

Q: Are **VoIP** providers subject to the ARHCF?

A: As you are no doubt aware, matters regarding VOIP and VOIP providers have been subject to much litigation in various Courts and before several Commissions. The cases have frequently focused on one or more specific issues and it is difficult to generalize or summarize the effects of those cases. However, we rely on our plain reading of the Arkansas Rules and Statute to provide a determination. There are no definitions in Act 385 of 2007 which apply to this analysis. The definitions section of the Commission's Rules includes the two following definitions:

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

"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 of publishing of yellow pages, regardless of the entity providing such services, or services to the extent that such services are used in conjunction with the operation of an electric utility system owned by a government entity.

Rule 1.01 Jurisdiction, indicates that pursuant to Act 77 of 1997 and Act 385 of 2007, the Commission has the authority and responsibility 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, within the state of Arkansas. Rule 1.02 Application of Rules, specifies that the Rules apply to 'telecommunications providers' who offer 'telecommunications services' within the State. Rule 1.03 Relief from Rules, offers that whenever compliance with the requirements of the Rules results in an unreasonable hardship or excessive expense, parties subject to the Rules can apply to the Commission for relief.

Every telecommunications provider that operates or provides retail telecommunications services within Arkansas is required to contribute, on a nondiscriminatory basis, into the AR HCF (Rule 4.01).

Based on the preceding overview of Act 385 of 2007 and current Arkansas Public Service Commission Rules, we find that there are no discretionary or optional provisions regarding an obligation to contribute to the Arkansas High Cost Fund attributable to the retail provision of telecommunications services by telecommunications providers, absent the grant of temporary or permanent relief from the Rules by the Commission. **We conclude that VOIP is a telecommunications service subject to the contribution requirement of the Arkansas High Cost Fund.**