

OUTLINE OF CONTENTS

PART I: RULES FOR THE NEW AUSF

- Rule 1: Applicability
- Rule 2: *Definitions*
- Rule 3: General
- Rule 4: Transition and Sunset Provision for Part II
- Rule 5: Specific Services and Features Supported by the AUSF
- Rule 6: Unserved Area (Optional Rule)
- Rule 7: Sizing of the AUSF; Payments into the AUSF; Cost Recovery to Providers
- Rule 8: Eligibility to Receive Support from the AUSF
- Rule 9: Disbursements from the AUSF
- Rule 10: Administration
- Rule 11: Review of AUSF
- Rule 12: Enforcement
- Rule 13: Social Programs
- Rule 14: Variance and Waiver
- Rule 15: Incorporation by Reference

PART II: PLACEHOLDER FOR EXISTING AUSF RULES

PART III: LOW INCOME ASSISTANCE PROGRAMS

PROPOSED FRAMEWORK FOR ARIZONA UNIVERSAL SERVICE FUND RULES

PROPOSED RULES (INCLUDING COMMENTS) OF AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. ("AT&T")

INTRODUCTION

These proposed new rules comprise the following: (a) Part I Rules for non-rural LECs and potential new entrants; (b) transition Rules for Arizona ILECs who are eligible to receive support under the current Arizona Universal Service Fund ("AUSF"), also in Part I Rules; and (c) rules for the existing AUSF incorporated as the Part II Rules of these rules.

PART I

RULES FOR THE NEW AUSF BASIS, PURPOSE AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to provide procedures and regulations to administer the AUSF. The AUSF is intended to further the goal of ensuring that certain supported services shall be available and affordable throughout the State of Arizona. The AUSF is created to meet the requirements of Section 254 of the Telecommunications Act of 1996 and *[state code]*. The Rules contained in Part I (the "Part I Rules") are adopted to provide a mechanism to ensure that Eligible Telecommunications Carriers ("ETC") are reimbursed for the difference between the forward-looking economic cost of providing supported services for a geographic area (as determined by the Commission pursuant to the Proxy Cost Model) and the Cost Benchmark, with further reductions to the amount available for AUSF support as contained in these Rules. These Part I Rules shall ensure that no ETC receives funds from the AUSF or any other source that, together with local exchange service and other revenues, exceeds the Commission-approved forward looking economic cost of providing supported local exchange services, as determined by the Proxy Cost Model.

The Rules contained in Part II (the "Part II Rules") are adopted to provide a mechanism for Rural LECs to receive the support provided for therein consistent with support mechanisms which existed immediately prior to the effectiveness of these Rules until such time as such entities become eligible to receive support under the Part I Rules.

The AUSF shall be equitable, competitively neutral, portable among ETCs and non-discriminatory in its funding, distribution, and administration. In accordance with the principle of competitive neutrality, these universal service support rules and mechanisms are intended to and shall be interpreted to neither unfairly advantage nor disadvantage one provider or class of providers over another, and neither unfairly favor nor disfavor one technology over another.

The Commission is authorized to promulgate rules generally by *[state code]* and specifically for telecommunications services by *[state code]*. By *[state code]*, the Commission has the authority to regulate all providers of telecommunications services to the extent necessary to ensure that universal service is provided to all consumers in the State at *[just, reasonable and affordable]*.

Finally, these Rules are intended to be consistent with the requirements of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (hereafter referred to as the "Act" or the "federal Act"), including 47 U.S.C. Sections 214 and 254.

RULE 1. APPLICABILITY.

The Part I Rules contain the permanent provisions regulating the new AUSF, and are applicable to all telecommunications service providers in Arizona except to the extent that such providers are eligible, and continue, to receive high-cost support, under the Part II Rules

The Part II Rules contain the temporary provisions providing for the transition from the existing AUSF support mechanism that was in effect prior to _____, to the mechanisms in the Part I Rules. The Part II Rules are applicable to those providers that were eligible to receive state USF funds as of _____, 200__; were rural LECs as of _____, 200__; etc.

RULE 2. DEFINITIONS.

The meaning of terms used within these Rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by state statute or this Rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this Rule conflict with statutory definitions, the statutory definitions control. As used in these Rules, unless the context indicates otherwise, the following definitions shall apply:

2.1 Primary Residential Line (Single Line Business/All Lines). The first line installed at a residential address (including any single family dwelling unit in a multiple dwelling unit building). There shall be no more than one Primary Residential Line per residential address Any additional lines(s) installed at the same residence address (whether in a different name or not) shall not be considered Primary Residential Lines for purposes of AUSF support. This definition is not limited to wireline or to any other technology.

2.2 Administrator. The person or entity that administers the AUSF support mechanisms in accordance with Rule 10. In the absence of a neutral third party entity designated to act as the Administrator, the Commission may act as the AUSF Administrator on an interim basis. The Administrator shall ensure the administration of the AUSF is fair, consistent and efficient.

COMMENT: The Administrator must be a neutral third-party designee of the Commission rather than the Commission itself, although the rule allows the Commission itself to act from time to time as Administrator on an interim basis. The language of the last sentence ensures compliance by the Administrator with R14-2-11.

2.3 Average Schedule Small LECs. Small LECs which are average schedule companies as defined and used in 47 CFR Sections 69.605 to 69.610.

