**65-407 PUBLIC UTILITIES COMMISSION**

**Chapter 288: MAINE UNIVERSAL SERVICE FUND**

**SUMMARY**: The purpose of this Chapter is to provide "high cost" support for those local exchange telephone companies that are not able to maintain affordable and reasonably comparable local service rates without that support and to provide support for other requirements established by law.

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**§ 7 WAIVER OF PROVISIONS OF CHAPTER 11**

**§ 1 PURPOSE**

 The purposes of the Maine Universal Service Fund (MUSF or Fund) implemented pursuant to this Chapter are:

 A. **Promotion and Encouragement of Universal Service and Reasonable Rates**. To ensure that provider of last resort (POLR) telephone service is available to consumers throughout all areas of the State at reasonably comparable rates by providing support from the Fund to non-price cap incumbent local exchange carriers, or any successor entities, that provide POLR service; and

B. **Other Supported Uses**. To provide support for other services, functions or activities pursuant to authorization provided in 35-A M.R.S. §7104(5), (6), and (7).

**§ 2 DEFINITIONS**

A. **Access Charges**. "Access charges" and "access rates" are those charges and rates that an IXC must pay to LECs for using the LECs' facilities to originate and terminate intrastate interexchange service in Maine.

B. **Basic Service Calling Area**. A "Basic Service Calling Area" is the area that a local exchange subscriber may call without toll charges, as defined in Chapter 204 of the Commission's Rules.

C. **Billing Account Number.** "Billing Account Number" or "BAN" is a unique number used by telecommunications service providers to designate a specific customer account or customer location to be billed.

D. **Competitive Local Exchange Carrier (CLEC)**. A "competitive local exchange carrier" or "CLEC" is any LEC that is not an ILEC.

E. **Dark fiber provider**. "Dark fiber provider" means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that: (a) offers its federally supported dark fiber on an open-access basis without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission; (b) is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act; and (c) does not transmit communications for compensation inside this State.

F. **Eligible Telecommunications Carrier (ETC**). An "eligible telecommunications carrier" or "ETC" is a carrier designated by this Commission as eligible to receive universal service support pursuant to the provisions of 47 U.S.C §214(e).

G. **Exchange Access**."Exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

H. **Fund Administrator**. The "Fund Administrator" is an independent fiscal agent that is not a state entity, and that is selected by the Commission through a state-approved Request For Proposals procedure, and that contracts with the Commission to provide all services necessary to administer and manage the MUSF.

I. **Home Service Provider**. A "Home Service Provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

J. **Incumbent Local Exchange Carrier (ILEC)**. "Incumbent local exchange carrier" or "ILEC" means, with respect to an area, the local exchange carrier that on February 8, 1996 provided telephone exchange service in the area and: (a) On February 8, 1996 was deemed to be a member of the exchange carrier association pursuant to 47 Code of Federal Regulations, Section 69.601(b); or (b) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in (a) above.

K. **Interconnected Voice over Internet Protocol Service (Interconnected VoIP)**. "Interconnected Voice over Internet Protocol Service" or "interconnected VoIP" means a service that enables real-time, two-way voice communications; requires a broadband connection from the user's location; requires internet protocol-compatible customer premises equipment (CPE); and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

L. **Intrastate Interexchange Carrier (IXC)**. An "intrastate interexchange carrier" or "IXC" is any person, association, corporation, or other entity that provides intrastate interexchange telecommunications services, including a local exchange carrier that provides interexchange service.

M. **Intrastate Service**. An "intrastate service" is the provision of a telecommunications service that is functionally intrastate, with points of origination and termination within Maine, regardless of the actual routing of the communication. In the case of mobile telecommunications and paging services, the points of origination and termination of the communication shall be assumed to be the antenna locations at which the carrier acquires and passes on the end user's signal, unless the actual location of the end user can be determined.

N. **Line**. A "line" is any wired or wireless connection capable of real-time concurrent inbound or outbound voice communication calls that are made to or received from the public switched telephone network. For the purposes of this Chapter, private branch exchange (PBX) lines and Centrex lines are considered to be lines. For the purposes of this Chapter, the number of lines a service provider provides to a subscriber shall be deemed to equal the number of inbound or outbound calls the subscriber can maintain at the same time using the service provider’s service.

