
14 safety services, as well as unlicensed wireless services and fixed wireless
15 services such as microwave backhaul; and

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

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

21 ~~(18)~~ **{(19)}** "Wireless services" means "personal wireless services"
22 and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)
23 (7)(C), including commercial mobile services as defined in 47 U.S.C. §
24 332(d), provided to personal mobile communication devices through
25 wireless facilities or any fixed or mobile wireless services provided using
26 wireless facilities.

27 ~~(19)~~ **{(20)}** "Wireless infrastructure provider" means any person that
28 builds or installs transmission equipment, wireless facilities or wireless
29 support structures, but that is not a wireless services provider.

30 ~~(20)~~ **{(21)}** "Wireless support structure" means a freestanding
31 structure, such as a monopole, guyed or self-supporting tower or other
32 suitable existing or alternative structure designed to support or capable of
33 supporting wireless facilities. "Wireless support structure" shall not
34 include any telephone or electrical utility pole or any tower used for the
35 distribution or transmission of electrical service.

36 ~~(21)~~ **{(22)}** "Utility pole" means a structure owned or operated by a
37 public utility as defined in K.S.A. 66-104, and amendments thereto, a
38 municipality as defined in K.S.A. 75-6102, and amendments thereto, or an
39 electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and
40 amendments thereto, that is designed specifically for and used to carry
41 lines, cables or wires for telecommunications, cable, electricity or to
42 provide lighting.

43 ~~(22)~~ **{(23)}** "Water tower" means a water storage tank or a standpipe,

1 or an elevated tank situated on a support structure that was originally
2 constructed for use as a reservoir or facility to store or deliver water.

3 ~~(23)~~ **{(24)}** "Wireless services provider" means a provider of wireless
4 services.

5 (c) (1) An authority shall not charge an application fee, consulting fee
6 or other fee associated with the submission, review, processing and
7 approval of an application that is not required for other wireless
8 infrastructure providers or wireline telecommunications or broadband
9 providers within the authority's jurisdiction.

10 (2) An authority shall only assess fees or charges for the actual costs
11 relating to the granting or processing of an application that are directly
12 incurred by the authority and the authority shall not charge any market-
13 based or value-based fees for the processing of an application. Such fees
14 and charges shall be reasonably related in time to the occurrence of such
15 costs.

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

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

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

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

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

1 law, rule or regulation.

2 (2) (A) Subject to the provisions of this subsection, a wireless
3 services provider or wireless infrastructure provider, subject to an
4 application, shall have the right to construct, maintain and operate wireless
5 support structures, utility poles, small cell wireless facilities or distributed
6 antenna systems along, across, upon, under or above the public right-of-
7 way. The authority must be competitively neutral with regard to other
8 users of the public right-of-way, may not be unreasonable or
9 discriminatory and may not violate any applicable state or federal law, rule
10 or regulation.

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

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

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

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

31 (F) An authority may require a wireless services provider or wireless
32 infrastructure provider to repair all damage to a public right-of-way caused
33 by the activities of that provider, or of any agent, affiliate, employee or
34 subcontractor of that provider, while occupying, installing, repairing or
35 maintaining facilities in a public right-of-way and to return the right-of-
36 way to ~~its functional equivalence before the damage pursuant to the~~
37 ~~reasonable requirements and specifications of the authority~~ ***{the condition***
38 ***in which it existed prior to the damage}***. If a wireless services provider or
39 wireless infrastructure provider fails to make the repairs required by an
40 authority, the authority may effect those repairs and charge the provider
41 the reasonable cost of those repairs. ***{If an authority incurs damages as a***
42 ***result of a violation of this paragraph, then the authority shall have a***
43 ***cause of action against a wireless services provider or wireless***

1 ***infrastructure provider for violation of this paragraph, and may recover***
2 ***its damages, including reasonable attorney fees, if such provider is***
3 ***found liable by a court of competent jurisdiction.***}

4 (G) If requested by an authority, in order to accomplish construction
5 and maintenance activities directly related to improvements for the health,
6 safety and welfare of the public, a wireless services provider or wireless
7 infrastructure provider shall relocate or adjust its facilities within the
8 public right-of-way at no cost to the authority, as long as such request
9 similarly binds all users of such right-of-way. Such relocation or
10 adjustment shall be completed as soon as reasonably possible within the
11 time set forth in any written request by the authority for such relocation or
12 adjustment, as long as the authority provides the wireless services provider
13 or wireless infrastructure provider with a minimum of 180 days advance
14 written notice to comply with such relocation or adjustment, unless
15 circumstances beyond the authority's control require a shorter period of
16 advance notice. If any such relocation or adjustment is for private benefit,
17 the provider shall not bear the cost of the relocation or adjustment to the
18 extent of such private benefit and the provider shall not be obligated to
19 commence the relocation or adjustment until receipt of funds for such
20 relocation or adjustment. The provider shall have no liability for any
21 delays caused by a failure to receive funds for the cost of such relocation
22 or adjustment and the authority shall have no obligation to collect such
23 funds.

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

1 paragraph is solely for the benefit of the authority and the wireless services
2 provider or wireless infrastructure provider and does not create or grant
3 any rights, contractual or otherwise, to any other person or entity.

4 (1) A wireless services provider or wireless infrastructure provider or
5 authority shall promptly advise the other in writing of any known claim or
6 demand against the provider or the authority related to or arising out of the
7 provider's activities in a public right-of-way.

