

ARKANSAS SENATE
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of Senate Bill No. 1085

"AN ACT CONCERNING HIGH-COST FUNDING FOR ELIGIBLE
TELECOMMUNICATIONS CARRIERS."

Amendment No. 2 to Senate Bill No. 1085.

Amend Senate Bill No. 1085 as engrossed, S4/6/05 (version: 04-06-2005 08:43)

Delete the title of the bill and substitute the following: "AN ACT CONCERNING PAYMENTS FROM THE ARKANSAS UNIVERSAL SERVICE FUND; CONCERNING ELIGIBLE TELECOMMUNICATIONS CARRIERS; AND FOR OTHER PURPOSES."

AND

Delete the subtitle of the bill and substitute the following: "AN ACT CONCERNING PAYMENTS FROM THE ARKANSAS UNIVERSAL SERVICE FUND AND CONCERNING ELIGIBLE TELECOMMUNICATIONS CARRIERS."

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 23-17-404 is amended to read as follows:
23-17-404. Preservation and promotion of universal service.

(a)(1) The Arkansas Universal Service Fund (AUSF) is established by this section in order to promote and assure the availability of universal service at rates that are reasonable and affordable and to provide for reasonably comparable services and rates between rural and urban areas.

(2) The AUSF will provide funding to eligible telecommunications carriers that provide basic local exchange services over ~~facilities owned~~ their own facilities or a combination of their own facilities and resale of another carrier's services by the eligible telecommunications carrier.

(3) The AUSF shall be designed to provide predictable, sufficient, and sustainable funding to eligible telecommunications carriers serving rural or high-cost areas of the state.

(b)(1) The AUSF is to provide a mechanism to restructure the present system of telecommunication service rates in the state as provided herein, and all telecommunications providers, except as prohibited by federal law, shall be charged for the direct and indirect value inherent in the obtaining and preserving of reasonable and comparable access to telecommunications services in the rural or high-cost areas. The value and utility of access to and interconnection with the public switched network will be lessened if the rural or high-cost areas do not have comparable access and subscribership.



(2)(A) This AUSF charge for all telecommunications providers shall be proportionate to each provider's Arkansas intrastate retail telecommunications service revenues.

(B) Because customers of the telecommunications providers that would pay the AUSF charge receive the benefits of a universal network, the telecommunications providers may surcharge their customers to recover the AUSF charges paid by the telecommunications provider. Therefore, the AUSF charge is not a tax and is not affected by state laws governing taxation.

(C) For the purpose of assessing mobile telecommunications services, the administrator shall continue to assess only Arkansas intrastate retail telecommunications service revenues and only to the extent such revenues may be considered located in the State of Arkansas in accordance with the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252.

(c)(1)(A) The Arkansas Public Service Commission shall delegate to a trustee, the "administrator", the administration, collection, and distribution of the AUSF in accordance with the rules and procedures established by the commission and consistent with this subchapter.

(B) The Arkansas Public Service Commission shall take reasonable action to ensure that the administrator has the capability and capacity to perform its function in a timely and effective manner. The commission shall seek proposals from appropriate entities.

(2)(A) The administrator shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the AUSF.

(B) Within sixty (60) days after receipt of a request for AUSF funds, the administrator shall review and determine the accuracy and appropriateness of the request and advise the entity requesting the funds of his or her determination.

(C) The affected parties shall have thirty (30) days to request reconsideration by the commission of the administrator's determination, and the commission after notice and hearing, if requested, shall issue its opinion on the reconsideration within thirty (30) days after the request of reconsideration.

(D) Persons aggrieved by the commission's opinion shall have the right to appeal the opinion in accordance with law.

(d)(1) The AUSF administrator periodically shall establish and notify each telecommunications provider of the AUSF charge levels required to be paid by the telecommunications provider.

(2) Any telecommunications provider that without just cause fails to pay the AUSF charge that is due and payable pursuant to this section after notice and opportunity for hearing shall have its authority to do business as a telecommunications provider in the State of Arkansas revoked by the commission.

