PENNSYLVANIA

 PUBLIC UTILITY COMMISSION

**Harrisburg, PA 17105-3265**

Public Meeting held December 2, 2010

Commissioners Present:

 James H. Cawley, Chairman

 Tyrone J. Christy, Vice Chairman

John F. Coleman, Jr.

Wayne E. Gardner

Robert F. Powelson

# Pennsylvania Universal Service Fund : Docket No. M-00001337

Annual Rate Adjustment :

# CORRECTED ORDER

**BY THE COMMISSION:**

 On September 28, 2010, Solix, Inc. (Solix), the 2000-2011 Administrator for the Pennsylvania Universal Service Fund (PaUSF or Fund), filed its Annual Administrator’s Report (Report) to the Commission. Solix served copies of the Report on the telecommunications carriers participating in the PaUSF, the Office of Consumer Advocate and the Office of Small Business Advocate. AT&T and the Pennsylvania Telephone Association (PTA) filed comments.

 On November 15, 2010, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TGC New Jersey, Inc. (collectively AT&T), filed comments to the Report. In its comments, AT&T stated that it does not object to the report. However, AT&T noted its concerns over the 7.5% increase in the annual assessment for 2011, particularly in light of the shrinking number of customers who need support and the

declining number of contributing carriers. AT&T further urged the Commission to resolve the pending Recommended Decisions of ALJs Melillo and Colwell at Docket No. I-00040105.

 On November 19, 2010, the PTA filed comments. In its comments, PTA states that AT&T improperly raised arguments against the existing PaUSF and the Commission’s universal service policy in its comments to the Report. PTA contends that these issues were already properly raised in two separate pending Dockets before the Commission (Docket No. I-00040105), the litigation of which is complete. PTA also asserts that, contrary to AT&T’s statement that this years’ increase by 7.5% is the largest single annual increase in the past nine years, increases over the years have varied greatly. For example, PTA notes that increases have ranged from 10.96% in the 2001-02 year to 0.67% two years later. PTA also notes that this years’ increase will only raise the current assessment factor from 1.16% to 1.25%, which is substantially below the federal assessment rate of 15.3% for support of federal USF programs. Finally, for the reasons stated above, PTA urges the Commission not to consider AT&T’s comments in reviewing the Report.

 In its comments, the PTA also states that the FCC recently released its ruling on universal service contributions for nomadic interconnected Voice over Internet Protocol (VoIP) service providers. [[1]](#footnote-1) The FCC ruling held that states may extend their universal service contribution requirements to future intrastate revenues of nomadic interconnected VoIP service providers, as long as the state’s requirements do not conflict with federal law or policy. The PTA notes that this ruling is significant to the assessment factor for the PaUSF because inclusion of the VoIP carriers would decrease the factor even further.

We note that the FCC issued this ruling on November 5, 2010, after Solix filed its annual report and recommendations concerning the PaUSF. As such, this ruling is not considered in the current filing addressed here today. However, the Commission reserves the right to further examine its current fund and regulations to determine whether VoIP carriers should be assessed in compliance with the FCC’s directives and the Commission’s current regulations.

 Pursuant to our regulation at 52 Pa. Code § 63.164 (relating to Commission USF oversight) we are issuing this order within ninety days of receipt of the Administrator’s Annual Report. This order establishes the size of the Fund, approves a budget for the next calendar year, establishes the assessment rate for contributing telecommunications providers, and establishes administrative guidelines for the upcoming year. Based upon the Report from Solix, we have made the following determinations regarding the PaUSF for calendar year 2011.

1. Maintain Five Percent (5%) Contingency

 We agree with Solix’s recommendation that we maintain the annual funding contingency of 5%. Last year Solix recommended that we maintain a 5% contingency. This amount proved to provide sufficient cash flow to ensure that all PUSF support payments are made on schedule.

2. Encourage Annual Payments

 Solix states that, since the Fund’s inception in 2000, most carriers that are required to pay into the PaUSF have paid via monthly contributions, regardless of their total annual amount due. As a way to increase operational efficiencies for the carriers as well as the Administrator, Solix recommends that the PaPUC continue to encourage carriers to pay their annual contributions in a lump sum payment at the beginning of the calendar year rather than in monthly installments if economically feasible for the carrier. We agree and encourage carriers, especially those with less than $2,000 in annual payments to pay in lump sum at the beginning of the calendar year for greater operational efficiency. There is no financial penalty for not paying in lump sum; however, lump sum payment is encouraged by this Commission.

3. Carryover Balance

 Solix states in its Report that the Fund balance is currently increasing by an average of $4,909 per month, primarily due to the usual January jump in revenue because of yearly filers and by an average earned interest of $393 per month. Following a downward trend in the second half of 2009, the Fund balance is projected to decrease due to latter-year write-offs and reduced billed assessments resulting in an anticipated year-end fund balance of $2.5 million (only -1.94% decrease from 2009). Solix asserts that it would be prudent to utilize a conservative estimated balance of $1.5 million as of December 31, 2010, for calculation purposes, providing a further cushion for any unforeseen variances. We agree with Solix’s recommendation to err on the side of caution so that the Fund is adequately funded.[[2]](#footnote-2) We therefore will use the $1.5 million figure for the Fund’s surplus contingency cushion at the end of the year for the purposes of calculating calendar year 2011 contributions.

