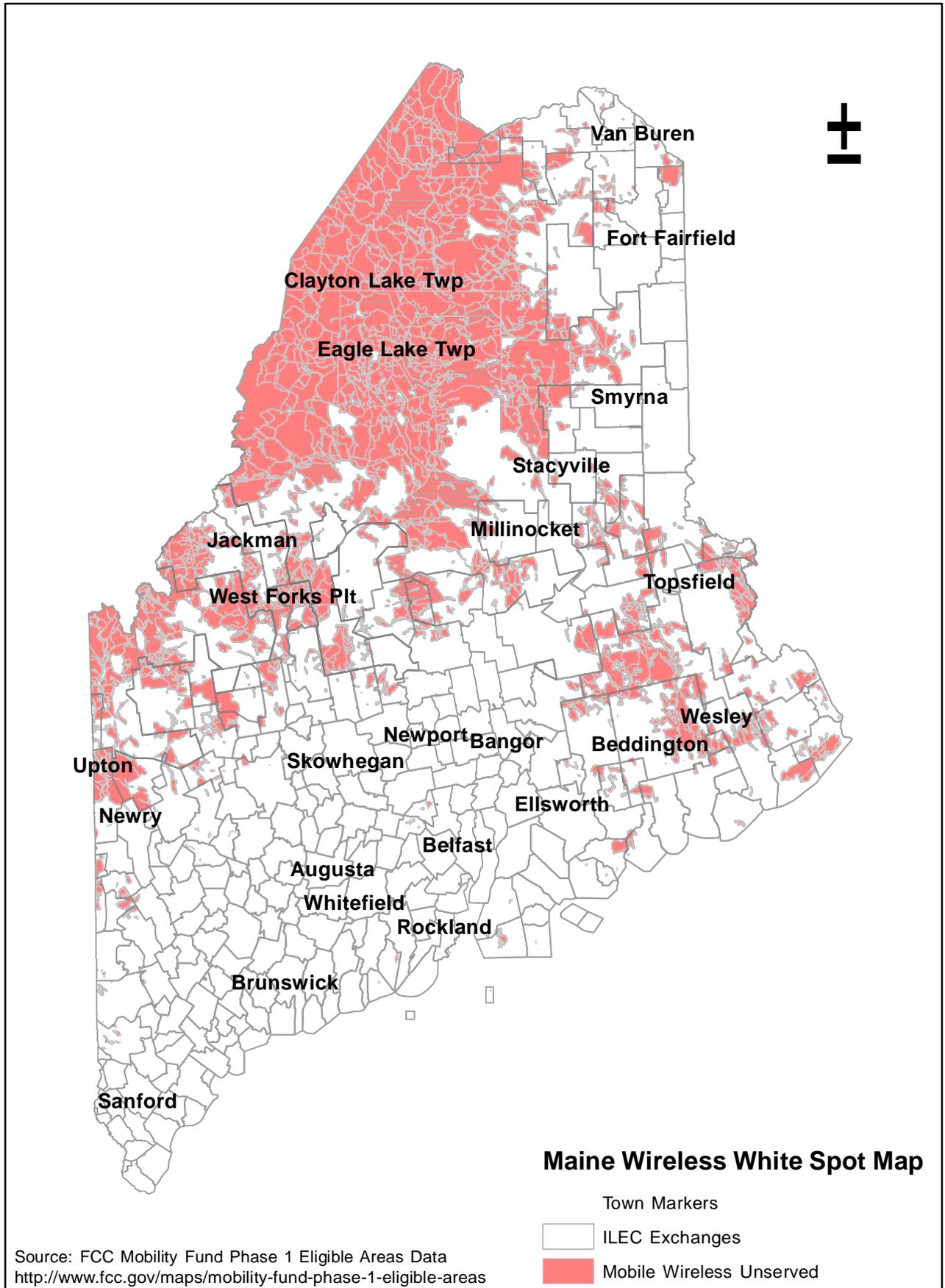
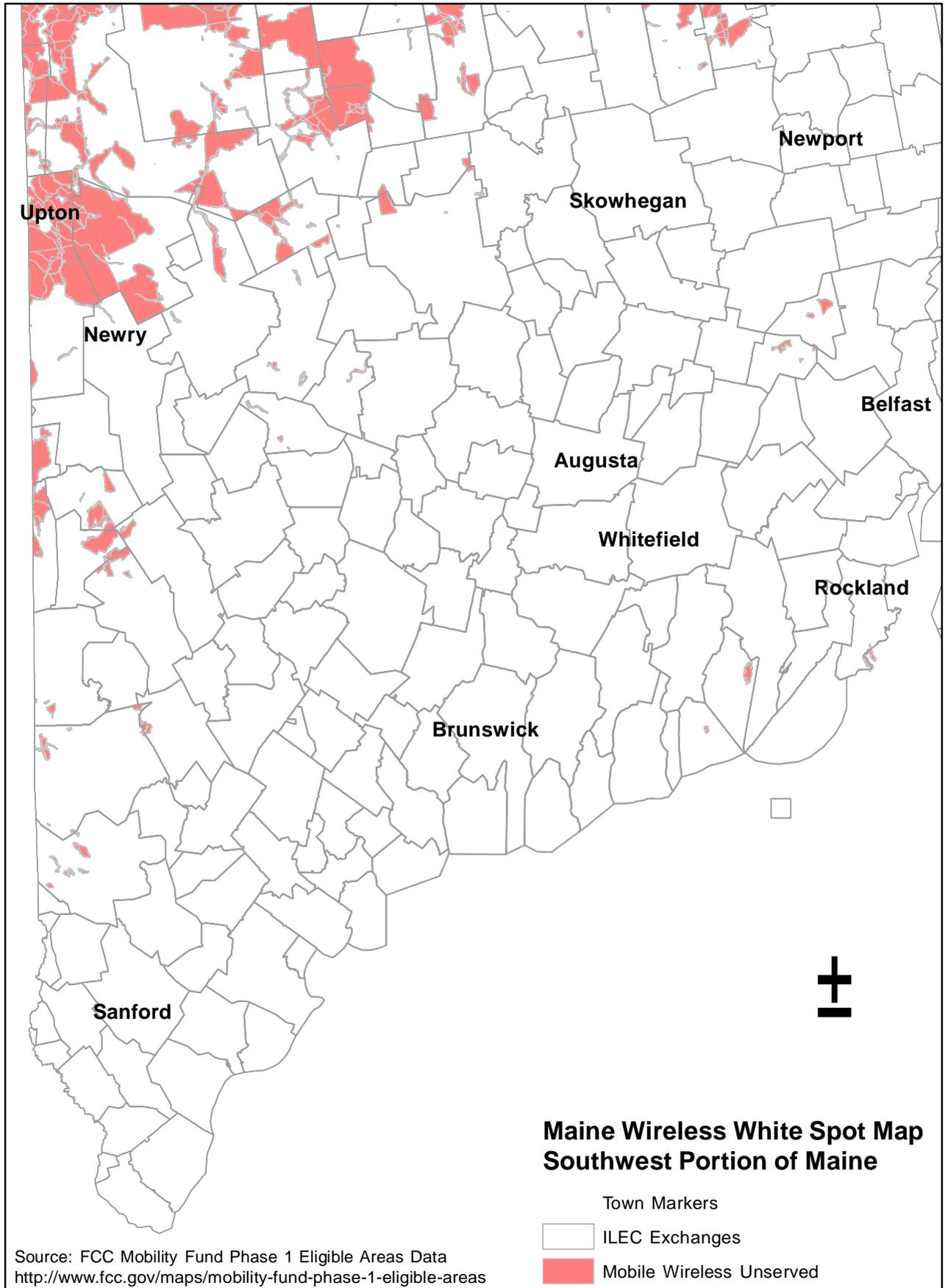


APPENDIX A: WHITE SPACES MAPS



Source: FCC Mobility Fund Phase 1 Eligible Areas Data
<http://www.fcc.gov/maps/mobility-fund-phase-1-eligible-areas>

Updated by MJohnson 11/15/2012



Source: FCC Mobility Fund Phase 1 Eligible Areas Data
<http://www.fcc.gov/maps/mobility-fund-phase-1-eligible-areas>

Maine Wireless White Spot Map Southwest Portion of Maine

- Town Markers
- ILEC Exchanges
- Mobile Wireless Unserved

Updated by MJohnson 11/15/2012

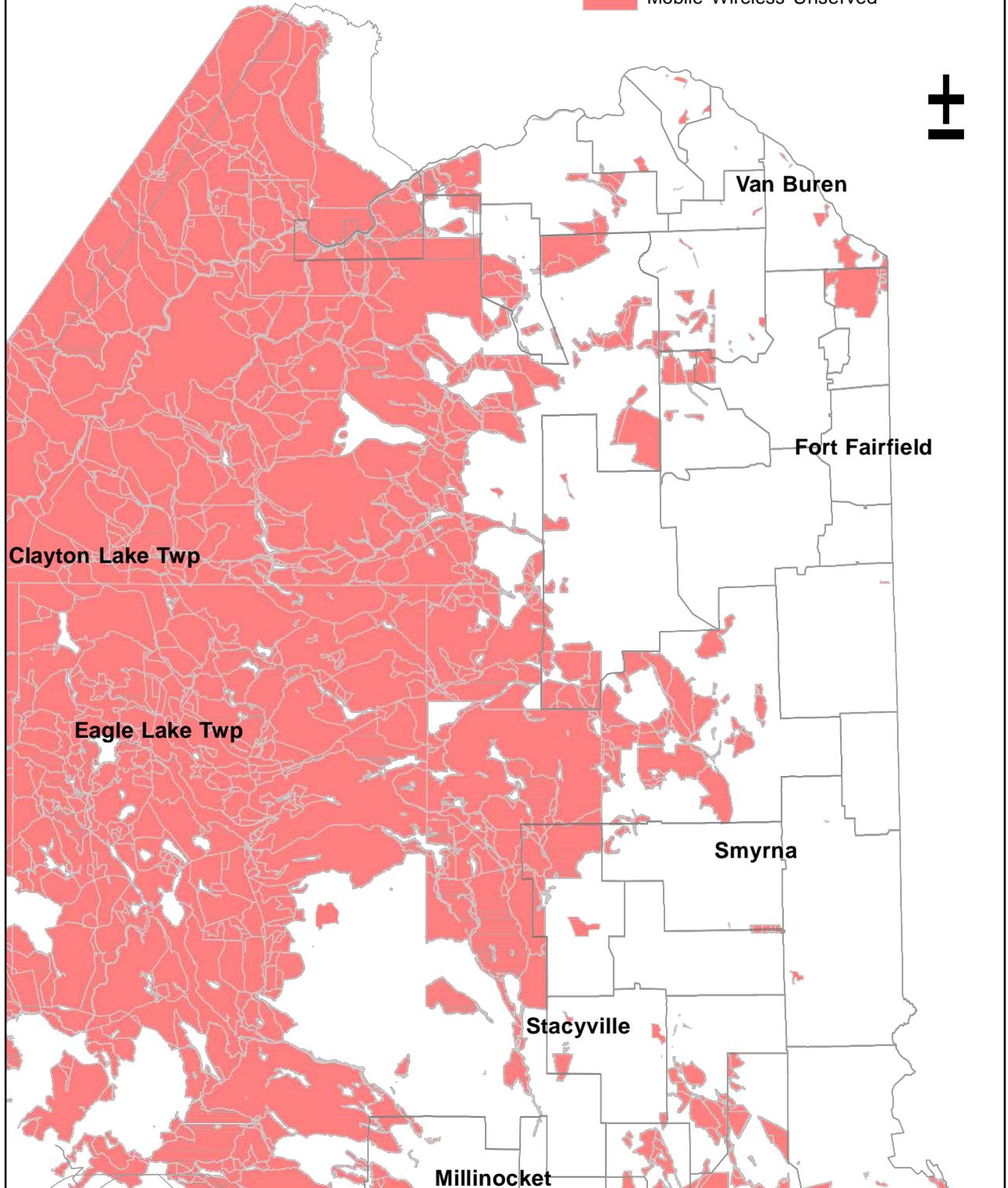
Source: FCC Mobility Fund Phase 1 Eligible Areas Data
<http://www.fcc.gov/maps/mobility-fund-phase-1-eligible-areas>