2.4 Commission. The Arizona Corporation Commission.

2.5 Eligible Telecommunication Carrier. ("ETC"). A telecommunications service provider which has been designated by the Commission pursuant to Rule 8 and consistent with the requirements of Section 214(e) of the federal Act to receive disbursements from the AUSF.

COMMENT: This definition makes it clear that Eligible Telecommunications Carriers ("ETCs") must provide service in conformity with the requirements of federal law as well as state law in order to be eligible for AUSF support. This also assures consistency between AUSF support and federal support, as mandated by Rule 3.

2.6 Service Area. As used in the Part I Rules, a Commission-defined geographic area, in accordance with Section 214(e)(5) of the federal Act, established for the purpose of determining universal service obligations and support mechanisms. A Service Area shall (a) not unreasonably large, (b) be sufficiently small to ensure targeting of high cost support, and (c) be sufficiently small to encourage entry by competitors in a technologically neutral manner.

2.6.1 If a Rural LEC transitions to the AUSF under Part I Rules prior to _____, 200_, it will continue to use the same geographic area for cost calculations as it uses for calculating federal high cost universal service support (hereafter the "USF") unless the FCC and the Commission has determined a waiver is in the public interest, convenience and necessity.

COMMENT: The Rural LEC provision (along with the Part II Rules) permits the status quo to remain between the state and federal jurisdictions for high cost support. FCC initial USF Order, paras. 186-188 describes the procedure to alter rural service areas.

2.7 Support Area. A Commission defined geographic area over which the support an ETC receives for a high cost area is calculated.

2.8 End User Surcharge. An end user surcharge is a Commission ordered percentage surcharge, pursuant to Rule 7.2, applied to the end-user's total monthly bill, exclusive of taxes and other surcharges, for all end users for intrastate telecommunications services that are (a) offered for a fee and (b) offered directly to the public, or to such classes of users to effectively available to the public. The surcharge for universal service support mechanisms shall not be applicable to those end-users who are recipients of low income assistance programs concurrent with the receipt of such low-income assistance. The charge is imposed on the person purchasing the service but shall be collected by the telecommunications provider. Each telecommunications provider shall include in its tariffs filed at the Commission a description of billing procedures of the USF surcharge.

2.8.1 For purposes of these Rules, intrastate telecommunications services include: 1) basic local exchange service; 2) enhanced vertical services (e.g., call waiting, call forwarding, caller ID, etc.); 3) intrastate toll services; 4) exchange access services; 5) directory assistance service; 6) enhanced white pages; 7) cellular telephone and paging services; 8) mobile radio services; 9) personal communications services (PCS); 10) operator services; 11) WATS and WATS-like services; 12) toll-free service; 13) 900 service; 14) message telephone service (MTS); 15) private line service; 16) telex; 17) telegraph; 18) video and/or teleconferencing services; 19) satellite service; 20) resale of intrastate telecommunications services; 21) payphone services; and 22) other services that are equivalent or similar to the foregoing services; and 23) such other services as the Commission may by Order designate from time to time.

For purposes of this Rule, an end user surcharge shall not be applied to charges billed to an end user for terminating calls on wireless facilities (whether such calls were originated on a wireless or non-wireless network).

2.9 Proxy Cost. A competitively neutral estimate of the forward-looking economic cost of providing the supported services set forth in Rule 5 for each Primary Residential Line, using forward-looking, least-cost and readily available technology, as generated by the Proxy Cost Model.

COMMENT: This definition complies with the FCC initial USF Order, para. 232.

2.10 Proxy Cost Model. A Commission adopted model which produces a competitively neutral estimate of the forward-looking economic cost of providing supported services on a per residential line basis. Forward Looking Economic Cost ("FLEC") means the long-run, forward looking

incremental cost to a telecommunications service provider caused by providing the entire quantity of a public telecommunications service, network function, or group of services or functions, by using forward-looking, least cost, and reasonably available technology. The "long-run" means a period of time long enough so that cost estimates are based on the assumption that all inputs are variable. The entire cost of the loop shall be allocated to basic local exchange service in a manner consistent with the cost methodology used for establishing the rates for the unbundled loop in that Support Area. The proxy cost model will not favor one type of technology over another and must also be consistent with the model used for purposes of the federal universal service funding mechanism.

COMMENT: This definition complies with the FCC initial USF Order, and Section 254 of the Act. In addition, this definition clarifies the criteria which the Proxy Cost Model must meet and assures consistency between the manner in which the cost of the loop is assigned for AUSF purposes and the manner in which it is determined for UNE purposes, thereby eliminating the arbitrage problems that inconsistency would create.

2.11 Retail Revenues. Retail Revenues are those revenues (net of uncollectables) generated in connection with the sale of intrastate telecommunications services to end users. For purposes of this definition, retail revenue for wireless telecommunications providers' end-users excludes revenue generated from charges to end users for terminating calls on wireless facilities (whether such calls were originated on a wireless or non-wireless network).

COMMENT: The purpose of this rule is to clearly define the revenue base for assessing AUSF obligations to telecommunications providers in a manner that is consistent with the FCC's USF assessment mechanism. This rule also makes clear that the end-user revenues of wireless carriers are to be treated differently from those of wireline carriers. This methodology assures that wireline carriers' end-users are only surcharged on those revenues which ought equitably to be assessable owing to the differences between wireless and wireline providers. Since wireless end-users typically pay for calls that originate and calls that terminate on their line, if surcharged on that basis, distortion of revenues would inequitably burden wireless end-users.

