

ARKANSAS PUBLIC SERVICE COMMISSION

2007 JUL 20 P 2:00

IN THE MATTER OF VARIOUS ELIGIBLE )  
TELECOMMUNICATIONS COMPANIES )  
PETITION TO INITIATE A RULEMAKING )  
TO ADOPT RULES TO IMPLEMENT AND )  
ADMINISTER THE ARKANSAS HIGH COST )  
FUND (AHCF) CREATED IN ACT 385 OF )  
2007 OF THE ARKANSAS GENERAL )  
ASSEMBLY )

FILED

DOCKET NO. 07-062-R  
ORDER NO. 6

ORDER

On May 25, 2007 Arkansas Telephone Company, Inc.; Arkwest Communications, Inc.; Central Arkansas Telephone Cooperative, Inc.; Madison County Telephone Company; Magazine Telephone Company; Mountain View Telephone Company; Northern Arkansas Telephone Co., Inc.; Pinnacle Communications; Prairie Grove Telephone Company; Rice Belt Telephone Company; South Arkansas Telephone Company, Inc.; Southwest Arkansas Telephone Cooperative, Inc.; Walnut Hill Telephone Company; and Yelcot Telephone Company (hereinafter collectively referred to as "Petitioners") filed a Petition to Initiate Rulemaking to Establish Rules for the Arkansas High Cost Fund ("AHCF"). Petitioners assert that Arkansas Act 385 of 2007 requires this Commission to establish procedures for administration of the AHCF and Petitioners submitted a proposed set of AHCF Rules.

Order No. 3 of this docket entered June 22, 2007 established the procedural schedule for the docket. On July 3, 2007, a Petition to Submit Modified Proposed Rules was filed by Southwestern Bell Telephone Company d/b/a AT&T Arkansas ("AT&T"). The Petition to Submit Modified Proposed Rules states that the modified proposed



rules, submitted as Attachment I to the petition, is supported by AT&T, CenturyTel, and the initial Petitioners.

Comments were filed in the docket on July 6, 2007 by: the General Staff of the Arkansas Public Service Commission ("Staff"); the Petitioners, together with AT&T, CenturyTel, Inc., Cleveland County Telephone Company, and Decatur Telephone Company; and Ritter Telephone Company, Inc., together with Tri-County Telephone Company, Inc. On July 13, 2007, reply comments were filed by Petitioners, AT&T, CenturyTel, Inc., Cleveland County Telephone Company and Decatur Telephone Company. In addition to the company's filing comments, notices of participation in the docket were filed by Cox Arkansas Telecom, L.L.C. and MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services, and MCI Communication Services, Inc., d/b/a Verizon Business Services.

Proof of publication of the hearing, pursuant to Rule 12.04 of the Commission's *Rules of Practice and Procedure*, was filed in the docket on July 13, 2007. A hearing was conducted on July 17, 2007, and no public comments were provided at the hearing or filed in this docket.

All of the parties submitting comments support the modified proposed rules filed in this docket on July 3, 2007 and assert that the rules provide a reasonable framework for implementation and administration of the AHCF and are in the public interest.

The comments and reply comments establish that the Modified Proposed AHCF Rules, filed in this docket on July 3, 2007 are within the Commission's jurisdiction to adopt, are consistent with the requirements of Arkansas Act 385 of 2007, and it is in the public interest to adopt the proposed rules. Additionally, as noted by Staff and agreed to

by the other commenting parties, the existing Arkansas Universal Fund will be replaced by the AHCF in accordance with §4 of Act 385; therefore, there will be no need for continuing the existing *Arkansas Universal Fund Rules* beyond December 31, 2007.

