

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.

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2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 2131

4

5 By: Representative Stovall

6 By: Senators T. Smith, Malone, Higginbothom, Hill

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For An Act To Be Entitled

10 AN ACT CONCERNING PAYMENTS FROM THE ARKANSAS
11 UNIVERSAL SERVICE FUND; CONCERNING ELIGIBLE
12 TELECOMMUNICATIONS CARRIERS; AND FOR OTHER
13 PURPOSES.

14

15

Subtitle

16 AN ACT CONCERNING PAYMENTS FROM THE
17 ARKANSAS UNIVERSAL SERVICE FUND AND
18 CONCERNING ELIGIBLE TELECOMMUNICATION
19 CARRIERS.

20

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 SECTION 1. Arkansas Code § 23-17-404 is amended to read as follows:
25 23-17-404. Preservation and promotion of universal service.

26 (a)(1) The Arkansas Universal Service Fund (AUSF) is established by
27 this section in order to promote and assure the availability of universal
28 service at rates that are reasonable and affordable and to provide for
29 reasonably comparable services and rates between rural and urban areas.

30 (2) The AUSF will provide funding to eligible telecommunications
31 carriers that provide basic local exchange services over ~~facilities owned~~
32 their own facilities or a combination of their own facilities and resale of
33 another carrier's services by the eligible telecommunications carrier.

34 (3) The AUSF shall be designed to provide predictable,
35 sufficient, and sustainable funding to eligible telecommunications carriers
36 serving rural or high-cost areas of the state.



1 (b)(1) *The AUSF is to provide a mechanism to restructure the present*
2 *system of telecommunication service rates in the state as provided herein,*
3 *and all telecommunications providers, except as prohibited by federal law,*
4 *shall be charged for the direct and indirect value inherent in the obtaining*
5 *and preserving of reasonable and comparable access to telecommunications*
6 *services in the rural or high-cost areas. The value and utility of access to*
7 *and interconnection with the public switched network will be lessened if the*
8 *rural or high-cost areas do not have comparable access and subscribership.*

9 (2)(A) *This AUSF charge for all telecommunications providers*
10 *shall be proportionate to each provider's Arkansas intrastate retail*
11 *telecommunications service revenues.*

12 (B) *Because customers of the telecommunications providers*
13 *that would pay the AUSF charge receive the benefits of a universal network,*
14 *the telecommunications providers may surcharge their customers to recover the*
15 *AUSF charges paid by the telecommunications provider. Therefore, the AUSF*
16 *charge is not a tax and is not affected by state laws governing taxation.*

17 (C) *For the purpose of assessing mobile telecommunications*
18 *services, the administrator shall continue to assess only Arkansas intrastate*
19 *retail telecommunications service revenues and only to the extent such*
20 *revenues may be considered located in the State of Arkansas in accordance*
21 *with the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252.*

22 (c)(1) *The Arkansas Public Service Commission shall delegate to a*
23 *trustee, the "administrator", the administration, collection, and*
24 *distribution of the AUSF in accordance with the rules and procedures*
25 *established by the commission and consistent with this subchapter.*

26 (2)(A) *The administrator shall enforce and implement all rules*
27 *and directives governing the funding, collection, and eligibility for the*
28 *AUSF.*

29 (B) *Within sixty (60) days after receipt of a request for*
30 *AUSF funds, the administrator shall review and determine the accuracy and*
31 *appropriateness of the request and advise the entity requesting the funds of*
32 *his or her determination.*

33 (C) *The affected parties shall have thirty (30) days to*
34 *request reconsideration by the commission of the administrator's*
35 *determination, and the commission after notice and hearing, if requested,*
36 *shall issue its opinion on the reconsideration within thirty (30) days after*

1 the request of reconsideration.

2 (D) Persons aggrieved by the commission's opinion shall
3 have the right to appeal the opinion in accordance with law.