Maine Wireless White Spot Map Northeastern Portion of Maine

Town Markers

ILEC Exchanges

Mobile Wireless Unserved

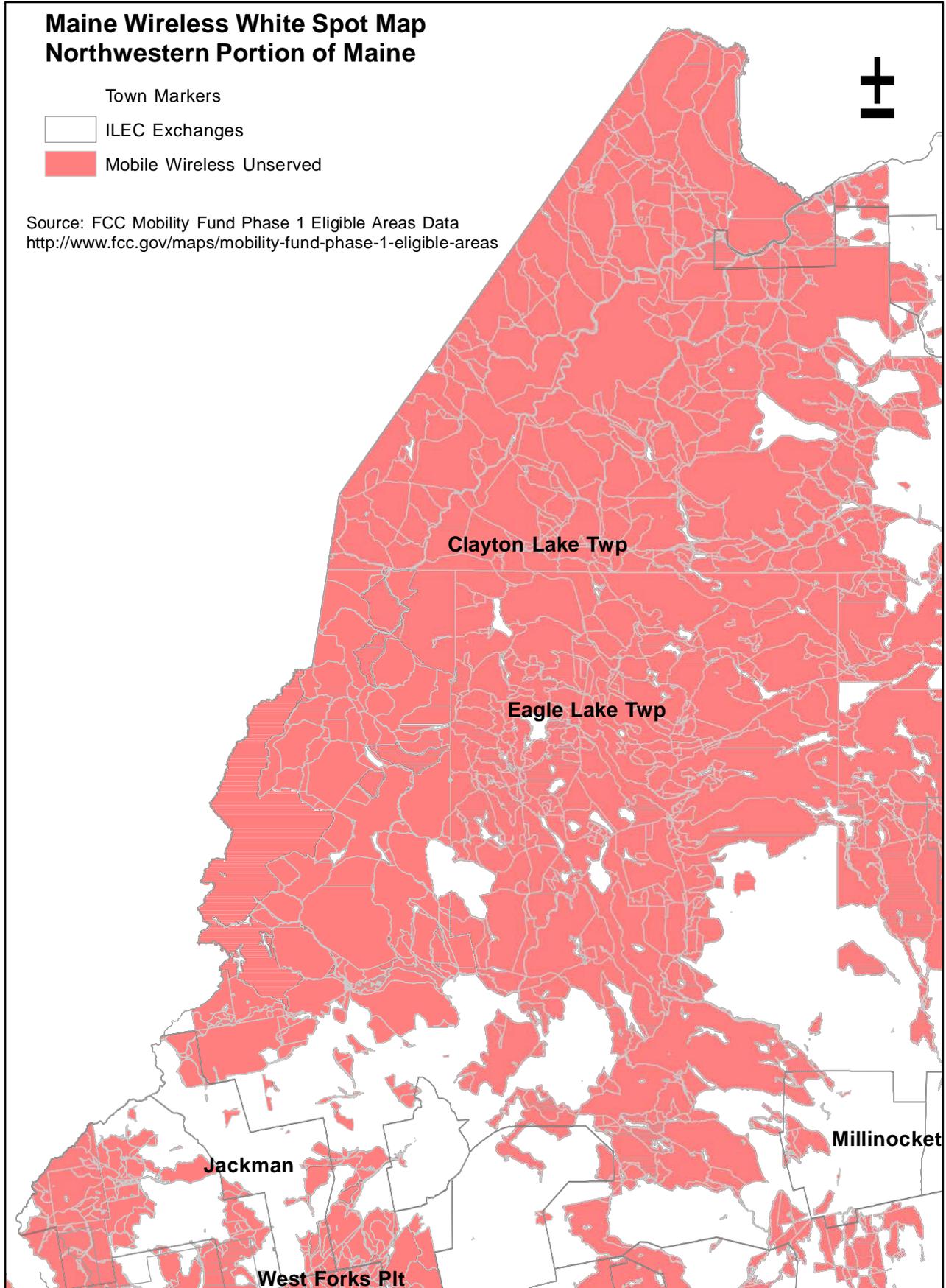


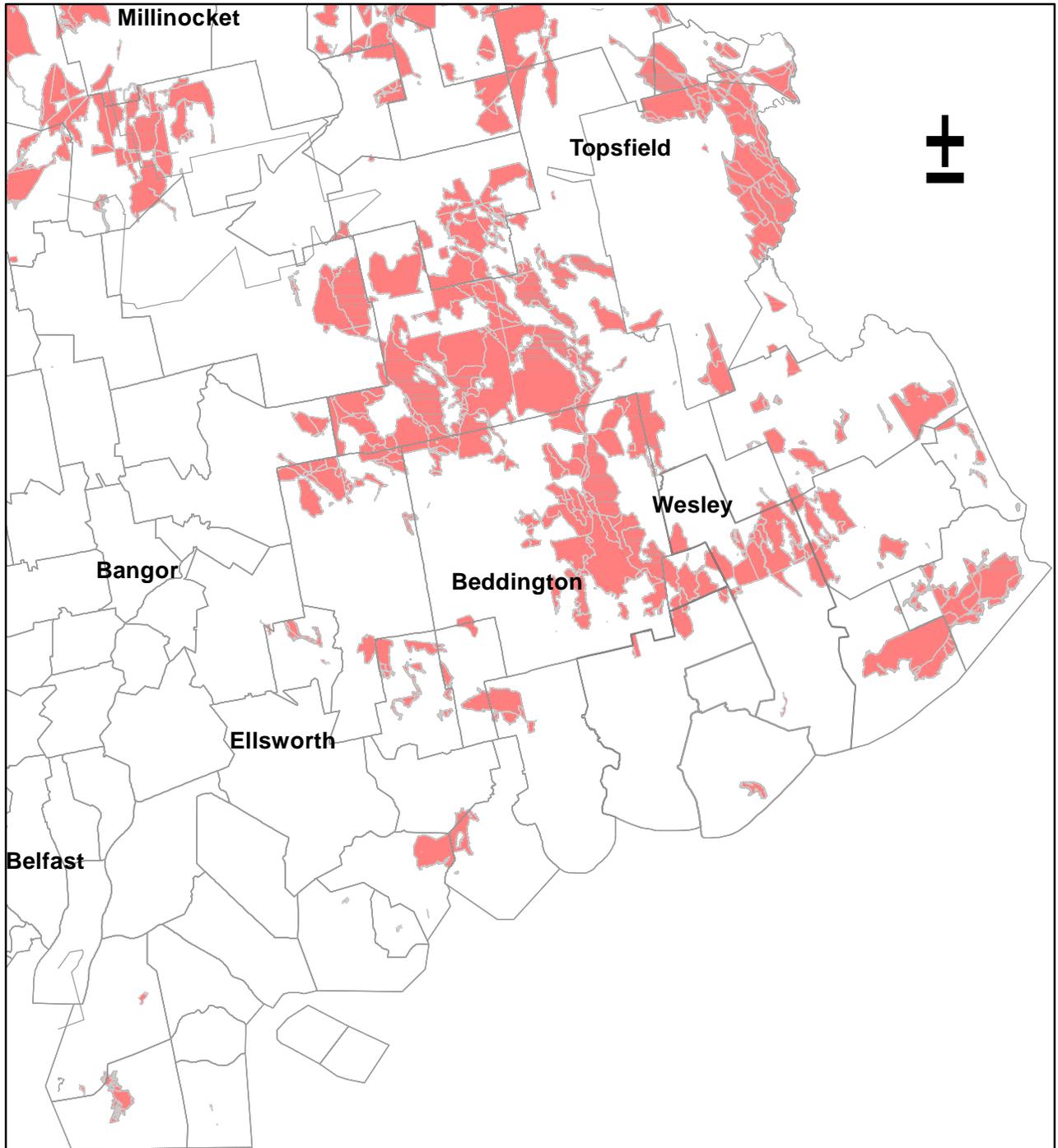
Updated by MJohnson 11/15/2012

Maine Wireless White Spot Map Northwestern Portion of Maine

- Town Markers
- ILEC Exchanges
- Mobile Wireless Unserved

Source: FCC Mobility Fund Phase 1 Eligible Areas Data
<http://www.fcc.gov/maps/mobility-fund-phase-1-eligible-areas>





**Maine Wireless White Spot Map
Southeastern Portion of Maine**

- Town Markers
- ILEC Exchanges
- Mobile Wireless Unserved

Source: FCC Mobility Fund Phase 1 Eligible Areas Data
<http://www.fcc.gov/maps/mobility-fund-phase-1-eligible-areas>

Updated by MJohnson 11/15/2012

APPENDIX B: COMMENTS OF STAKEHOLDERS

COMMENTS FROM FAIRPOINT COMMUNICATIONS

Submitted December 20, 2012

I. Executive Summary

The networks of the Providers of Last Resort (POLR) are the backbone network infrastructure utilized by all communication providers in the state. This network provides the ready capacity to serve retail customers who other carriers refuse to serve or cannot serve. These networks are able to recover more quickly than other networks in the case of natural disaster. FairPoint, similar to other incumbent providers, has historically operated under a "regulatory contract" whereby in exchange for being the exclusive provider of services to customers no matter where they lived or worked in the serving territory, the company was allowed to recover its costs and earn a reasonable rate of return on its investments with rate and service quality oversight. The outcome was that urban "profits" were used to subsidize the losses incurred in high-cost to serve areas (predominantly rural) and business customers were charged more than the cost to serve them such that residential rates could remain affordable. The accelerating technological advancements, robust competition in low-cost to serve areas and for business customers, along with the recent FCC Order to transform Intercarrier Compensation and Universal Service have made the "regulatory contract" unworkable. FairPoint stands ready to be the Provider of Last Resort within the areas it serves;

however, if it is not able to recover the costs to serve the high cost areas, it may be compelled to seek approval to withdraw services to those areas.

The forward looking cost model addressed by the Commission would identify the high cost to serve exchanges (communities) and quantify the revenues and costs associated with those communities such that POLR funding could be directed to recover certain eligible costs associated with only those communities. A forward looking model is the correct choice for determining POLR funding in Maine because it contemplates the most efficient network using the most current technologies. A POLR would not be eligible to recover its costs to the extent they exceeded the forward looking model. This incentivizes a provider to operate efficiently in high cost areas.

The funding process put forward by the Commission contemplates a complicated and time-consuming three-step process; first, the Commission will review and vet the assumptions of a forward looking cost model. Then, the Commission proposes it will compare those results against a traditional embedded cost study and cap the funding at the lower of the forward looking model or the embedded cost model. Finally, the Commission proposes to conduct a reverse auction. What this approach fails to recognize is that the embedded cost model was used in the monopoly era when low-cost areas of the state subsidized the areas that are very high cost. An embedded cost study does not identify the high cost to serve areas or quantify the funding deficiencies. It would assume that the “profits” in the low costs markets can be used to fund the high cost markets when in truth, to the extent they even exist; they provide the flexibility to compete.

