

By: King of Hemphill

H.B. No. 3127

A BILL TO BE ENTITLED

AN ACT

relating to the authority of certain telecommunications providers to commit to making infrastructure and network improvements in exchange for support from the universal service fund.

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

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

CHAPTER 53A. RURAL ADVANCED PLAN FOR INFRASTRUCTURE DEPLOYMENT

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

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

(A) provide to each resident of this state a

1 network capable of providing access to basic local
2 telecommunications services and advanced telecommunications
3 services so that a majority of residents in rural areas have the
4 option to use those services; and

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

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

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

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

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

26 (6) promote economic stabilization and growth in rural
27 areas through basic local and advanced telecommunications services

1 networks.

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

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

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

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

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

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

25 (6) "Library" means:

26 (A) a public library or regional library system,
27 as defined by Section 441.122, Government Code;

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

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

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

9 (8) "Small provider" means:

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

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

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

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

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

26 (B) owned by a state-licensed health care
27 practitioner and operated on a nonprofit basis.

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

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

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

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

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

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

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

26 (3) work to ensure that all new or upgraded local loops
27 that are the subject of an equitable request for service are capable

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

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

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

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

26 (c) An electing provider may deny a request that is not an
27 equitable request. An infrastructure commitment associated with a

1 denied request is waived.

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

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

10 (1) a community center;

11 (2) an educational institution;

12 (3) a library;

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

15 (5) a telemedicine center; or

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

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

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

26 (d) An electing provider may provide a private network
27 service under a customer-specific contract.

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

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

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

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

26 (c) Before granting a waiver under Subsection (b), the
27 commission must consider the public benefits that would result from

1 the investment or service, the willingness and ability of the
2 requestor to pay a reasonable aid to construction charge, and the
3 allowance of additional universal service fund support to allow
4 timely completion of the request.

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

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

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

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

25 Sec. 53A.010. PROGRESS AND ACCOUNTABILITY REPORT. (a) An
26 electing provider shall file annually with the commission a report
27 on the provider's progress toward fulfilling the provider's

1 infrastructure commitment.

2 (b) The report must include:

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

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

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

13 (A) plant-specific operations expenses;

14 (B) plant non-specific operations expenses;

15 (C) customer operations expenses;

16 (D) corporate operations expenses;

17 (E) depreciation and amortization expenses;

18 (F) other operating expenses;

19 (G) total telecom plant in service;

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

21 (I) total telecom plant under construction; and

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

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

26 (d) The commission shall monitor the progress of each
27 electing provider through the reports submitted under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) Not later than January 1, 2017, the commission shall
24 implement a mechanism for electing providers to transition support
25 from the Small and Rural Incumbent Local Exchange Company Universal
26 Service Plan to the Rural Advanced Plan for Infrastructure
27 Deployment. Until the mechanism is in place, an electing

1 provider's support level may not be decreased from the level the
2 provider receives on the date the commission receives notice under
3 Section 53A.004 of the provider's election.

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

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

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

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

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

24 (f) An electing provider who requests to have the provider's
25 initial support level determined and disbursed under Subsection
26 (d)(1) may, not earlier than the first anniversary of the date of
27 the determination of initial support level, make a one-time request

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

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

24 (h) The commission shall adjust support disbursed under
25 Subsection (d)(2) automatically every three years using the
26 calculation prescribed by Subsection (d)(2). An adjustment
27 proceeding under this subsection must be completed in not more than

1 60 days.

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