

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 87th General Assembly
3 Regular Session, 2009

As Engrossed: S3/26/09

A Bill

SENATE BILL 808

4
5 By: Senator Horn
6
7

For An Act To Be Entitled

8
9 *AN ACT TO ENCOURAGE INVESTMENT IN*
10 *TELECOMMUNICATIONS FACILITIES IN RURAL AREAS AND*
11 *TO ASSIST LOW INCOME TELECOMMUNICATIONS*
12 *CUSTOMERS; TO PROVIDE AN EMERGENCY EFFECTIVE*
13 *DATE; AND FOR OTHER PURPOSES.*
14

Subtitle

15
16 *TO ENCOURAGE INVESTMENT IN*
17 *TELECOMMUNICATIONS FACILITIES IN RURAL*
18 *AREAS, TO ASSIST LOW INCOME*
19 *TELECOMMUNICATIONS CUSTOMERS, AND TO*
20 *PROVIDE AN EMERGENCY EFFECTIVE DATE.*
21
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 *SECTION 1. Arkansas Code § 23-17-404(b)(2)(A), concerning the*
27 *preservation and promotion of universal service through the Arkansas High*
28 *Cost Fund, is amended to read as follows:*

29 *(2)(A)(i) ~~This AHCF charge for all telecommunications providers~~*
30 *~~shall be proportionate to each provider's Arkansas intrastate retail~~*
31 *~~telecommunications service revenues~~ Every telecommunications provider, and to*
32 *the extent not prohibited by federal law, every provider of interconnected*
33 *VOIP service, as defined by 47 C.F.R. 9.3, as it existed on October 1, 2005,*
34 *shall be assessed the AHCF charge on an equitable and nondiscriminatory*
35 *basis.*

36 *(ii)(a) The AHCF charge shall be proportionate to*



1 each telecommunications provider's Arkansas intrastate telecommunications
2 service revenue.

3 (b) However, interconnected VOIP providers
4 shall identify intrastate revenue subject to the AHCF charge using the
5 inverse of the current FCC safe harbor, for example 35.1% as of March 19,
6 2009, of all collected revenues, or after approval by the Arkansas Public
7 Service Commission, using either direct assignment or a company-specific
8 traffic study;

9
10 SECTION 2. Arkansas Code § 23-17-404(e)(2), concerning the
11 preservation and promotion of universal service through the Arkansas High
12 Cost Fund, is amended to read as follows:

13 (2)(A) The commission shall provide a report to the Legislative
14 Council by October 31 of the year prior to a regular session of the General
15 Assembly detailing any recommended changes to the universal service list of
16 requirements that are to be supported by the AHCF. This list may be approved
17 by the General Assembly, and if approved, the AHCF support to ETCs may be
18 adjusted, due to the approved changes, to reflect an increase or decrease in
19 the size of the AHCF by increasing or decreasing the overall financial cap on
20 the AHCF to recover the cost of additions or revisions to the universal
21 service list concurrent with any such revisions to the list of universal
22 services identified in § 23-17-403.

23 (B) In considering revisions to the universal service
24 list, the commission shall consider the need for the addition or removal of a
25 service to the list in order to maintain end-user rates for universal
26 services that are reasonably comparable between urban and rural areas or to
27 reflect changes in the type and quality of telecommunications services
28 considered essential by the public as evidenced, for example, by those
29 telecommunication services that are purchased and used by a majority of
30 single-line urban customers.

31 (C) A rate case proceeding or earning investigation or
32 analysis shall not be required or conducted in connection with the recovery
33 of the cost of additions or revisions or in connection with the
34 administration of the AHCF.

35 (D)(i) Beginning July 1, 2009, the AHCF shall consist of
36 the following three (3) separate programs:

1 (a) The AHCF High Cost Program which is under
2 the upper limit or "CAP" requirements of § 23-17-404;

3 (b) The State Lifeline Program which is
4 separate from the AHCF High Cost Program and is not under the CAP
5 requirements; and

6 (c) The AICCLP Funding Program which is
7 separate from the AHCF High Cost Program and the State Lifeline Program and
8 is not under the CAP requirements.