FairPoint believes that in several key respects, the proposal by the Commission does not provide an efficient solution to the core challenge to public policy of ensuring universal service in a state in which the underlying cost to provide telecommunications service varies significantly by geographic area. The Commission described the issue in its previous report to the 125th legislature:

Competition has gradually eroded the regulatory bargain, in part because franchises are no longer exclusive. Moreover, competitors have no “obligation to serve” all customers. Instead, competitors self-select the areas that they serve and the products that they offer to maximize profits. Consequently, the traditional monopoly providers, now known as Incumbent Local Exchange Carriers (“ILECs”), are faced with intense competition in the most attractive (low cost / high profit) segments of their territories. The loss of customers to competitors diminished the opportunity for cross subsidization of rates between high cost and low cost areas.¹

FairPoint believes that the complexity and fundamental flaws with both the embedded cost study as well as the reverse auctions will fail to produce the desired outcome in a timely fashion. Furthermore, the reverse auction and the embedded cost study do not work in concert. For these reasons, as more fully described below, FairPoint recommends the legislature direct the Commission to take the following action:

1. Adopt a forward looking cost model fully vetted by the Commission as the mechanism through which to provide funding for high cost areas in order to ensure universal service continues;
2. Implement the funding mechanism no later than September, 2013, or provide interim funding until such time as the long-term solution is implemented;
3. Implement a reasonable, comparable and affordable benchmark rate;

¹ Maine Public Utilities Commission, *Plan to Reform Telecommunications Regulation*, December 30, 2011 at 4.

4. Allow for reasonable, affordable deaveraging of rates constrained by the benchmark;
5. Provide that SQI tracking and reporting coincides with receipt of POLR funding; and
6. Eliminate SQI tracking and reporting for areas where a carrier receives no POLR funding.

II. Introduction

The Commission's Draft Report describes the need for POLR network providers and associated funding and the various positions of all of the stakeholders. It takes an even-handed look at telecommunications and presents a possible solution to the questions presented by the legislature. Beginning with LD 1784 and continuing with Public Law, Chapter 623, the legislature recognized that robust competition exists in the telecommunications market in Maine and that the competitive market warranted the urgent need to reduce retail regulation in the state. At the same time, the legislature determined that there must always be an affordable, high quality basic level of service that any business or residence in the state would be able to receive, identified as Provider of Last Resort service ("POLR service"). The legislature indicated that rates for POLR service and any accompanying universal service funding required more thought and study and issued the following mandate:

The Public Utilities Commission shall convene a stakeholder group to create an appropriate framework for establishing rates for provider of last resort service, including methodology, appropriate cost considerations and standards for the availability and amount of support from a universal service fund established in the Maine Revised Statutes, Title 35-A, Section 7104...

The Commission has produced a report which suggests a process to regulate POLR rates and a concept to provide a source of funding to support the communications infrastructure ensuring the availability of POLR service.

III. POLR Funding

The Commission recommended in its previous report to the 125th legislature dated December 30, 2011 and notes in the Commission's Draft Report that FairPoint has engaged the service of CostQuest to model the Forward Looking Economic Costs of providing POLR service in Maine. The CostQuest model demonstrates that in many areas of the state the costs of ensuring POLR service is available to all residents and businesses exceed the revenue FairPoint receives for service to its customers in those areas. Since competition precludes FairPoint from subsidizing the high cost areas with revenues from the low cost areas, a mechanism is needed to recover these costs in order for FairPoint to be a network provider providing POLR service in the high cost areas of Maine. As allowed by Public Law, Chapter 623, FairPoint intends to file a case requesting state universal service support to allow it to continue to make POLR service available throughout its service territory. FairPoint will begin working with the Commission to ensure that proper funding to recover these costs will be available by September, 2013 when FairPoint will be in the position to adjust rates.² In recognition of

² FairPoint is currently subject to an alternative form of regulation ("AFOR"), under its AFOR plan, FairPoint has agreed to a cap on local rates.

the fact that FairPoint continues to serve very high cost areas without POLR funding, the legislature should require the Commission to complete any ensuing process to vet the sufficiency of FairPoint's filing for funding prior to the expiration of its AFOR. While we do not anticipate any delay in implementation of POLR funding, in the event the Commission has not completed the full recovery plan by the AFOR expiration, the Commission should be required to create an interim funding mechanism to ensure that FairPoint is not forced to provide service in areas where it is not able to recover the costs.

The issues with respect to providing service in rural areas and the appropriate mechanism to fund the incumbents that have traditionally received less universal service funding due to their dominant carrier status is not unique to Maine. Under existing federal universal service programs a substantial portion of universal service funds are targeted at rural carriers³ (the "rural/rural divide"). For instance, the FCC has targeted 80% of the high cost funding to rural carriers, who serve only 20% of the rural customers in the country. Now, due to changing market conditions, it is no longer sustainable for incumbents to provide and affordable service in high cost areas without additional support.

In a separate proceeding, the Commission established stringent service quality standards for POLR service which included benchmarks as well as penalties. The Commission has done this in advance of providing any mechanism for allowing the incumbent carriers to recover the costs of providing this service. Said another way,

³ See definition in the Communications Act of 1934, as amended ("The Act"). 47 USC 153. FairPoint's former Verizon operations do not meet the definition of rural carrier, although it serves rural areas. The other incumbents in the state are considered "rural carriers" under The Act.

incumbent carriers are now required to provide a service throughout their footprint without adequate funding in exchanges that are high cost and, adding insult to injury, is penalized when it falls short. The incumbent carriers are the only telecommunications providers measured for service quality and subject to very high fines. POLRs should not be required to track and measure service quality in areas where the POLRs do not receive POLR funding. FairPoint stands ready to continue to provide the necessary POLR service to the state, and voluntarily submit to service quality measures that are not applied to any of its competitors, but in order to do so, FairPoint must receive the requisite POLR funding.

As the Commission recognized in its previous report to the legislature:

POLR service is a minimal basic service that needs to be subsidized. If the obligation to fund the provision of POLR service was placed solely on the POLR service provider, that carrier may gradually lack the funds to carry out its obligation. In addition to revenues sufficient to cover the costs of POLR service, the providers obligated to offer that service must have the revenue necessary to maintain their infrastructure so that they can provide POLR service in a quality and reliable manner.⁴

IV. Embedded Cost Backstop

In its draft report to the 125th legislature in November, 2011, the Commission recommended the use of a forward looking cost model in order to determine the cost of providing POLR service on an exchange by exchange basis. Now, the Commission's Draft Report provides that a carrier *may* use a forward looking economic cost model; however, it provides that the results of any forward looking model will be capped by the results produced through an embedded cost study. FairPoint does not support the use

⁴ Maine Public Utilities Commission, Plan to Reform Telecommunications Regulation, December 30, 2011 at 40.

of this “embedded cost backstop,” since it is incompatible with the results contemplated by the Commission’s Draft Report. An embedded cost study is a relic from the former monopoly era and does not reflect the current communications market. An embedded cost study cannot be disaggregated to an exchange level and therefore the results are irreconcilable with an exchange level forward looking cost model. In addition, an embedded cost study assumes that urban low cost areas are subsidizing the rural high cost areas of a provider’s service territory, a condition that simply cannot be sustained in the current competitive environment. FairPoint is subject to robust competition in its low cost exchanges, therefore in order to compete in those exchanges, the assumptions inherent an embedded cost model cannot be sustained. Remembering that the objective is to provide adequate POLR support to ILECs in their high cost exchanges, placing a limitation on that support based on total company embedded costs, would be an arbitrary constraint.

In the previous report to the 125th legislature, the Commission recommended a forward-looking cost model because it was the most efficient path to determining support. A forward-looking economically efficient cost model is preferable to an embedded cost model because it assumes a carrier operates using modern technology employed in the most efficient network configurations. It models the most economically efficient technology to provide POLR service and assumes use of only current least cost technologies and models only the costs of a network that is efficient for the desired purpose. It assumes that carriers will offer any and all regulated and non-regulated services that are economically feasible, and includes economic contributions from such services in the evaluation of POLR funding requirements. This approach also ensures

that the POLR network provider recovers only the costs associated with the most efficient network, thereby incenting the network provider to be efficient. The use of a forward looking cost model should also be favored as it is the desired method for establishing the federal counterpart of POLR funding, which is the Connect America Fund.

For all these reasons, the Commission's limited resources are better used focusing on vetting the inputs and assumptions of the forward looking economically efficient cost model of trying to accomplish two full studies.

V. Reverse Auction

In its draft report the Commission favors the use of reverse auctions. The Commission provides that the "reserve price" for the auction will be established by the embedded cost of serving the area where the POLR seeks funding (assuming the forward looking cost is higher than the embedded cost of service). While the concept of a reverse auction is an interesting approach, there are several major concerns that make it unwise as the first course of action.

Reverse auctions, at least as it is contemplated on the federal level, are directed toward "Greenfield applications." For example, the FCC's reverse auction for broadband in unserved or underserved areas and the reverse auctions for the mobility fund, the target customers are currently without the service that the auction is targeted to bring. That works because the point is to bring service (broadband service) to areas with no service today. In contrast, POLR service is available to all consumers in the state of Maine today. If the incumbent does not win the auction, one can assume brand

new facilities will need to be constructed in some or all of the rural area built to offer POLR service. No other provider is currently equipped to offer POLR service to every customer in FairPoint's high cost exchanges. For these reasons, the Commission should dispense with the seeking authority to hold a reverse auction as it is fraught with the potential pitfalls likely to leave areas of the state without a sufficient means by which to serve the needs of all customers. The concept of a reverse auction, while perhaps attractive on its face, adds unnecessary complexity and bureaucracy and fairness concerns.

In the event that the legislature does choose to entertain reverse auctions the Commission needs to insure that any auction is conducted in a fair and competitively neutral manner. The Commission must allow all carriers including the incumbent to submit a bid. To allow other parties to bid against the ILECs "bid" that is available publically, is fundamentally unfair and discriminatory. The integrity of the bidding process requires that all providers be allowed to submit a sealed bid.

As outlined above, FairPoint does not support the use of a reverse auction; however, in the event the legislature authorizes use of reverse auctions there are several concerns that must be addressed to ensure the continued availability of POLR service.

The Commission must require that any carrier submitting a bid have its own facilities to provide POLR service, the Commission must not award a bid to provider that intends to rely on the incumbents facilities to provide POLR service.

The Commission must also ensure the incumbent is compensated for the cost of providing the existing POLR service at the level demonstrated for the purposes of the reverse auction, for the period that it takes a new provider to build a network capable of serving all POLR customers. This will ensure that customers are not left without POLR service for some period of time and will encourage the new provider to build service in a timely fashion in order that payments can stop flowing to the previous POLR and begin flowing to the newly designated entity. Additionally, funding the incumbents for the period it takes a new provider to be prepared to serve will insure that in the event the winning bidder does not build the necessary infrastructure or is unable to meet all of the obligations of a POLR provider, the state is not left without a POLR provider. While the Commission indicates it believes it is unlikely that an incumbent would discontinue service, FairPoint does not believe that the possibility is so remote. If a carrier is losing money in an exchange, it does not make economic sense to continue operations in that exchange. Doing so would have a negative impact on the remaining operations of the carrier.

Finally, the Commission must recognize that there is also a potential danger that a carrier agrees to be the POLR for a sum certain only to find out that the costs of providing POLR service are much higher than anticipated, in that event the provider may seek additional funding or rate increases that would equal or exceed the original bid of the incumbent.

