

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S3/26/13  
**A Bill**

SENATE BILL 1045

By: Senator L. Chesterfield

**For An Act To Be Entitled**

AN ACT TO SUPPORT AND DEVELOP BROADBAND  
INFRASTRUCTURE AND BROADBAND EXPANSION; TO CREATE  
INCENTIVES TO IMPROVE INTERNET ACCESS AND INTERNET  
CAPABILITIES BY ESTABLISHING BROADBAND PROVIDERS OF  
LAST RESORT; AND FOR OTHER PURPOSES.

**Subtitle**

TO SUPPORT AND DEVELOP BROADBAND  
INFRASTRUCTURE AND BROADBAND EXPANSION;  
TO CREATE INCENTIVES TO IMPROVE INTERNET  
ACCESS AND INTERNET CAPABILITIES BY  
ESTABLISHING BROADBAND PROVIDERS OF LAST  
RESORT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code Title 23, Chapter 17, is amended to add an  
additional subchapter to read as follows:*

*Subchapter 5. Broadband Provider of Last Resort*

*23-17-501. Title.*

*This subchapter shall be known and may be cited as the "Broadband  
Provider of Last Resort Act".*

*23-17-502. Definitions.*

*As used in this subchapter:*

*(1) "Approved alternative technology" means technology that:*



(A) Offers service and functionality comparable to that provided through an exiting provider's facilities, as determined by the Arkansas Public Service Commission;

(B) May include a technology that does not require the use of a public right-of way; and

(C) Is approved by the commission for deployment in a particular service area;

(2) "Basic telecommunications service" means the service provided to the premises of residential or business customers composed of the following:

(A) Voice-grade access to the public switched network with ability to place and receive calls;

(B) Touch-tone service availability;

(C) Flat-rate residential local service and business local service;

(D) Access to emergency services where provided by local authorities;

(E) Access to basic operator services;

(F) A standard white-page directory listing;

(G) Access to basic local directory assistance;

(H) Access to long distance toll service providers; and

(I) The minimum service quality as established and required by the commission on February 4, 1997;

(3) "Broadband" means any service used to provide Internet access at a minimum speed of four megabits per second (4 Mbps);

(4) "Competing local exchange carrier" means a local exchange carrier that is not an incumbent local exchange carrier;

(5) "Exchange access" means offering access to telephone exchange services or facilities for the purpose of originating or terminating telephone toll services;

(6) "Exiting provider" means an entity that:

(A) Is the predominant local exchange carrier in a local exchange area; and

(B) Ceases operation in all or part of the local exchange area;

(7) "Facilities-based local exchange carrier" means a local

exchange carrier that provides local exchange service:

(A) Exclusively over facilities owned or leased by the carrier; or

(B) Predominantly over facilities owned or leased by the carrier, in combination with the resale of the telecommunications service or broadband service of another carrier;

(8) "Incumbent local exchange carrier" means a local exchange carrier and the successors and assigns of the local exchange carrier that are certified by the commission to operate in a local exchange area and were providing basic local exchange service on February 8, 1996;

(9) "Local exchange area" means the geographic area approved by the commission within which a local exchange carrier is authorized to provide basic local exchange services and switched-access services;

(10)(A) "Local exchange carrier" means a telecommunications provider of basic local exchange service and switched-access service.

(B) "Local exchange carrier" does not include a commercial mobile telephone service provider;

(11) "Local exchange service" means the provision of telephone exchange service or exchange access;

(12) "Provider of last resort" means an entity that is required by this subchapter to provide broadband to its customers; and

(13) "Successor provider" means an entity that is or is designated to become, the provider of last resort for all or part of a defined geographic area previously served by an exiting provider.

23-17-503. Broadband obligations of provider of last resort.

A provider of last resort shall provide broadband upon request by a customer within its local exchange area.

23-17-504. Obligations of incumbent local exchange carrier as provider of last resort – Satisfaction of obligations using any available technology.

(a) Except as provided in § 23-17-506 or § 23-17-509, an incumbent local exchange carrier has the obligations of the provider of last resort.

(b) An incumbent local exchange carrier may meet the local exchange carrier's obligations under this section using any available technology.

23-17-505. Exiting provider – Advance notice required – Liability for charges owed to other providers.

(a) An exiting provider shall provide advance notice of at least sixty (60) days to the Arkansas Public Service Commission and each affected customer and wholesale provider before:

(1) Ceasing to serve all or part of the provider's defined service area; or

(2) Filing for bankruptcy.

(b) The notice required by subsection (a) of this section shall:

(1) Be submitted in the form and manner prescribed by the commission; and

(2) Include at least one (1) toll-free customer service telephone number maintained by the provider to facilitate the continuation of service and the transition of customers to other providers.

(c) The exiting provider is liable for all charges incurred by its customers or other providers to transition a customer to another provider.

23-17-506. Relief from provider of last resort obligations – Installation of facilities by another provider.

(a) A designated provider of last resort or another provider may petition the Arkansas Public Service Commission for an order relieving the designated provider of all or part of its obligations as the provider of last resort in an area if:

(1) A local exchange carrier that is not the designated provider of last resort or a provider of broadband services installs facilities to provide broadband in the area; and

(2) The designated provider of last resort for the area has not installed adequate facilities to serve all customers in the area.

(b) The commission shall relieve the designated provider of last resort from all or part of its obligations as the provider of last resort for the area and shall designate the entity making the installation under subsection (a) of this section as the provider of last resort for all or part of the area if the commission determines that:

(1) The designated provider of last resort does not have facilities in place to provide broadband to all customers in the area; and

(2) The entity making the installation under subsection (a) of

this section has installed facilities adequate to provide broadband to all or part of the area.