2.12 Rural Telephone Company. A local exchange carrier that (a) provides common carrier service to any local exchange carriers study area that does not include either any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of Census; or any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (d) has less than 15 percent of its access lines in communities of more than 50,000 on February 6, 1996.

COMMENT: The definition of Rural LEC is found in the federal Act, Section 3(a)(47).

2.13 Cost Benchmark. A Commission determined percentage whereby a comparison is made to a carrier's per-line average cost of providing the supported services. Per-line average costs in excess of this Cost Benchmark will receive support from the AUSF.

COMMENT: The Cost Benchmark needs to accurately reflect subsidies implicit in carrier access charges. Carrier access charges should be accounted for in the cost benchmark to the extent they have not been reduced to forward-looking economic cost. The amount of AUSF support should take into consideration this existing form of support. Otherwise, carriers might benefit from a double recovery – being compensated for the same high costs implicitly through carrier access charges and explicitly through the AUSF.

RULE 3. GENERAL.

The AUSF shall be coordinated with the Federal Communications Commission (FCC) Universal Service Fund (USF), as described by regulations found at 47 CFR Sections 36.601 to 36.641, 47 CFR Sections 54.1 to 54.707 and any other Universal Service Support Mechanism that may be adopted by the FCC pursuant to the federal Act.

COMMENT: To reference the new federal USF regulations found at 47 CFR 54 *et. seq.* and to make clear that federal USF coordination is not limited to 47 U.S.C. Section 254, but to any Universal Service Fund that might be adopted by the federal government.

RULE 4. TRANSITION AND SUNSET PROVISION FOR PART II

4.1 The mechanism for making payments into the AUSF established in Rule 7 of Part I (the "Part I Fund") shall not take effect until further order of the Commission.

COMMENT: This Rule ensures that the new AUSF is not contaminated by the funding practices for the existing universal service funding mechanism, and allows the Commission to revise the existing mechanism to conform to the requirements of Sec. 254 of the Telecommunications Act.

4.1.1 Until Rule 7 is effective, the mechanism for making payments into the AUSF established in Rules _____ through _____ of Part II of these Rules (the "Part II Fund") remain in effect, but only for purposes of Rural LEC support pursuant to the Part II Rules.

COMMENT: Necessary to define the Part II Rules and for later ease of reference and to make clear that funding under Rule II may be only available to Rural LECs, but going forward will not ever be the basis for funding Non-Rural LECs under the new AUSF.

4.1.2 After Rule 7 becomes effective, Rules ____ of Part II of this Rule, and any amounts necessary to provide continuing support pursuant to _____ Part II shall be included in the amount to be collected pursuant to Rule 7. Any amounts remaining in the Part II Fund at the time Part II Rules are repealed shall be transferred to the Part I Fund.

COMMENT: The Rule makes clear that there will be only one AUSF fund from which support under both the Part I and Part II Rules will be drawn and that once the Part II funding methodology is repealed, any amounts remaining in the Part II fund shall be transferred to the Part I account.

4.2 Any LECs eligible, as of _____, 200_ to draw from the Part II Fund, may only continue to draw support in accordance with the Part II Rules until the earliest occurrence of one of the following two events:

4.2.1 The carrier elects into the mechanism established pursuant to the Part I of this Rule prior to _____, 200_.

4.2.2 The Commission concludes a further rulemaking pursuant to which the Commission shall enter an order that allows for the transfer of access charges into the AUSF to be recovered in a competitively neutral manner solely for a limited transition period defined below. Such order shall, at a minimum, include each of the following:

4.2.2.1 On or before _____, 200_, the Rural LEC shall make an election (which shall be deemed irrevocable) to participate in the mechanism established pursuant to Part I of this Rule.

4.2.2.2 All LECs shall permanently reduce intrastate

access charges by the greatest amount resulting one of the following methodologies: 1) eliminating the CCLC; 2) mirroring the interstate access rates.

4.2.2.2.1 The difference in revenues between access charges at the reduced intrastate rates and currently approved intrastate access rates for the LEC will be received from the AUSF on a revenue-neutral basis without a rate case, solely for a limited Transition Period ending on _____, 200_.

4.2.2.2.2 During the Transition Period, the amount of AUSF support to be received in the current year by the rural LEC will be determined based on the prior year-end actual intrastate Minutes-of-Use (MOU) times the difference in the reduced intrastate rates and the currently approved intrastate access rates.

4.2.2.2.3 This amount will be computed by the AUSF Administrator on the lag MOU basis and will not be subject to true up.

COMMENT: The proposed Rules 4.2.2.1 and 4.2.2.2 together comprise the mechanics of transition for the Rural LECs which has the effect of keeping them whole, solely for a limited transition period until the scheduled date for transitioning Rural LECs to new, permanent universal service support mechanisms under the FCC Rules. This creates a vehicle for Rural LECs to access high cost support without a corresponding rate case and beginning to address the removal of implicit subsidies. Without addressing the removal of implicit subsidies, prior to the ability to access high cost support, the Rural LECs should not have access to the Part I mechanism before _____, 200_. Therefore, absent access reform, any additional high cost support would mean double recovery at the expense of rate-payers.

