

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H1/23/97

A Bill

HOUSE BILL 1184

5 By: Representatives Wagner, Beatty, Thicksten, Capps, Cunningham, Young, Lavery, Purdom, Newman, George, Maddox, Brown,
6 Miller, Fletcher, McKissack, McGee, Malone, Pollan, McGehee, Wilkinson, Willems, Johnson, Rorie, Simon, Broadway, Kidd,
7 Lancaster, Sheppard, Stalnaker, Jones, Bennett, Choate, Davis, Baker, Wood, Northcutt, Simmons, Allison, Flanagan, Horn, Whorton,
8 Cook, Hausam, Jeffress, Hall, Wren, Goodwin, Critcher, McJunkin, Hunton, Harris, French, Joe Hudson, Wallis, Teague, Bond,
9 Shoffner, Ammons, Milum, Booker, Pappas, Walker, Courtway, Roberts, Rodgers, Angel, and *Curran*

10

11 By: Senators Hopkins, Argue, Bearden, Bell, Canada, Dowd, Edwards, Everett, Fitch, Gordon, Gwatney, Harriman, Hill, Hoofman,
12 Hunter, Jeffries, Lewellen, Mahony, Malone, Roebuck, Ross, Smith, Todd, Walker, Walters, Webb, Wilson, and *Kennedy*

13

14

15

For An Act To Be Entitled

16 "TELECOMMUNICATIONS REGULATORY REFORM ACT OF 1997."

17

18

Subtitle

19

"TELECOMMUNICATIONS REGULATORY REFORM

20

ACT OF 1997."

21

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

23

24 SECTION 1. Title.

25 This act may be referred to and cited as the "Telecommunications
26 Regulatory Reform Act of 1997".

27

28 SECTION 2. Legislative Findings.

29 It is the intent of the General Assembly in enacting this Act to:

30 (1) Provide for a system of regulation of telecommunications services,
31 consistent with the Federal Act, that assists in implementing the national
32 policy of opening the telecommunications market to competition on fair and
33 equal terms, modifies outdated regulation, eliminates unnecessary regulation,
34 and preserves and advances universal service.

35 (2) Recognize that a telecommunications provider that serves high cost
36 rural areas or exchanges faces unique circumstances that require special

1 consideration and funding to assist in preserving and promoting universal
2 service.

3 (3) Recognize differences between the small and large incumbent local
4 exchange carriers, that there are customer-owned telephone cooperatives and
5 small locally-owned investor companies, and that it is appropriate to provide
6 incentives and regulatory flexibility to allow incumbent local exchange
7 carriers that serve the rural areas to provide existing services and to
8 introduce new technology and new services in a prompt, efficient and
9 economical manner. The General Assembly finds that the Commission, when
10 promulgating rules and regulations, should take into consideration the
11 differences in operating conditions in the large and small incumbent local
12 exchange carriers and the burdens placed on small carriers because of
13 regulation.

14

15 SECTION 3. Definitions.

16 As used in this Act:

17 (1) "Access line" means communications facility extending from a
18 customer's premises to a serving central office comprising a subscriber line
19 and, if necessary, a trunk facility.

20 (2) "Affiliate" means any entity that, directly or indirectly, owns or
21 controls, is owned or controlled by, or which is under common ownership or
22 control with, another entity. Owns or controls, for the purpose of this
23 definition means holding at least a majority of the outstanding voting power.

24 (3) "Arkansas IntraLATA Toll Pool" means the unincorporated
25 organization of the Arkansas incumbent local exchange carriers, approved by
26 the Commission, whose purpose is to redistribute the pooled revenues from
27 intraLATA toll telephone service.

28 (4) "Arkansas Intrastate Carrier Common Line Pool" means the
29 unincorporated organization of the providers of Arkansas telecommunications
30 services, authorized by the Commission, whose purpose is to manage billing,
31 collection, and distribution of the incumbent local exchange carrier's
32 intrastate toll common line service revenue requirements.

33 (5) "Basic local exchange service" means the service provided to the
34 premises of residential or business customers composed of the following:

35 (a) voice grade access to the public switched network, with
36 ability to place and receive calls,

1 (b) touch tone service availability,
2 (c) flat rate residential local service and business local
3 service,
4 (d) access to emergency services (911/E911) where provided by
5 local authorities,
6 (e) access to basic operator services,
7 (f) a standard white page directory listing,
8 (g) access to basic local directory assistance,
9 (h) access to long distance toll service providers, and
10 (i) the minimum service quality as established and required by
11 the Commission on the effective date of this Act.

12 (6) "Commercial mobile service" means cellular, Personal
13 Communications Systems and any service regulated pursuant to Part 20 of the
14 rules and regulations of the FCC (47 CFR Part 20) or any successor provisions.

15 (7) "Commission" means the Arkansas Public Service Commission.

16 (8) "Competing local exchange carrier" or "CLEC" means a local exchange
17 carrier that is not an incumbent local exchange carrier.

18 (9) "Electing company" means a local exchange carrier that elects to be
19 regulated pursuant to Sections 6 through Section 8 of this Act.

20 (10) "Eligible telecommunications carrier" means the local exchange
21 carrier determined in accordance with Section 5 .

22 (11) "Embedded investment" means the amount of investment in telephone
23 plant that has already been made by an incumbent local exchange carrier as of
24 the effective date of this act.

25 (12) "FCC" means the Federal Communications Commission.

26 (13) "Facilities" means any of the physical elements of the telephone
27 plant that are needed to provide or support telecommunications services,
28 including switching systems, cables, fiber optic, and microwave radio
29 transmission systems, measuring equipment, billing equipment, operating
30 systems, billing systems, ordering systems, and all other equipment and
31 systems that a telecommunications service provider uses to provide or support
32 telecommunications services.

33 (14) "Federal act" means the Communications Act of 1934, as amended.

34 (15) "Government entity" includes all Arkansas state agencies,
35 commissions, boards, authorities, and all Arkansas public educational entities
36 (including school districts), and political subdivisions (including

1 incorporated cities and towns and all institutions, agencies or
2 instrumentalities of municipalities) and county governments.

