

**278.516 Alternative regulation process for small telephone utilities -- Findings --
Definitions -- Procedures -- Withdrawal.**

- (1) The legislature finds and determines that:
 - (a) Small telephone utilities lack the resources to fully participate in the existing regulatory processes, particularly under traditional rate of return and certificate of public convenience and necessity regulation;
 - (b) Regulation, if not tailored specifically to the needs of small telephone utilities, can retard the growth and development of small telephone utilities by requiring the expenditure of excessive time and money responding to and addressing regulatory processes instead of devoting those resources to customer service and more productive business concerns and issues; and
 - (c) It is in the public interest to provide regulatory flexibility to small telephone utilities to better enable them to adjust to the competition and innovation that has come and is coming to the telecommunications industry as found and determined by the legislature at KRS 278.512(1).
- (2) In addition to the definitions set forth at KRS 278.010, the following definitions shall apply to this section:
 - (a) "Telephone utility" means a telephone utility as defined at KRS 278.010(3)(e) except that it includes local exchange carriers only;
 - (b) "Local exchange carrier" means a traditional wireline telephone utility which provides its subscribers with access to the national public switched telephone network;
 - (c) "Traditional wireline telephone utility" means one whose delivery of its telephone utility services is characterized by the predominant use of wire or wireline connections carrying communications transmissions between the subscriber of the utility and the national public switched telephone network;
 - (d) "Small telephone utility" means a local exchange carrier providing telephone utility service and having not more than fifty thousand (50,000) access lines in Kentucky;
 - (e) "Largest telephone utility" means the local exchange carrier providing telephone utility service in Kentucky and having the greatest number of access lines in Kentucky;
 - (f) "Access lines" mean the telephone lines provided by a local exchange carrier. In calculating the number of access lines provided by a local exchange carrier, the number of access lines provided by all telephone utilities under common ownership or control, as defined in KRS 278.020(6), with that telephone utility shall be counted;
 - (g) "GDP" means the real Gross Domestic Product Price Index, as it may be amended from time to time, as it is published by the Bureau of Economic Analysis of the United States Department of Commerce;

- (h) "Annual percent change in the GDP" means, for any given calendar year, the annual percentage change in the GDP as it is calculated by the Bureau of Economic Analysis of the United States Department of Commerce;
 - (i) "Basic business rate" and "basic residential rate" mean the total rates or charges which must be paid by a business or residential subscriber, respectively, to a local exchange carrier in order to receive, outside of a standard metropolitan statistical area, telephone utility service within a specified geographic area for local calling and for which tariffed rates or charges are assessed, regardless of the amount of use of local calling;
 - (j) "Standard metropolitan statistical area" means any area in Kentucky designated as such, or as a part thereof, pursuant to 44 U.S.C. sec. 3504(d)(3) and 31 U.S.C. sec. 1104(d), as they may be amended, by the Office of Management and Budget of the Executive Office of the President of the United States; provided, however, that for purposes of this section, "standard metropolitan statistical area" shall include only the two (2) largest, as measured by population, standard metropolitan statistical areas, regardless of whether that area is located wholly or partially in Kentucky;
 - (k) "Basic business service" or "basic residential service" means the service for which basic business rates or basic residential rates are charged;
 - (l) "Average basic business or residential rate, including zone charges," means the total revenues which should be produced by the imposition of those rates or charges divided by the number of access lines to which those rates or charges are applicable;
 - (m) "Zone charges" mean mileage or zone charges and are the charges assessed by a telephone utility on the basis of a subscriber's distance from a central office in order that the subscriber may receive basic business or residential services;
 - (n) "Subscriber" means the person or entity legally and financially responsible for the bill rendered by a telephone utility for its services;
 - (o) "Intrastate access charges" mean the charges assessed for use of the telecommunications facilities of one telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating and terminating within Kentucky;
 - (p) "Interstate access charges" mean the charges assessed for use of the telecommunications facilities of one (1) telephone utility by another person or entity in order to deliver to the public for compensation telephone messages originating or terminating, but not both, in Kentucky; and
 - (q) "Pic charges" are charges assessed by a local exchange carrier in order to implement a change in a subscriber's long distance carrier.
- (3) (a) If a small telephone utility elects to be regulated as provided in subsection (7) of this section, a small telephone utility once during any twenty-four (24) month period may adjust or implement each of the following rates or charges: basic business rate; basic residential rate; zone charges; or installation charges for basic business or basic residential services by an amount not to exceed the

sum of the annual percentage changes in the GDP for the immediately preceding two (2) calendar years multiplied by the existing rate or charge to be adjusted. However, in no event shall a small telephone utility so adjust:

1. Its basic business rate, including zone charges, if the resulting average basic business rate, including zone charges, would thereby exceed the average basic business rate, including zone charges, of the largest telephone utility;
 2. Its basic residential rate, including zone charges, if the resulting average basic residential rate would thereby exceed the average basic residential rate including zone charges, of the largest telephone utility; or
 3. If its average basic business rate, including zone charges, its average basic residential rate, including zone charges, or its installation charges for basic business or basic residential services would be increased by more than twenty percent (20%).
- (b) At least sixty (60) calendar days before the effective date of such an adjustment of its rates or charges, a small telephone utility shall file a copy of its revised rates and tariffs with the commission and shall mail notice of the proposed rate adjustment to each affected subscriber and the commission. The notice shall state:
1. The GDP for the preceding two (2) calendar years;
 2. The amount by which any of the small telephone utility's rates or charges identified in subsection (3)(a) of this section will be adjusted; and
 3. The right of subscribers to object to the adjustment and request commission review by filing a letter or petition with the commission.
- (c) If by the forty-fifth calendar day following the date of the notice to subscribers of such a proposed adjustment to its rates or charges, the commission has received letters or petitions requesting commission review of the adjustment signed by at least five hundred (500) subscribers or five percent (5%) of subscribers, whichever is greater, the commission shall immediately notify the small telephone utility of this fact, and the proposed rate adjustment shall not become effective as scheduled. The small telephone utility may withdraw the proposed rate or charge adjustment, or if it decides to proceed, the commission shall review the proposed rate adjustment as though no election had been made pursuant to subsection (7) of this section.
- (4) Any other provision of this chapter notwithstanding, a small telephone utility which has elected to be regulated pursuant to this section may adjust any of its rates, charges, or tariffs, except for:
- (a) Its basic business rate;
 - (b) Its basic residential rate;
 - (c) Its zone charges;
 - (d) Its installation charges for basic business or basic residential services;
 - (e) Its access charges; or

(f) Its pic charges,

without regard to the effect on its revenues, by filing its proposed rates, charges, or tariffs with the commission and by notifying its subscribers, both at least thirty (30) calendar days prior to the effective date of its proposed rates, charges, or tariffs.

- (5) A small telephone utility which has elected to be regulated pursuant to this section shall not:
- (a) Adjust its intrastate access charges if the adjustment requires the small telephone utility's access charge customers, including interexchange carriers, to pay intrastate access charges at levels exceeding the small telephone utility's interstate access charge levels; or
 - (b) Adjust its intrastate pic charges if the adjustment requires the small telephone utility's customers to pay intrastate pic charges at levels exceeding the small telephone utility's interstate pic charge levels.

The small telephone utility may decrease its intrastate access charges or intrastate pic charges to any level without restriction. Adjustments to intrastate access charge rates or intrastate pic charges shall be effective thirty (30) calendar days following the filing of access charge tariffs or pic charge tariffs with the commission.

- (6) The rates, charges, earnings, or revenues of a small telephone utility which has elected to be regulated pursuant to this section and is in compliance with the provisions of this section shall be deemed by the commission to be in compliance with KRS 278.030(1).
- (7) A small telephone utility may elect, at any time, to be regulated by the provisions, in their entirety only, of this section by filing a verified resolution of the utility's board of directors, or other governing body, so electing with the commission. An election shall be effective immediately upon filing with the commission and shall remain effective until withdrawn by the filing with the commission of a verified resolution of the small telephone utility's board of directors or other governing body; provided, however, that all resolutions of election or withdrawal shall remain in effect for at least one (1) year from the date of their filing with the commission. A resolution electing to be regulated by the provisions of this section shall mean that the small telephone utility so electing shall be regulated by this section and shall not be regulated by KRS 278.020(1) and 278.300. Nothing in this section, however, shall be construed to alter the applicability of KRS 278.020(4) or 278.030(2) to small telephone utilities electing to be regulated by the provisions of this section.
- (8) A small telephone utility which has elected to be regulated pursuant to this section may file an application with the commission pursuant to KRS 278.020(1), and, if a utility does so, that application shall be deemed to have been granted unless within thirty (30) calendar days following the filing of the application, the commission denies the application. If the application is denied or none is filed, the small telephone utility electing to be regulated pursuant to this section may engage in the construction of the plant or facilities, or the purchase of equipment or properties, to provide the services described in KRS 278.010(3)(e). However, if the small telephone utility subsequently files a resolution of withdrawal under subsection (7) of this section, the increased value of property that resulted from any construction

project denied approval by the commission or not submitted to the commission for approval may be excluded from the small utility's rate base for rate making purposes if the cost of construction exceeded one million dollars (\$1,000,000) or five percent (5%) of the value of the small telephone utility's property as reflected in the utility's most recent annual report filed with the commission.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 75, sec. 2, effective July 13, 2004. -- Created 1996 Ky. Acts ch. 71, sec. 1, effective July 15, 1996.