4.3 Rural LECs eligible, as of _____, 200_, to draw from the AUSF described in Part II, but which are not receiving any support, may apply for high cost support in accordance with the Part I Rules subject to the time limits of Rule 4.2.1. Once a Rural LEC commences drawing support under the Part I Rules, it must comply with the Part I Rules and may not return to drawing support under the Part II Rules.

COMMENT: The language makes clear that once a Rural LEC has commenced receiving support under the Part I Rules, it cannot go back and seek support under the Part II Rules.

4.4 Part II of these Rules expires midnight, _____, 200_.

RULE 5. SPECIFIC SERVICES AND FEATURES SUPPORTED BY THE AUSF.

The services and features supported by the AUSF are an evolving level of telecommunications services established by the Commission and periodically updated under [Sec _____ State]. The following basic set of core service and network functionalities, supported by the federal universal service fund, will be supported by the AUSF for each Primary Residential Line.

- (1) single party service;
- (2) voice grade access to the public switched network;
- (3) multi-frequency DTMF signaling or its functional equivalent;
- (4) access to emergency services (including in some circumstances 911 and e-911);
- (5) access to operator services;
- (6) access to interexchange carriers;
- (7) access to directory assistance; and
- (8) toll limitation services for qualifying low-income consumers.

Basic core services do not include white page listings and equal access to long distance carriers. Wireless carriers will not be required to support services that are not required of them by the FCC.

COMMENT: The definition of supported services is consistent with the services to be supported by the federal USF, while still allowing the Commission the flexibility it needs to comply with Arizona law in allowing for changes to be made to the list of supported services. The Rule also makes clear that supported services will only be those relating to Primary Residential Lines (Single Line Business/All Lines).

RULE 6. UNSERVED AREA (Optional Rule)

COMMENT: Rule 6 in its entirety provides the mechanism for support of high cost lines in an area(s) of Arizona which may be used where the Commission seeks to initiate telephone service in an area not served by an ILEC (either non-rural or rural).

NOTE: If this Rule is included, the state-specific definition of "Unserved Area and/or Line Extension" should be added to Rule 2.

6.1 The Commission may designate a carrier for the Unserved Area(s) of Arizona by way of a competitive bidding mechanism.

6.2 The high cost support for the Unserved Area shall be determined by computing the difference between the winning bid, in this case the carrier submitting the lowest bid per primary residential line and the Cost Benchmark or the actual basic local service rate, whichever is higher, net of any federal USF.

6.2 AUSF support for Unserved Areas will be included in the funding mechanism specified under Rule 7.

RULE 7. SIZING OF THE AUSF; PAYMENTS INTO THE AUSF; COST RECOVERY TO PROVIDERS.

COMMENT: Rule 7 in its entirety provides an integrated approach to fund management, including sizing of the fund, surcharges to end-users, and quarterly remittance of net amounts (assessments less estimated disbursements) to the Administrator. Finally, there is a reconciliation that is done each quarter to reconcile end-user surcharges and estimated disbursements to actual entitlement once the Administrator has the information needed to do so. All of this is done using a single quarterly report that must be filed by each provider with the Administrator within 45 days of the end each calendar quarter. This creates a minor lag in reconciliation which over time should be acceptable.

7.1 Each provider of intrastate telecommunications services shall be notified of a percentage surcharge to be applied to the monthly bill of each end-user which represents the ratio of the total statewide AUSF requirement to total statewide Retail Revenues.

7.1.1 A provider of a service, exempt from regulation pursuant to [state statute or rules], may apply for approval of an alternative method for calculating the revenues associated with the sale of that service. The Commission shall grant an application for disparate treatment if the Commission determines that assessment under Rule 7.1 would be discriminatory, inequitable and not in the public interest.

7.2 Process for Determining End -User Surcharges.

7.2.1 Within 45 days after the end of each quarter, each telecommunications service provider shall provide to the Administrator an accounting certified by an officer of the company of its Retail Revenues (and such other revenues and costs as the Administrator shall request for purposes of determining surcharges and disbursements under these Rules) for the previous quarter. In addition, the provider shall report the actual number of Primary Residential Lines (Single Line Business/All Lines) served by such provider in each Service Area as of the end of each month during such quarter. The Administrator shall determine the forms to be used by providers to report revenues and Primary Residential Lines (Single Line Business/All Lines) served within each Service Area. The Administrator shall send each telecommunications service provider a form within 10 days after the end of the quarter, to be completed by each telecommunications service provider and returned to the Administrator within 45 days after the end of the quarter, reporting the information required under these rules. A copy of each report returned to the Administrator by a telecommunications service provider shall be sent to the Commission by the Administrator.

COMMENT: This rule sets forth the quarterly reporting requirements with which all intrastate telecommunications service providers must comply. From the information provided by this mechanism and the other information to which the Administrator has access, the Administrator can size the fund, calculate the end-user surcharge and estimate disbursements. Once the fund gets started, this report will also allow the Administrator to perform the reconciliation required by Rule(s) 4. ___ and 9.6.3.

7.2.2 Based on the information provided to it by telecommunications service providers, the information available from the Cost Proxy Model and such other information as the Administrator may gather from the Commission and such providers to adjust and administer the fund, the Administrator shall estimate the total amount of AUSF support that will be needed for the next quarter (including support needed under the Part I Rules and the Part II Rules) and shall determine the quarterly assessment percentage to be paid by each telecommunications service provider. The Commission shall issue an order establishing the appropriate end-user surcharge percentage at least 15 days before the first day of each quarter. The surcharge percentage for any quarter (the "Assessment Quarter") under this Rule 7.2.2 shall be based on Retail Revenues reported for the second quarter preceding the Assessment Quarter under Rule 7.2.1. Such end-user surcharge shall be collected and paid by the provider as provided in these Rules.