3 (16) "Incumbent local exchange carrier" means, with respect to a local
4 exchange area, a local exchange carrier, including successors and assigns,
5 that is certified by the Commission and was providing basic local exchange
6 service on February 8, 1996.

7 (17) "Interstate access charge pools" means the system, currently
8 administered by the National Exchange Carriers Association, wherein
9 participating local exchange carriers pool billed interstate access revenues.

10 (18) "Local exchange area" means the geographic area, approved by the
11 Commission, encompassing the area within which a local exchange carrier is
12 authorized to provide basic local exchange services and switched access
13 services.

14 (19) "Local exchange carrier" means a telecommunications provider of
15 basic local exchange service and switched access service. Such term does not
16 include commercial mobile service providers.

17 (20) "Network element" means a facility or equipment used in the
18 provision of a telecommunications service. Such term also includes features,
19 functions, and capabilities that are provided by means of such facility or
20 equipment, including subscriber numbers, databases, signaling systems, and
21 information sufficient for billing and collection or used in the transmission,
22 routing, or other provision of a telecommunications service.

23 (21) "Resale" means the purchase of services by one local exchange
24 carrier from another local exchange carrier for the purpose of reselling those
25 services directly or indirectly to an end-user customer.

26 (22) "Rural telephone company" means a local exchange carrier defined as
27 a rural telephone company in the Federal Act as of the effective date of this
28 act.

29 (23) "Switched access service" means the provision of communications
30 between a customer premise and an interexchange carrier's point of
31 interconnection with a local exchange carrier's network for the completion of
32 end user calls to the public switched network for the origination or
33 termination of interexchange long distance traffic.

34 (24) "Telecommunications provider" means any person, firm, partnership,
35 corporation, association, or other entity that offers telecommunications
36 services to the public for compensation.

1 (25) "Telecommunications services" means the offering to the public for
2 compensation the transmission of voice, data, or other electronic information
3 at any frequency over any part of the electromagnetic spectrum,
4 notwithstanding any other use of the associated facilities. Such term does
5 not include radio and television broadcast or distribution services, or the
6 provision or publishing of yellow pages, regardless of the entity providing
7 such services, or services to the extent that such services are used in
8 connection with the operation of an electric utility system owned by a
9 government entity.

10 (26) "Tier One Company" means any incumbent local exchange carrier
11 that, together with its Arkansas affiliates that are also incumbent local
12 exchange carriers, provides basic local exchange services to greater than one
13 hundred fifty thousand (150,000) access lines in the State of Arkansas on the
14 effective date of this Act. Changes in designation of an incumbent local
15 exchange carrier, or portions thereof, as a Tier One Company or non-Tier One
16 Company may be effected by prior approval from the Commission pursuant to
17 Section 11(i).

18 (27) "Universal service" means those telecommunications services that
19 are defined and listed in the definition of basic local exchange service until
20 changed by the Commission pursuant to Section 4(e)(3) of this Act.

21

22 SECTION 4. Preservation and Promotion of Universal Service.

23 (a) The Arkansas Universal Service Fund (AUSF) is established by this
24 Section in order to promote and assure the availability of universal service
25 at rates that are reasonable and affordable, and to provide for reasonably
26 comparable services and rates between rural and urban areas. The AUSF will
27 provide funding to eligible telecommunications carriers that provide basic
28 local exchange services over facilities owned by the eligible
29 telecommunications carrier. The AUSF shall be designed to provide
30 predictable, sufficient, and sustainable funding to eligible
31 telecommunications carriers serving rural or high cost areas of the State.

32 (b) The Arkansas Universal Service Fund is to provide a mechanism to
33 restructure the present system of telecommunication service rates in the State
34 as provided herein, and all telecommunications providers, except as prohibited
35 by federal law, shall be charged for the direct and indirect value inherent in
36 the obtaining and preserving of reasonable and comparable access to

1 telecommunications services in the rural or high cost areas. The value and
2 utility of access to and interconnection with the public switched network will
3 be lessened if the rural or high cost areas do not have comparable access and
4 subscribership. This AUSF charge for all telecommunications providers shall
5 be proportionate to each provider's Arkansas intrastate retail
6 telecommunications service revenues. In that the customers of the
7 telecommunications providers that would pay the AUSF charge receive the
8 benefits of a universal network, such telecommunications providers may
9 surcharge their customers to recover such AUSF charges paid by the
10 telecommunications provider. Therefore, the AUSF charge is not a tax, and is
11 not affected by state laws governing taxation.

12 (c) The Commission shall delegate to a trustee (the "administrator") the
13 administration, collection, and distribution of the AUSF in accordance with
14 the rules and procedures established by the Commission and consistent with
15 this Act. The administrator shall enforce and implement all rules and
16 directives governing the funding, collection, and eligibility for the AUSF.
17 Within sixty days after receipt of a request for AUSF funds, the administrator
18 shall review and determine the accuracy and appropriateness of the request and
19 advise the entity requesting such funds of his determination. The affected
20 parties shall have thirty days to request reconsideration by the Commission of
21 the administrator's determination and the Commission shall after notice and
22 hearing, if requested, issue its opinion on the reconsideration within thirty
23 days after the request of reconsideration. Persons aggrieved by the
24 Commission's opinion shall have the right to appeal such opinion in accordance
25 with law.

26 (d) The AUSF administrator shall periodically establish and notify each
27 telecommunications provider of the AUSF charge levels required to be paid by
28 the telecommunications provider. Any telecommunications provider that fails,
29 without just cause, to pay the AUSF charge that is due and payable pursuant to
30 this section shall, after notice and opportunity for hearing, have its
31 authority to do business as a telecommunications provider in the State of
32 Arkansas revoked by the Commission. The AUSF charge shall not be subject to
33 any state or local tax or franchise fees. The Commission is authorized to
34 increase the AUSF charge by those amounts necessary to recover the cost of
35 administration of the AUSF.

