

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr., Statement

Pennsylvania Universal Service Fund Annual Rate
Adjustment

M-00001337

ORDER

BY THE COMMISSION:

On September 30, 2022,¹ Rolka Loube Saltzer, LLC (Rolka Loube), the Administrator for the Pennsylvania Universal Service Fund (PaUSF or Fund), filed its annual Administrator's Report (Report) with the Commission as required under 52 Pa. Code § 63.163(e), providing a Fund income statement, recommendations for Fund operations, and a proposed budget and assessment rates for the upcoming 2023 calendar year. Rolka Loube served copies of the Report on the telecommunications carriers participating in the PaUSF, the Office of Consumer Advocate and the Office of Small Business Advocate on October 5, 2022, pursuant to Section 63.163(f). No comments were filed.

Pursuant to 52 Pa. Code § 63.164 (relating to the Commission's oversight of the Fund), we are issuing this order within ninety days of receipt of the Report. This order

¹ On September 22, 2022, Rolka Loube provided an initial draft of the Administrator's Report to Commission staff for review.

establishes the size of the Fund, approves a budget for the 2023 calendar year, establishes the assessment rate for contributing telecommunications providers, adopts certain recommendations for Fund operations, and establishes administrative guidelines for the upcoming year. Based upon the Report from Rolka Loube, we have made the following determinations regarding the PaUSF for calendar year 2023.

1. Maintain Five Percent (5%) Contingency

Rolka Loube recommends that the Commission maintain the annual funding contingency reserve of 5% for the 2023 calendar year. The Commission acknowledges that for the last seventeen (17) years, it has approved a 5% contingency reserve for the Fund. This percentage has provided a sufficient cash reserve to ensure that PaUSF support payments timely occur in the event of unforeseen funding shortfalls and delinquent accounts. Accordingly, we agree with and adopt Rolka Loube's recommendation about maintaining the annual funding contingency reserve of 5% for the PaUSF in 2023.

2. Carryover Balance

The Fund's balance is projected to increase, which will result in an anticipated year-end Fund balance greater than \$1.5 million. Rolka Loube asserts that it would be prudent to utilize a conservative estimated cash balance of \$1.5 million as of December 31, 2022, for calculation purposes, providing a cushion for any unforeseen variances. We agree with Rolka Loube's recommendation to err on the side of caution so that the Fund is adequately funded.² Therefore, we will use a \$1.5 million cash contingency reserve balance to calculate contributions for the 2023 calendar year.

² The Commission previously adopted this methodology in its 2010 Annual Rate Adjustment Order, *In re: Pennsylvania Universal Service Fund Annual Rate Adjustment*, Docket No. M-00001337 (Order entered December 3, 2010).

3. Electronic Filing of Carrier Data Collection Reports of Prior Year Revenues

Pursuant to 52 Pa. Code § 63.165(a), contributing telecommunications providers are required to report their annual revenues from the prior calendar year to the Fund Administrator by March 31st of each year. The aggregate reported annual revenues are used by the Fund Administrator to calculate the following year's PaUSF assessment rate. The prior administrator, Vantage Point Solutions (VPS), maintained a web-based portal for the online reporting whereby carriers could fulfill this requirement with the Administrator. VPS collected the annual filing forms through June 30, 2022, after which any late filings or revisions were provided directly to Rolka Loube for updates. Rolka Loube is expected to roll out their own web-based portal early in 2023 to enable contributing providers to file their 2022 revenues. Filers will be provided unique logins to file their respective submissions and revisions. Thus, the Commission will continue to require contributing providers to submit their annual affidavit identifying their total gross intrastate end-user telecommunications retail revenue for the previous calendar year to Rolka Loube using the web-based portal that Rolka Loube is developing.

