

**MINUTES
SENATE COMMITTEE ON INSURANCE AND COMMERCE
HOUSE COMMITTEE ON INSURANCE AND COMMERCE
MEETING JOINTLY
State Capitol, Room 171
Little Rock, Arkansas**

Monday, December 10, 2018

The Senate and House Interim Committees on Insurance and Commerce met jointly at 1:30 p.m. Monday, December 10, 2018, at the State Capitol, Room 171, in Little Rock, Arkansas.

Committee members present: Senators Jason Rapert, Chairman; Cecile Bledsoe, Joyce Elliott and Breanne Davis. Representatives Charlie Collins, Chairman; Robin Lundstrum, Vice-Chair; Reginald Murdock, Mark Lowery, Chris Richey, Joe Jett, Deborah Ferguson, John Payton, Les Eaves, Grant Hodges, Laurie Rushing, Ken Henderson, James Sorvillo, Marcus E. Richmond, John Maddox and Les Warren.

Also attending: Senator Alan Clark; Senator-elect Mark Johnson; and Representatives Frances Cavanaugh, Jimmy Gazaway, Charles Blake, Andy Davis, Danny Watson, Clint Penzo, Steve Hollowell, Vivian Flowers, and James Dotson.

Senator Rapert called the meeting to order.

CONSIDERATION TO APPROVE MEETING MINUTES FOR JULY 10, 2018, AND AUGUST 27, 2018
[EXHIBITS C-1, C-2]

Representative Lundstrum made a motion to approve the July 10, 2018, and August 27, 2018, Senate and House Insurance and Commerce Committee meeting minutes. Representative Lowery seconded the motion, and the motion carried.

Senator Rapert noted if there was no objection the agency directors will go before the Internet Broadband Services agenda item.

ARKANSAS BANK DEPARTMENT - - 2019 LEGISLATIVE PACKAGE

Ms. Candace Franks, Commissioner, and John Ahlen, Deputy Commissioner, Arkansas State Bank Department, were recognized. Commissioner Franks noted there are 79 state-chartered banks and over \$100 billion in total assets under supervision. There are only four institutions that are in need of improvement.

Deputy Commissioner Ahlen noted there are two clean-up bills being proposed. One corrects a reference to the unclaimed property statute, in reference to property left in a bank safety deposit box, and the second concerns loans that have been endorsed without recourse, and the bill treats all loans the same in calculating a bank's lending limit.

ARKANSAS SECURITIES DEPARTMENT (ASD) - - 2019 LEGISLATIVE PACKAGE

Mr. Edmond Waters, Commissioner, ASD, was recognized and introduced David Smith, General Counsel, ASD. Mr. Smith stated the department proposes to have a bill with amendments to each of the three acts they regulate.

The Securities Act: Proposed amendments to be: 1) Filing requirements for covered securities to be in sync with the national electronic filing method; 2) Definition of an "investment advisor" to clarify the statute,

aligning the department with amendments that were made to the 2002 Model Act; 3) Move an existing section to a more visible area.

The Mortgage Act: Proposed amendment regarding registration of people with prior felonies, or while licensed becomes a felon. It gives the commissioner discretionary authority whereby he may, or may not, revoke or grant a license.

Money Services Industry Act: Amend surety bonds and net worth requirement, currently each has a set amount; the proposed change will have a requirement dependent on size of the amount to register and/or license.

ARKANSAS INSURANCE DEPARTMENT (AID) - - 2019 LEGISLATIVE PACKAGE

Mr. Allen Kerr, Commissioner, AID, noted in the legislative packet for the committee to review there are some changes to be made. The omnibus bill proposes basic statistical changes to re-align AID's statutes.

[HANDOUT 1]

Ms. Amanda Rose, Attorney, AID, presented the changes in the Omnibus Bill, Life and Health Insurance Guaranty Association Act and Insurance Code as detailed in Handout 1.

INTERNET BROADBAND SERVICES

Mr. Rusty McMillon, Green County Judge, spoke of Paragould's plan to get fiber cable to homes. The city will reach about a quarter of its population each year until 2021. Internet service has been offered for at least a decade, but the fiber optic will allow for broadband access enhancements and for some service outside the city. Craighead Electric Cooperative implemented a similar plan, Empower, in 2018 which takes care of everything outside of Paragould in Green County, and will be complete by 2024. An estimated 3200 miles of cable will have been put in with electrical connections. He noted the citizens in rural areas would still be struggling if Paragould and Craighead Electric Cooperative had not taken the initiative for service.

Mr. Kirkley Thomas, Vice President, Governmental Affairs, Arkansas Electric Cooperatives, Inc. (AEC), noted the company is a wholly-owned subsidiary of 17 distribution cooperatives around the state. Those cooperatives also own The Generation and Transmission Cooperative, a utility regulated by the Public Service Commission, which owns/co-owns 14 generating units around the state with a diverse mix from coal fueled power, natural gas fueled power, hydroelectric as well as some wind and solar. Mr. Dwayne Highly is president and CEO of those two companies headquartered in Little Rock. Collectively AEC has over a \$1.6 billion economic impact on the state. Each of the 17 cooperatives is an independent autonomous utility with its own board of directors. The respective boards hire the CEOs for each cooperative.

Senator Rapert noted Hollis in western Perry County, has no cell or internet service, and finds it hard to believe there are areas of Arkansas lacking basic level of service. He asked Mr. Thomas to relay the message that the governor and legislature want to know why some areas do not have service.

Mr. Thomas noted when cooperatives started into broadband there was only conventional lending. As recently as this summer, the cooperatives participated in the Connect America Fund (CAF) option through the Federal Communications Commission (FCC). Typically these funds go first to AT&T, Century Link and Windstream. The cooperatives were successful in that 85% of the funds in Arkansas went to cooperative entities. The six cooperatives proceeding with broadband are: Ozarks Electric, Craighead Electric, North Arkansas Electric, South Central Electric, Arkansas Valley Electric, and Ouachita Electric.

Ms. Lisa Lake, Area Manager, External Affairs, AT&T, noted the AT&T state investment over the past three years has been approximately \$550 million. It uses technology to expand its service and make investments in urban and rural areas using the CAF administered by the FCC. With the initial CAF II funds, AT&T serves over 30,000 locations that previously had no service, and by the end of 2020, there will be 52,000 locations.

The Arkansas High Cost Fund in connection with AT&T's Universal Telecommunication Services insures service is provided to people within its territory. The funds are used to upgrade, and though not a requirement, to build-out broadband. The amount of funding AT&T has been receiving since 2008 is \$3 million per year, but with an increase, now receives \$5 million per year. Revenue for the fund is obtained when the fund administrator bills the telecommunication companies. The telecommunication companies are allowed to surcharge its customers on their bills, which show as a universal service fee. The fee is assessed based on a percentage of intrastate revenue.

Senator Rapert noted it is a statutory mandate to the customer that allows the company to collect from the customer per phone line. Because land line usage is going away, it was thought the fund would dry up over time. Now it is collected per every cellular telephone line and iPad. He understood that the universal fund was about getting services to people that do not have those services.

Ms. Lake clarified that cellular service, or the lack of cellular service, cannot be tied to the High Cost Fund, which is for AT&T Incumbent Local Exchange Carrier (ILEC). AT&T cannot cross-subsidize their mobility company with anything from the High Cost Fund. The funds cannot be used for cell coverage. She stated AT&T's local exchange company receives High Cost Fund money, but its mobility company does not. The statute is written for the traditional telephone companies who provide services and must be an eligible telecommunications carrier and committed to provide service to every person in that territory.

Senator Rapert noted if there are millions of dollars flowing to a program that is supposed to offer universal services, and those services are not being offered, perhaps the money needs to be redirected. If AT&T cannot execute with the money that is there and its answer is more money, but other entities/communication services are getting the job done, perhaps redirecting the money to get the job done cheaper is what Arkansas needs.

He stated all the money in those universal service fund fees is "our" money, as individuals, as consumers, it is not taxpayer dollars. It is the users', and it is per line. The funds are being taken from the users to add to a universal access. He noted this discussion is meant to get to the heart of an issue -- as to how it can be done better. The universal fund is meant to serve the people in rural, less-populated areas, even though the company cannot bill as many people. Senator Rapert noted if the millions Arkansas has sent to AT&T through the universal fund, at the state level, is not enough for the company to provide the service that needs to be there, then Arkansas needs to have a discussion as to whether it keeps sending money to AT&T or redirect it to some other communication provider.

Senator Elliot requested Ms. Lake to provide information that is geographically centric to areas specific to where AT&T services are being offered and invested in and adoption rates.

Mr. Curt Stamp, Vice President Government Affairs & Arkansas Market, Cox Communications, noted the company is the nation's third largest cable communications company and the largest privately owned telecommunications company. It provides video, voice, and data services to six million residential and business customers across the country with 160,000 Arkansas customers. The company chose not to secure High Cost Fund money and does not receive CAF II either. The company will complete a \$15 million upgrade in northwest Arkansas in January 2019 that will provide gig service to its customers.

James Pitts, Operations Manager, Windstream Arkansas, noted the company operates in mostly rural areas. Windstream Arkansas has 100 technicians working in 60 communities with 133,000 households capable of providing broadband. Since 2016, the company has invested \$42 million to get fiber cable to new homes. Hollis is in their area, but 25 miles from nearest fiber cable. He noted he is in Windstream area, but has no service.

Ms. L. Elizabeth Bowles, CEO and Chair, Aristotle United Communications, noted the company was founded in 1995, and has always served rural Arkansas. Currently, the company serves the central Arkansas area and is focused on expanding, with specific focus on the delta.

She is also Chair of the FCC's Broadband Deployment Advisory Committee tasked with addressing the problem of broadband in America. The committee approved a Model State Code that can be found on FCC's website under Broadband Deployment Advisory Committee. **[HANDOUT 3]**

Ms. Bowles noted Arkansas is 48th in broadband penetration and is very low on the adoption scale. When there is only one provider in a community, the adoption rate will only be 30 to 40 percent. Competition enables and encourages adoption, because people want to feel they have a choice. There have been 32 broadband bills that have come up before this legislature that have never made it out of committee. Arkansas is behind from a deployment and adoption standpoint but also from a legislative front. She mentioned some things the state could do to encourage broadband deployment.

Two things that came out of the Model State Code, particularly relevant for this state are: 1) The creation of a broadband deployment fund and 2) considering the barriers of broadband deployment which are unreasonable regulatory burden and lack of municipal participation in broadband deployment. Arkansas has a ban on municipal ownership of broadband infrastructure. There are 27 states that ban municipal ownership of broadband in some way, but only five of them have an absolute ban, and Arkansas is one of them. An absolute ban means that a city in Perry County cannot issue a bond initiative to trench and lay conduit because it cannot own the conduit, the tower, or subsidize the tower. Those restraints on the communities create inconceivable barriers to deployment.

Recommendations in the Model State Code, Article 10, have to do with public-private partnerships. There are states that encourage, promote and fund public-private partnerships; municipalities are not the best choice to run broadband networks. A public private partnership where the municipality can use its strength to enable a private provider to come in and deploy is critical to the state. That cannot be done in Arkansas because of laws that prohibit it, and telephone companies and private providers benefit from the prohibition.

Senator Rapert asked, "What you are saying is that this body has within it, the power to remove the burdens which would allow public-private partnerships and expand access to broadband for communities and consumers?" Ms. Bowles answered, "Yes."

Ms. Bowles noted Aristotle has been in conversation with mayors across the state and where there is not a significant density of population, deployment is expensive. There are things that municipalities could do to help ease or assist with that cost, but statutorily are unable to because their hands are tied.

Ms. Bowles referred members to Article 11, which is a process where a broadband deployment fund can be funded. There are two versions: one would require reconstituting the Arkansas High Cost Fund, the second has to do with creating a broadband-specific fund.

UPDATE ON HIGH COST FUND

Ms. Donna Gray, Executive Director, Arkansas Public Service Commission (PSC) and Mr. Clark Cotton, Telecommunications Section Manager, PSC. [HANDOUT4]

Ms. Gray noted that the PSC is charged by law to administer the High Cost Fund and its role has been to retain an administrator to ensure that all the parameters in the current statute are being followed. The percentages of funds and how they are distributed among small telephone companies and others are set by statute.

Representative Richmond asked if the PSC can confirm specifically where the High Cost Funds are distributed, and would the PSC know if funds were not distributed correctly to a specific area. He also wanted to know, when request for High Cost Fund money is made, the company provides information for a program plan. Is there specific detail of where and what services are intended to be provided within that program's scope?

Ms. Gray noted the High Cost Fund providers each give information consistent with FCC reports on costs. Calculations are made to determine the amount to be afforded to each company. The details of what types of investments are made are beyond PSC's scope and are done at the federal level and mirrored in PSC calculations. She will check to confirm if the state can make adjustments. She noted PSC administers the statute of both the collection and disbursement of the fund. Those funds are collected as noted earlier, from individuals' phone bills, then that money is distributed by percentage into four categories according to statute.

Senator Rapert asked Ms. Gray where the \$43 million is deposited.

Mr. Cotton noted those dollars are billed and collected by the fund administrator; it does not come to the PSC. The fund administrator is selected through a Request for Proposal (RFP) process, and the PSC governs and issues the RFP. The last RFP was done in 2016 to Arkansas Rural Strategies, LLC, operating out of Danville, Arkansas. The report shows the company has a checking account and two investment funds; it does not say where they are.

Senator Rapert requested Mr. Cotton follow up with him on where the money is actually located.

Representative Collins thanked everyone for their work and dedication during his chairmanship and legislative tenure.

OTHER BUSINESS

With no further business, the meeting adjourned at 4:01 p.m.