36 (e) The Commission shall, after reasonable notice and hearing,

1 establish rules and procedures necessary to implement the AUSF. The
2 Commission shall implement the AUSF and make AUSF funds available to eligible
3 telecommunications carriers no later than 90 days following the later of (i)
4 the effective date of this Act, or (ii) the effective date of an FCC order
5 pursuant to Section 254 of the Federal Act (47 USC 254), that approves,
6 establishes or modifies interstate universal service funding. The Commission
7 shall not, prior to the implementation and availability of funds from the
8 AUSF, require any local exchange carrier to reduce rates for intrastate
9 switched access services or require any local exchange carrier to reduce its
10 net revenue received from the Arkansas IntraLATA Toll Pool (AITP). In
11 establishing and implementing the AUSF, the Commission shall adhere to the
12 following instructions and guidelines:

13 (1) AUSF funding shall be provided directly to eligible
14 telecommunications carriers.

15 (2) The Commission may, after reasonable notice and hearing,
16 revise the list of universal services, identified in Section 3 of this Act,
17 that may be supported by the AUSF to establish and maintain end user rates for
18 universal services that are reasonably comparable between urban and rural
19 areas, or to reflect changes in the type and quality of telecommunications
20 services considered essential by the public, as evidenced, for example, by
21 those telecommunication services that are purchased and used by a majority of
22 single line urban customers. The Commission shall determine and approve AUSF
23 funding to eligible telecommunications carriers to recover the cost of
24 additions or revisions to the universal service list concurrent with any such
25 revisions to the list of universal services identified in Section 3 of this
26 Act.

27 (3) If the Commission establishes or utilizes a minimum or
28 threshold universal service rate (threshold rate), for the purpose of
29 determining the amount of AUSF that an eligible telecommunications carrier may
30 receive, the Commission shall adhere to the following requirements:

31 (A) A rate case proceeding or earnings investigation or analysis
32 shall not be required or conducted in connection with the determination or
33 implementation of increases in universal service rates associated with
34 Commission use of a threshold rate, and the increases shall not be included in
35 the calculation of the basic local exchange service rate increase limits
36 specified in Section 7 and Section 12.

1 (B) The Commission may not require a reduction in universal
2 service rates to a threshold rate unless any associated decrease in revenues
3 are allowed to be concurrently recovered from the AUSF.

4 (4)(A) In the event of an FCC order, rule or policy, pursuant to
5 Section 254(a)(2) of the Federal Act, (47 USC 254(a)(2)) the effect of which
6 is to change the federal universal service fund revenues of an incumbent local
7 exchange carrier, the Commission shall either increase the rates for basic
8 local exchange service or increase the incumbent local exchange carrier's
9 recovery from the AUSF or a combination thereof to replace the reasonably
10 projected change in revenues. In determining whether to increase basic local
11 exchange service rates or increase AUSF for a Tier One Company pursuant to
12 this Section, the Commission shall take into account that company's rates and
13 consider whether such rates are below the statewide average.

14 (B) Any rural telephone company, excluding Tier One Companies,
15 that, as a result of changes caused by new or existing federal or state
16 regulatory or statutory directives, experiences a change in intrastate or
17 interstate switched access services revenues, or in net revenue received from
18 the intrastate Carrier Common Line Pool, interstate access charge pools, or
19 the Arkansas IntraLATA Toll Pool, shall be allowed to recover such reductions
20 from the AUSF or through modifications in rates applicable to basic local
21 exchange service. The recovered amounts shall be limited to the net reduction
22 in revenues from all sources of support listed in paragraphs (e)(4)(A) and
23 (e)(4)(B) of this Section.

24 (C) In connection with the receipt of AUSF funds for these
25 changes referred to in paragraph (e)(4)(A) or (e)(4)(B) of this Section, such
26 shall not be conditioned upon any rate case or earnings investigation by the
27 Commission. The AUSF administrator shall verify the calculations and accuracy
28 of the net revenue reductions, based on a comparison between (i) the total
29 annual revenues received from these sources by the eligible telecommunications
30 carrier during the most recent twelve months preceding the required regulatory
31 or statutory changes, and (ii) a reasonable projection of total test year
32 annual revenue after such changes are implemented.

33 (D) Except as provided in this paragraph, the intrastate Carrier
34 Common Line (CCL) Pool charges shall continue as effective on December 31,
35 1996. The Commission is authorized to develop and implement, commencing three
36 (3) years after the effective date of this Act, a phase-in reduction of

1 intrastate CCL pool charges until such charges are equivalent to the
2 interstate CCL charges. Any reduction of intrastate CCL pool charges of
3 incumbent local exchange carriers ordered by the Commission shall provide for
4 concurrent recovery of such revenue loss from the AUSF, basic local exchange
5 rates, or a combination thereof.

6 (5) All eligible telecommunications carriers may request high
7 cost funding from the AUSF as necessary in the future to maintain rates for
8 universal services that are reasonable, affordable, and comparable between
9 urban and rural areas. Except as otherwise provided in this Act, such funding
10 shall be based on all net investment, including embedded investment, and
11 expenses incurred by the eligible telecommunications carriers in the provision
12 of universal service. High cost funding shall be provided to eligible
13 telecommunications carriers as needed for the following: (A) investments and
14 expenses required to provide, maintain, and support universal services (B)
15 infrastructure expenditures in response to facility or service requirements
16 established by any legislative, regulatory, judicial authority, or
17 governmental entity, and (C) for other purposes deemed necessary by the
18 Commission to preserve and advance the public education and welfare.

19 (6) In identifying and measuring the costs of providing universal
20 services, exclusively for the purpose of determining high cost funding levels
21 under paragraph (e)(6) of this Section, eligible telecommunications carriers
22 shall have the following options:

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

26 (B) The eligible telecommunications carrier may identify high cost
27 areas within its local exchange area, such area being no smaller than a single
28 exchange or wire center, and perform a fully distributed allocation of cost
29 and identification of associated revenue in order to quantify funding needs
30 for such areas; or

31 (C) The Commission shall adopt reasonable cost proxies that may
32 be used by an eligible telecommunications carrier for this purpose.

