

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: H2/14/97

# A Bill

SENATE BILL 302

4  
5 By: Senator Hopkins

## For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE RURAL  
10 TELECOMMUNICATIONS COOPERATIVE ACT; AND FOR OTHER  
11 PURPOSES."

### Subtitle

14 "AN ACT TO AMEND VARIOUS SECTIONS OF THE  
15 RURAL TELECOMMUNICATIONS COOPERATIVE  
16 ACT."

17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19  
20 SECTION 1. Arkansas Code 23-17-202(10) and (11) are amended to read as  
21 follows:

22 "(10) Telecommunications service means ~~any communication service~~  
23 ~~through the use of electricity, microwave, fiber optics, or other accepted~~  
24 ~~means establishing connection between the transmitting and receiving point and~~  
25 ~~is the principal intended use thereof and shall include all telecommunications~~  
26 ~~lines, facilities, or systems used in the rendition of such service~~ the  
27 offering to the public for compensation the transmission of voice, data, or  
28 other electronic information at any frequency over any part of the  
29 electromagnetic spectrum, notwithstanding any other use of the associated  
30 facilities. Such term does not include radio and television broadcast or  
31 distribution services, or the provision or publishing of yellow pages,  
32 regardless of the entity providing such services, or services to the extent  
33 that such services are used in connection with the operation of an electric  
34 utility system owned by a government entity;

35 (11) Telecommunications company means any ~~natural person, firm,~~  
36 ~~association, corporation, or partnership, other than a cooperative, and their~~

1 ~~receivers, trustees, or lessees owning or operating any facility or system~~  
2 ~~used in the furnishing of telecommunications service within this state person,~~  
3 ~~firm, partnership, corporation, association, or other entity that offers~~  
4 ~~telecommunications services to the public for compensation;"~~

5

6 SECTION 2. Arkansas 23-17-203 is repealed.

7 ~~§ 23-17-203. Subchapter extended to other corporations.~~

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

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

17

18 SECTION 3. Arkansas Code 23-17-205 is amended to read as follows:

19 "§ 23-17-205. Powers of cooperative.

20 Any cooperative created under the provisions of this subchapter shall  
21 have power to:

22 (1) Sue and be sued in its corporate name;

23 (2) Have perpetual existence unless limited for a shorter term in its  
24 articles of incorporation;

25 (3) Adopt and use a corporate seal and to alter it;

26 (4) Furnish, improve, and expand telecommunications service to its  
27 members, to federal and state agencies, and to other persons. ~~Provided, that~~  
28 ~~no cooperative shall furnish any telecommunications services in any area not~~  
29 ~~allotted to it by the commission;~~

30 (5) Construct, purchase, lease as lessee, or otherwise acquire, and to  
31 improve, expand, install, equip, maintain, and operate, and to sell, assign,  
32 convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber  
33 telecommunications lines, facilities or systems, lands, buildings, structures,  
34 plant and equipment, exchanges, and any other real or personal property,  
35 tangible or intangible, which are necessary or appropriate to accomplish any  
36 purpose of the cooperative authorized by this subchapter;

1           (6) Connect and interconnect ~~with the approval of the commission~~ its  
2 telecommunications lines, facilities, or systems with telecommunications  
3 lines, facilities, or systems owned and operated by other telecommunications  
4 companies or cooperatives; ~~however, any such connection or interconnection~~  
5 ~~shall be in such manner, at such places, and according to such specifications~~  
6 ~~as will avoid interference with or hazards to other telecommunications lines,~~  
7 ~~facilities, or systems;~~

8           (7) Make its facilities available to persons furnishing  
9 telecommunication services within or without this state;

10          (8) Purchase, lease as lessee, or otherwise acquire, and to use and  
11 exercise, and to sell, assign, convey, pledge, or otherwise dispose of, or  
12 encumber franchises, rights, privileges, licenses, and easements;

13          (9) Fix membership fees, issue membership certificates, and issue  
14 nonvoting shares of stock;

15          (10) Borrow money and otherwise contract indebtedness, to issue and  
16 guarantee notes, bonds, and other evidences of indebtedness, and secure the  
17 same by mortgage, pledge, deed of trust, or security deed, or any other  
18 encumbrances upon any or all of its then-owned or after-acquired real or  
19 personal property, assets, franchises, or revenues;

20          (11) Construct, maintain, and operate telecommunications equipment,  
21 lines, facilities, and systems along, upon, under, and across publicly owned  
22 lands, easements, right of ways, and public thoroughfares, including, without  
23 limitation, all roads, highways, streets, alleys, bridges, and causeways,  
24 subject, however, to the same requirements and limitations with respect to the  
25 use or occupancy of such thoroughfares and lands as are imposed by the laws of  
26 this state on telecommunications companies;

27          (12) Exercise the power of eminent domain in the manner and to the same  
28 extent as provided by the laws of this state for the exercise of such power by  
29 telecommunications companies;

30          (13) Adopt, and from time to time, amend, or repeal bylaws;

31          (14) Make any and all contracts necessary, convenient, or appropriate  
32 for the full exercise of the powers herein granted;

33          (15) Accept gifts or grants of money, services, or property, real or  
34 personal;

35          (16) Do or perform any other acts and things which may be necessary,  
36 convenient, or appropriate to accomplish any purpose of the cooperative

1 authorized by this subchapter."

2

3 SECTION 4. Arkansas Code 23-17-210(c) is amended to read as follows:

4 "(c) The incorporators shall file for record a copy of the original  
5 articles of incorporation bearing the filing of the Secretary of State ~~in the~~  
6 ~~office of the county clerk of the county in which the principal office of the~~  
7 ~~cooperative in this state is located.~~"

8

9 SECTION 5. Arkansas Code 23-17-211(b) is amended to read as follows:

10 "(b) Every amendment shall be made and effected in the manner  
11 following:

12 (1) The board of directors of the cooperative shall adopt a  
13 resolution setting forth the amendment proposed, declaring its advisability,  
14 and calling a meeting of the members entitled to vote for the consideration  
15 thereof at such meeting, of which notice shall be given in the manner provided  
16 in § 23-17-217;

17 ~~\_\_\_\_\_ (2) A vote of the members of record entitled to vote shall be~~  
18 ~~taken for and against the proposed amendment;~~

19 ~~\_\_\_\_\_ (3) (2) If it appears that not less than a majority of the~~  
20 ~~members entitled to vote voting have voted at an annual meeting in favor of~~  
21 ~~the amendment, the cooperative shall make under its corporate seal and the~~  
22 ~~hand of its president or vice president and secretary or assistant secretary a~~  
23 ~~verified certificate setting forth the amendment in full; and~~

24 ~~\_\_\_\_\_ (4) (3) Duplicate originals of the certificate, so verified,~~  
25 ~~shall be filed in the office of the Secretary of State, and one (1) of the~~  
26 ~~duplicate originals bearing the filing by the Secretary of State shall be~~  
27 ~~recorded in the office of the county clerk in the same manner as required in §~~  
28 ~~23-17-210 in regard to certified copies of original articles of incorporation;~~

29 ~~\_\_\_\_\_ (5) (4) Upon the filing of the certificate with the Secretary of~~  
30 ~~State, the charter of the cooperative shall be deemed to be amended~~  
31 ~~accordingly."~~

32

33 SECTION 6. Arkansas Code 23-17-214(c) is repealed.

34 ~~\_\_\_\_\_ (c)(1) The bylaws may provide for a division of the territory served or~~  
35 ~~to be served by a cooperative into two (2) or more districts for any purpose~~  
36 ~~including, without limitation, the nomination and election of directors.~~

1 ~~\_\_\_\_\_ (2) The bylaws shall prescribe the boundaries of the districts or~~  
2 ~~the manner of establishing and changing such boundaries.~~

3

4 SECTION 7. Arkansas Code 23-17-217(a), (b) and (c) are amended to read  
5 as follows:

6 "(a) Meetings of members may be held at such place as may be ~~provided~~  
7 ~~in the bylaws~~ designated by the board. In the absence of any such provision,  
8 all meetings shall be held in the principal office of the cooperative in this  
9 state.