4 (d)(1) The AUSF administrator periodically shall establish and notify
5 each telecommunications provider of the AUSF charge levels required to be
6 paid by the telecommunications provider.

7 (2) Any telecommunications provider that without just cause
8 fails to pay the AUSF charge that is due and payable pursuant to this section
9 after notice and opportunity for hearing shall have its authority to do
10 business as a telecommunications provider in the State of Arkansas revoked by
11 the commission.

12 (3) The AUSF charge shall not be subject to any state or local
13 tax or franchise fees.

14 (4) The commission is authorized to increase the AUSF charge by
15 those amounts necessary to recover the cost of administration of the AUSF.

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

29 (1)(A) AUSF funding shall be provided directly to eligible
30 telecommunications carriers.

31 (B) In order for an eligible telecommunications carrier to
32 receive funds from the AUSF, the eligible telecommunications carrier must
33 agree to be subject to the telecommunications provider rules promulgated by
34 the commission;

35 (2)(A) After reasonable notice and hearing, the commission may
36 revise the list of universal services identified in § 23-17-403 that may be

1 supported by the AUSF to establish and maintain end-user rates for universal
2 services that are reasonably comparable between urban and rural areas or to
3 reflect changes in the type and quality of telecommunications services
4 considered essential by the public, as evidenced, for example, by those
5 telecommunication services that are purchased and used by a majority of
6 single-line urban customers.

7 (B) The commission shall determine and approve AUSF
8 funding to eligible telecommunications carriers to recover the cost of
9 additions or revisions to the universal service list concurrent with any such
10 revisions to the list of universal services identified in § 23-17-403;

11 (3) If the commission establishes or utilizes a minimum or
12 threshold universal service rate, threshold rate, for the purpose of
13 determining the amount of AUSF that an eligible telecommunications carrier
14 may receive, the commission shall adhere to the following requirements:

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

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

24 (4)(A)(i) In the event of a Federal Communications Commission
25 order, rule, or policy pursuant to ~~47 U.S.C. § 254(a)(2), the effect of which~~
26 ~~is to change~~ that changes the federal Universal Service Fund revenues ~~of an~~
27 ~~incumbent local exchange carrier~~ of an eligible telecommunications carrier
28 after July 1, 2005, the commission shall either increase the rates for basic
29 local exchange service or increase the ~~incumbent local exchange carrier's~~
30 recovery from the AUSF or a combination thereof to replace the reasonably
31 projected change in revenues.

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

36 (B)(i)(a) Through ~~December 31, 2003~~ July 1, 2005, any

1 rural telephone company, excluding tier one companies, that, as a result of
2 changes caused by new or existing federal or state regulatory or statutory
3 directives, experiences a change in intrastate or interstate switched-access
4 services revenues or in net revenue received from the intrastate Carrier
5 Common Line Pool before January 1, 2004, interstate access charge pools, or
6 the Arkansas IntraLATA Toll Pool shall be allowed to recover the reductions
7 from the AUSF or through modifications in rates applicable to basic local
8 exchange service. The recovered amounts shall be limited to the net reduction
9 in revenues from all sources of support listed in subdivision (e)(4)(A) of
10 this section and this subdivision (e)(4)(B) and shall be subject to the
11 provisions of subdivisions (e)(6)(D) and (e)(9) of this section.

12 (b) Beginning July 1, 2005, any rural
13 telephone company, excluding tier one companies, that, as a result of changes
14 caused by new or existing federal or state regulatory or statutory
15 directives, experiences a change in intrastate or interstate switched-access
16 services revenues or ~~in net revenue received from the intrastate Carrier~~
17 ~~Common Line Pool prior to January 1, 2004~~, interstate access charge pools, ~~or~~
18 ~~the Arkansas IntraLATA Toll Pool~~ shall be allowed to recover the reductions
19 from the AUSF or through modifications in rates applicable to basic local
20 exchange service. The recovered amounts shall be limited to the net reduction
21 in revenues from all sources of support listed in subdivision (e)(4)(A) of
22 this section and this subdivision (e)(4)(B).

