

Title 23. Public Utilities and Regulated Industries

Chapter XVI. Arkansas Public Service Commission

Subchapter A. Generally

Part 452. Arkansas High Cost Fund Rules

Subpart 1. General Provisions

23 CAR § 452-101. Definitions.

As used in this part:

(1) "Access line" means exchange line cable and wire facilities Subcategories 1.1 through 1.3, 47 C.F.R. § 36.154(a), or its functional equivalent;

(2) "Administrator" means the administrator of the Arkansas High Cost Fund;

(3) "AHCF" or "fund" means the Arkansas High Cost Fund;

(4)(A) Categories of Eligible Telecommunications Carriers (ETCs) include:

(i)(a) Category I Company.

(b) All ETCs with a total customer access base or total customer base of five hundred thousand (500,000) or more access lines as to wireline ETCs and customers as to nonwireline ETCs;

(ii)(a) Category II Company.

(b) All ETCs with a total customer access base or total customer base of one hundred fifty thousand (150,000) or more access lines as to wireline ETCs and customers as to nonwireline ETCs, and less than five hundred thousand (500,000) access lines as to wireline ETCs and customers as to nonwireline ETCs;

(iii)(a) Category III Company.

(b) All ETCs with a total customer access base or total customer base of fifteen thousand (15,000) or more access lines as to wireline ETCs and customers as to nonwireline ETCs, and less than one hundred fifty thousand (150,000) access lines as to wireline ETCs and customers as to nonwireline ETCs;

(iv)(a) Category IV Company.

(b) All ETCs with a total customer access base or total customer base of less than fifteen thousand (15,000) access lines as to wireline ETCs and customers as to nonwireline ETCs;

(B)(i) Access lines will be the primary determinant of a carrier's categorization.

(ii) 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;

(5)(A) "Central office" means 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.

(B) There may be more than one (1) central office in a building;

(6) "Commercial mobile service" means cellular personal communications systems and any service regulated pursuant to Part 20 of the rules and regulations of the Federal Communications Commission, 47 C.F.R. pt. 20, or any successor provisions;

(7) "Commission" means the Arkansas Public Service Commission;

(8) "Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that:

(A) Has ordered and is receiving retail telecommunications services supplied by any telecommunications provider; and

(B) Is receiving a bill from the provider for services associated with one (1) or more retail access lines;

(9) "Federal act" means the Communications Act of 1934, as amended;

(10) "FCC" means the Federal Communications Commission;

(11) "Incumbent local exchange carrier" means, with respect to a local exchange area, a local exchange carrier, including successors and assigns, that is certified by the Arkansas Public Service Commission and was providing basic local exchange service on February 8, 1996;

(12)(A) "Intrastate retail telecommunications service revenues" means, consistent with the definition adopted by the Federal Communications Commission in CC Docket No. 96-45 released on May 8, 1997, revenues derived from end users for telecommunications and telecommunications services.

(B) This includes revenues derived from other carriers when such carriers utilize telecommunications services for their own internal uses;

(13)(A) "Local exchange area" means the geographic area, approved by the Arkansas Public Service Commission, encompassing the area within which a local exchange carrier is authorized to provide basic local exchange services and switched access services.

(B) It may consist of one (1) or more central offices together with associated plant used in furnishing telecommunications service in that area;

(14)(A) "Local exchange carrier" or "LEC" means a telecommunications provider of basic local exchange service and switched access service.

(B) Such term does not include commercial mobile service providers;

(15) "Rural telephone company" means a local exchange carrier defined as a rural telephone company in the Communications Act of 1934 as of the effective date of the Telecommunications Regulatory Reform Act of 1997, Acts 1997, No. 77;

(16) "Telecommunications provider" means any person, firm, partnership, corporation, association, or other entity that offers telecommunications services to the public for compensation;

(17) "Telecommunications provider rules" or "TPRs" mean those rules applicable to certain telecommunications providers that have been adopted by the Arkansas Public Service Commission;

(18)(A) "Telecommunications services" means 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.

(B) 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;

(19) "Total access lines" means the number of access lines reported by the carrier to the National Exchange Carrier Association, Inc. and/or its successor in the annual Universal Service Fund Data Collection or the equivalent for carriers not filing annual Universal Service Fund data; and

(20) "Universal services" means those telecommunications services that are defined and listed pursuant to Section 3(5) of the Telecommunications Regulatory Reform Act of 1997, Acts 1997, No. 77.

Authority. Arkansas Code §§ 23-17-404, 23-17-404, 23-17-404, 23-17-404.

Codification Notes. This section was promulgated as Definitions of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

The Federal Communications Commission CC Docket No. 96-45 is published at 12 FCC Rcd 8776 (FCC May 7, 1997).

The Communications Act of 1934 was enacted as Pub. L. No. 73-416.

23CAR § 452-102. Jurisdiction.

The Arkansas Public Service Commission has the authority and responsibility pursuant to Acts 1997, No. 77, and Acts 2007, No. 385, to assess a universal service fee upon all providers of telecommunications services, as defined by the rules of the Arkansas Public Service Commission to support state universal service objectives.

This section was promulgated as Rule 1.01 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-102. Jurisdiction.

The Arkansas Public Service Commission has the authority and responsibility pursuant to Acts 1997, No. 77, and Acts 2007, No. 385, to assess a universal service fee upon all providers of telecommunications services, as defined by the rules of the Arkansas Public Service Commission to support state universal service objectives.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 1.01 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-103. Application.

This part shall apply to telecommunications providers who offer telecommunications services within the State of Arkansas.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 1.02 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-104. Relief from rule.

(a) Whenever compliance with any requirement of this part would result in unreasonable hardship upon or excessive expense to a party or parties subject to this part, the Arkansas Public Service Commission may, upon application and for good cause shown, waive or modify the requirements of this part.

(b) The Arkansas Public Service Commission may grant temporary relief pending a hearing.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 1.03 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

Subpart 2. Use of the Fund and Eligibility

23 CAR § 452-201. Universal services.

(a) Universal services in Arkansas shall consist of basic local exchange services.

(b) Basic local exchange services are the services defined in Arkansas Code § 23-17-403(10).

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 2.01 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-202. Use of the Arkansas High Cost Fund.

Funding from the Arkansas High Cost Fund may be sought for the following purposes:

(1) To provide support to ETCs pursuant to the provisions of Acts 2007, No. 385; and

(2) To defray the costs of administering the fund, including the costs of completing an annual, independent audit.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 2.02 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

"ETC" means eligible telecommunications carrier.

Subpart 3. Administration of the Fund

23 CAR § 452-301. Appointment of the fund administrator.

(a) The Arkansas Public Service Commission shall appoint an Arkansas High Cost Fund administrator.

(b) The administrator must:

- (1) Be neutral and impartial;
- (2) Not be aligned or associated with any particular telecommunications industry segment; and
- (3) Not have a direct financial interest in the support mechanisms established by the Arkansas Public Service Commission.

(c)(1) The administrator shall act under the supervision of the Arkansas Public Service Commission, in order to administer the fund in accordance with Acts 2007, No. 385, and the fund rules and procedures approved by the Arkansas Public Service Commission.

(2) The administrator is authorized to enforce and implement applicable rules and orders of the Arkansas Public Service Commission.

(3)(A) The administrator shall serve at the discretion of the Arkansas Public Service Commission for a term determined by the Arkansas Public Service Commission.

(B) The Arkansas Public Service Commission may discharge the administrator before the expiration of the administrator's term for good cause.

Authority. Arkansas Code §§ 23-17-404, 23-17-404, 23-17-404, 23-17-404.

Codification Notes. This section was promulgated as Rule 3.01 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR 452-302. Duties of the administrator.

(a) The Arkansas High Cost Fund administrator's general duties shall include:

- (1) Collecting and receiving monies paid into the Arkansas High Cost Fund;
 - (2) Providing high-cost funds from the Arkansas High Cost Fund to participating ETCs;
 - (3) Determining the sufficiency of the Arkansas High Cost Fund and making adjustments to the Arkansas High Cost Fund assessment level, as required, to ensure such sufficiency;
 - (4) Managing the daily operations and affairs of the Arkansas High Cost Fund;
 - (5) Conducting periodic audits of contributors to the Arkansas High Cost Fund to ensure that the contributors are accurately reporting and making proper payments to the Arkansas High Cost Fund;
 - (6) Performing any periodic audits of the Arkansas High Cost Fund deemed necessary by the administrator and/or the Arkansas Public Service Commission;
 - (7) Resolving disputes;
 - (8) Reviewing all requests for high-cost 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 Acts 2007, No. 385;
 - (10) Performing any other duties ordered by the Arkansas Public Service 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 Arkansas Public Service Commission to enforce the provisions of the Arkansas High Cost Fund.

