STATE OF MAINE
PUBLIC UTILITIES COMMISSION

June 24, 2003

LINCOLNVILLE TELEPHONE COMPANY
Request for Universal Service Funding
Docket No. 2002-518

TIDEWATER TELEPHONE COMPANY
Request for Universal Service Funding
Docket No. 2002-529

ORDER APPROVING STIPULATIONS AND RATE PLANS AND AMENDING PRIOR ORDERS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we accept the Stipulations filed on June 11, 2003, between two incumbent local exchange carriers (ILECs), Lincolnville Telephone Company (Lincolnville) and Tidewater Telecom (Tidewater) (collectively the Companies) and the Office of the Public Advocate (OPA). By accepting the terms of the Stipulations, we approve the rate plans (for access and local rates) contained therein, and we amend our Orders of March 5, 2003 with regard to the amount of Maine Universal Service Fund (MUSF) support for each of the Companies that was scheduled to become effective on June 1, 2003. Under the amended orders, no MUSF support amount will be paid to either Company until the first step of the access rate reductions contained in the Rate Plans is implemented. Because BSCA rate effects are unknown at this time, the Companies must file requests for revised amounts of MUSF support in accordance with the terms of the approved Stipulations and the provisions of Chapter 288 of the Commission's Rules.

II. BACKGROUND

On December 18, 2002, each of the Companies filed a Request for Initial Establishment of MUSF Amount, based on the results of rate case Stipulations approved by the Commission on June 12, 2002, in Docket No. 2002-99 for Lincolnville, and Docket No. 2002-100 for Tidewater. In the June 2002 Stipulations, the Companies agreed to increase their basic exchange rates by $2.00 per month on June 1, 2002, and by an additional $1.50 per month on January 1, 2003. In their MUSF Requests, the Companies stated that they expected to reduce their intrastate access rates to the NECA 5 level on May 30, 2003, and to begin receiving MUSF support at that time. Because the Companies would have increased their local rates by $3.50 within a 6-month

period, the Companies requested a waiver from the MUSF Rule requirement that they raise their basic exchange rates to the equivalent Verizon level at the time that MUSF support begins, but instead be allowed to work toward equality with Verizon rates over the 3-year period allowed as an alternative under Chapter 288.

After an Examiner's Data Request led to the correction of a minor discrepancy in the calculation of the required MUSF amount, the Commission, in Orders issued on March 5, 2003, authorized MUSF support amounts for each Company beginning on June 1, 2003. The orders required MUSF annual support of $180,947 for Lincolnville and $795,262 for Tidewater. The orders further required the Companies to file tariffs to reduce their intrastate access rates to the NECA 5 level of July 2, 2002, effective June 1, 2003. Finally, the orders required the Companies to file plans for increasing their basic exchange rates to the equivalent Verizon level for Commission consideration. The Orders stated that a plan that increased local rates to the Verizon level simultaneously with the implementation of BSCA rule changes would be approved, but that the Companies were free to propose other plans, particularly in light of possible amendments to 35-A M.R.S.A. § 7101-B (the access parity statute).

On May 15, 2003, each of the Companies filed rate plans for changes in rates for local exchange service, as required by the March 5 Orders. The filings also, however, included access rate plans that differed from the access rate reductions required by the Orders and Motions to Amend the Commission's March 5 Orders that would permit implementation of those plans. The Orders required the Companies to reduce access rates to interstate levels on June 1, 2003; the proposed plans sought to phase in access reductions over two years.

Between the Commission's March 5 Orders and the Companies' May 15 filings, 35-A M.R.S.A. § 7101-B was amended, effective (as emergency legislation) May 2, 2003. P.L. 2003, ch. 101. As amended, Section 7101-B gives the Commission discretion in instituting intrastate access rate reductions. In exercising that discretion, the Commission must balance the disadvantages of intrastate access rates that exceed interstate levels with the disadvantages of any local rate increases that might be necessary to offset the access revenue loss.