9 (ii)(a) The State Lifeline Program shall be
10 administered by the AICCLP administrator and is designed to:

11 (1) Advance the goals of universal
12 service and ensure that low-income residential customers within the State of
13 Arkansas are provided financial assistance in maintaining basic local
14 exchange telecommunications service; and

15 (2) Operate in conjunction with the
16 Federal Lifeline Program to provide to qualifying residential subscribers for
17 basic local exchange service:

18 (A) Full waiver of the End-User
19 Common Line Charge; and

20 (B)(i) A monthly credit to the
21 subscriber's monthly bill; or

22 (ii) A reduced monthly rate.

23 (b)(1) The State Lifeline Program shall offer
24 a reimbursement to eligible ETCs of up to three dollars and fifty cents
25 (\$3.50) per month to customers eligible for the Federal Low Income Discount
26 Program.

27 (2)(A) The customer shall be a
28 participant in the Federal Low Income Discount Program to receive the State
29 Lifeline Program discount or reduced rate.

30 (B) The discount or reduced rate
31 shall be applied to the customer's monthly bill.

32 (3) Only ETCs are eligible to provide
33 the State Lifeline Program.

34 (4) The monthly credit to a qualifying
35 residential subscriber shall not be more than the total amount of the
36 subscriber's End-User Common Line Charge plus the monthly local service

1 charge.

2 (c)(1) The AICCLP administrator will
3 administer the State Lifeline Program similar to the Federal Low Income
4 Discount Program is administered.

5 (2) Eligible ETCs shall petition the
6 AICCLP monthly based on the number of Federal Low Income Discount Program
7 recipients.

8 (3) The AHCF administrator shall
9 transfer to the AICCLP administrator sufficient funds monthly to reimburse
10 the State Lifeline Program.

11 (4) The AICCLP administrator shall
12 verify that the ETC is eligible for the reimbursement and will then
13 distribute funds to each eligible ETC.

14 (5) An ETC shall provide its results of
15 the Federal Lifeline Program annual random sample process each year to the
16 AICCLP administrator to verify continuity between the two (2) programs.

17
18 SECTION 3. The introductory language of Arkansas Code § 23-17-
19 404(e)(4)(B)(iv)(a), concerning funding for the Extension of
20 Telecommunications Facilities Fund and the Arkansas Calling Plan Fund, is
21 amended to read as follows:

22 (iv)(a) Through December 31, 2003, the Extension of
23 Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be
24 funded by the AICCLP assessing one-half (1/2) of the fund to be paid by
25 incumbent local exchange carriers (ILECs) and one-half (1/2) of the fund to
26 be paid by all other telecommunications providers reporting intrastate retail
27 billed minutes of use to the AICCLP. Beginning January 1, 2004, through June
28 30, 2009, the Extension of Telecommunications Facilities Fund and the
29 Arkansas Calling Plan Fund will be paid by the AICCLP members, exiting ILECs,
30 and underlying carriers as follows:

31
32 SECTION 4. Arkansas Code § 23-17-404(e)(4)(B)(v)(b)(2), concerning the
33 administration of telecommunication services and funding, is amended to read
34 as follows:

35 (2)(A) The administrator of the AICCLP
36 as it existed prior to January 1, 2004, may supervise any audit that is

1 requested and may further take any action deemed reasonable or necessary to
2 finalize the winding-up process of the AICCLP as it existed prior to January
3 1, 2004.

4 (B)(i) Beginning July 1, 2009, the
5 Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan
6 Fund shall be funded through the AHCF under this subdivision
7 (e)(4)(B)(v)(b)(2)(B).

8 (ii) The AHCF administrator
9 shall calculate the necessary funding for the Extension of Telecommunications
10 Facilities Fund and the Arkansas Calling Plan Fund to the minimum extent of
11 funding necessary not to exceed the maximum specified in this section, to
12 fund any extensions of facilities or calling plans approved by the Commission
13 in accordance with applicable law and this section.

14 (iii)(a) The funds
15 calculated under subdivision (e)(4)(B)(v)(b)(2)(B)(ii) of this section shall
16 be transferred to the AICCLP administrator monthly in sufficient quantities
17 to fund the monthly commitment levels of the AICCLP administrator's funding
18 obligations.

