

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

*As Engrossed: S3/26/13*

# A Bill

SENATE BILL 1045

5 By: Senator L. Chesterfield  
6

## For An Act To Be Entitled

8 AN ACT TO SUPPORT AND DEVELOP BROADBAND  
9 INFRASTRUCTURE AND BROADBAND EXPANSION; TO CREATE  
10 INCENTIVES TO IMPROVE INTERNET ACCESS AND INTERNET  
11 CAPABILITIES BY ESTABLISHING BROADBAND PROVIDERS OF  
12 LAST RESORT; AND FOR OTHER PURPOSES.  
13

## Subtitle

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16 TO SUPPORT AND DEVELOP BROADBAND  
17 INFRASTRUCTURE AND BROADBAND EXPANSION;  
18 TO CREATE INCENTIVES TO IMPROVE INTERNET  
19 ACCESS AND INTERNET CAPABILITIES BY  
20 ESTABLISHING BROADBAND PROVIDERS OF LAST  
21 RESORT.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 *SECTION 1. Arkansas Code Title 23, Chapter 17, is amended to add an*  
27 *additional subchapter to read as follows:*

28 *Subchapter 5. Broadband Provider of Last Resort*  
29

30 *23-17-501. Title.*

31 *This subchapter shall be known and may be cited as the "Broadband*  
32 *Provider of Last Resort Act".*  
33

34 *23-17-502. Definitions.*

35 *As used in this subchapter:*

36 *(1) "Approved alternative technology" means technology that:*



1 (A) Offers service and functionality comparable to that  
2 provided through an exiting provider's facilities, as determined by the  
3 Arkansas Public Service Commission;

4 (B) May include a technology that does not require the use  
5 of a public right-of way; and

6 (C) Is approved by the commission for deployment in a  
7 particular service area;

8 (2) "Basic telecommunications service" means the service  
9 provided to the premises of residential or business customers composed of the  
10 following:

11 (A) Voice-grade access to the public switched network with  
12 ability to place and receive calls;

13 (B) Touch-tone service availability;

14 (C) Flat-rate residential local service and business local  
15 service;

16 (D) Access to emergency services where provided by local  
17 authorities;

18 (E) Access to basic operator services;

19 (F) A standard white-page directory listing;

20 (G) Access to basic local directory assistance;

21 (H) Access to long distance toll service providers; and

22 (I) The minimum service quality as established and  
23 required by the commission on February 4, 1997;

24 (3) "Broadband" means any service used to provide Internet  
25 access at a minimum speed of four megabits per second (4 Mbps);

26 (4) "Competing local exchange carrier" means a local exchange  
27 carrier that is not an incumbent local exchange carrier;

28 (5) "Exchange access" means offering access to telephone  
29 exchange services or facilities for the purpose of originating or terminating  
30 telephone toll services;

31 (6) "Exiting provider" means an entity that:

32 (A) Is the predominant local exchange carrier in a local  
33 exchange area; and

34 (B) Ceases operation in all or part of the local exchange  
35 area;

36 (7) "Facilities-based local exchange carrier" means a local

1 exchange carrier that provides local exchange service:

2 (A) Exclusively over facilities owned or leased by the  
3 carrier; or

4 (B) Predominantly over facilities owned or leased by the  
5 carrier, in combination with the resale of the telecommunications service or  
6 broadband service of another carrier;

7 (8) "Incumbent local exchange carrier" means a local exchange  
8 carrier and the successors and assigns of the local exchange carrier that are  
9 certified by the commission to operate in a local exchange area and were  
10 providing basic local exchange service on February 8, 1996;

11 (9) "Local exchange area" means the geographic area approved by  
12 the commission within which a local exchange carrier is authorized to provide  
13 basic local exchange services and switched-access services;

14 (10)(A) "Local exchange carrier" means a telecommunications  
15 provider of basic local exchange service and switched-access service.

