

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 H3/23/05

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)(a) For the period of July 1, 2005, through
34 June 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 (b) 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 (ii)(a)(1) Through a surcharge on its customer bills
8 over its total customer base, an eligible ILEC may recover any reduction in
9 its AUSF payments up to the amount authorized by the AUSF administrator as of
10 July 1, 2005.

11 (2) The surcharge shall be in addition
12 to any amount authorized under a rate increase by an electing company under §
13 23-17-401 and is not a tax.

14 (b) For a non-electing ILEC, no general rate
15 application or earnings review shall be required to implement the surcharge
16 which may not exceed the amount set under § 23-17-412(i)(1) for any twelve
17 month period.

18 (C) Effective July 1, 2010, the AUSF administrator shall
19 not make any payments to an eligible ILEC unless authorized by § 23-17-
20 404(e)(5),(6), and (7).

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

32 (b) Beginning January 1, 2004, except as
33 provided in this subdivision (e)(4)(D), the intrastate Carrier Common Line
34 charges billed to ILECs and underlying carriers shall be determined at the
35 rate of one and sixty-five hundredths cents ~~(1.65)~~ (\$ 0.0165) per intrastate
36 access minute, exclusive of the amounts specified in subdivisions

1 (e)(4)(D)(ii), (iii), and (iv) of this section. However, ILECs that are not
2 AICCLP members may charge at a rate that is less than one and sixty-five
3 hundredths cents ~~(1.65)~~ (\$ 0.0165) and may recover the difference between
4 the actual rate charged and one and sixty-five hundredths cents ~~(1.65)~~ (\$
5 0.0165) as allowed under § 23-17-416(b)(3). Following April 20, 2001,
6 carriers must continue to report RBMOUs associated with the traffic that they
7 reported as of December 2000 and shall continue to report through December
8 31, 2003, except that incumbent local exchange carriers may discontinue
9 reporting RBMOUs associated with their intracompany flat-rated optional plans
10 that exist as of June 1, 2001. The AICCLP charges shall be adjusted to
11 eliminate any credits to the AICCLP or to interexchange carriers that have
12 been previously required.

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

15 (b) A maximum of five hundred thousand dollars
16 (\$500,000) per year of AICCLP funds shall be allocated to fund the Extension
17 of Telecommunications Facilities Fund to assist in the extension of
18 telecommunications facilities to citizens not served by the wire line
19 facilities of an eligible telecommunications carrier.

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

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

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

32 (iv)(a) Through December 31, 2003, the Extension of
33 Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be
34 funded by the AICCLP assessing one-half (1/2) of the fund to be paid by
35 incumbent local exchange carriers (ILECs) and one-half (1/2) of the fund to
36 be paid by all other telecommunications providers reporting intrastate retail

1 billed minutes of use to the AICCLP. Beginning January 1, 2004, the Extension
2 of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will
3 be paid by the AICCLP members, exiting ILECs, and underlying carriers as
4 follows:

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

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

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

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

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

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

32 (2) The first four million dollars
33 (\$4,000,000) shall be allocated monthly as collected to assure that the AUSF
34 has adequate funds to compensate any retroactive claims that may be made
35 against the AUSF due to the change in the test period resulting from the
36 decision in AT&T Communications of the S.W., Inc. v. Arkansas Pub. Serv.

1 Comm'n, 344 Ark. 188, 40 S.W.3d 273 (2001).

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

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

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

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

23 (2) The administrator of the AICCLP as
24 it existed prior to January 1, 2004, may supervise any audit that is
25 requested and may further take any action deemed reasonable or necessary to
26 finalize the winding-up process of the AICCLP as it existed prior to January
27 1, 2004;

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

36 (A) Investments and expenses required to provide,

1 maintain, and support universal services;

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

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

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

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

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

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

21 (7) In calculating revenue requirements only for the purpose of
22 establishing high-cost funding needs from the AUSF, the commission shall not
23 fix depreciation rates. However, the commission may make reasonable
24 adjustments to depreciation expense if an eligible telecommunications
25 carrier's composite depreciation annual accrual rate is greater than the
26 weighted average of composite rates for similar plant and equipment of all
27 other telecommunications providers providing comparable services in the
28 state. In that case, the commission may adjust depreciation expenses of the
29 eligible telecommunications carrier to levels that would not exceed fifteen
30 percent (15%) above a composite accrual rate comparable to the statewide
31 weighted average; and

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

1 both.

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

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

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

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

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

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

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

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28 /s/ Stovall
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