

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2019-00022

July 15, 2019

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Chapter 288 of the
Commission's Rules – Maine Universal
Service Fund

ORDER AMENDING RULE
AND STATEMENT OF
FACTUAL AND POLICY BASIS

BARTLETT, Chairman; WILLIAMSON and DAVIS, Commissioners

I. SUMMARY

By this Order, the Commission amends Chapter 288 - Maine Universal Service Fund (MUSF) of the Commission's Rules. The amendments are intended to harmonize the contribution mechanism of Chapter 288 with Chapter 285 – Maine Telecommunications Education Access Fund (MTEAF) of the Commission's Rules and the Maine E-9-1-1 Fund. The Commission is also making other, non-substantive editorial amendments to the Rule.

II. BACKGROUND

A. 2018 Rulemaking Proceeding (2018-00200)¹

On August 16, 2018, the Commission issued a Notice of Rulemaking in Docket No. 2018-00200 to amend Chapter 288. The Notice also closed the Commission's Inquiry in Docket No. 2017-00305. During the course of the proceeding, the Commission solicited preliminary, pre-hearing comments to be filed on or before September 10, 2018; held a public hearing on the proposed amendments to Chapter 288 on September 17, 2018; and received final, post-hearing comments on or before October 26, 2018. Several interested parties participated in the proceeding.

Based on the comments received from the parties and its own assessment of the current rule, the Commission amended Chapter 288 to reflect recent changes to Maine's telecommunications regulatory statutes and changed the basis on which the Commission determines the contributions to the MUSF by voice network service providers. The Commission amended the Rule by requiring that MUSF contributions be based on a monthly per number amount on all "working telephone numbers" that are assigned to end-user customers of a voice network service provider and are capable of originating or terminating voice calls to or from the public switched telephone network (PSTN), with a maximum of 25 assessable numbers per customer "billing account

¹ For a detailed background of the process that led up to the most recent amendments to Chapter 288, see *Maine Public Utilities Commission, Amendment to Chapter 288 of the Commission's Rules – Maine Universal Service Fund*, Docket No. 2018-00200, Order Amending Rule and Factual and Policy Basis (Dec. 10, 2018).

number" (BAN). In the Commission's view, the use of working telephone numbers was the best indicator of the potential active connections to the PSTN.

The amendments to the Rule were intended to integrate the collection of the MUSF assessment with that of the MTEAF, thereby making administration of the funds less complicated and more efficient for both voice network service providers and the Joint Fund Administrator. The amendments to the Rule were also intended to provide additional financial stability to the MUSF.

B. Reconsideration

After the Commission issued its Order amending Chapter 288, Charter Communications, Inc. (Charter) and Comcast Phone of Maine, LLC (Comcast) jointly filed a motion requesting that the Commission reconsider its amendments. In its motion, Charter and Comcast argued that when the Commission opened the rulemaking proceeding, the Commission proposed a contribution methodology for the MUSF that would track the methodology recently adopted for the MTEAF and harmonize the collection mechanisms for the funds; neither the Commission nor any party, however, proposed a contribution methodology that would rely on "working telephone numbers." Consequently, according to Comcast and Charter, no party to the proceeding submitted any evidence or information relating to the costs, benefits, or practical implications and fairness of assessing "working telephone numbers" for the MUSF. Charter and Comcast further argued that no party submitted any comments regarding "working telephone numbers" and, therefore, there was no record evidence that addressed the costs and benefits of using this methodology for the MUSF while still maintaining a line-based methodology for the MTEAF.

Charter and Comcast further asserted that, because the Maine Administrative Procedure Act contemplates that a notice of proposed rulemaking "if possible, contain the express terms of the proposed rule or otherwise describe the substance of the proposed rule," 5 M.R.S. § 8053(3)(D), the Commission should commence a rulemaking proceeding to receive and consider additional evidence on the issue of "working telephone numbers" and other related questions.

The Commission suspended the reconsideration period on Charter's and Comcast's motion on January 16, 2019, and held the motion in abeyance, to give the Commission time to take appropriate action to address Charter's and Comcast's concerns.²

C. Current Rulemaking Proceeding (Docket No. 2019-00022)

In its March 22, 2019 Notice of Rulemaking, the Commission addressed the concerns raised by Charter and Comcast in their reconsideration motion and agreed

² Absent suspension, a motion for reconsideration is deemed denied if the Commission takes no action on the motion within 20 days of filing. Chapter 110, § 11(D)

that parties to the prior rulemaking proceeding in Docket No. 2018-00200 may not have had a sufficient opportunity to address a "working telephone number" based contribution methodology for the MUSF. In addition, the Commission stated that it had considered the positions of Charter and Comcast with regard to the harmonization of the MTEAF and MUSF Rules. To that end, the Commission undertook a close examination of the MTEAF and MUSF Rules, and, as a result, identified proposed amendments to both Rules that would bring them into alignment to the greatest possible extent. Accordingly, the Commission commenced this rulemaking proceeding to further clarify Chapter 288 and align its terms, as far as is practicable, with Chapter 285.

