

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

A Bill

SENATE BILL 54

4
5 By: Senators Hopkins, Argue, Bearden, Bell, Canada, Dowd, Edwards, Everett, Fitch, Gordon, Gwatney, Harriman, Hill, Hoofman,
6 Hunter, Jeffries, Lewellen, Mahony, Malone, Roebuck, Ross, Smith, Todd, Walker, Walters, Webb, and Wilson
7
8 By: Representatives Wagner, Beatty, Thicksten, Capps, Cunningham, Young, Lavery, Purdom, Newman, George, Maddox, Brown,
9 Miller, Fletcher, McKissack, McGee, Malone, Pollan, McGehee, Wilkinson, Willems, Johnson, Rorie, Simon, Broadway, Kidd,
10 Lancaster, Sheppard, Stalnaker, Jones, Bennett, Choate, Davis, Baker, Wood, Northcutt, Simmons, Allison, Flanagin, Horn, Whorton,
11 Cook, Hausam, Jeffress, Hall, Wren, Goodwin, Critcher, McJunkin, Hunton, Harris, French, Joe Hudson, Wallis, Teague, Bond,
12 Shoffner, Ammons, Milum, Booker, Pappas, Walker, Courtway, Roberts, Rodgers, and Angel

For An Act To Be Entitled

"TELECOMMUNICATIONS REGULATORY REFORM ACT OF 1997."

Subtitle

"TELECOMMUNICATIONS REGULATORY REFORM ACT OF
1997."

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

SECTION 1. Title.

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

SECTION 2. Legislative Findings.

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

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the national policy of opening the telecommunications market to competition on fair and equal terms, modifies outdated regulation, eliminates unnecessary regulation, and preserves and advances universal service.

(2) Recognize that a telecommunications provider that serves high cost rural areas or exchanges faces unique circumstances that require special consideration and funding to assist in preserving and promoting universal service.

(3) Recognize differences between the small and large incumbent local exchange carriers, that there are customer-owned telephone cooperatives and small locally-owned investor companies, and that it is appropriate to provide incentives and regulatory flexibility to allow incumbent local exchange carriers that serve the rural areas to provide existing services and to introduce new technology and new services in a

1 prompt, efficient and economical manner. The General Assembly finds that the Commission, when promulgating rules and regulations, should take
 2 into consideration the differences in operating conditions in the large and small incumbent local exchange carriers and the burdens placed on small
 3 carriers because of regulation.

4
 5 SECTION 3. Definitions.

6 As used in this Act:

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

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

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

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

17 (5) "Basic local exchange service" means the service provided to the premises of residential or single-line business customers composed
 18 of the following:

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

20 (b) touch tone service availability,

21 (c) flat rate single party residential local service and single line business local service,

22 (d) access to emergency services (911/E911) where provided by local authorities,

23 (e) access to basic operator services,

24 (f) a standard white page directory listing,

25 (g) access to basic local directory assistance,

26 (h) access to long distance toll service providers, and

27 (i) the minimum service quality as established and required by the Commission on the effective date of this Act.

28 (6) "Commercial mobile service" means cellular, Personal Communications Systems and any service regulated pursuant to Part
 29 20 of the rules and regulations of the FCC (47 CFR Part 20) or any successor provisions.