4. Assessment Rate for Calendar Year 2011

 We agree with Solix that each carrier’s contribution rate should be increased from 1.1651414% (0.011651414) of 2008 average monthly intrastate end-user retail telecommunications revenue to 1.2529634% (0.012529634) of 2009 average monthly intrastate end-user retail telecommunications revenues. This represents an increase of approximately 7.5% of last year’s contribution rate. This increase will cover the projected expenses for the Fund for calendar year 2011.

 The assessment calculation is based on data submitted by telecommunications carriers during the annual data collection process as well as Solix’s projections of the Fund carryover balance and projected 2011 administrative and auditing fees as follows:

1. Reported 2008/2009 annual access line growth rate = -6.24%; however, there were three carriers with positive access line growth. Therefore, the total support was raised by $13,311.[[3]](#footnote-3)

2. Projected PaUSF Fund balance as of 12/31/10 = $1,500,000

3. Projected 2011 annual support due to recipient carriers = $33,612,315[[4]](#footnote-4)

4. Projected 2011 annual administration and audit fees = $155,778[[5]](#footnote-5)

5. Projected 2011 allowance for uncollectibles = $1,605,616[[6]](#footnote-6)

6. Projected 2011 total annual fund size = $33,873,709

 [(Line 3 + Line 4 + Line 5 – Line 2)]

7. Reported 2009 intrastate retail revenues = $2,703,487,494

8. 2011 Assessment Rate = $33,873,709/$2,703,487,494 = .012529634 [(Line 6/Line 7)]

5. Conclusion

The Commission agrees with Solix’s recommendations regarding maintaining a 5% annual funding contingency, encouraging annual payments, using a carryover balance, and increasing the assessment rate by 7.5%. However, as discussed above, the Commission reserves the right to further examine its current fund and regulations to determine whether VoIP carriers should be assessed in compliance with the FCC’s directives and the Commission’s current regulations. **THEREFORE,**

 **IT IS ORDERED:**

1. That Solix, Inc.’s Administrator’s Report dated September 28, 2010, is approved and the PaUSF’s monthly contribution factor for 2011 is hereby increased from 1.1651414% (0.011651414) of 2008 average monthly intrastate end-user retail telecommunications revenue to 1.2529634% (0.012529634) of 2009 average monthly intrastate end-user retail telecommunications revenue.

2. That Solix, Inc. is directed to send a letter to all contributors of the Fund explaining specifically how this contribution factor increase affects them and what their monthly contributions will be for the calendar year 2011; the letter should encourage lump sum payments in early 2011, particularly for those carriers with total annual contributions of less than $2,000; the letter must be pre-approved by Commission staff before it is mailed to participants.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

Order Adopted: December 2, 2010

Order Entered: December 3, 2010

1. *In Re: Matter of Universal Service Contribution Methodology, Petition of the Nebraska Public Service Commission and Kansas Corporation Commission for a Declaratory Ruling Declaring that State Universal Service funds May Assess Nomadic VoIP Intrastate Revenues,* Docket No. 06-122 (November 5, 2010) (*VoIP USF Order*). [↑](#footnote-ref-1)
2. The Commission previously adopted this methodology in last year’s rate adjustment Order, *In re: Pennsylvania Universal Service Fund Annual Rate Adjustment,* Docket No. M-00001337, November 19, 2009. [↑](#footnote-ref-2)
3. The amount of $13,311 is added to last year’s projected 2010 annual support due recipient carriers of $33,599,005 to yield the projected 2010 annual support due to recipient carriers of $33,612,315 at line 3. Even though the recipient carriers’ aggregate annual access lines growth rate is negative, if carriers have net increases in access lines, they are entitled to more support in accordance with the adoption of the small company plan in the Commission’s 1999 *Global Order, Nextlink Pennsylvania, Inc.,* 93 Pa P.U.C. 172 (September 30, 1999), 196 P.U.R. 4th 172, *aff’d sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission,* 763 A.2d 440 (Pa. Cmwlth. 2000) *alloc. granted.* [↑](#footnote-ref-3)
4. Annual support projections are based upon annual reports submitted by the recipient carriers. [↑](#footnote-ref-4)
5. This projection is based upon the contracted administrator’s fee of $130,778 for calendar year 2011 plus an estimate of $25,000 needed for external auditor’s fees in 2011. In 2010, the PaUSF paid $23,293 in auditor fees for the fiscal year ending December 31, 2009. [↑](#footnote-ref-5)
6. This represents the 5% contingency for uncollectibles over the year 2011. [↑](#footnote-ref-6)