

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
4

As Engrossed: H3/18/05

A Bill

HOUSE BILL 2131

5 By: Representative Stovall
6 By: *Senators T. Smith, Malone, Higginbotham, Altes, Hill*
7

For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS CODE § 23-17-404(e) TO
11 PHASE OUT CERTAIN PAYMENTS FROM THE ARKANSAS
12 UNIVERSAL SERVICE FUND TO INCUMBENT LOCAL
13 EXCHANGE COMPANIES; AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT TO PHASE OUT CERTAIN PAYMENTS
16 FROM THE ARKANSAS UNIVERSAL SERVICE FUND
17 TO INCUMBENT LOCAL EXCHANGE CARRIERS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code 23-17-404(e), concerning payments from the
24 Arkansas Universal Service Fund, is amended to read as follows:

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



1 instructions and guidelines:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 ~~(B)(i) For the period of July 1, 2005, through June~~
34 ~~30, 2010, the level of AUSF payments to eligible ILECs addressed in~~
35 ~~subdivision (e)(4)(A) shall be ratably reduced annually by one-fifth (1/5) of~~
36 ~~the amount authorized by the AUSF administrator for each ILEC as of July 1,~~

1 2005; and

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

7 (C) Effective July 1, 2010, the AUSF administrator shall
8 not make any payments to an eligible ILEC unless authorized by § 23-17-
9 404(e)(5),(6), and (7).

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

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

1 been previously required.

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

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

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

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

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

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

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

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

1 Fund; and

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

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

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

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

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

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

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

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

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

12 (2) The administrator of the AICCLP as
13 it existed prior to January 1, 2004, may supervise any audit that is
14 requested and may further take any action deemed reasonable or necessary to
15 finalize the winding-up process of the AICCLP as it existed prior to January
16 1, 2004;

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

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

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

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

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

36 (A) The eligible telecommunications carrier may utilize

1 traditional rate case methods and procedures to identify universal service
2 revenue requirements and a residual AUSF funding requirement;

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

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

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

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

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

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

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

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

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

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

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

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17 /s/ Stovall
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