(3) The AUSF charge shall not be subject to any state or local tax or franchise fees.

(4) The commission is authorized to increase the AUSF charge by those amounts necessary to recover the cost of administration of the AUSF.

(e) After reasonable notice and hearing, the commission shall establish rules and procedures necessary to implement the AUSF. The commission shall implement the AUSF and make AUSF funds available to eligible telecommunications carriers no later than ninety (90) days following the later of February 4, 1997, or the effective date of a Federal Communications

Commission order pursuant to 47 U.S.C. § 254 that approves, establishes, or modifies interstate universal service funding. Prior to the implementation and availability of funds from the AUSF, the commission shall not require any local exchange carrier to reduce rates for intrastate switched-access services or require any local exchange carrier to reduce its net revenue received from the Arkansas IntraLATA Toll Pool (AITP). In establishing and implementing the AUSF, the commission shall adhere to the following instructions and guidelines:

(1)(A) AUSF funding shall be provided directly to eligible telecommunications carriers~~+~~.

(B) In order for an eligible telecommunications carrier to receive funds from the AUSF, the eligible telecommunications carrier must agree to be subject to the telecommunications provider rules promulgated by the commission;

(2)(A) After reasonable notice and hearing, the commission may revise the list of universal services identified in § 23-17-403 that may be supported by the AUSF to establish and maintain end-user rates for universal services that are reasonably comparable between urban and rural areas or to reflect changes in the type and quality of telecommunications services considered essential by the public, as evidenced, for example, by those telecommunication services that are purchased and used by a majority of single-line urban customers. At the hearing, the commission shall consider the cost to customers in mandating changes to the list and balance the justification for including the service on the list versus its impact on AUSF assessments.

(B) The commission shall determine and approve AUSF funding to eligible telecommunications carriers to recover the cost of additions or revisions to the universal service list concurrent with any such revisions to the list of universal services identified in § 23-17-403;

(3) If the commission establishes or utilizes a minimum or threshold universal service rate, threshold rate, for the purpose of determining the amount of AUSF that an eligible telecommunications carrier may receive, the commission shall adhere to the following requirements:

(A) A rate case proceeding or earnings investigation or analysis shall not be required or conducted in connection with the determination or implementation of increases in universal service rates associated with commission use of a threshold rate, and the increases shall not be included in the calculation of the basic local exchange service rate increase limits specified in §§ 23-17-407 and 23-17-412; and

(B) The commission may not require a reduction in universal service rates to a threshold rate unless any associated decrease in revenues is allowed to be concurrently recovered from the AUSF;

(4)(A)(i) In the event of a Federal Communications Commission order, rule, or policy pursuant to 47 U.S.C. § 254(a)(2), the effect of which is to change the federal Universal Service Fund revenues of an incumbent local exchange carrier, the commission shall either increase the rates for basic local exchange service or increase the incumbent local exchange carrier's recovery from the AUSF or a combination thereof to replace the reasonably projected change in revenues.

(ii) In determining whether to increase basic local exchange service rates or increase the AUSF for a tier one company pursuant to this section, the commission shall take into account that company's rates

and consider whether the rates are below the statewide average.

(B)(i)(a) Through December 31, 2003, any rural telephone company, excluding tier one companies, that, as a result of changes caused by new or existing federal or state regulatory or statutory directives, experiences a change in intrastate or interstate switched-access services revenues or in net revenue received from the intrastate Carrier Common Line Pool, interstate access charge pools, or the Arkansas IntraLATA Toll Pool shall be allowed to recover the reductions from the AUSF or through modifications in rates applicable to basic local exchange service. The recovered amounts shall be limited to the net reduction in revenues from all sources of support listed in subdivision (e)(4)(A) of this section and this subdivision (e)(4)(B).