52 Pa. Code § 63.165(a) requires contributing telecommunications providers to serve a copy of their affidavit identifying the provider's total intrastate end-user telecommunications retail revenue for the previous calendar year upon the Commission. Normally, reporting carriers were required to file a paper copy of their annual revenue report with the Commission's Secretary's Bureau. However, the Commission has established an electronic filing system so that consumers, utilities, and attorneys can conduct certain tasks electronically with the Commission.³ The e-filing process is more efficient than filing paper documents and eliminates the need for delivery services, especially for time-sensitive filings. The Commission also has recently launched an Assessments Revenue Online Reporting Portal to improve the efficacy of public utilities filing their fiscal assessment forms, which reflects the total intrastate operating revenue

³ See 52 Pa. Code § 1.32(b).

as directed by 66 Pa.C.S. § 510 (Section 510 Assessments). Consequently, the Commission now strongly encourages public utilities to file their Section 510 Assessments electronically with us. Likewise, consistent with 52 Pa. Code § 1.32(b) and our recent effort to move towards an online “paperless” filing system to receive Section 510 assessment forms electronically, the Commission permits and strongly encourages all of our contributing carriers to file only an electronic copy of their annual PaUSF revenue report⁴ with the Commission’s Secretary’s Bureau at the requisite yearly M docket.⁵

4. Recommendations for Ensuring Carrier Compliance

Rolka Loube recommends that the Commission continue to authorize the Fund Administrator to conduct a review of a certain number of carriers annually to ensure that carrier filings are compliant with the Commission’s regulations. The first carrier compliance reviews were conducted in 2021 by VPS. The Commission relied on Section 63.167 of our regulations, 52 Pa. Code § 63.167, to authorize VPS to conduct these reviews.

The Commission continues to believe that these carrier compliance reviews will ensure that selected contributing companies are making their required contributions to the Fund. Thus, we once again authorize Rolka Loube to conduct carrier compliance reviews of ten contributing carriers for July 2023-June 2024. These carrier compliance reviews may consist of site visits to the selected carriers, if deemed necessary, and if such can be safely and appropriately conducted given the continued existence of the COVID-19 pandemic and any social distancing safety protocols issued by the Centers for Disease

⁴ We determine that the Development of Assessment Data Request falls within the definition of a "qualified document" that has been designated by the Commission as being permitted to be filed electronically. *See* 52 Pa. Code §§ 1.8 and 1.32(b)(2)(ii).

⁵ If a contributing carrier deems that any confidential information is incorporated within its Development of Assessment Data Request form, the contributing carrier must file it in paper form. *See* 52 Pa. Code § 1.32(b)(4).

Control and Prevention. In lieu of onsite visits, the Fund Administrator and the carrier will both agree to other means to ensure the compliance review will result in the Administrator being able to verify adequately the carrier's reports to the Fund.

The Fund Administrator will submit a recommended carrier selection plan to the Commission for approval. Upon completion of each approved compliance review, the Fund Administrator will then submit a written report to the Commission that sets forth its findings and any recommended courses of action needed to remedy any findings of noncompliance. For each carrier that is selected, the Commission will open a docket for the compliance review and once a final report has been approved by the Commission, the docket will be closed.

Separately, the Commission authorizes the Rolka Loube to conduct "spot-check" compliance reviews of ten telecommunications providers whose revenues are reported as *de minimis* for two consecutive years. This measure will ensure that providers meet the criteria for *de minimis* status as these providers are not required to submit payment to the Fund. All carrier compliance reviews for this subset of providers will be desktop reviews and will rely on information gathered via Data Requests. The Data Requests are to be comprehensive and meant to gather sufficient information to determine compliance. Rolka Loube will submit a recommended provider selection plan to the Commission for approval of the ten *de minimis* carriers. Upon completion of each approved compliance review, Rolka Loube will submit a written report to the Commission including findings and recommended courses of action to remedy any findings of noncompliance. For each *de minimis* provider selected, the Commission will open a docket for the compliance review and once a final report has been approved by the Commission, the docket will be closed.

The Commission will continue to evaluate the need for and mechanism of carrier compliance reviews annually beginning with its Assessment Order entered in 2023.