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

12 (4) Nothing in this subsection shall be construed to prevent wireless
13 structures and wireless facilities from being located on state, federal or
14 interstate highway right-of-way in accordance with reasonable policies and
15 procedures adopted by the manager of the state, federal and interstate
16 highway right-of-way under applicable federal and state law.

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

32 (2) If the applicant and the authority do not agree on the applicable
33 market rate for the use or lease of public land and are unable to agree on a
34 process to determine the applicable market rate for any such public land,
35 then the market rate will be determined by a panel of three
36 appraisers. The panel will consist of one appraiser appointed by each
37 party and a third appraiser selected by the two appointed appraisers. Each
38 appraiser will independently appraise the appropriate lease rate and the
39 market rate shall be set at the mean between the highest and lowest market
40 rates among all three independent appraisals, unless the mean between the
41 highest and lowest appraisals is greater than or less than 10% of the
42 appraisal of the third appraiser chosen by the parties' appointed appraisers,
43 in which case the third appraisal will determine the rate for the lease. The

1 appraisal process shall be concluded within 150 calendar days from the
2 date the applicant first tenders a proposed lease rate to the authority.
3 Each party will bear the cost of the party's own appointed appraiser, and
4 the parties shall share equally the cost of the third appraiser chosen by the
5 two appointed appraisers.

6 (3) Nothing in this subsection shall be construed to prevent wireless
7 structures and wireless facilities from being located on real property,
8 structures or facilities under the ownership, control or jurisdiction of the
9 secretary of transportation in accordance with reasonable policies and
10 procedures adopted by the secretary of transportation under applicable
11 federal and state law.

12 (4) This subsection (e) shall not apply to public rights-of-way
13 governed by subsection (d).

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

16 (1) Require an applicant to submit information about, or evaluate an
17 applicant's business decisions with respect to, the applicant's designed
18 service, customer demand for service or quality of the applicant's service
19 to or from a particular area or site. An authority may require an applicant
20 filing an application for a new wireless support structure to state in such
21 application that the applicant conducted an analysis of available
22 collocation opportunities on existing wireless support structures within the
23 same search ring defined by the applicant, solely for the purpose of
24 confirming that an applicant undertook such analysis;

25 (2) require information that concerns the specific need for the
26 wireless support structure, including if the service to be provided from the
27 wireless support structure is to add additional wireless coverage or
28 additional wireless capacity. An authority may not require proprietary,
29 confidential or other business information to justify the need for the new
30 wireless support structure, including propagation maps and
31 telecommunications traffic studies;

32 (3) evaluate an application based on the availability of other potential
33 locations for the placement of wireless support structures or wireless
34 facilities including, but not limited to, the option to collocate, instead of
35 construct, a new wireless support structure or for substantial modifications
36 of a support structure;

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

42 (5) require the removal of existing wireless support structures or
43 wireless facilities, wherever located, as a condition for approval of an

1 application. This paragraph shall not preclude an authority from adopting
2 reasonable rules with respect to the removal of abandoned wireless support
3 structures or wireless facilities;

4 (6) impose any restrictions at or near *{civilian}* airports ~~or military~~
5 ~~installations~~ with respect to objects in navigable airspace height
6 limitations, proximity to *{civilian}* airports or markings and lighting on
7 wireless support structures or base stations that are greater than, or in
8 conflict with, any restrictions imposed by the federal aviation
9 administration, except that this paragraph shall not be construed so as to
10 impact any existing height restrictions adopted by an authority as of the
11 effective date of this section on wireless support structures or base stations
12 located at or near ~~airport or military installations~~ *{civilian airports}*;

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

15 (8) impose surety requirements, including bonds, escrow deposits,
16 letters of credit or any other type of financial surety to ensure that
17 abandoned or unused facilities can be removed, unless the authority
18 imposes similar requirements on other permits for other types of
19 commercial development or land uses, and any such instrument cannot
20 exceed a reasonable estimate of the direct cost of the removal of the
21 facility. If surety requirements are imposed, any such requirements shall be
22 competitively neutral, non-discriminatory, reasonable in amount and
23 commensurate with the historical record for local facilities and structures
24 that are abandoned;

25 (9) discriminate or create a preference on the basis of the ownership
26 of any property, structure, base station or wireless support structure when
27 promulgating rules or procedures for siting wireless facilities or for
28 evaluating applications or require the placement of wireless support
29 structures or wireless facilities on property owned or leased by the
30 authority, but an authority may develop a process to encourage the
31 placement of wireless support structures or wireless facilities on property
32 owned or leased by the authority, including an expedited approval process.
33 Nothing in this subsection shall be construed to hinder or restrict the siting
34 of public safety communications towers, including, but not limited to,
35 police and fire;

36 (10) impose any unreasonable requirements or obligations regarding
37 the presentation, appearance or function of the wireless facilities and
38 equipment including, but not limited to, those relating to any kinds of
39 materials used and those relating to arranging, screening or landscaping of
40 facilities. ***In developing such a requirement or obligation for wireless***
41 ***facilities located on a public right-of-way, the authority shall consider***
42 ***input from property owners adjoining the affected public right-of-way***;

43 (11) impose any requirements that an applicant purchase, subscribe

1 to, use or employ facilities, networks or services owned, provided or
2 operated by an authority, in whole or in part, or by any entity in which the
3 authority has a competitive, economic, financial, governance or other
4 interest;

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

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

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

13 (15) prohibit the use of emergency power systems that comply with
14 federal and state environmental requirements and do not violate local
15 health and safety requirements and local noise control ordinances, but no
16 local regulations shall prevent the provision of emergency power during an
17 actual emergency;

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

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

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

29 (g) An applicant for a small cell network involving no greater than 25
30 individual small cell facilities of a substantially similar design within the
31 jurisdiction of a single authority shall be permitted, upon request by the
32 applicant, to file a consolidated application and receive a single permit for
33 the installation, construction, maintenance and repair of a small cell
34 network instead of filing separate applications for each individual small
35 cell facility, except that the authority may require a separate application for
36 any small cell facilities that are not of a substantially similar design. The
37 authority shall render a decision no later than 60 days after the submission
38 of an application regarding small cell facilities that satisfies the authority's
39 requirements in a single administrative proceeding.