33 (7) In calculating revenue requirements only for the purpose of
34 establishing high cost funding needs from the AUSF the Commission shall not
35 fix depreciation rates; however, the Commission may make reasonable
36 adjustments to depreciation expense if an eligible telecommunications

1 carrier's composite depreciation annual accrual rate is greater than the
2 weighted average of composite rates for similar plant and equipment of all
3 other telecommunications providers providing comparable services in the State.
4 In such case, the Commission may adjust depreciation expenses of the eligible
5 telecommunications carrier to levels that would not exceed 15% above a
6 composite accrual rate comparable to the statewide weighted average.

7 (f) On or within thirty days following the fifth anniversary of the
8 effective date of this Act, the Commission and the AUSF administrator shall
9 complete and deliver a report on the status and performance of the AUSF to the
10 Legislative Council.

11 (g) The current Arkansas Universal Telephone Service Fund established
12 pursuant to Arkansas Code Annotated Sections 23-17-301 through 23-17-307 will
13 continue to exist until the AUSF is funded and operational. At that time any
14 funds remaining in the current fund will be transferred to the AUSF and the
15 current fund will no longer be operational.

16

17 SECTION 5. Eligible Telecommunications Carrier.

18 (a) The incumbent local exchange carrier, its successors and assigns,
19 which owns, maintains, and provides facilities for universal service within a
20 local exchange area upon the effective date of this Act, shall be the eligible
21 telecommunications carrier within such local exchange area.

22 (b) Where the incumbent local exchange carrier receives AUSF support,
23 except in areas served by rural telephone companies, the Commission,
24 consistent with Section 214(e)(2) of the Federal Act (47 USC 214(e)(2)), after
25 reasonable notice and hearing, may designate other telecommunications
26 providers to be eligible for high cost support pursuant to Section 4 under the
27 following conditions:

28 (1) The other telecommunications provider accepts the responsibility
29 to provide service to all customers in an incumbent local exchange carrier's
30 local exchange area using its own facilities or a combination of its own
31 facilities and resale of another carrier's services. High cost support under
32 this Section will not begin until the telecommunications provider has
33 facilities in place and offers to serve all customers in its service area;

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

36 (3) The telecommunications provider will not receive AUSF funding at a

1 level higher than the level of funding received by the incumbent local
2 exchange carrier in the same area;

3 (4) The telecommunications provider advertises the availability and
4 the charges of such services, using media of general distribution; and

5 (5) It is determined by the Commission that the designation is in the
6 public interest.

7 (c) In exchanges or wire centers where the Commission has designated
8 more than one eligible telecommunications carrier, the Commission shall permit
9 a local exchange carrier to relinquish its designation as an eligible
10 telecommunications carrier, consistent with Section 214(e)(4) of the Federal
11 Act (47 USC 214(e)(4)), upon a finding that at least one eligible
12 telecommunications carrier will continue to serve the area.

13 (d) For the entire area served by a rural telephone company, excluding
14 Tier One Companies, for the purpose of the AUSF and the federal universal
15 service fund, there shall be only one eligible telecommunications carrier
16 which shall be the incumbent local exchange carrier that is a rural telephone
17 company. The rural telephone company may elect to waive its right to be the
18 only eligible telecommunications carrier within the local exchange area by
19 filing notice with the Commission. If there is more than one eligible
20 telecommunications carrier, an eligible telecommunications carrier may
21 petition the Commission and be granted relief from designation as an eligible
22 telecommunications carrier.

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

25

26 SECTION 6. Electing Companies.

27 (a) Any incumbent local exchange carrier may elect to have the rates,
28 terms, and conditions for its telecommunications services determined pursuant
29 to the provisions of this Section.

30 (b) An incumbent local exchange carrier shall file a notice of its
31 intent with the Commission to be an electing company and to be regulated
32 pursuant to Sections 6 through Section 8.

33 (c) Upon such a filing, all rates, terms, and conditions for the
34 services provided by that incumbent local exchange carrier contained in the
35 tariffs and end-user contracts that were in effect on the date twelve months
36 prior to the date of election under this Section shall be deemed just and

1 reasonable. However, nothing herein shall restrict any customer's right to
2 complain to the Commission regarding quality of service or the Commission's
3 right to enforce any quality of service rules and standards which are equally
4 imposed on all telecommunications providers.

5 (d) A rural telephone company, excluding Tier One Companies, which
6 elects to be regulated pursuant to this Section may terminate that election by
7 filing a notice with the Commission. Upon terminating that election, the
8 rural telephone company may not thereafter, for a period of five years from
9 date of the termination notice under this paragraph, elect to be regulated
10 under this Section.

11

12 SECTION 7. Regulation of Rates for Basic Local Exchange Service and
13 Switched Access Service of Electing Companies.

14 (a) The rates for basic local exchange service and switched access
15 services that were in effect in the date twelve months prior to the date of
16 filing of a notice of election by a local exchange carrier pursuant to Section
17 6 shall be the maximum that such electing local exchange carrier may charge
18 for such services for a period of three years after the date of filing,
19 excluding rate increases ordered by the Commission pursuant to Section 4. An
20 electing company may decrease or, subsequent to a decrease, increase up to the
21 rate that was effective at the time of election pursuant to this Section. Such
22 rate changes shall be effective immediately, without Commission approval, by
23 filing a tariff or notice with the Commission.

24 (b) After the expiration of such three year period, the rates for basic
25 local exchange services and switched access services, excluding the intrastate
26 carrier common line charge, may be adjusted by the electing company filing a
27 price list with the Commission, as long as such rates remain at or below the
28 inflation-based rate cap. Inflation shall be measured by the year-over-year
29 percent change in the gross domestic product price index (GDP-PI) calculated
30 by the U.S. Department of Commerce, or any successor to such index. The
31 electing company is authorized to adjust the rate cap for each basic local
32 exchange service and switched access service by seventy-five percent of this
33 inflation measure, adjusted for exogenous changes specified in paragraph (e)
34 of this Section, and excluding rate increases ordered by the Commission
35 pursuant to Section 4. The rate cap may only be adjusted once each twelve
36 months beginning at the expiration of the three year period after the date of

1 initial filing to be regulated pursuant to Sections 6 through 8.