In proposing a phase-in of access rate reductions (and USF), the Companies have relied on the amendments to Section 7101-B. The Companies proposed to reduce their intrastate access rates to the NECA 5 level of January 1, 2003, in three approximately equal annual steps, with the first step to occur on June 1, 2003, and the second and third to occur on June 1st of each of the subsequent two years. The local rate plans also proposed to increase local rates in three approximately equal installments. The first step would occur on the first

day of the month that all contiguous exchanges will be added to all BSCAs, presently expected to occur in December of 2003, and at two subsequent 1-year intervals. The Companies proposed that MUSF payments be authorized to replace the lost access revenues and any revenue losses caused by the BSCA implementation that were not covered by the basic rate increases. Going forward, the amount of MUSF would be adjusted on a revenue neutral basis whenever either access rates were reduced or local rates were increased. Because of the staggering of annual access reductions and annual local rate increases, there would be a rate change of one type or another every six months over a 3-year period, requiring six changes to the USF amounts for both of the Companies.

On June 2, 2003, the Hearing Examiner issued a Request for Further Argument, requesting the Companies to explain "why they have an interest in shifting a portion the burden of support for the Companies from the Universal Service Fund to access rates that are higher than the amounts ordered in the March 5 Orders," given that the change would have no financial impact on the Companies and might create administrative burdens for the Commission and USF Administrator. Filing a memorandum in response to this request, the Companies argued that by implementing their proposed plans and, thus, not providing the Companies with the amount of USF support needed to maintain revenue neutrality in conjunction with access rate reductions to the NECA 5 level on June 1, 2003, the Maine economy would retain about $1 million, which would otherwise go to interexchange carriers, over the two year life of the proposed plans. The Companies asserted that further immediate access reductions would have little, if any, effect on the level of toll rates (i.e., that the interexchange carriers would be unlikely to pass along the $1 million in savings). Also, the Companies argued that a phase-in approach to access reductions and local rate increases was in the best interests of their customers.

III. STIPULATION PROVISIONS AND ANALYSIS

On June 11, 2003, the Companies filed Stipulations signed by the Public Advocate and themselves that proposed phase-ins of intrastate access rate reductions and local rate increases that differed from those contained in the Companies' May 15 plans. The Stipulations proposed to reduce, in two approximately equal steps, intrastate access rates to the NECA 5 rates that became effective on July 2, 2002,[1] and to increase local rates to the equivalent

[1] The amended statute requires LECs, on or before May 31, 2005, to establish intrastate access rates that are equal to interstate rates that were in effect on *January 1, 2003*. Although the Stipulations refer to the access rates that *became effective* on July 2, 2002, those rates were still in effect on January 1, 2003.

Verizon rate levels in two approximately equal steps that would occur at the same time as the access reductions.

The first proposed step would occur at the time that contiguous exchanges are added to BSCAs. Those changes to BSCAs are required by the October 2002, amendments to the BSCA Rule (Chapter 204). The BSCA changes are scheduled for December of 2003, although that date could change. The first step would include a reduction of access rates by 50% of the difference between present access rates and NECA 5 rates in effect on January 1, 2003 and an increase to local rates of 50% of the difference between the Companies' present rates and the equivalent Verizon rates that were in effect on July 1, 2003. Because there is no proposed access rate reduction and no local rate increase prior to at least December 2003, it will be necessary to amend the orders in this case to ensure that the Companies do not receive USF until at least that date.

The second step would occur on June 1, 2005, or approximately 18 months after the anticipated date of the initial step. The date of the second step is also the latest date that amended 35-A M.R.S.A. § 7101-B allows for reducing intrastate access rates to the interstate rates in effect on January 1, 2003. The second increase to local rates will equalize the Companies' rates with Verizon's equivalent rates as of January 1, 2005. Therefore, the second step change in basic rates will take into account any intervening changes to Verizon's rates that the Commission authorizes, including changes resulting from the changes to BSCAs.

The Stipulations state that USF will be provided not only to replace the revenues lost due to the access reductions, but also for the implementation of calling area changes under the BSCA rule, to the extent those losses are not offset by the local rate increases at each step. The Stipulations establish the annual amount of revenue that is lost in each step for each company due to the access reductions. We assume these revenue amounts were included in the Stipulations to avoid the need for future investigation and litigation into the rate elements and billing units used to determine the amount of the access loss. The Stipulation also acknowledges that the amount of MUSF support will need to be adjusted to account for the BSCA tracking account results, which generally are used to "true-up" the BSCA net revenues and costs.

