

65 - INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 288 – Maine Universal Service Fund

SUMMARY – The purpose of this Rule is to provide “high cost” support for those local exchange telephone companies that are not able to maintain affordable and reasonably comparable local service rates without that support. The Rule assesses the intrastate retail service revenues of all telecommunications providers.

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§ 1 PURPOSE

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

A. Promotion and Encouragement of Universal Service and Reasonable Rates. To ensure that similar telecommunications services are available to consumers throughout the State at affordable rates that are reasonably comparable to those for low cost and average cost areas; and

B. Provide Support. To provide support from the Fund to local exchange carriers (LECs) that provide local exchange service in areas served by rural incumbent local exchange carriers and that are unable otherwise to meet their allowed intrastate revenue requirement from retail local exchange, other telephone services, and access revenues.

§ 2 DEFINITIONS

A. Access Charges. “Access charges” and “access rates” are those charges and rates, required by Chapter 280, that an interexchange carrier must pay to Local Exchange Carriers (LECs) for using the LECs’ facilities to originate and terminate intrastate interexchange service in Maine.

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

C. Competitive Local Exchange Carrier (CLEC). A “competitive local exchange carrier” or “CLEC” is any local exchange carrier (LEC) that is not an incumbent local exchange carrier (ILEC) (defined herein).

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

E. Incumbent Local Exchange Carrier (ILEC). “Incumbent local exchange carrier” or “ILEC” means a local exchange carrier or its successor that provided local exchange service in a defined service territory in Maine on February 8, 1996 or that is designated as an ILEC pursuant to 47 U.S.C. § 251(h)(2).

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

G. Intrastate Retail Revenue. Retail revenue is revenue that a carrier bills for intrastate telecommunications services sold to end-user customers for use by those

customers, less the carrier's factor for uncollectibles. Intrastate retail revenue does not include revenue received from sales of services to other carriers for resale by those carriers; revenue from access services sold to other carriers; interconnection revenue received from other carriers, including from the sale of unbundled network elements; and revenue derived from surcharges for the MUSF, MTEAF, 911 and similar funding requirements.

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

I. Local Exchange Carrier (LEC). A "local exchange carrier" or "LEC" is a telephone utility, as defined by 35-A M.R.S.A. § 102(19), that provides telephone exchange service or interexchange access service within a telephone exchange pursuant to authority granted by the Maine Legislature or by this Commission. LECs include incumbent local exchange carriers (ILECS) and competitive local exchange carriers (CLECs) (both defined herein).

J. Mobile Telecommunications Carrier. A "mobile telecommunications carrier" is a carrier that provides mobile telecommunications services, as defined in 35-A M.R.S.A. § 102(9-A).

K. Radio Paging Service Provider. A "radio paging service provider" is a carrier that provides a radio paging service, as defined in 35-A M.R.S.A. § 102(15).

L. Rural Local Exchange Carrier (Rural LEC) or Rural Telephone Company. A "rural local exchange carrier" or "rural telephone company" is defined in 47 U.S.C. § 153(37).

M. Verizon. "Verizon" means Verizon New England, Inc. d/b/a Verizon Maine or its corporate successors.

§ 3 RECIPIENTS AND AMOUNTS

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

1. A rural local exchange carrier or a competitive local exchange carrier that provides service in an area served by a rural local exchange carrier; and
2. Found by the Commission to be an Eligible Telecommunications Carrier.

B. Application for Universal Service Funding.

1. Filing; timing. A rural local exchange carrier that intends to request universal service funding or a change in the amount of funding shall file an application requesting the funding or change in funding.

2. Timing. If the rural local exchange carrier is required by section 3(C)(1) to participate in a rate proceeding prior to initial funding or it decides on its own to file a rate case, the application shall be filed at the same time as the rate case. If the Commission opens a rate investigation, the carrier shall file an application at the time it makes its rate case filing pursuant to Chapter 120 of these Rules. For all other requests, the applicant shall file the application no later than three months prior to the proposed effective date of the funding or change in funding.