The Commission invited interested persons to file initial comments on its proposed amendments to the Rule. On April 26, 2019, Charter and Comcast filed comments. Shortly thereafter, on May 8, 2019, the Commission held a public hearing on the Rule; Charter and Comcast were the only interested persons to testify at the hearing. The deadline for final comments on the Rule was May 31, 2019; Charter and Comcast were the only interested persons to submit comments.

In their testimony and in their comments, Charter and Comcast expressed general agreement with the Rule amendments as proposed by the Commission. Notwithstanding their general agreement, Charter and Comcast suggested that the Commission expand the definition of the term "Line" to more precisely reflect the number of connections that would be subject to the per-connection fee proposed by the Commission. In addition, Charter and Comcast suggested deleting "interconnected VoIP service" providers from the definition of "Telecommunications Carrier" as those providers are already captured in other definitions, and inclusion in the "Telecommunications Carrier" definition could be "inconsistent and confusing" with those other definitions. May 31, 2019 Charter and Comcast Comments at 3.

III. RULE PROVISIONS

In addition to non-substantive editorial changes throughout the Rule, the Commission is making the following substantive changes to the Rule.

A. Section 1: Purpose

The Commission is not amending Section 1 of the Rule.

B. Sections 2: Definitions

The Commission is amending Section 2 of the Rule by adding a definition for the term "line." The Commission's definition is modeled on, but is not identical to, the language suggested by Charter and Comcast in the prior rulemaking proceeding in Docket No. 2018-00200. Further, the Commission agrees with the change to the Commission's proposed definition as suggested by Charter and Comcast in this proceeding and is adding their suggested language to the definition. In addition, as proposed in the Notice of Rulemaking, the Commission is adding definitions for "Dark

fiber provider," "Exchange Access," "Fund Administrator," and "Prepaid Wireless Telecommunications Service Provider" to define terms used in the Rule, and to align the definitions in the Rule with the definitions in Chapter 285. Similarly, the Commission is removing definitions for "E911 Address," "Rural Local Exchange Carrier (Rural LEC) or Rural Telephone Company," and "Voice Service Provider" as those terms are not used in the Rule. With regard to the definition of "Telecommunications Carrier," the Commission agrees with Charter and Comcast that interconnected VoIP service providers are adequately captured by other definitions and deleting these carriers from this definition will add clarity to the Rule, while still ensuring that these carriers remain subject to the paying into the MUSF.

C. Section 3: Eligibility and Filing Requirements

The Commission is not amending Section 3 of the Rule.

D. Section 4: The Fund

The Commission is not amending Section 4 of the Rule.

E. Section 5: Assessment

Throughout Section 5 of the Rule, the Commission is adding "line" as an option for carriers in addition to "working telephone number." As discussed above, the Commission is amending the rule in this manner to better harmonize the language in the Rule with the language in Chapter 285 (MTEAF). Further, the Commission is clarifying in the Rule that the connection-based assessment in the Rule will not become effective until January 1, 2020. The Commission makes this clarification to allow the Commission sufficient time to determine the per-connection amount of the assessment, and to give carriers sufficient time to change to the connection-based assessment mechanism.

F. Section 6: Recovery of Contribution from Retail Customers

As with Section 5, the Commission is adding "line" in Section 6 of the Rule as an option for carriers in addition to "working telephone number." As discussed above, the Commission is amending the rule in this manner to better harmonize the language in the Rule with the language in Chapter 285 (MTEAF).

G. Section 7: Waiver of Provision of Chapter

The Commission is not amending Section 7 of the Rule.

IV. ORDERING PARAGRAPHS

In light of the foregoing, the Commission

O R D E R S

1. That Chapter 288-Maine Universal Service Fund is hereby amended as described in the body of this Order and as set forth in the amended Rule attached to this Order;
2. That the Administrative Director shall file the amended Rule with the Secretary of State;
3. That the Administrative Director shall notify the following of this rulemaking proceeding:
 - a. All telephone utilities in Maine;
 - b. All providers of interconnected voice over Internet protocol service in Maine;
 - c. All providers of mobile telecommunications services in Maine who are not providers of prepaid wireless telecommunications service;
 - d. All persons who have filed with the Commission a written request for notifications regarding Notices of Rulemaking within the past year; and
 - e. The Office of the Public Advocate; and
4. That the Administrative Director shall send a copy of the amended Rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine, 04333-0015.

Dated at Hallowell, Maine, this 15th Day of July, 2019

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Williamson
 Daivis

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.