(b) Beginning January 1, 2004, any rural telephone company, excluding tier one companies, that, as a result of changes caused by new or existing federal or state regulatory or statutory directives, experiences a change in intrastate or interstate switched-access services revenues or in net revenue received from the intrastate Carrier Common Line Pool prior to January 1, 2004, interstate access charge pools, or the Arkansas IntraLATA Toll Pool shall be allowed to recover the reductions from the AUSF or through modifications in rates applicable to basic local exchange service. The recovered amounts shall be limited to the net reduction in revenues from all sources of support listed in subdivision (e)(4)(A) of this section and this subdivision (e)(4)(B).

(ii)(a) This subdivision (e)(4)(B)(ii) shall become effective on January 1, 2004.

(b) No ILEC shall receive reimbursement from the AUSF for losses resulting from exiting the AICCLP or for a reduction of its carrier common line net revenue requirement unless:

(1) The ILEC is eligible to be in the AICCLP on January 1, 2004; and

(2)(A) The AICCLP no longer provides a mechanism by which ILECs may recover their carrier common line net revenue requirements.

(B)(i) If any provision of the AICCLP is declared invalid for any reason or preempted by any court or any administrative agency and the Arkansas Public Service Commission determines that the provision is material, then each AICCLP member shall individually compute and charge a per-access minute carrier common line rate to fund its carrier common line net revenue requirement.

(ii) The AICCLP members shall charge the rate under subdivision (e)(4)(B)(ii)(b)(2)(B)(i) of this section to underlying carriers.

(iii) The ILECs shall charge a reciprocal rate to other ILECs.

(iv) The commission may review the accuracy of the reciprocal rates and the per-access minute carrier common line rate charged under subdivision (e)(4)(B)(ii)(b)(2)(B) of this section.

(c) If the AICCLP fails to provide an ILEC's carrier common line net revenue requirement, the commission shall provide for concurrent recovery of the revenue loss from the AUSF, basic local exchange rates, or a combination thereof.

(C) In connection with the receipt of AUSF funds for these changes referred to in subdivisions (e)(4)(A) or (B) of this section, it shall not be conditioned upon any rate case or earnings investigation by the commission. The AUSF administrator shall verify the calculations and accuracy of the net revenue reductions, based on a comparison between:

(i) The total annual revenues received from these sources by the eligible telecommunications carrier during the most recent twelve (12) months preceding the required regulatory or statutory changes; and

(ii) The reasonable projection of total test-year annual revenue after the changes are implemented.

(D)(i)(a) Through December 31, 2003, except as provided in this subdivision (e)(4)(D), the intrastate Carrier Common Line Pool charges billed to carriers by the Arkansas Intrastate Carrier Common Line Pool (AICCLP) shall be determined as provided in the AICCLP tariff effective on December 31, 2000. Following April 20, 2001, carriers must continue to report RBMOUs associated with the traffic that they reported as of December 2000 except that incumbent local exchange carriers may discontinue reporting RBMOUs associated with their intracompany flat-rated optional plans that exist as of June 1, 2001. The AICCLP charges shall be adjusted to eliminate any credits to the AICCLP or to interexchange carriers that have been previously required.

(b) Beginning January 1, 2004, except as provided in this subdivision (e)(4)(D), the intrastate Carrier Common Line charges billed to ILECs and underlying carriers shall be determined at the rate of one and sixty-five hundredths cents (1.65¢) per intrastate access minute, exclusive of the amounts specified in subdivisions (e)(4)(D)(ii), (iii), and (iv) of this section. However, ILECs that are not AICCLP members may charge at a rate that is less than one and sixty-five hundredths cents (1.65¢) and may recover the difference between the actual rate charged and one and sixty-five hundredths cents (1.65¢) as allowed under § 23-17-416(b)(3). Following April 20, 2001, carriers must continue to report RBMOUs associated with the traffic that they reported as of December 2000 and shall continue to report through December 31, 2003, except that incumbent local exchange carriers may discontinue reporting RBMOUs associated with their intracompany flat-rated optional plans that exist as of June 1, 2001. The AICCLP charges shall be adjusted to eliminate any credits to the AICCLP or to interexchange carriers that have been previously required.

(ii)(a) There is created an allocation of AICCLP funds to be known as the "Extension of Telecommunications Facilities Fund".