40 (h) (1) Within 150 calendar days of receiving an application for a new
41 wireless support structure and within 90 calendar days of receiving an
42 application for a substantial modification to an existing wireless support
43 structure or base station, or any other application for placement,

1 installation or construction of transmission equipment that does not
2 constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a),
3 an authority shall: (A) Review the application in light of the application's
4 conformity with applicable local zoning regulations;

5 (B) make a final decision to approve or disapprove the application;
6 and

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

14 (2) (A) The time period for approval of applications shall begin when
15 the application is submitted and may be tolled within the first 30 days after
16 the submission of the application if the authority notifies the applicant that
17 such application is incomplete, identifies all missing information and
18 specifies the code provision, ordinance, application instruction or
19 otherwise publicly stated procedures that require the information to be
20 submitted.

21 (B) The time period for approval of applications shall begin running
22 again when the applicant provides the necessary supplemental information.
23 Additionally, the time period for approval of applications may be tolled by
24 the express agreement in writing by both the applicant and the
25 authority.

26 (3) An application shall be deemed approved if an authority fails to
27 act on an application for a: (A) New wireless support structure within the
28 150-calendar day review period specified; or

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

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

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

40 (6) Within 30 days of the notice provided pursuant to subsection (h)
41 (5), a party aggrieved by the final action of an authority, either by the
42 authority affirmatively denying an application or by the authority's
43 inaction, may bring an action for review in any court of competent

1 jurisdiction.

2 (i) An authority may not institute any moratorium on the filing,
 3 consideration or approval of applications, permitting or the construction of
 4 new wireless support structures, substantial modifications of wireless
 5 support structures or collocations.

6 (j) Subject to the provisions of this section and applicable federal law,
 7 an authority may continue to exercise zoning, land use, planning and
 8 permitting authority within the authority's territorial boundaries with
 9 regard to the siting of new or the modification of wireless support
 10 structures, wireless facilities, small cell facilities or utility poles, except
 11 that no authority shall have or exercise any zoning or siting jurisdiction,
 12 authority or control over the construction, installation or operation of any
 13 small cell facility or distributed antennae system located in an interior
 14 structure or upon the site of any campus, stadium or athletic facility.

15 ***{(k) Nothing in this section shall be construed to apply to military***
 16 ***installations.}***

17 ~~{(l)}~~ The provisions of this section shall take effect and be in force
 18 on and after October 1, 2016.

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

29 (2) "Provider" means a local exchange carrier as defined in
 30 ~~subsection (h) of K.S.A. 66-1,187(h)~~, and amendments thereto, or a
 31 telecommunications carrier as defined in ~~subsection (m) of K.S.A. 66-~~
 32 ~~1,187(m)~~, and amendments thereto, or a video service provider as defined
 33 in K.S.A. ~~2007~~ 2015 Supp. 12-2022, and amendments thereto, *but does*
 34 *not include an applicant as defined in section 1, and amendments thereto.*

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

39 (4) "Competitive infrastructure provider" means an entity which
 40 leases, sells or otherwise conveys facilities located in the right-of-way, or
 41 the capacity or bandwidth of such facilities for use in the provision of
 42 telecommunications services, internet services or other intrastate and
 43 interstate traffic, but does not itself provide services directly to end users

1 within the corporate limits of the city.

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

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

13 (d) The authority of a provider to use and occupy the public right-of-
14 way shall always be subject and subordinate to the reasonable public
15 health, safety and welfare requirements and regulations of the city. A city
16 may exercise its home rule powers in its administration and regulation
17 related to the management of the public right-of-way provided that any
18 such exercise must be competitively neutral and may not be unreasonable
19 or discriminatory. Nothing herein shall be construed to limit the authority
20 of cities to require a competitive infrastructure provider to enter into a
21 contract franchise ordinance.

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

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

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

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

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

43 (f) A provider's request to use or occupy a specific portion of the

1 public right-of-way shall not be denied without reasonable notice and an
2 opportunity for a public hearing before the city governing body. A city
3 governing body's denial of a provider's request to use or occupy a specific
4 portion of the public right-of-way may be appealed to a district court.

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

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

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

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

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

16 (4) requirements concerning the provisioning of or quality of
17 customer services, facilities, equipment or goods in-kind for use by the
18 city, political subdivision or any other provider or public utility.

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

30 (j) If there is an emergency necessitating response work or repair, a
31 provider may begin that repair or emergency response work or take any
32 action required under the circumstances, provided that the provider
33 notifies the affected city promptly after beginning the work and timely
34 thereafter meets any permit or other requirement had there not been such
35 an emergency.

36 (k) A city may require a provider to repair all damage to a public
37 right-of-way caused by the activities of that provider, or of any agent
38 affiliate, employee, or subcontractor of that provider, while occupying,
39 installing, repairing or maintaining facilities in a public right-of-way and
40 to return the right-of-way, to its functional equivalence before the damage
41 pursuant to the reasonable requirements and specifications of the city. If
42 the provider fails to make the repairs required by the city, the city may
43 effect those repairs and charge the provider the cost of those repairs. If a

1 city incurs damages as a result of a violation of this subsection, then the
2 city shall have a cause of action against a provider for violation of this
3 subsection, and may recover its damages, including reasonable attorney
4 fees, if the provider is found liable by a court of competent jurisdiction.

5 (l) If requested by a city, in order to accomplish construction and
6 maintenance activities directly related to improvements for the health,
7 safety and welfare of the public, a provider shall promptly remove its
8 facilities from the public right-of-way or shall relocate or adjust its
9 facilities within the public right-of-way at no cost to the political
10 subdivision. Such relocation or adjustment shall be completed as soon as
11 reasonably possible within the time set forth in any request by the city for
12 such relocation or adjustment. Any damages suffered by the city or its
13 contractors as a result of such provider's failure to timely relocate or adjust
14 its facilities shall be borne by such provider.

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

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

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

27 (2) an excavation fee for each street or pavement cut to recover the
28 costs associated with construction and repair activity of the provider, their
29 assigns, contractors ~~and/or~~ or subcontractors, *or both*, with the exception
30 of construction and repair activity required pursuant to subsection (l) of
31 this act related to construction and maintenance activities directly related
32 to improvements for the health, safety and welfare of the public; provided,
33 however, imposition of such excavation fee must be based upon a regional
34 specific or other appropriate study establishing the basis for such costs
35 which takes into account the life of the city street prior to the construction
36 or repair activity and the remaining life of the city street. Such excavation
37 fee is expressly limited to activity that results in an actual street or
38 pavement cut;

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

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

1 and

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

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

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

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

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

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

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

41 Sec. 3. K.S.A. 66-2004 is hereby amended to read as follows: 66-
42 2004. (a) Pursuant to ~~subsection (f)(1) of section 251 of the federal act 47~~
43 *U.S.C. § 251(f)(1)*, the obligations of an incumbent local exchange carrier,

1 which include the duty to negotiate interconnection, unbundled access,
2 resale, notice of changes and collocation, shall not apply to a rural
3 telephone company unless such company has received a bona fide request
4 for interconnection, services or network elements and the commission
5 determines that such request is not unduly economically burdensome, is
6 technically feasible and preserves and enhances universal service.

7 (b) On July 1, 1996, the commission shall initiate a rulemaking
8 procedure to adopt guidelines to ensure that all telecommunications
9 carriers and local exchange carriers preserve and enhance universal
10 service, protect the public safety and welfare, ensure the continued quality
11 of telecommunications services and safeguard the rights of consumers. The
12 preservation and advancement of universal service shall be a primary
13 concern. The commission shall issue the guidelines no later than
14 December 31, 1996.

15 (c) Pursuant to ~~subsection (f) of section 253 of the federal act 47~~
16 *U.S.C. § 253(f)*, any telecommunications carrier that seeks to provide
17 telephone exchange service or local exchange access in a service area
18 served by a rural telephone company shall meet the requirements of
19 ~~subsection (e)(1) of section 214 of the federal act 47 U.S.C. § 214(e)(1)~~ for
20 designation as an eligible telecommunications carrier for that area before
21 being permitted by the commission to provide such service; however, the
22 guidelines shall be consistent with the provisions of ~~subsection (f)(1) and~~
23 ~~(2) of section 253 of the federal act 47 U.S.C. § 253(f)(1) and (2)~~.

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

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

39 (f) (1) *Any local exchange carrier electing pursuant to K.S.A. 66-*
40 *2005(b), and amendments thereto, to operate under traditional rate of*
41 *return regulation, or an entity in which such carrier directly or indirectly*
42 *owns an equity interest of 10% or more, shall not use KUSF funding,*
43 *except for Kansas lifeline service program purposes pursuant to K.S.A.*

1 66-2006, and amendments thereto, for the purposes of providing
2 telecommunication services in an area outside of the carrier's authorized
3 service area.

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

7 Sec. 4. K.S.A. 2015 Supp. 66-2005 is hereby amended to read as
8 follows: 66-2005. (a) Each local exchange carrier shall file a network
9 infrastructure plan with the commission on or after January 1, 1997, and
10 prior to January 1, 1998. Each plan, as a part of universal service
11 protection, shall include schedules, which shall be approved by the
12 commission, for deployment of universal service capabilities by July 1,
13 1998, and the deployment of enhanced universal service capabilities by
14 July 1, 2003, as defined pursuant to ~~subsections (p) and (q)~~ of K.S.A. 66-
15 1,187(p) and (q), and amendments thereto, respectively. With respect to
16 enhanced universal service, such schedules shall provide for deployment
17 of ISDN, or its technological equivalent, or broadband facilities, only upon
18 a firm customer order for such service, or for deployment of other
19 enhanced universal services by a local exchange carrier. After receipt of
20 such an order and upon completion of a deployment plan designed to meet
21 the firm order or otherwise provide for the deployment of enhanced
22 universal service, a local exchange carrier shall notify the commission.
23 The commission shall approve the plan unless the commission determines
24 that the proposed deployment plan is unnecessary, inappropriate, or not
25 cost effective, or would create an unreasonable or excessive demand on the
26 KUSF. The commission shall take action within 90 days. If the
27 commission fails to take action within 90 days, the deployment plan shall
28 be deemed approved. This approval process shall continue until July 1,
29 2000. Each plan shall demonstrate the capability of the local exchange
30 carrier to comply on an ongoing basis with quality of service standards to
31 be adopted by the commission no later than January 1, 1997.

