

Regulatory Analysis Form

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(1) Agency

Pennsylvania Public Utility Commission

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L-00000148/ 57-214

REGULATORY
REVIEW COMMISSION
Harbison

IRRC Number: 2104

(3) Short Title

Rulemaking Re Establishing Universal Service Fund Regulations at 52 Pa. Code Sections 63.141 - 63.152.

(4) PA Code Cite

52 Pa. Code Sections 63.141-63.152

(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)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed 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").

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, a sunset provision, and an enforcement provision.

(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).

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 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. Once these regulations are published in the Pennsylvania Bulletin, we expect to receive formal comments from the public within 30 days.

(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.

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(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?

We were hoping to have the regulations in effect by July 1, 2000, in order to commence the selection process of an administrator through the competitive bidding process.

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

The regulations sunset December 31, 2003.



State of Arkansas Universal Service Fund
1999 Carrier Remittance Worksheet

B. Submission Date:
C. Revenue Data Month:
D. Monthly Quarterly Annual
E. Original Revision

A. Company Code: AR -

Please read complete instructions before completing.

SECTION 1 - CARRIER IDENTIFICATION

1. Company Name:
Complete Mailing Address:
Telephone:
2. Primary Communications Business (Please 'X' primary business and 'N' other categories being reported):
ILEC CLEC IXC RES CAP WIRELESS OSP PAY Other (Explain)
3. Parent Company:
Complete Mailing Address:
Telephone:

SECTION 2 - MONTHLY INTRASTATE RETAIL REVENUE DATA

4. LOCAL EXCHANGE SERVICE
5. LOCAL PRIVATE LINE
6. CELLULAR/PCS/MOBILE MONTHLY CHARGES
7. CELLULAR/PCS/MOBILE USAGE CHARGES
8. INTRASTATE SWITCHED TOLL
9. TOLL PRIVATE LINE
10. ALTERNATIVE ACCESS & DIRECTORY
11. PAY TELEPHONE
12. MISCELLANEOUS CHARGES
13. TOTAL INTRASTATE RETAIL REVENUES (SUM OF LINES 4 THROUGH 12)

SECTION 3 - REMITTANCE CALCULATION

14. 1999 ARUSF CONTRIBUTION RATE .0050
15. GROSS ARUSF ASSESSMENT (LINE 13 * LINE 14)
16. ARUSF SUPPORT PAYABLE (See Instructions)
17. NET ARUSF REMITTANCE (LINE 15 - LINE 16)
Remittances due to NECA on the 10th day of the current month and support payments sent by NECA on the 10th day of the following month. Remittances received after the 10th day of the month are subject to a two percent (2%) monthly late payment fee, or \$50, whichever is greater.

SECTION 4 - CHANGE IN COMPANY STATUS

18. Date: New Carrier Name:
19. If business has been discontinued in Arkansas: Business Sold or Business Merged or Business Discontinued
19a. Company sold to or merged with:

SECTION 5 - CERTIFICATION

Under penalties as provided by law, I certify that I have examined this report and to the best of my knowledge and belief it is true, correct and complete. I further acknowledge NECA's authority to request additional supporting information as may be necessary.
20. Date Officer Name Officer Signature Officer Title
21. Date Contact Name Contact Phone Contact Title
22. Complete Contact Mailing Address:

Questions ???



ARUSF Administration
NECA
100 S. Jefferson Road
Whippany, NJ 07981
(973) 884-8011 (Phone)
(973) 884-8510 (Fax)

Make check payable to "NECA ARUSF" and send with worksheet to:



NECA ARUSF
PO Box 360481
Pittsburgh, PA 15251-6481

Please Send Payment and Remittance Worksheet Directly to Bank

Payment Method:

Check [] EFT []

**FACE SHEET
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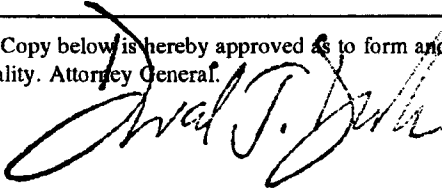
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LEGISLATIVE REFERENCE BUREAU
REVIEW COMMISSION

#2104

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

BY 
(DEPUTY ATTORNEY GENERAL)