19 (b) The AICCLP
20 administrator shall assist the AHCF administrator in developing estimates for
21 the AHCF administrator to use in calculating the necessary funding amounts to
22 be transferred.

23
24 SECTION 5. Arkansas Code § 23-17-404(e)(4)(E)(ii), concerning funds
25 available for distribution from the AHCF High Cost Program, is amended to
26 read as follows:

27 (ii)(a)(1) The funds available for distribution to
28 ETCs from the AHCF High Cost Program shall not exceed and are capped at
29 twenty-two million dollars (\$22,000,000) per year, the total capped fund,
30 until June 30, 2009.

31 (2)(A) Cost of administering the AHCF
32 shall first be deducted from the total capped fund prior to allocation of
33 funding to the ETCs.

34 (B) Transition funds used from the
35 surplus during the five-year transition period are supplemental and are not
36 subject to any cap.

1 remain the same through June 30, 2010.

2 (2)(A) Beginning July 1, 2010, the size
3 group cap for all ETCs with a total customer access base of total customer
4 base of one hundred fifty thousand (150,000) or more access lines or
5 customers and fewer than five hundred thousand (500,000) access lines or
6 customers shall be increased by four percent (4%) per year for a period of
7 three (3) years.

8 (B) The CAP shall be increased by
9 four percent (4%) annually to reflect each year's annual adjustment to the
10 increased funding level of all ETCs with a total customer access base or
11 total customer base of one hundred fifty thousand (150,000) or more access
12 lines or customers and fewer than five hundred thousand (500,000) access
13 lines or customers.

14 (3) Beginning July 1, 2013, the fund CAP
15 shall be increased each year by the annual increase in the Gross Domestic
16 Product Price Index or by three percent (3%) over the previous year's size
17 group's CAP balance, whichever is greater.

18 (d)(1) For all ETCs with a total customer
19 access base or total customer base of fifteen thousand (15,000) or more
20 access lines or customers and fewer than one hundred fifty thousand (150,000)
21 access lines or customers, the size group cap shall be two percent (2%) of
22 the total capped fund until June 30, 2009.

23 (2) Beginning July 1, 2009, the total
24 capped amount shall increase by five hundred sixty thousand dollars
25 (\$560,000) for all ETCs with a total customer access base or total customer
26 base of fifteen thousand (15,000) or more access lines or customers and fewer
27 that one hundred fifty thousand (150,000) access lines or customers.

28 (3)(A) Beginning July 1, 2010, the size
29 group cap shall be increased by four percent (4%) per year for a period of
30 three (3) years.

31 (B) The CAP shall be increased by
32 four percent (4%) annually to reflect each year's annual adjustment to the
33 increased funding level of all ETCs with a total customer access base or
34 total customer base of fifteen thousand (15,000) or more access lines or
35 customers and fewer that one hundred fifty thousand (150,000) access lines or
36 customers.

1 (4) Beginning July 1, 2013, the fund CAP
2 shall be increased each year by the annual increase in the Gross Domestic
3 Product Price Index or by three percent (3%) over the previous year's size
4 group's CAP balance, whichever is greater.

5 (e)(1) For all ETCs with a total customer
6 access base or total customer base of fewer than fifteen thousand (15,000)
7 access lines or customers, the size group cap shall be seventy-one percent
8 (71%) of the total capped fund until June 30, 2009.

9 (2) Beginning on July 1, 2009, the
10 amount of the size group's fund cap shall be the total amount allocated to
11 this size group, as last calculated on or before June 30, 2009, plus one
12 million three hundred thousand dollars (\$1,300,000).

13 (3)(A) Beginning July 1, 2010, the size
14 group cap shall be increased by four percent (4%) per year for a period of
15 three (3) years.

16 (B) The CAP shall be increased by
17 four percent (4%) annually to reflect each year's annual adjustment to the
18 increased funding level of all ETCs with a total customer access base or
19 total customer base of fewer than fifteen thousand (15,000) access lines or
20 customers.