5. Recommendation to Reexamine the PaUSF Mechanism

Rolka Loube notes that the overall PaUSF mechanism may need reexamination as the annual distributed support from the Fund remains relatively stable at \$33-\$34 million but the continuous decline of the contribution base coupled with a decline in annual reported revenues has resulted in annual increases to the Fund's contribution assessment factor for the remaining contributing carriers.⁶ Rolka Loube identifies that the Commission has previously expressed an intention to revisit its regulations that govern the PaUSF mechanism,⁷ and points to several federal regulatory policy developments, including the Federal Communications Commission's *USF/ICC Transformation* or *Connect America Fund Order*,⁸ to support its position that reexamination may be warranted. The Commission will monitor this issue to determine whether the PaUSF mechanism may have to be modified in order to expand its contribution base to offset the issue of existing contributors bearing the burden of increased assessment rates for future years.

6. Assessment Rate for Calendar Year 2023

We agree with Rolka Loube that each provider's contribution rate should be increased from 2.1255092% (0.021255092) of 2020 average monthly intrastate end-user retail telecommunications revenue to 2.5307826% (0.025307826) of 2021 average monthly intrastate end-user retail telecommunications revenue. This represents an increase of approximately 19.07%. The new contribution rate will cover the projected expenses for the Fund for calendar year 2023.

⁶ See Section 6, *infra*.

⁷ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, et al.*, Docket No. I-00040105 *et al.*, (Order entered July 18, 2011), p. 77 and Ordering Paragraph No. 20, p. 194; (Order entered August 9, 2012), pp. 66-67 and Ordering Paragraph No. 8, p. 69.

⁸ *In re Connect America Fund, et al.*, WC Docket No. 10-90 *et al.*, (FCC Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Rcd 17663 (2011), and subsequent Reconsideration and Clarification rulings (collectively *USF/ICC Transformation* or *Connect America Fund Order*), *aff'd In re FCC-161*, 753 F.3d 1015 (10th Cir. 2014), U.S. App. LEXIS 9637, 9633.

Rolka Loube based the assessment calculation on data submitted by telecommunications carriers during the annual data collection process, as well as Rolka Loube's projections of the Fund carryover balance and projected 2023 administrative and auditing fees as follows:

1. For recipient carriers, reported 2020/2021 annual access line growth rate = -7.18%.
2. Projected PaUSF Fund balance as of 12/31/22 = \$1,500,000.00
3. Projected 2023 annual support due to recipient carriers = \$33,828,568.72⁹
4. Projected 2023 annual administrative and audit fees = \$146,610.00¹⁰
5. Projected 2023 5% allowance for uncollectibles = \$1,616,428.44¹¹
6. Projected 2023 total annual fund size = \$34,091,607.16
[(Line 3 + Line 4 + Line 5 – Line 2)]
7. Reported 2021 intrastate end-user retail revenues = \$1,347,077,689.46
8. Recommended 2023 Assessment Rate =
 $\$34,091,607.16 / \$1,347,077,689.46 = \underline{\mathbf{0.025307826}}$

7. Obligation to Report Total Gross Intrastate VoIP Revenues for PaUSF Assessment Purposes

The VoIP Freedom Act preserves the Commission's jurisdiction over interconnected VoIP services for, among other things, PaUSF purposes. 73 P.S. § 2251.6(1)(iii). In prior assessment years some carriers have voluntarily provided intrastate VoIP revenues when annually submitting their completed Development of Assessment Data Request; however, this practice has not been universal. The Commission previously determined that the inclusion of intrastate VoIP revenues is in the public interest and is consistent with its preserved authority under the VoIP Freedom Act.¹² Accordingly, the Commission directs all currently certificated telecommunications

⁹ Annual support projections are based upon annual reports submitted by the recipient carriers.

¹⁰ This projection is based upon the contracted administrator's fee of \$60,000 for calendar year 2023 plus \$18,300 needed for the external auditor's fees in 2023 plus \$68,310 for the Carrier reviews

¹¹ This represents the 5% contingency for uncollectibles over the year 2022.