MAR 03 2000

DATE OF APPROVAL

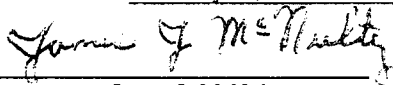
Check if applicable
Copy not approved. Objections attached

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(AGENCY)

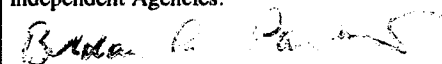
DOCUMENT/FISCAL NOTE NO. L-00000148/57-214

DATE OF ADOPTION January 27, 2000

BY 
James J. McNulty

TITLE (SECRETARY)

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

BY 
Bohdan R. Pankiw
Chief Counsel

2-9-00

DATE OF APPROVAL

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

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

The Pennsylvania Public Utility Commission on January 27, 2000, adopted a proposed 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
Proposed Rulemaking
Re: Establishing Universal Service Fund Regulations at
52 Pa. Code Sections 63.141- 63.151.**

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 January 27, 2000

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 §§63.141-63.152

Docket No. L-00000148

PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

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 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.

This Commission has statutory authority to establish a Universal Service Fund to ensure the availability of basic telecommunications services to all Pennsylvania citizens.

66 Pa. C.S. §§3001(1), 3001(2), 3009(b)(3). Even before the enactment of Chapter 30, this Commission recognized that its broad powers to regulate public utilities on a statewide basis provided support for the establishment of a Universal Service Fund.

Rulemaking to Establish a Universal Service Funding Mechanism, L-00950105 (June 21, 1996).

With the enactment of 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), 3009(b)(3) respectively.¹

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.

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. (“BA-PA”) 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, however, BA-PA and the

¹ Section 254(f) of TA-96 also serves to provide state authority to establish 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

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.²

In the Global Order entered September 30, 1999, the Commission ordered 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 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 BA-PA’s initial payment of \$12 million would increase.

to preserve and advance of universal service in that State.”

² 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).

At the November 2, 1999 USF technical conference sponsored by the Commission, the RTCC stated that it would prefer not to be responsible for calculating amounts owed to each of the approximately 30 recipients receiving numerous separate checks from the contributors into the USF under the monitored control of the Bureau of Audits as proposed in the Global Order. The LECs indicated a preference that the Commission or a neutral third party act as a clearing house for all contributors and recipients, and periodically do the calculations for the companies, bill the companies accordingly, and pay from the Fund that which is due other companies based on the data provided to the third party.

The concept of hiring a neutral third party interim administrator through a sole source contract was proposed. Both the National Exchange of Carriers Association ("NECA") and the Pennsylvania Telephone Association ("PTA") were mentioned as possible entities to handle the task of a third party administrator until a permanent one is chosen through competitive bidding at a later date. On balance, however, it appeared that NECA was best-equipped to handle the tasks of administration since it had accountants, legal counsel, was bonded, and was currently administering USFs in seven other states as well as administering the federal USF.

The Commission contacted NECA which expressed an interest in being the interim administrator of the fund. NECA was invited to make a presentation to the parties and the Commission. On November 17, 1999, at a second technical conference, NECA advised that based upon its prior experience, a new formula for calculating the monthly

contributions of the carriers was advisable. NECA suggested that instead of using the Amended Plan calculation (which used the prior year's data to calculate one flat monthly charge for the next 12 months), a fairer approach would be to use more current data, add in a 5% surcharge for uncollectables as well as a separate charge for administrative and auditing fees, and to divide this amount by the aggregate statewide intrastate end-user telecommunications retail revenue to yield an assessment rate which would then be multiplied by each company's individual prior month's intrastate end-user telecommunications retail revenue. The individual companies could easily do this monthly calculation. NECA would provide the companies with worksheet forms on a monthly basis, which the companies could fill out and return with their payments.

After reviewing NECA's proposal, the Commission determines that this new formula is more fair to all carriers because it accounts for fluctuations in the market place, such as new entrants, companies merging, companies exiting, and fluctuations in revenues. The new formula also takes into account administrative and auditing fees, and allows for a 5% surcharge cushion for uncollectables, which will ensure that fund recipients will receive support even if there are delinquent contributors. The 5% surcharge figure may be adjusted subsequently if it is found to be too high or too low.

Through subsequent informal discussions and correspondence with the companies, it appears that the majority is convinced that the NECA-proposed formula for contributions is preferred. The NECA proposal is reflected in §63.145, Calculation of contributions, of the proposed regulations attached to this Order.

The Commission supports the 1649 Petitioners' original proposal in the Amended Plan that "[A]ll telecommunications service providers (excluding wireless carriers) will contribute to the Fund on the basis of their intrastate end-user telecommunications revenues." Amended Plan, Appendix II, Section B, ¶5(b). This concept is incorporated in Annex A under §63.142, Definitions, Contributing telecommunications providers.

In our Global Order entered September 30, 1999, this Commission directed that all telecommunications providers (excluding wireless carriers) contribute to the USF on the pro rata basis of their intrastate end-user telecommunications retail revenues. We further ordered that all ILECs other than BA-PA and GTE will be USF recipients. These requirements are codified in §63.142, Definitions, of the Annex A proposed regulations.³

Finally, the Commission ordered that the Fund terminate on December 31, 2003, subject to provisions regarding the access charge investigation. If on or before that date, the Commission receives information showing that the USF may be dissolved, and no alternative funding has been established through that investigation, residential and business universal service credits may be eliminated. This provision is codified at §63.151, Sunset provision.

Section 63.143 provides for an independent fund auditor that will annually audit the USF records covering both collections and disbursements for the calendar years. The

³ We note that on January 18, 2000, a Joint Petition was filed to amend the Global Order, which if approved, would exclude Sprint/United from being a recipient of the USF. If that occurs, we will revise the regulations accordingly.

auditor's duties are set forth in proposed Section 63.148. The concept of an independent fund auditor was first proposed in the Amended Plan at Appendix II, Section B.

An illustrative timeline of the Fund is as follows:

January 1, 1999 – December 31, 1999 - data collection period

January 2000 - Administrator mails reporting forms to carriers

March 1, 2000 - the administrator's financial statements, income statements and balance sheets for the prior calendar/fiscal year are due to the auditor and Commission.

April 1, 2000 - Each company reports its total intrastate end-user telecommunications retail revenue to the administrator, the Commission and the Auditor.

May 1, 2000 - Auditor's report due to Commission and Administrator.

July 1, 2000 – Administrator's report is due to Commission with copies to OCA and interested parties.

August 1, 2000 – Comments on administrator's report due.

October 1, 2000 – Commission orders new assessment rates and budget, which will be implemented beginning the next fiscal/calendar year.

January 1, 2001 – New assessments implemented

Process repeats itself through December 31, 2003.

We are aware that the FCC is currently examining the three interrelated issues of 1) interconnection regulations, 2) universal service funding rules, and 3) restructuring of interstate access charges that will collectively establish the new regulatory environment under TA-96. As the FCC recognized:

[O]nly when all parts of the trilogy are complete will the task of adjusting the regulatory framework to fully competitive markets be finished. Only when our counterparts at the state level complete implementing and supplementing these rules will the complete blueprint for competition be in place.

In the Matter of the 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, ¶9 (released August 8, 1996).

In order to implement the goals of TA-96 consistent with this language, we are establishing a universal service funding mechanism at the same time that we are implementing revenue-neutral rate reform and resolving interconnection issues. The interim funding mechanism that we have proposed through this rulemaking proceeding will function until December 31, 2003, or until the subsequent investigation develops a new process, whichever occurs first. We believe that the rules proposed will provide the best mechanism to establish the USF which is necessary to accomplish the desired reforms to implement a reduction in access and intraLATA toll rates on a revenue-neutral basis; **THEREFORE,**

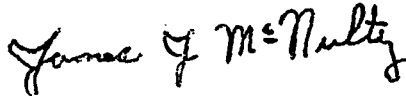
IT IS ORDERED:

1. That the proposed rulemaking be opened to consider the regulations set forth in Annex A.

2. That the Secretary submit this Order and Annex A to the Office of Attorney General for review as to form the legality and to the Governor's Budget Office for review of fiscal impact.
3. That the Secretary certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
4. That an original and fifteen (15) copies of any comments referencing the docket number of the proposed regulations be submitted ~~within~~ **thirty (30) days of publication** in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265.
5. 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.
6. 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).
7. That an outside contractor shall be retained to assist the Bureau of Audits in administering the USF until final regulations are approved and a permanent administrator can be selected through a competitive bidding process.

