

By: Perry

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.

(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 provided by Subsections (d) through (i) ~~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 opportunity for hearing. In

1 determining appropriate monthly support amounts, the commission
2 shall consider the adequacy of basic rates to support universal
3 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, when combined with
9 regulated revenues, to permit the small provider the opportunity to
10 earn a reasonable return in accordance with Section 53.051. A small
11 provider that makes a request under this section shall continue to
12 receive the same level of support it was receiving on the date of
13 the written request until the commission makes a determination or
14 adjustment through the 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:

19 (1) require the annual filing of a report by each small
20 provider that submits a request under Subsection (c) for the
21 purpose of:

22 (A) establishing a continued level of support for
23 the provider or the eligibility of the provider for support
24 adjustment filings for the purposes of Subsections (f), (g), and
25 (h); and

26 (B) determining whether support levels, when
27 combined with regulated revenues, provide the provider an

1 opportunity to earn a reasonable return as described in Subsection
2 (f);

3 (2) provide requirements for the annual filing, which
4 may include annual earnings reports filed with the commission under
5 16 T.A.C. Section 26.73 and any underlying data that, during the
6 rulemaking process, the commission determines to be reasonably
7 necessary for the purposes of Subdivision (1); and

8 (3) provide requirements and procedures for
9 adjustment proceedings that are consistent with Subsections (g) and
10 (h).

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

15 (f) For purposes of the mechanism described by Subsection
16 (d), a return that is within three percentage points of the rate of
17 return is deemed reasonable and a support adjustment may not be made
18 for a small provider whose return falls in that range for the
19 previous fiscal year.

20 (g) A small provider whose return is more than three
21 percentage points below the rate of return may file an application
22 that is eligible for administrative review or informal disposition
23 to adjust support to a level that would bring the small provider's
24 return into the range that would be deemed reasonable under
25 Subsection (f). Except for good cause, a small provider that files
26 an application for adjustment under this subsection may not file a
27 subsequent application for adjustment before the third anniversary

1 of the date on which the small provider's most recent application
2 for adjustment is initiated.

3 (h) There is no presumption that the return is unreasonable
4 for a small provider whose return is more than three percentage
5 points above the rate of return. However, on its own motion, the
6 commission may initiate a proceeding to review the small provider's
7 support level and after notice and an opportunity for a hearing,
8 reduce the provider's level of support, if appropriate. Except for
9 good cause, the commission may not initiate a subsequent adjustment
10 proceeding for a small provider under this subsection before the
11 third anniversary of the date on which the small provider's most
12 recent adjustment proceeding is initiated.

13 (i) A small provider that is eligible to have support
14 determined and distributed under this section shall continue to
15 receive the same level of support it was receiving on August 31,
16 2017, until the earlier of:

17 (1) the date on which the commission makes a
18 determination or adjustment through the mechanism described by
19 Subsection (d); or

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

22 (j) A report or information the commission requires a small
23 provider to provide under this section is confidential and is not
24 subject to disclosure under Chapter 552, Government Code. In any
25 proceeding related to Subsection (d), a third party's access to
26 confidential information is subject to an appropriate protective
27 order.

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

3 [~~(h) Subsections (a), (c), (d), (e), and (f) and any monthly~~
4 ~~support amount approved under those subsections expire September 1,~~
5 ~~2017.~~]

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