16 (B) "Local exchange carrier" does not include a commercial  
17 mobile telephone service provider;

18 (11) "Local exchange service" means the provision of telephone  
19 exchange service or exchange access;

20 (12) "Provider of last resort" means an entity that is required  
21 by this subchapter to provide broadband to its customers; and

22 (13) "Successor provider" means an entity that is or is  
23 designated to become, the provider of last resort for all or part of a  
24 defined geographic area previously served by an exiting provider.

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26 23-17-503. Broadband obligations of provider of last resort.

27 A provider of last resort shall provide broadband upon request by a  
28 customer within its local exchange area.

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30 23-17-504. Obligations of incumbent local exchange carrier as provider  
31 of last resort – Satisfaction of obligations using any available technology.

32 (a) Except as provided in § 23-17-506 or § 23-17-509, an incumbent  
33 local exchange carrier has the obligations of the provider of last resort.

34 (b) An incumbent local exchange carrier may meet the local exchange  
35 carrier's obligations under this section using any available technology.

36

1 23-17-505. Exiting provider – Advance notice required – Liability for  
2 charges owed to other providers.

3 (a) An exiting provider shall provide advance notice of at least sixty  
4 (60) days to the Arkansas Public Service Commission and each affected  
5 customer and wholesale provider before:

6 (1) Ceasing to serve all or part of the provider’s defined  
7 service area; or

8 (2) Filing for bankruptcy.

9 (b) The notice required by subsection (a) of this section shall:

10 (1) Be submitted in the form and manner prescribed by the  
11 commission; and

12 (2) Include at least one (1) toll-free customer service  
13 telephone number maintained by the provider to facilitate the continuation of  
14 service and the transition of customers to other providers.

15 (c) The exiting provider is liable for all charges incurred by its  
16 customers or other providers to transition a customer to another provider.

17  
18 23-17-506. Relief from provider of last resort obligations –  
19 Installation of facilities by another provider.

20 (a) A designated provider of last resort or another provider may  
21 petition the Arkansas Public Service Commission for an order relieving the  
22 designated provider of all or part of its obligations as the provider of last  
23 resort in an area if:

24 (1) A local exchange carrier that is not the designated provider  
25 of last resort or a provider of broadband services installs facilities to  
26 provide broadband in the area; and

27 (2) The designated provider of last resort for the area has not  
28 installed adequate facilities to serve all customers in the area.

29 (b) The commission shall relieve the designated provider of last  
30 resort from all or part of its obligations as the provider of last resort for  
31 the area and shall designate the entity making the installation under  
32 subsection (a) of this section as the provider of last resort for all or part  
33 of the area if the commission determines that:

34 (1) The designated provider of last resort does not have  
35 facilities in place to provide broadband to all customers in the area; and

36 (2) The entity making the installation under subsection (a) of

1 this section has installed facilities adequate to provide broadband to all or  
2 part of the area.

3 (c) The commission shall make the determination required by subsection  
4 (b) of this section within sixty (60) days after the petition is filed with  
5 the commission under subsection (a) of this section.

6  
7 23-17-507. Notice of exiting provider – Appointment of successor –  
8 Temporary exemption from certain requirements – Arkansas High Cost Fund  
9 support – Transfer of customers.

10 (a) Except as provided in §§ 23-17-508 and 23-17-509, the Arkansas  
11 Public Service Commission shall conduct a formal proceeding to determine a  
12 successor provider for all or part of the area if:

13 (1) The commission receives notice that an exiting provider will  
14 cease operation in all or part of the exiting provider's local exchange area;  
15 and

16 (2) Another provider does not have facilities sufficient to  
17 provide basic telecommunications service or broadband in the local exchange  
18 area.

19 (b) After determining a successor provider for the affected area under  
20 subsection (a) of this section, the commission shall allow the successor  
21 provider the following as necessary to serve the customers of the exiting  
22 provider:

23 (1) A reasonable time in accordance with industry practices to:

24 (A) Modify, construct, or obtain facilities; or

25 (B) Deploy an approved alternative technology;

26 (2) A temporary exemption from a lawful obligation to unbundle  
27 the successor provider's network elements for a period determined by the  
28 commission to be reasonably necessary to allow the successor provider to:

29 (A) Modify, construct, or obtain facilities; or

30 (B) Deploy an approved alternative technology; and

31 (3) A temporary exemption from a lawful obligation to provide  
32 telecommunications service for resale and broadband within the affected area  
33 for a period determined by the commission to be reasonably necessary to allow  
34 the successor provider to:

35 (A) Modify, construct, or obtain facilities; or

36 (B) Deploy an approved alternative technology.

