

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2131

4
5 By: Representative Stovall
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For An Act To Be Entitled

8
9 AN ACT TO AMEND ARKANSAS CODE § 23-17-404(e) TO
10 PHASE OUT CERTAIN PAYMENTS FROM THE ARKANSAS
11 UNIVERSAL SERVICE FUND TO INCUMBENT LOCAL
12 EXCHANGE COMPANIES; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 AN ACT TO PHASE OUT CERTAIN PAYMENTS
16 FROM THE ARKANSAS UNIVERSAL SERVICE FUND
17 TO INCUMBENT LOCAL EXCHANGE CARRIERS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code 23-17-404(e), concerning payments from the
23 Arkansas Universal Service Fund, is amended to read as follows:

24 (e) After reasonable notice and hearing, the commission shall
25 establish rules and procedures necessary to implement the AUSF. The
26 commission shall implement the AUSF and make AUSF funds available to eligible
27 telecommunications carriers no later than ninety (90) days following the
28 later of February 4, 1997, or the effective date of a Federal Communications
29 Commission order pursuant to 47 U.S.C. § 254 that approves, establishes, or
30 modifies interstate universal service funding. Prior to the implementation
31 and availability of funds from the AUSF, the commission shall not require any
32 local exchange carrier to reduce rates for intrastate switched-access
33 services or require any local exchange carrier to reduce its net revenue
34 received from the Arkansas IntraLATA Toll Pool (AITP). In establishing and
35 implementing the AUSF, the commission shall adhere to the following
36 instructions and guidelines:



1 (1) AUSF funding shall be provided directly to eligible
 2 telecommunications carriers;

3 (2)(A) After reasonable notice and hearing, the commission may
 4 revise the list of universal services identified in § 23-17-403 that may be
 5 supported by the AUSF to establish and maintain end-user rates for universal
 6 services that are reasonably comparable between urban and rural areas or to
 7 reflect changes in the type and quality of telecommunications services
 8 considered essential by the public, as evidenced, for example, by those
 9 telecommunication services that are purchased and used by a majority of
 10 single-line urban customers.

11 (B) The commission shall determine and approve AUSF
 12 funding to eligible telecommunications carriers for exchanges in rural or
 13 high-cost areas to recover the cost of additions or revisions to the
 14 universal service list concurrent with any such revisions to the list of
 15 universal services identified in § 23-17-403;

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

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

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

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

36 ~~(ii) In determining whether to increase basic local~~

1 ~~exchange service rates or increase the AUSF for a tier one company pursuant~~
 2 ~~to this section, the commission shall take into account that company's rates~~
 3 ~~and consider whether the rates are below the statewide average.~~

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

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

26 ~~(ii)(a) This subdivision (c)(4)(B)(ii) shall become~~
 27 ~~effective on January 1, 2004.~~

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

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

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

35
 36 ~~(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 AIGCLP 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 AIGCLP 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.~~

~~(e) If the AIGCLP 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.~~

(4)(A) Except for AUSF payments under § 23-17-404(e)(5)- (7), the payment from the AUSF to an eligible ILEC shall not exceed the amount authorized by the AUSF administrator as of July 1, 2005.

(B)(i) For the period of July 1, 2005, through June 30, 2010, the level of AUSF payments to eligible ILECs addressed in subdivision (e)(4)(A) shall be ratably reduced annually by one-fifth (1/5) of the amount authorized by the AUSF administrator for each ILEC as of July 1, 2005; and

1 (ii) During the ratable reduction of the level
 2 of AUSF payments under subdivision (e)(4)(B)(i) of this section, the
 3 aggregate AUSF payments to an ILEC under subdivisions (e)(4)(A) and
 4 (e)(4)(B)(i) of this section or § 23-17-404(e)(5) - (7) shall not exceed the
 5 amount authorized by the AUSF administrator as of July 1, 2005.

6 (C) Effective July 1, 2010, the AUSF administrator shall
 7 not make any payments to an eligible ILEC unless authorized by § 23-17-
 8 404(e)(5), (6), and (7).

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

20 (b) Beginning January 1, 2004, except as
 21 provided in this subdivision (e)(4)(D), the intrastate Carrier Common Line
 22 charges billed to ILECs and underlying carriers shall be determined at the
 23 rate of one and sixty-five hundredths cents ~~(1.65)~~ (\$ 0.0165) per intrastate
 24 access minute, exclusive of the amounts specified in subdivisions
 25 (e)(4)(D)(ii), (iii), and (iv) of this section. However, ILECs that are not
 26 AICCLP members may charge at a rate that is less than one and sixty-five
 27 hundredths cents ~~(1.65)~~ (\$ 0.0165) and may recover the difference between
 28 the actual rate charged and one and sixty-five hundredths cents ~~(1.65)~~ (\$
 29 0.0165) as allowed under § 23-17-416(b)(3). Following April 20, 2001,
 30 carriers must continue to report RBMOUs associated with the traffic that they
 31 reported as of December 2000 and shall continue to report through December
 32 31, 2003, except that incumbent local exchange carriers may discontinue
 33 reporting RBMOUs associated with their intracompany flat-rated optional plans
 34 that exist as of June 1, 2001. The AICCLP charges shall be adjusted to
 35 eliminate any credits to the AICCLP or to interexchange carriers that have
 36 been previously required.

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

3 (b) A maximum of five hundred thousand dollars
 4 (\$500,000) per year of AICCLP funds shall be allocated to fund the Extension
 5 of Telecommunications Facilities Fund to assist in the extension of
 6 telecommunications facilities to citizens not served by the wire line
 7 facilities of an eligible telecommunications carrier.

8 (iii)(a)(1) There is also created an AICCLP
 9 allocation to be known as the "Arkansas Calling Plan Fund".

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

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

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

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

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

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

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

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

18 (d)(1) The assessments shall commence upon the
 19 first day of the month following April 20, 2001.

20 (2) The first four million dollars
 21 (\$4,000,000) shall be allocated monthly as collected to assure that the AUSF
 22 has adequate funds to compensate any retroactive claims that may be made
 23 against the AUSF due to the change in the test period resulting from the
 24 decision in AT&T Communications of the S.W., Inc. v. Arkansas Pub. Serv.
 25 Comm'n, 344 Ark. 188, 40 S.W.3d 273 (2001).

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

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

36 (b) In addition, if an eligible

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

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

11 (2) The administrator of the AICCLP as
 12 it existed prior to January 1, 2004, may supervise any audit that is
 13 requested and may further take any action deemed reasonable or necessary to
 14 finalize the winding-up process of the AICCLP as it existed prior to January
 15 1, 2004;

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

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

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

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

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

35 (A) The eligible telecommunications carrier may utilize
 36 traditional rate case methods and procedures to identify universal service

1 revenue requirements and a residual AUSF funding requirement;

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

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

9 (7) In calculating revenue requirements only for the purpose of
10 establishing high-cost funding needs from the AUSF, the commission shall not
11 fix depreciation rates. However, the commission may make reasonable
12 adjustments to depreciation expense if an eligible telecommunications
13 carrier's composite depreciation annual accrual rate is greater than the
14 weighted average of composite rates for similar plant and equipment of all
15 other telecommunications providers providing comparable services in the
16 state. In that case, the commission may adjust depreciation expenses of the
17 eligible telecommunications carrier to levels that would not exceed fifteen
18 percent (15%) above a composite accrual rate comparable to the statewide
19 weighted average; and

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

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

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

36 (ii) The commission may require each potential

1 customer to be served by the extension of facilities to pay up to two hundred
2 fifty dollars (\$250) of the cost of extending facilities.

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

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

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

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

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