7.2.3 In determining the estimated total size of the AUSF (and thus the surcharge to be levied on end-users), and in order to prevent double recovery of AUSF costs by ETCs from Arizona telecommunications service end-users, the Administrator shall reduce the total gross fund amount by the total statewide quarterly amount of: (1) any yellow pages support required by the Commission which has not been accounted for in the Cost Benchmark; and (2) amounts available from federal USF. The Administrator shall account for the cost and revenue information needed to calculate such amounts as part of the quarterly report to be completed and returned to the Administrator by all telecommunications service providers.

COMMENT: Rules 7.2.1, 7.2.2 and 7.2.3 work together to allow the Administrator to properly size the AUSF, to establish the end-user surcharge, and to prevent double payments by consumers and double recovery to ETCs. Rule 7.2.3 itemizes the credits that are to be applied against the gross fund requirement (which is simply proxy cost less benchmark summed over all supported lines), to properly account for other sources of support must be subtracted from the gross amount that results from subtracting the Cost Benchmark from the proxy cost. The items are applied as a credit against the gross fund amount for purposes of determining the end-user retail surcharge percentage.

7.2.4 The Administrator may increase the end-user surcharge by an amount it reasonably estimates to be necessary to compensate for reasonable uncollectible surcharges. Such increase shall generally not exceed 5% of each month's surcharge.

COMMENT: This rule allows the Administrator to estimate shortfalls and spread them equitably over all end-users. To the extent such shortfalls do not become reality, overpayments should be accounted for in reconciliations and/or by lowering future surcharges as the fund gets to the point where it has money in the bank.

7.2.5 The Administrator shall send to each intrastate telecommunications service provider a notice of the retail surcharge percentage approved by the Commission and net fund receipts, if any (surcharge less estimated disbursement) for the following quarter. Each provider so notified shall remit, if applicable, the monthly net surcharge to the Administrator within the period of time designated by the Administrator as specified in Rule 7.4.

COMMENT: This rule provides the method for advising providers of the amounts they are to remit to the Administrator and cross-references to Rule 7.4, which provides the detailed mechanism for those remittances.

7.3 Application of Fund Surcharges to Customer Billings.

For purposes of funding the AUSF, commencing _____, 200__, all intrastate telecommunications service providers shall contribute to the AUSF on a competitively neutral and nondiscriminatory basis through explicit retail revenue surcharges determined by the Administrator and approved by the Commission. The surcharge shall be applied to all intrastate Retail Revenues, but not to wholesale services revenues. The surcharge shall appear as a line item on the monthly bill of each end-user of each intrastate telecommunications service provider.

COMMENT: This rule requires each provider to pass through their AUSF assessment through a Commission ordered surcharge to be placed as a line-item on each provider's bill, based on total Retail Revenues billed, exclusive of wholesale revenues, which are not assessable. An end-user surcharge is the appropriate means of assuring that AUSF support is explicit and competitively neutral and recovers costs based upon the amount of retail services used by the customer. Moreover, an end-user surcharge ensures that assessment and cost recovery of USF costs are implemented simultaneously.

7.4 Remittance of Fund Charges and of Retail Surcharges.

7.4.1 Each provider of telecommunications services shall collect and remit surcharged amounts to the Administrator.

7.4.2 Each provider of telecommunications services shall remit billed surcharge receipts to the Administrator quarterly, as follows:

7.4.2.1 Prior to the end of each quarter, as described in Rule 7.2.2, the Administrator shall inform each ETC of the estimated amount of fund assessment and support that it will be eligible to receive from the AUSF for the coming quarter.

7.4.2.2 The surcharge revenues billed by each telecommunications service provider, net of the amount estimated to be owing to the provider from the AUSF, if any, shall be remitted to the Administrator no more than 45 calendar days after the end of each quarter. If the amount or net amount owed is not received by that date, the Commission may file a show cause for applicable remedies including withholding future support from the AUSF and/or penalties pursuant to [state statute or rules].

7.4.2.3 The Administrator will forward the amounts remitted to it to the Arizona Treasurer's Office for deposit to the AUSF account..

7.4.2.4 The Administrator will arrange for fund distribution payments to ETC's (which are not net payers to the AUSF fund) within 45 days of the end of each quarter.

7.4.2.5 The Administrator shall perform a quarterly reconciliation for each telecommunications service provider to reconcile end-user surcharges, estimated disbursements and remittances to actual AUSF support, as provided in Rule 9.6.3.

COMMENT: The rules in this section contain a unified methodology for remittance of end-user surcharges (including the manner by which an Eligible Telecommunications Carrier receives net estimated disbursements for AUSF support). In keeping with the prior scheme, end-user surcharges are to be paid to the Administrator quarterly. This maintains administrative consistency and keeps remittances current enough to be acceptable without unduly burdening providers.

RULE 8. ELIGIBILITY TO RECEIVE SUPPORT FROM THE AUSF.