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

BY THE COMMISSION:



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 27, 2000

ORDER ENTERED: FEB -4 2000

ANNEX A

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

§63.141 Statement of purpose and policy.

On July 8, 1993, the General Assembly enacted Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§3001, *et seq.*, which provides for the regulatory reform of the telephone industry in Pennsylvania. 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."

66 Pa. C.S. §3001(1). 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 Pennsylvania. 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. 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.

§63.142 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 that provider's monthly contribution to the annual universal service fund budget. Each contributing telecommunications provider's assessment rate is computed annually pursuant to Section 63.145.

Basic Universal Service. An evolving set of telephone services, as defined by the Commission, which represents the set of services essential for a Pennsylvanian to participate in modern society at any point in time.

Contributing telecommunications providers. All 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 exempt from the provisions of this subchapter.

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

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

Universal Service Fund Recipient. An entity or person who receives funds from the Universal Service Fund. All incumbent local exchange carriers operating in Pennsylvania, with the exception of Bell Atlantic-Pennsylvania, Inc. and GTE, shall be eligible USF recipients.

§63.143 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 Universal Service Fund consistent with the provisions of 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 USF 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 and apart 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 Sections 63.145, Calculation of contributions. The administrator shall also be responsible for receiving, validating, and paying universal service reimbursement claims submitted by local service providers.

- (e) The administrator shall file with the Commission and the auditor by 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 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.

§63.144 Commission oversight.

(a) The Commission will issue an order within 90 days of receipt of the administrator's annual report, which establishes 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 63.145, and
- (6) reviewing and establishing compensation for the administrator and the auditor including reimbursement of reasonable administrative expenses related to the Fund.

(b) 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.

(c) 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.

§63.145 Calculation of Contributions.

(a) All telecommunications providers shall submit an affidavit to the administrator by April 1 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. In determining a contributing telecommunications provider's assessment rate, the administrator will calculate the upcoming year's size of the fund and add to that 5% times the estimated size of the fund plus the Commission-approved administrative and auditor expenses for the upcoming year and divide that sub-total by the aggregate statewide intrastate end-user telecommunications retail revenue for the year. This rate will then be multiplied by each carrier's individual intrastate end-user telecommunications retail revenue for the prior month to yield that carrier's monthly contribution. This calculation is illustrated as follows:

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

X = size of fund

Y = surcharge for uncollectables (5% times X)

Z = Commission approved administrative and auditing expenses

A = aggregate state-wide end-user intra-state retail revenue for the previous calendar year

B = carrier's individual end-user intra-state retail revenue for the prior month

C = carrier's monthly contribution

(b) To the extent the funding received from providers in any one year exceeds the disbursements required for the USF plus the cost of administering the USF (including such reserve as may be necessary for the proper administration of the USF), any unexpended and unencumbered moneys shall remain in the USF, and the subsequent year's Fund size reduced by that surplus.

§63.146 Administrator criteria.

The administrator shall meet the following criteria:

- (a) The administrator shall be neutral, impartial, and independent;
- (b) The administrator shall not advocate specific positions before the Commission in non-universal service administrative proceedings related to common carrier issues;
- (c) The administrator shall not be an affiliate of any provider of telecommunications services; and
- (d) 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 (e.g., local exchange carriers or interexchange carriers) of contributing carriers or support recipients, and the Board's composition must reflect the broad base of

contributors to and recipients of Fund assets. For purposes of this restriction, a direct financial interest exists:

- (1) where the administrator or board member is an employee of a telecommunications carrier,
- (2) owns equity interests in bonds or equity instruments issued by any telecommunications carrier, or
- (3) owns mutual funds that invest more than 50% of its assets in telecommunications securities.

§63.147 Administrator's duties.

