

| Regulatory Analysis Form | | This space for use by IRRC |
|---|--|--|
| (1) Agency Pennsylvania Public Utility Commission | | RECEIVED 2001 APR 19 AM 9:54 REVIEW COMMISSION IRRC Number: # 2104 |
| (2) I.D. Number (Governor*s Office Use) L-00000148/ 57-214 | | |
| (3) Short Title Rulemaking Re Establishing Universal Service Fund Regulations | | |
| (4) PA Code Cite 52 Pa. Code Sections 63.161-63.171 | (5) Agency Contacts & Telephone Numbers Primary Contact: Elizabeth H. Barnes, Law Bureau 717-772-5408 (legal) Secondary Contact: Gary Wagner, Bureau of Fixed Utility Services, 717-783-6175 (technical) | |
| (6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted | | (7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor |
| (8) Briefly explain the regulation in clear and nontechnical language. <p>The rulemaking establishes guidelines for choosing, through the competitive bidding process, an independent and neutral third-party administrator and a fund auditor to administer, for the Commonwealth of Pennsylvania an intrastate telecommunications Universal Service Fund ("USF").</p> <p>The administrator shall be responsible for assessing telecommunications carriers for contributions to the fund, collecting assessments, and then evaluating and reimbursing certain telecommunications carriers from the USF. The auditor will annually audit the fund and submit a report to the Commission. The third-party administrator will consider the audit report in preparing its annual report to the Commission and will consider any undercollections or overcollections identified by the audit report in establishing a budget and assessment rate for contributing telecommunications providers for the upcoming calendar year. The Commission retains the right to establish the budget and assessment rates for the forthcoming year, including the compensation for the administrator and auditor. The regulations further establish guidelines for the method of calculation to be used in assessing carriers as well as other rules regarding the prohibition of carrier surcharges on customers to cover contributions to the fund, and an enforcement provision.</p> | | |

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

66 Pa. C.S. Sections 501, 1308, 3001(1) and (2); and 3009(b)(3).

In the Matter of Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers: First Report and Order, CC Docket Nos. 96-98 and 95-185, FCC 96-325 (August 8, 1996).

Rulemaking to Establish a Universal Service Funding Mechanism, PUC Docket No. L-00950105 (June 21, 1996), Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications in the Commonwealth, PUC Docket No. I-00940035 (November 10, 1997), Generic Investigation in Intrastate Access Charge Reform, PUC Docket No. I-00960066 (November 10, 1997), Global Order, PUC Docket Nos. P-00991648 and P-00991649 (September 30, 1999).

Bell Atlantic-Pennsylvania, Inc. v. PaPUC at No. 2790 C.D. 1999, Commonwealth Court of Pennsylvania, October 25, 2000.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No. However, it is implicitly required pursuant to 66 Pa. C.S. Sections 3001(1) and (2), 3009(b)(3), and 3007 (3).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

With the enactment of Chapter 30 of the Pennsylvania Public Utility Code, and the Federal Telecommunications Act of 1996, the Commission is responsible to assure that with the development of competition in the rural local telephone services market, customers are assured basic service at affordable rates. The state USF is intended to neutralize revenue short falls pursuant to access charge reductions.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

None.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Universal Service Fund is a revenue rebalancing fund designed to work over an interim period (until December 31, 2003) in order to facilitate the transition of a monopolistic local telephone exchange market to a competitive market by "leveling the playing field" while at the same time assuring that during the process, rural consumers in higher-cost areas maintain their local telephone service at affordable rates.

The current estimated rural population in Pennsylvania that will be benefited from this regulation is approximately 3,693,348, 31.1% of the total population in Pennsylvania. The figure was taken from the 1990 U.S. Department of Commerce, Bureau of the Census statistics.

With the Commission's Order of September 30, 1999 at Docket Nos. P-00991648 and P-00991649), the PUC ordered access charges (the rates collected by local exchange carriers from IXCs to complete long distance calls) be reduced by approximately fifty percent (50%). The access charges are what the long distance phone companies (IXCs) pay the local exchange carriers in order to access the local loop to complete calls for their customers. With this reduction in revenue, the smaller ILECs may not be able to cover their costs in bringing phone service to their customers in rural areas because the cost of providing local telephone service to customers in rural areas is more expensive than to customers in densely populated areas.

The proposed rulemaking embodies a plan, whereby small rural carriers could draw reimbursement for cost of local service from a Universal Service Fund which would be funded by all carriers assessed in Pennsylvania in a share proportionate to the contributor's intrastate telecommunications end-user revenue. IXCs will be able to compete in the local exchange market because of an access charge reduction, while the rural telephone companies would be able to reduce their access charges and toll rates while providing local

telephone service to their customers at affordable capped rates without losing revenue and thus, their ability to compete.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No person or entity will be adversely affected by this regulation. The Commission will not pay for either the Administrator or the Auditor of the USF. The Administrator's and the Auditor's fees are paid only from the fund itself which in turn is funded by the contributor carriers in Pennsylvania. Bell Atlantic-Pennsylvania (Verizon) will be the major contributor to the fund and will not benefit from the fund; however, the company is the largest monopoly of local telephone service in Pennsylvania. AT&T and MCI will be major contributors to the fund, but they, in turn, are rewarded through access charge reductions and an ability to better compete in the local telephone market in Pennsylvania.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All telecommunications carriers under the jurisdiction of the Commission including IXCs will be required to comply with the regulations. There are currently approximately 300 interexchange carriers and competitive and incumbent local exchange carriers which hold certificates of public convenience within Pennsylvania and which report revenues. They will all be subject to this rulemaking.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Commission has received comments from GTE-North, Bell Atlantic-Pennsylvania, AT&T Pennsylvania, Pennsylvania Office of Attorney General, Office of Consumer Affairs, and the Rural Telephone Companies Coalition regarding drafts of the proposed regulations. After publication in the Pennsylvania Bulletin as proposed, we received formal comments from the OCA, AT&T, Verizon, Sprint/United Telephone and the Rural Telephone Company Coalition.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The specific quantitative costs or savings to the carriers participating in the USF is unknown. However, it may be predicted that although IXCs will be required to contribute to the fund, they will reap the reward of having to pay lower access charges in order to reach their customers. No contributing carrier can pass on the cost of contribution to the fund to its end-user customer. The small rural incumbent local exchange carriers should remain revenue neutral as a result of the fund. Thus, they should experience minimal costs or savings.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulations would save the Commission from administering the fund itself. Therefore, the regulations save Pennsylvania ratepayers the salaries of an accountant, director and supervisor, all of whom would be needed in order to perform the job of the administrator. This could amount to approximately \$150,000 per year. Commission staff, including: the Law Bureau, Bureau of Fixed Utility Service, and the Bureau of Audits, will continue to be involved in administration of the fund although not on a daily basis, as would be the administrator's role.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY Year | FY +1 Year | FY +2 Year | FY +3 Year | FY +4 Year | FY +5 Year |
|-----------------------------|--------------------|---------------|---------------|---------------|---------------|---------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Savings | | | | | | |
| COSTS: | | | | | | |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Costs | | | | | | |
| REVENUE LOSSES: | | | | | | |
| Regulated Community | | | | | | |
| Local Government | | | | | | |
| State Government | | | | | | |
| Total Revenue Losses | | | | | | |

(20a) Explain how the cost estimates listed above were derived.