23 (ii)(a) This subdivision (e)(4)(B)(ii) shall become
24 effective on January 1, 2004.

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

28 (1) The ILEC is eligible to be in the
29 AICCLP on January 1, 2004; and

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

33 (B)(i) If any provision of the AICCLP is
34 declared invalid for any reason or preempted by any court or any
35 administrative agency and the Arkansas Public Service Commission determines
36 that the provision is material, then each AICCLP member shall individually

1 compute and charge a per-access minute carrier common line rate to fund its
2 carrier common line net revenue requirement.

3 (ii) The AICCLP members shall charge the rate under
4 subdivision (e)(4)(B)(ii)(b)(2)(B)(i) of this section to underlying carriers.

5 (iii) The ILECs shall charge a reciprocal rate to
6 other ILECs.

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

10 (c) If the AICCLP fails to provide an ILEC's
11 carrier common line net revenue requirement, the commission shall provide for
12 concurrent recovery of the revenue loss from the AUSF, basic local exchange
13 rates, or a combination thereof.

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

19 (i) The total annual revenues received from these
20 sources by the eligible telecommunications carrier during the most recent
21 twelve (12) months preceding the required regulatory or statutory changes;
22 and

23 (ii) The reasonable projection of total test-year
24 annual revenue after the changes are implemented.

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

36 (b) Beginning January 1, 2004, except as

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

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

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

23 There is also created an AICCLP allocation to be known as the "Arkansas
24 Calling Plan Fund".

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

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

35 (iv)(a) Through December 31, 2003, the Extension of
36 Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be

1 funded by the AICCLP assessing one-half (1/2) of the fund to be paid by
2 incumbent local exchange carriers (ILECs) and one-half (1/2) of the fund to
3 be paid by all other telecommunications providers reporting intrastate retail
4 billed minutes of use to the AICCLP. Beginning January 1, 2004, the Extension
5 of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will
6 be paid by the AICCLP members, exiting ILECs, and underlying carriers as
7 follows:

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

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

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

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

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

33 The assessments shall commence upon the first day of the month
34 following April 20, 2001.

35 (2) The first four million dollars (\$4,000,000) shall be
36 allocated monthly as collected to assure that the AUSF has adequate funds to

1 *compensate any retroactive claims that may be made against the AUSF due to*
2 *the change in the test period resulting from the decision in AT&T*
3 *Communications of the S.W., Inc. v. Arkansas Pub. Serv. Comm'n, 344 Ark. 188,*
4 *40 S.W.3d 273 (2001).*

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

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

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

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

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

22 (D)(i)(a)(1) If an eligible telecommunications carrier has
23 not elected to discontinue funding pursuant to subdivision (e)(9)(A) of this
24 section, beginning July 1, 2005, an eligible telecommunications carrier that
25 had been receiving AUSF funding under subdivisions (e)(4)(A) and
26 (e)(4)(B)(i)(a) of this section shall receive AUSF funding as determined by
27 the high-cost transition and revenue shift cap formulas described in
28 subdivisions (e)(6)(D)(ii) and (iii) of this subsection.

29 (2) The provisions of subdivision
30 (e)(6)(D)(i)(a)(1) of this section are applicable only to eligible
31 telecommunications carriers that were receiving AUSF funding as of January 1,
32 2005, and to non-tier one eligible telecommunications carriers with less than
33 ten thousand (10,000) access lines as of January 1, 2005.

34 (b) Beginning July 1, 2005, the AUSF
35 administrator shall ratably:

36 (1)(A) Reduce the base year AUSF funding

1 by one-fifth (1/5) for the next five (5) years.

2 (B) The base year AUSF funding is
3 the amount received by an eligible carrier for the twelve months ending June
4 30, 2005.