¹² 2021 Order at 7.

carriers in the Commonwealth to report their total gross intrastate VoIP revenues for PaUSF assessment purposes.

In order to continue this directive, Rolka Loube will work with the Commission to amend and clarify language in the Development of Assessment Data Request form to provide for the inclusion of total gross intrastate VoIP revenues by our contributing certificated telecommunications carriers.

8. Additional Administrative Guideline for the Fund

The Commission continues to encourage annual lump-sum payments at the beginning of the calendar year or quarterly payments where it is economically feasible (*e.g.*, when providers have nominal monthly contributions, such as less than \$500 per month). This measure will increase operational efficiencies for carriers, as well as for the Fund Administrator. Thus, we urge contributing telecommunications providers to remit either quarterly payments or lump-sum annual contributions.

CONCLUSION

The Commission agrees with Rolka Loube's recommendations regarding maintaining a 5% annual funding contingency, using a carryover balance, requiring timely filings using Rolka Loube's forthcoming web-based portal, conducting carrier compliance reviews for selected contributing carriers as well as selected providers that have reported *de minimis* revenues for two consecutive years, and increasing the assessment rate to 2.5307826%. Through this Order, the Commission directs all currently certificated telecommunications carriers to ensure that they are reporting their total gross intrastate VoIP revenues to Rolka Loube for PaUSF assessment purposes;

THEREFORE,

IT IS ORDERED:

1. That the Administrator's Report of Rolka Loube Saltzer, LLC, dated September 30, 2022, is approved and the monthly contribution factor for the Pennsylvania Universal Service Fund for 2023 is hereby increased from 2.1255092% (0.021255092) of 2020 average monthly intrastate end-user retail telecommunications revenue to 2.5307826% (0.025307826) of 2021 average monthly intrastate end-user retail telecommunications revenue.

2. That Rolka Loube Saltzer, LLC, in collaboration with the Commission, will amend and add clarifying language to the PaUSF Development of Assessment Data Request form to direct all contributing certificated telecommunications carriers to report their total gross intrastate VoIP revenues for PaUSF purposes.

3. That all contributing carriers file a completed PaUSF Development of Assessment Data Request form, due on March 31, 2023, with Rolka Loube Saltzer, LLC, using its forthcoming web-based portal, and file only an electronic copy with the Commission's Secretary's Bureau pursuant to 52 Pa. Code § 1.32(b). Failure to comply with this requirement may result in revocation of the carrier's certificate of public convenience.

4. That Rolka Loube Saltzer, LLC, is directed to send a letter to all contributing telecommunications providers to the Pennsylvania Universal Service Fund explaining specifically how this contribution factor increase affects them and what their monthly contributions will be for the calendar year 2023. The letter should encourage either payments on a quarterly basis or annual lump-sum payments in early 2023; the letter must be pre-approved by Commission staff before it is mailed to participants.

5. That Rolka Loubé Saltzer, LLC, is authorized to conduct carrier compliance reviews of ten contributing carriers in the fiscal year beginning July 1, 2023, and ending June 30, 2024. Upon completion of each approved compliance review, the Fund Administrator will submit a written report to the Commission including findings and recommended courses of action to remedy any findings of noncompliance.

6. That Rolka Loubé Saltzer, LLC, is authorized to conduct ten “spot-check” compliance reviews of telecommunications providers whose revenues are reported as *de minimis* for two consecutive years utilizing information gathered via Data Requests. Upon completion of each approved compliance review, the Fund Administrator will submit a written report to the Commission including findings and recommended courses of action to remedy any findings of noncompliance.

7. That Rolka Loubé Saltzer, LLC, in consultation with the Commission, is authorized to submit as an amendment to its contract, a detailed plan and pricing schedule to conduct ten carrier compliance reviews and ten “spot-check” compliance reviews for the fiscal year beginning July 1, 2023, and ending June 30, 2024.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022