32 (b) In order to protect universal service, facilitate the transition to
33 competitive markets and stimulate the construction of an advanced
34 telecommunications infrastructure, each local exchange carrier shall file a
35 regulatory reform plan at the same time as it files the network
36 infrastructure plan required in subsection (a). As part of its regulatory
37 reform plan, a local exchange carrier may elect traditional rate of return
38 regulation or price cap regulation. Carriers that elect price cap regulation
39 shall be exempt from rate base, rate of return and earnings regulation and
40 shall not be subject to the provisions of K.S.A. 66-136 and 66-127, and
41 amendments thereto, except as otherwise provided in such sections.
42 However, the commission may resume such regulation upon finding, after
43 a hearing, that a carrier that is subject to price cap regulation has: Violated

1 minimum quality of service standards pursuant to ~~subsection (1)~~ of K.S.A.
2 66-2002(l), and amendments thereto; been given reasonable notice and an
3 opportunity to correct the violation; and failed to do so. Regulatory reform
4 plans also shall include:

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

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

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

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

38 (2) any portion of rural telephone company reductions in intrastate
39 switched access rates which would result in an increase in KUSF recovery
40 in a single year which exceeds .75% of intrastate retail revenues used in
41 determining sums which may be recovered from Kansas
42 telecommunications customers pursuant to ~~subsection (a)~~ of K.S.A. 66-
43 2008(a), and amendments thereto, shall be deferred until March 1 of the

1 next following odd-numbered year; and

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

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

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

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

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

39 (B) If a rural telephone company's present residential rate, including
40 any separate charge for tone dialing, is below such average: (i) Such rate
41 shall be deemed affordable prior to March 1, 2003; (ii) as of March 1,
42 2003, and prior to March 1, 2004, a rate \$2 higher than the company's
43 present residential monthly rate, but not exceeding such weighted mean,

1 shall be deemed affordable; (iii) as of March 1, 2004, and prior to March
2 1, 2005, a rate \$4 higher than the company's present residential monthly
3 rate, but not exceeding such weighted mean, shall be deemed affordable;
4 and (iv) as of March 1, 2005, and prior to March 1, 2006, a rate \$6 higher
5 than the company's present residential monthly rate, but not exceeding
6 such weighted mean, shall be deemed affordable.

7 (C) As of March 1, 2007, and each two years thereafter, an affordable
8 residential service rate shall be the weighted arithmetic mean of local
9 service rates determined as of October 1 of the preceding year in the
10 manner hereinbefore specified, except that any increase in such mean
11 exceeding \$2 may be satisfied by increases in a rural telephone company's
12 residential monthly service rate not exceeding \$2 per year, effective March
13 1 of the year when such mean is determined, with the remainder applied at
14 the rate of \$2 per year, but not to exceed the affordable rate.

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

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

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

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

41 (6) Upon motion by a rural telephone company, the commission may
42 determine a higher affordable local residential or business rate for such
43 company if such higher rate allows the company to provide additional or

1 improved service to customers, but any increase in a rural telephone
2 company's local rate attributable to the provision of increased calling
3 scope shall not be included in any subsequent recalculation of affordable
4 rates as otherwise provided in this subsection.

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

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

16 (f) For regulatory reform plans in which price cap regulation has been
17 elected, price cap plans shall have three baskets: Residential and single-
18 line business, including touch-tone; switched access services; and
19 miscellaneous services. The commission shall establish price caps at the
20 prices existing when the regulatory plan is filed subject to rate rebalancing
21 as provided in subsection (c) for residential services, including touch-tone
22 services, and for single-line business services, including touch-tone
23 services, within the residential and single-line business service basket. The
24 commission shall establish a formula for adjustments to the price caps. The
25 commission also shall establish price caps at the prices existing when the
26 regulatory plan is filed for the miscellaneous services basket. The
27 commission shall approve any adjustments to the price caps for the
28 miscellaneous service basket, as provided in subsection (g).

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

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

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

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

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

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

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

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

41 (o) Subsequent to the adoption of guidelines pursuant to subsection
42 (n), the commission shall initiate a petitioning procedure under which the
43 local exchange carrier may request rate range pricing. The commission

1 shall act upon a petition within 21 days, subject to a 30-day extension. The
2 prices within a rate range shall be tariffed and shall apply to all customers
3 in a nondiscriminatory manner in an exchange or group of exchanges.

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

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

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

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

39 (C) in any exchange in which there are fewer than 75,000 local
40 exchange access lines served by all providers, the commission shall price
41 deregulate all business telecommunication services upon a demonstration
42 by the requesting local telecommunications carrier that there are two or
43 more nonaffiliated telecommunications carriers or other entities, that are

1 nonaffiliated with the local exchange carrier, providing local
2 telecommunications service to business customers, regardless of whether
3 the entity provides local service in conjunction with other services in that
4 exchange area. One of such nonaffiliated carriers or entities shall be
5 required to be a facilities-based carrier or entity and not more than one of
6 such nonaffiliated carriers or entities shall be a provider of commercial
7 mobile radio services in that exchange;

