

1-1 By: Perry, et al. S.B. No. 586
 1-2 (In the Senate - Filed January 24, 2017; February 8, 2017,
 1-3 read first time and referred to Committee on Business & Commerce;
 1-4 April 12, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 12, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 586 By: Campbell

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the distribution of universal service funds to certain
 1-22 small and rural incumbent local exchange companies.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 56.032, Utilities Code, as effective
 1-25 September 1, 2017, is amended to read as follows:

1-26 Sec. 56.032. ADJUSTMENTS: SMALL AND RURAL INCUMBENT LOCAL
 1-27 EXCHANGE COMPANY UNIVERSAL SERVICE PLAN. (a) In this section:

1-28 (1) "Rate of return" means the Federal Communications
 1-29 Commission's prescribed rate of return as of the date of any
 1-30 determination, review, or adjustment under this section, to be no
 1-31 greater than 9.75 percent prior to July 1, 2021. If the commission
 1-32 finds that the Federal Communications Commission no longer
 1-33 prescribes a rate of return necessary to implement this section,
 1-34 the commission shall initiate proceedings to determine or modify
 1-35 the rate of return to be used for purposes of this section as
 1-36 necessary.

1-37 (2) "Small provider" means:

1-38 (A) an incumbent local exchange company or
 1-39 cooperative that, on September 1, 2013, together with all local
 1-40 exchange companies affiliated with the company or cooperative on
 1-41 that date, served 31,000 or fewer access lines in this state; or

1-42 (B) a company or cooperative that is a successor
 1-43 to a company or cooperative described by Paragraph (A).

1-44 (b) Except as provided by Subsections (c) through (j) [~~(d)~~
 1-45 and ~~(e)~~], the commission may revise the monthly support amounts to
 1-46 be made available from the Small and Rural Incumbent Local Exchange
 1-47 Company Universal Service Plan by any mechanism, including support
 1-48 reductions resulting from rate rebalancing approved by the
 1-49 commission, after notice and an opportunity for hearing. In
 1-50 determining appropriate monthly support amounts, the commission
 1-51 shall consider the adequacy of basic rates to support universal
 1-52 service.

1-53 (c) On the written request of a small provider that is not an
 1-54 electing company under Chapter 58 or 59, the commission shall
 1-55 determine and disburse support to the small provider in fixed
 1-56 monthly amounts based on an annualized support amount the
 1-57 commission determines to be sufficient, when combined with
 1-58 regulated revenues, to permit the small provider the opportunity to
 1-59 earn a reasonable return in accordance with Section 53.051. A small
 1-60 provider that makes a request under this subsection shall continue

2-1 to receive the same level of support it was receiving on the date of
 2-2 the written request until the commission makes a determination or
 2-3 adjustment through the mechanism described by Subsection (d).

2-4 (d) Not later than January 1, 2018, the commission shall
 2-5 initiate rulemaking proceedings to develop and implement a
 2-6 mechanism to determine the annualized support amount to be
 2-7 disbursed under Subsection (c). The mechanism must:

2-8 (1) require the annual filing of a report by each small
 2-9 provider that submits a request under Subsection (c) for the
 2-10 purpose of:

2-11 (A) establishing a continued level of support for
 2-12 the provider or the eligibility of the provider for support
 2-13 adjustment filings for the purposes of Subsections (f), (g), (h),
 2-14 and (i); and

2-15 (B) determining whether support levels, when
 2-16 combined with regulated revenues, provide the provider an
 2-17 opportunity to earn a reasonable return as described by Subsection
 2-18 (f);

2-19 (2) provide requirements for the annual filing, which
 2-20 may include annual earnings reports filed with the commission under
 2-21 16 T.A.C. Section 26.73 and any underlying data that, during the
 2-22 rulemaking process, the commission determines to be reasonably
 2-23 necessary for the purposes of Subdivision (1);

2-24 (3) provide requirements and procedures for
 2-25 adjustment proceedings that are consistent with Subsections (h) and
 2-26 (i); and

2-27 (4) provide a procedure for the commission to assess,
 2-28 as necessary, whether the reported return of a small provider is
 2-29 based on expenses that are not reasonable and necessary.

2-30 (e) In a proceeding to adjust support levels using the
 2-31 mechanism described by Subsection (d), the commission may consider
 2-32 the small provider's data for a period not to exceed three fiscal
 2-33 years before the date the proceeding is initiated.

2-34 (f) For purposes of the mechanism described by Subsection
 2-35 (d), a return is deemed reasonable if the return is within two
 2-36 percentage points above or three percentage points below the rate
 2-37 of return as defined in this section. A small provider's reported
 2-38 return is subject to assessment under the procedures described in
 2-39 Subsection (d)(4).

2-40 (g) The commission may not approve a support adjustment
 2-41 under Subsection (h) or (i) if the commission determines that a
 2-42 small provider's return for the previous fiscal year was reasonable
 2-43 under Subsection (f).

2-44 (h) A small provider whose return is not reasonable under
 2-45 Subsection (f) because the return is more than three percentage
 2-46 points below the rate of return as defined in this section may file
 2-47 an application that is eligible for administrative review or
 2-48 informal disposition to adjust support or rates to a level that
 2-49 would bring the small provider's return into the range that would be
 2-50 deemed reasonable under Subsection (f), except that the adjustment
 2-51 may not set a small provider's support level at more than 140
 2-52 percent of the annualized support amount the provider received in
 2-53 the 12-month period before the date of adjustment. A rate
 2-54 adjustment under this subsection may not adversely affect universal
 2-55 service. Except for good cause, a small provider that files an
 2-56 application for adjustment under this subsection may not file a
 2-57 subsequent application for adjustment before the third anniversary
 2-58 of the date on which the small provider's most recent application
 2-59 for adjustment is initiated.