(b) A maximum of five hundred thousand dollars (\$500,000) per year of AICCLP funds shall be allocated to fund the Extension of Telecommunications Facilities Fund to assist in the extension of telecommunications facilities to citizens not served by the wire line facilities of an eligible telecommunications carrier.

There is also created an AICCLP allocation to be known as the "Arkansas Calling Plan Fund".

(2) Through December 31, 2003, the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be funded by the AICCLP by assessing one-half (1/2) of the fund to be paid by ILECs and one-half (1/2) of the fund to be paid by all other telecommunications providers reporting intrastate retail billed minutes of

use to the AICCLP.

(b) The Arkansas Calling Plan Fund shall receive a maximum of four million five hundred thousand dollars (\$4,500,000) per year to assist in funding the provision of calling plans in telephone exchanges in the state.

(iv)(a) Through December 31, 2003, the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be funded by the AICCLP assessing one-half (1/2) of the fund to be paid by incumbent local exchange carriers (ILECs) and one-half (1/2) of the fund to be paid by all other telecommunications providers reporting intrastate retail billed minutes of use to the AICCLP. Beginning January 1, 2004, the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be paid by the AICCLP members, exiting ILECs, and underlying carriers as follows:

(1) Each AICCLP member and each exiting ILEC shall remit to the AICCLP administrator on a monthly basis the proportion of the total assessment each was paying before December 31, 2003, for a collective total of one-half (1/2) of those funds;

(2) Underlying carriers shall pay to the administrator a collective total of one-half (1/2) of the cost of the Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund; and

(3) Each underlying carrier shall continue to remit to the administrator on a monthly basis its portion of the underlying carrier funding requirement of the Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund, based upon the underlying carrier's share of Arkansas intrastate telecommunications services revenues and special intrastate ILEC revenues proportionate to the total Arkansas intrastate telecommunications services revenues and special intrastate ILEC revenues of all underlying carriers.

(b) Through December 31, 2003, ILECs shall be individually assessed in accordance with the proportion that the ILEC funds the AICCLP credits that are being eliminated by this section, and each other telecommunications provider shall be assessed based on its portion of the total non-ILEC intrastate retail billed minutes of use.

(c) Amounts paid by ILECs to fund either the Extension of Telecommunications Facilities Fund or the Arkansas Calling Plan Fund created by this section shall not be recoverable from the Arkansas Universal Service Fund (AUSF).

The assessments shall commence upon the first day of the month following April 20, 2001.

(2) The first four million dollars (\$4,000,000) shall be allocated monthly as collected to assure that the AUSF has adequate funds to compensate any retroactive claims that may be made against the AUSF due to the change in the test period resulting from the decision in AT&T Communications of the S.W., Inc. v. Arkansas Pub. Serv. Comm'n, 344 Ark. 188, 40 S.W.3d 273 (2001).

(3) Following the allocation to the AUSF, assessments shall be made with respect to the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund only to the extent necessary, but not more than the maximum specified in this section, to fund any extensions of facilities or calling plans approved by the Arkansas Public Service Commission in accordance with applicable law and this section.

(v)(a) AICCLP charges determined and billed through December 2000 shall be considered final and not subject to further true up or adjustment.

(b) In addition, if an eligible telecommunications carrier was financially harmed by a court-ordered change in the test period applicable for the AUSF funding and an alternate test period was used by the eligible telecommunications carrier for more than one (1) year, then the test period for the harmed eligible telecommunications carrier shall remain the test period originally set by the commission.

Unless an audit is requested prior to February 28, 2004, by a two-thirds (2/3) vote of the participating carriers of the AICCLP as it is constituted prior to January 1, 2004, charges determined and billed through December 2003 shall be considered final and not subject to audit.

(2) The administrator of the AICCLP as it existed prior to January 1, 2004, may supervise any audit that is requested and may further take any action deemed reasonable or necessary to finalize the winding-up process of the AICCLP as it existed prior to January 1, 2004;

(5) All eligible telecommunications carriers may request high-cost funding from the AUSF as necessary in the future to maintain rates for universal services that are reasonable, affordable, and comparable between urban and rural areas. Except as otherwise provided in this subchapter, the funding shall be based on all net investment, including embedded investment, and expenses incurred by the eligible telecommunications carriers in the provision of universal service. High-cost funding shall be provided to eligible telecommunications carriers as needed for the following:

(A) Investments and expenses required to provide, maintain, and support universal services;

(B) Infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory, judicial authority, or governmental entity; and

(C) For other purposes deemed necessary by the commission to preserve and advance the public education and welfare;

(6) In identifying and measuring the costs of providing universal services, exclusively for the purpose of determining high-cost funding levels under this subdivision (e)(6), eligible telecommunications carriers shall have the following options:

(A) The eligible telecommunications carrier may utilize traditional rate case methods and procedures to identify universal service revenue requirements and a residual AUSF funding requirement;

(B) The eligible telecommunications carrier may identify high-cost areas within its local exchange area, the area being no smaller than a single exchange or wire center, and perform a fully distributed allocation of cost and identification of associated revenue in order to quantify funding needs for the areas; or

(C) The commission shall adopt reasonable cost proxies that may be used by an eligible telecommunications carrier for this purpose;

(7) In calculating revenue requirements only for the purpose of establishing high-cost funding needs from the AUSF, the commission shall not fix depreciation rates. However, the commission may make reasonable adjustments to depreciation expense if an eligible telecommunications carrier's composite depreciation annual accrual rate is greater than the weighted average of composite rates for similar plant and equipment of all

other telecommunications providers providing comparable services in the state. In that case, the commission may adjust depreciation expenses of the eligible telecommunications carrier to levels that would not exceed fifteen percent (15%) above a composite accrual rate comparable to the statewide weighted average; ~~and~~

(8)(A)(i) The commission shall establish by regulation a grant program to make grants available to eligible telecommunications carriers for the extension of facilities to citizens who are not served by wire line services of an eligible telecommunications carrier. Grants may be requested by an eligible telecommunications carrier or citizens who are not served or both.

(ii) The commission shall delegate to a trustee the administration, collection, and distribution of the Extension of Telecommunications Facilities Fund in accordance with the rules and procedures established by the commission. The trustee shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the Extension of Telecommunications Facilities Fund.

(B)(i) In establishing regulations for the grant program, the commission shall consider demonstrated need, the length of time the citizens have not been served, the households affected, the best use of the funds, and the overall need for extensions throughout the state.

(ii) The commission may require each potential customer to be served by the extension of facilities to pay up to two hundred fifty dollars (\$250) of the cost of extending facilities.

(C) The plan shall be funded by customer contributions and by the Extension of Telecommunications Facilities Fund established by subdivision (e)(4)(D) of this section.

(D)(i) The commission shall provide quarterly reports to the Legislative Council. The reports shall include, but shall not be limited to, the number of requests for grants, the number of grants awarded, the amount awarded, and the number of additional customers served.

(ii) The commission shall notify members of the General Assembly of grants made in their districts.

(E) In order to allow time for potential applicants to request grants, no grants shall be awarded for three (3) months after the effective date of the rules establishing the program; ~~and~~

(9)(A) Through a surcharge on its customer bills over its total customer access base, an eligible ILEC may recover any reduction in its AUSF payments up to the amount authorized by the AUSF administrator as of July 1, 2005.

(B) The surcharge is not a tax.

(C)(i) For an electing company under § 23-17-401, the surcharge shall be in addition to any rate increase authorized under § 23-17-401.

(ii) For a non-electing ILEC, no general rate application or earnings review shall be required to implement the surcharge.

(f) On or within thirty (30) days following the fifth anniversary of February 4, 1997, the commission and the AUSF administrator shall complete and deliver a report on the status and performance of the AUSF to the Legislative Council.

(g) The current Universal Telephone Service Fund established pursuant to § 23-17-301 et seq. will continue to exist until the AUSF is funded and

operational. At that time any funds remaining in the current fund will be transferred to the AUSF, and the current fund will no longer be operational.