5 (C) Beginning July 1, 2009, the
6 base year AUSF funding shall be replaced by the amount determined in
7 accordance with subdivisions (e)(6)(D)(ii) and (iii) of this section; and

8 (2) Increase AUSF funding by one-fifth
9 (1/5) of the funding amount determined by subdivisions (e)(6)(D)(ii) and
10 (iii) of this section for the same five-year period.

11 (ii) The amount of the eligible telecommunications
12 carrier's AUSF funding under the high cost transition formula shall be
13 determined by the AUSF administrator who shall apply the high-cost transition
14 formula as follows:

15 (a)(1) Subtract two hundred ninety-five
16 dollars (\$295.00) per loop from the total annual cost per loop.

17 (2) The total annual cost per loop is
18 the most recent unseparated annual cost per loop of the eligible
19 telecommunications carrier's study area as defined in 47 C.F.R. §36.621, as
20 it existed on January 1, 2005, and which is used for the purpose of
21 administering and calculating the carrier's eligibility for the federal high
22 cost fund;

23 (b) Subtract the annual amount per loop
24 received by the eligible carrier from the federal high cost fund from the
25 total annual cost per loop;

26 (c) If the carrier's weighted average
27 recurring monthly rate for basic residential local exchange telephone service
28 is equal to or less than eleven dollars (\$11.00) per month as of July 1,
29 2005, subtract from the total annual cost per loop the local rate threshold
30 adjustment which is the amount produced by multiplying by twelve (12) the
31 difference between the carrier's weighted average recurring monthly rate for
32 basic residential local exchange telephone service that was in effect on July
33 1, 2005, and eleven dollars (\$11.00); and

34 (d) Multiply the carrier's total working loops
35 as of December 31 of the preceding year by the balance remaining after making
36 the subtractions under subdivisions (e)(6)(D)(ii)(a), (b) and (c) of this

1 section from the total annual cost per loop.

2 (iii)(a) If the eligible carrier's base year AUSF
3 funding per loop per year exceeds the high-cost transition fund eligibility
4 per loop per year as determined under subdivision (e)(6)(D)(ii) of this
5 section by an amount greater than one hundred twenty dollars (\$120.00) per
6 loop per year, the AUSF administrator shall provide the eligible carrier a
7 revenue shift cap adjustment.

8 (b)(1) The revenue shift cap shall be
9 determined by dividing the base year AUSF funding per loop by the carrier's
10 average number of working loops for the same twelve-month period.

11 (2) Base year AUSF funding per loop is
12 the amount per loop per year that was received by an eligible carrier for the
13 twelve (12) months ending July 1, 2005, and is equal to the total AUSF
14 funding received by an eligible carrier for the twelve (12) months ending
15 July 1, 2005.

16 (c) The revenue shift cap adjustment shall be
17 equal to the base year AUSF funding per loop per year, less one hundred
18 twenty dollars (\$120.00) per loop per year, multiplied by the carrier's
19 number of working loops as of December 31 of the preceding year.

20 (iv) For each eligible carrier receiving AUSF
21 funding under subdivision (e) (6)(D)(i)(A) of this section, the AUSF
22 administrator shall recalculate and update the high-cost transition fund
23 formula and revenue shift cap each year.

24 (v) If the amount recoverable by an eligible carrier
25 under subdivisions (e)(6)(D)(ii) and (iii) of this section is less than the
26 carrier's base year AUSF funding, the carrier may increase its basic local
27 exchange rates by an amount that will recover that difference.