Not measurable at this time.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

| Program | FY -3 | FY -2 | FY -1 | Current FY |
|----------------|--------------|--------------|--------------|-------------------|
| Not applicable | | | | |
| | | | | |
| | | | | |
| | | | | |

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

See response to No. 17 above.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. There are no analogous federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Currently, the Commission is aware of at least seven other states which have hired a third-party administrator to implement their state Universal Service Funds including: Texas, Arkansas, Nevada, Vermont, Wyoming, Oklahoma, Arizona, Kansas and Nebraska. The Commission has copies of each of these state's regulations for comparison. The regulations will not place Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Yes, but no public hearing or meeting dates have been scheduled yet.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. We expect the USF administrator to require carriers to complete forms similar to the one attached, which is from Arkansas, on a monthly basis along with their payments into the fund. Carriers will be required to annually report their annual intrastate end-user telecommunications revenue to the Commission and the administrator in order for the administrator to recalculate an adjusted assessment rate for the following calendar year, but this reporting requirement should not be unduly burdensome on the carriers.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The USF should benefit the entire state, but especially rural communities. Farmers typically live in rural areas of the Commonwealth and would be beneficiaries of the regulations. Access charge reductions are to be flowed through to the IXC's end-user customers and to that extent, benefits in the way of reduced toll charges will ensure statewide benefits, especially for those residents with fixed incomes.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective upon publication as a final rulemaking in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The regulation will be reviewed on an on-going basis.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

2001 APR 19 AM 9:54

LEGISLATIVE HISTORY
REVIEW COMMISSION



2104

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and
legality. Attorney General.

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00000148/57-214

DATE OF ADOPTION March 22, 2001

BY James J. McNulty
James J. McNulty

TITLE (SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or
independent Agencies.

Bohdan R. Pankiw
BY Bohdan R. Pankiw
Chief Counsel

3-22-01
DATE OF APPROVAL

Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

L-00000148/57-214
Final Rulemaking
Establishing Universal Service
Fund Regulations
52 Pa. Code, Chapter 63

The Pennsylvania Public Utility Commission on March 22, 2001, adopted a revised final rulemaking order establishing a universal service funding mechanism, implementing revenue-neutral rate reform and resolving interconnection issues in the telecommunications industry. The contact persons are Gary Wagner, Bureau of Fixed Utility Services, 783-6175, and Elizabeth Barnes, Law Bureau, 772-5408.

EXECUTIVE SUMMARY

L-00000148/57-214

Final Rulemaking

Re: Establishing Universal Service Fund Regulations

For several years, the Commission has been examining the need for an Intrastate Universal Service Fund (“USF” or “Fund”) in an effort to both reduce and restructure access charges and establish the appropriate level playing field for the development of local competition in Pennsylvania. The USF is a means to reduce access and toll rates for the ultimate benefit of end-users and to encourage greater toll competition while enabling carriers to preserve the affordability of local service rates.

The state USF, as currently constituted within the parameters of the instant rulemaking, can best be described as a “revenue-neutrality” fund designed to neutralize LEC revenue short-falls resulting as a consequence of anticipated access charge and intrastate toll revenue reductions. Although it is referred to as a fund, it is actually a pass-through mechanism to facilitate the transition from a monopoly environment to a competitive environment – an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by mandated decreases in toll and access charges receipts.

Prior rulemaking attempts at establishing USF regulations, Rulemaking to Establish a Universal Service Funding Mechanism, Docket No. L-00950105 (June 21, 1996), were ultimately addressed in the PUC’s Order on September 30,

1999 (P-00991648 and P-00991649). The September 30 Order directed that regulations be promulgated to establish and administer a state USF.

The contact persons are Elizabeth Barnes, Law Bureau (717) 772-5408, and Gary Wagner, Fixed Utility Services (717) 783-6175.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Public Meeting held March 22, 2001

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice-Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Rulemaking Re Establishing
Universal Service Fund Regulations at
52 Pa. Code §§63.161-63.172

Docket No. L-00000148

REVISED FINAL RULEMAKING ORDER

BY THE COMMISSION:

Introduction

For several years, the Commission has been examining the need for an Intrastate Universal Service Fund ("USF" or "Fund") in an effort to both reduce and restructure access charges and establish the appropriate level playing field for the development of local competition. The USF is a means to reduce access and toll rates for the ultimate benefit of end-users and to encourage greater toll competition while enabling carriers to continue to preserve the affordability of local service rates. The state USF, as currently constituted within the parameters of the instant rulemaking, can best be described as a revenue-neutrality fund designed to neutralize LEC revenue short-falls resulting as a

consequence of ordered access charge and intrastate toll revenue reductions. Although it is referred to as a fund, it is actually a pass-through mechanism to facilitate the transition from a monopoly environment to a competitive environment – the USF provides for an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by mandated decreases in toll and access charges receipts.

With the enactment of Chapter 30, this Commission has statutory authority to establish a Universal Service Fund. Rulemaking to Establish a Universal Service Funding Mechanism, L-00950105 (June 21, 1996); Bell Atlantic-Pennsylvania v. PaPUC, 2790 C.D. 1999, October 25, 2000. Under Chapter 30, the Commission has explicit regulatory authority to take appropriate actions to maintain universal service at affordable rates. In particular, we note the legislative objective of “maintaining universal service at affordable rates statewide,” the requirement that telecommunications customers pay only “reasonable charges” for local service, and that the Commission may “establish such additional requirements and regulations as it determines to be necessary and proper to ensure the protection of consumers.” 66 Pa. C.S. §§3001(1), 3001(2), and 3009(b)(3), respectively. Section 254(f) of TA-96 also contains explicit state authority for a universal service fund, providing that “[e]very telecommunication carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to preserve and advance universal service in that State.”

With the initiation of the Global Settlement Conference in September 1998, the issues relating to a USF, including the size and structure of the fund, and its interplay with access and toll rate reduction, rate caps, and rate rebalancing, were bundled with the myriad of other complex telecommunications issues the parties were seeking to resolve. Both of the subsequent petitions to resolve these complex telecommunications issues (P-00991648 and P-00991649), contained proposals to establish a USF. These petitions formed the basis for the Global Order later entered on September 30, 1999.

