

FIRST REGULAR SESSION

# SENATE BILL NO. 526

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDDLE.

Read 1st time February 25, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1346S.011

## AN ACT

To repeal sections 386.020 and 386.710, RSMo, and to enact in lieu thereof two new sections relating to powers of the public counsel.

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

Section A. Sections 386.020 and 386.710, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 386.020 and 386.710, to  
3 read as follows:

386.020. As used in this chapter, the following words and phrases mean:

2 (1) "Alternative local exchange telecommunications company", a local  
3 exchange telecommunications company certified by the commission to provide  
4 basic or nonbasic local telecommunications service or switched exchange access  
5 service, or any combination of such services, in a specific geographic area  
6 subsequent to December 31, 1995;

7 (2) "Alternative operator services company", any certificated  
8 interexchange telecommunications company which receives more than forty  
9 percent of its annual Missouri intrastate telecommunications service revenues  
10 from the provision of operator services pursuant to operator services contracts  
11 with traffic aggregators;

12 (3) "Basic interexchange telecommunications service" includes, at a  
13 minimum, two-way switched voice service between points in different local calling  
14 scopes as determined by the commission and shall include other services as  
15 determined by the commission by rule upon periodic review and update;

16 (4) "Basic local telecommunications service", two-way switched voice  
17 service within a local calling scope as determined by the commission comprised  
18 of any of the following services and their recurring and nonrecurring charges:

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

19 (a) Multiparty, single line, including installation, touchtone dialing, and  
20 any applicable mileage or zone charges;

21 (b) Assistance programs for installation of, or access to, basic local  
22 telecommunications services for qualifying economically disadvantaged or  
23 disabled customers or both, including, but not limited to, lifeline services and  
24 link-up Missouri services for low-income customers or dual-party relay service for  
25 the hearing impaired and speech impaired;

26 (c) Access to local emergency services including, but not limited to, 911  
27 service established by local authorities;

28 (d) Access to basic local operator services;

29 (e) Access to basic local directory assistance;

30 (f) Standard intercept service;

31 (g) Equal access to interexchange carriers consistent with rules and  
32 regulations of the Federal Communications Commission;

33 (h) One standard white pages directory listing. Basic local  
34 telecommunications service does not include optional toll-free calling outside a  
35 local calling scope but within a community of interest, available for an additional  
36 monthly fee or the offering or provision of basic local telecommunications service  
37 at private shared-tenant service locations;

38 (5) "Cable television service", the one-way transmission to subscribers of  
39 video programming or other programming service and the subscriber interaction,  
40 if any, which is required for the selection of such video programming or other  
41 programming service;

42 (6) "Carrier of last resort", any telecommunications company which is  
43 obligated to offer basic local telecommunications service to all customers who  
44 request service in a geographic area defined by the commission and cannot  
45 abandon this obligation without approval from the commission;

46 (7) "Commission", the "Public Service Commission" hereby created;

47 (8) "Commissioner", one of the members of the commission;

48 (9) "Competitive telecommunications company", a telecommunications  
49 company which has been classified as such by the commission pursuant to section  
50 392.245 or 392.361;

51 (10) "Competitive telecommunications service", a telecommunications  
52 service which has been classified as such by the commission pursuant to section  
53 392.245 or to section 392.361, or which has become a competitive  
54 telecommunications service pursuant to section 392.370;

55 (11) "Corporation" includes a corporation, company, association and joint  
56 stock association or company;

57 (12) "Customer-owned pay telephone", a privately owned  
58 telecommunications device that is not owned, leased or otherwise controlled by  
59 a local exchange telecommunications company and which provides  
60 telecommunications services for a use fee to the general public;

61 (13) "Effective competition" shall be determined by the commission based  
62 on:

63 (a) The extent to which services are available from alternative providers  
64 in the relevant market;

65 (b) The extent to which the services of alternative providers are  
66 functionally equivalent or substitutable at comparable rates, terms and  
67 conditions;

68 (c) The extent to which the purposes and policies of chapter 392, including  
69 the reasonableness of rates, as set out in section 392.185, are being advanced;

70 (d) Existing economic or regulatory barriers to entry; and

71 (e) Any other factors deemed relevant by the commission and necessary  
72 to implement the purposes and policies of chapter 392;

73 (14) "Electric plant" includes all real estate, fixtures and personal  
74 property operated, controlled, owned, used or to be used for or in connection with  
75 or to facilitate the generation, transmission, distribution, sale or furnishing of  
76 electricity for light, heat or power; and any conduits, ducts or other devices,  
77 materials, apparatus or property for containing, holding or carrying conductors  
78 used or to be used for the transmission of electricity for light, heat or power;

79 (15) "Electrical corporation" includes every corporation, company,  
80 association, joint stock company or association, partnership and person, their  
81 lessees, trustees or receivers appointed by any court whatsoever, other than a  
82 railroad, light rail or street railroad corporation generating electricity solely for  
83 railroad, light rail or street railroad purposes or for the use of its tenants and not  
84 for sale to others, owning, operating, controlling or managing any electric plant  
85 except where electricity is generated or distributed by the producer solely on or  
86 through private property for railroad, light rail or street railroad purposes or for  
87 its own use or the use of its tenants and not for sale to others;

88 (16) "Exchange", a geographical area for the administration of  
89 telecommunications services, established and described by the tariff of a  
90 telecommunications company providing basic local telecommunications service;

91 (17) "Exchange access service", a service provided by a local exchange  
92 telecommunications company which enables a telecommunications company or  
93 other customer to enter and exit the local exchange telecommunications network  
94 in order to originate or terminate interexchange telecommunications service;

95 (18) "Gas corporation" includes every corporation, company, association,  
96 joint stock company or association, partnership and person, their lessees, trustees  
97 or receivers appointed by any court whatsoever, owning, operating, controlling or  
98 managing any gas plant operating for public use under privilege, license or  
99 franchise now or hereafter granted by the state or any political subdivision,  
100 county or municipality thereof;

101 (19) "Gas plant" includes all real estate, fixtures and personal property  
102 owned, operated, controlled, used or to be used for or in connection with or to  
103 facilitate the manufacture, distribution, sale or furnishing of gas, natural or  
104 manufactured, for light, heat or power;

105 (20) "Heating company" includes every corporation, company, association,  
106 joint stock company or association, partnership and person, their lessees, trustees  
107 or receivers, appointed by any court whatsoever, owning, operating, managing or  
108 controlling any plant or property for manufacturing and distributing and selling,  
109 for distribution, or distributing hot or cold water, steam or currents of hot or cold  
110 air for motive power, heating, cooking, or for any public use or service, in any  
111 city, town or village in this state; provided, that no agency or authority created  
112 by or operated pursuant to an interstate compact established pursuant to section  
113 70.370 shall be a heating company or subject to regulation by the commission;

114 (21) "High-cost area", a geographic area, which shall follow exchange  
115 boundaries and be no smaller than an exchange nor larger than a local calling  
116 scope, where the cost of providing basic local telecommunications service as  
117 determined by the commission, giving due regard to recovery of an appropriate  
118 share of joint and common costs as well as those costs related to carrier of last  
119 resort obligations, exceeds the rate for basic local telecommunications service  
120 found reasonable by the commission;

121 (22) "Incumbent local exchange telecommunications company", a local  
122 exchange telecommunications company authorized to provide basic local  
123 telecommunications service in a specific geographic area as of December 31, 1995,  
124 or a successor in interest to such a company;

125 (23) "Interconnected voice over internet protocol service", service that:

126 (a) Enables real-time, two-way voice communications;

- 127 (b) Requires a broadband connection from the user's location;  
128 (c) Requires internet protocol-compatible customer premises equipment;  
129 and  
130 (d) Permits users generally to receive calls that originate on the public  
131 switched telephone network and to terminate calls to the public switched  
132 telephone network;
- 133 (24) "Interexchange telecommunications company", any company engaged  
134 in the provision of interexchange telecommunications service;
- 135 (25) "Interexchange telecommunications service", telecommunications  
136 service between points in two or more exchanges;
- 137 (26) "InterLATA", interexchange telecommunications service between  
138 points in different local access and transportation areas;
- 139 (27) "IntraLATA", interexchange telecommunications service between  
140 points within the same local access and transportation area;
- 141 (28) "Light rail" includes every rail transportation system in which one  
142 or more rail vehicles are propelled electrically by overhead catenary wire upon  
143 tracks located substantially within an urban area and are operated exclusively  
144 in the transportation of passengers and their baggage, and including all bridges,  
145 tunnels, equipment, switches, spurs, tracks, stations, used in connection with the  
146 operation of light rail;
- 147 (29) "Line" includes route;
- 148 (30) "Local access and transportation area" or "LATA", contiguous  
149 geographic area approved by the U.S. District Court for the District of Columbia  
150 in *United States v. Western Electric*, Civil Action No. 82-0192 that defines the  
151 permissible areas of operations for the Bell Operating companies;
- 152 (31) "Local exchange telecommunications company", any company engaged  
153 in the provision of local exchange telecommunications service. A local exchange  
154 telecommunications company shall be considered a "large local exchange  
155 telecommunications company" if it has at least one hundred thousand access lines  
156 in Missouri and a "small local exchange telecommunications company" if it has  
157 less than one hundred thousand access lines in Missouri;
- 158 (32) "Local exchange telecommunications service", telecommunications  
159 service between points within an exchange;
- 160 (33) "Long-run incremental cost", the change in total costs of the company  
161 of producing an increment of output in the long run when the company uses least  
162 cost technology, and excluding any costs that, in the long run, are not brought

163 into existence as a direct result of the increment of output. The relevant  
164 increment of output shall be the level of output necessary to satisfy total current  
165 demand levels for the service in question, or, for new services, demand levels that  
166 can be demonstrably anticipated;

167 (34) "Municipality" includes a city, village or town;

168 (35) "Nonbasic telecommunications services" shall be all regulated  
169 telecommunications services other than basic local and exchange access  
170 telecommunications services, and shall include the services identified in  
171 paragraphs (d) and (e) of subdivision (4) of this section. Any retail  
172 telecommunications service offered for the first time after August 28, 1996, shall  
173 be classified as a nonbasic telecommunications service, including any new service  
174 which does not replace an existing service;

175 (36) "Noncompetitive telecommunications company", a telecommunications  
176 company other than a competitive telecommunications company or a  
177 transitionally competitive telecommunications company;

178 (37) "Noncompetitive telecommunications service", a telecommunications  
179 service other than a competitive or transitionally competitive telecommunications  
180 service;

181 (38) "Operator services", operator-assisted interexchange  
182 telecommunications service by means of either human or automated call  
183 intervention and includes, but is not limited to, billing or completion of calling  
184 card, collect, person-to-person, station-to-station or third number billed calls;

185 (39) "Operator services contract", any agreement between a traffic  
186 aggregator and a certificated interexchange telecommunications company to  
187 provide operator services at a traffic aggregator location;

188 (40) "Person" includes an individual, and a firm or copartnership;

189 (41) "Private shared tenant services" includes the provision of  
190 telecommunications and information management services and equipment within  
191 a user group located in discrete private premises as authorized by the commission  
192 by a commercial-shared services provider or by a user association, through  
193 privately owned customer premises equipment and associated data processing and  
194 information management services and includes the provision of connections to the  
195 facilities of local exchange telecommunications companies and to interexchange  
196 telecommunications companies;

197 (42) "Private telecommunications system", a telecommunications system  
198 controlled by a person or corporation for the sole and exclusive use of such

199 person, corporation or legal or corporate affiliate thereof;

200 (43) "Public utility" includes every pipeline corporation, gas corporation,  
201 electrical corporation, telecommunications company, water corporation, heat or  
202 refrigerating corporation, and sewer corporation, as these terms are defined in  
203 this section, and each thereof is hereby declared to be a public utility and to be  
204 subject to the jurisdiction, control and regulation of the commission and to the  
205 provisions of this chapter;

206 (44) "Railroad" includes every railroad and railway, other than street  
207 railroad or light rail, by whatsoever power operated for public use in the  
208 conveyance of persons or property for compensation, with all bridges, ferries,  
209 tunnels, equipment, switches, spurs, tracks, stations, real estate and terminal  
210 facilities of every kind used, operated, controlled or owned by or in connection  
211 with any such railroad;

212 (45) "Railroad corporation" includes every corporation, company,  
213 association, joint stock company or association, partnership and person, their  
214 lessees, trustees or receivers appointed by any court whatsoever, owning, holding,  
215 operating, controlling or managing any railroad or railway as defined in this  
216 section, or any cars or other equipment used thereon or in connection therewith;

217 (46) "Rate", every individual or joint rate, fare, toll, charge, reconsigning  
218 charge, switching charge, rental or other compensation of any corporation, person  
219 or public utility, or any two or more such individual or joint rates, fares, tolls,  
220 charges, reconsigning charges, switching charges, rentals or other compensations  
221 of any corporation, person or public utility or any schedule or tariff thereof;

222 (47) "Resale of telecommunications service", the offering or providing of  
223 telecommunications service primarily through the use of services or facilities  
224 owned or provided by a separate telecommunications company, but does not  
225 include the offering or providing of private shared tenant services;

226 (48) "Service" includes not only the use and accommodations afforded  
227 consumers or patrons, but also any product or commodity furnished by any  
228 corporation, person or public utility and the plant, equipment, apparatus,  
229 appliances, property and facilities employed by any corporation, person or public  
230 utility in performing any service or in furnishing any product or commodity and  
231 devoted to the public purposes of such corporation, person or public utility, and  
232 to the use and accommodation of consumers or patrons;

233 (49) "Sewer corporation" includes every corporation, company, association,  
234 joint stock company or association, partnership or person, their lessees, trustees

235 or receivers appointed by any court, owning, operating, controlling or managing  
236 any sewer system, plant or property, for the collection, carriage, treatment, or  
237 disposal of sewage anywhere within the state for gain, except that the term shall  
238 not include sewer systems with fewer than twenty-five outlets;

239 (50) "Sewer system" includes all pipes, pumps, canals, lagoons, plants,  
240 structures and appliances, and all other real estate, fixtures and personal  
241 property, owned, operated, controlled or managed in connection with or to  
242 facilitate the collection, carriage, treatment and disposal of sewage for municipal,  
243 domestic or other beneficial or necessary purpose;

244 (51) **"Small business", an independently owned and operated**  
245 **business as defined in Title 15 U.S.C. Section 632A and as described by**  
246 **Title 13 CFR Part 121;**

247 (52) "Street railroad" includes every railroad by whatsoever type of power  
248 operated, and all extensions and branches thereof and supplementary facilities  
249 thereto by whatsoever type of vehicle operated, for public use in the conveyance  
250 of persons or property for compensation, mainly providing local transportation  
251 service upon the streets, highways and public places in a municipality, or in and  
252 adjacent to a municipality, and including all cars, buses and other rolling stock,  
253 equipment, switches, spurs, tracks, poles, wires, conduits, cables, subways,  
254 tunnels, stations, terminals and real estate of every kind used, operated or owned  
255 in connection therewith but this term shall not include light rail as defined in  
256 this section; and the term "street railroad" when used in this chapter shall also  
257 include all motor bus and trolley bus lines and routes and similar local  
258 transportation facilities, and the rolling stock and other equipment thereof and  
259 the appurtenances thereto, when operated as a part of a street railroad or trolley  
260 bus local transportation system, or in conjunction therewith or supplementary  
261 thereto, but such term shall not include a railroad constituting or used as part  
262 of a trunk line railroad system and any street railroad as defined above which  
263 shall be converted wholly to motor bus operation shall nevertheless continue to  
264 be included within the term street railroad as used herein;

265 [(52)] (53) "Telecommunications company" includes telephone  
266 corporations as that term is used in the statutes of this state and every  
267 corporation, company, association, joint stock company or association, partnership  
268 and person, their lessees, trustees or receivers appointed by any court  
269 whatsoever, owning, operating, controlling or managing any facilities used to  
270 provide telecommunications service for hire, sale or resale within this state;

271            [(53)] (54) "Telecommunications facilities" includes lines, conduits, ducts,  
272 poles, wires, cables, crossarms, receivers, transmitters, instruments, machines,  
273 appliances and all devices, real estate, easements, apparatus, property and routes  
274 used, operated, controlled or owned by any telecommunications company to  
275 facilitate the provision of telecommunications service;

276            [(54)] (55) "Telecommunications service", the transmission of information  
277 by wire, radio, optical cable, electronic impulses, or other similar means. As used  
278 in this definition, "information" means knowledge or intelligence represented by  
279 any form of writing, signs, signals, pictures, sounds, or any other  
280 symbols. Telecommunications service does not include:

281            (a) The rent, sale, lease, or exchange for other value received of customer  
282 premises equipment except for customer premises equipment owned by a  
283 telephone company certificated or otherwise authorized to provide telephone  
284 service prior to September 28, 1987, and provided under tariff or in inventory on  
285 January 1, 1983, which must be detariffed no later than December 31, 1987, and  
286 thereafter the provision of which shall not be a telecommunications service, and  
287 except for customer premises equipment owned or provided by a  
288 telecommunications company and used for answering 911 or emergency calls;

289            (b) Answering services and paging services;

290            (c) The offering of radio communication services and facilities when such  
291 services and facilities are provided under a license granted by the Federal  
292 Communications Commission under the commercial mobile radio services rules  
293 and regulations;

294            (d) Services provided by a hospital, hotel, motel, or other similar business  
295 whose principal service is the provision of temporary lodging through the owning  
296 or operating of message switching or billing equipment solely for the purpose of  
297 providing at a charge telecommunications services to its temporary patients or  
298 guests;

299            (e) Services provided by a private telecommunications system;

300            (f) Cable television service;

301            (g) The installation and maintenance of inside wire within a customer's  
302 premises;

303            (h) Electronic publishing services;

304            (i) Services provided pursuant to a broadcast radio or television license  
305 issued by the Federal Communications Commission; or

306            (j) Interconnected voice over internet protocol service;