O. **Local Exchange Carrier (LEC)**. A "local exchange carrier" or "LEC" means any person that is engaged in the provision of telephone exchange service or exchange access. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of a commercial mobile service under 47 United States Code, Section 332(c), unless the commission by rule determines that the Federal Communications Commission includes such service in the definition of the term. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of interconnected voice over Internet protocol service unless the person is providing provider of last resort service. "Local exchange carrier" does include a person insofar as the person is a dark fiber provider.

P. **Mobile Telecommunications Services**. "Mobile telecommunications Services" means telecommunications services licensed by the Federal Communications Commission for mobile use.

Q. **Nomadic Interconnected Voice over Internet Protocol Service**. "Nomadic Interconnected Voice over internet Protocol Service" or "Nomadic interconnected VoIP service" is an interconnected VoIP service that permits users to make and receive calls from any location where the user can obtain access to a broadband connection that will permit connection to the interconnected VoIP service provider.

R. **Place of Primary Use**. "Place of Primary Use" means the street address representative of where the customer's use of the mobile telecommunications services primarily occurs, which must be: (a) the residential street address or the primary business street address of the customer; and (b) within the licensed service area of the home service provider.

S. **Prepaid Wireless Telecommunications Service Provider**. "Prepaid wireless telecommunications service provider" or "prepaid wireless provider" is a provider of prepaid wireless telecommunications service as defined in Title 25 M.R.S. §2921(14)

T. **Price Cap Incumbent Local Exchange Carrier**. "Price cap incumbent local exchange carrier" or "price cap ILEC' means an incumbent local exchange carrier that agreed to accept Connect America Fund Phase II support pursuant to the Federal Communications Commission's Report and Order released on December 18, 2014, in In the Matter of Connect America Fund, WC Docket No. 10-90, FCC 14-190, for locations within the State on or before January 1, 2016 and does not receive funding from a state universal service fund under section 7104.

U. **Provider of Last Resort Service**. "Provider of Last Resort or "POLR Service" means a flat-rate service with voice grade access to the public switched telephone network; local usage within the basic service calling areas of the incumbent local exchange carriers as of January 1, 2012; dual-tone multifrequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; toll limitation for qualifying low-income customers; and the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current.

V. **Public Switched Telephone Network (PSTN).** "Public Switched Telephone Network" or "PSTN" is the worldwide voice telephone network accessible to all those with telephones.

W. **Radio Paging Service**. "Radio paging service" is a service provided by a communications common carrier engaged in rendering signaling communications. Signaling communication is one-way communication from a base station to a mobile or fixed receiver, or to multipoint mobile or fixed receivers by audible or subaudible means, for the purpose of activating a signaling device in the receiver or communicating information to the receiver, whether or not the information is to be retained in record form. Radio paging service is limited to the following types of communications: (a) An optical readout paging service is one which communicates a message to a receiver which displays the message on an optical or tactile readout, either in a permanent form or a temporary form; (b) A tone only paging service is one which activates an aural, visual or tactile signaling device when received; or (c) A tone-voice paging service is one which transmits tone to activate a signaling device and audio circuit in the addressed receiver, following which a voice-grade signal is transmitted, to be amplified by the audio circuit.

X. **Registered Location**. "Registered Location" means the most recent information obtained by an interconnected VoIP service provider that identifies the physical location of an end user.

Y. **Telecommunications.** "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Z. **Telecommunications Carrier**. "Telecommunications carrier" means any provider of telecommunications services, except that it does not include aggregators of telecommunications services which, in the ordinary course of their operations, make telephones available to the public or to transient users of their premises using a provider of operator services.

AA. **Telecommunications Service**. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used.

BB. **Telephone Exchange Service**. "Telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment or other facilities, or combination thereof, by which a subscriber can originate and terminate a telecommunications service.

CC. **Voice Network Service Provider**. "Voice Network Service Provider" means a voice service provider that offers its subscribers the means to initiate or receive voice communications using the public switched telephone network.

