

Act 437 of the 1989 Regular Session.

Act 437

SB410

By: Senator Hopkins

"AN ACT TO AMEND THE RURAL TELEPHONE COOPERATIVE ACT TO CHANGE VARIOUS OBSOLETE PROVISIONS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 23-17-201 is hereby amended to read as follows:

"23-17-201. Title. This subchapter may be cited as the 'Rural Telecommunications Cooperative Act.'"

SECTION 2. Arkansas Code 23-17-202(10) and (11) are hereby amended to read as follows:

"(10) 'Telecommunications service' means any communication service through the use of electricity, microwave, fiber optics, or other accepted means establishing connection between the transmitting and receiving point and is the principal intended use thereof and shall include all telecommunications lines, facilities, or systems used in the rendition of such service;

(11) Telecommunications company' means any natural person, firm, association, corporation, or partnership, other than a cooperative, and their receivers, trustees, or lessees owning or operating any facility or system used in the furnishing of telecommunications service within this state;"

SECTION 3. Arkansas Code 23-17-203 is hereby amended to read as follows:

"23-17-203. Subchapter extended to other corporations.

(a) Any cooperative, mutual, or nonprofit corporation organized under any law of this state engaged in furnishing telecommunications service to rural areas shall be deemed to have been created under this subchapter and shall be subject to all its provisions.

(b) Any incorporated telecommunications company may, by a vote of the holders of a majority of its stock, at a meeting called for that purpose, amend its articles of incorporation so as to comply with and be governed by the terms and provisions of this subchapter if its service is confined to rural areas."

SECTION 4. Arkansas Code 23-17-204 is hereby amended to read as follows:

"23-17-204. Purpose of cooperative. Cooperative nonprofit membership corporations either with or without capital stock may be organized under this subchapter for the purpose of furnishing telecommunications service in rural areas to the widest practicable number of users of the service."

SECTION 5. Arkansas Code 23-17-205 is hereby amended to read as follows:

"23-17-205. Powers of cooperative. Any cooperative created under the provisions of this subchapter shall have power to:

- (1) Sue and be sued in its corporate name;
- (2) Have perpetual existence unless limited for a shorter term in its Articles of Incorporation;

- (3) Adopt and use a corporate seal and to alter it;
- (4) Furnish, improve, and expand telecommunications service to its members, to federal and state agencies, and to other persons. Provided, that no cooperative shall furnish any telecommunications services in any area not allotted to it by the Commission;
- (5) Construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber telecommunications lines, facilities or systems, lands, buildings, structures, plant and equipment, exchanges, and any other real or personal property, tangible or intangible, which are necessary or appropriate to accomplish any purpose of the cooperative authorized by this subchapter.
- (6) Connect and interconnect with the approval of the Commission its telecommunications lines, facilities, or systems with telecommunications lines, facilities, or systems owned and operated by other telecommunications companies or cooperatives; however, any such connection or interconnection shall be in such manner, at such places, and according to such specifications as will avoid interference with or hazards to other telecommunications lines, facilities or systems;
- (7) Make its facilities available to persons furnishing telecommunication services within or without this State;
- (8) Purchase, lease as lessee, or otherwise acquire, and to use and exercise, and to sell, assign, convey, pledge, or otherwise dispose of, or encumber franchises, rights, privileges, licenses, and easements.
- (9) Fix membership fees, issue membership certificates, and issue non-voting shares of stock;
- (10) Borrow money and otherwise contract indebtedness, to issue and guarantee notes, bonds, and other evidences of indebtedness, and secure the same by mortgage, pledge, deed of trust, or security deed, or any other encumbrances upon any or all of its then-owned or after-acquired real or personal property, assets, franchises, or revenues;
- (11) Construct, maintain, and operate telecommunications equipment, lines, facilities and systems along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges, and causeways, subject, however, to the same requirements and limitations with respect to the use or occupancy of such thoroughfares and lands as are imposed by the laws of this State on telecommunications companies;
- (12) Exercise the power of eminent domain in the manner and to the same extent as provided by the laws of this State for the exercise of such power by telecommunications companies;
- (13) Adopt, and from time to time, amend or repeal bylaws;
- (14) Make any and all contracts necessary, convenient, or appropriate for the full exercise of the powers herein granted;
- (15) Accept gifts or grants of money, services, or property, real or personal;
- (16) Do or perform any other acts and things which may be necessary, convenient, or appropriate to accomplish any purpose of the cooperative authorized by this subchapter."