VI. Requirements of a Replacement Provider

As stated above, FairPoint does not believe that it is prudent for the state to utilize reverse auctions because there are too many unknowns and too many potential dangers that have real consequences for telecommunications service in the State of Maine. That said, in the event that the state utilizes a reverse auction, the state should require that any provider who wins a reverse auction recognize and comply with regulations associated with its status as the new incumbent, regardless of the technology used to provide the POLR service, including providing all the elements of POLR service, including wholesale and retail benchmark requirements and service quality tracking and reporting.

With respect to the outgoing incumbent provider, if the incumbent so requests, the Commission should be required to allow the incumbent to relinquish its ETC designation in any service territory where the incumbent is displaced⁵ as well as supporting any petition for discontinuing service the incumbent wishes to submit to the FCC in any area where the incumbent is displaced as the POLR provider.⁶ This is the only equitable solution. To do otherwise, would continue to strap the incumbent with POLR and other regulatory obligations as a matter of federal law, although it is not receiving any funding to do so.

VII. Benchmarks

⁵ See 47 USC §214(e)(4) A State...shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. See also 47 USC § 214(e)(5) "The term 'service area' means a geographic area established by a State commission...for the purpose of determining universal service obligations and support mechanisms.

⁶ See 47 USC §251(F)(2) and 47 USC §251(h)(2).

In its proposal the Commission recommends a local service rate benchmark of \$25-\$35. FairPoint agrees with the Commission that benchmarks are largely a political decision, however, when setting a reasonable benchmark for supported areas, there are a few things that need to be considered. First, in setting a reasonable benchmark the state must insure that to the extent the benchmark is a requirement of funding, it is set at a rate that is reasonably comparable to rates in urban areas. The traditional theory is that funding should not be used to compensate for artificially low rates. While this is, and should remain, a valid concern, it needs to be carefully balanced with the dangers of setting a benchmark that is so high that it is not reasonable and affordable nor competitive. If a company is required to raise its rates beyond an affordable level, the company will lose customers thereby driving down revenues and driving up the need for additional high cost funding. This is obviously not the desired outcome. As a condition of receiving high cost funding, carriers should not be required to set their rates at a level that is too high to in the market place. In order to adequately balance the concerns set forth above, the state should set a reasonable benchmark and allow carriers to freedom to impute the revenues in the supported areas thereby insuring that the fund is not compensating the carriers for low rates while allowing the POLRs the freedom to respond quickly to competitive forces in the marketplace. If there is one lesson to be learned from recent history, it is that the market can change in an instant and regulation is often very slow to respond to a rapidly changing market. Flexibility is important in these circumstances. Finally, the Commission should be cognizant of a concern of “rate shock.”

In its proposal the Commission indicates that the benchmark should be inclusive of all taxes, fees and surcharges. While FairPoint understands conceptually why the Commission may favor this approach, as a practical matter, however, this concept would be impossible to implement. Taxes, fees and surcharges are largely outside a carrier's control, therefore that carrier could be forced to change its rate every time a tax or surcharge is added, increased or changed in some other fashion. A benchmark including the federal subscriber line charge and ARC, are more tailored to inclusion in a benchmark rate.

Respectfully Submitted this 20th day of December, 2012.

/s/ Sarah A. Davis

Sarah A. Davis Regulatory
Attorney FairPoint
Communications
1 Davis Farm Road
Portland, ME 04103
Maine Bar No. 4219

COMMENTS FROM TELECOMMUNICATIONS ASSOCIATION OF MAINE

Submitted December 20, 2012

December 20, 2012

MAINE PUBLIC UTILITIES COMMISSION
Inquiry Into Telecommunications Regulatory
Reform Plan

**COMMENTS ON DRAFT
REPORT**

The Telecommunications Association of Maine (TAM) is concerned that a number of the proposals set forth by the Commission in the Draft Report submitted by the Commission on November 28, 2012, in the above captioned proceeding (“Draft Report”) undermine the core principles of Universal Service that have served the people of Maine well by ensuring that all citizens of the State, even those in high cost areas of the State, have affordable access to robust telecommunications services. Accordingly, TAM offers the following responses to specific provisions of the *Draft Report*.

On page 7 of the *Draft Report* the Commission asserts that “The essence of this disagreement [between the parties] is whether or not all consumers of telecommunications services in Maine should be required to subsidize a network operated by an ILEC that is used for the provision of POLR service by that ILEC.” The essence of the disagreement, from TAM’s perspective, is whether the economic and operational benefits gained by competitors as a direct result of artificial constraints on business operations forced upon ILECs by Federal and State laws should be paid for primarily by ILEC customers, especially those customers living in the rural portions of Maine.

On Page 10 of the *Draft Report*, the Commission states that “TAM’s proposal also abandons any attempt to separate rate base, expenses and revenues into regulated and unregulated categories. Further, no attempt is made to establish a distinct revenue requirement that is attributable solely to POLR service.” This is a fundamental misunderstanding of TAM’s proposal, which focused solely on the services over which the Commission continues to have regulatory authority, namely POLR service. There are no regulated and unregulated categories because the Commission’s authority to oversee issues such as management costs, efficiencies, and unregulated affiliate issues, has been completely eliminated by the legislature. The Commission’s perceived lack of detail in TAM’s proposal is simply because the Commission is attempting to recreate authority that was removed from the Commission by the legislature. TAM’s proposal tracks the actual existing authority of the Commission, whereas the Commission’s analysis was based on a backwards-looking notion of what a rate case used to encompass.

On page 11 of the *Draft Report* the Commission states “For example, the cost model could be used to establish the cost of the network that is necessary to provide POLR service, and the amount of MUSF support that a POLR carrier receives would be equal to the difference between the modeled costs of the network and the modeled revenues generated from the services provided over that modeled network”. Forward Looking Economic Cost (“FLEC”) models are not suitable for all companies, and should only be used at the discretion of the company applying for increased support. The Commission has proposed use of embedded cost study backstops and reverse auctions as a means of ensuring that the numbers generated by the FLEC are not excessive. However, this approach seems to presume that the Commission would have no oversight or control of the inputs and appropriate cost estimates used as the basis of the FLEC model. TAM believes that the Commission is fully capable of exercising its judgment and abilities to ensure that the values that go into the FLEC model are accurate and appropriate for the State. So long as the Commission does the up-front work in developing the inputs, there would be no possibility for companies to “game the system” to cause higher than necessary results out of the model. Rather than introduce new and untested procedures for creating artificial throttling of support levels, the legislature should simply direct the Commission to utilize its expertise to create an appropriate set of inputs for a FLEC model.

On Page 12 of the *Draft Report*, the Commission states “The “presumptive” amount of MUSF support will be the difference between the modeled costs of that network and the modeled revenues of that network, subject to both a cap on the total MUSF support level allowed for the POLR carrier and the possibility that an alternative POLR carrier will successfully bid to provide POLR service in that particular wire center.” This approach represents a radical departure from current established procedures in favor of currently untested theoretical concepts that even the Commission acknowledges may have implications on State and Federal obligations that the Commission has not fully thought through. There are substantive changes in the federal approach to telecommunications industry and the programs that have served the Country so well for many years. In order to fulfill the requirement that Maine maximize the support available from the federal government, it would be prudent to wait until the support available, and no longer available, has been established before making major changes to the structures already in place in the State of Maine.

On Page 13 of the *Draft Report*, the Commission sets forth its proposal on Benchmark Rates. TAM is concerned that the Commission is once again reasserting its argument that had previously been expressly rejected by the legislature, indeed a position that Section A-25 of 2012 P.L. Ch. 623

went out of its way to direct the Commission **not** to penalize rural Maine citizens for where they live through higher rates. Aside from being inconsistent with a clearly articulated State Policy, this position argues that the legislature should engage in an act which is illegal under 47 U.S.C. § 254, which requires comparable service at comparable rates for all Americans regardless of where they live. However, TAM agrees that a benchmark rate should be established for support purposes. Companies should be free to price service below this level to respond to the competitive market where appropriate, but regardless of the price charged to customers the Benchmark Rate would be imputed when calculating MUSF support levels.

On Page 14 of the *Draft Report*, the Commission proposes using reverse auctions after a company has undergone a revenue requirement proceeding. TAM strongly opposes the use of reverse auctions if a company has undergone a full Chapter 120 rate case to establish rate design and support levels. The supposed benefit, if anyone even bid on any of the RLEC exchanges, is far outweighed by the uncertainty and potential for cherry picking that would lead to difficulty in securing loans and making capital expenditures necessary to build out services to customers. If the Commission is serious about wanting to explore whether alternate providers would be cost effective then it should require any potential bidder to undergo a rate case and then choose the bidder with the lowest overall support needs after the Commission has established an appropriate whole company rate design. Anything else is simply a gimmick that encourages competitive providers to cherry-pick exchanges that will yield the greatest windfalls by bidding exactly \$1 less than the ILEC costs.

On Page 15 of the *Draft Report* the Commission notes that “The Commission has successfully conducted auctions for standard offer electricity supply contracts ever since the deregulation of the electricity supply market in Maine.” What the Commission fails to note is that with the electricity standard offer, as a result of divestiture, Transmission & Distribution Utilities were required to sell their generation business to a non-affiliated entity. Therefore the Standard Offer is a process dealing entirely with unregulated entities that are not only non-utilities, but entities that are not even affiliated with utilities. It is quite simply not a comparable scenario. The true analogy would be if, for example, a pre-divestiture Central Maine Power was required to include all of its costs as a T&D Utility as well as its electricity generation costs in its bid for Standard Offer and other bidders would be required to build brand new transmission lines if they won the bid. The comparison the Commission is attempting to draw here is deeply flawed and misleading. The Commission has in fact never done a reverse auction for any regulated utility service. It would be

wading into uncharted waters with the proposals set forth in the *Draft Report*.

On Page 15 of the *Draft Report* the Commission acknowledges that there may be issues if an ILEC ceases to be a POLR but states “we will seek to minimize the possibility that the loss of support for that network could compromise Maine’s citizens’ ability to obtain the telecommunications services they require”. Unfortunately, the Commission does not state how they will seek to minimize the harm to citizens. TAM believes that at a bare minimum the Commission would have to take steps to ensure that any ILEC that loses POLR status in an exchange would be immediately granted relief under 47 U.S.C. § 251(f)(2) from having to provide wholesale services, and further, the Commission should structure any Order changing a POLR provider to provide a sufficient basis for the ILEC to apply to the FCC for Forbearance from all obligations as an ILEC for that exchange. The Commission would also have to require that the bidder be capable of offering POLR service completely through its own facilities.

TAM respectfully requests that the Commission incorporate these comments in the body of the final Report to the legislature in the sections referenced by each indented paragraph.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Sanborn", with a long horizontal flourish extending to the right.

Benjamin M. Sanborn, Esq.
Telecommunications Association of
Maine

The Law Office of Benjamin M. Sanborn, P.A.
P.O. Box 5347
Augusta, ME 04330
TEL: (207) 314-2609
FAX: (866) 436-6616

COMMENTS FROM THE WIRELESS AND VOIP COALITION

Submitted December 20, 2012

December 20, 2012

Inquiry Into Telecommunications
Regulatory Reform Plan

COMMENTS OF WIRELESS
AND VOIP COALITION ON
DRAFT REPORT

INTRODUCTION

The Wireless and VoiP Coalition¹ ("Coalition") appreciates the opportunity to participate fully in this proceeding and to comment on the Commission's Draft Report issued on November 28, 2012. The Coalition commends the Commission for balancing a concern for POLR service and rates with the need to ensure that the Maine Universal Service Fund ("MUSF") is reasonable in size and does not impose too large a burden on Maine consumers. The proposals of FairPoint and TAM (the incumbent local exchange carriers, or "ILECs") to use the MUSF to subsidize their entire networks would result in a funding burden on Maine consumers that is many times larger than it is today. Such expansion would impose enormous and ever-growing MUSF fees on consumers, the great majority of whom are not customers of the ILECs receiving the subsidies. Specifically, the ILECs' proposal would result in a typical Maine family of four paying \$16.25 a month just in state USF fees—more than the rate most ILEC customers pay today for POLR service – and those fees would reach at least \$22.50 in five years. For obvious reasons, this would hurt consumers and discourage the build-out of advanced telecommunications in Maine. The Commission can avoid this result by recommending to the Legislature, among other things, that it: (1) limit the MUSF to support only the cost of providing voice service in high-cost areas of the state, *i.e.* areas in which only one provider offers service; and (2) explicitly cap the size of the Fund.

