

By: Perry, et al.

S.B. No. 586

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 Communications Commission's prescribed rate of return as of the date of any determination, review, or adjustment under this section, to be no greater than 9.75 percent prior to July 1, 2021. If the commission finds that the Federal Communications Commission no longer prescribes a rate of return necessary to implement this section, the commission shall initiate proceedings to determine or modify the rate of return to be used for purposes of this section as necessary.

(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).

1 (b) Except as provided by Subsections (c) through (j) [~~(a)~~
2 ~~and (e)~~], the commission may revise the monthly support amounts to
3 be made available from the Small and Rural Incumbent Local Exchange
4 Company Universal Service Plan by any mechanism, including support
5 reductions resulting from rate rebalancing approved by the
6 commission, after notice and an opportunity for hearing. In
7 determining appropriate monthly support amounts, the commission
8 shall consider the adequacy of basic rates to support universal
9 service.

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

21 (d) Not later than January 1, 2018, the commission shall
22 initiate rulemaking proceedings to develop and implement a
23 mechanism to determine the annualized support amount to be
24 disbursed under Subsection (c). The mechanism must:

25 (1) require the annual filing of a report by each small
26 provider that submits a request under Subsection (c) for the
27 purpose of:

1 (A) establishing a continued level of support for
2 the provider or the eligibility of the provider for support
3 adjustment filings for the purposes of Subsections (f), (g), (h),
4 and (i); and

5 (B) determining whether support levels, when
6 combined with regulated revenues, provide the provider an
7 opportunity to earn a reasonable return as described by Subsection
8 (f);

9 (2) provide requirements for the annual filing, which
10 may include annual earnings reports filed with the commission under
11 16 T.A.C. Section 26.73 and any underlying data that, during the
12 rulemaking process, the commission determines to be reasonably
13 necessary for the purposes of Subdivision (1);

14 (3) provide requirements and procedures for
15 adjustment proceedings that are consistent with Subsections (h) and
16 (i); and

17 (4) provide a procedure for the commission to assess,
18 as necessary, whether the reported return of a small provider is
19 based on expenses that are not reasonable and necessary.

20 (e) In a proceeding to adjust support levels using the
21 mechanism described by Subsection (d), the commission may consider
22 the small provider's data for a period not to exceed three fiscal
23 years before the date the proceeding is initiated.

24 (f) For purposes of the mechanism described by Subsection
25 (d), a return is deemed reasonable if the return is within two
26 percentage points above or three percentage points below the rate
27 of return as defined in this section. A small provider's reported

1 return is subject to assessment under the procedures described in
2 Subsection (d)(4).

3 (g) The commission may not approve a support adjustment
4 under Subsection (h) or (i) if the commission determines that a
5 small provider's return for the previous fiscal year was reasonable
6 under Subsection (f).

7 (h) A small provider whose return is not reasonable under
8 Subsection (f) because the return is more than three percentage
9 points below the rate of return as defined in this section may file
10 an application that is eligible for administrative review or
11 informal disposition to adjust support or rates to a level that
12 would bring the small provider's return into the range that would be
13 deemed reasonable under Subsection (f), except that the adjustment
14 may not set a small provider's support level at more than 140
15 percent of the annualized support amount the provider received in
16 the 12-month period before the date of adjustment. A rate
17 adjustment under this subsection may not adversely affect universal
18 service. Except for good cause, a small provider that files an
19 application for adjustment under this subsection may not file a
20 subsequent application for adjustment before the third anniversary
21 of the date on which the small provider's most recent application
22 for adjustment is initiated.

23 (i) There is no presumption that the return is unreasonable
24 for a small provider whose return is more than two percentage points
25 above the rate of return as defined in this section. However, on
26 its own motion, the commission may initiate a proceeding to review
27 the small provider's support level and regulated revenues and after

1 notice and an opportunity for a hearing, adjust the provider's
2 level of support or rates, if appropriate. A rate adjustment under
3 this subsection may not adversely affect universal service. Except
4 for good cause, the commission may not initiate a subsequent
5 adjustment proceeding for a small provider under this subsection
6 before the third anniversary of the date on which the small
7 provider's most recent adjustment proceeding is initiated.

8 (j) A small provider that is eligible to have support
9 determined and distributed under Subsection (c) shall continue to
10 receive the same level of support it was receiving on August 31,
11 2017, until the earlier of:

12 (1) the date on which the commission makes a
13 determination or adjustment through the mechanism described by
14 Subsection (d); or

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

17 (k) A report or information the commission requires a small
18 provider to provide under Subsection (d) is confidential and is not
19 subject to disclosure under Chapter 552, Government Code. In any
20 proceeding related to Subsection (d), a third party's access to
21 confidential information is subject to an appropriate protective
22 order.

23 (l) Except as provided by Subsection (m), this ~~This~~
24 section does not:

25 (1) affect the commission's authority under Chapter 53
26 or this chapter; or

27 (2) limit the commission's authority to initiate a

1 review of a small provider under another provision of this title.

2 (m) In a proceeding for a small provider initiated under
3 Subchapter A, B, C, or D, Chapter 53, the commission may recalculate
4 the annualized support amount to be disbursed to the small provider
5 and to be used as the basis for adjustment in any subsequent
6 proceeding under Subsections (c) through (j).

7 (n) Subsections (a), (c), (d), (e), (f), (g), (h), (i), (j),
8 (k), (l), and (m) and any monthly amounts approved under those
9 subsections expire September 1, 2023.

10 ~~[(h) Subsections (a), (c), (d), (e), and (f) and any monthly~~
11 ~~support amount approved under those subsections expire September 1,~~
12 ~~2017.]~~

13 SECTION 2. (a) In this section, "commission" means the
14 Public Utility Commission of Texas.

15 (b) On or after January 1, 2022, and before July 1, 2022, the
16 commission shall initiate a proceeding to review and evaluate
17 whether:

18 (1) Section 56.032, Utilities Code, as amended by this
19 Act, including any rules adopted to implement that section,
20 accomplishes the purposes of the establishment of the universal
21 service fund under Section 56.021(1)(B), Utilities Code, and allows
22 each small provider, as defined by Section 56.032, Utilities Code,
23 as amended by this Act, the opportunity to earn a reasonable return
24 in accordance with Section 53.051, Utilities Code, and should be
25 continued; or

26 (2) changes in law to amend or replace the mechanism
27 created by Section 56.032, Utilities Code, are necessary to

1 accomplish the purposes described in Subdivision (1) of this
2 subsection.

3 (c) The commission has all authority necessary to conduct
4 the review under Subsection (b) of this section.

5 (d) After the review conducted under Subsection (b) of this
6 section, and not later than September 1, 2022, the commission shall
7 submit to the legislature a report on:

8 (1) the continued appropriateness of using the Federal
9 Communications Commission prescribed rate of return for the
10 mechanism established under Section 56.032(d), Utilities Code, as
11 added by this Act, if the Federal Communications Commission still
12 prescribes a rate of return that may be used for that mechanism;

13 (2) the efficiency and frequency of adjustment
14 proceedings conducted under Section 56.032(h), Utilities Code, as
15 amended by this Act, and Section 56.032(i), Utilities Code, as
16 added by this Act;

17 (3) the frequency and efficiency of determinations
18 made on reasonable and necessary expenses under Section
19 56.032(d)(4), Utilities Code, as added by this Act;

20 (4) the effect of changes in technology on regulated
21 revenue and support needs or determinations made under Section
22 56.032, Utilities Code, as amended by this Act; and

23 (5) any other relevant information the commission
24 determines is necessary for inclusion in the report and is in the
25 public interest.

26 (e) Notwithstanding Subsection (b) of this section or
27 Section 56.024, Utilities Code, a party to a commission proceeding

1 under this section examining the universal service fund and the
2 effectiveness of Section 56.032, Utilities Code, as amended by this
3 Act, is entitled to access confidential information provided to the
4 commission under Section 56.024(a), Utilities Code, if a protective
5 order is issued in the proceeding for the confidential information.

6 SECTION 3. This Act takes effect September 1, 2017.