3. Contents. The application or rate filing shall contain:

a. The rural LEC's intrastate access billing units for each access rate element from the most recently available 12-month period (which shall be identified), its existing intrastate access rates for each access rate element and the level of the Company's access revenues using those rates and access billing units. With the approval of the Director of Finance, a rural LEC may use reasonable estimates of billing units for specified rate elements;

b. If, pursuant to the requirements of 35-A M.R.S.A. § 7101-B and Chapter 280, § 8 of these Rules, the rural LEC will be changing its intrastate access rates on or prior to the date of the requested initial or revised funding, a recalculation of the Company's access revenues using the same billing units and access rate elements used in the calculation described in sub-paragraph a and the revised access rates, which shall be no greater than the rates permitted by 35-A M.R.S.A. § 7101-B and Chapter 280, § 8 of these Rules;

c. Work papers showing the steps of each calculation in sub-paragraphs a and b and a statement of any assumptions used in the calculations;

d. The difference between the calculations in sub-paragraphs (a) and (b).

e. A proposed plan for implementing local exchange service rates that comply with the requirements of section 3(C)(3) and (4), including any phase-in of rates that may be permitted by section 3(D).

C. Determination of Need for Incumbent Rural LECs. Prior to the initial receipt of support from the Fund by an incumbent rural local exchange carrier:

1. The Commission must determine, in a rate proceeding completed no earlier than six months prior to the adoption of this Chapter, the rural LEC's revenue requirement for revenues and costs that are subject to the ratemaking authority of the

Commission, and must find that the carrier will be unable to meet that revenue requirement after it has met the requirements of paragraphs 2, 3 and 4 below;

2. The rural LEC must establish intrastate access rates that meet the requirements of 35-A M.R.S.A. § 7101-B and Chapter 280, § 8 of the Commission's Rules. The Commission, on or after June 1, 2003, may require a rural LEC to establish intrastate access rates at a level specified by the Commission prior to any date, after June 1, 2003, that is established by statute for the implementation of intrastate access rates that are less than or equal to specified interstate access rates, provided that such a requirement is not precluded by the statute; and

3. Subject to the exceptions contained in Section 3(D), the rural LEC must establish local basic service rates that are no less than those of Verizon exchanges that have Basic Service Calling Areas of a similar size; and

4. Unless the Commission orders otherwise for good cause, the rural LEC must establish rates for optional calling features and other services that provide the greatest possible contribution to its revenue requirement.

D. Exceptions.

1. The Commission may allow deviations from Verizon local exchange rates in individual exchanges if it is desirable to establish or preserve a rate design for a rural LEC, including disparities within and among exchanges that are a result of the operation of Chapter 204 (Basic Service Calling Areas), provided that, on an overall basis, the carrier's rates are no less than those of Verizon.

2. The Commission may determine, for a particular carrier or exchange, that immediately raising the basic exchange rates to those of Verizon is not in the public interest and that the carrier may temporarily establish local rates at a lower level. However, no more than 3 years after the initial determination to provide high cost support to a local exchange carrier is made under this rule (or such other date as may be established by statute), a LEC receiving high cost support must raise its local exchange rates to levels that are no less than those of Verizon, subject to the exception in Section 3(D)(1).

E. Support For Additional Carriers. In the event that a competitive local exchange carrier is certified to serve an area that is already served by a rural incumbent local exchange carrier receiving support from the MUSF, and the Commission has terminated the rural exemption for the incumbent LEC pursuant to the provisions of 47 U.S.C. § 251(f)(1)(B), the competitive carrier may petition the Commission to receive support from the Fund. The Commission will determine:

1. the method of calculating the amount and the amount of funding that the additional carrier will receive, and

2. the amount, if any, by which the amount of funding of any carrier already receiving funding for serving that area will be adjusted.

F. Order Establishing Amount of Support. Following any application or rate proceeding required by this Section or any adjustment or order for support permitted by this Section, the Commission shall issue an order establishing the amount of payments that a local exchange carrier is authorized to receive from the Fund and, if necessary, a schedule for the implementation of the rates for local exchange service that is required by section 3(C)(3) and 3(D).

G. Adjustments Without Further Rate Proceeding. At any time after the initial establishment of the MUSF support level for a local exchange carrier, the Commission, without an additional rate proceeding, but after notice and such procedure as required by law, may adjust the amount of support provided from the Fund to accommodate substantial and direct changes in the costs or revenues of a local exchange carrier that receives payments from the Fund that result from changes in:

1. access charges;
2. the amount of federal high cost support;
3. a Basic Service Calling Area;
4. local exchange rates by a local exchange carrier that, pursuant to Commission order issued pursuant to Section 3(C), is phasing in rates to a level that is comparable to Verizon rates, or
5. federal or Maine regulatory rules or policies, accounting practices, tax laws, or other legislatively or judicially imposed requirements to the extent these changes have a direct and specific effect on telecommunications carriers collectively or individually.

H. Adjustments for Other Reasons. To change the amount of payments that a local exchange carrier receives from the Fund for reasons other than those listed in Section 3(G), the Commission shall conduct a proceeding that is appropriate to address the request. If a rural incumbent local exchange carrier requests a change in the amount of payments because of claimed changes in its revenue requirement or revenues for reasons other than those listed in Section 3(G), the Commission generally shall conduct a rate proceeding, but the Commission may waive this requirement for good cause.

§ 4 THE FUND

A. Fund Administrator. The Commission will choose an Administrator that is not a state entity and is not a telecommunications entity (or an affiliated interest thereof) that contributes to or receives money from the Fund.

B. Amount of Fund; Adjustments. The Fund Administrator will calculate the Fund Costs, which shall be equal to the amount of contributions necessary for support payments and administrative costs of the Fund. In the first year of the Fund, the Administrator will also include an additional one percent of the amount of contributions

necessary for support payments to account for amounts billed to contributors that may be uncollected. The Administrator will evaluate annually the need for and amount of the uncollectible factor and recommend any change to the Commission. A change in the uncollectible factor shall be effective upon approval by the Commission or the Director of Finance. The Administrator will recalculate the Fund Costs quarterly, pursuant to Commission Orders described in Section 3. The Commission may require the Administrator to adjust the total contribution amount for a subsequent quarter upon the filing of a stipulation in a rate proceeding for a rural incumbent local exchange carrier, even though the Commission has not approved the stipulation. The Commission may also require the Administrator to collect in a subsequent quarter any additional Fund Costs that became effective in a previous quarter that the Administrator was not able to collect in that quarter.

C. Applicability of Contribution Requirement. All interexchange carriers (IXCs), Local Exchange Carriers (LECs), mobile telecommunications carriers and radio paging providers that provide intrastate telecommunications service in Maine must contribute to the Fund if the carrier had intrastate retail revenues of \$12,500 or more during the most recently completed quarter. A carrier that must contribute to the Fund shall report the amount of its billed revenue and its uncollectible factor quarterly on forms provided by the Fund Administrator. Assessments apply to all intrastate retail revenues derived from telecommunications services provided in Maine and to intrastate retail revenues derived from rates and charges described in Section 4(D) and 4(E), or 4(F), as applicable. The Administrator will determine the amount that each carrier must contribute to the fund using the formula contained in Section 4(G).

D. Assessment of IXC Revenues Derived from Jurisdictionally Mixed Retail Charges.

1. Application. Assessments shall apply to the intrastate portion of those retail charges or rates of an IXC that apply on an unseparated basis to both intrastate and interstate service provided in Maine (e.g., minimum monthly bills, with or without a usage allowance). Unless the Commission or the Director of Finance approves an alternative allocation method for a carrier pursuant to paragraph 3 below, a carrier that provides interexchange service shall use the default allocation method contained in paragraph 2.

2. Default Allocation Method for IXCs. For each carrier that provides interexchange service, the intrastate portion of revenue derived from retail charges or rates that apply on an unseparated basis to both intrastate and interstate interexchange service shall be determined by applying the ratio of Maine intrastate directly assigned retail revenue (e.g., usage charged at a per-minute rate) to total (intrastate plus interstate) directly assigned retail revenue for service rendered in Maine. The carrier shall report its intrastate and total Maine revenues and the percentage of intrastate revenue on a form provided by the Administrator.

3. Alternative Allocation Method. Upon application by a reporting carrier, the Commission or the Director of Finance may approve an alternative allocation

method for IXCs for revenues derived from retail charges or rates that apply on an unseparated basis to both intrastate and interstate service or that include local (including ancillary) services using minutes of use or some other reasonable and verifiable apportionment method.

E. Assessment and Allocation of Revenues Derived from Unseparated Charges That Include Local and/or Ancillary Service Rates.

1. Assignment of Local and Ancillary Service Portion as Intrastate.

For each local exchange or interexchange carrier that offers a rate that includes both interexchange and local exchange services (including ancillary local exchange services such as call waiting, call forwarding, caller ID and the like), the portion of the rate that applies to local exchange (including ancillary) services shall be deducted prior to making the allocation described in subsection D(2) or D(4) and shall be reported entirely as intrastate revenue. The carrier shall report its local exchange and ancillary service revenue as determined pursuant to this paragraph on a form provided by the Administrator.

2. Default Determination of Local and Ancillary Service Portion. The local (including ancillary) portion of any rate that includes both interexchange and local exchange (including ancillary) services shall equal the carrier's separate rates for local exchange and ancillary services. If the carrier has no separate rates for local exchange service or ancillary services, it shall use Verizon's local exchange and ancillary service rates, but must obtain approval of the Director of Finance for the method of determining the applicable Verizon rates.

3. Alternative Determination of Local and Ancillary Service Portion. Upon application by a reporting carrier, the Commission or the Director of Finance may approve an alternative method for the determination of the local and ancillary service portion of any rate that includes both interexchange and local exchange (including ancillary) services.

F. Assessment of Revenues from Jurisdictionally Mixed Charges of Mobile Telecommunications Carriers.

1. Application. Assessments shall apply to the intrastate portion of those retail charges or rates of a mobile telecommunications provider (including a paging provider) that apply on an unseparated basis to both intrastate and interstate service provided in Maine (e.g., minimum monthly bills, with or without a usage allowance and bills that combine interexchange with local and ancillary services). Unless the Commission or the Director of Finance approves an alternative allocation method for a carrier pursuant to paragraph 3 below, a carrier that provides interexchange service shall use the default allocation method contained in paragraph 2.

2. Default Allocation Method for Mobile Telecommunications Carriers. Mobile telecommunications providers, including paging providers, shall use the applicable "safe harbor" methodology established by the Federal Communications

Commission for commercial mobile radio service (CMRS) providers. The intrastate percentage shall equal 100 percent minus the “safe harbor” interstate percentage. All retail revenue derived from retail charges or rates that apply on an unseparated basis to both intrastate and interstate service shall be multiplied by the intrastate percentage and the result reported as intrastate retail revenue.

3. Alternative Allocation Method. Upon application by a reporting mobile telecommunications provider, the Commission or the Director of Finance may approve an alternative allocation method for that carrier for revenues derived from retail charges or rates that apply on an unseparated basis to both intrastate and interstate service or from rates that include both interexchange and local (including ancillary) services.

G. Calculation of Contributions by Carriers. The quarterly contribution that each carrier must contribute to the Fund shall be equal to that carrier’s Maine intrastate retail billed revenue for telecommunications services, less the carrier’s factor for uncollectibles, for the most recently completed quarter, multiplied by the Revenue Percentage. The Administrator shall establish the Revenue Percentage by calculating a fraction in which the Fund Costs (the sum of support payment requirement plus administrative costs plus the percentage for uncollectibles) is divided by the total intrastate retail revenue for telecommunications services for all carriers that have reported at least \$12,500 in intrastate retail revenues as required by Section 4(G).

H. Adjustment of Revenue Percentage and Amounts. The Administrator shall adjust the Revenue Percentage described in Section 4(E) each quarter year.

I. Reporting of Revenues by Carriers. Each carrier subject to the requirements of this Rule that has \$12,500 or more in intrastate retail telecommunications service revenues (including revenues described in Section 4(D)(1)) for the previous quarter shall report its billed intrastate revenues and its uncollectible factor quarterly to the Administrator on the date and in a format to be established by the Administrator.

J. Billing; Payment. The Fund Administrator will bill the amount determined pursuant to Section 4(E) to each carrier that must contribute pursuant to the requirements of Section 4(C). Contributors shall remit payment within the number of days stated in the invoice. The time for payment shall be no less than 30 days after the rendering of the invoice by the Administrator, and shall be established by the Director of Finance after consultation with the Administrator and consideration of the cash working capital needs of the Fund.

K. Disbursements from the Fund. The Fund Administrator will disburse the support amount required directly from the Fund to the local exchange carriers eligible to receive funds in quarterly installments.

L. Electronic Processing. To the extent practicable, the Administrator shall implement an electronic system for reporting of revenues, billing, payments by contributors and disbursements.

§ 5 IDENTIFICATION AND RECOVERY OF CONTRIBUTIONS BY CONTRIBUTING CARRIERS

A. Identification of Contributions. All Carriers that must contribute to the MUSF must provide the following one of the following notifications on each bill that they send to their customers:

1. "Pursuant to the requirements of 35-A M.R.S.A. § 7104, [Name of carrier] contributed \$_____ during the 12 months ending [month, year] to the Maine Universal Service Fund."
2. "Pursuant to the requirements of 35-A M.R.S.A. § 7104, during the calendar year ____, [Name of carrier] contributed \$_____ to the Maine Universal Service Fund."
3. "Pursuant to the requirements of 35-A M.R.S.A. § 7104, during the past quarter year, [Name of carrier] contributed ____ percent of its Maine intrastate revenues to the Maine Universal Service Fund."
4. "Pursuant to the requirements of 35-A M.R.S.A. § 7104, during the calendar year ____, [Name of carrier] contributed an average of ____ percent of its Maine intrastate revenues to the Maine Universal Service Fund."
5. "Pursuant to the requirements of 35-A M.R.S.A. § 7104, during the 12 months ending [month, year], [Name of carrier] contributed an average of ____ percent of its Maine intrastate revenues to the Maine Universal Service Fund."

For alternative notifications 1 and 5, the 12-month period identified shall be the most recent period for which data is available, and for the first 12 months during which carriers contribute to the Fund, the wording of the notification shall be adjusted to reflect the actual number of months of contribution and the total amount contributed during that period. A carrier that uses alternative notification number 2 or 4 during 2003 shall substitute "during the current year" for the words "during the calendar year ____."

B. Recovery of Contributions; Surcharge. Carriers subject to the jurisdiction of the Commission may recover contributions that they make to the MUSF through a surcharge that they impose on their end-user customers subject to the following requirements:

1. Maximum Percentage. No surcharge imposed on any intrastate retail service or on any customer shall exceed the Revenue Percentage established by the Fund Administrator pursuant to Section 4(E) and (F);

2. Application – In General. Subject to the provisions of Section 5(B)(3), the surcharge may apply to all intrastate retail telecommunications services billed to a retail customer, or any designated subset of those services, but shall not apply to surcharges for Enhanced 911, for the Maine Telecommunications Education Access Fund, or for similar funds that are not part of a carrier's retail service offerings;

3. Application to Intrastate Portion Only of Jurisdictionally Mixed Charges. If an IXC has rates or charges that that apply on an unseparated basis to both intrastate and interstate service (e.g., minimum monthly bills, with or without a usage allowance and bills that combine interexchange and local services), it may apply the surcharge only to the intrastate portion of those charges using the same allocation method, applied to each customer's bill, that it uses for reporting those revenues pursuant to Section 4(D);

4. Identification of Surcharge. The surcharge shall be identified on customer bills as the "Maine Universal Service Fund surcharge" and shown as a separate line item;

5. Rate Schedules. The surcharge shall be included in the carrier's rate schedule, which may incorporate the Revenue Percentage that is adjusted quarterly by the Fund Administrator rather than stating a specific surcharge percentage.

§ 6 WAIVER OF PROVISIONS OF CHAPTER

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

BASIS STATEMENT: The factual and policy basis for the original rule is set forth in the Commission's Statement of Factual and Policy Basis and Order Approving Rule issued on July 18, 2001 in Docket No. 2001-230. The factual and policy basis for the first set of amendments to the rule is set forth in the Commission's Statement of Factual and Policy Basis and Order Approving Rule issued on March 17, 2003 in Docket No. 2002-687. Copies of these Statements and Orders have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04330-0018.

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

EFFECTIVE DATE: The original rule was approved as to form and legality by the Attorney General on July 23, 2001. It was filed with the Secretary of State on July 24, 2001 and became effective on July 29, 2001. The first set of amendments was approved as to form and legality by the Attorney General on March 19, 2003. It was filed with the Secretary of State on March 27, 2003 and became effective on April 1, 2003.