SECTION 6. Arkansas Code 23-17-206 is hereby amended to read as follows:  
"23-17-206. Jurisdiction of Arkansas Public Service Commission.

Cooperatives doing business in this state pursuant to this subchapter shall be subject to the general jurisdiction of the Arkansas Public Service Commission. Jurisdiction shall be exercised by the commission in the same manner and to the same extent as provided by law for the regulation, supervision, or control of telecommunications companies, subject, however, to all

the provisions of this subchapter."

SECTION 7. Arkansas Code 23-17-208 is hereby amended to read as follows:

"23-17-208. Cooperative names. The words 'telecommunications cooperative' or 'telephone cooperative' shall not be used in the corporate names of corporations organized under the laws of this state or authorized to do business herein, other than cooperatives organized pursuant to the provisions of this subchapter."

SECTION 8. Arkansas Code 23-17-209 is hereby amended to read as follows:

"23-17-209. Articles of incorporation - Contents.

(a) The articles of incorporation shall state:

(1) The name of the cooperative, which name shall include the words 'Telephone Cooperative' or 'Telecommunications Cooperative', and the abbreviation 'Inc.'.

(2) The purpose for which the cooperative is formed;

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the cooperative until its first annual meeting of members, or until their successors are elected and qualified.

(4) The number of directors, not less than five (5), to be elected at the annual meeting of members;

(5) The address of its principal office and the name and address of its agent upon whom process may be served;

(6) The terms and conditions upon which persons shall be admitted to membership and retain membership in the cooperative;

(7) In addition to the foregoing, if a cooperative desires to issue non-voting shares of stock, its articles of incorporation shall state:

(A) The total number of such shares of stock which may be issued and the par value of each share;

(B) The fixed or maximum rates of dividends on the par value of such shares of stock and whether dividends shall be cumulative;

(C) Whether such shares of stock may be issued to members only or to members and nonmembers; and

(D) The maximum number of such shares of stock which may be owned by any person and the terms and conditions upon which such shares of stock may be transferred, redeemed, or retired. No shares of stock shall be issued except for cash or for property at its fair value in an amount equal to the par value of such shares of stock;

(8) Any provision not inconsistent with law, which the incorporators may choose to insert, for the regulation of the business and the conduct of the affairs of the cooperative.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this subchapter."

SECTION 9. Arkansas Code 23-17-215 is hereby amended to read as follows:

"23-17-215. Qualifications of members.

(a) All persons proposed to be served by a cooperative shall be eligible for membership in the cooperative.

(b) No person shall become a member of a cooperative unless that person shall be a subscriber for local telecommunications service supplied by the cooperative when available."

SECTION 10. Arkansas Code 23-17-216 is hereby amended to read as follows:

"23-17-216. Certificate of membership - Refund of fees or patronage profits.

(a) When a member of a cooperative has paid the membership fee in full,

a certificate of membership shall be issued to the member.

(b) Memberships in the cooperative and the certificates thereof shall be nontransferable.

(c) Membership may be cancelled upon the resignation, expulsion, or death of the member.

(d) The membership fee shall not be refunded nor shall patronage profits be paid to a member upon his ceasing to be such, while the cooperative has outstanding and unpaid obligations in excess of sixty percent (60%) of its net assets, with the exception that the board of directors may in their discretion authorize a refund of membership fees and capital credits, if earned, for deceased members."

SECTION 11. Arkansas Code 23-17-217(e) and (f) are hereby amended to read as follows:

"(e) Each member present in person at any meeting shall be entitled to one (1), and only one (1), vote on each matter submitted to a vote at a meeting of the members, but voting by mail or proxy may be provided for in the bylaws. Notwithstanding, the by-laws may require each member to vote in person on certain matters.

(f)(1) Unless the bylaws prescribe the presence of a greater percentage of the number of members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative shall be ten percent (10%) of all members, and, of a cooperative having more than five hundred (500) members, a quorum shall be not less than fifty (50) members.

However, in the event a cooperative is unable to attain a quorum for five (5) consecutive years at its annual meeting, the board of directors in the annual meeting notice may declare that the number of members present shall constitute a quorum for the purpose of conducting the business prescribed in said notice.

