**65-407 PUBLIC UTILITIES COMMISSION**

**Chapter 284: PREPAID WIRELESS FEE**

**SUMMARY:** This Chapter establishes the fee to be collected, and remitted on prepaid wireless telecommunications service and describes the requirements and procedures for collection, remittance and periodic adjustments of the fee.

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**§1 PURPOSE AND APPLICABILITY**

**A. Purpose.** The purpose of this Chapter is to establish the fee on prepaid wireless telecommunications service that is required to be contributed to the Maine Universal Service Fund (MUSF) and the Maine Telecommunications Access Fund (MTEAF) by prepaid wireless consumers. This Chapter also describes the requirements and procedures for the collection, remittance and periodic adjustments of the Prepaid Wireless Telecommunications Service Fee (Prepaid Wireless Fee), which consists of the MUSF and MTEAF contributions and the E-9-1-1 prepaid wireless surcharge set by statute.

**B. Applicability.** This Chapter applies to all retail sales of prepaid wireless services in Maine. The requirements of Chapter 285, the Maine Telecommunications Education Access Fund, and Chapter 288, Maine Universal Service Fund, of the Commission’s rules do not apply to providers of prepaid wireless telecommunications service except as specifically provided for in this rule.

**§2 DEFINITIONS**

**A. Prepaid wireless telecommunications service.** “Prepaid wireless telecommunications service” has the same meaning as in 25 M.R.S. §2921(13).

**B. Prepaid wireless telecommunications service consumer or prepaid wireless consumer.** “Prepaid wireless telecommunications service consumer” or “prepaid wireless consumer” has the same meaning as in 25 M.R.S. §2921(13-A).

**C. Prepaid wireless telecommunications service provider.** “Prepaid wireless telecommunications service provider” has the same meaning as in 25 M.R.S. §2921(14).

**D. Retail Transaction.** “Retail transaction” has the same meaning as in 25 M.R.S. §2921(15).

**E. Seller.** “Seller” has the same meaning as in 25 M.R.S. §2921(16).

**§3 DETERMINATION OF THE PREPAID WIRELESS FEE AMOUNT**

**A. Determination of the Total Fee Amount.** The amount of the Prepaid Wireless Fee is the sum of the following fees effective January 1, 2013 and as thereafter adjusted pursuant to Section 4 below:

1. The amount of the fee that is required to be contributed to the MUSF as determined pursuant to 35-A M.R.S. §7104(3-A) and Chapter 288 of the Commission’s rules;

2. The amount of the fee that is required to be contributed to the MTEAF pursuant to 35-A M.R.S. §7104-B(2-A) and Chapter 285 of the Commission’s rules; and

3. The statewide prepaid wireless telecommunications service E-9-1-1 surcharge levied on prepaid wireless telecommunications service consumers pursuant to 25 M.R.S. §2927(1-F).

**B. Universal Service Fund Contribution.** The Commission shall determine the amount of the contribution to the MUSF on each retail transaction of prepaid wireless services by multiplying $25 by the percentage that the Commission has established pursuant to Chapter 288 of the Commission’s rules for the purpose of calculating contributions to the MUSF by providers of prepaid wireless telecommunications services. The fee amount shall be rounded to the nearest penny.

**C. Telecommunications Education Access Fund Contribution.** The amount of the contribution to the MTEAF on each retail transaction of prepaid wireless services shall be equal to the monthly per line, per number or per customer Contribution Amount that is established by the Commission pursuant to Chapter 285 of the Commission’s rules and that must be contributed by voice network service providers who are not prepaid wireless service providers. The amount contributed to the MTEAF through the PWF may not exceed $0.21 per retail transaction.

**D. E-9-1-1 Prepaid Wireless Surcharge.** The amount of the prepaid wireless E-9-1-1 surcharge to be collected on each retail transaction of prepaid wireless services shall be the amount established pursuant to 25 M.R.S. §2927(1-F).