10 (b) Annual meetings of the members shall be held at such time as may be  
11 ~~provided in the bylaws~~ designated by the board. Failure to hold the annual  
12 meeting at the designated time shall not work forfeiture or dissolution of the  
13 cooperative.

14 (c) Special meetings of the members may be called by the president, or  
15 by the board of directors, and shall be called by the president upon petition  
16 signed by not less than ~~one-tenth (1/10)~~ ten percent (10%) of all the  
17 members."

18

19 SECTION 8. Arkansas code 23-17-224(a)(1) is amended to read as follows:

20 "(a)(1) Any two (2) or more cooperatives may enter into an agreement  
21 subject to the approval by the ~~Arkansas Public Service Commission~~ required  
22 authorities, if any, for the consolidation of the cooperatives."

23

24 SECTION 9. Arkansas Code 23-17-225(a) is amended to read as follows:

25 "(a) Any cooperative may, ~~subject to the approval of the Arkansas~~  
26 ~~Public Service Commission,~~ dissolve by a ~~majority~~ two-thirds (2/3) vote of the  
27 members present at any regular meeting or at any special meeting of its  
28 members called for that purpose."

29

30 SECTION 10. Arkansas Code 23-17-227 is repealed.

31 ~~§ 23-17-227. Certificates of public convenience and necessity.~~

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

1 operation.

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

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

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

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

21

22 SECTION 11. Arkansas Code 23-17-231 is amended to read as follows:

23 "§ 23-17-231. Mortgage, pledge, or other disposition of property.

24 (a) The board of directors of a cooperative shall have full power and  
25 authority, without authorization by the members thereof, ~~but subject to the~~  
26 ~~approval of the Arkansas Public Service Commission,~~ to authorize the execution  
27 and delivery of leases, mortgages or deeds of trust of, or by pledge or  
28 encumbering of, any or all of the property, assets, rights, privileges,  
29 licenses, franchises, and permits of the cooperative whether already acquired  
30 or to be acquired, and wherever situated, as well as the revenues thereof, all  
31 upon such terms and conditions as the board of directors shall determine, to  
32 secure any indebtedness of the cooperative to the United States of America or  
33 any agency or instrumentality thereof.

34 (b) A cooperative may not ~~otherwise~~ sell, ~~mortgage, lease,~~ or otherwise  
35 dispose of ~~or encumber~~ all or a substantial portion of its property unless the  
36 sale, ~~mortgage, lease,~~ or other disposition ~~or encumbrance~~ is authorized ~~and~~

1 ~~approved by the commission and by the affirmative vote of not less than two-~~  
2 ~~thirds (2/3) of all the members of the cooperative."~~

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4

5 SECTION 12. Arkansas Code 23-17-232 is repealed.

6 ~~§ 23-17-232. Recordation of mortgages - Effect thereof.~~

7 ~~----- (a) Any mortgage, deed of trust, or other instrument executed by a~~  
8 ~~cooperative, which affects real and personal property and which is recorded in~~  
9 ~~the real property records in any county in which such property is located or~~  
10 ~~is to be located, shall have the same force and effect as if the mortgage,~~  
11 ~~deed of trust, or other instrument were also recorded, filed, or indexed, as~~  
12 ~~provided by law in the proper office in the county, as a mortgage of personal~~  
13 ~~property.~~

14 ~~----- (b)(1) All after-acquired property of the cooperative described or~~  
15 ~~referred to as being mortgaged or pledged in any mortgage, deed of trust, or~~  
16 ~~other instrument shall become subject to the lien thereof immediately upon the~~  
17 ~~acquisition of the property by the cooperative, whether or not the property~~  
18 ~~was in existence at the time of the execution of the mortgage, deed of trust,~~  
19 ~~or other instrument.~~