8.1 In accordance with Section 214(e) of the Act, a telecommunications service provider that (a) is a common carrier, (b) offers Supported Services in accordance with Rule 5 of these Rules, either using its own facilities or a combination of its own facilities and the resale of another carrier's services (including the services offered by another ETC); and (c) advertise[s] the availability of such services and the charges therefor using media of general distribution, shall be designated as an ETC. See FCC initial USF Order, at para.131.

8.2 Application. To be designated an ETC within a Support Area, a provider must file an application with the Commission.

8.2.1 Contents of Application. In order to be eligible to receive support, the application must provide evidence sufficient to establish that:

8.2.1.1 The provider is, or is applying to be, qualified as an Eligible Telecommunications Carrier under the Rules set out at *[state code]* for purposes of being eligible to receive federal universal service support and agrees to provide such basic local exchange service as described in Sections 214(e) and 254 of the federal Act within the Support Area.

COMMENT: This proposed rule makes it clear that the provider seeking eligibility understands that it must be qualified to receive federal USF support in order to receive AUSF support and must comply with the provisions of the federal Act regarding universal service. The Rule also is made consistent with Rule 8.2.2.2 which allows concurrent applications to be submitted for AUSF qualification, certification, operating authority, or alternative regulation.

8.2.1.2 The provider will offer basic local service throughout the entire Support Area;

8.2.1.3 The provider is not receiving funds from the AUSF or any other source that together with local service revenues, exceed the cost of providing local exchange service in the Support Area, as determined by the Proxy Cost Model.

8.2.2 Process for Determining Eligibility. The Commission will process applications in accordance with the Rules of Practice and Procedure found at *[state code or rules]*

8.3 A total service reseller may not receive support from the AUSF for customers which are served entirely through resale. Rather, the facilities-based provider shall be eligible to receive any applicable AUSF support.

8.4 If an ETC serves a customer in a Support Area via a combination of its facilities and another's unbundled facilities, or solely through the use of unbundled network elements, the provider shall be eligible to receive AUSF support

COMMENT: The Rule makes clear that a provider offering services in whole or in part through the use of unbundled network elements shall be entitled to receive the full measure of any support under these Rules.

8.5 AUSF support shall be portable between any ETC chosen by the end-user.

RULE 9. DISBURSEMENTS FROM THE AUSF.

9.1 The Commission shall establish Support Areas for the State by order. Such Support Areas may be revised. The Commission shall endeavor to designate Support Areas which are in conformance with the Support areas specified by the FCC for federal USF support purposes.

COMMENT: This rule is aimed at assuring consistency with the federal USF and the manner in which support areas are determined for that purpose. See also Rules 2.7 (defining "Support Area") and 2.10 (defining "Proxy Cost Model") and 9.2, below.

9.2 The Commission shall: 1) adopt a Proxy Cost Model; and 2) publish the Proxy Cost for each Support Area. The Proxy Cost Model and the resultant Proxy Costs shall be updated as necessary.

9.3 The Commission shall, based upon the Proxy Costs and Cost Benchmark, designate certain areas eligible for high cost support where the per line Proxy Cost exceeds the Cost Benchmark as a Support Area.

9.4 Amount of Support; Removal of Other Subsidies.

9.4.1 Each ETC shall receive monthly support from the AUSF based on the number of Primary Residential Lines (Single Line Business/All Lines) it serves in Support Areas designated by the Commission, multiplied by the difference between the per line Proxy Cost in such Support Area and the per line Cost Benchmark. The amount of support shall be reduced by any other amount of support received by such providers or for which such provider is eligible under support mechanisms established by the federal government and/or this State and shall be further reduced by any yellow pages support required by the Commission but that is not included in the Cost Benchmark.

COMMENT: The rule defines the amount of support based on the applicable Proxy Cost less the Cost Benchmark, making this Rule consistent with that support determination mechanism. The additional reductions to the amount of support payable per line are necessary to assure that there is no double recovery by providers and double payment by consumers. Each of these revenue items is available to the provider to cover the cost of the line and should therefore reduce the amount of support payable to the provider from the AUSF. This brings the actual disbursement calculation into conformance with the provisions contained Rule 7 regarding sizing of the fund.

9.4.2 Commencing with the effective date of these Rules, and ILEC must file an advice letter to lower monthly rates for switched access services by eliminating implicit subsidies in an amount at least equal to the current gross monthly award being claimed by the provider from the AUSF. The advice letter shall include a showing that all implicit subsidies related to wholesale switched access charges, including the Carrier Common Line charge, have been eliminated from rates.

COMMENT: This rule is necessary to assure that providers are not receiving duplicate recovery from other sources prior to receipt of AUSF support. Wholesale switched access charges are to be targeted for

removal of implicit subsidies first because of the large amounts involved, and in the case of the Carrier Common Line Charge, the lack of any costs associated with that component.

9.5 Cost Benchmark (Non-rural Carriers). There shall be one state-wide average benchmark determined for residential basic local service for each ILEC which shall be used as the Cost Benchmark in calculating AUSF support payable to the ETC providing service within the Support Areas.

9.6 Process for Determining Disbursements.

9.6.1 Each quarter, each telecommunications carrier shall provide the Administrator with an accounting of the number of Primary Residential Lines (Single Line Business/All Lines) that the ETC served in each Support Area as of the last day of each the preceding month in the quarter, pursuant to the requirements of Rule 7.2.1.

9.6.2 The Administrator shall make the quarterly disbursements from the AUSF after receipt of the quarterly assessments pursuant to Rule 7.4.