(a) At a minimum, the administrator shall have the following duties:

- (1) maintain a database to track entities obligated to pay into the fund,
- (2) develop appropriate forms to be used by all telecommunications service providers to report monthly contributions and provide a copy of the form on a monthly basis to those companies for completion,
- (3) review the carrier forms to ensure completeness and accuracy of calculations and contact providers whose accounts contain unexplained variances in reported revenues or USF assessments,
- (4) assess late-payment charges of 1.5% per month on contributors that are 30 days 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 all delinquent contributors when a payment is 30 days past due and follow up with at least one subsequent written notice and/or phone call to the contributor to pursue collection of USF payments due,
- (6) maintain logs of notices of delinquent contributors and refer to the Commission for further enforcement, on a monthly basis, all delinquencies that persist beyond 90 days,
- (7) inform the Commission if it has reason to believe that any company has submitted false information to the administrator with the intent of obtaining fraudulent funding or if any other irregularity occurs in the operation or administration of the Fund,
- (8) invest Fund moneys in instruments designed to minimize risk of loss while providing maximum liquidity; 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 the Commission approves.
- (9) promptly advise the Commission if the administrator's data analysis projects a potential fund shortfall or if USF disbursements exceed receipts for a given period,
- (10) in January of each year, mail reporting forms to each telecommunications service provider to acquire appropriate data to compute the statewide aggregate intrastate end-user telecommunications retail revenues,
- (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 any 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 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 July 1 (60 days after
the audit report is due
- (22) with prior Commission approval, borrow monies to cover the
short-term liabilities of the Fund caused by undercollections

- (23) 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 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 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 USF.
- (26) treat any competitive and financial information received as confidential and proprietary and only release said information upon order of the Commission (this restriction shall not apply to

any 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.

§63.148 Auditor's duties.

The auditor shall have the following duties:

- (a) An independent external auditor chosen by the Commission shall audit the USF records covering both collections and disbursements for the fiscal years. The costs for conducting audits shall be included in the computation of USF requirements. Thereafter, the USF shall be audited in the same manner annually.
- (b) 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 any undercollections or overcollections experienced by the Fund in the previous year.

§63.149 Collection of universal service fund contributions.

- (a) At the beginning of each month, 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 using the calculation as described in Section 63.145 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 appropriate interest and penalties on the delinquent contribution or any other remedy available under law.

(c) If a carrier's contribution to the USF in any given year is less than a Commission-determined *de minimus* amount, that carrier will not be required to submit a contribution.

§63.150 End-user surcharge prohibited.

No telecommunications service provider may implement a customer or end-user surcharge to recover its contribution to the USF.

§63.151 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.

§63.152 Enforcement.

A telecommunications service provider that fails to pay, in a timely manner, any contribution required under these regulations may be prohibited from providing service in the Commonwealth.



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

THE CHAIRMAN

March 7, 2000

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

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

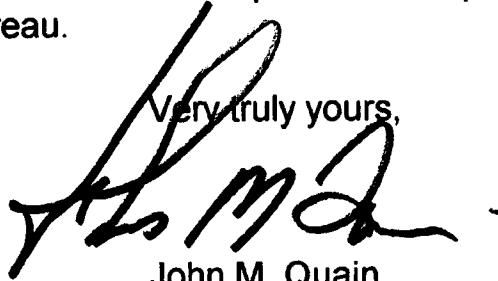
Dear Chairman McGinley:

Enclosed please find one (1) copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to establish a universal service funding mechanism, implementing revenue-neutral rate reform and resolving interconnection issues. The contact persons are Gary Wagner, Bureau of Fixed Utility Services, 783-6175 and Elizabeth Barnes, Law Bureau 772-5408.

The proposal has been deposited for publication with the
Legislative Reference Bureau.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John M. Quain', written over the typed name below.

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
Assistant Counsel Barnes
Regulatory Coordinator DelBiondo
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

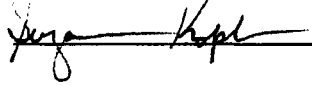
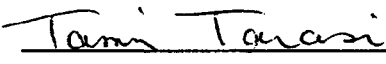

Pennsylvania Public Utility Commission

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REVIEW 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

Date	Signature	Designation
3-7-00		HOUSE COMMITTEE Consumer Affairs
3-7-00		SENATE COMMITTEE Consumer Protection and Professional Licensure
3/7/00		Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau