ARKANSAS SENATE

87th General Assembly - Regular Session, 2009

Amendment Form

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Subtitle of Senate Bill No. 808

"TO ENCOURAGE INVESTMENT IN TELECOMMUNICATIONS FACILITIES IN RURAL AREAS AND TO ASSIST LOW INCOME TELECOMMUNICATION CUSTOMERS."

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Amendment No. 1 to Senate Bill No. 808.

Amend Senate Bill No. 808 as originally introduced:

Delete the title in its entirety and substitute the following:
"AN ACT TO ENCOURAGE INVESTMENT IN TELECOMMUNICATIONS FACILITIES IN RURAL AREAS AND TO ASSIST LOW INCOME TELECOMMUNICATIONS CUSTOMERS; TO PROVIDE AN EMERGENCY EFFECTIVE DATE; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute:
"TO ENCOURAGE INVESTMENT IN
TELECOMMUNICATIONS FACILITIES IN RURAL
AREAS, TO ASSIST LOW INCOME
TELECOMMUNICATIONS CUSTOMERS, AND TO
PROVIDE AN EMERGENCY EFFECTIVE DATE."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 23-17-404(b)(2)(A), concerning the preservation and promotion of universal service through the Arkansas High Cost Fund, is amended to read as follows:

(2)(A)<u>(i)</u> ~~This AHCF charge for all telecommunications providers shall be proportionate to each provider's Arkansas intrastate retail telecommunications service revenues~~ <u>Every telecommunications provider, and to the extent not prohibited by federal law, every provider of interconnected VOIP service, as defined by 47 C.F.R. 9.3, as it existed on October 1, 2005, shall be assessed the AHCF charge on an equitable and nondiscriminatory basis.</u>

<u>(ii)(a) The AHCF charge shall be proportionate to each telecommunications provider's Arkansas intrastate telecommunications service revenue.</u>

<u>(b) However, interconnected VOIP providers shall identify intrastate revenue subject to the AHCF charge using the</u>

inverse of the current FCC safe harbor, for example 35.1% as of March 19, 2009, of all collected revenues, or after approval by the Arkansas Public Service Commission, using either direct assignment or a company-specific traffic study;

SECTION 2. Arkansas Code § 23-17-404(e)(2), concerning the preservation and promotion of universal service through the Arkansas High Cost Fund, is amended to read as follows:

(2)(A) The commission shall provide a report to the Legislative Council by October 31 of the year prior to a regular session of the General Assembly detailing any recommended changes to the universal service list of requirements that are to be supported by the AHCF. This list may be approved by the General Assembly, and if approved, the AHCF support to ETCs may be adjusted, due to the approved changes, to reflect an increase or decrease in the size of the AHCF by increasing or decreasing the overall financial cap on the AHCF 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.

(B) In considering revisions to the universal service list, the commission shall consider the need for the addition or removal of a service to the list in order to 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.

(C) A rate case proceeding or earning investigation or analysis shall not be required or conducted in connection with the recovery of the cost of additions or revisions or in connection with the administration of the AHCF~~;~~.

(D)(i) Beginning July 1, 2009, the AHCF shall consist of the following three (3) separate programs:

(a) The AHCF High Cost Program which is under the upper limit or “CAP” requirements of § 23-17-404;

(b) The State Lifeline Program which is separate from the AHCF High Cost Program and is not under the CAP requirements; and

(c) The AICCLP Funding Program which is separate from the AHCF High Cost Program and the State Lifeline Program and is not under the CAP requirements.

(ii)(a) The State Lifeline Program shall be administered by the AICCLP administrator and is designed to:

(1) Advance the goals of universal service and ensure that low-income residential customers within the State of Arkansas are provided financial assistance in maintaining basic local exchange telecommunications service; and

(2) Operate in conjunction with the Federal Lifeline Program to provide to qualifying residential subscribers for basic local exchange service:

(A) Full waiver of the End-User Common Line Charge; and

(B)(i) A monthly credit to the

subscriber's monthly bill; or

(ii) A reduced monthly rate.

(b)(1) The State Lifeline Program shall offer a reimbursement to eligible ETCs of up to three dollars and fifty cents ($3.50) per month to customers eligible for the Federal Low Income Discount Program.

(2)(A) The customer shall be a participant in the Federal Low Income Discount Program to receive the State Lifeline Program discount or reduced rate.

(B) The discount or reduced rate shall be applied to the customer's monthly bill.

(3) Only ETCs are eligible to provide the State Lifeline Program.

(4) The monthly credit to a qualifying residential subscriber shall not be more than the total amount of the subscriber's End-User Common Line Charge plus the monthly local service charge.

(c)(1) The AICCLP administrator will administer the State Lifeline Program similar to the Federal Low Income Discount Program is administered.

(2) Eligible ETCs shall petition the AICCLP monthly based on the number of Federal Low Income Discount Program recipients.

(3) The AHCF administrator shall transfer to the AICCLP administrator sufficient funds monthly to reimburse the State Lifeline Program.

(4) The AICCLP administrator shall verify that the ETC is eligible for the reimbursement and will then distribute funds to each eligible ETC.

(5) An ETC shall provide its results of the Federal Lifeline Program annual random sample process each year to the AICCLP administrator to verify continuity between the two (2) programs.

SECTION 3. The introductory language of Arkansas Code § 23-17-404(e)(4)(B)(iv)(a), concerning funding for the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund, is amended to read as follows:

(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, through June 30, 2009, 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:

SECTION 4. Arkansas Code § 23-17-404(e)(4)(B)(v)(b)(2), concerning the administration of telecommunication services and funding, is amended to read as follows:

(2)(A) 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.

(B)(i) Beginning July 1, 2009, the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund shall be funded through the AHCF under this subdivision (e)(4)(B)(v)(b)(2)(B).

(ii) The AHCF administrator shall calculate the necessary funding for the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund to the minimum extent of funding necessary not to exceed the maximum specified in this section, to fund any extensions of facilities or calling plans approved by the Commission in accordance with applicable law and this section.

(iii)(a) The funds calculated under subdivision (e)(4)(B)(v)(b)(2)(B)(ii) of this section shall be transferred to the AICCLP administrator monthly in sufficient quantities to fund the monthly commitment levels of the AICCLP administrator's funding obligations.

(b) The AICCLP administrator shall assist the AHCF administrator in developing estimates for the AHCF administrator to use in calculating the necessary funding amounts to be transferred.

SECTION 5. Arkansas Code § 23-17-404(e)(4)(E)(ii), concerning funds available for distribution from the AHCF High Cost Program, is amended to read as follows:

(ii)(a)(1) The funds available for distribution to ETCs from the AHCF High Cost Program shall not exceed and are capped at twenty-two million dollars ($22,000,000) per year, the total capped fund, until June 30, 2009.

(2)(A) Cost of administrating the AHCF shall first be deducted from the total capped fund prior to allocation of funding to the ETCs.

(B) Transition funds used from the surplus during the five-year transition period are supplemental and are not subject to any cap.

(C) The annual period to be used by the AHCF administrator to adjust support levels and upon which to apply any cap shall be on the calendar year.

(D) In addition to the total fund cap, the funds available from the AHCF shall also be capped based upon size groups using access lines for loop-based ETCs and customers for customer-based ETCs.

(E) Size grouping is used to ensure that funds are targeted to areas most needing high-cost assistance.

(F) For the purpose of calculating the size grouping caps, total customer access base shall be used for loop-based ETCs and total customers for customer-based ETCs.

(b)(1) For all ETCs with a total customer access base or total customer base of five hundred thousand (500,000) or more access lines or customers, the size group cap shall be thirteen and one-half percent (13.5%) of the total capped fund until June 30, 2009.

(2) Beginning July 1, 2009, the total capped amount shall increase by one million three hundred thousand dollars ($1,300,000) for all ETCs with a total customer access base of five hundred thousand (500,000) or more access lines or customers.

(3)(A) Beginning July 1, 2010, the size group cap shall be increased by four percent (4%) per year for a period of three (3) years.

(B) The CAP shall be increased by four percent (4%) annually to reflect each year's annual adjustment to the increased funding level of all ETCs with a total customer access base of five hundred thousand (500,000) or more access lines or customers.

(4) Beginning July 1, 2013, the fund CAP shall be increased each year by the annual increase in the Gross Domestic Product Price Index or by three percent (3%) over the previous year's size group's CAP balance, whichever is greater.

(c)(1) For all ETCs with a total customer access base or total customer base of one hundred fifty thousand (150,000) or more access lines or customers and fewer than five hundred thousand (500,000) access lines or customers, the size group cap shall be thirteen and one-half percent (13.5%) of the total capped fund as of June 30, 2009, and shall remain the same through June 30, 2010.

(2)(A) Beginning July 1, 2010, the size group cap for all ETCs with a total customer access base of total customer base of one hundred fifty thousand (150,000) or more access lines or customers and fewer than five hundred thousand (500,000) access lines or customers shall be increased by four percent (4%) per year for a period of three (3) years.

(B) The CAP shall be increased by four percent (4%) annually to reflect each year's annual adjustment to the increased funding level of all ETCs with a total customer access base or total customer base of one hundred fifty thousand (150,000) or more access lines or customers and fewer than five hundred thousand (500,000) access lines or customers.

(3) Beginning July 1, 2013, the fund CAP shall be increased each year by the annual increase in the Gross Domestic Product Price Index or by three percent (3%) over the previous year's size group's CAP balance, whichever is greater.

(d)(1) For all ETCs with a total customer access base or total customer base of fifteen thousand (15,000) or more access lines or customers and fewer than one hundred fifty thousand (150,000) access lines or customers, the size group cap shall be two percent (2%) of the total capped fund until June 30, 2009.

(2) Beginning July 1, 2009, the total capped amount shall increase by five hundred sixty thousand dollars ($560,000) for all ETCs with a total customer access base or total customer base of fifteen thousand (15,000) or more access lines or customers and fewer that one hundred fifty thousand (150,000) access lines or customers.

(3)(A) Beginning July 1, 2010, the size group cap shall be increased by four percent (4%) per year for a period of three (3) years.

(B) The CAP shall be increased by four percent (4%) annually to reflect each year's annual adjustment to the increased funding level of all ETCs with a total customer access base or total customer base of fifteen thousand (15,000) or more access lines or customers and fewer that one hundred fifty thousand (150,000) access lines or customers.

(4) Beginning July 1, 2013, the fund CAP shall be increased each year by the annual increase in the Gross Domestic Product Price Index or by three percent (3%) over the previous year's size group's CAP balance, whichever is greater.

(e)(1) For all ETCs with a total customer access base or total customer base of fewer than fifteen thousand (15,000) access lines or customers, the size group cap shall be seventy-one percent (71%) of the total capped fund until June 30, 2009.

(2) Beginning on July 1, 2009, the amount of the size group's fund cap shall be the total amount allocated to this size group, as last calculated on or before June 30, 2009, plus one million three hundred thousand dollars ($1,300,000).

(3)(A) Beginning July 1, 2010, the size group cap shall be increased by four percent (4%) per year for a period of three (3) years.

(B) The CAP shall be increased by four percent (4%) annually to reflect each year's annual adjustment to the increased funding level of all ETCs with a total customer access base or total customer base of fewer than fifteen thousand (15,000) access lines or customers.

(4) Beginning July 1, 2013, the fund CAP shall be increased each year by the annual increase in the Gross Domestic Product Price Index or by three percent (3%) over the previous year's size group's CAP balance, whichever is greater.

(f) If the Gross Domestic Product Price Index is no longer in use, the price index used to replace the Gross Domestic Product Price Index shall be used to calculate the annual increases required by subdivisions (e)(4)(E)(ii)(b) – (e)(4)(E)(ii)(e) of this section.

(g) If a company's total access base or total customer base increases beyond the company's size group, the company shall continue to be treated as a member of its existing size group for a period of two (2) years from the date of the increase if notice of the increase is provided to the AHCF administrator within thirty (30) days of the increase.

SECTION 6. Arkansas Code § 23-17-416 is amended to read as follows:

23-17-416. Arkansas intrastate carrier common line.

(a)(1) Except as provided in § 23-17-404(e)(4)(D)(i)(b), beginning January 1, 2004, 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.

(2) The carrier common line charge is not a tax and is not affected by state laws governing taxation.

(b)(1) Through June 30, 2009, the AICCLP operates as follows:

(A) Each underlying carrier's monthly payment to the AICCLP shall include the sum of the underlying carrier's share of the AICCLP's net revenue requirement for the remaining incumbent local exchange carriers, the underlying carrier's portion of the Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense, and the AICCLP administrative expenses.

~~(2)~~(B) Each underlying carrier's monthly payment to the AICCLP shall be based upon the underlying carrier's proportionate share of Arkansas intrastate telecommunications services revenues and special intrastate ILEC revenues to the total Arkansas intrastate telecommunications services revenue and special intrastate ILEC revenues of all underlying carriers.

(2)(A) Beginning July 1, 2009, the AHCF administrator shall fund monthly to the AICCLP administrator the net carrier common line revenue requirement of the remaining AICCLP members, the total Arkansas Calling Plan Fund expense, and the total Extension of Telecommunications Facilities Fund expense.

(B) The calculated funds shall be transferred to the AICCLP administrator monthly in sufficient quantities to fund the monthly commitment levels of the AICCLP administrator's funding obligations, including administration fees.

(C) The AICCLP administrator shall notify the AHCF administrator of the funding requirement.

(D) If the net revenue requirement of the members of the AICCLP is reduced by federal or state law or federal or state regulation, the monthly net revenue requirement based on the average of the past three (3) months prior to the event's taking place will be received from the AHCF and shall not be under any cap requirements.

(3)(A)(i) An exiting ILEC that experiences a fixed carrier common line revenue shortfall for its carrier common line net revenue requirements may recover the shortfall through increases in local rates based on the total customer access base of the exiting company.

(ii) AICCLP members shall recover their carrier common line net revenue requirement by AICCLP rate adjustment and through the AICCLP.

(iii) If the fixed carrier common line revenue shortfall is distributed throughout the total customer access base, then each independent ILEC within the total customer access base shall receive from the distribution its share of the shortfall.

(B) An exiting ILEC that seeks to recover its carrier common line revenue shortfall is not required to recover equally from each class of customers.

(C)(i) An exiting ILEC may recover its fixed carrier common line revenue shortfall from any intrastate rate other than access charges.

(ii) Any AICCLP member may recover its AICCLP rate adjustment from any intrastate rate other than access charges.

(D) An exiting ILEC that reduces its carrier common line charge of one and sixty-five hundredths cents (1.65¢) may recover the shortfall through increases in local rates.

(4) This section shall not limit a carrier's ability to adjust its rates under § 23-17-406, § 23-17-407, or § 23-17-408.

(5) This section shall not limit a carrier's ability to increase its local rates under § 23-17-412.

(6) Any AICCLP rate adjustment charge shall not limit an AICCLP member's ability to adjust rates under § 23-17-412.

(7)(A) ~~No~~ A toll reseller shall not be required to pay to an

ILEC or to the AICCLP any portion of an underlying carrier's common line net revenue obligation unless the ILEC is the toll reseller's underlying carrier.

(B) Unless agreed to otherwise between the toll reseller and the ILEC, if an ILEC is a toll reseller's underlying carrier, then the toll reseller shall report the special intrastate ILEC revenue to the administrator and shall pay all amounts due the AICCLP for the revenue.

(c)(1) The Arkansas Public Service Commission shall adopt all rules relating to the membership, operation, management, and administration of the AICCLP as it will be constituted after December 31, 2003.

(2) The commission may adopt rules under subdivision (c)(1) of this section after it appoints the members of the Arkansas Intrastate Carrier Common Line Pool Advisory Procedural Board and selects an AICCLP administrator.

(d) The commission may terminate a carrier's certificate of convenience and necessity if the carrier fails to comply with AICCLP procedures or fails to make a payment due under this section.

(e)(1) The commission shall choose an AICCLP administrator on or before June 1, 2003.

(2) The administrator shall manage the collection and distribution of the carrier common line net revenue requirements in accordance with the rules and procedures established by the commission and consistent with this section.

(3) The administrator shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the AICCLP membership.

(4)<u>(A)</u> ~~The~~ <u>Through June 30, 2009, the</u> administrator shall determine the total monthly amount due to the AICCLP from AICCLP members, exiting ILECs, and underlying carriers, based upon the sum of the monthly carrier common line net revenue requirement of AICCLP members, funding requirements for the Arkansas Calling Plan Fund and the Extension of Telecommunications Facilities Fund, and the AICCLP administrative fees.

<u>(B) Beginning July 1, 2009, the AICCLP administrator shall determine the total monthly amount due to the AICCLP from the AHCF, based upon the sum of the monthly carrier common line net revenue requirement of AICCLP members, funding requirements for the Arkansas Calling Plan Fund and the Extension of Telecommunications Facilities Fund, and the AICCLP administrative fees.</u>

(5) The administrator shall provide monthly and annual reports to the commission concerning the operation of the AICCLP.

(6) Any information considered proprietary by the administrator shall be treated as confidential unless the commission determines that the administrator erred in the determination.

(7) The AICCLP administrator and the Arkansas Universal Service Fund administrator may share confidential information to determine the amounts due or the accuracy of information submitted by ILECs and underlying carriers.

(8)(A) Any ILEC that was designated as a non-tier one ILEC under Acts 1997, No. 77, as of December 31, 1997, and had fewer than fifty thousand (50,000) access lines as of December 31, 1997, shall be eligible to be a member of the AICCLP beginning January 1, 2004.

(B)(i) Based on its total customer access base, the maximum that a non-tier one company under subdivision (e)(8)(A) of this section may draw shall be one million three hundred thousand dollars ($1,300,000) annually.

(ii) If a non-tier one company under subdivision (e)(8)(A) of this section is entitled to receive more than one million three hundred thousand dollars ($1,300,000) annually, then the administrator shall assess a prorated charge to each ILEC associated with the total customer access base that is based upon the ILEC's proportionate share of the total net revenue requirement of all ILECs within the total customer base.

(f)(1) Beginning January 1, 2004, no ILEC that had a total customer access base of more than fifty thousand (50,000) access lines as of December 31, 1997, shall be a member of AICCLP.

(2) An ILEC that had a total customer access base of fifty thousand (50,000) or fewer access lines as of December 31, 1997, may terminate its membership in the AICCLP after sixty (60) days' notice to the commission and the administrator and may not thereafter again become a member of the AICCLP.

(g)(1) If an ILEC terminates its membership in the AICCLP after January 1, 2004, its total customer access base must exit the pool as a single unit.

(2) If an ILEC terminates its membership in the AICCLP after January 1, 2004, its fixed carrier common line revenue shortfall shall be calculated using relevant data from the data development period identified in subdivision (h)(4)(B)(ii) of this section.

(h)(1) The administrator shall determine the amounts to be paid to AICCLP members on a monthly basis and shall determine any fixed or varying amounts due the pool from AICCLP members, exiting ILECs, ~~and~~ underlying carriers, and the AHCF.

(2) The administrator shall provide notice to AICCLP members and the AHCF administrator, other ILECs, and underlying carriers concerning calculations related to each entity and shall bill all carriers for any amounts due the pool.

(3) The administrator shall use the appropriate data development period to determine the calculations for AICCLP members' carrier common line net revenue requirement.

(4)(A) For each ILEC exiting the pool on December 31, 2003, the administrator shall use the appropriate data to determine the payment that the exiting ILECs shall pay the pool to fund their portion of the Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund.

(B)(i) Except for AICCLP members exiting the pool after January 1, 2004, the data development period for all ILECs shall be the ILECs' billing months of June, July, and August 2003.

(ii) If an AICCLP member exits the AICCLP after January 1, 2004, its data development period to determine the ILEC's fixed carrier common line revenue shortfall shall be the three-month period immediately preceding its exit.

(iii) No later than the twenty-second day or the next business day thereafter of July 2003, if the twenty-second day falls on a weekend or holiday, and no later than the twenty-second day or the next business day of each month thereafter, if the twenty-second day falls on a weekend or holiday, each underlying carrier and AICCLP member shall report to the administrator its previous month's data necessary for AICCLP calculations.

(j)(1) On December 31, 2003, and the last business day of each month thereafter, the administrator shall cause notice to be sent to each underlying carrier, AICCLP member, ~~and~~ exiting ILEC, and the AHCF administrator of the amount due, based on the previous month's data as submitted to the administrator.

(2)(A) Each underlying carrier, AICCLP member, and exiting ILEC shall remit payment due under subdivision (j)(1) of this section to the administrator by no later than the last business day of the following month.

(B) The AHCF administrator shall remit the payment due to the AICCLP administrator by the tenth day of the following month.

(3) The administrator shall make all reasonable efforts to ensure that AICCLP members receive payment of their monthly net carrier common line revenue requirement by February 10, 2004, and by the tenth day of each month thereafter.

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that rural and economically depressed areas of the state are in need of investment in telecommunications and computer services; that enhanced telecommunications service and the deployment of broadband facilities, technology, and infrastructure to provide broadband service is needed as quickly as the state's resources permit; and that this act contains requirements that need to take effect July 1, 2009, to promote measures designed to stimulate investment and increase the availability of telecommunications and broadband technology to rural and economically depressed areas of the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

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

By: Senator Horn

DLP/LHA - 03-25-2009 14:35 ____________________________________

DLP361 **Secretary**