DD. **Working Telephone Number**. A "Working Telephone Number" is an active ten-digit telephone number that (1) is compliant with the guidelines established by the North American Numbering Plan Administrator for use by a voice network service provider; (2) has been assigned to an end-user customer of the voice network service provider; and (3) is capable of receiving voice traffic from, or originating voice traffic to, the Public Switched Telephone Network.

**§ 3 ELIGIBILITY AND FILING REQUIREMENTS**

A. **Eligible Applicants**. To be eligible to apply for support from the MUSF, a carrier must be:

1. A non-price cap incumbent local exchange carrier that provides POLR service, or a successor provider of POLR service designated by the Commission; and

2. Found by the Commission to be an Eligible Telecommunications Carrier.

B. **Application for Universal Service Funding or Change in Funding**.

1. **Filing**. A non-price cap incumbent local exchange carrier (ILEC) that intends to request universal service funding or a change in the amount of funding shall file an application requesting the funding or change in funding. The application must demonstrate:

a. that the non-price cap ILEC's cost of providing POLR service is greater than the current POLR rate charged by the ILEC;

b. that the non-price cap ILEC's total intrastate revenue requirement exceeds the amount of intrastate revenue that the ILEC receives under its current rates and prices; or

c. that the non-price cap ILEC's total combined (intrastate and interstate) revenue requirement exceeds the total amount of revenue that the ILEC receives from all services under its current rates and prices.

2. **Additional Requirements**. If the non-price-cap ILEC files its application using the demonstration described in Subsection B (1)(a) of this Section, the ILEC must also demonstrate that raising its POLR rate to the level necessary to meet its cost of providing POLR service would result in a POLR rate that is not reasonably comparable. If the non-price cap ILEC files its application using the demonstrations described in Subsections B (1)(b) or B (1)(c) of this Section, the non-price cap ILEC must also:

* demonstrate that it has maximized the revenues that it obtains from all intrastate services, other than POLR service, or all services, as applicable;
* demonstrate that it has reduced to the lowest reasonably prudent level its costs necessary to provide safe and adequate service;
* propose to raise its POLR rate to a reasonably comparable level; and
* establish intrastate access rates that meet the requirements of 35-A M.R.S. §7101-B and any requirements established by the Commission pursuant to 35-A M.R.S. §7101-B(2)(C).

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a. A non-price cap ILEC that files an application using the demonstration described in Subsection B (1)(a) of this Section must also provide complete support for its asserted cost of providing POLR service.

b. A non-price cap ILEC that files an application using the demonstrations described in Subsections B (1)(b) or B (1)(c) of this Section, shall also contain all information required by Chapter 120, Section 5 of the Commission's Rules, except to the extent waived pursuant to Section 7 of this Chapter.

 C. **Support for Successor Providers**. In the event that a non-price cap ILEC is relieved of its POLR service obligation, and the Commission designates a successor entity to provide POLR service in the relieved provider's service territory, the successor entity shall initially receive the same amount of MUSF support as the non-price cap ILEC received at the time it was relieved of its POLR obligation. The successor entity may request a change in the amount of its MUSF support pursuant to the requirements applicable to a non-price cap ILEC under Subsection (B of this Section.

 D. **Order Establishing Amount of Support**. Following any application or rate proceeding required by this Section or any adjustment or order for support permitted by this Section, the Commission shall issue an order establishing the amount of payments that a provider of POLR service is authorized to receive from the Fund and, if necessary, a schedule for the implementation of the rate for POLR service.

 E. **Adjustments Without Further Rate Proceeding**. At any time after the initial establishment of the MUSF support level for a provider of POLR service, the Commission, without an additional proceeding pursuant to B of this Section, but after notice and such procedure as required by law, may adjust the amount of support provided from the Fund to accommodate substantial and direct changes in the cost of providing POLR service, or in the case of a POLR provider who received an adjustment of its MUSF support amount pursuant to the provisions of Subsection B (1)(b) or (c) of this Section, in costs and revenues of a provider of POLR service. The Commission may consider changes in:

1. access charges;

2. the amount of federal high cost support;

3. the Basic Service Calling Area of the provider;

4. federal or Maine regulatory rules or policies, accounting practices, tax laws, or other legislatively or judicially imposed requirements to the extent these changes have a direct and specific effect on telecommunications carriers collectively or individually; or

5. such other items the Commission considers to be appropriate.

 F. **Adjustments for Other Reasons**. To change the amount of payments that a provider of POLR service receives from the Fund for reasons other than those listed in Section 3(E), the Commission shall conduct a proceeding that is appropriate to address the type of change under consideration.

**§ 4 THE FUND**

A. **Fund Administrator**. The Commission will select and contract with a Fund Administrator that is not a state entity and is not a telecommunications entity (or an affiliated interest thereof) that contributes to or receives money from the Fund. The Fund Administrator will act as agent for the Commission and will administer the Fund solely under the direction of the Commission.

B. **Amount of Fund; Adjustments to MUSF Contribution Amount**. On a quarterly basis, the Fund Administrator will calculate the total Fund Costs, which shall be equal to the amount of contributions necessary for Commission ordered support payments to providers of POLR service, other payments required or authorized by 35-A M.R.S. §7104, any other payments required by law, and administrative costs of the Fund. The Fund Administrator may also include an additional amount, not to exceed one percent of the total Fund Costs, to account for amounts due from contributors that may be uncollected. The Fund Administrator will recalculate the total Fund Costs quarterly, pursuant to Commission Orders described in Section 3 and changes in Fund Costs otherwise required by law or by order of the Commission. The Commission may also require the Administrator to collect in a subsequent quarter any additional Fund Costs that became effective in a previous quarter but that were not included in the Fund Costs for the previous quarter. Based on the total Fund Costs and the history and trend of reported Lines or Working Telephone Numbers, the Fund Administrator will calculate a recommended MUSF Contribution Amount, which will be stated as a monthly per Line or per Working Telephone Number amount. Any recommendation that changes the then-current monthly per Line or per Working Telephone Number amount will be docketed, sent out for comments, and placed on the Commission's deliberations agenda for its consideration. Any change in the MUSF Contribution Amount will become effective pursuant to Commission Order.

C. **Disbursements from the Fund**. The Fund Administrator will disburse the authorized support payments to POLR providers from the Fund in quarterly installments and payments to other recipients as required or authorized by law.

D. **Electronic Processing**. To the extent practicable, the Administrator shall implement an electronic system for reporting of Lines or Working Telephone Numbers, payments by contributors, and disbursements from the Fund.

**§ 5 ASSESSMENT**

A. **Required Contributions**

Beginning with the calendar quarter which starts on October 1, 2019, each of the following voice network service providers who provide service to end-user retail customers in Maine shall report the number of its Lines or the number of its Working Telephone Numbers assigned to customers located in Maine and shall contribute to the MUSF under the provisions contained in Subsection B of this Section: Local Exchange Carriers, Interconnected Voice over Internet Protocol Service Providers, and Mobile Telecommunications Service Providers.

Prior to January 1, 2020, local exchange carriers, interconnected voice over Internet protocol service providers, and mobile telecommunications service providers shall continue to make contributions to the Fund using the procedures in place on December 1, 2018.

B. **Reporting and Remittance**

 1. **Local Exchange Carriers**

Subject to the limitation provided by Subsection 5(B)(4) of this Chapter, within thirty days after the end of each calendar quarter, each local exchange carrier shall report to the Fund Administrator on forms provided by the Fund Administrator the number of its active residential and business Lines or Working Telephone Numbers, including those assigned to Centrex and PBX lines, that were providing voice telephone service in Maine at the end of each month of the preceding quarter.

2. **Providers of Interconnected VoIP Service**

Subject to the limitation provided by Subsection 5(B)(4) of this Chapter, within thirty days after the end of each calendar quarter, each provider of interconnected VoIP service shall report to the Fund Administrator on forms provided by the Fund Administrator the number, at the end of each month of the preceding calendar quarter, of its active interconnected VoIP Lines or Working Telephone Numbers that had a registered location within Maine. Providers of interconnected VoIP service must adhere to the requirements of 47 C.F.R. §9.5(d).

