

By: Geren

H.B. No. 2659

A BILL TO BE ENTITLED

AN ACT

relating to the distribution of universal service funds to certain small and rural incumbent local exchange companies.

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

SECTION 1. Section 56.032, Utilities Code, as effective September 1, 2017, is amended to read as follows:

Sec. 56.032. ADJUSTMENTS: SMALL AND RURAL INCUMBENT LOCAL EXCHANGE COMPANY UNIVERSAL SERVICE PLAN. (a) In this section:

(1) "Rate of return" means the Federal Communication Commission's prescribed rate of return as of the date of any determination, review, or adjustment under this section.

(2) "Small provider" means:

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

(B) a company or cooperative that is a successor to a company or cooperative described by Paragraph (A).

(b) Except as otherwise provided by this section ~~[Subsections (d) and (e)]~~, the commission may revise the monthly support amounts to be made available from the Small and Rural Incumbent Local Exchange Company Universal Service Plan by any mechanism, including support reductions resulting from rate rebalancing approved by the commission, after notice and an

1 opportunity for hearing. In determining appropriate monthly  
2 support amounts, the commission shall consider the adequacy of  
3 basic rates to support universal service.

4 (c) On the written request of a small provider that is not an  
5 electing company under Chapter 58 or 59, the commission shall  
6 determine and disburse support to the small provider in fixed  
7 monthly amounts based on an annualized support amount the  
8 commission determines to be sufficient to permit the small provider  
9 the opportunity to earn a reasonable return in accordance with  
10 Section 53.051. A small provider that makes a request under this  
11 section is entitled to continue to receive the same level of support  
12 it was receiving on the date of the written request until the  
13 commission makes a determination or adjustment through the  
14 mechanism described by Subsection (d).

15 (d) Not later than January 1, 2018, the commission shall  
16 initiate rulemaking proceedings to develop and implement a  
17 mechanism to determine the annualized support amount to be  
18 disbursed under this section. The mechanism must be designed to:

19 (1) review or adjust support for each small provider  
20 on an annual basis; and

21 (2) use the earnings monitoring report and any  
22 underlying information the commission determines to be reasonably  
23 necessary for the rulemaking process to determine whether support  
24 levels provide an opportunity to earn a reasonable return.

25 (e) In a proceeding to adjust support levels using the  
26 mechanism described by Subsection (d), the commission may consider  
27 the small provider's information for a period not to exceed three

1 fiscal years before the date the proceeding is initiated.

2 (f) For purposes of the mechanism described by Subsection  
3 (d), a return that is within three percentage points of the rate of  
4 return is considered to be reasonable and a support adjustment may  
5 not be made for a small provider whose return falls in that range  
6 for the previous fiscal year.

7 (g) A small provider whose return is more than three  
8 percentage points below the rate of return may file an application  
9 that is eligible for administrative review or informal disposition  
10 to adjust support to a level which would bring the small provider's  
11 return into the range that would be considered reasonable under  
12 Subsection (f). Except for good cause, a small provider who files  
13 an application for adjustment under this subsection may not file a  
14 subsequent application for adjustment before the third anniversary  
15 of the date on which the small provider's most recent application  
16 for adjustment is resolved.

17 (h) There is no presumption that the return is unreasonable  
18 for a small provider whose return is more than three percentage  
19 points above the rate of return. However, on its own motion, the  
20 commission may initiate a proceeding to review the small provider's  
21 support level and after notice and an opportunity for a hearing,  
22 reduce the provider's level of support, if appropriate. Except for  
23 good cause, the commission may not initiate a subsequent adjustment  
24 proceeding for a small provider under this subsection before the  
25 third anniversary of the date on which that small provider's most  
26 recent adjustment proceeding is resolved.

27 (i) A small provider that is eligible to have support

1 determined and distributed under this section shall continue to  
2 receive the same level of support it was receiving on August 31,  
3 2017, until the earlier of:

4 (1) the date on which the commission makes a  
5 determination or adjustment through the mechanism described by  
6 Subsection (d); or

7 (2) the 61st day after the date the commission adopts  
8 the mechanism described by Subsection (d).

9 (j) A report or information the commission requires a  
10 telecommunications provider to provide under this section is  
11 confidential and is not subject to disclosure under Chapter 552,  
12 Government Code. In any proceeding related to Subsection (d), a  
13 third party's access to confidential information is subject to an  
14 appropriate protective order.

15 (k) [~~(g)~~] This section does not affect the commission's  
16 authority under Chapter 53 or this chapter.

17 ~~[(h) Subsections (a), (c), (d), (e), and (f) and any monthly~~  
18 ~~support amount approved under those subsections expire September 1,~~  
19 ~~2017.]~~

20 SECTION 2. This Act takes effect September 1, 2017.