2 (c) As long as an electing company is in compliance with paragraphs (a)
3 and (b) of this Section, such rates are deemed just and reasonable.

4 (d) Notwithstanding the provisions of this Section, if, at any time
5 following the three year anniversary of the date of election pursuant to this
6 Section, another telecommunications provider is providing basic local exchange
7 service or switched access service within an electing company's local exchange
8 area, the electing company may, within any exchange of the electing company in
9 which another telecommunications provider is providing these services,
10 commence determining its rates for basic local exchange service and switched
11 access services in the same manner that it determines its rates for services
12 other than basic local exchange service and switched access service, pursuant
13 to Section 8(c).

14 (e) For purposes of this Section, the term exogenous change shall mean a
15 cumulative impact on a local exchange carrier's intrastate regulated revenue,
16 expenses or investment of more than three percent over a twelve month period,
17 that is attributable to changes in federal, state, or local government
18 mandates, rules, regulations or statutes.

19

20 SECTION 8. Regulatory Framework for Electing Companies.

21 (a) The earnings of an electing company shall not be subject to rate of
22 return or rate base monitoring or regulation, and the Commission shall not
23 consider rate of return, rate base, or the earnings of an electing company in
24 connection with rate changes made pursuant to this Section or Section 7.

25 (b) An electing company is authorized to determine and account for its
26 investments, revenues and expenses, including depreciation expenses, pursuant
27 to generally accepted accounting principles.

28 (c) An electing company may increase or decrease its rates for
29 telecommunications services other than basic local exchange service and
30 switched access services and establish rates for new services by filing a
31 tariff or a price list with the Commission. Such rates shall not require
32 Commission approval. The tariff or price list shall be effective upon filing
33 or at such future time as the electing company shall designate. So long as
34 rates for services are in accordance with this Section and Section 7, such
35 rates are deemed just and reasonable. Any service that is not a
36 telecommunications service is not subject to Commission regulation, and rates

1 for such services need not be filed with the Commission.

2 (d) An electing company may package any of its services with any other
3 service it or its affiliates offer, with or without a discount, provided that
4 services whose rates are capped under Section 7 may be purchased separately at
5 the rate which is capped in accordance with that Section.

6

7 SECTION 9. Authorization of Competing Local Exchange Carriers.

8 (a) Consistent with the Federal Act and the provisions of Section 10,
9 the Commission is authorized to grant certificates of convenience and
10 necessity to telecommunications providers authorizing them to provide basic
11 local exchange service and/or switched access service to an incumbent local
12 exchange carrier's local exchange area if and to the extent that such
13 applications otherwise comply with state law, designate the geographic areas
14 proposed to be served by such applicants, and the applicants demonstrate they
15 possess the financial, technical and managerial capacity to provide such
16 competing services. Competing local exchange carriers shall be required to
17 maintain a current tariff or price list with the Commission, and to make
18 prices and terms of service available for public inspection. Retail prices of
19 competing local exchange carriers shall not require prior review or approval
20 by the Commission.

21 (b) A government entity may not provide, directly or indirectly, basic
22 local exchange service. After reasonable notice to the public and public
23 hearing, a government entity owning an electric utility system or television
24 signal distribution system may make any telecommunications capacity or
25 associated facilities which it now owns, or may hereafter acquire, available
26 to the public upon such terms and conditions as may be established by its
27 governing authority, except such government entity may not use such
28 telecommunications capacity or facilities to provide, directly or indirectly,
29 basic local exchange service. Any restriction contained in this paragraph
30 shall not be applicable to the provision of telecommunications services or
31 facilities to the extent used solely for 911, E911, other emergency services,
32 educational or medical purposes, or for the provision of telecommunications
33 services or facilities by an educational institution to its students.

34 (c) A government entity which operates an electric utility system may
35 deny any telecommunications provider access to its electric utility poles,
36 ducts, conduits, or rights-of-way, on a nondiscriminatory basis where there is

1 insufficient capacity and for reasons of safety, reliability, and generally
2 applicable engineering purposes.

3 (d) Except to the extent required by the Federal Act and this Act, the
4 Commission shall not require an incumbent local exchange carrier to negotiate
5 resale of its retail telecommunications services, to provide interconnection,
6 or to sell unbundled network elements to a competing local exchange carrier
7 for the purpose of allowing such competing local exchange carrier to compete
8 with the incumbent local exchange carrier in the provision of basic local
9 exchange service. Promotional prices, service packages, trial offerings, or
10 temporary discounts offered by the local exchange carrier to its end-user
11 customers are not required to be available for resale.

12 (e) The prices for unbundled network elements shall include the actual
13 costs, including an allocation of joint and common costs and a reasonable
14 profit.

15 (f) As provided in Sections 251 and 252 of the Federal Act (47 USC 251
16 and 252), the Commission's authority with respect to interconnection, resale,
17 and unbundling is limited to the terms, conditions and agreements pursuant to
18 which an incumbent local exchange carrier will provide interconnection,
19 resale, or unbundling to a CLEC for the purpose of the CLEC competing with the
20 incumbent local exchange carrier in the provision of telecommunications
21 services to end-user customers.

22 (g) The Commission shall approve, as permitted by the Federal Act,
23 resale restrictions which prohibit resellers from purchasing retail local
24 exchange services offered by a local exchange carrier to residential customers
25 and reselling those retail services to nonresidential customers, or
26 aggregating the usage of multiple customers on resold local exchange services,
27 or any other reasonable limitation on resale to the extent permitted by the
28 Federal Act. The wholesale rate of any existing retail telecommunications
29 services provided by local exchange carriers that are not exempt from Section
30 251(c) of the Federal Act (47 USC 251(c)) and that are being sold for the
31 purpose of resale, shall be the retail rate of the service less any net
32 avoided costs due to the resale. The net avoided costs shall be calculated as
33 the total of the costs that will not be incurred by the local exchange carrier
34 due to it selling the service for resale less any additional costs that will
35 be incurred as a result of selling the service for the purpose of resale.

