

1 INTERIM STUDY PROPOSAL 2013-027

2 State of Arkansas

As Engrossed: S3/26/13

3 89th General Assembly

A Bill

4 Regular Session, 2013

SENATE BILL 1045

5
6 By: Senator L. Chesterfield

7 Filed with: Senate Committee on Transportation, Technology and Legislative Affairs

8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT TO SUPPORT AND DEVELOP BROADBAND
11 INFRASTRUCTURE AND BROADBAND EXPANSION; TO CREATE
12 INCENTIVES TO IMPROVE INTERNET ACCESS AND INTERNET
13 CAPABILITIES BY ESTABLISHING BROADBAND PROVIDERS OF
14 LAST RESORT; AND FOR OTHER PURPOSES.

16 Subtitle

17 TO SUPPORT AND DEVELOP BROADBAND
18 INFRASTRUCTURE AND BROADBAND EXPANSION;
19 TO CREATE INCENTIVES TO IMPROVE INTERNET
20 ACCESS AND INTERNET CAPABILITIES BY
21 ESTABLISHING BROADBAND PROVIDERS OF LAST
22 RESORT.
23

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25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27
28 *SECTION 1. Arkansas Code Title 23, Chapter 17, is amended to add an*
29 *additional subchapter to read as follows:*

30 Subchapter 5. Broadband Provider of Last Resort

31 32 23-17-501. Title.

33 This subchapter shall be known and may be cited as the "Broadband
34 Provider of Last Resort Act".

35 36 23-17-502. Definitions.

1 As used in this subchapter:

2 (1) "Approved alternative technology" means technology that:

3 (A) Offers service and functionality comparable to that
4 provided through an exiting provider's facilities, as determined by the
5 Arkansas Public Service Commission;

6 (B) May include a technology that does not require the use
7 of a public right-of way; and

8 (C) Is approved by the commission for deployment in a
9 particular service area;

10 (2) "Basic telecommunications service" means the service
11 provided to the premises of residential or business customers composed of the
12 following:

13 (A) Voice-grade access to the public switched network with
14 ability to place and receive calls;

15 (B) Touch-tone service availability;

16 (C) Flat-rate residential local service and business local
17 service;

18 (D) Access to emergency services where provided by local
19 authorities;

20 (E) Access to basic operator services;

21 (F) A standard white-page directory listing;

22 (G) Access to basic local directory assistance;

23 (H) Access to long distance toll service providers; and

24 (I) The minimum service quality as established and
25 required by the commission on February 4, 1997;

26 (3) "Broadband" means any service used to provide Internet
27 access at a minimum speed of four megabits per second (4 Mbps);

28 (4) "Competing local exchange carrier" means a local exchange
29 carrier that is not an incumbent local exchange carrier;

30 (5) "Exchange access" means offering access to telephone
31 exchange services or facilities for the purpose of originating or terminating
32 telephone toll services;

33 (6) "Exiting provider" means an entity that:

34 (A) Is the predominant local exchange carrier in a local
35 exchange area; and

1 (B) Ceases operation in all or part of the local exchange
2 area;

3 (7) "Facilities-based local exchange carrier" means a local
4 exchange carrier that provides local exchange service:

5 (A) Exclusively over facilities owned or leased by the
6 carrier; or

7 (B) Predominantly over facilities owned or leased by the
8 carrier, in combination with the resale of the telecommunications service or
9 broadband service of another carrier;

10 (8) "Incumbent local exchange carrier" means a local exchange
11 carrier and the successors and assigns of the local exchange carrier that are
12 certified by the commission to operate in a local exchange area and were
13 providing basic local exchange service on February 8, 1996;

14 (9) "Local exchange area" means the geographic area approved by
15 the commission within which a local exchange carrier is authorized to provide
16 basic local exchange services and switched-access services;

17 (10)(A) "Local exchange carrier" means a telecommunications
18 provider of basic local exchange service and switched-access service.

