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May 25, 2006

Honorable Philip Bartlett, Senate Chair  
Honorable Lawrence Bliss, House Chair  
Joint Standing Committee on Utilities and Energy  
Augusta, Maine 04333

Re: Information Relating to Over-Collection in Maine Universal Service Fund

Dear Senator Bartlett and Representative Bliss:

## I. BACKGROUND

Last month, the Utilities and Energy Committee (Committee) unanimously approved an amended version of LD 2080, An Act to Accelerate Private Investment in Maine's Wireless and Broadband Infrastructure. Among other things, LD 2080 as amended creates the ConnectME Authority (Authority). Section 6 of the amended bill allows for the temporary transfer of up to \$500,000 of previously collected but unallocated funds in the Maine Universal Service Fund (MUSF) to the Authority if certain conditions are met.<sup>1</sup> Section 6 also provides for the repayment of the amount transferred to the Authority back to the MUSF and requires the Commission to "ensure the return of the funds to ratepayers by amending" MUSF quarterly assessments.

In the Commission's written and oral comments regarding LD 2080, we provided background information about the MUSF over-collection. In various conversations with Committee members after the final work session on LD 2080, I agreed to provide the Committee with additional information about how and when the over-collection occurred and how and when the Commission plans to return the over-collected funds. The purposes of this letter are to (1) provide background information about the MUSF; (2) provide the specific details about the MUSF over-collection and (3) discuss the return of those funds to ratepayers and the potential use of those funds in the context of LD 2080.

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<sup>1</sup> Section 6 provides that "[t]he authority may not request and the commission may not undertake any transfer of funds to the ConnectME Fund under this section until the authority receives authorization pursuant to Title 5, section 8072 to finally adopt major substantive rules under Title 35-A, section 9205, subsection 3 or until after January 15, 2007, whichever is later."



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## **II. PURPOSE AND HISTORY OF THE MUSF**

Title 35-A, section 7104 is entitled "Affordable telephone service." Section 7104 provides the statutory basis for the MUSF. Subsection 7104(1) provides that the Commission "shall require telephone utilities to participate in statewide outreach programs designed to increase the number of low-income telephone customers on the network through increased participation in any universal service program approved by the commission." Subsection 7104(2) requires the Commission to "ensure that similar telecommunications services are available to consumers throughout all areas of the State at reasonably comparable rates."

Among other things, section 7104 requires the Commission to review the telecommunications needs of Maine's consumers and establish a level of support required to meet those needs. Section 7104 also authorizes the Commission to require providers of intrastate telecommunications services to contribute to the MUSF in an amount required to meet those needs.

In 2001, the Commission promulgated Chapter 288 (the MUSF Rule) to implement section 7104. A copy of the MUSF Rule is attached to this letter. The primary purposes of MUSF Rule are to (1) provide "high cost" support for those local exchange telephone companies that are not able to maintain affordable and reasonably comparable local service rates without the support and (2) create a mechanism for assessing the intrastate retail revenues for all telecommunications providers.

In recent years, the Legislature has allocated funding from the MUSF to support activities that it determined to be consistent with the purposes specified in section 7104. These activities include the Communications Equipment Fund and support for the Emergency Alert Telecommunications Service (subsection 7104(5)), support for public-interest pay phones (subsection 7104(6)) and support for telecommunications relay services (subsection 7104(7)).<sup>2</sup>

## **III. ADMINISTRATION OF MUSF**

Subsection 7104(3) provides that if the Commission establishes a state universal service fund, "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." Section 4 of the MUSF Rule discusses the Fund and how the Fund is administered. The MUSF is set up to operate as a "pay-as-you-go" mechanism, with collections equal to required costs on a quarterly basis. Costs are known in advance and include ILEC support payments, support for the above-listed public interest services and costs for the Fund Administrator.

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<sup>2</sup> Earlier this session, the Legislature enacted unallocated language directing the Commission to allocate money from the MUSF to assist federally qualified health centers seek federal funding and conduct a needs assessment. Resolve 2005, chapter 141.

#### **IV. HOW AND WHEN THE OVER-COLLECTION OCCURRED**

The MUSF began operating in June 2003. During each quarter, the Fund Administrator determines the amount of support that must be distributed to ILECs based on Orders issued by the Commission that are in effect or will become effective in the upcoming quarter. During the final two quarters of 2003 and the first quarter of 2004, the former Fund Administrator calculated the assessment without realizing that the support for some carriers had been reduced and the Commission staff failed to catch the error. This resulted in an over-collection of approximately \$800,000.<sup>3</sup>

#### **V. COMMISSION RESPONSE TO OVER-COLLECTION**

The over-collection was discovered in mid-2004. The Commission responded to the error and corresponding over-collection in three ways. First, the Commission directed the Fund Administrator to place the over-collected amount in safe short-term investments, so that interest would accrue that could be added to the MUSF balance. Second, the Commission adopted internal cross-checking procedures to make sure the error which led to the over-collection does not recur. Third, the Commission adopted a plan for returning the over-collection amount to ratepayers.

##### **A. Adoption of New Procedures**

As soon as the Commission discovered the error which led to the over-collection, it reviewed the quarterly verification procedures used by the Fund Administrator and the Commission staff. The review indicated that the error had resulted from two deficiencies. First, the Fund Administrator's calculations did not accurately reflect changes resulting from several Commission Orders. Second, Commission staff did not adequately review the Fund Administrator's calculations.

To correct the first deficiency, the Commission took steps to improve the flow of information from the Commission to the Fund Administrator to ensure that the Fund Administrator receives, in a timely fashion, copies of all Commission Orders that affect the calculation of the MUSF assessment. In addition, Commission staff and the Fund Administrator cross-check the prescribed funding amounts for the eligible companies on a quarterly basis.

To address the second deficiency, the Commission implemented procedures under which the Fund Administrator sends staff a standardized worksheet in the middle of each quarter that shows the Fund Administrator's

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<sup>3</sup> The over-collection occurred on an across-the-board basis, so that no carrier was disproportionately affected by the error.

and verifies the calculation from the Fund Administrator, staff notifies the Commissioners of the rate for the upcoming quarter and emails its acceptance of the calculation to the Fund Administrator. The Fund Administrator then lists the new rate on its web site (so that carriers with surcharges can update their billing systems) and sends out invoices to the carriers for their contributions to the Fund. The entire process is done electronically, supplemented by phone conversations, if necessary.

Since the Commission adopted these new procedures, there have been no errors in the calculation of the MUSF assessment.

## **B. Returning Over-Collected Amount to Ratepayers**

The Commission did not contemplate that a surplus balance would occur in the MUSF, so the MUSF Rule contains no specific provisions for dealing with over-collections. When it learned of the over-collection balance, the Commission considered three alternative ways to return the surplus balance to ratepayers.

The first option was to repay the over-collection amount in equal quarterly payments. This would be accomplished by using the over-collection amount to reduce future MUSF costs, either all at once (i.e., in a single quarter) or over some specified period of time, such as 12 or 18 months, in equal quarterly amounts.

The second option was to keep the assessment rate constant. This would be accomplished by setting the assessment at a rate that is somewhat lower than the calculated rate, for as long as the surplus exists. Under this alternative, the amount of over-collection "used up" would vary by quarter.

A third option was to use the over-collection to initially fund the new initiatives that have recently been added to section 7104. This would return the surplus funds to ratepayers by delaying increases in the assessment associated with these new section 7104 initiatives. Each of these new initiatives, along with its anticipated MUSF funding requirements, is summarized below.

- **Communications Equipment Fund (CEF)** (subsection 7104(5)) – in addition to the \$85,000 that is automatically transferred annually from the MUSF to the CEF, the Commission may transfer an additional \$37,500 to the CEF, if the Bureau of Rehabilitation Services does not receive sufficient funding from federal or other sources to carry out the purposes of the CEF.

- **Emergency Alert Telecommunications Service** (subsection 7104(5)) – subsection 7104(5) also allows the Bureau of Rehabilitation to request up to \$60,000 during the current fiscal year from the MUSF to support the emergency alert telecommunications service. The maximum support amount that may be requested from the MUSF for emergency alert telecommunications service increases to \$90,000 in 2006-07 and to \$120,000 in any subsequent fiscal year.
- **Public Interest Pay Phones** (section 7104(6)) - authorizes the Commission to collect and expend up to \$50,000 each year to fund public interest pay phones.
- **Telecommunications Relay Service (TRS)** (section 7104(7)) - requires the costs of the TRS to come out of the MUSF. Section 7104(7) also requires the Commission to make certain findings about the level of support and the structure of the program and its outreach programs. The current annual cost of the TRS is approximately \$500,000, but that amount could change in the future, depending on the types of services offered and the technology used.
- **Federally Qualified Health Centers (FQHC)** (Resolve 2005, chapter 141) – requires the Commission to allocate \$75,000 from the MUSF to assist FQHCs conduct a needs assessment and apply for federal funding

After carefully considering the three options, the Commission decided that the over-collected balance should be used up over time (approximately 12 to 15 months) to meet the costs of the new section 7104 mandates that are listed above. The Commission selected this option for two basic reasons. First, it will have a smoothing effect on the MUSF assessment which will result in less confusion for ratepayers who would otherwise see unexplained fluctuations in the assessment on their bills. Second, the smoothing effect will also reduce the administrative burden on carriers that would otherwise have to make more modifications to their billing systems to accommodate additional changes in the assessment.

Based on current projections, the Commission anticipates that approximately \$300,000 of the over-collection amount will be expended on these new section 7104 initiatives by the end of calendar year 2006. The remaining \$500,000 of the over-collected funds is discussed in section VI below.

## VI. USE OF OVER-COLLECTED FUNDS IN CONTEXT OF LD 2080

As noted above, section 6 of LD 2080 allows for the temporary transfer of up to \$500,000 of the over-collection amount in the MUSF to the ConnectME Authority (Authority) after the Authority adopts major substantive rules or January 15, 2007, whichever is later. To ensure the Commission's ability to satisfy the requirements of LD 2080, the Commission will maintain a \$500,000 over-collection balance to be available if the necessary conditions are met and the ConnectME Authority requests the authorized transfer of funds from the MUSF.

Section 6 of LD 2080 also requires the Authority to repay all amounts transferred from the MUSF back to the MUSF as soon as such funds are available to the Authority through other funding sources. In addition, section 6 requires the Commission to "ensure the return of the funds to ratepayers by amending" MUSF quarterly assessments.

LD 2080 does not include any specific deadline for the repayment by the Authority to the MUSF. It is therefore impossible to identify a specific date by which funds returned to the MUSF would be expended on the new section 7104 mandates in the manner described above. However, based on current projections, the Commission estimates that the entire amount of over-collected funds returned by the Authority to the MUSF would be expended within six to 12 months after the funds are returned to the MUSF.

I hope this letter adequately addresses your questions relating to the over-collection of funds in the MUSF. If you have any questions about this letter or the MUSF, please feel free to contact me.

Sincerely,

  
Chris Simpson  
Legislative Liaison

Attachment

cc: Members of the Utilities and Energy Committee  
Jon Clark, OPLA  
Lucia Nixon, OPLA

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.

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STATUTORY 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.