2-60 (i) There is no presumption that the return is unreasonable
 2-61 for a small provider whose return is more than two percentage points
 2-62 above the rate of return as defined in this section. However, on
 2-63 its own motion, the commission may initiate a proceeding to review
 2-64 the small provider's support level and regulated revenues and after
 2-65 notice and an opportunity for a hearing, adjust the provider's
 2-66 level of support or rates, if appropriate. A rate adjustment under
 2-67 this subsection may not adversely affect universal service. Except
 2-68 for good cause, the commission may not initiate a subsequent
 2-69 adjustment proceeding for a small provider under this subsection

3-1 before the third anniversary of the date on which the small
3-2 provider's most recent adjustment proceeding is initiated.
3-3 (j) A small provider that is eligible to have support
3-4 determined and distributed under Subsection (c) shall continue to
3-5 receive the same level of support it was receiving on August 31,
3-6 2017, until the earlier of:
3-7 (1) the date on which the commission makes a
3-8 determination or adjustment through the mechanism described by
3-9 Subsection (d); or
3-10 (2) the 61st day after the date the commission adopts
3-11 the mechanism described by Subsection (d).
3-12 (k) A report or information the commission requires a small
3-13 provider to provide under Subsection (d) is confidential and is not
3-14 subject to disclosure under Chapter 552, Government Code. In any
3-15 proceeding related to Subsection (d), a third party's access to
3-16 confidential information is subject to an appropriate protective
3-17 order.
3-18 (1) Except as provided by Subsection (m), this [This]
3-19 section does not:
3-20 (1) affect the commission's authority under Chapter 53
3-21 or this chapter; or
3-22 (2) limit the commission's authority to initiate a
3-23 review of a small provider under another provision of this title.
3-24 (m) In a proceeding for a small provider initiated under
3-25 Subchapter A, B, C, or D, Chapter 53, the commission may recalculate
3-26 the annualized support amount to be disbursed to the small provider
3-27 and to be used as the basis for adjustment in any subsequent
3-28 proceeding under Subsections (c) through (j).
3-29 (n) Subsections (a), (c), (d), (e), (f), (g), (h), (i), (j),
3-30 (k), (l), and (m) and any monthly amounts approved under those
3-31 subsections expire September 1, 2023.
3-32 ~~[(h) Subsections (a), (c), (d), (e), and (f) and any monthly~~
3-33 ~~support amount approved under those subsections expire September 1,~~
3-34 ~~2017.]~~
3-35 SECTION 2. (a) In this section, "commission" means the
3-36 Public Utility Commission of Texas.
3-37 (b) On or after January 1, 2022, and before July 1, 2022, the
3-38 commission shall initiate a proceeding to review and evaluate
3-39 whether:
3-40 (1) Section 56.032, Utilities Code, as amended by this
3-41 Act, including any rules adopted to implement that section,
3-42 accomplishes the purposes of the establishment of the universal
3-43 service fund under Section 56.021(1)(B), Utilities Code, and allows
3-44 each small provider, as defined by Section 56.032, Utilities Code,
3-45 as amended by this Act, the opportunity to earn a reasonable return
3-46 in accordance with Section 53.051, Utilities Code, and should be
3-47 continued; or
3-48 (2) changes in law to amend or replace the mechanism
3-49 created by Section 56.032, Utilities Code, are necessary to
3-50 accomplish the purposes described in Subdivision (1) of this
3-51 subsection.
3-52 (c) The commission has all authority necessary to conduct
3-53 the review under Subsection (b) of this section.
3-54 (d) After the review conducted under Subsection (b) of this
3-55 section, and not later than September 1, 2022, the commission shall
3-56 submit to the legislature a report on:
3-57 (1) the continued appropriateness of using the Federal
3-58 Communications Commission prescribed rate of return for the
3-59 mechanism established under Section 56.032(d), Utilities Code, as
3-60 added by this Act, if the Federal Communications Commission still
3-61 prescribes a rate of return that may be used for that mechanism;
3-62 (2) the efficiency and frequency of adjustment
3-63 proceedings conducted under Section 56.032(h), Utilities Code, as
3-64 amended by this Act, and Section 56.032(i), Utilities Code, as
3-65 added by this Act;
3-66 (3) the frequency and efficiency of determinations
3-67 made on reasonable and necessary expenses under Section
3-68 56.032(d)(4), Utilities Code, as added by this Act;
3-69 (4) the effect of changes in technology on regulated

4-1 revenue and support needs or determinations made under Section
4-2 56.032, Utilities Code, as amended by this Act; and

4-3 (5) any other relevant information the commission
4-4 determines is necessary for inclusion in the report and is in the
4-5 public interest.

4-6 (e) Notwithstanding Subsection (b) of this section or
4-7 Section 56.024, Utilities Code, a party to a commission proceeding
4-8 under this section examining the universal service fund and the
4-9 effectiveness of Section 56.032, Utilities Code, as amended by this
4-10 Act, is entitled to access confidential information provided to the
4-11 commission under Section 56.024(a), Utilities Code, if a protective
4-12 order is issued in the proceeding for the confidential information.

4-13 SECTION 3. This Act takes effect September 1, 2017.

4-14

* * * * *