28 (7) In calculating revenue requirements only for the purpose of
29 establishing high-cost funding needs from the AUSF, the commission shall not
30 fix depreciation rates. However, the commission may make reasonable
31 adjustments to depreciation expense if an eligible telecommunications
32 carrier's composite depreciation annual accrual rate is greater than the
33 weighted average of composite rates for similar plant and equipment of all
34 other telecommunications providers providing comparable services in the
35 state. In that case, the commission may adjust depreciation expenses of the
36 eligible telecommunications carrier to levels that would not exceed fifteen

1 percent (15%) above a composite accrual rate comparable to the statewide
2 weighted average; and

3 (8)(A)(i) *The commission shall establish by regulation a grant*
4 *program to make grants available to eligible telecommunications carriers for*
5 *the extension of facilities to citizens who are not served by wire line*
6 *services of an eligible telecommunications carrier. Grants may be requested*
7 *by an eligible telecommunications carrier or citizens who are not served or*
8 *both.*

9 (ii) *The commission shall delegate to a trustee the*
10 *administration, collection, and distribution of the Extension of*
11 *Telecommunications Facilities Fund in accordance with the rules and*
12 *procedures established by the commission. The trustee shall enforce and*
13 *implement all rules and directives governing the funding, collection, and*
14 *eligibility for the Extension of Telecommunications Facilities Fund.*

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

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

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

25 (D)(i) *The commission shall provide quarterly reports to*
26 *the Legislative Council. The reports shall include, but shall not be limited*
27 *to, the number of requests for grants, the number of grants awarded, the*
28 *amount awarded, and the number of additional customers served.*

29 (ii) *The commission shall notify members of the*
30 *General Assembly of grants made in their districts.*

31 (E) *In order to allow time for potential applicants to*
32 *request grants, no grants shall be awarded for three (3) months after the*
33 *effective date of the rules establishing the program; and*

34 *(9)(A) A telecommunications carrier receiving funds from the*
35 *AUSF as of July 1, 2005, may elect to have its payments ratably reduced*
36 *annually by one-fifth (1/5) of the amount authorized by the AUSF*

1 administrator as of July 1, 2005.

2 (B)(i)(a) Any telecommunications carrier that elects to
3 receive the reduction under subdivision (9)(A) of this section may recover
4 through a surcharge any reduction in its AUSF payments up to the amount
5 authorized by the AUSF administrator as of July 1,2005.

6 (b) The surcharge shall be on the
7 telecommunications carrier's customer bills over its total customer base
8 which includes commonly controlled local exchange carriers.

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

12 (c) For any telecommunications carrier that
13 elects to receive the reduction under subdivision (9)(A) of this section, no
14 general rate application or earnings review shall be required to implement
15 the surcharge that may not exceed the amount set under § 23-17-412(i)(1) for
16 any twelve-month period.

17 (f) On or within thirty (30) days following the fifth anniversary of
18 February 4, 1997, the commission and the AUSF administrator shall complete
19 and deliver a report on the status and performance of the AUSF to the
20 Legislative Council.

21 (g) The current Universal Telephone Service Fund established pursuant
22 to § 23-17-301 et seq. will continue to exist until the AUSF is funded and
23 operational. At that time any funds remaining in the current fund will be
24 transferred to the AUSF, and the current fund will no longer be operational.

25
26 SECTION 2. Arkansas Code § 23-17-405 is amended to read as follows:

27 23-17-405. Eligible telecommunications carrier.

28 (a) The incumbent local exchange carrier, its successors and assigns,
29 which owns, maintains, and provides facilities for universal service within a
30 local exchange area on February 4, 1997, shall be the eligible
31 telecommunications carrier within the local exchange area.

32 (b) Where the incumbent local exchange carrier receives AUSF support,
33 ~~except in areas served by rural telephone companies,~~ the Arkansas Public
34 Service Commission, consistent with 47 U.S.C. § 214(e)(2), after reasonable
35 notice and hearing, may designate other telecommunications providers to be
36 eligible for high-cost support pursuant to § 23-17-404 under the following

1 conditions:

2 (1)(A) The other telecommunications provider accepts the
3 responsibility to provide service to all customers in an incumbent local
4 exchange carrier's local exchange area using its own facilities or a
5 combination of its own facilities and resale of another carrier's services.

