PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITIES

[52 PA. CODE CH. 63]

[L-00000148]

Universal Service Fund

The Pennsylvania Public Utility Commission (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, (717) 783-6175, and Elizabeth Barnes, Law Bureau, (717) 772-5408.

Executive Summary

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 this Commonwealth. 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 local exchange carrier (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 Commission'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.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed rulemaking, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If the Legislative Committees have objections to any portion of the proposed amendment, they will notify the Commission within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendment, it will notify the Commission within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor of objections raised.

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; and Terrance J. Fitzpatrick

Public Meeting held
January 27, 2000

Proposed Rulemaking Order

By the Commission:

For several years, the Commission has been examining the need for a USF 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 USF to ensure the availability of basic telecommunications services to citizens of this Commonwealth. See 66 Pa.C.S. §§ 3001(1) and (2) and 3009(b)(3) (relating to declaration of policy; and additional powers and duties). Even before the enactment of 66 Pa.C.S. Chapter 30 (relating to alternative form of regulation of telecommunications services) (Chapter 30), this Commission recognized that its broad powers to regulate public utilities on a Statewide basis provided support for the establishment of a USF. *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." See 66 Pa.C.S. §§ 3001(1) and (2) and 3009(b)(3) respectively.[1]

[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 to preserve and advance of 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.

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 Federal Communications Commission (FCC) resolved outstanding policy issues and permanently established rules concerning universal service and access charge reform. Subsequently, however, BA-PA 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.[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.

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. The 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. The 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 the 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 § 63.165 (relating to 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 § 63.162 (relating to definitions) in the definition of "contributing telecommunications providers."

[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).

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 proposed to be codified in § 63.162.[3]

Finally, the Commission ordered that the USF 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 proposed to be codified in § 63.171 (relating to sunset provision).

Section 63.163 (relating to universal service fund administration) provides for an independent fund auditor that will annually audit the USF records covering both collections and disbursements for the calendar years. The auditor's duties are set forth in proposed § 63.168 (relating to auditor's duties). 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 the Office of Consumer Advocate (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).

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 That:

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

2. The Secretary submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

4. An original and 15 copies of comments referencing the docket number of the proposed regulations be submitted within 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. 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. 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 formal review and comments by the Independent Regulatory Review Commission.

7. An outside contractor shall be retained to assist the Bureau of Audits in administering the USF until final-form regulations are approved and a permanent administrator can be selected through a competitive bidding process.

8. 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.

JAMES J. MCNULTY,
Secretary

Fiscal Note: No fiscal impact; (8) recommends adoption.

[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.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. 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 this Commonwealth. Given an increasingly competitive telecommunications marketplace, it is necessary to establish a competitively-neutral universal service funding mechanism to assure and maintain universal service and to promote the development of competition in telecommunications markets throughout this Commonwealth.

(3) The 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 are used will be determined by applicable orders of the Commission including 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 that provider's monthly contribution to the annual Fund budget. Each contributing telecommunications provider's 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 exempt from this subchapter.

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), unbundled network elements or other services which are essentially wholesale in nature.

Fund—The Universal Service Fund.

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

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

§ 63.164. 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 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 § 63.165 (relating to calculation of contributions).

(6) Reviewing and establishing compensation for the administrator and the auditor including reimbursement of reasonable administrative expenses related to the Fund.

(b) The Commission will perform an annual review of Fund recipients to verify their continued eligibility and that each eligible local service provider has received and is projected to receive Fund entitlements. Subject to these reviews, the Commission will order required adjustments to Fund 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. When data required is not provided within 45 days of the request, the Commission may impose applicable remedies, including withholding future support from the Fund or penalties, or both, as provided under the Public Utility Code, 66 Pa.C.S. Part I (relating to Public Utility Code).

§ 63.165. Calculation of contributions.

(a) 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 subtotal 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 statewide end-user intraState retail revenue for the previous calendar year

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

C = carrier's monthly contribution

(b) To the extent the funding received from providers in any 1 year exceeds the disbursements required for the Fund plus the cost of administering the Fund (including such reserve as may be necessary for the proper administration of the Fund), any unexpended and unencumbered moneys 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.

(2) The administrator may not advocate specific positions before the Commission in nonuniversal service administrative proceedings related to common carrier issues.

(3) The administrator may not be an affiliate of any provider of telecommunications services.

(4) If the administrator has a board of directors that includes members with direct financial interests in entities that contribute to or receive support from the Fund, no more than a third of the board members may represent any one category (for example, local exchange carriers or interexchange carriers) of contributing carriers or support recipients, and the Board's composition shall reflect the broad base of contributors to and recipients of Fund assets. For purposes of this restriction, a direct financial interest exists when the administrator or board member does one or more of the following:

(i) Is an employe of a telecommunications carrier.

(ii) Owns 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.

§ 63.167. Administrator's duties.

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 Fund assessments.

(4) Assess late-payment charges of 1.5% per month on contributors that are 30 days past due (disbursements will not be made to a recipient that has outstanding contributions due until the administrator has received the 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 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 a 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 Fund 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 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 Fund.

(26) Treat competitive and financial information received as confidential and proprietary and only release this 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) 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 Fund shall be audited in the same manner annually.

(2) 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 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 § 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 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 a Commission-determined de minimis 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 to recover its contribution to the Fund.

§ 63.171. Sunset provision.

The Fund shall expire on December 31, 2003, unless the term of the Fund is extended by the Commission. Money remaining in the Fund upon dissolution will be returned to contributors participating in the Fund as of the date of dissolution in their prorata share.

§ 63.172. Enforcement.

A telecommunications service provider that fails to pay, in a timely manner, a contribution required under this subchapter may be prohibited from providing service in this Commonwealth.

[Pa.B. Doc. No. 00-480. Filed for public inspection March 17, 2000, 9:00 a.m.]