The Presiding Officer hereby finds that:

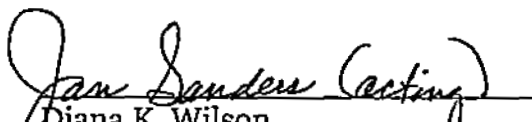
1. The *Arkansas High Cost Fund Rules* (Attachment I hereto) should be and are hereby adopted, and
2. The Commission's *Arkansas Universal Fund Rules* should be and are hereby repealed effective December 31, 2007.
3. Staff is directed to fulfill the requirements of Ark. Code Ann. §25-15-204(d)(1) and Ark. Code Ann. §10-3-309 on behalf of the Commission, and to make its compliance filings in this docket.

BY ORDER OF THE PRESIDING OFFICER PURSUANT TO DELEGATION.

This 20<sup>th</sup> day of July, 2007.

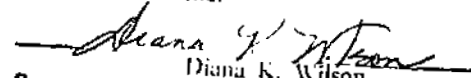


Arthur H. Stuenkel  
Presiding Officer



Diana K. Wilson  
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.



Diana K. Wilson  
Secretary of the Commission  
Date 7-20-07 JS

## ARKANSAS HIGH COST FUND RULES

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## DEFINITIONS

### Access Line

Exchange Line Cable and Wire Facilities Subcategories 1.1 through 1.3 [Part 36.154(a)], or its functional equivalent.

### Administrator

The administrator of the Arkansas High Cost Fund.

### AHCF or Fund

The Arkansas High Cost Fund.

### Categories of Eligible Telecommunications Carriers (ETCs)

**Category I Company:** All ETCs with a total customer access base or total customer base of 500,000 or more access lines as to wireline ETCs and customers as to non-wireline ETCs.

**Category II Company:** All ETCs with a total customer access base or total customer base of 150,000 or more access lines as to wireline ETCs and customers as to non-wireline ETC, and less than 500,000 access lines as to wireline ETCs and customers as to non-wireline ETCs.

**Category III Company:** All ETCs with a total customer access base or total customer base of 15,000 or more access lines as to wireline ETCs and customers as to non-wireline ETC, and less than 150,000 access lines as to wireline ETCs and customers as to non-wireline ETCs.

**Category IV Company:** All ETCs with a total customer access base or total customer base of less than 15,000 access lines as to wireline ETCs and customers as to non-wireline ETCs.

Access lines will be the primary determinant of a carrier's categorization. Any carrier desiring to use its customer count as an alternative basis of classification must include in its submission a report by an independent third party auditor attesting to the accuracy of the customer count as of December 31 of the prior year.

### Central Office

A switching unit, in a telephone system which provides service to the general public, having the necessary equipment and operations arrangements for terminating and interconnecting subscriber lines and trunks or trunks only. There may be more than one central office in a building.

### Commercial Mobile Service

Cellular, Personal Communications Systems and any service regulated pursuant to Part 20 of the rules and regulations of the FCC (47 CFR Part 20) or any successor provisions.

### Commission

The Arkansas Public Service Commission.

### Customer

Any person, firm, partnership, cooperative corporation, corporation or lawful entity that has ordered and is receiving retail telecommunications services supplied by any telecommunications provider and is receiving a bill from the provider for services associated with one or more retail access lines..

### Federal Act

The Communications Act of 1934, as amended.

### FCC

The Federal Communications Commission.

### Incumbent Local Exchange Carrier

With respect to a local exchange area, a local exchange carrier, including successors and assigns, that is certified by the Commission and was providing basic local exchange service on February 8, 1996.

### Intrastate Retail Telecommunications Service Revenues

Consistent with the definition adopted by the FCC in CC Docket 96-45 released on May 8, 1997, revenues derived from end users for telecommunications and telecommunications services. This includes revenues derived from other carriers when such carriers utilize telecommunications services for their own internal uses.

### Local Exchange Area

The geographic area, approved by the Commission, encompassing the area within which a local exchange carrier is authorized to provide basic local exchange services and switched access services. It may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.

#### Local Exchange Carrier (LEC)

A telecommunications provider of basic local exchange service and switched access service. Such term does not include commercial mobile service providers.