3. **Providers of Mobile Telecommunications Services**

Subject to the limitation provided by Subsection 5(B)(4) of this Chapter, within thirty days after the end of each calendar quarter, each provider of mobile telecommunications services, except for prepaid wireless providers, shall report to the Fund Administrator on forms provided by the Fund Administrator for the end of each month of the preceding quarter the number of its Lines or Working Telephone Numbers assigned to mobile telecommunications end-user customers whose place of primary use was in Maine.

4. **Limitation on Reporting by Billing Account Number**

For the purposes of Subsections 5(B)(1), (2), and (3) of this Chapter, the reporting voice network service provider shall not report more than twenty-five Lines or Working Telephone Numbers per active Billing Account Number.

5. **Contribution Calculation and Remittance**

Within twenty days after the end of each calendar quarter, each voice network service provider that must report its Lines or Working Telephone Numbers to the Fund Administrator, using the forms and instructions promulgated by the Fund Administrator and under the provisions of Subsections B (1), (2), or (3) of this Section, subject to the limitation provided by Subsection B (4), of this Section, shall calculate its required contribution to the MUSF by multiplying the number of Lines or Working Telephone Numbers reported for each month by the Contribution Amount established by the Commission under the provisions of Subsection 4(B) of this Chapter. The voice network service provider must remit its required contribution to the Fund Administrator under procedures established by the Fund Administrator at the time it files its required report for each quarter.

6. **Confidentiality**

For the purposes of this Chapter, the counts of Lines or Working Telephone Numbers that must be reported to the Fund Administrator pursuant to the provisions of Subsections 5(B)(1), (2), or (3) of this Chapter will be considered Confidential Business Information, pursuant to the provisions of 35-A M.R.S. §1311-A(1).

 7. **Calculation of Prepaid Wireless Fee Percentage**

For the purposes of calculating the Prepaid Wireless Fee (PWF) percentage pursuant to 35-A M.R.S. §7104(3-A), the Contribution Amount determined pursuant to Subsection 4(B) of this Chapter shall be divided by twenty-five dollars. The resulting percentage shall be used to calculate the amount of MUSF included in the PWF.

**§ 6 RECOVERY OF CONTRIBUTIONS FROM RETAIL CUSTOMERS**

A. **Collection from Retail Customers; Surcharge**. Each contributing voice network service provider, except for providers of prepaid wireless service, may recover its contributions to the MUSF from its retail customers by applying a surcharge to its customers' bills that is no higher than the amount established by the Commission pursuant to Subsection 4(B) of this Chapter. Any surcharge imposed by a voice network service provider may not be applied to more than 25 Lines or Working Telephone Numbers per Billing Account Number.

B. **Identification of Surcharge**. Any surcharge implemented pursuant to this Section shall be included on customers' bills as a separate line item and be identified as "Maine Universal Service Fund surcharge." This provision does not apply to any voice network service provider that does not provide bills or other statements of charges (written or electronic) to its customers.

**§7 WAIVER OF PROVISIONS OF CHAPTER**

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any of the requirements of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Telephone and Water Utility Industries, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

STATUTORY AUTHORITY: 35-A M.R.S. §§ 104, 111, 7104

EFFECTIVE DATE: The original rule was approved as to form and legality by the Attorney General on July 23, 2001. It was filed with the Secretary of State on July 24, 2001 (filing 2001-281) and became effective on July 29, 2001.

AMENDED: approved as to form and legality by the Attorney General on March 19, 2003. It was filed with the Secretary of State on March 27, 2003 (filing 2003-83) and became effective on April 1, 2003.

AMENDED: approved as to form and legality by the Attorney General on August 8, 2011. It was filed with the Secretary of State on August 10, 2011 (filing 2011-264) and became effective on August 15, 2011.

AMENDED: This chapter was approved as to form and legality by the Attorney General on December 18, 2018. It was filed with the Secretary of State on December 19, 2018 and became effective on December 24, 2018 (filing 2018-272).

AMENDED: This chapter was approved as to form and legality by the Attorney General on July 29, 2019. It was filed with the Secretary of State on July 30, 2019 and became effective on August 4, 2019 (filing 2019-142).