36 (h) Incumbent local exchange carriers shall provide CLECs, at reasonable

1 rates, nondiscriminatory access to operator services, directory listings and
2 assistance, and 911 service only to the extent required in the Federal Act.

3 (i) The Commission shall approve any negotiated interconnection
4 agreement or statement of generally available terms filed pursuant to the
5 Federal Act unless it is shown by clear and convincing evidence that the
6 agreement or statement does not meet the minimum requirements of Section 251
7 of the Federal Act (47 USC 251). In no event shall the Commission impose any
8 interconnection requirements that go beyond those requirements imposed by the
9 Federal Act or any interconnection regulations or standards promulgated under
10 the Federal Act.

11 (j) In the event the Commission is requested to arbitrate any open
12 issues pursuant to Section 252 of the Federal Act (47 USC 252), the parties to
13 the arbitration proceeding shall be limited to the persons or entities
14 negotiating the agreement.

15

16 SECTION 10. Competing Local Exchange Carriers in Service Areas of Rural
17 Telephone Companies.

18 (a) A rural telephone company shall not have any duty to negotiate
19 terms and conditions of, or to enter into any agreement for the provision to
20 any other telecommunications provider of interconnection with the rural
21 telephone company's network as provided by Section 251(c) and Section 252 of
22 the Federal Act (47 USC 251(c) and 252), including access to its network
23 elements on an unbundled basis, resale of any telecommunications service that
24 such rural telephone company provides at retail to subscribers, or physical
25 collocation, unless and until a telecommunications provider has made a bona
26 fide request to the rural telephone company for such services, and the
27 Commission has determined, in accordance with the Federal Act, that the rural
28 telephone company must fulfill such request.

29 (b) With regard to a rural telephone company that is not also a Tier One
30 Company, the Commission may only determine that the rural telephone company
31 must fulfill such a request if, after reasonable notice and hearing, it is
32 established by clear and convincing evidence that

33 (1) the request is not unduly economically burdensome;

34 (2) the request is technically feasible; and

35 (3) the request is consistent with the protection of universal

36 service and the public interest, convenience, and necessity.

1 (c) The Commission shall not conclude that clear and convincing evidence
2 exists, as required in paragraph (b) of this Section, unless the Commission
3 has, among other relevant matters, concluded that granting the requested
4 relief will not result in significant adverse impact on any of the following:

5 (1) The customers of the incumbent local exchange carrier serving
6 the area;

7 (2) The incumbent local exchange carrier's continuing ability to
8 provide its customers adequate service at reasonable rates;

9 (3) The incumbent local exchange carrier's ability to continue to
10 meet eligible carrier obligations;

11 (4) Statewide average toll rates;

12 (5) Customers cost of telephone service;

13 (6) The goals of universal service;

14 (7) The quality of service provided to customers;

15 (8) The incumbent local exchange carrier's ability to attract
16 capital and incur debt at reasonable rates and the ability to sustain

17 sufficient revenue stream to pay existing debt;

18 (9) The ability of the exchange to support more than one local
19 exchange carrier; and

20 (10) The interest of all ratepayers.

21 (d) If no order granting the request is entered by the Commission
22 within 120 days after notice of such request has been filed, the request is
23 denied.

24

25 SECTION 11. Regulatory Reform.

26 (a) Regarding the earnings, rates of return, or rate base calculation of
27 any electing company, any incumbent local exchange carrier that has filed
28 notice in accordance with Section 12, or any competing local exchange carrier,
29 and provided that all such companies and carriers otherwise comply with the
30 applicable ratemaking provisions of this Act, the Commission shall not:

31 (1) require the filing of any financial report, statement, or other
32 document for the purpose of reviewing, monitoring, or regulating rate base,
33 earnings, or rates of return, or

34 (2) conduct any investigation of rate base, earnings, or rates of
35 return.

36 (b) Notwithstanding the provisions of this Act, a rate group

1 reclassification of an exchange from one rate group to another occurring as a
2 result of access line growth or loss of exchange access arrangements shall be
3 allowed by the Commission on request of a local exchange carrier.

4 (c) Consistent with the policy of telecommunications competition that is
5 implemented with this Act, other than the Commission's promulgation of rules
6 and regulations required by this Act, the Commission shall promulgate no new
7 rule or regulation that increases regulatory burdens on telecommunications
8 service providers, except upon a showing that the benefits of such rule or
9 regulation are clear and demonstrable and substantially exceed the cost of
10 compliance by the affected telecommunications service providers.

11 (d) Not later than 180 days after the effective date of this Act, the
12 Commission shall conduct a rule making proceeding to identify and repeal all
13 rules and regulations relating to the provision of telecommunications service
14 which are inconsistent with, have been rendered unnecessary by, or have been
15 superseded by either this Act or the Federal Act.

16 (e) Not later than 180 days after the effective date of this Act, the
17 Commission shall revise its rules so that they apply, except as expressly
18 provided in this Act, equally to all providers of basic local exchange
19 service. All future rule changes promulgated by the Commission shall apply
20 equally to all providers of basic local exchange service.

21 (f) In order to eliminate outdated, unnecessary and burdensome laws and
22 regulations, electing companies, incumbent local exchange carriers filing
23 notice pursuant to Section 12, and competing local exchange carriers shall not
24 be subject to the requirements of Sections 23-2-304(a)(1), 23-2-304(a)(4),
25 23-2-304(a)(5), 23-2-306, 23-2-307, Sections 23-3-101 through 23-3-107, 23-3-
26 112, 23-3-114, Sections 23-3-118, 23-3-119(a)(2), 23-3-201, 23-3-206, 23-3-301
27 through 23-3-316, 23-4-101 through 23-4-104, 23-4-107, 23-4-109, 23-4-110,
28 23-4-201(d), 23-4-401 through 23-4-405, Sections 23-4-407 through 23-4-419,
29 23-17-234, or the Commission rules and regulations implementing such statutes.