(2) If less than a quorum is present at any meeting, a majority of those present in person or by proxy may adjourn the meeting from time to time without further notice."

SECTION 12. Arkansas Code 23-17-219 is hereby amended to read as follows:

"23-17-219. Board of directors - Elections - Term of office - Vacancies.

(a) The directors of a cooperative shall hold office until their terms expire or until their successors are elected and qualified.

(b)(1) At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect directors to hold office for the term for which they are elected and until their successors have been elected and qualified.

(2) Instead of electing all of the directors annually, the bylaws may provide for staggered terms of no longer than six (6) years for each director.

(c) Any vacancy occurring in the board shall be filled by the remaining directors. Such persons so elected to fill a vacancy shall serve until the board of directors shall call for an election to elect a successor, and until such successor has been elected and qualified."

SECTION 13. Arkansas Code 23-17-220 is hereby amended to read as follows:

"23-17-220. Board of directors - Meetings.

(a) Meetings of the board of directors, regular or special, shall be held at such place and upon such notice as the bylaws may prescribe.

(b)(1) Neither the business to be transacted at, nor the purpose of, any regular meeting of the board of directors need be specified in the notice or

waiver of notice of the meeting.

(2) The notice of a special meeting of the board shall state the purpose of and the business to be transacted at the meeting.

(c)(1) A majority of the board of directors shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or by the bylaws.

(2) The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board unless the act of a greater number is required by the articles of incorporation or by the bylaws."

SECTION 14. Arkansas Code 23-17-221 is hereby amended to read as follows:

"23-17-221. Officers, agents, and employees.

(a)(1) The board of directors shall elect from their number a president, a vice president, a secretary, and a treasurer, and one (1) person may be elected to the office of secretary-treasurer.

(2) The powers, duties and terms of office of the foregoing officers shall be provided for in the bylaws.

(b) The board of directors may appoint such other officers, agents, and employees as it deems necessary and fix their powers, duties, and compensation.

(c) Any officer, agent, or employee elected or appointed by the board of directors may, subject to any contracts validly entered into by the cooperative, be removed by it whenever, in its judgment, the best interests of the cooperative will be served."

SECTION 15. Arkansas Code 23-17-224 is hereby amended to read as follows:

"23-17-224. Consolidation.

(a)(1) Any two (2) or more cooperatives may enter into an agreement subject to the approval by the Arkansas Public Service Commission for the consolidation of the cooperatives.

(2) The agreement shall set forth the terms and conditions of the consolidation, the name and the proposed consolidated cooperative, the number of its directors, which shall be not less than five (5), the time of the annual meeting and election, and the names of at least five (5) persons to be directors until the first annual meeting.

(3) Unless otherwise provided in the bylaws of either of the proposed consolidating cooperatives, if the agreement is approved by the votes of a majority of the members of each cooperative present in person or by proxy at any regular meeting, or at any special meeting of its members called for that purpose, the directors named in the agreement shall sign and acknowledge as incorporators articles of consolidation conforming substantially to the original articles of incorporation of the cooperatives organized under this subchapter.

(b) The articles of consolidation shall be executed, acknowledged, filed, and recorded in the same manner as the articles of incorporation of a cooperative organized under this subchapter.

(c) As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording and issued a certificate of consolidation, the proposed consolidated cooperative described in the articles as its designated name shall be and become a body corporate with all of the powers of a cooperative as originally organized hereunder.

(d) All of the rights, privileges, immunities, and franchises and all real and personal property including, without limitation, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating cooperatives shall be deemed to be transferred to

and vested in the new cooperative without further act or deed.

(e) The new cooperative shall be responsible and liable for all of the liabilities and obligations of each of the consolidating cooperatives. Any claim existing or actions or proceeding pending by or against any of the consolidating cooperatives may be prosecuted as if the consolidation had not taken place, but the new cooperative may be substituted in its place.

(f) Neither the rights of creditors nor any liens upon the property of any of the consolidating cooperatives shall be impaired by the consolidation."

SECTION 16. Arkansas Code 23-17-227 is hereby amended to read as follows:

"23-17-227. Certificates of public convenience and necessity.

(a) No cooperative shall undertake the construction, extension, or operation of any facilities for supplying or furnishing telecommunications service unless and until there has been secured from the Arkansas Public Service Commission a certificate that the present or future public convenience and necessity require, or will require, such construction, extension, or operation.

(b) All petitions for certificates of convenience and necessity filed with the commission pertaining to telecommunications service shall be accompanied by a map on a legible scale showing the location or proposed location of central office equipment, the initial rate area, the exchange area, and, in the case of a then-operating company, the additional areas proposed to be served;

(c) Any petitions filed with the commission may, for the purpose of a hearing, be consolidated with other similar pending petitions. Such petitions shall be heard and disposed of as expeditiously as possible, provided that notice of the date of hearing and copy of the petition shall be served upon all telecommunications companies affected, or likely to be affected, by any order entered on any such petitions.

(d)(1) The commission, in granting any certificate, may allocate areas between telecommunications companies and cooperatives and charge them with the responsibility of furnishing telecommunications service in the respective areas so allocated.

(2) No area then being furnished with reasonably adequate telecommunications service by a telecommunications company or a cooperative shall be assigned to another cooperative or telecommunications company."

SECTION 17. Arkansas Code 23-17-228(b)(2) is hereby amended to read as follows:

"(2) In the case of a cooperative authorized to issue shares of stock, the bylaws and contracts shall provide that no moneys shall be paid, except after the declaration or payment of dividends on the outstanding shares of stock in accordance with the certificate of incorporation of the cooperative and the bylaws or contracts shall otherwise be consistent with cooperatives' obligations in respect to the shares of stock."

SECTION 18. Arkansas Code 23-17-229 is hereby amended to read as follows:

"23-17-229. Use of revenues. The revenues of the cooperative shall be devoted to:

(1) The payment of operating and maintenance expenses, the rendition of efficient service, and the creation of adequate depreciation reserves sufficient to maintain the investment in facilities;

(2) The payment of the principal and interest on outstanding obligations;

- (3) The payment of dividends on stock issued and outstanding, if any;
- (4) The creation of such reserves for improvements, construction, and contingencies as the board from time to time may prescribe; and
- (5) For any other purposes authorized by law."

SECTION 19. Arkansas Code 23-17-320 is hereby amended to read as follows:

"23-17-230. Taxation - Exemptions. Cooperatives formed under this subchapter shall continue to be exempt from all other excise taxes of whatsoever kind or nature except the Arkansas gross receipts tax and the Arkansas compensating tax."

SECTION 20. Arkansas Code 23-17-234 is hereby amended to read as follows:

"23-17-234. Connection, interconnection, etc., of lines, facilities, and systems. The Arkansas Public Service Commission shall have the power and jurisdiction, upon the petition of any interested party, to order and direct the connection or interconnection, and the points thereof, of the lines, facilities, and systems of any cooperative with the lines, facilities, and systems of any telecommunications company or cooperative. However, the connection or interconnection shall be in such manner, at such points, and according to such specifications as will not interfere with or impede the service supplied by a telecommunications company or other cooperative."

SECTION 21. Arkansas Code 23-17-235 is hereby amended to read as follows:

"23-17-235. Liabilities of connecting companies or cooperatives. No telecommunications company or cooperative whose facilities are connected or interconnected with those of another telecommunications company or cooperative shall be liable for the failure of service, construction, maintenance, or operation not occurring on, or occasioned by, its own facilities."

SECTION 22. Arkansas Code 23-17-236 is hereby amended to read as follows:

"23-17-236. Construction standards. Construction of telecommunications lines and facilities by a telecommunications company or cooperative shall, as minimum requirement, comply with the standards of the National Electric Safety Code in effect at the time of the construction or requirements set up by the Arkansas Public Service Commission. Construction shall be in such manner and according to such specifications as will avoid interference with, or hazards to, existing telecommunications lines, facilities, or systems."

SECTION 23. Arkansas Code 23-17-237 is hereby amended to read as follows:

"23-17-237. Limitation of actions. No suit shall be brought against any telecommunications company or cooperative by the reason of the maintenance of telecommunications lines, poles, equipment, or fixtures on any real property, or within any right-of-way of any public way, unless it is commenced within two (2) years after the cause of action has accrued."

SECTION 24. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 25. All laws and parts of laws in conflict with this Act are

hereby repealed.

APPROVED: March 9, 1989

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