IV. DECISION

In reviewing a stipulation submitted by the parties to a proceeding, we consider whether the parties joining the stipulation represent a sufficiently broad spectrum of interests such that there is no appearance or reality of disenfranchisement, whether the process was fair to all parties, and whether the stipulated result is reasonable and in the public interest. *Consumers Maine*

Water Co., Proposed General Rate Increase of Bucksport and Hartland Divisions, Docket No. 96-739 (Me. P.U.C. July 3, 1997). Because all of the parties to the cases filed the Stipulations, it appears that the first two criteria for accepting a stipulation have been met. Based on our review and understanding of the provisions contained in the Stipulations, we find that the Stipulations filed in these dockets are not adverse to the public interest and will be accepted.

While we accept the terms of the Stipulations, including the amounts of access revenue losses to be used in determining MUSF support, we do not approve initial amounts of MUSF support for the Companies at this time. The Companies must file updated estimates of BSCA costs (lost revenues and increased operating costs) at least 90 days prior to the implementation of the new local calling areas required under the BSCA rule. After we have examined the BSCA cost and revenue loss estimates and approved a reasonable BSCA cost and revenue loss amount, we will establish an amount of initial MUSF support for each Company, which will be effective when step one of the each Company's plan is implemented. The MUSF amount for each Company will again be adjusted at the time of the implementation of step two of each plan, taking into account the effects, if any, of the BSCA tracking mechanism and the access reductions that occur at step two.

While there are a number of results that might satisfy the letter and spirit of the amended statute, we believe the outcome proposed by the Stipulations is reasonable and contains a fair balancing of the interests of the Companies and their ratepayers. The Commission now has discretion in requiring companies to achieve the access rate parity required under the statute. In exercising that discretion, we find that the Stipulations represent a reasonable resolution of the interrelated issues of access rate reductions, basic rate increases, calling area modifications due to the BSCA Rule, and MUSF support, all of which must be considered in light of the amended Section 7101-B. The Stipulations achieve the end result required by the statute and Chapters 204, 280 and 288 of the Commission's Rules, in that intrastate access rates will be reduced to the interstate rates presently in effect, rates for local exchange service will eventually reach the Verizon level, and customers will see increases in their local calling areas (BSCAs). At least the first two of these actions will be accomplished on a revenue neutral basis for the Companies; the BSCA changes must be subject to the tracking account and recovery provisions of the BSCA rule, Chapter 204, § 5(C).

We do not agree with the Company's assertion that further access reductions at this time would provide little or no benefit to customers. It would be difficult to either prove or disprove that assertion, because showing a direct link between access rates and toll rates is difficult, due to the variety of considerations that go into pricing decisions. In general, toll rates have come

down dramatically over the past several years, due at least in part to the significant reductions that have occurred in interstate and intrastate access charges. Verizon reached parity between its interstate and intrastate rates in 1999. By contrast, a number of independent telephone companies have reduced access rates to 2002 interstate rates only very recently, and the rates of ITCs that in 2001 reduced intrastate access rates to 1999 interstate levels have remained at those levels, even though interstate rates have decreased substantially since 1999. Also, it is possible that many IXCs were aware of the Maine access parity statute , and may have priced their toll plans on the expectation that the statutory requirement would be implemented.

In accepting the instant Stipulations, we exercise the discretion required by Section 7101-B, and we find that the results are reasonable under the statutory guidelines of 35-A M.R.S.A. § 7101-B(2).

Therefore, we

1. ACCEPT the Stipulations executed by Lincolnville Telephone Company, Tidewater Telecom and the Office of the Public Advocate and APPROVE the provisions of the rate plans contained in the Stipulations for implementation as proposed in the Stipulations. The Companies shall file all necessary rate schedules to implement the provisions of the rate plans in accordance with the Commission's filing requirements;

2. ORDER that at least 90 days prior to the implementation of new BSCA routes required for Lincolnville Telephone Company and Tidewater Telecom, the Companies shall file updated estimates of lost revenues and increased costs due to the implementation of local calling area expansion required by the BSCA rule and requests for initial amounts of MUSF support;

3. AMEND the Orders issued in these cases on March 6, 2003 to provide that Lincolnville Telephone Company and Tidewater Telecom will receive no universal service funding from the Maine Universal Service Fund at this time and until further order of the Commission; and,

4. ORDER Lincolnville Telephone Company and Tidewater Telecom, if they file requests for universal service funding, to fashion those requests so

that they are consistent with the local and access rate plans approved in this Order.

Dated at Augusta, Maine, this 24th day of June, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 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 1004 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.

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.A. § 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.A. § 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.