Procedural History

In Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications in the Commonwealth, Docket No. I-00940035 (November 10, 1997), and Generic Investigation in Intrastate Access Charge Reform, Docket No. I-00960066 (November 10, 1997), Bell Atlantic-Pennsylvania, Inc., now known as Verizon Pennsylvania (“Verizon”), and the small incumbent local exchange carriers filed a proposed joint settlement of the universal service issues, embodied in their “Small Company Universal Service Plan” (“Small Company Plan”), originally filed on November 10, 1997 at Docket Nos. I-00940035, L-00950105, I-00940034, and I-00960066. The Small Company Plan was proposed as an interim measure to be in place until such time as the Commission and the FCC resolved outstanding policy issues and permanently established rules concerning universal service

and access charge reform. Subsequently, Verizon and the Rural Telephone Company Coalition ("RTCC") filed an Amended Plan ("Amended Plan") which was attached to their petition at P-00991649 ("1649 Petition") as Appendix II, Small Company Universal Service Fund Settlement.¹

In the Global Order, the Commission directed that a universal service fund be established and sized in accordance with the Amended Plan attached to the 1649 Petition as Appendix II, Section A, as altered by Sprint/United's inclusion in the plan. The Commission adopted the Amended Plan's proposal that the Fund be sized at \$20.5 million based upon the schedules attached to the Amended Plan.

At a subsequent Technical Conference on November 2, 1999, the RTCC requested additional time to submit updated schedules which would more accurately reflect September 1998 to September 1999 data, and it was further generally agreed among the parties represented at the Technical Conference that the originally estimated sizing of \$20.5 million did not anticipate Sprint/United's participation in the Fund at a level of \$9.0 million. Therefore, since new ILEC schedules and Sprint/United's original schedule were forthcoming and would affect the eventual tariff filings and the sizing of the Fund, it was recognized and accepted that the sizing figure of \$20.5 million, as well as Verizon's initial payment of \$12.0 million, would increase.

¹ Since the modified Small Company Universal Service Plan in the P-00991649 Petition essentially replaced the November 10, 1997 filing, this Commission viewed the November 10, 1997 filing as being superseded by the Amended Plan. Global Order, P-00991648 and P-00991649 (September 30, 1999).

On March 18, 2000, the Universal Service Fund Proposed Regulations were published at 30 Pa.B. 1549. On April 17, 2000, the Commission received written comments from AT&T Communications of Pennsylvania, Inc. (“AT&T”); Verizon; RTCC, the Attorney General’s Office, Office of Consumer Affairs (“OCA”), and Sprint Communications Company L.P. and the United Telephone Company of Pennsylvania (“Sprint/United”). On May 18, 2000, the Commission received comments from the Independent Regulatory Review Committee (“IRRC”).

On December 5, 2000, a Final Rulemaking Order was entered at the Commission. However, upon review of continued concerns from IRRC, the Commission *sua sponte* withdrew its Final Rulemaking Order by letter dated February 23, 2001. This Revised Final Rulemaking Order replaces the earlier Final Rulemaking Order, except that Annex B is no longer attached. This is because Annex B consisted of a draft request for proposals (RFP) inviting bids for the administrator of the Fund. The RFP was officially published on January 6, 2001 at 31 Pa.B. 56.

Discussion of Comments

IRRC commented generally that the PUC Order and Regulatory Analysis Form did not contain sufficient information to evaluate the economic and fiscal impact of this regulation or the regulation’s reasonableness. Specifically, IRRC was concerned about the dollar amount of the Fund.

In our Proposed Order adopted on January 27, 2000 and entered on February 4, 2000, this Commission ordered that the Fund be sized at \$20.5 million plus an additional \$9.0 million to reflect Sprint/United's participation, or approximately \$29.5 million. In fact, since then, the size of the Fund for the year 2000 has been established by Commission Order entered April 18, 2000, at \$31,220,606.² The size of the Fund will increase each year at the rate at which the number of access lines owned by the 31 recipient carriers increases.³ Although the regulations do not specify a minimum or maximum limit on the dollar amount of the Fund, the size of the Fund is tied directly to changes in the number of access lines each recipient company owns. The contribution rate to the Fund is directly tied to the specific local telecommunication provider's revenues. Those participating carriers which report intrastate end-user retail telecommunications revenues will contribute to the Fund in their pro-rata share.

In its Comments, IRRC also notes that proposed Section 63.161(3) sets forth the current intent of the Fund, but that proposed Section 63.164(1) states that the PUC may establish new programs eligible for universal service funding. IRRC objects that the regulation does not specify any limit on the scope of services that could be supported by the Fund. We have amended Section 63.164(1) so as to delete this language.

Verizon argues that Rule 1701 of the Pennsylvania Rules of Appellate Procedure bars the Commission from establishing the USF because the Commission's ability to

² *Establishment of a Pennsylvania Universal Service Fund*, M-00001337, Tentative Order, entered April 18, 2000, p.14.

create and fund a different universal service fund is currently before the Commonwealth Court in a prior appeal.⁴ However, while the merits of that particular fund adopted in 1997 (but never implemented) may be on appeal, nothing in Pa.R.A.P. 1701 bars this Commission from establishing a wholly different fund.

Rule 1701 generally provides that after an appeal is taken or review of a quasi-judicial order is sought, the trial court or government unit may no longer proceed further in the matter. Pa.R.A.P. 1701(a). Essentially, the effect of an appeal stays the government unit's ability to act further on the particular matter or issues appealed to the reviewing court. The Rule 1701 stay, however, is not applicable to the USF established by the Commission in the instant order.

The January 28, 1997 order established a Basic Universal Service (BUS) rate and a different universal service costing methodology. Verizon's appeal is limited to the creation of the prior fund. Verizon's appeal does not create an open-ended stay or bar the Commission's ability to create any fund, only the one at issue in the appealed order. The Commission has not attempted to pursue implementation of the January 28, 1997 BUS fund. Moreover, in the recently issued decision at *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 2790 C.D. 1999, October 25, 2000, the

³ *Establishment of a Pennsylvania Universal Service Fund*, M-00001337, Order, entered April 18, 2000, p. 3.

⁴ See *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications in the Commonwealth*, PaPUC Docket No. I-00940035, Opinion and Order entered January 28, 1997, *Bell Atlantic-Pennsylvania v. PaPUC* at No. 2420 C.D. 1997, Commonwealth Court of Pennsylvania.

Commonwealth Court has expressly ruled that “the PUC’s action on the current USF issue, now before this Court, is not barred by Pa.R.A.P. 1701.” *Slip Opinion* at 99.

Verizon also argues that in *Process Gas Consumers Group v. Pa.P.U.C.*, 511 Pa. 88, 511 A.2d 1315 (1986) (*Process Gas*), the Pennsylvania Supreme Court prohibited the Commission from creating a fund similar to the USF because the creation of that particular kind of fund was not within the Commission’s delegated authority. The Commission rejects this argument as the fund created in *Process Gas* is distinguishable from the USF established in the Global Order.

