**65-407 PUBLIC UTILITIES COMMISSION**

**Chapter 285: MAINE TELECOMMUNICATIONS EDUCATION ACCESS FUND**

**SUMMARY**: This Chapter implements the provisions of 35-A M.R.S. §7104‑B and describes the process for telecommunications carriers to contribute to the Maine Telecommunications Education Access Fund.

#### TABLE OF CONTENTS

**§ 1 PURPOSE AND APPLICABILITY**  **3**

**§ 2** **DEFINITIONS**  **3**

**§ 3** **ASSESSMENT**  **4**

A. Required Contributions 4

B. Reporting and Remittance 4

C. Establishment of Contribution Amount 5

D. Administrator 6

**§ 4** **RECOVERY OF CONTRIBUTIONS FROM RETAIL CUSTOMERS 6**

A. Collection From Retail Customers; Surcharge 6

B. Identification of Surcharge 6

**§ 5** **USE OF FUNDS 6**

A. Recommendation of Department of Education (DOE) and

 Maine State Library (MSL) 6

B. Review of Recommendation 6

C. Commission Order 6

**§ 6** **WAIVER OR EXEMPTION 7**

**§ 1 PURPOSES AND APPLICABILITY**

 This Chapter establishes the Maine Telecommunications Education Access Fund (MTEAF or the Fund), requires that voice network service providers must contribute to the MTEAF, establishes the reporting and payment requirements that must be followed by the contributing entities to the MTEAF, and establishes the criteria for use of the Fund to meet the guidelines contained in 35-A M.R.S. §7104-B. Pursuant to the provisions of this Chapter, all voice network service providers, as defined in this Chapter, shall report the number of their active voice exchange lines or their number of active voice customers who maintain a registered location in Maine, or whose place of primary use is in Maine, shall contribute into the MTEAF, and may recover their contributions from their customers.

**§ 2 DEFINITIONS**

A. **Basic Service Calling Area**. A "Basic Service Calling Area" is the area that a local exchange subscriber may call without toll charges, as defined in Chapter 204 of the Commission's Rules.

B. **Billing Account Number**. "Billing Account Number" or "BAN" is a unique number used by telecommunications service providers to designate a specific customer account or customer location to be billed.

C. **Competitive Local Exchange Carrier (CLEC)**. A "competitive local exchange carrier" or "CLEC" is any LEC that is not an ILEC.

D. **Dark fiber provider**. "Dark fiber provider" means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that: (a) offers its federally supported dark fiber on an open-access basis without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission; (b) is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act; and (c) does not transmit communications for compensation inside this State.

E. **Exchange Access**."Exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

F. **Fund Administrator**. The “Fund Administrator” is an independent fiscal agent that is not a state entity, and that is selected by the Commission through a state-approved Request For Proposals procedure, and that contracts with the Commission to provide all services necessary to administer and manage the MTEAF.

G. **Home Service Provider**. A "Home Service Provider" is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

H **Incumbent Local Exchange Carrier (ILEC)**. "Incumbent local exchange carrier" or "ILEC" means, with respect to an area, the local exchange carrier that on February 8, 1996 provided telephone exchange service in the area and: (a) On February 8, 1996 was deemed to be a member of the exchange carrier association pursuant to 47 Code of Federal Regulations, Section 69.601(b); or (b) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in (a) above.

I. **Interconnected Voice over Internet Protocol Service (Interconnected VoIP)**. “Interconnected Voice over Internet Protocol Service” or “interconnected VoIP” means a service that enables real-time, two-way voice communications; requires a broadband connection from the user’s location; requires internet protocol-compatible customer premises equipment (CPE); and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

J. **Line**. A "line" is any wired or wireless connection capable of real-time concurrent inbound or outbound voice communication calls that are made or received to or from the public switched telephone network. For the purposes of this Chapter, private branch exchange (PBX) lines and Centrex lines are considered to be lines. For the purposes of this Chapter, the number of lines a service provider provides to a subscriber shall be deemed to equal the number of inbound or outbound calls the subscriber can maintain at the same time using the service provider’s service.

K. **Local Exchange Carrier (LEC)**. A "local exchange carrier" or "LEC" means any person that is engaged in the provision of telephone exchange service or exchange access. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of a commercial mobile service under 47 United States Code, Section 332(c), unless the commission by rule determines that the Federal Communications Commission includes such service in the definition of the term. "Local exchange carrier" does not include a person insofar as that person is engaged in the provision of interconnected voice over Internet protocol service unless the person is providing provider of last resort service. "Local exchange carrier" does include a person insofar as the person is a dark fiber provider.

L. **Mobile Telecommunications Services**. "Mobile telecommunications Services" means telecommunications services licensed by the Federal Communications Commission for mobile use.

M. **Nomadic Interconnected Voice over Internet Protocol Service**. “Nomadic Interconnected Voice over Internet Protocol Service” or “Nomadic interconnected VoIP service” is an interconnected VoIP service (defined herein) that permits users to make and receive calls from any location where the user can obtain access to a broadband connection that will permit connection to the interconnected VoIP service provider.

N. **Place of Primary Use.** The term “place of primary use” means the street address representative of where the customer’s use of mobile telecommunications services primarily occurs, which must be: (a) the residential street address or the primary business address of the customer, and (b) within the licensed service area of the home service provider.

O. **Prepaid Wireless Telecommunications Service Provider.** “Prepaid wireless telecommunications service provider” or "prepaid wireless provider" is a provider of prepaid wireless telecommunications service as defined in Title 25 M.R.S. §2921(14).

P. **Provider of Last Resort Service**. "Provider of Last Resort or "POLR Service" means a flat-rate service with voice grade access to the public switched telephone network; local usage within the basic service calling areas of the incumbent local exchange carriers as of January 1, 2012; dual-tone multifrequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; toll limitation for qualifying low-income customers; and the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current.

Q. **Public Switched Telephone Network (PSTN).** "Public Switched Telephone Network" or "PSTN" is the worldwide voice telephone network accessible to all those with telephones

R. **Qualified Library**. “Qualified library” means a public library as defined in 27 M.R.S. §110(10); research center as defined in 27 M.R.S. §110(12); or a library that provides free public access to all advanced telecommunications services available at that library and whose collection serves as a statewide resource, if the Commission determines, in consultation with the Maine Library Commission, that including that library as a qualified library is in the public interest. For purposes of this Rule, qualified library includes the Raymond H. Fogler Library at the University of Maine.

S. **Qualified School**. “Qualified school” means a public school as defined in 20-A M.R.S. §1(24), including alternative programs as provided for in 20-A M.R.S. §4729; a private school approved under 20-A M.R.S. §2901 or §2951; or a school that provides free public access to all advanced telecommunications services available at that school, if the Commission determines, in consultation with the Department of Education, that including that school as a qualified school is in the public interest.

T. **Registered Location.** Registered Location means the most recent information obtained by an interconnected VoIP service provider that identifies the physical location of an end user.

U. **Telecommunications.** "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

V. **Telecommunications Carrier**. "Telecommunications carrier" means any provider of telecommunications services, except that it does not include aggregators of telecommunications services which, in the ordinary course of their operations, make telephones available to the public or to transient users of their premises using a provider of operator services.

W. **Telecommunications Service**. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used.

X. **Telephone Exchange Service.** "Telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment or other facilities, or combination thereof, by which a subscriber can originate and terminate a telecommunications service.

Y. **Voice Network Service Provider**. “Voice Network Service Provider” means a voice service provider that offers its subscribers the means to initiate or receive voice communications using the public switched telephone network.

Z. **Working Telephone Number**. A "Working Telephone Number" is an active ten-digit telephone number that (1) is compliant with the guidelines established by the North American Numbering Plan Administrator for use by a voice network service provider; (2) has been assigned to an end-user customer of the voice network service provider; and (3) is capable of receiving voice traffic from, or originating voice traffic to, the Public Switched Telephone Network.

**§ 3 ASSESSMENT**

A. **Required Contributions**

Each of the following voice network service providers who provide service to end-user retail customers in Maine shall report the number of their Lines or Working Telephone Numbers in Maine and shall contribute to the MTEAF under the provisions contained in Subsections B and C of this Section: local exchange carriers, interconnected voice over Internet protocol service providers, and providers of mobile telecommunications services.

B **Reporting and Remittance**

 1. **Local Exchange Carriers**

Subject to the limitation provided by Subsection B (4) of this Section, within thirty days after the end of each calendar quarter, each local exchange carrier shall report to the Fund Administrator on forms provided by the Fund Administrator the number of its Lines, including Centrex and PBX lines, or Working Telephone Numbers that are providing voice telephone service in Maine at the end of each month of the preceding quarter.

2. **Providers of Interconnected VoIP Service**

Subject to the limitation provided by Subsection B (4) of this Section, within thirty days after the end of each calendar quarter, each provider of interconnected VoIP service shall report to the Fund Administrator on forms provided by the Fund Administrator the number, at the end of each month of the preceding calendar quarter, of its active interconnected VoIP Lines or Working Telephone Numbers that have a registered location within Maine. Providers of interconnected VoIP service must adhere to the requirements of 47 CFR §9.5(d).

3. **Providers of Mobile Telecommunications Services**

Subject to the limitation provided by Subsection B (4) of this Section, within thirty days after the end of each calendar quarter, each provider of mobile telecommunications services, except for prepaid wireless providers, shall report to the Fund Administrator on forms provided by the Fund Administrator for the end of each month of the preceding quarter the number of its mobile telecommunications services Lines or Working Telephone Numbers whose place of primary use is in Maine.

4. **Limitation on Reporting by Billing Account Number**

For the purposes of Subsections B (1), (2), and (3) of this Section, the reporting service provider shall not report more than twenty-five Lines or Working Telephone Numbers per active Billing Account Number.

5. **Contribution Calculation and Remittance**

Each service provider that must report its lines or customers to the Fund Administrator under the provisions of Subsections B (1), (2), or (3) of this Section, subject to the limitation provided by Subsection B (4), of this Section shall calculate its required contribution to the MTEAF by multiplying the number of Lines or Working Telephone Numbers reported for each month by the Contribution Amount established by the Commission under the provisions of Subsection C of this Section. The service provider must remit its required contribution to the Fund Administrator under procedures established by the Fund Administrator at the time its files its required report for each quarter.

6. **Confidentiality**

For the purposes of this Chapter, the counts of Lines or Working Telephone Numbers that must be reported to the Fund Administrator pursuant to the provisions of Subsections B (1), (2), or (3) of this Section will be considered Confidential Business Information, pursuant to the provisions of 35-A M.R.S. §1311-A(1).

C. **Establishment of Contribution Amount**. The Commission shall establish an amount per Line or per Working Telephone Number that does not exceed the amount permitted by 35-A M.R.S. §7104-B to be contributed by the voice network service providers specified in Subsection A of this Section. In establishing the contribution amount, the Commission shall consider the needs of schools and libraries based on the recommendation of the Department of Education (DOE) and the Maine State Library (MSL) as required in Section 4(A) of this Chapter; the amount collected in prior periods; the balance in the MTEAF account maintained by the Fund Administrator; and the impact on ratepayers. The Fund Administrator may recommend that the Commission add a specified amount for amounts calculated as due from contributors that may be uncollected, provided that the maximum amount that may be collected from contributors does not exceed the amount permitted by 35-A M.R.S. §7104-B(3). The Commission shall, by order, determine the effective date of the initial per line, per number or per customer amount established by the Commission pursuant to this paragraph, and that effective date shall be the beginning of the subsequent calendar quarter that is at least ninety days after the date of the order. The Commission shall determine any subsequent change to the contribution amount at least sixty days prior to the effective date of the change.