The ILECs contend that in order for them to serve customers *anywhere* in Maine, they require support for their network *everywhere* they serve in Maine. But during the collaborative, the Commission learned the enormous cost of the ILECs' plan: it would increase the size of the Fund from roughly \$7 million per year today to \$180 million a year in five years. (See Draft Report at 6). Funding the ILECs' entire networks and business plans is simply infeasible. The Draft Report appropriately recognizes this fact and reasonably seeks to limit the size of the MUSF.

The fundamental framework recommended in the Draft Report for setting POLR rates and managing MUSF support is reasonable and necessary to ensure continued access to affordable voice service for all Maine residents while imposing some constraints on the growth of the MUSF. In particular, the Commission appropriately recognized that:

The Coalition consists of the following wireless and/or VoiP providers: AT&T, Sprint Nextel, T-Mobile, US Cellular and Verizon.

- MUSF support should be limited only to "the particular wire centers for which support is necessary," Draft Report at 12, as opposed to the ILECs' assertions that support is needed for all of their wire centers, including any urban or suburban areas;
- MUSF Support is predicated on end-user rate levels that are based on a benchmark of the "maximum rate that consumers should be required to pay for POLR service," Draft Report at 13, and could be de-averaged;²
- Any need for support must be demonstrated with sufficient and reviewable evidence, rather than the mere "spreadsheet" that the ILECs wanted to provide.

The Draft Report, however, leaves open the very real possibility that the MUSF would be expanded to support POLR service not just in high cost areas but even in highly competitive areas, and that it would provide ILECs with support for their competitive losses, instead of just support for their obligation to serve high-cost areas at below-cost rates. To ensure a sustainable and affordable MUSF without impinging on the policy of universal service, the Coalition urges the Commission to incorporate into the framework recommended in the Draft Report a few additional cost-containment measures. These include, most importantly: (1) limiting the scope of the MUSF to subsidizing the cost of providing voice service in high-cost areas of the state; and (2) capping the size of the Fund. There is simply no basis for charging all Maine telecommunications consumers so that ILECs can serve areas of the state where other, unsubsidized carriers already provide service. And capping the MUSF is the most effective way to manage its growth and prevent its conversion into a fund that protects ILECs from competition and consumer choice.

DISCUSSION

I. The Report proposes a reasonable, necessary framework for setting POLR rates and awarding state Universal Service Fund support.

In the course of this proceeding, the Wireless and VoIP Coalition has consistently stated its support for universal access to POLR service at affordable rates, but it has been equally clear that this principle is no basis for state subsidies of service in areas where consumers can choose from among multiple providers, or for the anti-competitive funding of ILEC networks on the backs of customers of the ILECs' competitors. The Coalition has argued that Maine should harmonize its support efforts with those of the FCC and limit the MUSF to ensuring that affordable phone service is available to those increasingly few customers who have no choice of provider within a defined geography,

² The Commission appropriately noted that "requiring the ILECs to look to their own customers-by raising rates, winning back customers, or providing additional services-is more consistent with the situation of non-regulated firms, where, if a firm loses revenues through lost market share, it does not have the opportunity of "socializing" its losses through a fund collected from the customers of its competitors." Draft Report at 13.

i.e., "white spots." Data from the FCC indicates that there are fewer than 9,000 such people in Maine, or less than 1% of the state population. Even if white spots were more liberally defined to encompass two or three times as many people, the fact remains that the base of customers who are captive to a monopoly supplier is very small. Thus an MUSF that is properly limited to white spots should be small and would shrink over time as technology and competition expand to provide competitive service offerings to those consumers who do not have them today.

The Coalition also demonstrated that using the MUSF to fund the ILECs' entire networks and revenue requirements,³ on a perfunctory showing of need, is unsustainable, unfair and prohibitively expensive. The resulting MUSF fee would start out very high and grow quickly, as more and more Maine customers choose wireless and VoiP alternatives to ILEC offerings. Consumers would soon be paying double-once for the phone service they chose, and again for the ILEC service they left. Such an approach would eliminate any incentive for the ILECs to become more efficient or to generate more revenue from their own customers. It would also increasingly burden new and advanced telecommunications services in Maine in order to support the technologies of the past. That is not a wise policy for Maine's future.

The Draft Report addresses these concerns in principle. By and large, the framework it proposes is reasonable and appropriate for setting POLR rates and managing the MUSF. In particular, the Coalition supports the Commission's proposal to require any carrier seeking MUSF support to make a rigorous showing of need through a "comprehensive, adjudicatory revenue requirements case [] conducted by the Commission...." Draft Report at 9. As the Draft Report also notes, any lesser standard or truncated procedure such as that proposed by TAM is likely to result in increases in rates and/or MUSF subsidies even though the ILEC has failed to take reasonable, prudent steps to reduce its costs or raise revenues. Increased MUSF support in such a case would be particularly objectionable, where that support is largely funded by Maine consumers who no longer purchase the ILECs' services. Likewise, the Commission's proposal to consider a rate increase/MUSF support request only on an individual wire center basis, see Draft Report at 12, is appropriately intended to restrict MUSF subsidization to "truly high cost, low [economic] profit wire centers" and minimize public financial support to where it is actually needed.⁴

The framework in the Draft Report also includes reasonable mechanisms to help balance the interests of the few customers in truly high-cost areas, who want low POLR

³ The ILECs' proposals include international and interstate telecommunications revenues and expenses, as well as jurisdictionally interstate non-telecommunications revenue and expenses, as well as unaudited and complex affiliate transactions. There is no precedent or rationale for the state of Maine- or any state for that matter – to subsidize jurisdictionally interstate costs, which is a federal responsibility. Likewise, sorting through the complexities of affiliate transactions is a time and resource intensive process.

⁴ As explained below, however, the wire center approach (even in combination with reverse auctions) is not sufficient to ensure this result, because some wire centers contain both high-cost and low-cost regions and because no carrier-ILEC or competitor-should receive a subsidy to provide service in low-cost wire centers.

rates, against the interests of all other consumers in Maine, who subsidize those rates through contributions to the MUSF. In this respect, the Draft Report includes a benchmark range for POLR rates somewhat higher than current rates in acknowledgement that it is unfair and anti-competitive to impose the full burden of an increase in ILEC support on customers of other carriers. The Draft Report also appropriately shows a willingness to set benchmark rates based on the cost characteristics of particular geographic areas, possibly resulting in modest rate de-averaging. The FCC residential rate ceiling of \$30 implies a residential rate for unlimited service of approximately \$22-\$23. The Draft Report appropriately recognizes that ILECs should be moving up to the minimum before looking for support from other carriers. In light of the enormity of the revenue support that the ILECs seek to receive from the MUSF – information that was not available to the Legislature when it passed LD 1784 – a reasonable increase in POLR rates and modest rate de-averaging should be considered minimum prerequisites to any increase in the MUSF. No one is in favor of rate increases in the abstract, but now that we have all seen the enormous size of the funding burdens required to maintain heavily subsidized POLR rates, it is apparent that ILEC customers must contribute more toward the cost of their own services.

The Coalition also supports the concept of reverse auctions in awarding MUSF support. (See Draft Report at 14.) Instead of simply basing the amount of an MUSF award on the ILECs' revenue requirements (even those proven in a rigorous proceeding), reverse auctions are in concept a better method of identifying the lowest price the state needs to pay to ensure POLR service in a given high-cost area and reward the most efficient carrier. The Coalition agrees that reverse auctions have the potential to minimize the MUSF fees that would need to be collected to support the provision of POLR service in high-cost areas (whether identified in the rate case process or otherwise). To realize this potential, however, the state reverse auction process must be coordinated and synchronized with the federal reverse auction process, as explained further below.

II. Additional measures are needed to fully ensure that the MUSF remains sustainable, affordable and efficient in supporting universal service in Maine.

While the Draft Report would establish a useful structure for setting POLR rates and includes helpful cost-containment measures, those measures alone will likely prove inadequate to prevent the rapid expansion of the MUSF somewhat along the lines envisioned by the ILECs, placing an overwhelming fee burden on Maine consumers. For example, the Draft Report notes that one issue in determining a POLR's costs, and thus the amount of MUSF funding to which it would be eligible, is whether those costs should include the physical plant costs the POLR incurs in providing non-POLR services. See Draft Report at 9. To the extent that this issue is resolved in the affirmative, the MUSF will effectively be funding the ILECs' provision of non-POLR services, which Maine customers of other providers should not have to fund.

Also, the Draft Report recommends a wire center-by-wire center approach in addressing MUSF support in order to restrict support to truly high-cost wire centers, but it apparently would also allow ILECs to seek support for all of their wire centers. This would enable precisely the "implicit cross-subsidization of costs from low cost areas to high cost areas of the POLR carrier's territory" that the Report appropriately seeks to end. *Id.* at 12. Low-cost, competitive areas should be ineligible for support, because it is both unaffordable and anticompetitive to subsidize one competitor over another. MUSF support is properly and most efficiently focused on high-cost areas served by only a single voice provider.

The Draft Report does not expressly state how lower-cost wire centers would be excluded from MUSF funding. Presumably, MUSF support would be available for every wire center in Maine, unless the ILEC declines or fails to demonstrate that its costs exceed its revenues in a wire center. The Draft Report appears to allow an ILEC to include in its revenue requirements not just losses arising from the provision of POLR service but also any losses arising from competition. Under that standard, a company such as FairPoint would likely be able to qualify for MUSF support even in highly competitive wire centers, such as in Portland, not because of higher costs of service, but because of revenue losses due to competition. Under this paradigm, the worse an ILEC competes over time, the larger the subsidy it would collect, which has the incentives completely backwards.

FairPoint would be entitled to MUSF support under the framework in the Draft Report only if no other provider underbids it in a reverse auction (possibly on an ILEC total wire center basis). The Report anticipates that the prospect of being outbid will motivate an ILEC such as FairPoint to be conservative in its funding request. *Id.* at 14. That may or may not turn out to be the case. Certainly, the ILECs have insisted in this proceeding that they are desperate for state funding, that they need a lot of it, that they will need more and more of it over time, and that they may not be able to continue to provide POLR service without full funding of their demands. And FairPoint has implied that it needs a \$14 million cash infusion immediately. Thus, FairPoint and other ILECs may believe that they have no option but to seek full funding of their perceived needs. Further, even if an ILEC trims down its funding request for fear of being underbid, the MUSF will likely end up subsidizing **some** carrier (either the ILEC or a lower bidder) to provide POLR service in areas of the state already fully served by one or more unsubsidized voice providers.

The Coalition offers the following suggestions to strengthen the cost-containment features in the Report and help ensure that the MUSF is affordable and efficient in supporting universal service in Maine:

- Limit MUSF support to high-cost areas only, excluding areas with unsubsidized competitors, since their presence empirically demonstrates unsubsidized entry is economic;

- Explicitly cap the size of the MUSF, to provide certainty and minimize regulatory gaming;
- Coordinate the structure and synchronize the timing of state support efforts with the FCC's high-cost reforms and fully exploit federal support for Maine before supplementing with MUSF grants, to minimize overlap of the two programs; and
- Provide a more flexible, contemporary definition of POLR service, so as to encourage participation in reverse auctions.