307 [(55)] **(56)** "Telephone cooperative", every corporation defined as a  
308 telecommunications company in this section, in which at least ninety percent of  
309 those persons and corporations subscribing to receive local telecommunications  
310 service from the corporation own at least ninety percent of the corporation's  
311 outstanding and issued capital stock and in which no subscriber owns more than  
312 two shares of the corporation's outstanding and issued capital stock;

313 [(56)] **(57)** "Traffic aggregator", any person, firm, partnership or  
314 corporation which furnishes a telephone for use by the public and includes, but  
315 is not limited to, telephones located in rooms, offices and similar locations in  
316 hotels, motels, hospitals, colleges, universities, airports and public or  
317 customer-owned pay telephone locations, whether or not coin operated;

318 [(57)] **(58)** "Transitionally competitive telecommunications company", an  
319 interexchange telecommunications company which provides any noncompetitive  
320 or transitionally competitive telecommunications service, except for an  
321 interexchange telecommunications company which provides only noncompetitive  
322 telecommunications service;

323 [(58)] **(59)** "Transitionally competitive telecommunications service", a  
324 telecommunications service offered by a noncompetitive or transitionally  
325 competitive telecommunications company and classified as transitionally  
326 competitive by the commission pursuant to section 392.361 or 392.370;

327 [(59)] **(60)** "Water corporation" includes every corporation, company,  
328 association, joint stock company or association, partnership and person, their  
329 lessees, trustees, or receivers appointed by any court whatsoever, owning,  
330 operating, controlling or managing any plant or property, dam or water supply,  
331 canal, or power station, distributing or selling for distribution, or selling or  
332 supplying for gain any water;

333 [(60)] **(61)** "Water system" includes all reservoirs, tunnels, shafts, dams,  
334 dikes, headgates, pipes, flumes, canals, structures and appliances, and all other  
335 real estate, fixtures and personal property, owned, operated, controlled or  
336 managed in connection with or to facilitate the diversion, development, storage,  
337 supply, distribution, sale, furnishing or carriage of water for municipal, domestic  
338 or other beneficial use.

386.710. 1. The public counsel shall have the following powers and  
2 duties:

3 (1) He **or she** shall employ a staff or hire on a contract basis such  
4 employees and experts as are necessary to carry out the purposes and

5 responsibilities of his **or her** office, and shall set their compensation within the  
6 appropriation made for that purpose;

7 (2) He **or she** may represent and protect the interests of [the public]  
8 **residential and small business public utility customers** in any proceeding  
9 before or appeal from the public service commission;

10 (3) He **or she** shall have discretion to represent or refrain from  
11 representing [the public] **residential and small business public utility**  
12 **customers** in any proceeding. He **or she** shall consider in exercising his **or her**  
13 discretion the importance and the extent of the [public interest involved]  
14 **interests of residential and small business public utility customers**, and  
15 whether that interest would be adequately represented without the action of his  
16 **or her** office. If the public counsel determines that there are conflicting [public]  
17 interests involved in a particular matter, he **or she** may choose to represent one  
18 such interest based upon the considerations of this section, to represent no  
19 interest in that matter, or to represent one interest and certify to the director of  
20 the department of economic development that there is a significant [public]  
21 interest which he **or she** cannot represent without creating a conflict of interest  
22 and which will not be protected by any party to the proceeding. The director of  
23 the department shall select an attorney, to be paid from funds appropriated for  
24 this purpose, to represent that segment of [the public] **residential and small**  
25 **business public utility customers** certified to him **or her** by the public  
26 counsel as unrepresented. Nothing in this section shall be construed to limit the  
27 right of any person, firm or corporation specified in subsection 1 of section  
28 386.390 to petition or make complaint to the commission or otherwise intervene  
29 in proceedings or other matters before the commission.

30 2. The public counsel shall be served with all proposed tariffs, initial  
31 pleadings, and applications, in all proceedings **that affect the interests of**  
32 **residential and small business public utility customers** before the public  
33 service commission, and shall be served with a copy of all orders of the  
34 commission.

35 3. Nothing in sections 386.071, 386.150, 386.155, 386.170, 386.200,  
36 386.330, 386.360, 386.390, 386.400, 386.410, 386.420, 386.440, 386.450, 386.480,  
37 386.500, 386.530, 386.540, 386.600, 386.700 and 386.710, shall be construed or  
38 interpreted to mean that the public counsel shall not have the right to appeal any  
39 and all orders of the public service commission **proceedings that affect the**  
40 **interests of residential and small business public utility customers** to

41 the courts which right of appeal exists and has existed since the time of transfer  
42 as provided in section 386.500.

43 4. He **or she** shall have all powers necessary or proper to carry out the  
44 duties specified in this section.

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