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

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

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

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

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

- 1 (12) "FCC" means the Federal Communications Commission.
- 2 (13) "Facilities" means any of the physical elements of the telephone plant that are needed to provide or support telecommunications
3 services, including switching systems, cables, fiber optic, and microwave radio transmission systems, measuring equipment, billing equipment,
4 operating systems, billing systems, ordering systems, and all other equipment and systems that a telecommunications service provider uses to provide
5 or support telecommunications services.
- 6 (14) "Federal act" means the Communications Act of 1934, as amended.
- 7 (15) "Government entity" includes all Arkansas state agencies, commissions, boards, authorities, and all Arkansas public educational
8 entities (including school districts), and political subdivisions (including incorporated cities and towns and all institutions, agencies or
9 instrumentalities of municipalities) and county governments.
- 10 (16) "Incumbent local exchange carrier" means, with respect to a local exchange area, a local exchange carrier, including successors and
11 assigns, that is certified by the Commission and was providing basic local exchange service on February 8, 1996.
- 12 (17) "Interstate access charge pools" means the system, currently administered by the National Exchange Carriers Association,
13 wherein participating local exchange carriers pool billed interstate access revenues.
- 14 (18) "Local exchange area" means the geographic area, approved by the Commission, encompassing the area within which a local
15 exchange carrier is authorized to provide basic local exchange services and switched access services.
- 16 (19) "Local exchange carrier" means a telecommunications provider of basic local exchange service and switched access service. Such
17 term does not include commercial mobile service providers.
- 18 (20) "Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes
19 features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling
20 systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications
21 service.
- 22 (21) "Resale" means the purchase of services by one local exchange carrier from another local exchange carrier for the purpose of
23 reselling those services directly or indirectly to an end-user customer.
- 24 (22) "Rural telephone company" means a local exchange carrier defined as a rural telephone company in the Federal Act as of the
25 effective date of this act.
- 26 (23) "Switched access service" means the provision of communications between a customer premise and an interexchange carrier's point
27 of interconnection with a local exchange carrier's network for the completion of end user calls to the public switched network for the origination or
28 termination of interexchange long distance traffic.
- 29 (24) "Telecommunications provider" means any person, firm, partnership, corporation, association, or other entity that offers
30 telecommunications services to the public for compensation.
- 31 (25) "Telecommunications services" means the offering to the public for compensation the transmission of voice, data, or other electronic
32 information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities. Such term
33 does not include radio and television broadcast or distribution services, or the provision or publishing of yellow pages, regardless of the entity
34 providing such services, or services to the extent that such services are used in connection with the operation of an electric utility system owned by a
35 government entity.
- 36 (26) "Tier One Company" means any incumbent local exchange carrier that, together with its Arkansas affiliates that are also

1 incumbent local exchange carriers, provides basic local exchange services to greater than one hundred fifty thousand (150,000) access lines in the
 2 State of Arkansas on the effective date of this Act. Changes in designation of an incumbent local exchange carrier, or portions thereof, as a Tier
 3 One Company or non-Tier One Company may be effected by prior approval from the Commission pursuant to Section 11(i).

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

6
 7 SECTION 4. Preservation and Promotion of Universal Service.

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

13 (b) The Arkansas Universal Service Fund is to provide a mechanism to restructure the present system of telecommunication service
 14 rates in the State as provided herein, and all telecommunications providers, except as prohibited by federal law, shall be charged for the direct and
 15 indirect value inherent in the obtaining and preserving of reasonable and comparable access to telecommunications services in the rural or high cost
 16 areas. The value and utility of access to and interconnection with the public switched network will be lessened if the rural or high cost areas do not
 17 have comparable access and subscribership. This AUSF charge for all telecommunications providers shall be proportionate to each provider's
 18 Arkansas intrastate retail telecommunications service revenues. In that the customers of the telecommunications providers that would pay the
 19 AUSF charge receive the benefits of a universal network, such telecommunications providers may surcharge their customers to recover such AUSF
 20 charges paid by the telecommunications provider. Therefore, the AUSF charge is not a tax, and is not affected by state laws governing taxation.