6 (B) High-cost support under this section will not begin
7 until the telecommunications provider has facilities in place and offers to
8 serve all customers in its service area;

9 (2) The telecommunications provider may only receive funding for
10 the portion of its facilities that it owns and maintains;

11 (3) The telecommunications provider will not receive AUSF
12 funding at a level higher than the level of funding received by the incumbent
13 local exchange carrier in the same area;

14 (4) The telecommunications provider advertises the availability
15 and the charges for the services, using media of general distribution; ~~and~~

16 (5) The telecommunications provider shall:

17 (A) Provide a five-year plan demonstrating how high-cost
18 universal service support will be used to improve its coverage, service
19 quality, or capacity throughout the service area for which it seeks
20 designation;

21 (B) Demonstrate its ability to remain functional in
22 emergency situations;

23 (C) Demonstrate that it will satisfy consumer protection
24 and service quality standards;

25 (D) Offer local usage plans comparable to those offered by
26 the incumbent local exchange carrier in the area for which it seeks
27 designation; and

28 (E) Acknowledge that it may be required to provide equal
29 access if all other eligible telecommunications carriers in the designated
30 service area relinquish their designations; and

31 (6) ~~It is determined by the~~ The commission determines that the
32 designation is in the public interest after:

33 (A) Reviewing the benefits of increased consumer choice
34 and the unique advantages and disadvantages of the competitor's service
35 offering;

36 (B) Examining the potential for cream-skimming effects in

1 instances where the application seeks designation below the study area level
2 of a rural incumbent local exchange carrier;

3 (C) Offering local usage plans comparable to those offered
4 by the incumbent local exchange carrier in the area for which it seeks
5 designation; and

6 (D) Acknowledging that it may be required to provide equal
7 access if all other eligible telecommunications carriers in the designated
8 service area relinquish their designations.

9 (c) In exchanges or wire centers where the commission has designated
10 more than one (1) eligible telecommunications carrier, the commission shall
11 permit a local exchange carrier to relinquish its designation as an eligible
12 telecommunications carrier, consistent with 47 U.S.C. § 214(e)(4), upon a
13 finding that at least one (1) eligible telecommunications carrier will
14 continue to serve the area.

15 ~~(d)(1) For the entire area served by a rural telephone company,~~
16 ~~excluding tier one companies, for the purpose of the AUSF and the federal~~
17 ~~Universal Service Fund, there shall be only one (1) eligible~~
18 ~~telecommunications carrier which shall be the incumbent local exchange~~
19 ~~carrier that is a rural telephone company.~~

20 ~~(2) The rural telephone company may elect to waive its right to~~
21 ~~be the only eligible telecommunications carrier within the local exchange~~
22 ~~area by filing notice with the commission.~~

23 ~~(3) If there is more than one eligible telecommunications~~
24 ~~carrier, an eligible telecommunications carrier may petition the commission~~
25 ~~and be granted relief from designation as an eligible telecommunications~~
26 ~~carrier.~~

27 (e) An eligible telecommunications carrier may use commercial mobile
28 services to provide universal services.

29
30 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
31 General Assembly of the State of Arkansas that there is an immediate need for
32 the amendment of the Telecommunications Regulatory Reform Act of 1997 to
33 ensure compliance with federal law and regulations and to continue to
34 encourage growth and competition; that any delay in the effective date of
35 this act could create an undue burden upon Arkansas citizens and could work
36 irreparable harm upon the efficient provision of telecommunications services

1 in the State of Arkansas. Therefore, an emergency is declared to exist and
2 this act being immediately necessary for the preservation of the public
3 peace, health, and safety shall become effective on:

4 (1) The date of its approval by the Governor;

5 (2) If the bill is neither approved nor vetoed by the Governor,
6 the expiration of the period of time during which the Governor may veto the
7 bill; or

8 (3) If the bill is vetoed by the Governor and the veto is
9 overridden, the date the last house overrides the veto.

10
11 /s/ Stovall
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