D. **Administrator**. The Commission shall contract with an appropriate independent fiscal agent to serve as Fund Administrator. Voice network service providers shall report and remit their required contributions to the Fund Administrator quarterly as specified in Subsection B of this Section. The Fund Administrator shall provide the forms and instructions for reporting and payment. In addition, the Fund Administrator shall establish the timing and procedures for reporting and payment after consultation with the Director of Telephone and Water Utility Industries.

**§ 4 RECOVERY OF CONTRIBUTIONS FROM RETAIL CUSTOMERS**

A. Collection from Retail Customers; Surcharge. Each contributing voice network service provider may recover its contributions to the MTEAF from its retail customers by applying a surcharge to its customers' bills that is no higher than the amount established by the Commission pursuant to Subsection 3(C) of this Chapter. Any surcharge imposed by a voice network service provider may not be applied to more than 25 lines or numbers per Billing Account Number.

B. Identification of Surcharge. Any surcharge implemented pursuant to this Section shall be included on customers’ bills as a separate line item and be identified as “School and Library Fund surcharge.” This provision does not apply to carriers that do not provide bills or other statements of charges (written or electronic) to their customers;

**§ 5 USE OF FUNDS**

 A. **Recommendation of Department of Education (DOE) and Maine State Library (MSL**). No later than March 1 of each year, the DOE and MSL shall jointly file a proposal describing any funding requested from the MTEAF for the following fiscal year, beginning July 1. The filing should explain how the proposal meets the criteria and guidelines set forth in 35-A M.R.S. §7104‑B and how schools and libraries will meet the requirements concerning Federal E-Rate contained in 35-A M.R.S. §7104-B(6).

 B. **Review of Recommendation**. The Commission will seek comments from interested persons, including, but not limited to, the Maine Office of the Public Advocate, voice network service providers, internet service providers, cable TV operators, and school and library administrators, on the proposal. The Commission shall consider those comments in reaching any decision on spending for the following year. The Commission may request the MSL and DOE to respond to comments or to revise their proposal based on those comments.

 C. **Commission Order**. The Commission shall issue an Order by May 1 of each year establishing a budget, which will authorize the use of MTEAF funds for the following fiscal year. The Commission may modify the spending allowed under the budget during the course of the fiscal year upon a request from the MSL and DOE, or upon its own motion, if it finds that unexpected or unforeseen events have occurred or are expected to occur during the pendency of the fiscal year. The Order shall also establish a level of funding for libraries that do not apply for Federal E-Rate, as permitted by 35-A M.R.S. §7104-B(6)(A).

**§ 6 WAIVER OR EXEMPTION**

 Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any of the requirements of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Telephone and Water Utility Industries, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

STATUTORY AUTHORITY: 35-A M.R.S. §§ 104, 111, 7104-B.

EFFECTIVE DATE: The original rule was approved as to form and legality by the Attorney General on August 21, 2000. It was filed with the Secretary of State on August 21, 2000 and became effective on August 26, 2000 (filing 2000-358).

EFFECTIVE DATE: The rule as amended was approved as to form and legality by the Attorney General on March 19, 2003. It was filed with the Secretary of State on March 27, 2003 and became effective on April 1, 2003 (filing 2003-82).

EFFECTIVE DATE:The rule as amended was approved as to form and legality by the Attorney General on September 27, 2007. It was filed with the Secretary of State on September 28, 2007 and became effective on October 3, 2007 (filing 2007-422).

EFFECTIVE DATE:The rule as amended was approved as to form and legality by the Attorney General on August 8, 2011. It was filed with the Secretary of State on August 10, 2011 and became effective on August 15, 2011 (filing 2011-263).

EFFECTIVE DATE:The rule as amended was approved as to form and legality by the Attorney General on February 16, 2018. It was filed with the Secretary of State on February 20, 2018 and becomes effective on July 1, 2018 (filing 2018-028).

EFFECTIVE DATE:This chapter as amended was approved as to form and legality by the Attorney General on July 29, 2019. It was filed with the Secretary of State on July 30, 2019 and became effective on August 4, 2019 (filing 2019-141).