

By: King of Hemphill

H.B. No. 2796

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the authority of certain telecommunications providers  
3 to commit to making infrastructure and network improvements in  
4 exchange for support from the universal service fund; adding  
5 provisions subject to a criminal penalty.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subtitle C, Title 2, Utilities Code, is amended  
8 by adding Chapter 53A to read as follows:

9 CHAPTER 53A. RURAL ADVANCED PLAN FOR INFRASTRUCTURE DEPLOYMENT

10 Sec. 53A.001. POLICY. In accordance with the policy stated  
11 in Section 51.001(g), considering the differences in the geographic  
12 and economic challenges posed by providing basic local  
13 telecommunications services and competitive and advanced  
14 telecommunications services to rural areas as opposed to urban  
15 areas, the benefits incident to those services, the status of  
16 universal service in the rural areas of this state, state and  
17 national initiatives for widespread deployment of broadband  
18 services, and the telecommunications services network and  
19 infrastructure advancements needed to make possible the future  
20 deployment of an electric smart grid in rural areas, it is the  
21 policy of this state to:

22 (1) upgrade and maintain the telecommunications  
23 services infrastructure in rural areas of this state in an effort  
24 to:

1           (A) provide to each resident of this state a  
2 network capable of providing access to basic local  
3 telecommunications services and advanced telecommunications  
4 services so that a majority of residents in rural areas have the  
5 option to use those services; and

6           (B) ensure that each resident has advanced  
7 telecommunications services to maintain the role of this state as a  
8 leader in commerce and education;

9           (2) ensure that the residents of rural areas have  
10 access to a wide range of advanced telecommunications services and  
11 other competitive benefits in a manner and at prices similar to the  
12 access available to residents in urban areas;

13           (3) provide the necessary infrastructure in rural  
14 areas to support access to an array of telecommunications, data,  
15 and video services, economic development and educational  
16 opportunities, and telemedicine applications;

17           (4) provide the required underlying primary network  
18 infrastructure to support major state and national energy policy  
19 initiatives established to create an electric smart grid that  
20 requires the support of an advanced telecommunications services  
21 network;

22           (5) provide incentives and flexibility similar to  
23 programs available in urban areas for small incumbent local  
24 exchange companies that serve rural areas to complete a basic local  
25 and advanced telecommunications services infrastructure that will  
26 support universal service; and

27           (6) promote economic stabilization and growth in rural

1 areas through basic local and advanced telecommunications services  
2 networks.

3 Sec. 53A.002. DEFINITIONS. In this chapter:

4 (1) "Advanced telecommunications services" includes  
5 high speed, switched, broadband telecommunications service that  
6 enables users to originate and receive high quality voice, data,  
7 graphics, and video telecommunications.

8 (2) "Community center" means an organized public or  
9 private entity that provides a location for specialized groups or  
10 the general public to meet for group activities involving  
11 community, educational, patriotic, political, public information,  
12 recreational, religious, or social functions. The term includes  
13 recreational centers, senior centers, youth centers, and publicly  
14 owned meeting facilities. The commission may by rule designate  
15 additional types of facilities or entities as community centers.

16 (3) "Educational institution" has the meaning  
17 assigned by Section 57.021.

18 (4) "Electing provider" means a small provider that  
19 elects to be subject to the infrastructure commitment and  
20 corresponding regulation under this chapter.

21 (5) "Emergency services facility" means a facility  
22 from which a person, including a firefighter, paramedic, emergency  
23 medical technician, police officer, sheriff, constable, or other  
24 state or federal law enforcement representative, responds to  
25 emergencies, including 9-1-1 calls.

26 (6) "Library" means:

27 (A) a public library or regional library system,

1 as defined by Section 441.122, Government Code;

2 (B) a library operated by an institution of  
3 higher education or a school district; or

4 (C) a library operated by a nonprofit  
5 corporation, as defined by Section 441.221, Government Code.

6 (7) "Private network services" means  
7 telecommunications services, including basic local  
8 telecommunications services, broadband services, customized  
9 services, and packaged network services.

10 (8) "Small provider" means:

11 (A) an incumbent local exchange company or  
12 cooperative that on September 1, 2013, together with all local  
13 exchange companies affiliated with the company or cooperative on  
14 that date, served 31,000 or fewer access lines in this state; or

15 (B) a company or cooperative that is a successor  
16 to a company or cooperative described by Subparagraph (A).

17 (9) "Smart grid" means infrastructure required to  
18 produce an advanced electric energy grid system under the state and  
19 national policy initiatives under the Energy Independence and  
20 Security Act of 2007 (42 U.S.C. Section 17001 et seq.).

21 (10) "Telemedicine center" means a facility that is  
22 equipped to transmit, by video, data, or voice service, medical  
23 information for the diagnosis or treatment of an illness or disease  
24 and that is:

25 (A) owned or operated by a public or  
26 not-for-profit hospital; or

27 (B) owned by a state-licensed health care

1 practitioner and operated on a nonprofit basis.

2 Sec. 53A.003. CHAPTER CONTROLS. To the extent this chapter  
3 conflicts with Chapter 53, this chapter controls.

4 Sec. 53A.004. ELECTION. (a) A small provider that is not  
5 an electing company under Chapter 58 or 59 as of September 1, 2013,  
6 may elect to be subject to this chapter and make the corresponding  
7 infrastructure commitment under this chapter by notifying the  
8 commission in writing of the election.

9 (b) The notice must include the information required by  
10 Section 56.034 and a statement that the provider agrees to fulfill  
11 the infrastructure commitment prescribed by this chapter.

12 (c) A small provider may not revoke an election.

13 Sec. 53A.005. INFRASTRUCTURE COMMITMENT. (a) After the  
14 date the commission receives notice of the small provider's  
15 election under Section 53A.004, the electing provider shall:

16 (1) commit to make all reasonable efforts and  
17 investments in this state necessary to improve or upgrade network  
18 infrastructure in the manner described by this chapter;

19 (2) work to ensure that the electing provider's  
20 network backbone interoffice facilities are capable of supporting  
21 services that include, at a minimum, broadband speeds that are not  
22 less than the minimum speeds required by the Federal Communications  
23 Commission, voice services, video signal at a quality level  
24 comparable to a television broadcast signal, and other reasonably  
25 anticipated basic local or advanced telecommunications services  
26 that may become available to the public in the future; and

27 (3) work to ensure that all new or upgraded local loops

1 that are the subject of an equitable request for service are capable  
2 of supporting basic local and advanced telecommunications  
3 services, including broadband service at a speed that is not less  
4 than the minimum broadband speed required by the Federal  
5 Communications Commission.

6 (b) To meet the requirements of this chapter, an electing  
7 provider may use any technology capable of achieving the required  
8 level of service capabilities. This includes both new construction  
9 and upgrades to existing facilities.

10 Sec. 53A.006. EQUITABLE REQUESTS FOR SERVICE. (a) For the  
11 purposes of this chapter, a request for service is considered an  
12 equitable request for service only if provision of the requested  
13 service by the electing provider receiving the request is  
14 technologically and economically feasible, including the provision  
15 of network extensions or upgrades necessary to support any services  
16 the requesting entity is receiving at the time the request is made  
17 and other reasonably anticipated basic local or advanced  
18 telecommunications services that may become available to the public  
19 in the future.

20 (b) An electing provider shall determine whether a request  
21 for service is an equitable request. If the electing provider  
22 determines that the request is not an equitable request, the  
23 electing provider shall provide written notice of that  
24 determination to the requesting person. The requesting person may  
25 appeal to the commission a determination that a request for service  
26 is not an equitable request.

27 (c) An electing provider may deny a request that is not an

1 equitable request. An infrastructure commitment associated with a  
2 denied request is waived.

3 (d) If the electing provider or the commission determines  
4 that a request for service is an equitable request, the electing  
5 provider shall, regardless of technology used, work to ensure that  
6 the provider meets the commitments prescribed by Section 53A.005.

7 Sec. 53A.007. PRIVATE NETWORK SERVICES FOR CERTAIN  
8 ENTITIES. (a) An electing provider shall, after receiving an  
9 equitable request for service under Section 53A.006, provide  
10 private network services to:

11 (1) a community center;

12 (2) an educational institution;

13 (3) a library;

14 (4) a public or not-for-profit emergency services  
15 facility;

16 (5) a telemedicine center; or

17 (6) a legally constituted consortium of entities  
18 listed in this subsection.

19 (b) The electing provider shall provide the private network  
20 services for the private and sole use of the receiving entity or  
21 entities. The provider may provide the services jointly with a  
22 facility that is used to provide another service to another  
23 customer.

24 (c) The entities described by Subsection (a) are a special  
25 class of customers for the purposes of the private network for  
26 distance learning, telemedicine, and information-sharing uses.

27 (d) An electing provider may provide a private network

1 service under a customer-specific contract.

2 (e) The entities described by Subsection (a) warrant  
3 preferred rate treatment. An electing provider shall provide  
4 private network services to those entities at a reduced rate equal  
5 to 65 percent of the amount owed under the customer-specific  
6 contract or under the otherwise applicable tariffed rate after  
7 applicable federal discounts are applied.

8 (f) On request of an electing provider, the commission shall  
9 provide reimbursement through the universal service fund, in  
10 addition to monthly support received under Section 56.034(d)(1) or  
11 (2), for reduced rates for private network services for entities  
12 described by Subsection (a). The amount of reimbursement shall be  
13 equal to the difference between the electing provider's  
14 customer-specific contract or otherwise applicable tariffed rate  
15 for that service, and the reduced rate offered for that service  
16 under this chapter.

17 Sec. 53A.008. WAIVER OF INFRASTRUCTURE COMMITMENT  
18 REQUIREMENTS. (a) On the request of an electing provider, the  
19 commission may waive an infrastructure commitment requirement  
20 under Section 53A.005 or 53A.009 or a requirement under an  
21 equitable request for service under Section 53A.006.

22 (b) The commission may grant a waiver in relation to an  
23 equitable request for service under Section 53A.006 if the electing  
24 provider demonstrates that the requested investment or service  
25 places an undue burden on the universal service fund or the electing  
26 provider.

27 (c) Before granting a waiver under Subsection (b), the



1 commission must consider the public benefits that would result from  
2 the investment or service, the willingness and ability of the  
3 requestor to pay a reasonable aid to construction charge, and the  
4 allowance of additional universal service fund support to allow  
5 timely completion of the request.

6 (d) The commission shall review a waiver granted under  
7 Subsection (a) or (b) at least once every three years if the  
8 corresponding requirement or the corresponding equitable request  
9 for service remains pending. The commission may not extend a waiver  
10 until the commission reviews the factors listed in Subsection (c),  
11 the technical ability of the provider to meet the waived  
12 requirement, and the effect of extending the waiver on the  
13 universal service fund.

14 Sec. 53A.009. PLAN. (a) An electing provider shall develop  
15 and implement a five-year infrastructure investment plan to  
16 maintain and upgrade existing network facilities to ensure  
17 connectivity capable of meeting the standards prescribed by this  
18 chapter.

19 (b) The plan must include a description of the proposed  
20 improvements or upgrades to the electing provider's network  
21 throughout its service area that will help the provider meet  
22 infrastructure commitments and customer needs.

23 (c) An electing provider who is subject to a requirement  
24 under federal law to file a five-year plan is not required to create  
25 an additional plan under this section.

26 Sec. 53A.010. PROGRESS AND ACCOUNTABILITY REPORT. (a) An  
27 electing provider shall file annually with the commission a report

1 on the provider's progress toward fulfilling the provider's  
2 infrastructure commitment.

3 (b) The report must include:

4 (1) the plan described by Section 53A.009 or the  
5 provider's federally prescribed five-year plan;

6 (2) a description of the provider's progress on  
7 implementing the plan, how the provider is using universal service  
8 support funds to improve service quality, coverage, or capacity,  
9 and an explanation detailing why improvements or targets for the  
10 previous calendar year have not been met, including adjustments for  
11 evolving standards;

12 (3) a summary of financial data for the previous  
13 calendar year that includes total company data, including:

14 (A) plant-specific operations expenses;

15 (B) plant non-specific operations expenses;

16 (C) customer operations expenses;

17 (D) corporate operations expenses;

18 (E) depreciation and amortization expenses;

19 (F) other operating expenses;

20 (G) total telecom plant in service;

21 (H) total property held for future use; and

22 (I) total telecom plant under construction; and

23 (4) average network capacity and speed capabilities  
24 available to customers.

25 (c) A report filed under this section is confidential and  
26 not subject to disclosure under Chapter 552, Government Code.

27 (d) The commission shall monitor the progress of each

1 electing provider through the reports submitted under this section.

2 Sec. 53A.011. UNIVERSAL SERVICE FUND RECOVERY. (a) An  
3 electing provider is eligible to receive support from the universal  
4 service fund as provided by this chapter and Section 56.034.

5 (b) This chapter does not affect the eligibility of an  
6 electing provider to receive support under Section 56.025.

7 SECTION 2. Section 56.021, Utilities Code, is amended to  
8 read as follows:

9 Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The  
10 commission shall adopt and enforce rules requiring local exchange  
11 companies to establish a universal service fund to:

12 (1) assist telecommunications providers in providing  
13 basic local telecommunications service at reasonable rates in high  
14 cost rural areas under two plans:

15 (A) the Texas High Cost Universal Service Plan  
16 (16 T.A.C. Section 26.403); and

17 (B) the Small and Rural Incumbent Local Exchange  
18 Company Universal Service Plan (16 T.A.C. Section 26.404);

19 (2) reimburse the telecommunications carrier that  
20 provides the statewide telecommunications relay access service  
21 under Subchapter D;

22 (3) finance the specialized telecommunications  
23 assistance program established under Subchapter E;

24 (4) reimburse the department and the commission for  
25 costs incurred in implementing this chapter and Chapter 57;

26 (5) reimburse a telecommunications carrier providing  
27 lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as

1 amended;

2 (6) finance the implementation and administration of  
3 an integrated eligibility process created under Section 17.007 for  
4 customer service discounts relating to telecommunications  
5 services, including outreach expenses the commission determines  
6 are reasonable and necessary;

7 (7) reimburse a designated provider under Subchapter  
8 F;

9 (8) reimburse a successor utility under Subchapter G;  
10 [~~and~~]

11 (9) finance the program established under Subchapter  
12 H; and

13 (10) assist telecommunications providers that are  
14 small and rural local exchange companies in providing basic local  
15 and advanced telecommunications services in high cost rural areas  
16 through fulfilling infrastructure commitments under Chapter 53A,  
17 as provided by Section 56.034.

18 SECTION 3. Subchapter B, Chapter 56, Utilities Code, is  
19 amended by adding Section 56.034 to read as follows:

20 Sec. 56.034. SUPPORT FOR RURAL ADVANCED PLAN FOR  
21 INFRASTRUCTURE DEPLOYMENT. (a) Support for the Rural Advanced  
22 Plan for Infrastructure Deployment is available to  
23 telecommunications providers who are electing providers under  
24 Chapter 53A.

25 (b) Not later than January 1, 2017, the commission shall  
26 implement a mechanism for electing providers to transition support  
27 from the Small and Rural Incumbent Local Exchange Company Universal

1 Service Plan to the Rural Advanced Plan for Infrastructure  
2 Deployment. Until the mechanism is in place, an electing  
3 provider's support level may not be decreased from the level the  
4 provider receives on the date the commission receives notice under  
5 Section 53A.004 of the provider's election.

6 (c) When a provider notifies the commission that it elects  
7 to be subject to Chapter 53A, the provider shall request that the  
8 commission determine and disburse support to the provider under  
9 Subsection (d)(1) or (d)(2).

10 (d) An electing provider may request that the commission  
11 disburse funds to the provider in fixed monthly amounts based on:

12 (1) the company's annualized amount of recovery from  
13 the universal service fund for the fiscal year ending on August 31,  
14 2017, but only if the commission receives notice under Section  
15 53A.004 of the provider's election on or before September 1, 2017;  
16 or

17 (2) an annualized support amount determined to be  
18 sufficient, based on the Federal Communications Commission cost  
19 study and independently audited financials of the provider for the  
20 most recently ended fiscal year and when considered with other  
21 revenues, to permit the company the opportunity to earn a  
22 reasonable return in accordance with Section 53.051.

23 (e) The commission shall determine the initial support  
24 level not later than the 60th day after the date the commission  
25 receives the notice under Section 53A.004.

26 (f) An electing provider who requests to have the provider's  
27 initial support level determined and disbursed under Subsection

1 (d)(1) may, not earlier than the first anniversary of the date of  
2 the determination of initial support level, make a one-time request  
3 to have the provider's fixed monthly support determined and  
4 disbursed under Subsection (d)(2). Not later than the 60th day  
5 after the date the commission receives a request under this  
6 subsection, the commission shall recalculate the amount of the  
7 electing provider's support as provided by Subsection (d)(2) and  
8 the electing provider is considered to have made a request under  
9 Subsection (d)(2) for the purposes of all future adjustments. This  
10 subsection does not limit a provider's ability to make a request  
11 under Subsection (g).

12 (g) Not earlier than the first anniversary of the date of  
13 the determination of an initial support level the electing provider  
14 will receive under Subsection (d), or after an election under  
15 Subsection (f), the commission may, only for good cause and on its  
16 own motion, or shall, on the written request of the provider,  
17 initiate a proceeding to recalculate the annual support amount to  
18 be used as the basis for the fixed monthly support amounts. The  
19 commission shall base the recalculation under this subsection on an  
20 annualized support amount determined to be sufficient, when  
21 considered with other revenues, to permit the company the  
22 opportunity to earn a reasonable return in accordance with Section  
23 53.051. Except for good cause, the commission may not initiate a  
24 proceeding to adjust a provider's support under this subsection  
25 more frequently than once every three years.

26 (h) The commission shall adjust support disbursed under  
27 Subsection (d)(2) automatically every three years using the

1 calculation prescribed by Subsection (d)(2). An adjustment  
2 proceeding under this subsection must be completed in not more than  
3 60 days.

4 SECTION 4. This Act takes effect September 1, 2015.