

1 SB169
2 135793-2
3 By Senator Ward
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 07-FEB-12

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8 SYNOPSIS: Under existing law, an incumbent local
9 exchange carrier is generally required to provide
10 basic telephone service within the carrier's
11 franchised service territory.

12 This bill would define basic telephone
13 service consistent with regulations of the Federal
14 Communications Commission to include additional
15 forms of telephone service such as cell phone
16 service.

17 This bill would also further define the
18 carrier-of-last-resort obligation within an
19 incumbent local exchange carrier's franchised
20 service territory. The bill would remove the
21 requirement that the local exchange carrier provide
22 service to a residence except that, for a certain
23 period, a resident could petition the Public
24 Service Commission for an order to provide service
25 if the residence does not receive voice service.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

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4 To amend Sections 37-2A-2 and 37-2A-8 of the Code of
5 Alabama 1975, to further define basic telephone service and to
6 provide that a local exchange carrier would not be required to
7 provide basic telephone service subject to certain exceptions.
8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 37-2A-2 and 37-2A-8 of the Code
10 of Alabama 1975, are amended to read as follows:

11 "§37-2A-2.

12 "When used in this chapter, the following words have
13 the following meanings:

14 ~~"(1) BASIC TELEPHONE SERVICE. A retail service that~~
15 ~~provides to the premises of residential customers or to the~~
16 ~~premises of business customers the following features and~~
17 ~~functions only:~~

18 ~~"a. Dial tone.~~

19 ~~"b. Access to other lines for the transmission of~~
20 ~~two-way switched or dedicated communication within a local~~
21 ~~calling area without additional usage sensitive charges.~~

22 ~~"c. A primary directory listing.~~

23 ~~"d. Dual-tone multi-frequency signaling.~~

24 ~~"e. Access to operator services.~~

25 ~~"f. Access to directory assistance services.~~

26 ~~"g. Access to telecommunications relay services for~~
27 ~~the deaf or hard-of-hearing.~~

1 ~~"h. Access to E-911 service where provided by a~~
2 ~~local governmental authority or multi-jurisdictional~~
3 ~~authority.~~

4 ~~"i. Access to inter-exchange long distance service.~~

5 ~~"The term does not include service that includes any~~
6 ~~feature and function other than those listed in paragraphs a.~~
7 ~~through i. or that includes any other communications service,~~
8 ~~even as to the features and functions that are listed in~~
9 ~~paragraphs a. through i. The term also does not include~~
10 ~~service to a residential customer or a business customer who~~
11 ~~subscribes to more than one line of basic telephone service.~~
12 ~~An incumbent local exchange carrier's rate for residential~~
13 ~~basic telephone service and for a business customer who~~
14 ~~subscribes to no more than one line of basic telephone service~~
15 ~~shall be the same in rural areas as in urban areas of the~~
16 ~~state or no higher than the rates for basic service in~~
17 ~~existence on August 1, 2009.~~

18 ~~"(1) BASIC TELEPHONE SERVICE. "Voice telephony~~
19 ~~service" as defined in 47 C.F.R. 54.101(a), provided by an~~
20 ~~incumbent local exchange carrier through any technology and~~
21 ~~through any affiliate or service arrangement.~~

22 ~~"(2) BROADBAND SERVICE or BROADBAND ENABLED SERVICE.~~
23 ~~Any service that consists of or includes a high-speed access~~
24 ~~capability to transmit at a rate that is not less than 200~~
25 ~~kilobits per second either in the upstream or downstream~~
26 ~~direction, and either of the following:~~

1 "a. Provides computer processing, information
2 storage, information content or protocol conversion, including
3 any service applications or information service provided over
4 such high-speed access service.

5 "b. Is used to provide access to the Internet.

6 "(3) BUNDLED OFFERING. A combination of retail
7 services offered as a package, whether at a single price or
8 with the availability of the price for one service contingent
9 on the purchase of other services. A bundled offering must be
10 advertised and sold as a bundled offering at rates, terms, or
11 conditions that are different than if the services are
12 purchased separately and may be comprised of any
13 telecommunications services offered by a local exchange
14 carrier in combination with any other telecommunications
15 services or with any nontelecommunications services, including
16 services offered by an affiliate of the local exchange carrier
17 or a nonaffiliated third party provider.

18 "(4) COMMISSION. The Public Service Commission of
19 the State of Alabama.

20 "(5) COMMUNICATIONS SERVICE. Any service that is
21 either a telecommunications service or an information service.

22 "(6) CONTRACT OFFERING. Any retail contractual
23 agreement, whether or not memorialized in writing, by which a
24 local exchange or inter-exchange carrier offers any
25 communications service to any existing customer or potential
26 customer.

1 "(7) ELIGIBLE TELECOMMUNICATIONS CARRIER. A
2 telecommunications carrier which qualifies for universal
3 service support under 47 U.S.C. §214(e) as a common carrier
4 and provides the services supported by the federal universal
5 support mechanisms under 47 U.S.C. §254(c) throughout the
6 service area for which eligible telecommunications carrier
7 designation is received.

8 "(8) EXCHANGE ACCESS. The offering of access to
9 telephone exchange services or facilities for the purpose of
10 origination or termination of telephone toll services.

11 "(9) EXISTING BUNDLED OFFERING. A bundled offering
12 subscribed to by the customer before September 1, 2006.

13 "(10) EXISTING CONTRACT OFFERING. Any contract
14 offering executed by the customer before September 1, 2006.

15 "(11) INCUMBENT LOCAL EXCHANGE CARRIER. With respect
16 to an area, the local exchange carrier that, on the date of
17 enactment of the Federal Telecommunications Act of 1996,
18 provided telephone exchange service in the area and was deemed
19 to be a member of the Exchange Carrier Association pursuant to
20 Section 69.601(b) of the Federal Communications Commission's
21 regulations (47 CFR §69.601(b)) or, on or after that date of
22 enactment, became a successor or assignee of a member of the
23 Exchange Carrier Association.

24 "(12) INFORMATION SERVICE. The offering of a
25 capability for generating, acquiring, storing, transforming,
26 processing, retrieving, utilizing, or making available
27 information via telecommunications, and includes electronic

1 publishing, but does not include any use of any such
2 capability for the management, control, or operation of a
3 telecommunications system or the management of a
4 telecommunications service.

5 "(13) INTER-EXCHANGE CARRIER. Any company certified
6 by the commission to provide intrastate inter-exchange
7 telecommunications service in this state.

8 "(14) LIFELINE. A program designed to increase the
9 availability of communications services to low income
10 subscribers by providing a credit to monthly recurring local
11 service to qualifying residential subscribers. The terms and
12 conditions of the program shall be in compliance with the
13 Federal Communications Commission's rules and with the
14 Telecommunications Act of 1996.

15 "(15) LINK-UP. A program designed to increase the
16 availability of communications services to low income
17 subscribers by providing a credit to the non-recurring
18 installation and service charges to qualifying residential
19 subscribers. The terms and conditions of the program shall be
20 in compliance with the Federal Communications Commission's
21 rules and with the Telecommunications Act of 1996.

22 "(16) LOCAL EXCHANGE CARRIER. Any provider of
23 telecommunications service that is engaged in the provision of
24 telephone exchange service or exchange access.

25 "(17) NEW BUNDLED OFFERING. A bundled offering
26 subscribed to by the customer on or after September 1, 2006.

1 "(18) NEW CONTRACT OFFERING. Any contract offering
2 executed by the customer on or after September 1, 2006.

3 "(19) OPTIONAL TELEPHONE FEATURES. Those central
4 office-based features that were tariffed by a local exchange
5 carrier on or before February 1, 2005, that, where available:

6 "a. Are available to a line-side connection in a
7 telephone switch;

8 "b. Are available on a stand-alone basis separate
9 from a bundled offering; and

10 "c. Enhance the utility of basic telephone service.
11 The term includes, but is not limited to, call forwarding,
12 call waiting, and caller ID.

13 "(20) TELECOMMUNICATIONS. As defined in the
14 Telecommunications Act of 1996, 47 U.S.C. §153(43).

15 "(21) TELECOMMUNICATIONS CARRIER. Any provider of
16 telecommunications services. A telecommunications carrier
17 shall be treated as subject to this chapter only to the extent
18 that it is engaged in providing telecommunications service.

19 "(22) TELECOMMUNICATIONS SERVICE. The offering of
20 telecommunications for a fee directly to the public, or to any
21 classes of users as to be effectively available directly to
22 the public, regardless of the facilities used. The term does
23 not include the provision of commercial mobile service under
24 Section 332(c) of the Federal Communications Act of 1934.

25 "(23) TELEPHONE EXCHANGE SERVICE. Either of the
26 following:

1 "a. Service within a telephone exchange, or within a
2 connected system of telephone exchanges within the same
3 exchange area operated to furnish to subscribers
4 intercommunicating service of the character ordinarily
5 furnished by a single exchange, and which is covered by the
6 exchange service charge.

7 "b. Comparable service provided through a system of
8 switches, transmission equipment, or other facilities, or
9 combination thereof, by which a subscriber can originate and
10 terminate telecommunications service.

11 "(24) VOICE OVER INTERNET PROTOCOL (VoIP) SERVICE.
12 An interconnected voice over Internet (VoIP) service, as
13 defined in 47 C.F.R. §9.3, as amended, that does all of the
14 following:

15 "a. Enables real-time, two-way voice communications.

16 "b. Requires a broadband connection from the user's
17 location.

18 "c. Requires Internet protocol-compatible customer
19 premises equipment (CPE).

20 "d. Permits users generally to receive calls that
21 originate on the public switched telephone network and to
22 terminate calls to the public switched telephone network.

23 "§37-2A-8.

24 "(a) (1) Notwithstanding any provision of law to the
25 contrary, an entity that is not an incumbent local exchange
26 carrier shall not be obligated to tariff or otherwise provide
27 basic telephone service. An incumbent local exchange carrier

1 shall provide, upon reasonable request, basic telephone
2 service to the premises of a permanent residence within its
3 franchised service territory, if the costs, including, but not
4 limited to costs of facilities, rights-of-way, and equipment,
5 of providing basic telephone service to the requesting party
6 does not exceed eight thousand dollars (\$8,000).

7 "(2) If the cost exceeds eight thousand dollars
8 (\$8,000), as provided in subdivision (1), an incumbent local
9 exchange carrier may not deny service on the basis of cost so
10 long as sufficient funds to provide that service are available
11 from the Alabama portion of the applicable federal universal
12 service fund program.

13 "(3) An incumbent local exchange carrier obligated
14 by this section to serve as the carrier of last resort is
15 relieved of that obligation and shall not be obligated to
16 provide basic telephone service to any occupants of real
17 property if the owner or developer of the real property, or a
18 person acting on behalf of the owner or developer of real
19 property, engages in any of the following acts:

20 "a. Permits an alternative communications service
21 provider to install its facilities or equipment used to
22 provide communications services based on a condition of
23 exclusion of the incumbent local exchange carrier during the
24 construction phase of the real property.

25 "b. Accepts or agrees to accept incentives or
26 rewards from an alternative communications services provider
27 that are contingent upon the provision of any or all local

1 communications services by one or more alternative
2 communications services providers to the exclusion of the
3 incumbent local exchange carrier.

4 "c. Collects from the occupants or residents of the
5 real property mandatory charges for the provision of any local
6 communications services provided by an alternative
7 communications services provider to the occupants or residents
8 in any manner, including, but not limited to, collection
9 through rent, fees, or dues.

10 "d. Prohibits an incumbent local exchange carrier
11 from providing the full range of its communications services,
12 including video services, to the premises of potential
13 customers.

14 "(4) If the alternative communications services
15 provider in paragraphs a. through c. of subdivision (3) goes
16 out of business and is unable to provide service to the
17 property and there is no other provider willing or able to
18 provide, or actually providing voice service to the property,
19 then the incumbent local exchange carrier, subject to the
20 limitations in subdivisions (1) and (2), shall provide voice
21 service to the property utilizing any available technology
22 through any affiliated companies, provided the incumbent local
23 exchange carrier has reasonable access to the property.

24 "(5)a. Notwithstanding subdivisions (1), (2), (3),
25 and (4), on the effective date of the act adding this
26 subdivision, an incumbent local exchange carrier is relieved
27 of its obligation to provide basic telephone service unless

1 the incumbent local exchange carrier elects to retain the
2 obligation and notifies the Public Service Commission not
3 later than 30 days after the effective date of the act adding
4 this subdivision.

5 "b. An incumbent local exchange carrier that elects
6 to retain the obligation to provide basic telephone service
7 pursuant to paragraph a. and files a notice with the Public
8 Service Commission on or before December 1 of any year, shall
9 be relieved of the obligation on January 1 of any subsequent
10 year.

11 "(6) The relief specified in subdivision (5) does
12 not affect an incumbent local exchange carrier's obligations
13 under federal law.

14 "(7)a. If the premises of a permanent residence in
15 existence on the effective date of the act adding this
16 subdivision is within an incumbent local exchange carrier's
17 franchised service territory and the residence is unable to
18 receive voice service from any provider through any voice
19 technology, the owner of the permanent residence or a tenant
20 may file a request for service with the commission. Following
21 investigation by the commission, if the commission determines
22 that a reasonable request for service has been made and that
23 no voice service is available to the premises of the permanent
24 residence, the commission may determine whether a local
25 exchange carrier is best able to provide voice service to the
26 residence and may order the carrier to provide voice service
27 to the residence. Alternatively, the commission may conduct a

1 competitive procurement process to identify a willing provider
2 of voice service to provide voice service at the requesting
3 residence. In either case, the local exchange carrier or
4 willing provider of voice service may utilize any voice
5 technology or service arrangement to provide voice service.
6 The commission shall issue a final order disposing of any
7 request within 90 days of the filing of the request.

8 "b. This subdivision and any obligations created
9 pursuant to it shall be repealed 12 months after the effective
10 date of the act adding this subdivision.

11 "(b) (1) Beginning February 1, 2007, the retail price
12 for basic telephone service to be offered by incumbent local
13 exchange carriers shall not exceed the highest price charged
14 by the incumbent local exchange carrier on January 31, 2007.

15 "(2)a. Beginning January 1, 2008, and every
16 succeeding January 1 through December 31, 2010, the retail
17 rates for basic telephone service may not be increased by the
18 incumbent local exchange carrier to exceed the rates of the
19 previous year as of January 1, plus any increase in the
20 Consumer Price Index for all urban consumers as reported by
21 the U.S. Department of Labor, Bureau of Labor Statistics.

22 "b. Beginning August 1, 2009, the commission shall
23 not have any jurisdiction, right, power, authority, or duty to
24 regulate, supervise, control, oversee, or monitor, directly or
25 indirectly, the costs, rates, charges, terms, or conditions,
26 for any retail telecommunications services provided to

1 businesses or government entities, except as provided in
2 Section 37-2A-11(b)(6).

3 "c. Beginning January 1, 2011, the commission shall
4 not have any jurisdiction, right, power, authority, or duty to
5 regulate, supervise, control, oversee, or monitor, directly or
6 indirectly, the costs, rates, charges, terms, or conditions
7 for basic telephone service.

8 "(3)a. Each optional telephone feature in a bundled
9 offering must be available on a stand-alone basis under a
10 tariff on file with the commission. If a bundled offering is
11 offered by a local exchange carrier, the carrier shall have a
12 basic telephone service tariffed offering for residential
13 customers on file with the commission.

14 "b. Beginning January 1, 2008, and through December
15 31, 2010, increases in tariffed rates for optional telephone
16 features may not exceed five percent per optional telephone
17 feature per year.

18 "c. Through December 31, 2010, a residential bundled
19 offering that consists solely of basic telephone service and
20 optional telephone features must be priced at or below the sum
21 of the tariffed price of basic telephone service and the
22 tariffed price of the associated optional telephone features.

23 "d. Beginning January 1, 2011, the commission shall
24 not have any jurisdiction, right, power, authority, or duty to
25 regulate, supervise, control, oversee, or monitor, directly or
26 indirectly, the costs, rates, charges, terms, or conditions
27 for optional telephone features."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.