21 (4) Beginning July 1, 2013, the fund CAP
22 shall be increased each year by the annual increase in the Gross Domestic
23 Product Price Index or by three percent (3%) over the previous year's size
24 group's CAP balance, whichever is greater.

25 (f) If the Gross Domestic Product Price Index
26 is no longer in use, the price index used to replace the Gross Domestic
27 Product Price Index shall be used to calculate the annual increases required
28 by subdivisions (e)(4)(E)(ii)(b) – (e)(4)(E)(ii)(e) of this section.

29 (g) If a company's total access base or total
30 customer base increases beyond the company's size group, the company shall
31 continue to be treated as a member of its existing size group for a period of
32 two (2) years from the date of the increase if notice of the increase is
33 provided to the AHCF administrator within thirty (30) days of the increase.

34
35 SECTION 6. Arkansas Code § 23-17-416 is amended to read as follows:
36 23-17-416. Arkansas intrastate carrier common line.

1 (a)(1) Except as provided in § 23-17-404(e)(4)(D)(i)(b), beginning
2 January 1, 2004, intrastate carrier common line charges billed to ILECs and
3 underlying carriers shall be determined at the rate of one and sixty-five
4 hundredths cents (1.65¢) per intrastate access minute.

5 (2) The carrier common line charge is not a tax and is not
6 affected by state laws governing taxation.

7 (b)(1) Through June 30, 2009, the AICCLP operates as follows:

8 (A) Each underlying carrier's monthly payment to the
9 AICCLP shall include the sum of the underlying carrier's share of the
10 AICCLP's net revenue requirement for the remaining incumbent local exchange
11 carriers, the underlying carrier's portion of the Arkansas Calling Plan Fund
12 and Extension of Telecommunications Facilities Fund expense, and the AICCLP
13 administrative expenses.

14 ~~(2)(B)~~ Each underlying carrier's monthly payment to the
15 AICCLP shall be based upon the underlying carrier's proportionate share of
16 Arkansas intrastate telecommunications services revenues and special
17 intrastate ILEC revenues to the total Arkansas intrastate telecommunications
18 services revenue and special intrastate ILEC revenues of all underlying
19 carriers.

20 (2)(A) Beginning July 1, 2009, the AHCF administrator shall fund
21 monthly to the AICCLP administrator the net carrier common line revenue
22 requirement of the remaining AICCLP members, the total Arkansas Calling Plan
23 Fund expense, and the total Extension of Telecommunications Facilities Fund
24 expense.

25 (B) The calculated funds shall be transferred to the
26 AICCLP administrator monthly in sufficient quantities to fund the monthly
27 commitment levels of the AICCLP administrator's funding obligations,
28 including administration fees.

29 (C) The AICCLP administrator shall notify the AHCF
30 administrator of the funding requirement.

31 (D) If the net revenue requirement of the members of the
32 AICCLP is reduced by federal or state law or federal or state regulation, the
33 monthly net revenue requirement based on the average of the past three (3)
34 months prior to the event's taking place will be received from the AHCF and
35 shall not be under any cap requirements.

36 (3)(A)(i) An exiting ILEC that experiences a fixed carrier

1 common line revenue shortfall for its carrier common line net revenue
2 requirements may recover the shortfall through increases in local rates based
3 on the total customer access base of the exiting company.

4 (ii) AICCLP members shall recover their carrier
5 common line net revenue requirement by AICCLP rate adjustment and through the
6 AICCLP.

7 (iii) If the fixed carrier common line revenue
8 shortfall is distributed throughout the total customer access base, then each
9 independent ILEC within the total customer access base shall receive from the
10 distribution its share of the shortfall.

11 (B) An exiting ILEC that seeks to recover its carrier
12 common line revenue shortfall is not required to recover equally from each
13 class of customers.

14 (C)(i) An exiting ILEC may recover its fixed carrier
15 common line revenue shortfall from any intrastate rate other than access
16 charges.

17 (ii) Any AICCLP member may recover its AICCLP rate
18 adjustment from any intrastate rate other than access charges.

19 (D) An exiting ILEC that reduces its carrier common line
20 charge of one and sixty-five hundredths cents (1.65¢) may recover the
21 shortfall through increases in local rates.