30 (g) The Commission, except as provided in this Act with respect to
31 universal services, shall have no jurisdiction to regulate commercial mobile
32 services or commercial mobile service providers.

33 (h) The Commission shall establish reasonable cost proxies, which rural
34 telephone companies, excluding Tier One Companies, may use without producing
35 company specific cost studies, when cost studies would otherwise be required.
36 Use of these proxies or the adoption of approved rates of non rural telephone

1 companies by rural telephone companies, excluding tier one companies, shall be
2 deemed adequate proof of such rural telephone company costs.

3 (i) The Commission may reclassify an incumbent local exchange carrier
4 as a tier one company or a non tier one company only upon petition by the
5 incumbent local exchange carrier in connection with an increase or decrease in
6 the number of the carrier_s access lines in the state.

7 (j) The unauthorized change of a customer_s service to another
8 telecommunications service provider is prohibited. To protect customers from
9 any unauthorized changes in their choice of telecommunications service
10 providers, no local exchange carrier shall honor a request by any person other
11 than the customer to change the provider of intrastate long distance or local
12 exchange service to such customer in the state, except: (1) where the
13 request is placed by a local or long distance company that has provided to the
14 local exchange carrier a letter of agency containing clear and conspicuous
15 disclosure of such change signed by the customer authorizing the change; (2)
16 where the customer affected by the change calls a toll-free number
17 (established by the company requesting the change) to confirm the request for
18 change made in response to a contact initiated by the local exchange or long
19 distance company requesting the change; or (3) where the Commission otherwise
20 expressly authorizes. Any telecommunications carrier that violates the
21 verification procedures described in this subsection and collects charges for
22 telecommunications services from the customer shall be liable to the carrier
23 previously selected by the customer in an amount equal to all charges paid by
24 such subscriber after such violation in accordance with such procedures as the
25 Commission may prescribe. The Commission is also authorized to impose civil
26 penalties, not to exceed five thousand dollars (\$5,000.00) for any such
27 violation.

28

29 SECTION 12. Optional Alternative Regulation of Non Tier One Rural
30 Telephone Companies.

31 (a) Rural telephone companies, excluding Tier One Companies, that file
32 notice with the Commission of an election to be regulated in accordance with
33 the provisions of this Section are authorized to determine and account for
34 their respective revenues and expenses, including depreciation expenses,
35 pursuant to generally accepted accounting principles, and, except as provided
36 in this Section, shall be subject to regulation only in accordance with this

1 Section and shall not be subject to any rate review or rate of return
2 regulation by the Commission. Such companies shall file rate lists for their
3 telecommunications services which rates shall be effective upon filing, except
4 the rates for basic local exchange services and switched access services,
5 which rates shall be effective upon compliance and in accordance with the
6 procedures in this Section. Any service that is not a telecommunications
7 service is not subject to regulation by the Commission, and rates for such
8 services need not be filed with the Commission.

9 (b) On the effective date of an election pursuant to this Section, the
10 tariffed rates of a company electing to be subject to the provisions of this
11 Section are deemed just and reasonable and shall continue to be deemed just
12 and reasonable as long as any increases in such company's tariffed rates are
13 in accordance with the provisions of this Section.

14 (c) The company may increase its basic local exchange service rates
15 after sixty (60) days' notice to all affected subscribers. Rates for basic
16 local exchange services may be reduced and be effective immediately upon
17 filing or at such later time specified in such filing. Notice by the company
18 to its subscribers shall be by regular mail and may be included in regular
19 subscriber billings and shall include the following:

20 (1) A schedule of the proposed basic local exchange service rate change;

21 (2) The effective date of the proposed basic local exchange service rate
22 change; and

23 (3) An explanation of the right of the subscriber to petition the
24 Commission for a public hearing on the rate increase and the procedure
25 necessary to petition.

26 (d) The subscriber petitions provided for in this Section shall be
27 prepared as follows:

28 (1) FORM.

29 (A) The petition shall be headed by a caption, which shall contain:

30 (i) The heading, "The Arkansas Public Service Commission"

31 (ii) The name of the company or cooperative seeking a change in
32 basic local exchange service rates.

33 (iii) The relief sought.

34 (B) A petition substantially in compliance with the form set forth in
35 this subsection shall not be deemed invalid due to minor errors in its form.

36 (2) BODY. The body of the petition shall consist of three numbered

1 paragraphs, if applicable, as follows:

2 (A) ALLEGATIONS OF FACTS. The allegations of facts shall be stated in
3 the form of ultimate facts, without unnecessary detail, upon which the right
4 to relief is based. The allegations shall be stated in numbered subparagraphs
5 as necessary for clarity.

6 (B) RELIEF SOUGHT. The petition shall contain a brief statement of the
7 amount of the change in basic local exchange service rates that is objected to
8 or other relief sought.

9 (C) PETITIONERS. The petition shall contain the name, address, telephone
10 number, and signature of each subscriber signing the petition. Only the
11 subscriber in whose name the telephone service is listed shall be counted as a
12 petitioner. Every signature must be dated and shall have been affixed to the
13 petition within sixty (60) days preceding its filing with the Commission.

14 (e) Exclusive of basic local exchange service rate changes pursuant to
15 Section 4, the Commission shall have authority to review basic local exchange
16 service rates set by the company only upon a formal petition which complies
17 with subsection (d) of this Section and which is signed by at least fifteen
18 percent (15%) of all affected subscribers. If a proper petition is presented
19 to the Commission within sixty (60) days after the date of notice of the rate
20 change was sent to affected subscribers, the Commission shall accept and file
21 the petition and, upon reasonable notice, may suspend the rates and charges at
22 issue during the pendency of the proceedings and reinstate the rates and
23 charges previously in effect and shall hold and complete a hearing thereon
24 within ninety (90) days after filing to determine if the rates as proposed are
25 just and reasonable. The Commission may, within sixty days after close of the
26 hearing, enter an order adjusting the rates and charges at issue, except that
27 the Commission may not set any rate or charge below the basic local exchange
28 service rates in effect at the time the new rate at issue was proposed. A
29 company subject to this Section shall not increase its rates without the
30 approval of the Commission for six months after the date the Commission enters
31 such order. If the Commission fails to enter any order within sixty days
32 after the close of the hearing, the petition shall be deemed denied and the
33 rates and charges shall be deemed approved for all purposes, including the
34 purposes of appeal.