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

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

22 (F) up to and continuing until July 1, 2008, rates for the initial
23 residential local exchange access line and up to four business local
24 exchange access lines at one location shall remain subject to price cap
25 regulation *and all other rates, except rates for switched access services,*
26 *are deemed price deregulated.* On and after July 1, 2008, the local
27 exchange carrier shall be authorized to adjust such rates without
28 commission approval by not more than the *greater of the* percentage
29 increase in the consumer price index for all urban consumers, as officially
30 reported by the bureau of labor statistics of the United States department
31 of labor, or its successor index, *or the amount necessary to maintain the*
32 *local rate floor as determined by the federal communications commission*
33 *or its successor*, in any one year period and such rates shall not be adjusted
34 below the price floor established in subsection (k). Such rates shall not be
35 affected by purchase of one or more of the following: Call management
36 services, intraLATA long distance service or interLATA long distance
37 service; and

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

42 (2) For the purposes of this subsection:

43 (A) Any entity providing voice service shall be considered as a local

1 telecommunications service provider regardless of whether such entity is
2 subject to regulation by the commission;

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

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

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

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

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

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

33 ~~(7) Prior to January 1, 2007, the commission shall determine the~~
34 ~~weighted, statewide average rate of nonwireless basic local~~
35 ~~telecommunications service as of July 1, 2006. Prior to January 1, 2007,~~
36 ~~and annually thereafter, the commission shall determine the weighted,~~
37 ~~average rate of nonwireless basic local telecommunications services in~~
38 ~~exchanges that have been price deregulated pursuant to subsection (q)(1)~~
39 ~~(B), (C) or (D). The commission shall report its findings on or before~~
40 ~~February 1, 2007, and annually thereafter to the governor, the legislature~~
41 ~~and each member of the standing committees of the house of~~
42 ~~representatives and the senate which are assigned telecommunications~~
43 ~~issues. The commission shall also provide in such annual report~~

~~1 information on the current rates for services provided by all
2 telecommunications carriers or other telecommunications service
3 providers regardless of the technology used to provide service in price
4 deregulated exchanges, service offerings provided by all
5 telecommunications carriers or other telecommunications service
6 providers regardless of the technology used and available in price
7 deregulated exchanges and the number of competitors in price deregulated
8 exchanges including, but not limited to, facilities based carriers,
9 commercial mobile radio service or broadband based service providers.~~

10 (8) For the purposes of this subsection:

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

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

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

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

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

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

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

41 (2) The commission shall resume price cap regulation of a service
42 provided in any exchange area by placing it in the appropriate service
43 basket, as approved by the commission, upon a determination by the

1 commission that the conditions in subsection (q)(1)(C) or (D) are no
2 longer satisfied in that exchange area.

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

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

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

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

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

1 ~~extension~~ without prior approval by the commission. In response to a
2 complaint that an individual customer pricing agreement is priced below
3 the price floor set forth in subsection (k), the commission shall issue an
4 order within 60 days after the filing of the complaint, unless the
5 complainant agrees to an extension.

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

8 (w) As required under K.S.A. 66-131, and amendments thereto, and
9 except as provided for in ~~subsection (e) of~~ K.S.A. 66-2004(c), and
10 amendments thereto, telecommunications carriers that were not authorized
11 to provide switched local exchange telecommunications services in this
12 state as of July 1, 1996, including cable television operators who have not
13 previously offered telecommunications services, must receive a certificate
14 of convenience based upon a demonstration of technical, managerial and
15 financial viability and the ability to meet quality of service standards
16 established by the commission. Any telecommunications carrier or other
17 entity seeking such certificate shall file a statement, which shall be subject
18 to the commission's approval, specifying with particularity the areas in
19 which it will offer service, the manner in which it will provide the service
20 in such areas and whether it will serve both business customers and
21 residential customers in such areas. Any structurally separate affiliate of a
22 local exchange carrier that provides telecommunications services shall be
23 subject to the same regulatory obligations and oversight as a
24 telecommunications carrier, as long as the local exchange carrier's affiliate
25 obtains access to any services or facilities from its affiliated local
26 exchange carrier on the same terms and conditions as the local exchange
27 carrier makes those services and facilities available to other
28 telecommunications carriers.

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

1 determine that a majority of such lines of the carrier are not price
2 deregulated the commission shall designate the carrier as an electing
3 carrier.

4 (y) Notwithstanding the provisions of this act, and subject to any
5 applicable exemption from interconnection generally, a
6 telecommunications carrier is entitled to interconnection with a local
7 exchange carrier or an electing carrier to transmit and route voice traffic
8 between both the telecommunications carrier and the local exchange
9 carrier or electing carrier regardless of the technology by which the voice
10 traffic is originated by and terminated to a consumer. The commission
11 shall afford such telecommunications carrier all substantive and procedural
12 rights available to such carrier regarding interconnection pursuant to 47
13 U.S.C. §§ 251 and 252 as in effect on the effective date of this act.
14 Nothing in this subsection shall be construed to confer jurisdiction upon
15 the commission for services that are exempt from or otherwise not subject
16 to commission jurisdiction.

17 (z) (1) Telecommunications carriers and electing carriers shall not be
18 subject to regulation by the commission for the provision of
19 telecommunications services, except that the commission shall retain the
20 authority and jurisdiction to authorize applications, suspension or
21 cancellation of certificates of public convenience and necessity to provide
22 local exchange or exchange access service in the state of Kansas, but the
23 commission may not use this certification authority to regulate
24 telecommunications carriers or electing carriers beyond the jurisdiction
25 provided the commission in this subsection.

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

28 (A) Carry out the commission's obligations established in 47 U.S.C.
29 §§ 251 and 252;

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

32 (C) regulate intrastate switched access rates, terms and conditions,
33 including the implementation of federal law concerning intercarrier
34 compensation.