20 ~~----- (2) The recordation of such mortgage, deed of trust, or other~~  
21 ~~instrument shall constitute notice and otherwise have the same effect with~~  
22 ~~respect to the after-acquired property as it has under the laws relating to~~  
23 ~~recordation, with respect to property owned by the cooperative at the time of~~  
24 ~~the execution of the mortgage, deed of trust, or other instrument and therein~~  
25 ~~described or referred to as being mortgaged or pledged thereby.~~

26 ~~----- (c) The lien upon personal property of any mortgage, deed of trust, or~~  
27 ~~other instrument shall, after recordation thereof, continue in existence and~~  
28 ~~of record for the period of time specified therein without the refileing~~  
29 ~~thereof, or the filing of any renewal certificate, affidavit, or other~~  
30 ~~supplemental information required by the laws relating to the renewal,~~  
31 ~~maintenance, or extension of liens upon personal property.~~

32

33 SECTION 13. Arkansas Code 23-17-234 is repealed.

34 ~~§ 23-17-234. Connection, interconnection, etc., of lines, facilities,~~  
35 ~~and systems.~~

36 ~~----- The Arkansas Public Service Commission shall have the power and~~

1 ~~jurisdiction, upon the petition of any interested party, to order and direct~~  
2 ~~the connection or interconnection, and the points thereof, of the lines,~~  
3 ~~facilities, and systems of any cooperative with the lines, facilities, and~~  
4 ~~systems of any telecommunications company or cooperative. However, the~~  
5 ~~connection or interconnection shall be in such manner, at such points, and~~  
6 ~~according to such specifications as will not interfere with or impede the~~  
7 ~~service supplied by a telecommunications company or other cooperative.~~

8

9 SECTION 14. Arkansas Code 23-17-237 is amended to read as follows:

10 "§ 23-17-237. Limitation of actions.

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

16

17 SECTION 15. Rural telecommunication cooperatives established under  
18 Arkansas Code 23-17-201, et seq. may opt out of coverage under Arkansas Code  
19 14-271-101, et seq. by providing written notice to the commission by first  
20 class mail.

21

22 SECTION 16. All provisions of this act of a general and permanent  
23 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
24 Code Revision Commission shall incorporate the same in the Code.

25

26 SECTION 17. If any provision of this act or the application thereof to  
27 any person or circumstance is held invalid, such invalidity shall not affect  
28 other provisions or applications of the act which can be given effect without  
29 the invalid provision or application, and to this end the provisions of this  
30 act are declared to be severable.

31

32 SECTION 18. All laws and parts of laws in conflict with this act are  
33 hereby repealed.

34

35 SECTION 19. EMERGENCY. It is hereby found and determined by the  
36 General Assembly that many provisions of the Rural Telephone Cooperative Act



1 are archaic and obsolete; that the Rural Telephone Cooperative Act should be  
2 modified to mesh with the Federal Telecommunications Act of 1996; that some  
3 provisions of the present Rural Telephone Cooperative Act are an impediment to  
4 providing the best service to the customers; that financing of the rural  
5 telecommunications coops is especially hampered by some of the obsolete  
6 provisions; that this act will update the Rural Telephone Cooperative Act and  
7 provide needed flexibility to the cooperatives. Therefore an emergency is  
8 hereby declared to exist and this act being immediately necessary for the  
9 preservation of the public peace, health and safety shall become effective  
10 thirty (30) days after the date of its approval by the Governor. If the bill  
11 is neither approved nor vetoed by the Governor, it shall become effective  
12 thirty (30) days after the expiration of the period of time during which the  
13 Governor may veto the bill. If the bill is vetoed by the Governor and the  
14 veto is overridden, it shall become effective thirty (30) days after the date  
15 the last house overrides the veto.

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/s/Senator Hopkins