#### Rural Telephone Company

A local exchange carrier defined as a rural telephone company in the Federal Act as of the effective date of the Telecommunications Regulatory Reform Act of 1997.

#### Telecommunications Provider

Any person, firm, partnership, corporation, association, or other entity that offers telecommunications services to the public for compensation.

#### Telecommunications Provider Rules or TPRs

Those rules applicable to certain telecommunications providers that have been adopted by the Commission.

#### Telecommunications Services

The offering to the public for compensation the transmission of voice, data, or other electronic information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities. Such term does not include radio and television broadcast or distribution services or the provision or publishing of yellow pages, regardless of the entity providing such services, or services to the extent that such services are used in connection with the operation of an electric utility system owned by a government entity.

#### Total Access Lines

The number of access lines reported by the carrier to the National Exchange Carrier Association and/or its successor in the annual USF Data Collection or the equivalent for carriers not filing annual USF data.

#### Universal Services

Those telecommunications services that are defined and listed pursuant to Section 3 (5) of the Telecommunications Regulatory Reform Act of 1997.

## SECTION 1. JURISDICTION, APPLICABILITY AND RELIEF

### Rule 1.01. Jurisdiction

The Commission has the authority and responsibility pursuant to Act 77 of 1997 and Act 385 of 2007 to assess a universal service fee upon all providers of telecommunications services, as defined by the rules of the Commission to support State universal service objectives.

### Rule 1.02. Application of Rules

These Rules shall apply to telecommunications providers who offer telecommunications services within the State of Arkansas.

### Rule 1.03. Relief from Rules

Whenever compliance with any requirement of these Rules would result in unreasonable hardship upon or excessive expense to a party or parties subject to these Rules, the Commission may, upon application and for good cause shown, waive or modify the requirements of these Rules. The Commission may grant temporary relief pending a hearing.



## **SECTION 2. USE OF THE FUND AND ELIGIBILITY**

### **Rule 2.01. Universal Services**

Universal services in Arkansas shall consist of basic local exchange services. Basic local exchange services are the services defined in Ark. Code Ann. §23-17-403 (5).

### **Rule 2.02. Use of the Arkansas High Cost Fund**

Funding from the AHCF may be sought for the following purposes:

- A. To provide support to ETCs pursuant to the provisions of Act 385 of 2007.
- B. To defray the costs of administering the fund, including the costs of completing an annual, independent audit.

**SECTION 3. ADMINISTRATION OF THE FUND**

**Rule 3.01. Appointment of the Fund Administrator**

- A. The Commission shall appoint an AHCF Administrator. The Administrator must:
- (1) Be neutral and impartial;
  - (2) Not be aligned or associated with any particular telecommunications industry segment;
  - (3) Not have a direct financial interest in the support mechanisms established by the Commission.
- B. The AHCF Administrator shall act under the supervision of the Commission, in order to administer the AHCF in accordance with Act 385 of 2007 and the AHCF rules and procedures approved by the Commission. The Administrator is authorized to enforce and implement applicable rules and orders of the Commission.
- C. The Administrator shall serve at the discretion of the Commission for a term determined by the Commission. The Commission may discharge the Administrator before the expiration of the Administrator's term for good cause.

**Rule 3.02. Duties of the Administrator**

- A. The Administrator's general duties shall include:
- (1) Collecting and receiving monies paid into the AHCF;
  - (2) Providing High Cost Funds from the AHCF to participating ETCs;
  - (3) Determining the sufficiency of the fund and making adjustments to the AHCF assessment level, as required, to assure such sufficiency;
  - (4) Managing the daily operations and affairs of the AHCF;
  - (5) Conducting periodic audits of contributors to the AHCF to ensure that the contributors are accurately reporting and making proper payments to the AHCF;
  - (6) Performing any periodic audits of the AHCF deemed necessary by the Administrator and/or the Commission;

- (7) Resolving disputes;
  - (8) Reviewing all requests for high costs funding and determining the accuracy and appropriateness of any request;
  - (9) Establishing funding levels for each category of companies and each ETC within each category using the funding levels and formulas as set forth in Act 385 of 2007;
  - (10) Performing any other duties ordered by the Commission, including assisting in developing any funding proxies to be used by certain ETCs; and
  - (11) Developing any forms necessary for funding requests and procedures.
- B. The Administrator is expressly authorized to bring actions before the Commission to enforce the provisions of the AHCF.

**Rule 3.03. Audits of the Fund**

The AHCF is subject to an annual audit by an independent certified public accountant selected by the Commission.

**Rule 3.04. Resolution of Disputes Regarding Contributions**

- A. Any contributor may dispute the amount of contribution it is required to pay into the AHCF, in the following manner:
- (1) The contributor may contact the Administrator of the AHCF and the Administrator shall have the initial responsibility for trying to resolve the dispute.
  - (2) If satisfactory resolution is not achieved, the contributor to the AHCF may file an application requesting the Commission resolve the dispute.
- B. Pending final resolution of a dispute concerning the amount of the required contribution, the disputing telecommunications provider shall pay the entire amount to the AHCF.

**Rule 3.05. Resolution of Other Disputes**

- A. Any adversely affected party may dispute the actions of an eligible telecommunications carrier related to the provisioning of Universal Services. The adversely affected party may contact the Administrator of the AHCF and the Administrator shall have the initial responsibility for trying to resolve the dispute.
- B. If satisfactory resolution is not achieved, the affected party may file an application requesting the Commission resolve the dispute.

**Rule 3.06. Violations**

- A. Failure to pay an assessed contribution to the AHCF shall be deemed a violation of the AHCF Rules.
- B. If the Commission determines, after notice and hearing, that a carrier has acted in violation of these AHCF Rules, in addition to the other enforcement powers of the Commission, the Commission, or its designee, shall bring an action on behalf of the AHCF in the appropriate court of competent jurisdiction, to recover any charge(s) the Commission determines are due and payable to the Fund.
  - (1) The Commission, or its designee, is authorized to bring the action on behalf of and to represent the AHCF to collect the overdue charge(s) and any costs incurred by the AHCF to pursue collection of said charges, including but not limited to interest, administrative and adjudicative costs and attorney fees.
  - (2) Upon collection of the charges and costs, the Administrator shall pay the costs associated with such collection action(s) and deposit any remaining funds into the AHCF.

## **SECTION 4. CONTRIBUTIONS TO THE AHCF**

### **Rule 4.01. Contributors to the Arkansas High Cost Fund**

Every telecommunications provider that operates or provides retail telecommunications services within Arkansas shall contribute, on a nondiscriminatory basis, into the AHCF.

### **Rule 4.02. Reporting Requirements**

Each contributor subject to these Rules, no later than May 15 of each year following the effective date of these Rules, shall submit to the Administrator a report, based on the preceding calendar year, containing the contributor's intrastate retail telecommunications service revenues. The Administrator shall forward a report containing the information to the Commission by May 30 of each year, unless otherwise ordered by the Commission.

### **Rule 4.03. Amount of Contributions**

- A. The Administrator shall, at least annually, notify each provider of telecommunications service of the amount of the contribution required to be made to the AHCF by each contributor, based upon the information provided pursuant to these AHCF Rules.
- B. Each contributor shall pay its contribution directly to the Administrator on a monthly basis, unless otherwise ordered by the Commission.
- C. There shall be a late charge on any current monthly payment due from any telecommunications provider if not received by the AHCF Administrator within five days after the due date. The late charges shall total 2 % of the current monthly payment due. In no event, however, shall the amount of any late charges be less than \$50.
- D. All contributions and penalty and handling charge payments made to the Administrator shall be deposited into the AHCF account.