1 (c) The successor provider is entitled to obtain funding from the  
2 Arkansas High Cost Fund to support the successor provider's assumption of  
3 obligations as the provider of last resort for all or part of the area.

4 (d)(1) A customer within the defined geographic area to be served by  
5 the successor provider of basic telecommunications service is considered to  
6 have applied for basic telecommunications service from the successor provider  
7 on the effective date of the commission's designation of the successor  
8 provider.

9 (2) Each right, privilege, and obligation applicable to  
10 customers of the successor provider applies to a customer transferred to the  
11 successor provider under this section.

12 (3) A customer transferred to the successor provider under this  
13 section is subject to the successor provider's terms of service as specified  
14 in an applicable tariff or contract.

15 (e) This section does not prohibit:

16 (1) A customer from seeking, at any time, service from a  
17 provider other than the successor provider; or

18 (2) A provider from voluntarily:

19 (A) Serving customers in the affected area; or

20 (B) Purchasing the facilities of the exiting provider.

21  
22 23-17-508. Provider's cessation of local exchange service or  
23 abandonment of facilities – Commission's declaration of emergency –  
24 Designation of successor provider.

25 (a) The Arkansas Public Service Commission may on its own motion or on  
26 the petition of an interested party institute an expedited proceeding under  
27 this section if the commission determines that:

28 (1) A facilities-based local exchange carrier is authorized to  
29 provide local exchange service in all or part of a local exchange area;

30 (2) A competing local exchange carrier does not have facilities  
31 sufficient to provide local exchange service in the area; and

32 (3) The facilities-based local exchange carrier has:

33 (A) Ceased providing local exchange service to the  
34 customers in the area; or

35 (B) Abandoned the operation of the facilities-based local  
36 exchange carrier's facilities in the area that are used to provide local

1 exchange service.

2 (b)(1) In a proceeding under this section, the commission may declare  
3 that an emergency exists and issue any order to protect the health, safety,  
4 and welfare of affected customers and to expedite the restoration or  
5 continuation of local exchange service or broadband to the affected  
6 customers.

7 (2) An order issued under subdivision (b)(1) of this section  
8 may:

9 (A) Provide for the temporary operation of the facilities-  
10 based local exchange carrier's facilities by another provider;

11 (B) Authorize one (1) or more third parties to enter the  
12 premises of an abandoned facility; or

13 (C) Grant temporary waivers from quality-of-service  
14 requirements for a provider:

15 (i) Providing temporary service under subdivision  
16 (b)(2)(A) of this section; or

17 (ii) Designated as a successor provider by the  
18 commission under subsection (c) of this section.

19 (c) Except as provided in § 23-17-509, the commission may act under §  
20 23-17-507 to designate a successor provider in a proceeding under this  
21 section.

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23 23-17-509. Exclusive service arrangements – Relief from obligations as  
24 provider of last resort.

25 (a) If a competing local exchange carrier operates under an  
26 arrangement by which the competing local exchange carrier is the exclusive  
27 provider of basic telecommunications service for a particular geographic  
28 area, building, or group of residences and businesses, the incumbent local  
29 exchange carrier is relieved of its obligations as a provider of last resort,  
30 and the competing local exchange carrier has the obligations of a provider of  
31 last resort with respect to the particular geographic area, building, or  
32 group of residences and businesses.

33 (b) The incumbent local exchange carrier has twelve (12) months to  
34 make any modifications necessary to facilities purchased from an exiting  
35 provider to allow the incumbent local exchange carrier to serve the affected  
36 customers of a competing local exchange carrier if:

