

## APPENDIX B

### § 63.161. Statement of purpose and policy.

On July 8, 1993, the General Assembly enacted 66 Pa.C.S. Chapter 30 (relating to alternative form of regulation of telecommunications services) which provides for the regulatory reform of the telephone industry in this Commonwealth.

- (1) The General Assembly's first declaration of policy in Chapter 30 is to "[m]aintain universal telecommunications services at affordable rates while encouraging the accelerated deployment of a universally available state-of-the-art, interactive, public switched broadband telecommunications network in rural, suburban and urban areas." See 66 Pa.C.S. § 3001(1) (relating to declaration of policy).
- (2) The General Assembly assigned to the Commission and this Commonwealth's telecommunications providers responsibility for assuring and maintaining universal service in this Commonwealth. Given an increasingly competitive telecommunications marketplace, it is necessary to establish a competitively-neutral universal service funding mechanism to assure and maintain universal service and to promote the development of competition in telecommunications markets throughout this Commonwealth.
- (3) The purpose of the Fund is to maintain the affordability of local service rates for end-user customers while allowing rural telephone companies to reduce access charges and intraLATA toll rates, on a revenue-neutral basis, thereby encouraging greater competition.

### § 63.162. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

***Assessment rate***—The percentage rate which when multiplied by each contributing telecommunications provider's total intraState end-user telecommunications retail revenue for the prior month will determine that provider's monthly contribution to the annual Fund budget. The assessment rate is computed annually under § 63.165 (relating to calculation of contributions).

***Basic universal service***—An evolving set of telephone services, as defined by the Commission, which represents the set of services essential for a resident of this Commonwealth to participate in modern society at any point in time.

***Contributing telecommunications providers***—Telecommunications carriers that provide

intraState telecommunications services. Whether a provider or class of providers is a telecommunications carrier will be determined based upon whether the provider or class of providers is considered a telecommunications carrier under Federal law as interpreted by the Federal Communications Commission except that wireless carriers are exempt from this subchapter under 66 Pa.C.S. § 102(2)(IV) (relating to definitions).

***End-user revenue***—Revenues received from telecommunications subscribers who consume the final service unadjusted for any expense or other purpose. Total intrastate end-user telecommunications retail revenue does not include those revenues received from access, resale (toll or local), or the sale of unbundled network elements or other services which are essentially wholesale in nature.

***Fund***—The Universal Service Fund.

***Fund recipient***—An entity which receives funds from the Fund. Incumbent local exchange carriers operating in this Commonwealth, with the exception of Verizon Pennsylvania and Verizon North, Inc. are eligible Fund recipients.

***Local service provider***—A telecommunications company to which retail customers subscribe for basic universal service.

### **§ 63.163. Universal service fund administration.**

- (a) The Commission will designate within the context of a competitive bidding process a third-party administrator and a fund auditor to maintain and audit the Fund consistent with this subchapter.
- (b) The Fund shall be administered in a manner ensuring that the Fund is exempt from State, Federal, and local taxes. The Fund administrator shall seek tax exempt status from the Internal Revenue Service.
- (c) The Fund shall be established and kept separate from any other Commonwealth general fund.
- (d) The administrator shall be responsible for assessing contributing telecommunications providers for contributions to the Fund as provided for in § 63.165 (relating to calculation of contributions). The administrator shall also be responsible for receiving contributions, validating contributions and distributing payments to fund recipients.
- (e) The administrator shall file with the Commission by September 1 of each year an annual report which shall include an income statement of the Fund's activity for the preceding calendar year, a list of recommendations pertaining to operations of the Fund, and a proposed budget and assessment rates for the upcoming year. A copy of

the report will be served contemporaneously upon the Office of Consumer Advocate, Office of Small Business Advocate and all telecommunications carriers participating in the Fund.

- (f) Interested parties shall be provided the opportunity to file comments to the administrator's report within 30 days of its submission to the Commission. Replies to comments shall be filed within 15 days thereafter. Comments should be addressed to the Pennsylvania Public Utility Commission's Secretary's Bureau, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265. The comments should be filed at Docket No. M-00001337.

**§ 63.164. Commission oversight.**

The Commission will issue an order within 90 days of receipt of the administrator's annual report, which establishes the size of the Fund, a budget, assessment rate for contributing telecommunications providers, and administrative guidelines for the upcoming calendar year.

**§ 63.165. Calculation of contributions.**

- (a) Contributing telecommunications providers shall submit an affidavit to the administrator by March 31 of each year, identifying the provider's total intrastate end-user telecommunications retail revenue for the previous calendar year. A copy shall be served upon the Commission.
- (b) In determining the annual assessment rate, the administrator will utilize the following calculation:

$$\frac{W + X + Y + Z}{A} \times B = C$$

W = Increase in funding requirement due to growth in access lines of recipient carriers. W equals the access line growth percentage for each recipient carrier multiplied by each recipient carriers' prior year net support (prior year funding minus prior year payment). The individual recipient carriers' required fund increases are totaled to yield W.  $W = ALG \times (PYF - PYP)$ .

X = Prior year's size of fund minus the estimated surplus from the prior year or plus any shortfall from the prior year.

Y = Surcharge for uncollectables is 1% times (X + W).

Z = Commission approved administrative and auditing expenses.

A = Aggregate Statewide end-user intraState retail revenue of all contributing telecommunications providers for the previous calendar year.

B = Individual contributing telecommunications provider's end-user intra-state retail revenue for the prior calendar year.

C = Individual contributing telecommunications provider's monthly contribution.

- (c) To the extent the funding received from providers in any 1 year exceeds the disbursements required for the Fund plus the cost of administering the Fund (including 1% of the total size of the Fund to cover delinquent accounts and contingencies), the excess shall remain in the Fund, and the subsequent year's Fund size reduced by that surplus.

### **§ 63.166. Administrator criteria.**

The administrator shall meet the following criteria:

- (1) The administrator shall be neutral, impartial and independent from telecommunications service providers operating in this Commonwealth.
- (2) The administrator may not advocate specific positions before the Commission in nonuniversal service administrative proceedings related to telecommunications issues.
- (3) The administrator may not be an affiliate of any provider of telecommunications services. The administrator may not be closely associated with any provider of telecommunications services in a dependent or subordinate position.
- (4) If the administrator has a board of directors that includes members with direct financial interests in entities that contribute to or receive support from the Fund, no more than a third of the board members may represent any one category (for example, local exchange carriers or interexchange carriers) of contributing carriers or support recipients, and the Board's composition shall reflect the broad base of contributors to and recipients of Fund assets. For purposes of this restriction, a direct financial interest exists when the administrator or Board member:
  - (i) Is an employee of a telecommunications carrier.
  - (ii) Owns any equity interests in bonds or equity instruments issued by any telecommunications carrier.

(iii) Owns mutual funds that invest more than 50% of its assets in telecommunications securities.

(5) If the administrator's board composition changes during its contractual period, the administrator shall notify the Commission immediately.

**§ 63.167. Administrator's duties.**

The administrator shall have the following duties:

- (1) Maintain a database to track contributing telecommunications providers.
- (2) Develop Commission-approved forms which all telecommunications service providers will submit to the administrator on a monthly basis with their monthly contributions.
- (3) Review the completed forms to ensure completeness and accuracy of reported revenue and Fund assessments and contact providers whose accounts contain unexplained variances in reported revenues or Fund assessments.
- (4) Assess late-payment charges of 1.5% per month pro rata per diem on contributions that are 30 days or more past due.
- (5) Send initial notices of delinquency to delinquent contributors when a payment is 30 days past due and follow up with at least one subsequent written notice, phone call, or both, to the contributor to pursue collection of Fund payments that are 60 days past due.
- (6) Maintain logs of notices to delinquent contributors and refer to the Commission for further enforcement, on a monthly basis, all accounts more than 90-days past due.
- (7) Immediately inform the Commission if the administrator has reason to believe that a contributing telecommunications provider has submitted false information to the administrator with the intent of obtaining fraudulent funding or underreported end-user revenue, or if any other irregularity occurs in the operation or administration of the Fund. Penalties that will be assessed to the contributing telecommunications provider are addressed in § 63.171 (relating to enforcement).
- (8) Invest Fund moneys in interest-bearing instruments designed to minimize risk of loss while providing maximum liquidity. Return on investment shall be placed into the Fund. Permitted investments include:
  - (i) Marketable obligations directly and fully guaranteed by the United States government.

- (ii) Federally-insured checking, money market accounts or certificates of deposit.
  - (iii) Other accounts expressly approved by the Commission.
- (9) Promptly advise the Commission if the administrator projects any potential Fund shortfall or if Fund disbursements exceed receipts in a given month.
- (10) In January of each year, mail reporting forms to each contributing telecommunications provider to acquire appropriate data to determine the following:
- (i) Each contributing telecommunications provider's intraState end-user telecommunications retail revenue for the prior calendar year.
  - (ii) The Fund recipients' access line growth which translates into a dollar amount increase in the size of the next year's Fund.
  - (iii) Aggregate Statewide end-user intraState retail revenue of all contributing telecommunications providers for the previous calendar year.
  - (iv) Each contributing telecommunications provider's contribution for the following calendar year.
- (11) Cooperate with the auditor selected by the Commission and provide data and information reasonably required to support audit activities.
- (12) Promptly respond to Commission requests for information pertaining to Fund administration.
- (13) Maintain adequate principal liability insurance coverage, criminal liability coverage, and a sufficient umbrella liability policy.
- (14) Prepare reports of Fund activity for the Commission on a monthly basis detailing carrier assessments, delinquent payers, late-payment charges, fund disbursements, interest earned and cumulative results.
- (15) Maintain records by contributor and by recipient.
- (16) Provide additional reports as requested by the Commission.
- (17) Maintain a statement of financial condition (balance sheet) and income statement for the total fund, and a sources and uses of funds statement, which will tie to the total Fund income statement.

- (18) Deliver the balance sheet, income statement, and sources and uses of funds statement to the Fund auditor by May 1 of each year so that the auditor may prepare its report.
- (19) Maintain a system of internal controls.
- (20) Consider the auditor's report in preparing the annual report for submission to the Commission and include any undercollections or overcollections identified by the audit report in developing a proposed budget for the upcoming fiscal year.
- (21) Submit the administrator's annual report by September 1 or 60 days following receipt of the audit report, whichever is later.
- (22) With prior Commission approval, borrow monies to cover the short-term liabilities of the Fund caused by undercollections.
- (23) At least 60 days before short-term borrowing is necessary, the administrator shall provide formal notice to the Commission which identifies the amount, the proposed lending source and the terms and conditions of the loan.
- (24) Comply with the contract and Commission orders. Any dispute between the administrator and any contributing telecommunications provider shall be submitted to the Commission for resolution.
- (25) Have access to the books of account of all telecommunications service providers to the limited extent necessary to verify their intraState end-user telecommunications retail revenues and other information used by the administrator in determining assessments and disbursements for the Fund.
- (26) Treat competitive and financial information received as confidential and proprietary and only release that information upon order of the Commission.
- (27) Operate on a fiscal year which shall be the same as the calendar year.

**§ 63.168. Auditor's duties.**

- (a) An independent external auditor chosen by the Commission will audit the Fund records covering both collections and disbursements for the fiscal year. The costs for conducting audits will be included in the computation of Fund requirements. Thereafter, an audit of the Fund collections and disbursements will be done annually.
- (b) Following the audit, the Fund auditor will prepare and submit a report to the Commission and the administrator by July 1 of each year. The audit report should

make recommendations regarding the finances of the Fund and should identify undercollections or overcollections experienced by the Fund in the previous year.

**§ 63.169. Collection of universal service fund contributions.**

- (a) At the beginning of the calendar year, the administrator will provide monthly reporting forms to each contributing telecommunications provider. Each carrier will complete the form monthly using the calculation as described in § 63.165 (relating to calculation of contributions) and remit the form to the administrator along with its monthly contribution in full.
- (b) Failure to make timely payment will result in the levy of a late payment charge of 1.5% per month pro rata per diem on the delinquent contribution.
- (c) If a carrier's contribution to the Fund in a given year is less than \$120, that carrier will not be required to submit a contribution.

**§ 63.170. End-user surcharge prohibited.**

A telecommunications service provider may not implement a customer or end-user surcharge or any other direct or indirect charge to recover any contributions to the Fund.

**§ 63.171. Enforcement.**

A telecommunications service provider that fails to pay, in a timely manner, any contribution required under this subchapter may be prohibited from providing service in this Commonwealth and be subject to other penalty as authorized under law.