### **Rule 4.04. Recovery of Contributions**

- A. A telecommunications provider may recover the amount of its contribution to the AHCF from its intrastate retail telecommunications service customers.

- B. In the event a telecommunications provider elects to explicitly state the AHCF contributions as a surcharge on each customer's bill, such information may be provided to the Secretary of the Arkansas Public Service Commission. The Secretary shall open an administrative docket solely for the receipt of notification of such a surcharge. If a telecommunications provider files such information, it shall also provide the supporting documentation for calculating the amount of the line item reflecting the AHCF contribution.

**Rule 4.05. Termination of the Arkansas Universal Service Fund**

The Administrator of the AUSF shall determine the amounts received by each incumbent local exchange carrier from the current Arkansas Universal Service Fund (AUSF). Such payments shall continue until the AHCF is operational. At that time, any funds remaining in the AUSF shall be transferred to the AHCF and the AUSF will no longer be operational after that time.

## SECTION 5. FUNDING FROM THE ARKANSAS HIGH COST FUND

### Rule 5.01. Funding from the AHCF

- A. AHCF support shall be distributed, on a monthly basis, directly to eligible local exchange carriers as provided for in Act 385 of 2007.
- B. The Administrator shall provide funding for Category I, Category II, Category III, and Category IV Companies using the formulas set forth in Act 385 of 2007. If an applicant seeks funding for Category I funding, the Administrator shall use the Category I funding formula to provide funding up to the amount of the cap. Funding for Categories II, III, and IV Companies shall be made using the specific formulas as set forth in Act 385 of 2007 for those size categories. If the funding request in any size category exceeds the funding available, the Administrator shall pro-rate the payment to the ETCs receiving funding using the formula in Act 385 of 2007 to pro-rate payments. In addition, for Category IV Companies, the Administrator shall use the transition funding formula to establish funding level for each ETC in Category IV.
- C. Receipt of AHCF funds shall not be conditioned upon any rate case or earnings investigation by the Commission.

### Rule 5.02. Request for Funding from the AHCF

#### General Provisions

- A. Any eligible telecommunications carrier seeking funding from the AHCF shall file a request for funding with the Administrator requesting support from the AHCF. The request shall be on a form developed by the Administrator.
- B. The application for funding shall include the ETCs agreement to be subject to and comply with all TPRs adopted by the Commission, except for any TPR the Commission has waived for the ETC or for any TPR not applicable due to the technology employed by the ETC.
- C. Upon receipt of a request for AHCF funding from an ETC, the Administrator shall determine whether the applicant is a Category I, II, III, or IV Company. If possible the Administrator shall use publicly available information to determine the appropriate category for the applicant. If such information is not available through public sources, the Administrator may determine the category based upon other information submitted by the applicant with sufficient detail for the Administrator to identify its reasonable accuracy.

- D. If an application for AHCF funding is submitted by an applicant requiring a proxy method to establish funding levels, the Administrator shall promptly notify the Commission and a proxy method shall be developed by the Commission for use in determining the funding to the ETC.
- E. The Administrator shall provide copies of the request for funding to the Secretary of the Arkansas Public Service Commission and to each provider of telecommunications services that has previously submitted a written request with the Administrator to receive notice of requests for funding.
- F. Within sixty (60) days after receipt of a request for AHCF funds, the Administrator shall review and determine the accuracy and appropriateness of the request and advise the entity requesting funding of the Administrator's determination. The Administrator shall provide copies of his determination on the request for funding to the Secretary of the Arkansas Public Service Commission, and to each provider of telecommunications service in Arkansas which has previously requested in writing to receive such determinations.
- G. Any affected party shall have thirty (30) days following the date the Administrator's determination is filed with the Secretary of the Commission within which to request reconsideration by the Commission of the Administrator's determination.
- H. The Commission shall, after notice and hearing, if requested, issue its opinion on the request for reconsideration within thirty (30) days after the request for reconsideration, unless the thirty (30) day period is extended for good cause.