22 (4) This section shall not limit a carrier's ability to adjust
23 its rates under § 23-17-406, § 23-17-407, or § 23-17-408.

24 (5) This section shall not limit a carrier's ability to increase
25 its local rates under § 23-17-412.

26 (6) Any AICCLP rate adjustment charge shall not limit an AICCLP
27 member's ability to adjust rates under § 23-17-412.

28 (7)(A) ~~No~~ A toll reseller shall not be required to pay to an
29 ILEC or to the AICCLP any portion of an underlying carrier's common line net
30 revenue obligation unless the ILEC is the toll reseller's underlying carrier.

31 (B) Unless agreed to otherwise between the toll reseller
32 and the ILEC, if an ILEC is a toll reseller's underlying carrier, then the
33 toll reseller shall report the special intrastate ILEC revenue to the
34 administrator and shall pay all amounts due the AICCLP for the revenue.

35 (c)(1) The Arkansas Public Service Commission shall adopt all rules
36 relating to the membership, operation, management, and administration of the

1 AICCLP as it will be constituted after December 31, 2003.

2 (2) The commission may adopt rules under subdivision (c)(1) of
3 this section after it appoints the members of the Arkansas Intrastate Carrier
4 Common Line Pool Advisory Procedural Board and selects an AICCLP
5 administrator.

6 (d) The commission may terminate a carrier's certificate of
7 convenience and necessity if the carrier fails to comply with AICCLP
8 procedures or fails to make a payment due under this section.

9 (e)(1) The commission shall choose an AICCLP administrator on or
10 before June 1, 2003.

11 (2) The administrator shall manage the collection and
12 distribution of the carrier common line net revenue requirements in
13 accordance with the rules and procedures established by the commission and
14 consistent with this section.

15 (3) The administrator shall enforce and implement all rules and
16 directives governing the funding, collection, and eligibility for the AICCLP
17 membership.

18 (4)(A) ~~The~~ Through June 30, 2009, the administrator shall
19 determine the total monthly amount due to the AICCLP from AICCLP members,
20 exiting ILECs, and underlying carriers, based upon the sum of the monthly
21 carrier common line net revenue requirement of AICCLP members, funding
22 requirements for the Arkansas Calling Plan Fund and the Extension of
23 Telecommunications Facilities Fund, and the AICCLP administrative fees.

24 (B) Beginning July 1, 2009, the AICCLP administrator shall
25 determine the total monthly amount due to the AICCLP from the AHCF, based
26 upon the sum of the monthly carrier common line net revenue requirement of
27 AICCLP members, funding requirements for the Arkansas Calling Plan Fund and
28 the Extension of Telecommunications Facilities Fund, and the AICCLP
29 administrative fees.

30 (5) The administrator shall provide monthly and annual reports
31 to the commission concerning the operation of the AICCLP.

32 (6) Any information considered proprietary by the administrator
33 shall be treated as confidential unless the commission determines that the
34 administrator erred in the determination.

35 (7) The AICCLP administrator and the Arkansas Universal Service
36 Fund administrator may share confidential information to determine the

1 amounts due or the accuracy of information submitted by ILECs and underlying
2 carriers.

3 (8)(A) Any ILEC that was designated as a non-tier one ILEC under
4 Acts 1997, No. 77, as of December 31, 1997, and had fewer than fifty thousand
5 (50,000) access lines as of December 31, 1997, shall be eligible to be a
6 member of the AICCLP beginning January 1, 2004.

7 (B)(i) Based on its total customer access base, the
8 maximum that a non-tier one company under subdivision (e)(8)(A) of this
9 section may draw shall be one million three hundred thousand dollars
10 (\$1,300,000) annually.

11 (ii) If a non-tier one company under subdivision
12 (e)(8)(A) of this section is entitled to receive more than one million three
13 hundred thousand dollars (\$1,300,000) annually, then the administrator shall
14 assess a prorated charge to each ILEC associated with the total customer
15 access base that is based upon the ILEC's proportionate share of the total
16 net revenue requirement of all ILECs within the total customer base.