This section was promulgated as Rule 3.02 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

"ETC" means eligible telecommunications carrier.

23 CAR § 452-302. Duties of the administrator.

- (a) The Arkansas High Cost Fund administrator's general duties shall include:
 - (1) Collecting and receiving monies paid into the Arkansas High Cost Fund;

(2) Providing high-cost funds from the Arkansas High Cost Fund to participating ETCs;

(3) Determining the sufficiency of the Arkansas High Cost Fund and making adjustments to the Arkansas High Cost Fund assessment level, as required, to ensure such sufficiency;

(4) Managing the daily operations and affairs of the Arkansas High Cost Fund;

(5) Conducting periodic audits of contributors to the Arkansas High Cost Fund to ensure that the contributors are accurately reporting and making proper payments to the Arkansas High Cost Fund;

(6) Performing any periodic audits of the Arkansas High Cost Fund deemed necessary by the administrator and/or the Arkansas Public Service Commission;

(7) Resolving disputes;

(8) Reviewing all requests for high-cost 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 Acts 2007, No. 385;

(10) Performing any other duties ordered by the Arkansas Public Service 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 Arkansas Public Service Commission to enforce the provisions of the Arkansas High Cost Fund.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 3.02 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

"ETC" means eligible telecommunications carrier.

23 CAR § 452-303. Audits of the fund.

The Arkansas High Cost Fund is subject to an annual audit by an independent certified public accountant selected by the Arkansas Public Service Commission.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 3.03 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-304. Resolution of disputes regarding contributions.

(a) Any contributor may dispute the amount of contribution it is required to pay into the Arkansas High Cost Fund, in the following manner:

(1) The contributor may contact the Arkansas High Cost Fund administrator, and the administrator shall have the initial responsibility for trying to resolve the dispute; and

(2) If satisfactory resolution is not achieved, the contributor to the fund may file an application requesting the Arkansas Public Service 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 fund.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 3.04 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-305. 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.

(b)(1) The adversely affected party may contact the Arkansas High Cost Fund administrator, and the administrator shall have the initial responsibility for trying to resolve the dispute.

(2) If satisfactory resolution is not achieved, the affected party may file an application requesting the Arkansas Public Service Commission resolve the dispute.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 3.05 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-306. Violations.

(a) Failure to pay an assessed contribution to the Arkansas High Cost Fund shall be deemed a violation of this part.

(b)(1) If the Arkansas Public Service Commission determines, after notice and hearing, that a carrier has acted in violation of this part, in addition to the other enforcement powers of the Arkansas Public Service Commission, the Arkansas Public Service Commission, or its designee, shall bring an action on behalf of the fund in the appropriate court of competent jurisdiction, to recover any charge or charges the Arkansas Public Service Commission determines are due and payable to the fund.

(2) The Arkansas Public Service Commission, or its designee, is authorized to bring the action on behalf of and to represent the fund to collect the overdue charge or charges and any costs incurred by the fund to pursue collection of said charges, including but not limited to:

(A) Interest;

(B) Administrative and adjudicative costs; and

(C) Attorney fees.

(3) Upon collection of the charges and costs, the administrator shall pay the costs associated with such collection action or actions and deposit any remaining funds into the Arkansas High Cost Fund.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 3.06 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

Subpart 4. Contributions to the Arkansas High Cost Fund

23 CAR § 452-401. Contributors.

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

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 4.01 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-402. Reporting requirements.

(a) Each contributor subject to this part, no later than May 15 of each year following the effective date of this part, shall submit to the Arkansas High Cost Fund administrator a report, based on the preceding calendar year, containing the contributor's intrastate retail telecommunications service revenues.

(b) The administrator shall forward a report containing the information to the Arkansas Public Service Commission by May 30 of each year, unless otherwise ordered by the Arkansas Public Service Commission.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 4.02 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-403. Amount of contributions.

(a) The Arkansas High Cost Fund administrator shall, at least annually, notify each provider of telecommunications service of the amount of the contribution required to be made to the Arkansas High Cost Fund by each contributor, based upon the information provided pursuant to this part.

(b) Each contributor shall pay its contribution directly to the administrator on a monthly basis, unless otherwise ordered by the Arkansas Public Service Commission.

(c)(1) There shall be a late charge on any current monthly payment due from any telecommunications provider if not received by the administrator within five (5) days after the due date.

(2)(A) The late charges shall total two percent (2%) of the current monthly payment due.

(B) In no event, however, shall the amount of any late charges be less than fifty dollars (\$50.00).

(d) All contributions and penalty and handling charge payments made to the administrator shall be deposited into the Arkansas High Cost Fund account.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 4.03 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-404. Recovery of contributions.

(a) A telecommunications provider may recover the amount of its contribution to the Arkansas High Cost Fund from its intrastate retail telecommunications service customers.

(b)(1) In the event a telecommunications provider elects to explicitly state the fund contributions as a surcharge on each customer's bill, such information may be provided to the secretary of the Arkansas Public Service Commission.

(2) The secretary shall open an administrative docket solely for the receipt of notification of such a surcharge.

(3) If a telecommunications provider files such information, it shall also provide the supporting documentation for calculating the amount of the line item reflecting the fund contribution.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 4.04 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

23 CAR § 452-405. Termination of the Arkansas Universal Service Fund.

(a) The Arkansas Universal Service Fund administrator shall determine the amounts received by each incumbent local exchange carrier from the current Arkansas Universal Service Fund.

(b)(1) Such payments shall continue until the Arkansas High Cost Fund is operational.

(2) At that time, any funds remaining in the Arkansas Universal Service Fund shall be transferred to the Arkansas High Cost Fund and the Arkansas Universal Service Fund will no longer be operational after that time.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 4.05 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

Subpart 5. Funding from the Arkansas High Cost Fund

23 CAR § 452-501. Funding.

(a) Arkansas High Cost Fund support shall be distributed, on a monthly basis, directly to eligible local exchange carriers as provided for in Acts 2007, No. 385.

(b)(1) The Arkansas High Cost Fund administrator shall provide funding for Category I, Category II, Category III, and Category IV Companies using the formulas set forth in Acts 2007, No. 385.

(2) 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.

(3) Funding for Category II, III, and IV Companies shall be made using the specific formulas as set forth in Acts 2007, No. 385, for those size categories.

(4) If the funding request in any size category exceeds the funding available, the administrator shall prorate the payment to the ETCs receiving funding using the formula in Acts 2007, No. 385, to prorate payments.

(5) In addition, for Category IV Companies, the administrator shall use the transition funding formula to establish the funding level for each ETC in Category IV.

(c) Receipt of funds from the Arkansas High Cost Fund shall not be conditioned upon any rate case or earnings investigation by the Arkansas Public Service Commission.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 5.01 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

"ETC" means eligible telecommunications carrier.

23 CAR § 452-502. Request for funding— General provisions.

(a)(1) Any eligible telecommunications carrier seeking funding from the Arkansas High Cost Fund shall file a request for funding with the Arkansas High Cost Fund administrator requesting support from the fund.

(2) The request shall be on a form developed by the administrator.

(b) The application for funding shall include the ETC's agreement to be subject to and comply with all TPRs adopted by the Arkansas Public Service Commission, except for any TPR the Arkansas Public Service Commission has waived for the ETC or for any TPR not applicable due to the technology employed by the ETC.

(c)(1) Upon receipt of a request for Arkansas High Cost Fund funding from an ETC, the administrator shall determine whether the applicant is a Category I, II, III, or IV Company.

(2)(A) If possible, the administrator shall use publicly available information to determine the appropriate category for the applicant.

(B) 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 funding is submitted by an applicant requiring a proxy method to establish funding levels, the administrator shall promptly notify the Arkansas Public Service Commission, and a proxy method shall be developed by the Arkansas Public Service 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)(1) Within sixty (60) days after receipt of a request for funds, the administrator shall:

(A) Review and determine the accuracy and appropriateness of the request; and

(B) Advise the entity requesting funding of the administrator's determination.

(2) The administrator shall provide copies of his or her determination on the request for funding to the secretary and to each provider of telecommunications service in Arkansas which has previously requested in writing to receive such determinations.

(3)(A) Any affected party shall have thirty (30) days following the date the administrator's determination is filed with the secretary within which to request reconsideration by the Arkansas Public Service Commission of the administrator's determination.

(B) The Arkansas Public Service 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-day period is extended for good cause.

Authority. Arkansas Code § 23-17-404.

Codification Notes. This section was promulgated as Rule 5.02 of the Arkansas High Cost Fund Rules prior to codification in the Code of Arkansas Rules.

"ETC" means eligible telecommunications carrier.