

278.512 Legislative findings -- Exemption of telecommunications product or service from regulation.

- (1) The legislature finds and determines that:
 - (a) Competition and innovation have become commonplace in the provision of certain telecommunications services in Kentucky and the United States;
 - (b) Flexibility in the regulation of the rates of providers of telecommunications service is essential to the well-being of this state, its economy, and its citizens; and
 - (c) The public interest requires that the Public Service Commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment, giving due regard to the interests of consumers, the public, the providers of the telecommunications services, and the continued availability of good telecommunications service.
- (2) Notwithstanding any other statute to the contrary, the commission may, on its own motion or upon motion of a telecommunications utility, after notice and opportunity for comment, and hearing if requested, exempt to the extent it deems reasonable, services or products related to telecommunications utilities or persons who provide telecommunications services or products from any or all of the provisions of this chapter, or may adopt alternative requirements for establishing rates and charges for any service by a method other than that which is specified in this chapter, if the commission finds by clear and satisfactory evidence that it is in the public interest. No exemption shall be granted under this statute which preempts, without notice and without hearing, if requested, the existing rights and obligations of a local exchange company to serve a territory under a tariff approved by the Public Service Commission. Any party which seeks an exemption shall certify to the commission at the time of the filing that he has notified the affected local exchange company by registered mail of the filing of a petition for exemption, and of the right of the local exchange company to request a hearing within thirty (30) days of the notification.
- (3) In determining public interest, the commission shall consider the following:
 - (a) The extent to which competing telecommunications services are available from competitive providers in the relevant market;
 - (b) The existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available;
 - (c) The number and size of competitive providers of service;
 - (d) The overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates;
 - (e) The existence of adequate safeguards to assure that rates for services regulated pursuant to this chapter do not subsidize exempted services;
 - (f) The impact of the proposed regulatory change upon efforts to promote universal availability of basic telecommunications services at affordable rates

and upon the need of telecommunications companies subject to the jurisdiction of the commission to respond to competition;

- (g) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or products;
 - (h) The overall impact on customers of a proposed change to streamline regulatory treatment of small or nonprofit carriers; and
 - (i) Any other factors the commission may determine are in the public interest.
- (4) When the commission exempts a telecommunications product or service from all of the provisions of this chapter, the investment, revenues, and expenses associated with the service or product shall not be considered by the commission in setting rates for the telecommunications company's regulated services. This provision shall only apply to telecommunication products or services which the commission exempts after July 14, 1992. Nothing herein shall prohibit the commission from having access to and from examining the books and records of the exempted product or service in order to determine compliance with the commission's rules respecting allocation of cost when setting rates for the telecommunications company's regulated services.
- (5) The Public Service Commission shall retain jurisdiction over persons and services which are exempted from regulation under this section, or for which alternative regulatory requirements have been established pursuant to this section. The commission, on its own motion, or upon the motion of any person, after notice and hearing, if requested, may vacate or modify any orders granting an exemption or establishing alternative requirements if it determines by clear and satisfactory evidence that the findings upon which the order was based are no longer valid, or that the exemption or modifications are no longer in the public interest.
- (6) In granting or vacating exemptions, the Public Service Commission shall not be discriminatory or preferential but may treat services and utilities differently if reasonable and not detrimental to the public interest.
- (7) The provisions of KRS 367.150(8) and 367.160, concerning the role of the Attorney General, shall apply to all proceedings under this section.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 306, sec. 1, effective July 14, 1992.