(h) The commission shall adopt portability rules as necessary to allow competitive eligible telecommunications carriers to have access to the AUSF funds of eligible telecommunications carriers receiving funds from the AUSF. The commission shall consider cost issues and quality of service issues in the rule making process.

SECTION 2. Arkansas Code § 23-17-405 is amended to read as follows:
23-17-405. Eligible telecommunications carrier.

(a) The incumbent local exchange carrier, its successors and assigns, which owns, maintains, and provides facilities for universal service within a local exchange area on February 4, 1997, shall be the eligible telecommunications carrier within the local exchange area.

(b) Where the incumbent local exchange carrier receives AUSF support, ~~except in areas served by rural telephone companies,~~ the Arkansas Public Service Commission, consistent with 47 U.S.C. § 214(e)(2), after reasonable notice and hearing, may designate other telecommunications providers to be eligible for high-cost support pursuant to § 23-17-404 under the following conditions:

(1)(A) The other telecommunications provider accepts the responsibility to provide service to all customers in an incumbent local exchange carrier's local exchange area using its own facilities or a combination of its own facilities and resale of another carrier's services.

(B) High-cost support under this section will not begin until the telecommunications provider has facilities in place and offers to serve all customers in its service area;

(2) The telecommunications provider may only receive funding for the portion of its facilities that it owns and maintains;

(3) The telecommunications provider will not receive AUSF funding at a level higher than the level of funding received by the incumbent local exchange carrier in the same area;

(4) The telecommunications provider advertises the availability and the charges for the services, using media of general distribution; ~~and~~

(5) The telecommunications provider shall:

(A) Provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality, or capacity throughout the service area for which it seeks designation;

(B) Demonstrate its ability to remain functional in emergency situations;

(C) Demonstrate that it will satisfy consumer protection and service quality standards;

(D) Offer local usage plans comparable to those offered by the incumbent local exchange carrier in the area for which it seeks designation; and

(E) Acknowledge that it may be required to provide equal access if all other eligible telecommunications carriers in the designated service area relinquish their designations; and

(6) It is determined by the The commission determines that the designation is in the public interest after:

(A) Reviewing the benefits of increased consumer choice

and the unique advantages and disadvantages of the competitor's service offering;

(B) Examining the potential for cream-skimming effects in instances where the application seeks designation below the study area level of a rural incumbent local exchange carrier;

(C) Offering local usage plans comparable to those offered by the incumbent local exchange carrier in the area for which it seeks designation; and

(D) Acknowledging that it may be required to provide equal access if all other eligible telecommunications carriers in the designated service area relinquish their designations.

(c) In exchanges or wire centers where the commission has designated more than one (1) eligible telecommunications carrier, the commission shall permit a local exchange carrier to relinquish its designation as an eligible telecommunications carrier, consistent with 47 U.S.C. § 214(e)(4), upon a finding that at least one (1) eligible telecommunications carrier will continue to serve the area.

~~(d)(1) For the entire area served by a rural telephone company, excluding tier one companies, for the purpose of the AUSF and the federal Universal Service Fund, there shall be only one (1) eligible telecommunications carrier which shall be the incumbent local exchange carrier that is a rural telephone company.~~

~~(2) The rural telephone company may elect to waive its right to be the only eligible telecommunications carrier within the local exchange area by filing notice with the commission.~~

~~(3) If there is more than one eligible telecommunications carrier, an eligible telecommunications carrier may petition the commission and be granted relief from designation as an eligible telecommunications carrier.~~

(e) An eligible telecommunications carrier may use commercial mobile services to provide universal services.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the amendment of the Telecommunications Regulatory Reform Act of 1997 to ensure compliance with federal law and regulations and to continue to encourage investment in rural telecommunications; that any delay in the effective date of this act could create an undue burden upon Arkansas citizens and could work irreparable harm upon the efficient provision of telecommunications services in the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Horn

JDF/JDF - 04-06-2005 09:21

JDF478

Secretary