In *Process Gas*, the Commission, in response to a federal program established to reduce the rates of eligible consumers throughout the states, imposed a state-specific Boiler Fuel Rider (BFR) surcharge on certain industrial consumers. The Commission ordered the resulting revenue from the state BFR surcharge to be placed into an escrow account. Subsequently, the Commission ordered that the funds from the escrow account be used to create a conservation program, finding that the General Assembly had conferred in Section 308 of the Public Utility Code a duty upon the Commission to promote energy conservation. The Pennsylvania Supreme Court concluded that Section 308 only empowers the Commission to direct an internal bureau to conduct research in the area of conservation, and does not empower the Commission to create a fund or to mandate programs to utilize those funds.

The creation of the USF in the Global Order, however, is within the Commission's delegated authority. One of the primary purposes set forth in Chapter 30 of the Code is to "[m]aintain universal telecommunications service at affordable rates . . ." 66 Pa.C.S. §3001(1). Another prevailing purpose of the Commission under Chapter 30 is to "[e]nsure that customers pay only reasonable charges for local exchange telecommunications services . . ." 66 Pa.C.S. §3001(2). Moreover, Section 3009(b)(3) provides statutory authority for the Commission to "establish such additional requirements and regulations as it determines to be necessary to ensure the protection of consumers." 66 Pa.C.S. §3009(b)(3).

Section 254(f) of TA-96, 47 U.S.C. §254, provides that a state may adopt regulations to determine the manner in which intrastate telecommunications providers shall on an equitable and non-discriminatory basis contribute to the preservation and advancement of universal service. Verizon argues that because Section 254(f) refers to "states" instead of "state commissions," the General Assembly, not the Commission, is the only entity authorized to establish a USF in Pennsylvania. Nonetheless, as was explained above, the General Assembly has delegated authority to the Commission under 66 Pa.C.S. §501 to administer and supervise public utilities doing business within the Commonwealth of Pennsylvania, and therefore, the Commission may promulgate and enforce regulations to carry out its duties. Under these circumstances, the Commission

submits, and the Commonwealth Court has now affirmed, that state and federal statutes confer upon the PUC the power to establish a Universal Service Fund.⁵

IRRC further comments that the PUC did not provide an estimate of the operating cost of the Fund. These costs include those determined by competitive bid (the administrator and auditor), the reserve in Section 63.165(b), and the cost to telecommunications providers to report monthly to the administrator.

The Commission did not provide an estimate of the operating cost of the Fund because we are interested in obtaining a low bid from prospective administrators and/or auditors. Publicly estimating how much the administrative and auditor fees should be would jeopardize the competitive bid process. Nevertheless, the administrative and auditing costs of the Fund should be minimal compared to the overall size of the Fund and should not be dependent on the size of the Fund. Rather, the fees should be reflective of the cost of providing the administrative and auditing services.

Regarding the cost to telecommunications providers to provide monthly reports to the administrator, monthly calculations are eliminated in the final regulations. Also, the companies can save on mailing expenses by electronically submitting their worksheets to the administrator and by electronically wiring their payments into the Fund.

AT&T commented that although the Commission's establishing a USF is "on the mark," the methodology imposes a disproportionate financial burden of the Fund on

⁵ *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 2790 C.D. 1999, October 25, 2000 Slip opinion at p. 104.

competitive local exchange carriers (“CLECs”), interexchange carriers (“IXCs”), and other telecommunications providers that must pay access and other wholesale charges to local exchange companies because the contribution calculation is based on each provider’s end-user retail revenue and thus excludes all revenues received from the sale of wholesale services such as access, resale (toll or local), and unbundled network elements (“UNEs”). CLECs buy UNEs from ILECs. The revenues the ILEC receives for the sale of wholesale services are not assessed for purposes of calculating the ILEC’s contribution to the USF. Contrarily, the CLEC, which does not sell its services at wholesale rates, has entirely assessable revenues. AT&T operates as an IXC and a CLEC within the Commonwealth and it advocates changing the Fund contribution calculation so as to base contributions on each carrier’s gross intrastate revenues, less payments made to other carriers for wholesale services.

The Commission developed the formula for determining each company’s USF contribution so as to avoid a double counting of revenues for the same services. Whether the Commission allows the ILECs to exclude wholesale revenues from their calculation of assessable revenues, or allows the carriers buying wholesale services to subtract what they pay, the service which ultimately reaches the end-user customer is assessed only once. The Commission believes, for the purposes of this USF, that it is more appropriate to allow the ILECs to subtract those revenues received from the sale of wholesale services because the ILEC is not delivering the service to an end-user customer. The Commission

is persuaded by the RTCC and Verizon that this calculation is more revenue-neutral for the eligible recipient carriers. We also note that, unlike the assessments for Commission regulatory expenses pursuant to 66 Pa.C.S. §510, there is no set statutory formula that limits our discretion in developing an appropriate USF contribution methodology.

AT&T further asserts that the definition of a Universal Service Fund Recipient in Section 63.142 should be modified so as to provide that a CLEC operating in the service territory of an ILEC other than Verizon-Pennsylvania or Verizon-North, and certified by the Commission as an eligible telecommunications carrier pursuant to 47 U.S.C. §214(e), qualifies as a Universal Service Fund Recipient. We disagree. The Small Company Plan restricted the eligible carriers to a list of approximately 30 rural telephone companies and, by the Global Order, this Commission adopted that theory and added Sprint/United to the limited listing of eligible Fund recipients. The federal universal fund referenced by AT&T as justification for its position was established for various programs which are not a part of the reasons for establishing the Pennsylvania USF. Therefore, 47 U.S.C. §214(e) does not govern our definition.

We further disagree with AT&T regarding its assertion that the costs associated with administering the Fund should be borne only by those receiving disbursements from the Fund. The Fund was designed to be revenue neutral. The 31 companies that are recipients should not have to bear the entire administrative cost.

AT&T also avers that the Commission's proposed supervision and oversight of the Fund administrator should be expanded to provide contributors with an ongoing consultative role in the administration of the Fund and that the regulations should provide for an oversight committee comprising of contributors, recipients, and Commission employees. While we agree with AT&T that all telecommunications providers' input is helpful and wanted, we do not believe this needs to be expressly incorporated into the regulation. By regulation, all participants will receive annual reports regarding the Fund administration and will have opportunity to comment regarding the administration of the Fund. Any intermittent problems may be addressed to the Commission.

Comments relating to specific sections of the proposed regulations are addressed as follows.

§63.161 Statement of purpose and policy.

As noted previously, we agree with IRRC that the last sentence in Section 63.161 should be stricken as it appears that future Commission orders could have the effect of changing the regulations. We have further deleted the word "currently" from the regulation. We decline to specify dollar amounts on what the access charges, intraLATA toll rates, and cap on residential local services are to be because these dollar amounts might change in the future. In its September 30, 1999 Global Order, the Commission ordered reductions to \$.009 per minute for access charges, \$.11 per minute for intraLATA toll rates, and \$16.00 caps on residential local service charges to consumers.

§63.162 Definitions.

We accept IRRC's suggested modifications to the Definitions for the terms assessment rate, contributing telecommunications providers, end-user revenue, fund recipient, and local service provider, and modify our definitions accordingly. IRRC suggested we delete the term "basic universal service" because it was not used elsewhere in the regulation. Instead, in the definition of "local service provider" we have changed the phrase "basic local exchange services" to "basic universal service" and have kept the definition of basic universal service. We note that we have defined basic universal service as "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." By order entered April 10, 1995, the Commission has specifically defined basic universal service to consist of the following service components: 1) single party, voice grade, incoming and outgoing access to the public switched network and usage within a local calling area; 2) touch tone capability; 3) annual local directory; 4) access to operator services; 5) access to directory assistance; 6) access to telecommunications relay service and other services designed for persons with disabilities; and 7) access to emergency services.⁶

⁶ *In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth; Declaratory Order, Advance Notice of Proposed Rulemaking,*

§63.163 Universal service fund administration.

IRRC is concerned that Section 63.163 describes a competitive bidding process, but does not state the term of the contract. IRRC states that the Commission should amend subsection (a) to provide the length of the contract awarded. Although we decline to add a temporal constraint to the regulation, we included a sentence in our Request For Proposals attached to our original Final Rulemaking Order entered on December 5, 2000, which provided that the initial contract for the administrator shall terminate on December 31, 2003 subject to possible renewals.

§63.164 Commission oversight.

IRRC commented that subsections (a)(1)-(4) go beyond the intent of the Fund expressed in the Global Order and should be deleted. The Commission agrees and deletes subsections (a)(1)-(4). IRRC also commented regarding the Commission's need to include "the size of the Fund" in the Order required by this subsection. We agree and have added such language to subsection (a) of the regulation.

§63.165 Calculation of contributions.

RTCC requested additional language in Section 63.165 to require that the Fund amount never fall below the initial amount established by the Commission. The Commission declines to add this provision as it is not necessary. We note that the Fund size will never fall below the initial amount established by the Commission because even

if recipient carriers have a decrease in access lines, they will not receive less than they initially received because that is how the Small Company Plan was designed and adopted by the Commission in the September 30, 1999 Global Order.

The Commission further rejects RTCC's suggestion that the submission of year-end intrastate end-user retail revenue by March 31 of each year be changed to an earlier date. March 31 is the deadline for the submission of utility gross intrastate operating revenue reports pursuant to Section 510 annual assessment calculations; therefore, it is a good deadline for the submission of year-end intrastate end-user retail revenue reports.

The Commission does agree with RTCC that all calculations and assumptions should be done on an annual basis rather than monthly. The Commission is persuaded by RTCC, Sprint/United, and Verizon that the administrative expense of having to recalculate monthly contributions to the Fund outweighs the benefit of having the monthly contributions more accurately reflect monthly revenue fluctuations. The Commission further agrees with RTCC that the calculation should include a factor which increases the Fund in accordance with growth in access lines of eligible recipient carriers.

The Commission agrees with Verizon and AT&T in reducing the surcharge for uncollectables from 5% to 1% of the size of the Fund per annum, and in eliminating estimated surplus at the end of each calendar year. Our regulation has been amended accordingly.

IRRC commented that the calculation includes the “Commission approved” administrative and auditing expenses. Section 63.163(a) states the administrator and auditor will be selected by competitive bid. Therefore, it is unclear why the phrase “Commission approved” is needed. The phrase “Commission approved” is needed because in a contract, there may be per diem charges for things not covered in the flat-rate charge for administering the Fund. Extra expenses, which may include travelling expenses, auditing expenses and legal expenses, are those expenses above that which were contemplated and bargained for in the flat rate charge and these expenses may be recovered, but only with Commission approval.

IRRC further commented that the language describing the illustrated calculation was confusing and IRRC suggested that the formula could stand alone in the regulation without the description. We deleted the language describing the formula for calculating contributions. Additionally, IRRC noted that the definition for “W “ could be better. We added language describing how to calculate “W.” IRRC questioned whether we should amend the calculation of “Y” such that $Y = 1\% \text{ times } (X+W)$ instead of what had been written, $Y = 1\% \text{ times } X$. We agree with IRRC that the 1 percent for uncollectables should be multiplied by the prior year’s size of the Fund plus any increase in the Fund due to growth in access lines of the recipient carriers. We amend the calculation of “Y” accordingly. Finally, we changed the definition of X such that the prior year’s size of the Fund is adjusted for any surplus or shortfall experienced the prior year.

§63.166 Administrator criteria.

We accept IRRC's comments that the administrator be expressly neutral, impartial, and independent from telecommunications services providers operating in the Commonwealth. We have modified our regulation accordingly.

IRRC commented that the term "affiliate" should be defined in subsection (3). We define "affiliate" as in the Webster's Collegiate Dictionary 10th Edition as "a person or organization closely associated with another typically in a dependent or subordinate position." IRRC commented that we should explain whether this provision, which excludes all affiliates, including telecommunications providers outside of Pennsylvania, was our intent. Yes, it was. We have added additional language to the regulation to further clarify our position.

Additionally, in response to IRRC's comment that the phrase "common carrier" is undefined and should be clarified, we remove the term "common carrier" and substitute the word "telecommunications," which needs no definition.

In response to IRRC's comments regarding the Administrator's requirement to report to the Commission any changes in its Board composition, we agree, and have added such language to the regulation.

§63.167 Administrator's duties.

We accept IRRC's comments regarding administrator duties in this section and modify Section 63.167 accordingly. We have changed references to "companies" or

“entities” to read “contributing telecommunications providers” in the interest of using consistent language. We have changed the deadline for the administrator’s annual report from July 1 to September 1.

Regarding §63.167(2), IRRC commented the PUC should explain the need to report contributions on a monthly basis. While the assessment calculations are annual, billings and payments are monthly. The form is mailed with payment due on a monthly basis because the form identifies the carrier, the carrier’s current address, phone numbers, utility code and the monthly amount due. The form acts as an invoice and a way of tracking incoming payments. We have amended the text of the regulation to clarify our intent.

Regarding §63.167(7), IRRC commented that if the administrator believes a contributing telecommunications provider is guilty of submitting false information or another irregularity, and the PUC agrees, the type of action taken against a contributing telecommunications provider should be specified. IRRC suggests that the regulation should reference either a citation to corrective action or other penalty that will be assessed to the contributing telecommunications provider. Accordingly, we will cross-reference this subsection to the section of these rules dealing with enforcement, §63.171.

Regarding §63.167(8), IRRC wants to know where the return on investment will be placed. Will profits be reinvested in selected instruments, or will the moneys be

placed into the Fund? The interest earned on the Fund monies will be reinvested into the Fund. This is specified in the final-form regulation.

Regarding §63.167(9), any potential Fund shortfall should be reported as soon as possible because it would involve the PUC having to recalculate assessment rates and this would take time before Funds flowing in would exceed Funds flowing out. Also, we have removed the term “data analysis” from the regulation to remove any uncertainty caused by this term.

Regarding §63.167(10), we believe it is important that the forms be mailed annually to contributing telecommunications providers as opposed to sending the forms electronically or by facsimile. Currently, electronic mail and fax machines are not viewed as reliable as regular mail.

Regarding §63.167(12), IRRC wants to know what is meant by “promptly.” Depending upon the type of data request, the Commission will determine what is an acceptably prompt response. This discretion is necessary to effective oversight of the Fund administration. For example, if the Commission requires a recalculation of contributions, the Commission might expect a prompt response to be within two weeks. However, if the Commission asks whether a particular contributor is delinquent and by how much, the Commission might expect a prompt response to be one within a couple of days.

Regarding §63.167(23), IRRC commented the phrase “on a timely basis” is unacceptably vague. IRRC suggested the PUC should consider adding a specific minimum time period that an administrator must follow to alert the PUC if short-term borrowing is needed. We agree and remove the phrase “on a timely basis” and substitute the phrase “at least 60 days before short-term borrowing is necessary. ”

Regarding §63.167(24), we agree with IRRC and omit compliance requirements with “procedures and guidelines” as there are none currently other than an investment guideline attached as an appendix to the current sole source contract with NECA as an interim administrator. To clarify, we have substituted in the revised final regulations the phrase, “the contract and Commission Orders” for “procedures and guidelines.”

§63.168 Auditor’s duties.

IRRC noted that in the original rulemaking the regulations stated that the Administrator’s report and the Auditor’s report were due on the same date, July 1 of each year. This was a typographical error. The Administrator’s report should be due 60 days after the Auditor’s report is due. Therefore, we changed the language in Section 63.163 to reflect that the Administrator’s report is due on September 1, and we did not change the auditor’s deadline for a report in Section 63.168.

IRRC further requested we amend or explain the meaning of the sentence: “Thereafter, the Fund shall be audited in the same manner annually.” We accept IRRC’s

contribution to the USF. All telecommunications service providers are prohibited from recovering these contributions through any type of direct or indirect charge. Section 63.170 is expanded to include this clarification.

§63.171 Sunset provision.

IRRC commented that Section 63.171 (relating to sunset provision) states the “Fund shall expire on December 31, 2003, unless the term of the Fund is extended by the Commission.” The regulations would thus allow the term of the Fund to be extended by Commission order. The regulation does not specify under what authority or circumstances the PUC would extend the term of the Fund beyond December 31, 2003. Therefore, the term of the Fund is unclear. IRRC recommends that if the Commission wants to rescind this regulation at some point, it should do so by promulgating another regulation. IRRC recommends the provision be deleted from the final form version. We agree and delete Section 63.171.

In addition to the above-noted modifications, the final form USF regulations hereby adopted include a number of grammatical, non-substantive changes intended only for clarification.

Overall, we believe that the regulations, as herein amended in consideration of comments received, and as attached hereto as Annex A, are consistent with the public interest and shall be adopted at this time through final order. Annex A reflects through its red-lined markings, the cumulative changes made to Annex A of this Commission’s

comments regarding these matters and modify Section 63.168 so as to clarify that an audit of Fund collections and disbursements will be done annually.

§63.169 Collection of universal service fund contributions.

IRRC contends that it is unclear why each carrier must return the form within 30 days of issuance. Second, IRRC contends the phrase “end-user revenue” should replace the phrase “end-user telecommunications retail revenue.” We have addressed IRRC’s two concerns in our revised final regulations.

At the beginning of the calendar year, the administrator will provide monthly reporting forms to each contributing telecommunications provider. Each carrier will complete and remit the form to the administrator along with its monthly contribution in full. 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. If a carrier’s contribution to the USF in any given year is less than or equal to \$120, that carrier will not be required to submit a contribution. We have added this figure to the regulation. Also, we eliminated the phrase “end-user telecommunications retail revenue.”

§63.170 End-user surcharge prohibited.

IRRC asked for clarity regarding whether a provider can recover USF contributions through any type of direct or indirect charge even though a surcharge on customer bills is expressly prohibited. To clarify as requested, no telecommunications service provider may implement a customer or end-user surcharge to recover its

Proposed Rulemaking Order entered on February 4, 2000. Accordingly, under authority at Section 501 of the Public Utility Code, 66 Pa.C.S. §501, and Sections 201, *et seq.*, of the Commonwealth Documents Law, 45 P.S. §§1201, *et seq.*, and regulations promulgated thereunder at 1 Pa. Code §§7.1 – 7.4, we amend the regulations at 52 Pa.Code §§ 63.161 – 63.171 as discussed above and as set forth in Annex A;

THEREFORE,

IT IS ORDERED:

1. That this Commission's Final Rulemaking Order entered on December 5, 2000, is hereby rescinded and replaced with this Revised Final Rulemaking Order.
2. That 52 Pa. Code, Chapter 63 is hereby amended by the addition of the regulations as set forth in Annex A, attached hereto.
3. That the Secretary shall submit this Order and Annex A for review by the designated Standing Committees of both houses of the General Assembly, and for review and approval of the Independent Regulatory Review Commission.
4. That the Secretary shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.
5. That the Secretary shall submit a copy of this Order and Annex A to the Office of Attorney General for review as to legality.
6. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

7. That a copy of this Order and Annex A be filed in the Joint Petitions for Global Resolution proceeding at P-00991648 and P-00991649 as well as at Docket No. M-00001337, *Establishment of a Pennsylvania Universal Service Fund*.

8. That a copy of this Order and Annex A shall be served upon the Pennsylvania Telephone Association, all jurisdictional telecommunications utilities, the Office of Trial Staff, Office of Consumer Advocate, and the Office of Small Business Advocate.

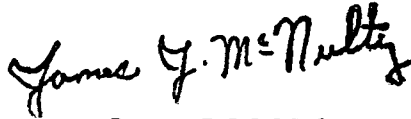
9. That the final regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

10. That the contact persons for this rulemaking are Gary Wagner, Telecommunications Manager, Bureau of Fixed Utility Services, (717) 783-6175 (technical) and Elizabeth Barnes, Assistant Counsel, Law Bureau (717) 772-5408 (legal).

11. That the National Exchange Carrier Association continues as the interim administrator to assist in administering the interim USF now in place until final

regulations are approved and a permanent administrator is selected through a competitive bidding process.

BY THE COMMISSION:

A handwritten signature in black ink that reads "James J. McNulty". The signature is written in a cursive, slightly slanted style.

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: March 22, 2001

ORDER ENTERED: **MAR 23 2001**

ANNEX A

TITLE 52. PUBLIC UTILITIES PART 1. PUBLIC UTILITIES COMMISSION Subpart C. FIXED SERVICE UTILITIES CHAPTER 63. TELEPHONE SERVICE Subchapter L. UNIVERSAL SERVICE

§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 enacting 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 the Commonwealth's telecommunications providers responsibility for assuring and maintaining universal service in the 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 ~~Fund~~ PURPOSE OF THE UNIVERSAL SERVICE FUND ("USF" OR "FUND") is ~~currently intended for the purpose of allowing rural telephone companies to reduce their access charges and toll rates and to reduce and cap certain local service charges to consumers on a revenue-neutral basis thereby encouraging greater toll competition while at the same time continuing 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. The manner by which these funds shall be used will be determined by applicable orders of the Commission including but not limited to the order entered on September 30, 1999, at P-00991648 and P-00991649, as amended by the order entered on November 5, 1999.~~

§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 ~~equal~~ DETERMINE

that provider's monthly contribution to the annual Fund budget. ~~Each contributing telecommunications provider's~~ 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 ~~will be~~ ARE exempt from this subchapter PURSUANT TO 66 PA.C.S. §102(2)(IV).

End-user revenue - Revenues received from telecommunications subscribers who actually 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 ~~or person who~~ WHICH receives funds from the Fund. All incumbent local exchange carriers operating in this Commonwealth, with the exception of ~~Bell Atlantic Pennsylvania, Inc.~~ VERIZON PENNSYLVANIA and ~~GTE~~ VERIZON NORTH, INC. shall be eligible Fund recipients.

Local service provider - A telecommunications company to which RETAIL telephone customers subscribe for basic local exchange UNIVERSAL services.

§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 establish, maintain and audit the Fund consistent with this subchapter. ~~The third-party administrator designated by the Commission will be independent and will not be affiliated with any contributing telecommunications provider or any other party with a vested interest in the Fund. The administrator shall be responsible for general administration of the Fund, the preparation of an annual report to the Commission, and maintaining the financial viability of the Fund.~~

- (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. ~~paying universal service reimbursement claims submitted by local service providers.~~
- (e) The administrator shall file with the Commission ~~and the auditor~~ by ~~SEPTEMBER~~ July 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. ~~and any other interested party.~~

(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, P.O. BOX 3265, HARRISBURG, PA 17105-3265. THE COMMENTS SHOULD BE FILED AT DOCKET NO. M-00001337.

§63.164. Commission oversight.

(a) 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.

~~The order may address but is not limited to the following:~~

- ~~(1) establishing new programs eligible for universal service funding;~~
- ~~(2) terminating the eligibility for universal service funding of existing programs;~~
- ~~(3) reallocating the budget among programs;~~
- ~~(4) modifying support formulas or benefits within a program;~~

~~(5) raising or reducing assessment levels consistent with Section 63.165;~~

~~and~~

~~reviewing and establishing compensation for the administrator and the auditor including reimbursement of reasonable administrative expenses related to the Fund.~~

~~The Commission shall perform an annual review of USF recipients to verify their continued eligibility and that each eligible local service provider has received and is projected to receive USF entitlements. Subject to such reviews, the Commission will order required adjustments to USF assessments, distributions, necessary rule changes, and other relevant items as appropriate.~~

~~Supplemental and forecast information that may be requested by the Commission to assure a complete review shall be provided by telecommunications service providers to the Commission within 45 days of the Commission's written request. Where data required is not provided within 45 days of the request, the Commission may impose applicable remedies, including withholding future support from the USF and/or penalties as provided under the Public Utility Code.~~

§63.165. Calculation of contributions.

(a) CONTRIBUTING telecommunications providers shall submit an affidavit to the administrator by ~~April 1~~ 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 ~~a contributing telecommunications provider's~~ THE ANNUAL assessment rate, the administrator will UTILIZE THE FOLLOWING CALCULATION. ~~FIRST SIZE calculate the upcoming year's size of the fund BY INCREASING THE PRIOR YEAR'S FUND TO ACCOUNT FOR ANY GROWTH IN ACCESS LINES, and add to that PLUS A 51% GROSS UP OF THAT TOTAL FOR UNCOLLECTABLE~~ ~~times the estimated size of the fund plus the Commission-approved administrative and auditor expenses for the upcoming year and divide~~ DIVIDING that subtotal by the aggregate statewide intrastate end-user telecommunications retail revenue OF ALL CONTRIBUTING TELECOMMUNICATIONS PROVIDERS for the PRIOR CALENDAR year. This rate will then be multiplied by each carrier's CONTRIBUTING TELECOMMUNICATIONS PROVIDER'S individual intrastate end-user telecommunications retail revenue for the prior month CALENDAR YEAR AND DIVIDED BY 12 to yield that carrier's CONTRIBUTING TELECOMMUNICATIONS PROVIDER'S monthly contribution FOR THE UPCOMING YEAR. This calculation is illustrated as follows:

$$\frac{W + X + Y + Z}{A} \times \frac{B}{12} = C$$

~~W = INCREASE IN FUNDING REQUIREMENT DUE TO GROWTH IN ACCESS LINES~~

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 CARRIER'S PRIOR YEAR NET SUPPORT (PRIOR YEAR FUNDING MINUS PRIOR YEAR PAYMENT). THE INDIVIDUAL RECIPIENT CARRIERS' REQUIRED FUND INCREASES ARE TOTALED TO YEILD W. W=ALG x (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 ~~size of fund~~

Y = surcharge for uncollectables (~~51% times X~~) IS 1% TIMES (X + W)

Z = Commission approved administrative and auditing expenses

A = aggregate state-wide end-user intra-state retail revenue OF ALL CONTRIBUTING TELECOMMUNICATIONS PROVIDERS for the previous calendar year

B = ~~carrier's~~ individual CONTRIBUTING TELECOMMUNICATIONS PROVIDER'S end-user intra-state retail revenue for the prior ~~month~~ CALENDAR YEAR

C = ~~carrier's~~ INDIVIDUAL CONTRIBUTING TELECOMMUNICATIONS PROVIDER'S monthly contribution

(bC) To the extent the funding received from providers in any ~~1~~ ONE year exceeds the disbursements required for the Fund plus the cost of

administering the Fund (including ONE PERCENT OF THE TOTAL SIZE OF THE FUND ~~such reserve as may be necessary for the proper administration of the USF~~), TO COVER DELINQUENT ACCOUNTS AND CONTINGENCIES), ~~any unexpended and unencumbered moneys~~ 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 THE COMMONWEALTH OF PENNSYLVANIA.
- (2) The administrator may not advocate specific positions before the Commission in non-universal service administrative proceedings related to ~~common carrier~~ 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 ~~where the administrator or board member does one or more of the following:~~ WHERE THE ADMINISTRATOR OR BOARD MEMBER:

~~(1)(i) where the administrator or board member~~ 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 MUST NOTIFY THE COMMISSION IMMEDIATELY.

§63.167. Administrator's duties.

~~At a minimum,~~ The administrator shall have the following duties:

- (1) Maintain a database to track ~~entities~~ CONTRIBUTING TELECOMMUNICATIONS PROVIDERS ~~obligated to pay into the fund.~~
- (2) Develop ~~appropriate~~ COMMISSION-APPROVED forms ~~to be used by~~ WHICH all telecommunications service providers WILL SUBMIT TO THE ADMINISTRATOR ON A MONTHLY BASIS WITH THEIR MONTHLY CONTRIBUTIONS. ~~to report monthly contributions and provide a copy of the form on a monthly basis to those companies for completion~~
- (3) Review the ~~carrier~~-COMPLETED forms to ensure completeness and accuracy of ~~calculations~~ 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 ~~contributors~~ CONTRIBUTIONS that are 30 days OR MORE past due. ~~(no disbursements shall be made to any recipient that has any outstanding contributions due until the administrator has received such contributions and associated late fees).~~

- (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 of TO delinquent contributors and refer to the Commission for further enforcement, on a monthly basis, all ACCOUNTS MORE THAN 90-DAYS PAST DUE. ~~delinquencies that persist beyond 90 days,~~
- (7) IMMEDIATELY inform the Commission if it THE ADMINISTRATOR has reason to believe that a company CONTRIBUTING TELECOMMUNICATIONS PROVIDER has submitted false information to the administrator with the intent of obtaining fraudulent funding OR UNDER-REPORTED 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 UNDER §63.171. 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 shall 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 ~~which~~ EXPRESSLY APPROVED BY the Commission-approves.

(9) Promptly advise the Commission if the administrator's ~~data analysis~~ projects a ANY potential Fund shortfall or if Fund disbursements exceed receipts ~~for~~ IN a given period MONTH.

(10) In January of each year, mail reporting forms to each CONTRIBUTING telecommunications ~~service~~ provider to acquire appropriate data to DETERMINE: 1) EACH CONTRIBUTING TELECOMMUNICATIONS PROVIDER'S INTRASTATE END-USER TELECOMMUNICATIONS RETAIL REVENUE FOR THE PRIOR CALENDAR YEAR, 2) THE FUND RECIPIENTS' ACCESS LINE GROWTH WHICH TRANSLATES INTO A DOLLAR AMOUNT INCREASE IN THE SIZE OF THE NEXT YEAR'S FUND, 3) AGGREGATE STATE-WIDE END-USER INTRA-STATE RETAIL

REVENUE OF ALL CONTRIBUTING
TELECOMMUNICATIONS PROVIDERS FOR THE
PREVIOUS CALENDAR YEAR, AND 4) EACH
CONTRIBUTING TELECOMMUNICATIONS PROVIDER'S
CONTRIBUTION FOR THE FOLLOWING CALENDAR
YEAR. ~~compute the statewide aggregate intrastate end-user
telecommunications retail revenue.~~

- (11) Cooperate with the independent auditor selected by the Commission and provide data and information reasonably required to support audit activities.
- (12) Promptly respond to ~~incidental or occasional~~ 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 (~~if applicable~~), fund disbursements, interest earned, and cumulative results.
- (15) Maintain records by contributor and by recipient ~~in each~~ program.

- (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 ~~July 1 (60 days after the audit report is due)~~. 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 ~~If~~ short-term borrowing is necessary, the administrator shall provide formal notice ~~on a~~

timely basis 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. ~~procedures and guidelines established by the Commission, but may request the Commission amend, modify or delete procedures or guidelines. The administrator will not have the authority to develop or interpret the Commission's procedures or guidelines with respect to the Fund, and a~~ 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 said information upon order of the Commission. ~~This restriction does not apply to~~

~~information that the Commission has determined shall be publicly released.~~

(27) Operate on a fiscal year which shall be the same as the calendar year.

§63.168 Auditor's duties.

~~The auditor shall have the following duties:~~

~~(1)(A) An independent external auditor chosen by the Commission shall audit the Fund records covering both collections and disbursements for the fiscal years. The costs for conducting audits shall be included in the computation of Fund requirements. Thereafter, the USF shall be audited in the same manner annually.~~ THEREAFTER, AN AUDIT OF THE FUND COLLECTIONS AND DISBURSEMENTS SHALL BE DONE ANNUALLY.

~~(2)(B) FOLLOWING THE AUDIT, the Fund auditor will conduct an annual comprehensive audit of the Fund and 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 ~~each month~~ THE CALENDAR YEAR, the administrator will provide monthly reporting forms to each contributing

telecommunications provider. ~~The carriers calculate their contribution on the form taking into account their prior month's intrastate end-user telecommunications retail revenue. Within 30 days of issuance of the reporting forms,~~ 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 ~~appropriate interest and penalties on the delinquent contribution. or any other remedy available under law.~~

(c) If a carrier's contribution to the Fund in a given year is less than \$120.00, ~~\$10.00 a Commission-determined *de minimus* amount,~~ 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 ~~its~~ ANY contributionS to the Fund.

~~§63.171 — Sunset provision.~~

~~The USF shall expire on December 31, 2003, unless the term of the fund is extended by the Commission. Any moneys remaining in the Fund upon dissolution shall be returned to contributors participating in the fund as of the date of dissolution in their pro-rata share.~~

~~§63.172~~

~~§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 the Commonwealth AND BE SUBJECT TO OTHER PENALTY AS AUTHORIZED UNDER LAW.~~



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA

JOHN M. QUAIN
CHAIRMAN

April 19, 2001

The Honorable John R. McGinley, Jr.
Chairman
Independent Regulatory Review Commission
14th Floor, Harrisstown II
333 Market Street
Harrisburg, PA 17101

Re: L-00000148/57-214
Revised Final Rulemaking
Establishing Universal Service
Fund Regulations
52 Pa. Code Chapter 63

Dear Chairman McGinley:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on March 7, 2000, submitted a copy of the Notice of Proposed Rulemaking to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure and to the Independent Regulatory Review Commission (IRRC). This notice was published at 30 Pa.B. 1549, on March 18, 2000. In compliance with Section 745.5(b.1) copies of all comments received were provided to your Commission and the Committees.

In preparing this revised final form rulemaking, the Public Utility Commission has considered all comments received from the Committees, IRRC and the public.

Very truly yours,



John M. Quain
Chairman

Enclosures

cc: The Honorable Clarence D. Bell
The Honorable Lisa Boscola
The Honorable Chris R. Wogan
The Honorable Keith McCall
Legislative Affairs Director Perry
Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Barnes
Mr. Wagner
Mr. Zogby

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00000148/57-214

Subject: Establishing Universal Service Fund Regulations

Pennsylvania Public Utility Commission

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

| <u>Date</u> | <u>Signature</u> | <u>Designation</u> |
|-------------------|---|--|
| <u>5/19/01</u> | <u>[Signature]</u> | <u>HOUSE COMMITTEE</u> Consumer Affairs |
| <u>4/19/01</u> | <u>[Signature]</u> | <u>SENATE COMMITTEE</u> Consumer Protection and Professional Licensure |
| <u>4/19/01</u> | <u>[Signature]</u> | <u>Independent Regulatory Review Commission</u> |
| <u> </u> | <u> </u> | <u>Attorney General</u> |
| <u> </u> | <u> </u> | <u>Legislative Reference Bureau</u> |