

66-2009. Eligibility for KUSF funding; carrier of last resort obligations. (a) Local exchange carriers, not including electing carriers, that provided switched local exchange services in the state prior to January 1, 1996, or their successors, shall serve as the carrier of last resort in their exchanges and shall be eligible to receive KUSF funding. However, with respect to the Hill City exchange area in which multiple carriers were certified prior to January 1, 1996, the commission's determination, subject to court appeals, shall determine which authorized carrier shall serve as carrier of last resort. The local exchange carrier serving as the carrier of last resort shall remain the carrier of last resort and shall be entitled to recover the costs of serving as carrier of last resort.

(b) Beginning March 1, 1997, the amount of KUSF funds owed to each qualifying telecommunications carrier, telecommunications public utility or wireless telecommunications service provider in the state, based upon the revenue requirements assigned to the funds for such qualifying utility, carrier or provider, shall be allocated by the fund administrator in equal monthly installments.

(c) (1) For the purposes of this subsection:

(A) "Alternative service provider" means any person or entity providing local telecommunications services or any person or entity allowing another person or entity to use its equipment or facilities to provide local telecommunications services or any person or entity securing rights to select an alternative service provider for a property owner or developer, and does not include a local exchange carrier providing service within its commission-approved local exchange service area.

(B) "Alternative technology" means any technology that offers local telecommunications service and functionality comparable to that provided through an existing alternative service provider's facilities, and may include a technology that does not require the use of any public right-of-way.

(C) "Greenfield area" means an area that requires entirely new construction of local loops, in addition to the deployment of any necessary switching and other network equipment, to serve new real property developments.

(D) "Local telecommunications service" means two-way voice service capable of being originated and terminated within a local exchange service area, regardless of the technology used to provision the voice service.

(E) "Owner or developer" means the owner or developer of a business or residential property, any condominium association or homeowners' association thereof, any other person or entity having ownership in, or control over, the property, or any person acting on behalf of such owner or developer.

(F) "Real property" includes, but is not limited to, any single tenant or multi-tenant business or residential property, subdivisions, condominiums, apartments, office buildings or office parks.

(2) A local exchange carrier obligated by this section to serve as the carrier of last resort is hereby relieved of that obligation, and shall not be obligated to provide basic local telecommunications service to any occupants of real property if the owner or developer of the real property, or a person acting on behalf of the owner or developer of real property, engages in any of the following acts:

(A) Permits an alternative service provider to install its facilities or equipment used to provide local telecommunications service based on a condition of exclusion of the local exchange carrier, during the construction phase of the real property;

(B) accepts or agrees to accept incentives or rewards from an alternative service provider that are contingent upon the provision of any or all local telecommunications services by one or more alternative service providers to the exclusion of the local exchange carrier; or

(C) collects from the occupants or residents of the real property mandatory charges for the provision of any local telecommunications service provided by an alternative service provider to the occupants or residents in any manner, including, but not limited to, collection through rent, fees or dues.

(3) The local exchange carrier relieved of its carrier of last resort obligation to provide basic local telecommunications service to the occupants of the real property, pursuant to subsection (c), shall notify the commission of that fact within 120 days after receiving knowledge of the existence of such fact.

(4) A local exchange carrier that is not automatically relieved of its carrier of last resort obligation pursuant to paragraph (2) of subsection (c) may seek a waiver of its carrier of last resort obligation from the commission for good cause shown based on the facts and circumstances of the provision of local telecommunications service or internet access service to a particular real property. Upon petition for such relief, notice shall be given by the local exchange carrier at the same time to the relevant owner or developer. The commission shall make a determination concerning the petition on or before 90 days after such petition is filed.

(5) If all conditions described in paragraph (2) or (4) of subsection (c) cease to exist at the property, and the owner or developer requests in writing that the local exchange carrier make local telecommunications service available to occupants of the real property and confirms in writing that all conditions described in paragraph (2) or (4) of subsection (c) have ceased to exist at the property, the carrier of last resort obligation under this section shall again apply to the local exchange carrier at the real property. The local exchange carrier shall provide notice to the commission that it is assuming the carrier-of-last-resort obligation. The local exchange carrier may require that the owner or developer pay to the local exchange carrier in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the real property initially. The commission may verify that the fee enables the local exchange carrier to recover its costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the real property initially, including, but not limited to, amounts necessary to install or retrofit any facilities or equipment, to cut or trench sidewalks and streets and to restore roads, sidewalks, block walls or landscapes to original conditions. The local exchange carrier shall have a reasonable period of time following the request from the owner or developer to make arrangements for local telecommunications service availability. If a local exchange carrier is relieved of its carrier of last resort obligation under paragraph (2) or (4) of subsection (c), the owner or developer shall notify all occupants and any subsequent owner of the specific real property of the following: (1) That the incumbent local exchange carrier does not have facilities installed to serve the specific real property, and that such carrier has been relieved of its carrier of last resort obligations; and (2) the name of the person that will be providing local telecommunications service to the real property, and the type of technology that will be used to provide such service. An incumbent local exchange carrier may meet the carrier's obligations under this section using any available alternative technology. If any conditions described in paragraph (2) or (4) of subsection (c) again exist at the real property, the relief in paragraph (2) or (4) of subsection (c) shall again apply.

(6) When real property is located in a greenfield area, a carrier of last resort shall not automatically be excused from

its obligations under paragraph (2) of subsection (c) unless the alternative service provider possesses or shall possess at the time of commencement of service the capability to provide local telecommunications service or the functional equivalent of such service through any form of technology.

(7) If an owner or developer of real property permits an alternative service provider to install its facilities or equipment used to provide local telecommunications service to such property based on a condition of exclusion of the local exchange carrier, the owner or developer must provide written notice to the purchaser of any such real property that there is an exclusion of that local exchange carrier, and that the alternative service provider is the exclusive provider of service to such property.

History: L. 1996, ch. 268, § 10; L. 2008, ch. 122, § 3; L. 2013, ch. 110, § 12; July 1.