9.6.3 Quarterly Reconciliation. Following receipt of each ETC's report to the Administrator pursuant to Rule 7.2.1, the Administrator shall reconcile the estimated disbursements previously authorized for such ETC for the quarter for which the report provides information to the actual disbursements to which such provider is entitled (as calculated by Rule 9.4), and shall send a statement of such reconciliation to each ETC within 60 days after the end of the quarter. The statement shall be accompanied by a check in the appropriate amount if the provider is entitled to additional amounts from the AUSF. If the provider has been credited with, or received more than, the amount of its AUSF entitlement, it shall remit the deficiency within days of the date of the statement.

COMMENT: These rules set out the manner disbursements are calculated. They make use of a quarterly method so as to be consistent with the Section 7 Rules. Rule 9.6.3 provides for a quarterly reconciliation to assure that providers are getting no more or less than they are entitled to from the AUSF. This is necessary because the only feasible way to assess AUSF requirements will be on an advance estimated basis. Later, after actual numbers of supported lines within Support Areas are reported per Rule 7.2.1, the Administrator will be able to reconcile assessments, estimated disbursements and actual entitlement and make appropriate corrections. This rule provides the mechanism for this to be done.

RULE 10. ADMINISTRATION

10.1 The AUSF shall be under the direction of an administrator. The Commission shall appoint a neutral third party who meets the criteria set out in this Rule as Administrator. The Administrator shall be selected by the Commission by means of competitive bidding pursuant to the issuance of a request for proposal. Until such time as an Administrator has been appointed, or during times when a third party is not available to act as Administrator, the Commission may act as the Administrator.

10.1.1 The fund shall be administered in a manner ensuring that the AUSF is exempt from state, federal and local taxes.

COMMENT: To make clear the requirement that except during times where it is impossible to do so, the administrator of the AUSF should be a neutral third party. This Rule (and Rule 10.2 that follows) is in conformance with those adopted by the FCC for the administrator of federal USF support mechanisms. The reasons stated by the FCC for designating an independent third party are equally applicable to the administrator of the AUSF. In addition, the duties of the Administrator should include auditing, monitoring ETC status and qualifications (see Rules 10.7 - 10.13, below), and these functions can only be performed by an impartial third party.

10.2 Qualifications of the Administrator. The Administrator shall meet the following criteria:

10.2.1 The Administrator shall meet the following criteria:

10.2.1.1 Be neutral and impartial;

10.2.1.2 Not advocate specific positions before the Commission in non-universal service administrative proceedings related to common carrier issues, except that membership in a trade association that advocates positions before the Commission will not render it ineligible to serve as the Administrator;

10.2.1.3 Not be an affiliate of any provider of telecommunications services;

10.2.1.4 Not issue a majority of its debt to, nor derive a majority of its revenues from any provider(s) of telecommunications services. This prohibition also applies to any affiliates of the Administrator; and

10.2.1.5 If the Administrator has a Board of Directors that includes members with direct financial interests in entities that contribute to or receive support from the universal service support programs, no more than a third of the Board members may represent any one category (e.g., local exchange carriers, interexchange carriers, wireless carriers, schools, libraries) of contributing carriers or support recipients, and the Board's composition must reflect the broad base of contributors to and recipients of universal service.

10.2.2 An individual does not have a direct financial interest in entities that contribute to or receive support from the universal service support programs if he or she is not an employee of a telecommunications carrier or of a recipient of universal service support programs funds, does not own equity interests in bonds or equity instruments issued by any telecommunications carrier, and does not own mutual funds that specialize in the telecommunications industry. If a mutual fund invests more than 50 percent of its money in telecommunications stocks and bonds, then it specializes in the telecommunications industry.

10.2.3 An individual's ownership interest in entities that contribute to or receive support from the universal service support programs is de minimis if in aggregate the individual, spouse, and minor children's impermissible interests do not exceed \$5,000.

COMMENT: Criteria for eligibility of fund administration is found in the FCC initial USF Order at para. 864.

10.3 The reasonable expenses incurred in the administration of the AUSF shall be a cost of the AUSF and shall be recovered from the funds contributed to the AUSF.

COMMENT: The FCC allows (FCC initial USF Order, paras. 865 & 868) and the rule makes clear, that the costs of administering the AUSF is a cost to be assessed and collected the same as other AUSF funding.

10.4 The Administrator shall determine the assessment each telecommunications provider must pay into the AUSF and determine the disbursement each ETC may withdraw from the AUSF.

10.5 The Administrator shall net each ETC's assessment and disbursement prior to receipt or disbursement of funds.

10.6 To the extent the funding received from providers in any one fiscal year exceeds: 1) the disbursements required for the AUSF, plus 2) the cost of administering the AUSF (including such reserve as may be necessary for the proper administration of the AUSF), any unexpended and unencumbered moneys shall remain in the AUSF and shall be credited against the assessment each telecommunications service provider must pay in the succeeding fiscal year.

10.7 The Administrator shall have access to the books of account of all telecommunications service providers to the limited extent necessary to verify the intrastate Retail Revenues and other information used by the Administrator in determining assessments and disbursements for the AUSF.

COMMENT: The proposed rule make clear that the Administrator will have appropriate (but limited) power and authority to audit providers to make sure that they are abiding by the AUSF requirements.