17 (f)(1) Beginning January 1, 2004, no ILEC that had a total customer
18 access base of more than fifty thousand (50,000) access lines as of December
19 31, 1997, shall be a member of AICCLP.

20 (2) An ILEC that had a total customer access base of fifty
21 thousand (50,000) or fewer access lines as of December 31, 1997, may
22 terminate its membership in the AICCLP after sixty (60) days' notice to the
23 commission and the administrator and may not thereafter again become a member
24 of the AICCLP.

25 (g)(1) If an ILEC terminates its membership in the AICCLP after
26 January 1, 2004, its total customer access base must exit the pool as a
27 single unit.

28 (2) If an ILEC terminates its membership in the AICCLP after
29 January 1, 2004, its fixed carrier common line revenue shortfall shall be
30 calculated using relevant data from the data development period identified in
31 subdivision (h)(4)(B)(ii) of this section.

32 (h)(1) The administrator shall determine the amounts to be paid to
33 AICCLP members on a monthly basis and shall determine any fixed or varying
34 amounts due the pool from AICCLP members, exiting ILECs, ~~and~~ underlying
35 carriers, and the AHCF.

36 (2) The administrator shall provide notice to AICCLP members and

1 the AHCF administrator, other ILECs, and underlying carriers concerning
2 calculations related to each entity and shall bill all carriers for any
3 amounts due the pool.

4 (3) The administrator shall use the appropriate data development
5 period to determine the calculations for AICCLP members' carrier common line
6 net revenue requirement.

7 (4)(A) For each ILEC exiting the pool on December 31, 2003, the
8 administrator shall use the appropriate data to determine the payment that
9 the exiting ILECs shall pay the pool to fund their portion of the Arkansas
10 Calling Plan Fund and Extension of Telecommunications Facilities Fund.

11 (B)(i) Except for AICCLP members exiting the pool after
12 January 1, 2004, the data development period for all ILECs shall be the
13 ILECs' billing months of June, July, and August 2003.

14 (ii) If an AICCLP member exits the AICCLP after
15 January 1, 2004, its data development period to determine the ILEC's fixed
16 carrier common line revenue shortfall shall be the three-month period
17 immediately preceding its exit.

18 (iii) No later than the twenty-second day or the
19 next business day thereafter of July 2003, if the twenty-second day falls on
20 a weekend or holiday, and no later than the twenty-second day or the next
21 business day of each month thereafter, if the twenty-second day falls on a
22 weekend or holiday, each underlying carrier and AICCLP member shall report to
23 the administrator its previous month's data necessary for AICCLP
24 calculations.

25 (j)(1) On December 31, 2003, and the last business day of each month
26 thereafter, the administrator shall cause notice to be sent to each
27 underlying carrier, AICCLP member, ~~and~~ exiting ILEC, and the AHCF
28 administrator of the amount due, based on the previous month's data as
29 submitted to the administrator.

30 (2)(A) Each underlying carrier, AICCLP member, and exiting ILEC
31 shall remit payment due under subdivision (j)(1) of this section to the
32 administrator by no later than the last business day of the following month.

33 (B) The AHCF administrator shall remit the payment due to
34 the AICCLP administrator by the tenth day of the following month.

35 (3) The administrator shall make all reasonable efforts to
36 ensure that AICCLP members receive payment of their monthly net carrier

1 common line revenue requirement by February 10, 2004, and by the tenth day of
2 each month thereafter.

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4 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
5 General Assembly of the State of Arkansas that rural and economically
6 depressed areas of the state are in need of investment in telecommunications
7 and computer services; that enhanced telecommunications service and the
8 deployment of broadband facilities, technology, and infrastructure to provide
9 broadband service is needed as quickly as the state's resources permit; and
10 that this act contains requirements that need to take effect July 1, 2009, to
11 promote measures designed to stimulate investment and increase the
12 availability of telecommunications and broadband technology to rural and
13 economically depressed areas of the state. Therefore, an emergency is
14 declared to exist and this act being necessary for the preservation of the
15 public peace, health, and safety shall become effective on July 1, 2009.

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17 /s/ Horn
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