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

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

34 (e) The Commission shall, after reasonable notice and hearing, establish rules and procedures necessary to implement the AUSF.
 35 The Commission shall implement the AUSF and make AUSF funds available to eligible telecommunications carriers no later than 90 days
 36 following the later of (i) the effective date of this Act, or (ii) the effective date of an FCC order pursuant to Section 254 of the Federal Act

1 (47 USC 254), that approves, establishes or modifies interstate universal service funding. The Commission shall not, prior to the
 2 implementation and availability of funds from the AUSF, require any local exchange carrier to reduce rates for intrastate switched access services
 3 or require any local exchange carrier to reduce its net revenue received from the Arkansas IntraLATA Toll Pool (AITP). In establishing and
 4 implementing the AUSF, the Commission shall adhere to the following instructions and guidelines:

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

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

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

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

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

20 (4)(A) In the event of an FCC order, rule or policy, pursuant to Section 254(a)(2) of the Federal Act, (47 USC
 21 254(a)(2)) the effect of which is to change the federal universal service fund revenues of an incumbent local exchange carrier, the Commission
 22 shall either increase the rates for basic local exchange service or increase the incumbent local exchange carrier's recovery from the AUSF or a
 23 combination thereof to replace the reasonably projected change in revenues. In determining whether to increase basic local exchange service rates or
 24 increase AUSF for a Tier One Company pursuant to this Section, the Commission shall take into account that company's rates and consider
 25 whether such rates are below the statewide average.

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

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

36 (D) Except as provided in this paragraph, the intrastate Carrier Common Line (CCL) Pool charges shall continue as

1 effective on December 31, 1996. The Commission is authorized to develop and implement, commencing three (3) years after the effective date of
 2 this Act, a phase-in reduction of intrastate CCL pool charges until such charges are equivalent to the interstate CCL charges. Any reduction
 3 of intrastate CCL pool charges of incumbent local exchange carriers ordered by the Commission shall provide for concurrent recovery of such
 4 revenue loss from the AUSF, basic local exchange rates, or a combination thereof.

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

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

14 (A) The eligible telecommunications carrier may utilize traditional rate case methods and procedures to identify universal
 15 service revenue requirements and a residual AUSF funding requirement:

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

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

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

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

29 (g) The current Arkansas Universal Telephone Service Fund established pursuant to Arkansas Code Annotated Sections 23-
 30 17-301 through 23-17-307 will continue to exist until the AUSF is funded and operational. At that time any funds remaining in the current
 31 fund will be transferred to the AUSF and the current fund will no longer be operational.

32

33 SECTION 5. Eligible Telecommunications Carrier.

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

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

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

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

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

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

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

14 (c) In exchanges or wire centers where the Commission has designated more than one eligible telecommunications carrier, the
 15 Commission shall permit a local exchange carrier to relinquish its designation as an eligible telecommunications carrier, consistent with Section
 16 214(e)(4) of the Federal Act (47 USC 214(e)(4)), upon a finding that at least one eligible telecommunications carrier will continue to serve the
 17 area.

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

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

24

25 SECTION 6. Electing Companies.

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

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

30 (c) Upon such a filing, all rates, terms, and conditions for the services provided by that incumbent local exchange carrier contained in
 31 the tariffs and end-user contracts that were in effect on the date twelve months prior to the date of election under this Section shall be deemed just
 32 and reasonable. However, nothing herein shall restrict any customer's right to complain to the Commission regarding quality of service or the
 33 Commission's right to enforce any quality of service rules and standards which are equally imposed on all telecommunications providers.

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

1
2 SECTION 7. Regulation of Rates for Basic Local Exchange Service and Switched Access Service of Electing Companies.

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

9 (b) After the expiration of such three year period, the rates for basic local exchange services and switched access services, excluding the
10 intrastate carrier common line charge, may be adjusted by the electing company filing a price list with the Commission, as long as such rates
11 remain at or below the inflation-based rate cap. Inflation shall be measured by the year-over-year percent change in the gross domestic product
12 price index (GDP-PI) calculated by the U.S. Department of Commerce, or any successor to such index. The electing company is authorized to
13 adjust the rate cap for each basic local exchange service and switched access service by seventy-five percent of this inflation measure, adjusted for
14 exogenous changes specified in paragraph (e)
15 of this Section, and excluding rate increases ordered by the Commission pursuant to Section 4. The rate cap may only be adjusted once each
16 twelve months beginning at the expiration of the three year period after the date of initial filing to be regulated pursuant to Sections 6 through 8.