We address each of these points below.

1. Limit MUSF support to high-cost areas.

The Commission and Legislature should expressly limit MUSF support to high-cost areas, where only one provider offers voice service. This supplemental measure would ensure that precious MUSF resources are not wasted to subsidize service in areas where the existence of competition demonstrates that the private sector is able to provide voice service without any subsidy at all. For the same reason, if and when competitors make service available in a white spot, MUSF support can and should be phased out promptly. The figures submitted by the ILECs in this proceeding show that subsidizing POLR service in all or almost all of the State, without regard to the presence of competition, is prohibitively expensive in addition to being anti-competitive and unfair.

Moreover, determining support on a wire center basis will arguably skew or tilt the state reverse auction process in favor of the ILECs. To optimize the reverse auction and minimize the support awarded, the process should be designed to maximize participation. The FCC has chosen the smaller census block level to facilitate broader, unbiased participation. Using a smaller geographic measure will also allow the Commission to better target MUSF support to where it is needed -the white spots.

The Draft Report states that the Commission does not have sufficient information to assess whether the proliferation of wireless service in Maine has significantly reduced the white spaces, to fully identify the white spots, or to understand "precisely which customers in Maine do not have access at the residences to a strong wireless signal." Report at 6. But it is not necessary to define each white spot at a hyper-detailed, individual customer level to conclude that the vast majority of Maine residents enjoys a choice of multiple voice providers – be they traditional LECs, landline CATV or wireless providers – and therefore does not need a state-subsidized provider. **That** conclusion is well-supported by data on file or readily available. The FCC's wireless mobility maps (which are Addendum A to the Draft Report) are fairly granular-far more granular than a wire center analysis – and show the substantial geographic scope of wireless

coverage in Maine. As noted above, FCC data before the Commission shows that there are fewer than 9,000 such residents in the state.⁵

Nor does the Commission need to conduct an independent data analysis to identify the white spots. The FCC is in the midst of identifying all high-cost service areas across the country, including in Maine, at a granular, census block level, based on a cost model it is developing. By coordinating and synchronizing the state's high-cost support efforts with the FCC's high-cost support reforms, the Commission can take advantage of the FCC's work and complement the federal findings as it deems appropriate, rather than undertake an untested approach. Even if the Commission were to double or triple the white spots identified by the FCC, the cost of subsidizing service in those larger areas will still be far less than subsidizing service in those areas as *well as in competitive areas*, as the framework in the Draft Report would allow. In any event, limiting MUSF support to non-competitive areas (as the FCC would do) will reduce the need for subsidization over time, as wireless coverage in Maine continues to expand and reduce or eliminate the white spots.

Additionally, if the Commission or Legislature is concerned about the available data on wireless service availability, it could at least exclude MUSF support in any area where cable providers are offering service. This could be done on an interim basis until the FCC concludes the data analyses described above. Doing so would mean that some support is provided where there are wireless competitors offering services, but it would at least avoid the condition of providing MUSF support in the most highly competitive exchanges in the state.

2. Explicitly cap the size of the MUSF.

As an additional means of managing the MUSF, the Legislature should simply cap the size of the fund, expressed as a percentage of a provider's in-state revenues, as the MUSF is calculated today. Just as a benchmark rate would limit the cost burden that could be placed on high-cost customers (see Report at 13), a cap on the overall size of the Fund would limit the burden on consumers statewide who pay MUSF fees. A cap would also discipline the bids submitted in the reverse auction process, since bidders would know that there are only limited funds available to be awarded. Without a cap and reasonable geographic limits on the areas of the state eligible for support, the ILECs' revenue targets—rather than the cost of serving customers in high-cost areas—will drive the size of the MUSF, which means that the Fund and customers' MUSF fees will increase very quickly and without end, as the ILECs' business dwindles. The New York Public Service Commission recently approved a state USF which is limited to four years and is expressly capped at \$4 million per year (after an initial year at \$5 million). *See Proceeding to Examine Issues Related to a State Universal Service Fund*, New York Public Service Commission Case 09-M-0527, Order Adopting Phase II Joint

⁵ And that figure may be overstated because it may include residents who, though not served by wireless, are served by one or more LECs and a cable voice provider.

Proposal (August 17, 2012).⁶ Adopting a cap up front provides predictability, transparency, and rationality to the process.

3. Coordinate state support efforts with the FCC's high-cost reforms to fully exploit federal support for Maine before supplementing with MUSF grants.

Maine can use its limited MUSF resources most efficiently by harmonizing and leveraging its efforts with those of the FCC in promoting the ongoing transition by consumers to IP-based networks. Maine has a strong tradition of maximizing federal support, and it makes sense to continue that tradition by coordinating state support in a complementary, productive manner. As noted above, for example, MUSF support should be limited to areas where there is only one voice provider, and those white spots should be adjusted over time as the FCC refines its data and analyses. In addition, the Commission needs to know how much federal support an ILEC will receive from the federal programs, both new and old, in order to determine in its proposed adjudicatory proceedings the combined amount of rate increases and MUSF funding necessary in a given white spot or wire center.

Further, the Commission should structure the state auction process to be compatible with the federal auction process and be incremental or supplemental to it. Failure to do so could lead to needless duplication and waste, such as if the federal and state auctions select two different carriers for the same area. Likewise, conducting state auctions on a geographic basis (wire centers) different than the geographic basis of the federal auctions (census blocks with only one voice provider) virtually ensures an unduly complex and inefficient support system in Maine.

Thus, to take full advantage of the federal programs, the Commission should refrain from awarding long-term increases in any ILECs' MUSF funding before the FCC implements its transition plan. Any MUSF award in the interim (upon a proper showing by an ILEC) should be conditioned on future reductions based on federal developments.

4. Provide a more flexible, contemporary definition of POLR, so as to encourage participation in reverse auctions.

Modifying the statutory POLR requirements would make it more likely that a broader range and number of providers would be interested in participating in the proposed reverse auctions or selection process, likely resulting in lower winning bids, and possibly resulting in additional investment and competition from alternative providers. To the extent that current POLR requirements are designed to match the service and regulatory characteristics of ILEC services, it is less likely that other carriers

⁶ TAM suggests that the New York example is not relevant because New York City and Portland are not comparable. This argument is a red herring. The carriers receiving support in New York are the smaller carrier members of the New York State Telephone Association. These are about 30 carriers in up-state, rural New York, almost all of which serve fewer than 10,000 lines. Portland may not look like New York City, but the populated rural areas of New York state are similar to the populated rural areas of Maine.

could or would want to qualify for POLR status. For example, requiring a directory listing is generally inconsistent with wireless service. To encourage wireless and/or VoiP carriers to become POLR providers and to invest more in the State, the Commission should recommend to the Legislature a more contemporary POLR definition and set of requirements that do not necessarily require regulation or a specific historically rooted rate plan. This would go a long way toward making the POLR designation more desirable for non-ILECs, and thus reducing the cost of the program to Maine consumers.

CONCLUSION

The Coalition commends the Commission for its thoughtful consideration of all of the views expressed in the collaborative process, and in particular for its effort to balance the interests of *all* Maine consumers in its well-developed Draft Report. We hope the Commission and Legislature will consider our suggestions to augment the framework recommended in the Draft Report.

Respectfully submitted,

WIRELESS AND Vo/P COALITION

COMMENTS FROM TIME WARNER CABLE

Submitted December 20, 2012

December 20, 2012

Inquiry Into Telecommunications
Regulatory Reform Plan

COMMENTS OF TIME
WARNER CABLE INC.

Time Warner Cable Inc. (“TWC”) submits the following comments on the draft report to the Legislature that was filed in this proceeding on November 28, 2012 (“Report”).

Executive Summary

TWC’s comments on the Report focus on the following three points. First, TWC agrees with the Commission’s plan to conduct a comprehensive, adjudicatory revenue requirements proceeding to establish just and reasonable POLR service rates and MUSF support levels. Such a proceeding is the best means to ensure a thorough assessment of the POLR’s request for MUSF support. This approach is consistent with TWC’s concern that distributing large amounts of support to ILECs based merely on speculative assertions of need would be harmful and inappropriate, particularly when federal universal service reforms are still being implemented.

Second, TWC concurs with the Commission’s recommendation that a “maximum rate that consumers should be required to pay for POLR service” in order to protect consumers from being charged excessive prices for basic telephone service. However, TWC also believes that the Commission (or Legislature) should establish a *minimum* benchmark rate, to ensure that POLR providers receive funding only to the extent necessary to supplement a reasonable contribution from the POLR’s subscribers.

Finally, TWC strongly supports the Commission's recommendation that the Legislature authorize the use of a reverse auction process to assist in the setting of MUSF support to POLRs. TWC also urges the Legislature to permit the Commission to develop the appropriate geographic parameters for the reverse auction process so that POLR subsidies may be as targeted as possible and minimize potential adverse impacts on consumers and competitors.

General Comments

TWC commends the Commission for its thorough account of stakeholders' efforts to create a framework for establishing rates for provider of last resort service, including methodology, appropriate cost considerations and standards for the availability and amount of Maine Universal Service Fund (MUSF) support for the Provider of Last Resort (POLR) service.¹ The Commission's Report does an excellent job of distilling the complex (and sometimes arcane) issues surrounding universal service and provides a balanced and measured approach to addressing them.

Although a consensus of the stakeholders was not reached, the stakeholder meetings enabled all participants to achieve a better understanding of the issues involved and the potential frameworks for their resolution. The Report accurately describes the various policy perspectives and positions of the stakeholders, highlights their key areas of disagreement and provides the Legislature with reasonable and balanced recommendations to determine the proper role for universal service funding in a competitive marketplace.

¹ "Provider of last resort" service is defined by 35-A M.S.R.A. § 7201(7) as the minimum level of basic local exchange service that all Maine consumers are entitled to purchase at just and reasonable, regulated rates.

The Report is correct that the areas of greatest disagreement among the parties are whether, and to what extent, MUSF support should be provided in areas where there exist competitive alternatives to POLR service, and also whether or not MUSF support should be limited to areas in which the cost of providing POLR service is relatively high. As TWC has pointed out in prior comments in this proceeding, the extension of subsidies to ILECs and other potential providers of POLR service in areas served by unsubsidized competitors is likely to introduce competitive distortions into the marketplace for voice services, thereby undermining both the competition sought by the Legislature and the Maine fund's goal of promoting the accessibility of voice services in Maine.² Rather than being provided throughout an ILEC's service area, TWC believes that MUSF subsidies should be focused on enabling the provision of affordable POLR service in targeted areas where there exist no competitive alternatives to POLR service and where there is a demonstrated need for funding. Giving USF subsidies to carriers in competitive exchanges will force competitive providers—including VoIP-based providers such as TWC—to impose increased charges on their customers in order to subsidize their ILEC competitors. Such a result is good neither for Maine consumers nor competition in general.

TWC agrees with the Commission's conclusion that the best way to set POLR rates is to allow a carrier to petition for a POLR rate increase supported by whatever evidence it believes will best demonstrate the amount of revenues it needs in order to provide POLR service. In its filing, the POLR can advocate the methodology that it

² See Comments of Time Warner Cable, Docket No. 2011-00224, at 10 (filed Nov. 1, 2012); see also Joint Comments of the Cable VoIP Providers, Docket No. 2011-00224, at 4 (filed Nov. 15, 2011).

believes is best suited to its request. And because the request would be evaluated in an adjudicatory proceeding, the Commission and parties would have the opportunity to analyze and test the methodology selected by the POLR and to propose modifications and alternative methodologies for consideration. Such an evidence-based proceeding will maximize the likelihood that the Commission's decision will be based on demonstrated facts and sound policy, thereby ensuring that the consumer payments that fund the MUSF are justified and not premised on mere speculation or incorrect assumptions.

TWC also supports the Commission's recommendation that, prior to authorizing additional MUSF support to a POLR, a benchmark rate be set. Establishing a maximum rate that consumers pay for POLR service would protect consumers against paying inordinately high rates for basic service. However, TWC urges the Commission to consider also setting a minimum benchmark rate that would trigger funding eligibility, in order to avoid excessive support.

Finally, TWC supports the Commission's request that the Legislature expressly authorize it to conduct reverse auctions as a means to ensure that funding is competitively neutral and that a POLR's MUSF support is set at a level that is not unduly high, which would potentially result in excessive earnings for the POLR and burdensome fees for Maine consumers. Reverse auctions employ market forces to determine efficient levels of support in a competitively and technologically neutral manner.

Comments on Specific Commission Recommendations

- 1) ***The Commission should be required to conduct an adjudicatory revenue requirements case prior to approving a request for a POLR service rate increase or MUSF support.***

The Report states the Commission's support for a procedural process that would require a POLR seeking MUSF support to identify the particular wire centers for which it contends support is necessary and submit a forward-looking cost model to establish the costs of building a modern network in that wire center that is capable of providing POLR service.³ Under this approach, the presumptive amount of MUSF support would be the difference between the modeled costs of that network and the modeled revenues of that network, subject to both a cap on the total MUSF support level allowed for the POLR carrier and the possibility that an alternative POLR carrier will successfully bid to provide POLR service in that particular wire center.⁴ The MUSF support cap for a particular POLR carrier would be the difference between the total embedded costs of its existing "state-wide" network and the total revenues generated by that existing "state-wide" network.⁵

TWC supports this approach. To implement it, a comprehensive, adjudicatory revenue requirements proceeding would be conducted to establish just and reasonable POLR service rates and MUSF support levels. Such a proceeding would ensure a thorough assessment of the POLR's request for MUSF support, including a determination of what non-telecommunications services are capable of generating revenue based on the use of common plant, allowing a rigorous examination that is

³ Report, p. 12.

⁴ *Id.*

⁵ *Id.*

possible only in an evidentiary proceeding. As the Report notes, it has been eight years since the Commission's last comprehensive examination of ILEC rates, and MUSF disbursements have not changed since then.⁶ Requiring a comprehensive examination of the POLR's proposal is the best way to minimize the risk of the POLR's increased MUSF support resulting in excessive earnings and/or adverse impacts on competitors and consumers. This approach is consistent with TWC's earlier comments expressing concerns that distributing large amounts of support to ILECs based merely on speculative assertions of need would be harmful and inappropriate at any time, but particularly when federal universal service reforms are still being implemented.

Because there has not been sufficient opportunity to evaluate the CostQuest cost model proposed by FairPoint, TWC is not prepared to opine on its merits and/or faults. However, to the extent it or another cost model is proposed by a POLR, TWC believes it should have the opportunity to fully examine the model and target runs of specific geographic areas, consistent with its belief that POLR subsidies should be provided only in geographic areas not served by unsubsidized competitors.

For these reasons, TWC agrees that the Legislature should direct the Commission to conduct an adjudicatory revenue requirements case prior to approving a request for a POLR service rate increase or MUSF support. TWC believes that the Commission is in the best position to undertake a comprehensive review of the complex universal service issues and to implement decisions that appropriately balance the need for universal service with the benefits of a competitive market.

⁶ *Id.* at 9.

2) A benchmark POLR service rate needs to be established prior to authorizing any MUSF support.

The Report recommends the establishment of a benchmark rate to serve as the “maximum rate that consumers should be required to pay for POLR service.”⁷ TWC appreciates the Commission’s concern that consumers not be required to pay excessive prices for basic telephone service, and to that end, TWC does not necessarily object to setting a maximum rate prior to authorizing any MUSF support. However, TWC encourages the Commission to consider also setting a *minimum* benchmark rate, to ensure that POLR providers receive funding only to the extent necessary to supplement a reasonable contribution from subscribers. The FCC has taken such an approach in its recent reforms of the federal universal service system.⁸ A minimum benchmark rate would avoid awarding unwarranted subsidies to POLR providers that charge below-market rates. In either case, it likely would be sensible—and consistent with providing targeted MUSF and relying on reverse auctions—for the benchmarks to be set according to the particular cost characteristics of discrete areas within a carrier’s service territory, as the Report recognizes.

TWC believes that the task of setting the POLR service minimum and maximum benchmark rates should be delegated to the Commission, as it is in the best position to obtain the data necessary to make an informed judgment and to understand the impact(s) of setting POLR benchmark rates at levels that are either too high or too low.

⁷ *Id.* at 13.

⁸ See, e.g., *Connect America Fund*, Report and Order, 26 FCC Rcd 17663 ¶ 168 (2011).

3) *The Legislature should authorize a reverse auction process to assist in setting the level of MUSF support to be disbursed to a POLR service provider.*

TWC appreciates the Commission's recognition of the advantages that reverse auctions bring to the administration of the MUSF.⁹ In this proceeding and before the FCC, TWC has consistently supported reverse auctions as the most efficient and competitively neutral means of distributing MUSF support. By awarding support to the lowest bidder in a particular geographic area and subsidizing only one provider in each service area, reverse auctions would avoid the waste that has characterized universal service support in the past. The Report recognizes that reverse auctions potentially minimize the amount of money that would need to be collected from all users of telecommunications.¹⁰ This is because, under a reverse auction approach, an ILEC has an incentive to be fiscally conservative in its request for MUSF subsidies: If its request is artificially or unreasonably inflated, it will be more likely that a competitor would win the auction with a lower bid.¹¹ Competition for MUSF funding would encourage the offering of POLR service by potentially lower-cost carriers, thereby reducing the overall size of the MUSF fund.¹² Thus, by providing no more support than is necessary for a given build-out project, reverse auctions help to ensure fiscal integrity.

TWC understands that the use of reverse auctions might require the provision of more granular deployment data from other providers. TWC consistently has cooperated with state regulatory authorities to provide deployment information, and it also has provided such information to the FCC on a confidential basis with the specific goal of

⁹ Report, p. 13.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 14.

¹² *Id.*

assisting it to identify unserved areas. TWC would do likewise in future proceedings in order to assist the Commission and the Legislature to determine whether and where state universal service should be made available pursuant to a reverse auction mechanism.

TWC concurs with the Report's recommendation that the Legislature should authorize a reverse auction process to assist in the setting of MUSF support to POLRs. TWC urges the Legislature to permit the Commission to develop the appropriate geographic parameters for the reverse auction process so that POLR support may be as targeted as possible.

Conclusion

As it has stated throughout the stakeholder proceedings, TWC supports universal service for designated POLRs as long as 1) MUSF support is targeted to areas served by unsubsidized competitors and is based on an empirical showing that such support is truly necessary to maintain universal service, 2) other providers have an opportunity to obtain such support, and 3) the overall funding demands do not unduly burden Maine consumers. TWC urges the Legislature to adopt the Commission's recommendations because they appropriately balance the need for a comprehensive review of a POLR's request for MUSF subsidies with the concerns of consumers and competitors. The Commission's recommendations would, if adopted, allow TWC to fully examine and test a POLR's assertions and advocate outcomes that TWC believes are consistent with a balanced and competitively neutral policy framework. Finally, TWC urges the Commission to include in its recommendations the setting of a *minimum* benchmark rate that would trigger a POLR's eligibility for MUSF subsidies. This would ensure that

the POLR receives a minimum level of contribution from its own subscribers prior to seeking additional MUSF subsidies.

Respectfully submitted,

Julie P. Laine
Group Vice President &
Chief Counsel, Regulatory
TIME WARNER CABLE INC.
60 Columbus Circle
New York, NY 10023
Julie.Laine@twcable.com

/s/ Robin A. Casey
Robin A. Casey
Enoch Keever, PLLC
P. O. Box 97
Harpwell, ME 04079
(512) 970-7900 (Direct)
rcasey@enochkeever.com

December 20, 2012

COMMENTS FROM CRITICAL ALERT SYSTEMS

Submitted October 26, 2012

STATE Of MAINE

DOCKET# 2011-224

PUBLIC UTILITIES COMMISSION

INQUIRY INTO TELECOMMUNICATIONS

REGULATORY REFORM PLAN

October 25, 2012

Comments of Critical Alert Systems regarding Docket# 2011-224 in advance of the Maine Public Utilities Commission's November 7, 2012 Draft Report and Recommendations.

Introduction

Critical Alert Systems (CAS), through the business name Northeast Paging, provides paging service in Maine. In the 1980s and 1990s, before the ubiquity of wireless phone offerings in Maine, CAS served approximately 45,000 Maine customers. Today, it serves 18,000 Maine customers, a 60% reduction in customer base (nationally the number of paging customers has shrunk from 50 million in 1998 to roughly 3 million today). CAS has responded to customer loss resulting from the wireless telephone industry's entrance into, and expansion *in*, the Maine marketplace, not by seeking subsidy from others, but by evolving and refining its business model. CAS has established its product as the most dependable communications system in the market (the only fully functioning system during the 1998 Ice Storm) and thus has maintained market share in the "critical alert" market.

CAS's customer base is very targeted and its customers' need for reliable emergency management service is critical. CAS serves almost every Maine hospital, most Maine doctors, utilities and municipalities in their emergency communications needs. CAS is a very small but essential player in Maine's communications needs and the very last paging company providing service in Maine. CAS is the radio paging "provider of last resort" to hospitals, doctors, and the emergency management sector in all of Maine. CAS is not a traditional telecommunications provider and it does not have the financial wherewithal to subsidize traditional telecommunications companies throughout the State of Maine. Accordingly, we urge the Maine Public Utilities Commission to recommend removing radio paging services from any existing or expanded obligations to contribute into the Maine Universal Service Fund.

- I. The Customers of Radio Paging Services in Maine Should Not Be Required To Subsidize Telephone Service Providers in Maine.

The language of 35-A M.R.S.A. § 7104 (3) used to require that "providers of intrastate telecommunications services" contribute to the MUSF and specifically included "mobile telecommunications services" and "radio paging services." Although the inclusion of radio paging services may have had a logical basis in the 1990s when this provision of law was enacted, it no longer does. At that time in the 1990's, both wireless and paging were part of the technological vanguard and it was uncertain then what the future of communications would hold. As such, it must have seemed appropriate to lawmakers at that time to include both paging and wireless in the MUSF. As the industry has dramatically evolved in the 15 years since, the wireless industry and the cable industry have emerged as significant players within the telecommunications world, and radio paging service providers have correspondingly diminished. Accordingly, § 7104(3) now speaks in terms of "voice service providers" which is a term that captures all phone services in Maine. While it may have made sense to include paging services in the MUSF in the 1990s, it makes no sense to include them in the 2010s.

Moreover, the customers of radio paging services—hospitals, doctors, municipalities, utilities—are also customers of telephone services. Radio paging service is not a competitive alternative to telephone service—it is an additional service utilized by a finite critical services segment of the market only. As such, these customers are already paying into the MUSF, perhaps through both a landline or digital phone bill and a mobile phone bill. By including customers of radio paging services, these customers—primarily hospitals, are paying multiple times into the fund. This doubling or tripling of costs serves no rational purpose and unnecessarily adds costs on hospitals, municipalities and other emergency management providers. Public policy militates towards lowering health care and governmental costs wherever prudent. Including radio paging service in the MUSF raises those costs.

Finally, it should be noted that CAS, due to its relatively small size, is not obligated to pay into the Federal Universal Service Fund. Similarly, CAS should not be obligated to pay into the MUSF.

11. Radio Paging Services Are Not Telephone Services

Radio paging service is best understood in today's market place not as a telecommunications service or as a voice service but as a radio paging service. "Radio paging service" is a service provided by a communication common carrier engaged in rendering signaling communication." 35-A M.R.S.A. § 102 (15). A "radio common carrier" means "an entity that provides communications services primarily by use of radio...." (14). A mobile telecommunications service by contrast is a "telecommunications service licensed by the Federal Communications Commission for mobile use." Radio paging services are not licensed as "telecommunications services" by the FCC but as "radio paging services."

CAS understands the goal of the POLR requirements in Maine statute is to assure that telephone service is reasonably accessible to telephone customers in Maine and that the MUSF may be used to keep the rates of rural telephone customers reasonably approximate to the rates of more urban telephone customers. The general argument of the incumbent local exchange carriers seems to be that competition in the telephone market is resulting in customer loss for them which has a correspondingly upward pressure on their cost of service per telephone customer. Presumably, as competition

continues to increase, more customers will be lost, costs per customer will continue to climb, and thus more subsidy will be required. These ILECs argue for more funding to subsidize their increasingly uncompetitive telephone offerings. Even assuming that this argument has merit in a competitive marketplace—an assumption we do not make—the argument does not justify having radio paging customers subsidize telephone companies. If such a fund continues to have a purpose in the 21st century, its contributors ought to be limited to the dominant players creating the competitive pressures in the telephone marketplace—land line providers, cable telephone providers, and mobile telephone providers.

III. Specific Legislative Amendment Requested

Accordingly, we respectfully request that the MPUC include in its recommendations to the Maine Legislature the following change to Maine statute. CAS proposes that 35-A M.R.S.A. §7104(3) be amended with proposed deleted language marked with strikethroughs:

35-A M.R.S.A. §7104(3). Authority. The commission shall adopt rules to implement this section and may require voice network service providers to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56. Prior to requiring that voice network service providers ~~and radio paging service~~ contribute to a state universal service fund, the commission shall assess the telecommunications needs of the State's consumers and establish the level of support required to meet those needs. If the commission establishes a state universal service fund pursuant to this section, the commission shall contract with an appropriate independent fiscal agent that is not a state entity to serve as administrator of the state universal service fund. Funds contributed to a state universal service fund are not state funds. Rules and any state universal service fund requirements established by the commission pursuant to this section must:

A. Be reasonably designed to maximize federal assistance available to the State for universal service purposes; [1997, c. 692, §1 (NEW) .]

B. Meet the State's obligations under the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56; [2011, c. 623, Pt. 8, §14 (AMD).]

C. Be consistent with the goals of the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56; [2011, c. 623, Pt. 8, §14 (AMD).]

D. Ensure that any requirements regarding contributions to a state universal service fund be nondiscriminatory and competitively neutral; and [2011, c. 623, Pt. 8, §14 (AMD).]

E. [2011, c. 623, Pt. 8, §14 (RP).]

F. [2011, c. 623, Pt. 8, §14 (RP).]

G. Require, if a voice network service provider recovers its contributions under this section by means of a charge placed on a bill issued to a customer, explicit identification on that bill of any charge imposed under this section. [2011,c. 623, Pt. 8" §14 (NEW).]

For purposes of this section, "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. Rules adopted under this subsection are routine technical rules as defined in Title 5,chapter 375,subchapter 2-A.

Conclusion

It appears that many land line telecommunications carriers are experiencing the same sort of competitive pressure that the radio paging services industry has experienced but are responding to it not by innovating so as to compete but by seeking broader subsidy so as to make up for its competitive losses. Given our challenges with competition, and our hard earned repositioning in a competitive landscape, it is unconscionable to us that our customers are being asked to subsidize these companies. This appears to be a question more properly addressed to the pool of 21st century providers of phone service-land line phone companies, wireless phone companies, and internet based phone companies. Retail paging services are not growing in the general populace and do not pose competitive threats to the incumbent phone providers. Simply put, this is not, and should not be, our fight and we cannot afford it. We respectfully request that the MPUC recommend that radio paging services no longer be obligated to contribute to the Maine Universal Service Fund.

Date: October 25, 2012

Respectfully Submitted,

Edward McNaught, Jr.
President and COO
Critical Alert Systems

COMMENTS FROM PUBLIC ADVOCATE'S OFFICE

Submitted December 20, 2012

**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

MAINE PUBLIC UTILITIES COMMISSION)
)
Re: Inquiry Into Telecommunications)
Regulatory Reform Plan)
)
Docket No. 2011-00224)

**COMMENTS OF THE PUBLIC
ADVOCATE REGARDING DRAFT
REPORT OF THE COMMISSION**

December 20, 2011

INTRODUCTION

The Public Advocate appreciates the Commission's Draft Report. It contains a fair and reasonable set of recommendations for determining future Provider of Last Resort (POLR) rates and potential levels of support from an expanded Maine Universal Service Fund. The Public Advocate agrees with the Report's procedural recommendations that suggest that the important issues concerning POLR rates cannot be adequately resolved without the sort of evidentiary record that the Commission is best equipped to produce. The Public Advocate also agrees with the overriding principle that financial support should be limited to the minimum amount necessary to ensure adequate service from POLR providers. In order to ensure that goal, the Commission has identified two mechanisms: rate proceedings for POLRs that seek to prove that they need additional revenues for POLR service, and reverse auctions to test the market for alternative POLRs that might provide service more efficiently than an existing POLR. Given that the Public Advocate agrees with both the principles and the methodological steps to proceed as recommended in the Commission's Draft Report, these comments will focus only on a few suggested additions.

Public Advocate's Preliminary Response to Forward-Looking Cost Model

A preliminary review of the FairPoint forward-looking model reveals that FairPoint restricted its analysis to the regulated services, used a nine percent return on capital and developed exchange revenues based on allocations of study-area average revenue. At this time, the Public Advocate has not had an opportunity to review the model inputs to determine whether those inputs are reasonable or whether the model algorithms are reasonable.

A review of model outputs reveals expected results. These results show that a small number of urban exchanges are generating positive earnings, and that a large number of rural exchanges are generating negative earnings. In addition, forward-looking investment requirements for switching and transmission services are substantially below historical levels, and forward-looking loop investments are slightly greater than historical loop investment levels. It appears that FairPoint would seek support for the exchanges earning negative returns without offsetting that support with revenues from the exchanges that are earning positive returns. The Public Advocate objects to that position because it would increase the size of the MUSF unnecessarily.

The Legislature Should Consider Authorizing the Commission to Require the Sale of POLR Assets at Book Value, as an Alternative or in Conjunction with, to Reverse Auctions

In the event that a POLR provider seeks to demonstrate that it cannot adequately provide POLR service, with existing revenues, the Commission's Draft Report recommends that the Commission conduct traditional rate proceedings and then, for each POLR provider, fund any revenue shortfall with a rate increase up to a benchmark rate, and then fill the balance of the revenue deficiency, if any, with support from the Maine Universal Service Fund (MUSF). The Draft Report then recommends that, for each exchange, the amount of MUSF

support required be treated as a bid price against which other entities might compete in a reverse auction. The Public Advocate agrees with the principle and the goal embodied by this recommendation. However, we have concern that other carriers may not have the physical and technological capability needed to provide a substitute POLR service. For example, in most rural areas, there are households that cannot receive adequate wireless coverage. In almost every rural area, cable networks do not reach many homes and businesses. Similarly, non-cable VOIP carriers cannot reach customers who lack a broadband connection; and, in this regard, it is estimated that approximately 10% of Maine households cannot obtain DSL or cable modem service and many others choose not to subscribe. Another substantial problem is that, based on current practices, wireless and VOIP carriers do not provide POLR service as defined in Chapter 623 because those providers do not provide telephone service that has “the capacity to maintain uninterrupted voice service during a power failure.” The bottom line is that the reverse auction process would be a futile exercise if there were no qualified bidders.

Therefore, the Public Advocate recommends that the Commission’s final report include a recommendation that, in addition to receiving authority to hold reverse auctions, the Commission be granted the authority, if necessary, to require an auction of POLR wire-center assets so that there can be a much larger universe of potential bidders that could offer POLR service. The sale of POLR wire center assets at book value would enable any qualified entity to provide POLR service using the traditional copper-loop and circuit-switched network that already exists in every exchange. Then, potential bidders seeking to become substitute POLRs would include other carriers, including the existing rural telephone companies, competitive local exchange providers, wireless carriers, VOIP carriers, Internet service providers, and other entities that the Commission finds to be financially and technically

capable of providing POLR service. If a substitute POLR provider were to purchase the incumbent provider's network in a given high-cost area with a lower revenue requirement than demanded by the existing POLR provider, consumers would benefit from the continued use of the most reliable of all communication networks (traditional landline service), and the contributors to the MUSF will benefit from funding a POLR provider that is more efficient than the incumbent POLR provider.

As an alternative to sale of POLR wire center assets at book value, the Commission should consider the long-term lease of those same assets as a way to enable a wider array of potential substitute POLR providers to enter a market with a lower up-front cost than would be required by the outright purchase of those assets at book value.

If the Commission's final Report does not adopt this recommendation, then we hope that the Report will provide some explanation of the feasibility of reverse auctions. In particular, we suggest that the Report identify potential bidders and describe the means by which such bidders could serve all customers within a given area under existing POLR requirements. The prospect of a reverse auction will have an increased chance of attracting bidders if the auction were to allow bidders to seek to serve one or more individual exchanges rather than the entire ILEC territory. The Public Advocate suggests that auctioning an exchange or a group of exchanges should apply to FairPoint because FairPoint's exchanges are economically diverse (some very rural and some urban) and because of FairPoint's size. At this point, the Public Advocate does not recommend that the other POLRs be subject to bids on their individual exchanges.

Finally, the Public Advocate is concerned about the feasibility of reverse auctions. We are aware of no precedent whereby an already-served local exchange has been subject to a reverse auction process. A reverse auction is likely to be fraught with complexities and issues that cannot be fully understood at this time. Nevertheless, the Public Advocate agrees with the Commission that reverse auctions are a potentially useful tool to ensure efficiency, especially where public dollars are sought to subsidize incumbent providers.

Any Substitute POLR Must Be Eligible to Be Designated as an ETC

It is important that any new POLR provider meet the requirements for designation as an Eligible Telecommunications Carrier (ETC), as defined in federal law. A POLR provider using the traditional network is likely to so qualify. As long as the POLR provider is an ETC, that provider will be eligible to receive substantial funding from the federal Universal Service Fund, which will be providing additional funding through the Connect America Fund (CAF) to support broadband service in unserved and underserved areas. If the Commission were to approve a substitute POLR that cannot be designated by the Commission as an ETC, the State would stand to lose millions of dollars in CAF II support for broadband build-out from the federal Universal Service Fund.

A Substitute POLR Should Be Subject to Specific Conditions

In the event of a reverse auction, the Commission should be charged with considering more than just the bid price. Any substitute POLR should commit to complying with federal ETC requirements, it should commit to maximizing federal CAF II support for broadband, and it should commit to active participation in Lifeline and to other public service performance standards that the Commission deems appropriate under the circumstances.

Respectfully submitted,

A handwritten signature in black ink that reads "Wayne Jortner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Wayne R. Jortner
Senior Counsel

A handwritten signature in black ink that reads "William C. Black". The signature is cursive and somewhat stylized, with a prominent initial "W".

William C. Black
Deputy Public Advocate