(c) The commission shall make the determination required by subsection (b) of this section within sixty (60) days after the petition is filed with the commission under subsection (a) of this section.

23-17-507. Notice of exiting provider – Appointment of successor – Temporary exemption from certain requirements – Arkansas High Cost Fund support – Transfer of customers.

(a) Except as provided in §§ 23-17-508 and 23-17-509, the Arkansas Public Service Commission shall conduct a formal proceeding to determine a successor provider for all or part of the area if:

(1) The commission receives notice that an exiting provider will cease operation in all or part of the exiting provider's local exchange area; and

(2) Another provider does not have facilities sufficient to provide basic telecommunications service or broadband in the local exchange area.

(b) After determining a successor provider for the affected area under subsection (a) of this section, the commission shall allow the successor provider the following as necessary to serve the customers of the exiting provider:

(1) A reasonable time in accordance with industry practices to:

(A) Modify, construct, or obtain facilities; or

(B) Deploy an approved alternative technology;

(2) A temporary exemption from a lawful obligation to unbundle the successor provider's network elements for a period determined by the commission to be reasonably necessary to allow the successor provider to:

(A) Modify, construct, or obtain facilities; or

(B) Deploy an approved alternative technology; and

(3) A temporary exemption from a lawful obligation to provide telecommunications service for resale and broadband within the affected area for a period determined by the commission to be reasonably necessary to allow the successor provider to:

(A) Modify, construct, or obtain facilities; or

(B) Deploy an approved alternative technology.

(c) The successor provider is entitled to obtain funding from the Arkansas High Cost Fund to support the successor provider's assumption of obligations as the provider of last resort for all or part of the area.

(d)(1) A customer within the defined geographic area to be served by the successor provider of basic telecommunications service is considered to have applied for basic telecommunications service from the successor provider on the effective date of the commission's designation of the successor provider.

(2) Each right, privilege, and obligation applicable to customers of the successor provider applies to a customer transferred to the successor provider under this section.

(3) A customer transferred to the successor provider under this section is subject to the successor provider's terms of service as specified in an applicable tariff or contract.

(e) This section does not prohibit:

(1) A customer from seeking, at any time, service from a provider other than the successor provider; or

(2) A provider from voluntarily:

(A) Serving customers in the affected area; or

(B) Purchasing the facilities of the exiting provider.

23-17-508. Provider's cessation of local exchange service or abandonment of facilities – Commission's declaration of emergency – Designation of successor provider.

(a) The Arkansas Public Service Commission may on its own motion or on the petition of an interested party institute an expedited proceeding under this section if the commission determines that:

(1) A facilities-based local exchange carrier is authorized to provide local exchange service in all or part of a local exchange area;

(2) A competing local exchange carrier does not have facilities sufficient to provide local exchange service in the area; and

(3) The facilities-based local exchange carrier has:

(A) Ceased providing local exchange service to the customers in the area; or

(B) Abandoned the operation of the facilities-based local exchange carrier's facilities in the area that are used to provide local

exchange service.

(b)(1) In a proceeding under this section, the commission may declare that an emergency exists and issue any order to protect the health, safety, and welfare of affected customers and to expedite the restoration or continuation of local exchange service or broadband to the affected customers.

(2) An order issued under subdivision (b)(1) of this section may:

(A) Provide for the temporary operation of the facilities-based local exchange carrier's facilities by another provider;

(B) Authorize one (1) or more third parties to enter the premises of an abandoned facility; or

(C) Grant temporary waivers from quality-of-service requirements for a provider:

(i) Providing temporary service under subdivision (b)(2)(A) of this section; or

(ii) Designated as a successor provider by the commission under subsection (c) of this section.

(c) Except as provided in § 23-17-509, the commission may act under § 23-17-507 to designate a successor provider in a proceeding under this section.

23-17-509. Exclusive service arrangements – Relief from obligations as provider of last resort.

(a) If a competing local exchange carrier operates under an arrangement by which the competing local exchange carrier is the exclusive provider of basic telecommunications service for a particular geographic area, building, or group of residences and businesses, the incumbent local exchange carrier is relieved of its obligations as a provider of last resort, and the competing local exchange carrier has the obligations of a provider of last resort with respect to the particular geographic area, building, or group of residences and businesses.

(b) The incumbent local exchange carrier has twelve (12) months to make any modifications necessary to facilities purchased from an exiting provider to allow the incumbent local exchange carrier to serve the affected customers of a competing local exchange carrier if:

(1) A competing local exchange carrier with an exclusive service arrangement under subsection (a) of this section ceases operations in all or part of the particular geographic area, building, or group of residences and businesses served under the arrangement; and

(2) The incumbent local exchange carrier:

(A) Has insufficient facilities to serve the affected customers of the exiting provider; and

(B) Elects to purchase the facilities of the competing local exchange carrier.

(c) The incumbent local exchange carrier has twelve (12) months to deploy an approved alternative technology necessary to allow the incumbent local exchange carrier to serve the affected customers of a competing local exchange carrier if:

(1) A competing local exchange carrier with an exclusive service arrangement under subsection (a) of this section ceases operations in all or part of the particular geographic area, building, or group of residences and businesses served under the arrangement; and

(2) The incumbent local exchange carrier:

(A) Has insufficient facilities to serve the affected customers of the competing local exchange carrier; and

(B) Elects not to purchase the facilities of the competing local exchange carrier.

(d) The Arkansas Public Service Commission may for good cause grant an extension of the period of time allowed under subsection (b) or subsection (c) of this section upon application by an incumbent local exchange carrier.

/s/L. Chesterfield