The following rules (10.8 - 10.13) set forth the actions to be employed by the Administrator to administer the AUSF. As such, they provide explicit direction to the Administrator as to the minimum that it must do to properly account for the AUSF. These proposed rules place the burden on the Administrator to assure compliance with AUSF requirements, a task for which the Administrator will be uniquely suited.

10.8 The Administrator shall be required to maintain a database to track Primary Residential Lines (Single Line Business/All Lines) eligible for support based on how the service is provisioned and what carrier is providing the service in each Service Area.

10.9 The Administrator will develop an appropriate form to be used by all telecommunications service providers and provide a copy of the form on a quarterly basis to those companies for completion.

10.10 Any competitive and financial information received by the Administrator shall be treated as confidential and proprietary and shall only be released upon order of the Commission.

10.11 The Administrator, under the direction of the Commission, shall perform an annual review of AUSF fund recipients to verify their continued eligibility and that each ETC has received and is projected to receive their entitled amounts from the AUSF. Subject to such reviews, the Administrator will recommend to the Commission any required adjustments to AUSF assessments, distributions, necessary rule changes and other relevant items that the Commission should consider in connection with the AUSF.

10.12 The quarterly reports required of each telecommunications service provider under Rule 7.2.1 will be the principal source for starting the annual reviews.

10.13 Supplemental and forecast information that may be requested by the Administrator to assure a complete review shall be provided by telecommunications service providers to the Administrator, as formally requested, within 45 days of the Administrator's written request. If those persons do not provide the data required within 45 days of the request, the Commission may file a show cause proceeding for applicable remedies, including withholding future support from the AUSF and/or penalties as provided in *[State statute]*

10.14 The Administrator shall engage and determine the compensation for such professional and technical assistance as may, in its judgment, be necessary for the proper administration of the fund.

10.15 The Administrator shall operate on a fiscal year which runs from July 1 to June 30 of the succeeding year.

10.16 The AUSF records covering both collections and disbursements shall be audited for the fiscal year ending June 30, ___ by an independent external auditor chosen by the Commission. The costs for conducting audits shall be included in the computation of AUSF requirements. Thereafter, the AUSF shall be audited in the same manner at least once every other year.

10.17 An annual report prepared by the Administrator shall be filed with the Commission by October 1 of each year. This report shall summarize the preceding fiscal year's activity and contain the following:

10.17.1 A statement of AUSF collections and disbursements,

10.17.2 A record of the total cost of administration of the AUSF, and

10.17.3 The most recent audit report.

10.18 A copy of the Administrator's annual report shall be provided to the Legislative Audit Committee and to each telecommunications service provider which contributes to the AUSF.

RULE 11. REVIEW OF THE AUSF.

The AUSF will be evaluated and reviewed no later than _____, and at least every *[two, three, etc.]* years thereafter, for the purpose of determining whether the AUSF should be adjusted.

COMMENT: The Commission will need to monitor the consistency of the AUSF and federal USF to assure that double recovery does not occur and to assure competitive neutrality.

RULE 12. ENFORCEMENT.

12.1 Holder of a Certificate. A telecommunications service provider holding a certificate issued by this Commission that fails to pay, in a timely manner, an assessment due and payable under these Rules may, after notice and opportunity for hearing, have its certificate revoked as provided in *[State Statute or Rules]*.

12.2 Uncertificated Provider. A telecommunications service provider that: 1) does not hold a certificate from this Commission and 2) fails to pay its assessment when it is due and payable under these Rules may be subject to a Commission action including but not limited to a complaint: 1) to the Federal Communications Commission (FCC) seeking an order directing the delinquent provider to make the payment; or 2) for damages in a Arizona District Court.

RULE 13. SOCIAL PROGRAMS.

These Rules are not intended to limit or conflict with the Rules for Telecommunications Relay Service for the Disabled Telephone Users *[state rule]* or the Procedures for Administering the Low Income Telephone Assistance Fund *[state rule]*.

RULE 14. VARIANCE AND WAIVER.

The Commission may permit variance or waiver from these Rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable or unreasonable.

RULE 15. INCORPORATION BY REFERENCE.

References in these Rules to Parts 32, 36, 54, 64, and 69, are rules issued by the FCC and have been incorporated by reference in these Rules. These rules may be found at _____ . References to 47 CFR Parts 32, 36, 54, 64, and 69 do not include later amendments to or editions of those parts. A certified copy of these parts which have been incorporated by reference are maintained at the offices of the Arizona Corporations Commission, and are available for inspection during normal business hours. Certified copies of the incorporated rules shall be provided at cost upon request. The Director of the Public Utilities Commission, or his designee, will provide information regarding how the incorporated rules may be obtained or examined. These incorporated rules may be examined at any state publications depository library.

COMMENT: To cross-reference the new Part 54 federal regulations as being incorporated by reference into these rules. The Commission will have to specify the date of the Rules that are incorporated into these rules.

PART II: (PLACEHOLDER FOR EXISTING AUSF RULES)

RULE 16. EXISTING HIGH COST SUPPORT MECHANISM

RULE 17. SUNSET PROVISION

PART III: LOW INCOME ASSISTANCE PROGRAMS

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of **Errata to AT&T's Draft Proposal for Arizona Universal Service Rules**, Docket No. RT-00000H-97-0137, were sent by regular U.S. Mail on February 28, 2002 to:

Arizona Corporation Commission
Docket Control – Utilities Division
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