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

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

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

27
28 SECTION 8. Regulatory Framework for Electing Companies.

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

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

34 (c) An electing company may increase or decrease its rates for telecommunications services other than basic local exchange service and
35 switched access services and establish rates for new services by filing a tariff or a price list with the Commission. Such rates shall not require
36 Commission approval. The tariff or price list shall be effective upon filing or at such future time as the electing company shall designate. So

1 long as rates for services are in accordance with this Section and Section 7, such rates are deemed just and reasonable. Any service that is not a
 2 telecommunications service is not subject to Commission regulation, and rates for such services need not be filed with the Commission.

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

6
 7 SECTION 9. Authorization of Competing Local Exchange Carriers.

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

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

22 (c) A government entity which operates an electric utility system may deny any telecommunications provider access to its electric utility
 23 poles, ducts, conduits, or rights-of-way, on a nondiscriminatory basis where there is insufficient capacity and for reasons of safety, reliability,
 24 and generally applicable engineering purposes.

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

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

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

36 (g) The Commission shall approve, as permitted by the Federal Act, resale restrictions which prohibit resellers from purchasing retail

1 local exchange services offered by a local exchange carrier to residential customers and reselling those retail services to nonresidential customers, or
 2 aggregating the usage of multiple customers on resold local exchange services, or any other reasonable limitation on resale to the extent permitted by
 3 the Federal Act. The wholesale rate of any existing retail telecommunications services provided by local exchange carriers that are not exempt from
 4 Section 251(c) of the Federal Act (47 USC 251(c)) and that are being sold for the purpose of resale, shall be the retail rate of the service less
 5 any net avoided costs due to the resale. The net avoided costs shall be calculated as the total of the costs that will not be incurred by the local
 6 exchange carrier due to it selling the service for resale less any additional costs that will be incurred as a result of selling the service for the
 7 purpose of resale.

8 (h) Incumbent local exchange carriers shall provide CLECs, at reasonable rates, nondiscriminatory access to operator services,
 9 directory listings and assistance, and 911 service only to the extent required in the Federal Act.

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

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

16

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

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

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

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

27 (2) the request is technically feasible; and

28 (3) the request is consistent with the protection of universal service and the public interest, convenience, and necessity.

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

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

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

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

35 (4) Statewide average toll rates;

36 (5) Customers cost of telephone service;

- 1 (6) The goals of universal service;
 2 (7) The quality of service provided to customers;
 3 (8) The incumbent local exchange carrier's ability to attract capital and incur debt at reasonable rates and the ability to
 4 sustain sufficient revenue stream to pay existing debt;
 5 (9) The ability of the exchange to support more than one local exchange carrier; and
 6 (10) The interest of all ratepayers.
 7 (d) If no order granting the request is entered by the Commission within 120 days after notice of such request has been filed, the
 8 request is denied.

9
 10 SECTION 11. Regulatory Reform.

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

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

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

17 (b) Notwithstanding the provisions of this Act, a rate group reclassification of an exchange from one rate group to another occurring as
 18 a result of access line growth or loss of exchange access arrangements shall be allowed by the Commission on request of a local exchange carrier.

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

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

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

29 (f) In order to eliminate outdated, unnecessary and burdensome laws and regulations, electing companies, incumbent local exchange
 30 carriers filing notice pursuant to Section 12, and competing local exchange carriers shall not be subject to the requirements of Sections 23-2-
 31 304(a)(1), 23-2-304(a)(4), 23-2-304(a)(5), 23-2-306, 23-2-307, Sections 23-3-101 through 23-3-107, 23-3-112, 23-
 32 3-114, Sections 23-3-118, 23-3-119(a)(2), 23-3-201, 23-3-206, 23-3-301 through 23-3-316, 23-4-101 through 23-4-104,
 33 23-4-107, 23-4-109, 23-4-110, 23-4-201(d), 23-4-401 through 23-4-405, Sections 23-4-407 through 23-4-419, 23-17-
 34 234, or the Commission rules and regulations implementing such statutes.

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

1 (h) The Commission shall establish reasonable cost proxies, which rural telephone companies, excluding Tier One Companies, may use
 2 without producing company specific cost studies, when cost studies would otherwise be required. Use of these proxies or the adoption of approved
 3 rates of non rural telephone companies by rural telephone companies, excluding tier one companies, shall be deemed adequate proof of such rural
 4 telephone company costs.

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

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

18
 19 SECTION 12. Optional Alternative Regulation of Non Tier One Rural Telephone Companies.

20 (a) Rural telephone companies, excluding Tier One Companies, that file notice with the Commission of an election to be regulated in
 21 accordance with the provisions of this Section are authorized to determine and account for their respective revenues and expenses, including
 22 depreciation expenses, pursuant to generally accepted accounting principles, and, except as provided in this Section, shall be subject to regulation
 23 only in accordance with this Section and shall not be subject to any rate review or rate of return regulation by the Commission. Such companies
 24 shall file rate lists for their telecommunications services which rates shall be effective upon filing, except the rates for basic local exchange services
 25 and switched access services, which rates shall be effective upon compliance and in accordance with the procedures in this Section. Any service
 26 that is not a telecommunications service is not subject to regulation by the Commission, and rates for such services need not be filed with the
 27 Commission.

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

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

34 (1) A schedule of the proposed basic local exchange service rate change; (2) The effective date of the proposed basic local
 35 exchange service rate change; and

36 (3) An explanation of the right of the subscriber to petition the Commission for a public hearing on the rate increase and the procedure

1 necessary to petition.

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

3 (1) FORM.

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

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

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

7 (iii) The relief sought.

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

10 (2) BODY. The body of the petition shall consist of three numbered paragraphs, if applicable, as follows:

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

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

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

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

29 (f) Rates for switched access services of companies that are subject to this Section shall be determined pursuant to Section 7, except as
30 provided in Section 12(I) and Section 4.

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

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

35 (i) The Commission may, on its own motion, review basic local exchange service rates of any company subject to this Section if the
36 company has increased such rates by more than the greater of fifteen percent (15%) or \$2.00 per access line per month within any consecutive

1 twelve-month period, excluding rate increases ordered by the Commission pursuant to Section 4. The Commission shall hold and complete a
 2 hearing on such rates within ninety days after first giving notice of such hearing to the company to determine if the rates as proposed are just and
 3 reasonable. The Commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that
 4 the Commission may not require the company to set any rate or charge below the greater of the rates in effect at the time of the filing of the
 5 increase or the actual cost of providing such service as established by evidence received at the hearing. In such order, the Commission may order a
 6 refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future
 7 services. If the Commission fails to enter any order within sixty days after the close of the hearing, the rates and charges shall be deemed
 8 approved for all purposes, including for purposes of appeal.

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

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

15 (l) Notwithstanding the provisions of this Section, if, at any time following the three year anniversary of the notice provided under this
 16 Section, another telecommunications provider is providing basic local exchange service or switched access service within a local exchange area of the
 17 company subject to this Section, the company that is subject to this Section, may determine its rates for basic local exchange service and switched
 18 access service within any exchange in which another telecommunications provider is providing these services, in the same manner that it determines
 19 its rates for other services pursuant to Section 12(a).

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

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

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

27 ~~_____ (2) No area then being furnished with reasonably adequate telecommunications service by a telecommunications company or a cooperative shall~~
 28 ~~be assigned to another cooperative or telecommunications company.~~

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

30

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

34

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

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