19 (B) "Local exchange carrier" does not include a commercial
20 mobile telephone service provider;

21 (11) "Local exchange service" means the provision of telephone
22 exchange service or exchange access;

23 (12) "Provider of last resort" means an entity that is required
24 by this subchapter to provide broadband to its customers; and

25 (13) "Successor provider" means an entity that is or is
26 designated to become, the provider of last resort for all or part of a
27 defined geographic area previously served by an exiting provider.

28
29 23-17-503. Broadband obligations of provider of last resort.

30 A provider of last resort shall provide broadband upon request by a
31 customer within its local exchange area.

32
33 23-17-504. Obligations of incumbent local exchange carrier as provider
34 of last resort – Satisfaction of obligations using any available technology.

35 (a) Except as provided in § 23-17-506 or § 23-17-509, an incumbent
36 local exchange carrier has the obligations of the provider of last resort.

1 (b) An incumbent local exchange carrier may meet the local exchange
2 carrier's obligations under this section using any available technology.

3
4 23-17-505. Exiting provider – Advance notice required – Liability for
5 charges owed to other providers.

6 (a) An exiting provider shall provide advance notice of at least sixty
7 (60) days to the Arkansas Public Service Commission and each affected
8 customer and wholesale provider before:

9 (1) Ceasing to serve all or part of the provider's defined
10 service area; or

11 (2) Filing for bankruptcy.

12 (b) The notice required by subsection (a) of this section shall:

13 (1) Be submitted in the form and manner prescribed by the
14 commission; and

15 (2) Include at least one (1) toll-free customer service
16 telephone number maintained by the provider to facilitate the continuation of
17 service and the transition of customers to other providers.

18 (c) The exiting provider is liable for all charges incurred by its
19 customers or other providers to transition a customer to another provider.

20
21 23-17-506. Relief from provider of last resort obligations –
22 Installation of facilities by another provider.

23 (a) A designated provider of last resort or another provider may
24 petition the Arkansas Public Service Commission for an order relieving the
25 designated provider of all or part of its obligations as the provider of last
26 resort in an area if:

27 (1) A local exchange carrier that is not the designated provider
28 of last resort or a provider of broadband services installs facilities to
29 provide broadband in the area; and

30 (2) The designated provider of last resort for the area has not
31 installed adequate facilities to serve all customers in the area.

32 (b) The commission shall relieve the designated provider of last
33 resort from all or part of its obligations as the provider of last resort for
34 the area and shall designate the entity making the installation under
35 subsection (a) of this section as the provider of last resort for all or part
36 of the area if the commission determines that:

1 (1) The designated provider of last resort does not have
2 facilities in place to provide broadband to all customers in the area; and

3 (2) The entity making the installation under subsection (a) of
4 this section has installed facilities adequate to provide broadband to all or
5 part of the area.

6 (c) The commission shall make the determination required by subsection
7 (b) of this section within sixty (60) days after the petition is filed with
8 the commission under subsection (a) of this section.

9
10 23-17-507. Notice of exiting provider – Appointment of successor –
11 Temporary exemption from certain requirements – Arkansas High Cost Fund
12 support – Transfer of customers.

13 (a) Except as provided in §§ 23-17-508 and 23-17-509, the Arkansas
14 Public Service Commission shall conduct a formal proceeding to determine a
15 successor provider for all or part of the area if:

16 (1) The commission receives notice that an exiting provider will
17 cease operation in all or part of the exiting provider’s local exchange area;
18 and

19 (2) Another provider does not have facilities sufficient to
20 provide basic telecommunications service or broadband in the local exchange
21 area.