35 (f) Rates for switched access services of companies that are subject to
36 this Section shall be determined pursuant to Section 7, except as provided in

1 Section 12(1) and Section 4.

2 (g) A company subject to this Section may at any time file an
3 application with the Commission requesting the Commission to prescribe just
4 and reasonable rates for the company. Any rate so set may thereafter be
5 adjusted as provided in this Section.

6 (h) Nothing herein shall restrict any customer's right to complain to
7 the Commission regarding quality of service or the Commission's authority to
8 enforce quality of service rules and standards which are equally imposed on
9 all telecommunications providers.

10 (i) The Commission may, on its own motion, review basic local exchange
11 service rates of any company subject to this Section if the company has
12 increased such rates by more than the greater of fifteen percent (15%) or
13 \$2.00 per access line per month within any consecutive twelve-month period,
14 excluding rate increases ordered by the Commission pursuant to Section 4. The
15 Commission shall hold and complete a hearing on such rates within ninety days
16 after first giving notice of such hearing to the company to determine if the
17 rates as proposed are just and reasonable. The Commission may, within sixty
18 days after close of the hearing, enter an order adjusting the rates and
19 charges at issue, except that the Commission may not require the company to
20 set any rate or charge below the greater of the rates in effect at the time of
21 the filing of the increase or the actual cost of providing such service as
22 established by evidence received at the hearing. In such order, the
23 Commission may order a refund of amounts collected in excess of the rates and
24 charges as approved at the hearing which may be paid as a credit against
25 billings for future services. If the Commission fails to enter any order
26 within sixty days after the close of the hearing, the rates and charges shall
27 be deemed approved for all purposes, including for purposes of appeal.

28 (j) For purposes of this Section, the Commission may not require a
29 company that is subject to this Section, to set its rates below the actual
30 cost of the company providing the service. The actual cost shall, if
31 requested by the company, be determined to include a ratable portion of
32 administrative expenses and overhead incurred by the company in its operations
33 and the appropriate amortization of previously deferred accounting costs.

34 (k) No rural telephone company subject to this Section may change its
35 basic local exchange service rates within ninety days after entry of a final
36 order adjusting such rate pursuant to paragraphs (g) and (i) of this Section.

1 (1) Notwithstanding the provisions of this Section, if, at any time
 2 following the three year anniversary of the notice provided under this
 3 Section, another telecommunications provider is providing basic local exchange
 4 service or switched access service within a local exchange area of the company
 5 subject to this Section, the company that is subject to this Section, may
 6 determine its rates for basic local exchange service and switched access
 7 service within any exchange in which another telecommunications provider is
 8 providing these services, in the same manner that it determines its rates for
 9 other services pursuant to Section 12(a).

10 (m) A rural telephone company electing to be regulated in accordance
 11 with this Section may package any of its services with any other service it or
 12 its affiliates offer, with or without a discount, provided that basic local
 13 exchange services and switched access services may be purchased separately at
 14 the rates which are established in accordance with this Section.

16 SECTION 13. (a) Arkansas Code 23-17-227(d) is repealed.

17 ~~—— (d)(1) The commission, in granting any certificate, may allocate areas~~
 18 ~~between telecommunications companies and cooperatives and charge them with the~~
 19 ~~responsibility of furnishing telecommunications service in the respective~~
 20 ~~areas so allocated.~~

21 ~~—— (2) No area then being furnished with reasonably adequate~~
 22 ~~telecommunications service by a telecommunications company or a cooperative~~
 23 ~~shall be assigned to another cooperative or telecommunications company.~~

24 (b) All laws and parts of laws in conflict with this act are hereby
 25 repealed.

27 SECTION 14. If any provision of this Act or the application thereof to
 28 any person or circumstance is held invalid, such invalidity shall not affect
 29 other provisions or applications of this Act which can be given effect without
 30 the invalid provision or application, and to this end the provisions of this
 31 Act are declared to be severable.

33 SECTION 15. All provisions of this Act of a general and permanent nature
 34 are amendatory to the Arkansas Code of 1987 Annotated, and the Arkansas Code
 35 Revision shall incorporate the same in the Code.

36

1 SECTION 16. EMERGENCY. It is hereby found and determined by the Eighty-
2 first General Assembly that: (I) It is in the public interest to maintain and
3 preserve the commitment of universal availability of reasonably affordable
4 telecommunications services; (II) Competition and growth in the
5 telecommunications industry are affected by demographics and population
6 density. Therefore, telecommunications providers serving high-cost rural areas
7 often have needs that are different from those of telecommunications providers
8 serving only urban areas. Accordingly, the regulatory framework established by
9 this Act seeks to recognize and accommodate the unique factors faced by
10 telecommunications companies serving high-cost rural areas in addition to
11 providing all local exchange carriers with additional regulatory options to
12 assist them in providing telecommunications services and technological
13 advances to their customers; and, (III) It is essential that the State of
14 Arkansas immediately revise its existing regulatory regime for the
15 telecommunications industry to ensure that it is consistent with and
16 complementary to the Federal Telecommunications Act of 1996. Therefore an
17 emergency is declared to exist and this act being immediately necessary for
18 the preservation of the public peace, health and safety shall become effective
19 on the date of its approval by the Governor. If the bill is neither approved
20 nor vetoed by the Governor, it shall become effective on the expiration of the
21 period of time during which the Governor may veto the bill. If the bill is
22 vetoed by the Governor and the veto is overridden, it shall become effective
23 on the date the last house overrides the veto.

24 /s/Rep. Wagner, et al

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