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

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

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

43 (C) administer the Kansas lifeline service program pursuant to K.S.A.

1 66-2006, and amendments thereto;

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

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

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

14 (G) administer consumer complaints against telecommunications
15 carriers and electing carriers to investigate fraud, undue discrimination and
16 other practices harmful to consumers, but the commission shall not use
17 this authority to regulate telecommunications carriers or electing carriers
18 beyond the jurisdiction provided the commission in this subsection.

19 Sec. 5. K.S.A. 2015 Supp. 66-2007 is hereby amended to read
20 as follows: 66-2007. (a) All local exchange carriers, not including electing
21 carriers, providing long distance service in Kansas shall reduce their
22 statewide averaged basic long distance rates to reflect the net reductions in
23 access charges; however, such carriers shall be allowed to increase long
24 distance rates to reflect the KUSF funding requirements set forth in K.S.A.
25 66-2008, and amendments thereto.

26 (b) The commission shall approve, upon not more than 120 days'
27 notice, any basic local exchange price increases that in the aggregate in
28 any one year are \$1.50 or less per access line per month, that are proposed
29 by any rural telephone company which is subject to traditional rate of
30 return regulation and that comply with the requirements of this section.
31 Any such proposed price increases shall be presumed reasonable and not
32 subject to commission investigation and review if the rural telephone
33 company has followed the notice requirements set forth below. However,
34 the commission shall initiate an investigation if more than 15% of the
35 subscribers subject to the rate increase request such an investigation within
36 60 days of the date of distribution of the notice of the proposed change.
37 Upon filing such an application for a rate increase, any rural telephone
38 company seeking expedited approval of the proposed rate under this
39 section shall send a notice to its subscribers by regular mail, which may be
40 included with regular subscriber mailings. Such mailings shall include the
41 name, mailing address and telephone number of the commission. The
42 notice shall include a schedule of the proposed local exchange rates, the
43 effective date of the rates and a description of the procedures by which the

1 subscribers can petition the commission to determine the reasonableness of
2 the proposed rates, including a provision specifically stating that protest by
3 15% or more of subscribers subject to the proposed rate increase would
4 require the commission to initiate an investigation concerning the
5 reasonableness of the proposed rate increase.

6 (c) The commission shall have the right to investigate and determine
7 the reasonableness of an increase in local exchange rates and charges
8 under subsection (b) by any rural telephone company within one year of
9 the time local exchange rates or charges are increased. If the commission
10 determines such rate or charge increases are unreasonable, the commission
11 shall have the authority to order a rate hearing and, after such hearing,
12 shall have the authority to rescind all or any portion of the increases found
13 to be unreasonable.

14 (d) *The commission shall approve each application, within 45 days of*
15 *such application, by a rural telephone company to increase the company's*
16 *local service rates in an amount necessary for such company to maintain*
17 *eligibility for full federal universal service support. If the commission does*
18 *not order approval of such application within 45 days, the application*
19 *shall be deemed approved.*

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

24 (a) The commission shall require every telecommunications carrier,
25 telecommunications public utility and wireless telecommunications service
26 provider that provides intrastate telecommunications services and, to the
27 extent not prohibited by federal law, every provider of interconnected VoIP
28 service, as defined by ~~47 C.F.R. § 9.3 (October 1, 2005)~~ 47 C.F.R. 9.3, to
29 contribute to the KUSF *based upon the provider's intrastate*
30 *telecommunications services net retail revenues* on an equitable and
31 nondiscriminatory basis. *The commission shall not require any provider to*
32 *contribute to the KUSF under a different contribution methodology than*
33 *such provider uses for purposes of the federal universal service fund,*
34 *including for bundled offerings.* Any telecommunications carrier,
35 telecommunications public utility, wireless telecommunications service
36 provider or provider of interconnected VoIP service which contributes to
37 the KUSF may collect from customers an amount equal to such carrier's,
38 utility's or provider's contribution, but such carrier, provider or utility may
39 collect a lesser amount from its customer.

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

43 (b) Pursuant to the federal act, distributions from the KUSF shall be

1 made in a competitively neutral manner to qualified telecommunications
2 public utilities, telecommunications carriers and wireless
3 telecommunications providers, that are deemed eligible both under
4 subsection (e)(1) of section 214 of the federal act and by the commission.

5 (c) Beginning January 1, 2014:

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

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

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

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

15 (2) Local exchange carriers subject to price cap regulation pursuant to
16 K.S.A. 66-2005, and amendments thereto, shall not receive KUSF support
17 for any residential or business lines within an exchange that the
18 commission has granted price deregulation pursuant to ~~subsections (q)(1)~~
19 ~~(B), (C) or (D)~~ of K.S.A. 66-2005 ~~(q)(1)(B), (C) or (D)~~, and amendments
20 thereto, except for areas within any census block in such an exchange in
21 which there is no wireline carrier providing local exchange access lines
22 that does not receive KUSF support, not including KUSF support for
23 Kansas lifeline service program purposes pursuant to K.S.A. 66-2006, and
24 amendments thereto, for such access lines.

25 (3) Local exchange carriers subject to price cap regulation pursuant to
26 K.S.A. 66-2005, and amendments thereto, shall receive the same per line,
27 per month KUSF support as established in the April 13, 2000 notice in
28 commission docket numbers 99-GIMT-326-GIT and 00-GIMT-236-GIT
29 subject to the cap percentage in subsection (c)(1), not including KUSF
30 support for Kansas lifeline service program purposes pursuant to K.S.A.
31 66-2006, and amendments thereto, except that the amount shall be reduced
32 by any funding received by such carrier from the federal communication
33 commission's connect America fund II for the same household, if feasible,
34 or for the same census block.

35 (4) The commission shall discontinue the use of the "identical
36 support" rule and shall cap all competitive eligible telecommunications
37 carriers' KUSF high cost support as of March 1, 2013, and beginning
38 March 1, 2014, over a period of four years in annual equal increments,
39 reduce to zero, beginning March 1, 2018, the amount of KUSF high cost
40 support received by competitive eligible telecommunications carriers.
41 Nothing in this section shall be construed to affect competitive eligible
42 telecommunications carriers' eligibility for Kansas lifeline service program
43 purposes pursuant to K.S.A. 66-2006, and amendments thereto. For the

1 purposes of this subsection, "competitive eligible telecommunications
2 carrier" means a telecommunications carrier designated by the commission
3 as an eligible telecommunications carrier after January 1, 1998.
4 "Competitive eligible telecommunications carrier" shall not mean any
5 local exchange carrier or any electing carrier designated by the
6 commission as an eligible telecommunications carrier by order dated
7 December 5, 1997, in docket No. 98-GIMIT-241-GIT, or any such local
8 exchange carrier's or electing carrier's successors or assigns.

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

11 (d) (1) Subject to paragraph (2), the commission may periodically
12 review the KUSF to determine if the costs of qualified telecommunications
13 public utilities, telecommunications carriers and wireless
14 telecommunications service providers to provide local service justify
15 modification of the KUSF. If the commission determines that any changes
16 are needed, the commission shall modify the KUSF accordingly and
17 annually report such changes to the senate standing committee on utilities
18 and the house standing committee on utilities and telecommunications.

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

29 (e) (1) For each local exchange carrier electing pursuant to ~~subsection~~
30 ~~(b)~~ of K.S.A. 66-2005(b), and amendments thereto, to operate under
31 traditional rate of return regulation, all KUSF support, including any
32 adjustment thereto pursuant to this section, shall ~~be based on~~ *ensure the*
33 *reasonable opportunity for recovery of* such carrier's intrastate embedded
34 costs, revenue requirements, investments and expenses, *subject to the*
35 *annual cap established pursuant to subsection (e)(3)*. ~~Until at least March~~
36 ~~1, 2017,~~ Any modification of such support shall be made only as a direct
37 result of changes in those factors enumerated in this subsection. Nothing in
38 this subsection shall prohibit the commission from conducting a general
39 investigation regarding effects of federal universal service reform on
40 KUSF support and the telecommunications public policy of the state of
41 Kansas as expressed in K.S.A. 66-2001, and amendments thereto. The
42 commission may present any findings and recommendations to the
43 telecommunications study committee established in K.S.A. 2015 Supp. 66-

1 2018, and amendments thereto.

2 (2) Notwithstanding any other provision of law, no KUSF support
3 received by a local exchange carrier electing pursuant to ~~subsection (b) of~~
4 K.S.A. 66-2005(b), and amendments thereto, to operate under traditional
5 rate of return regulation shall be used to offset any ~~loss reduction of~~
6 federal universal service fund support for *recovery of such carrier*, ~~except~~
7 ~~that such limitation on KUSF support shall not preclude recovery of~~
8 ~~reductions in intrastate access revenue pursuant to subsection (c) of K.S.A.~~
9 ~~66-2005, and amendments thereto~~ *carrier's interstate costs and*
10 *investments*.

11 (3) Notwithstanding any other provision of law, the total KUSF
12 distributions, *not to include KUSF support for Kansas lifeline service*
13 *program purposes, pursuant to K.S.A. 66-2006, and amendments thereto,*
14 made to all local exchange carriers operating under traditional rate of
15 return regulation pursuant to ~~subsection (b) of~~ K.S.A. 66-2005(b), and
16 amendments thereto, shall not exceed an annual \$30,000,000 cap. *In any*
17 *year that the total KUSF support for such carriers would exceed the*
18 *annual cap, each carrier's KUSF support shall be proportionately based*
19 *on the amount of support each such carrier would have received absent*
20 *the cap.* A waiver of the cap shall be granted based on a demonstration by
21 a carrier that such carrier would experience significant hardship due to
22 force majeure or natural disaster as determined by the commission.

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

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

36 (b) VoIP services shall be subject to:

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

40 (2) the requirements of the Kansas 911 act, K.S.A. 2015 Supp. 12-
41 5362 et seq., and amendments thereto.

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

43 (1) The requirements of the video competition act, K.S.A. 2015 Supp.

1 12-2021 et seq., and amendments thereto;

2 (2) the state corporation commission's authority under 47 U.S.C. §§
3 251 and 252, as in effect on the effective date of this act. For the purposes
4 of this paragraph, the term "state commission" used in 47 U.S.C. §§ 251
5 and 252 shall mean the state corporation commission established pursuant
6 to K.S.A. 74-601, and amendments thereto;

7 (3) the authority of the state of Kansas or a political subdivision
8 thereof to manage the use of public rights of way pursuant to K.S.A. 17-
9 1902, and amendments thereto; ~~or~~

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

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

13 (d) For the purposes of this section:

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

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

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

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

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

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

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

29 Sec. 8. K.S.A. 66-2004 and K.S.A. 2015 Supp. 66-2005, 66-2007, 66-
30 2008 and 66-2017 are hereby repealed.

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

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