22 (b) After determining a successor provider for the affected area under
23 subsection (a) of this section, the commission shall allow the successor
24 provider the following as necessary to serve the customers of the exiting
25 provider:

26 (1) A reasonable time in accordance with industry practices to:

27 (A) Modify, construct, or obtain facilities; or

28 (B) Deploy an approved alternative technology;

29 (2) A temporary exemption from a lawful obligation to unbundle
30 the successor provider’s network elements for a period determined by the
31 commission to be reasonably necessary to allow the successor provider to:

32 (A) Modify, construct, or obtain facilities; or

33 (B) Deploy an approved alternative technology; and

34 (3) A temporary exemption from a lawful obligation to provide
35 telecommunications service for resale and broadband within the affected area

1 for a period determined by the commission to be reasonably necessary to allow
2 the successor provider to:

3 (A) Modify, construct, or obtain facilities; or

4 (B) Deploy an approved alternative technology.

5 (c) The successor provider is entitled to obtain funding from the
6 Arkansas High Cost Fund to support the successor provider's assumption of
7 obligations as the provider of last resort for all or part of the area.

8 (d)(1) A customer within the defined geographic area to be served by
9 the successor provider of basic telecommunications service is considered to
10 have applied for basic telecommunications service from the successor provider
11 on the effective date of the commission's designation of the successor
12 provider.

13 (2) Each right, privilege, and obligation applicable to
14 customers of the successor provider applies to a customer transferred to the
15 successor provider under this section.

16 (3) A customer transferred to the successor provider under this
17 section is subject to the successor provider's terms of service as specified
18 in an applicable tariff or contract.

19 (e) This section does not prohibit:

20 (1) A customer from seeking, at any time, service from a
21 provider other than the successor provider; or

22 (2) A provider from voluntarily:

23 (A) Serving customers in the affected area; or

24 (B) Purchasing the facilities of the exiting provider.

25
26 23-17-508. Provider's cessation of local exchange service or
27 abandonment of facilities – Commission's declaration of emergency –
28 Designation of successor provider.

29 (a) The Arkansas Public Service Commission may on its own motion or on
30 the petition of an interested party institute an expedited proceeding under
31 this section if the commission determines that:

32 (1) A facilities-based local exchange carrier is authorized to
33 provide local exchange service in all or part of a local exchange area;

34 (2) A competing local exchange carrier does not have facilities
35 sufficient to provide local exchange service in the area; and

36 (3) The facilities-based local exchange carrier has:

1 (A) Ceased providing local exchange service to the
2 customers in the area; or

3 (B) Abandoned the operation of the facilities-based local
4 exchange carrier's facilities in the area that are used to provide local
5 exchange service.

6 (b)(1) In a proceeding under this section, the commission may declare
7 that an emergency exists and issue any order to protect the health, safety,
8 and welfare of affected customers and to expedite the restoration or
9 continuation of local exchange service or broadband to the affected
10 customers.

11 (2) An order issued under subdivision (b)(1) of this section
12 may:

13 (A) Provide for the temporary operation of the facilities-
14 based local exchange carrier's facilities by another provider;

15 (B) Authorize one (1) or more third parties to enter the
16 premises of an abandoned facility; or

17 (C) Grant temporary waivers from quality-of-service
18 requirements for a provider:

19 (i) Providing temporary service under subdivision
20 (b)(2)(A) of this section; or

21 (ii) Designated as a successor provider by the
22 commission under subsection (c) of this section.

23 (c) Except as provided in § 23-17-509, the commission may act under §
24 23-17-507 to designate a successor provider in a proceeding under this
25 section.

26
27 23-17-509. Exclusive service arrangements – Relief from obligations as
28 provider of last resort.

29 (a) If a competing local exchange carrier operates under an
30 arrangement by which the competing local exchange carrier is the exclusive
31 provider of basic telecommunications service for a particular geographic
32 area, building, or group of residences and businesses, the incumbent local
33 exchange carrier is relieved of its obligations as a provider of last resort,
34 and the competing local exchange carrier has the obligations of a provider of
35 last resort with respect to the particular geographic area, building, or
36 group of residences and businesses.