**§4 ESTABLISHING AND CHANGING THE FEE AMOUNT**

**Fee Amount.** The Commission shall issue an order establishing the amount of the Prepaid Wireless Fee, pursuant to the provisions contained in Section 3 of this Chapter. For the fee amount initially adopted by the Commission pursuant to this Chapter, and for the adoption ofany subsequent change to the amount of the Prepaid Wireless Fee, the Commission shall provide not less than 30 days’ advance notice of its intent to adopt or to change the amount on the publicly accessible websites of both the Commission and the State Tax Assessor. The establishment of or any change in the amount of the Prepaid Wireless Fee shall take effect at the beginning of the next calendar quarter that is at least 60 days after the adoption or enactment of the change. The Commission shall not adjust the MUSF and MTEAF contribution amounts of the Prepaid Wireless Fee more frequently than once every 24 months, unless explicitly permitted by statute.

**§5 COLLECTION AND REMITTANCE OF THE FEE**

**A. Collection of the Fee.** A seller of prepaid wireless telecommunications services shall collect the Prepaid Wireless Fee on each retail sale in Maine of prepaid wireless services. The amount of the Prepaid Wireless Fee must be separately stated on an invoice, receipt or similar document provided to the prepaid wireless consumer by the seller except, where such disclosure is not practicable, the seller must make information regarding the amount of the Prepaid Wireless Fee available to the consumer in another manner.

**B. Location of Transactions.** For purposes of subsection A, a retail transaction that is effected in person by a prepaid wireless consumer at the business location of the seller is treated as occurring in this State if that business location is in this State. Any other retail transaction must be treated as occurring in this State if the retail transaction is treated as occurring in this State for the purposes of 36 M.R.S. §1752(8-B).

**C. Remittance of Fees.** Prepaid Wireless Fees collected by sellers, including all charges the seller is deemed to collect when the amount of the fee has not been separately stated on an invoice, receipt or similar document provided to the consumer by the seller, must be remitted to the State Tax Assessor at the times and in the manner provided for the remittance of sales tax under 36 M.R.S. §1951-A and rules adopted pursuant to that section for the remittance of sales tax on an other than monthly basis. The amount of the fee collected by a seller from a prepaid wireless consumer may not be included in the base for measuring any tax, fee, surcharge or other charge imposed by this State, any political subdivision of the State or any intergovernmental agency.

**D. Retention by Seller.** A seller who is not a prepaid wireless telecommunications service provider may deduct and retain 3% of the Prepaid Wireless Fee that is collected by the seller from a prepaid wireless consumer.

**E. Remittance to Commission.** The State Tax Assessor shall remit the total Prepaid Wireless Fees collected to the Commission and the Commission shall deposit the fees into the Prepaid Wireless Fee Fund. Within 30 days of the remittance by the State Tax Assessor to the Commission of the Prepaid Wireless Fees, the Commission shall:

(1) Deposit into a separate account those portions of the Prepaid Wireless Fees attributable to the E-9-1-1 surcharge imposed by 25 M.R.S. §2927(1-F);

(2) Deposit into the MUSF account established pursuant to 35-A M.R.S. §7104(3) those portions of the Prepaid Wireless Fees attributable to the fee imposed under 35-A M.R.S. §7104(3-A); and

(3) Deposit into the MTEAF account established under 35-A M.R.S. §7104-B(2) those portions of the Prepaid Wireless Fees attributable to the fee imposed under 35‑A M.R.S. §7104-B(2-A).

The Commission will calculate the amount of the Prepaid Wireless Fee that is deposited into each fund account by determining the percentage of the total Prepaid Wireless Fee that is attributable to each component of the Prepaid Wireless Fee (the MUSF, MTEAF and E-9‑1-1 surcharge) and multiplying the appropriate percentage by the total amount remitted into the Prepaid Wireless Fee Fund by the State Tax Assessor.

**§6 WAIVER OR EXEMPTION**

Upon request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement 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 Utilities, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

STATUTORY AUTHORITY: 35-A M.R.S. §§ 101, 111, 7104, 7104-B, P.L. 2011, ch. 600, and P.L. 2017, ch. 244.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on September 7, 2012. It was filed with the Secretary of State on September 10, 2012 (filing 2012-262) and became effective on September 15, 2012.

EFFECTIVE DATE:The rule as amended was approved as to form and legality by the Attorney General on February 28, 2018. It was filed with the Secretary of State on March 10, 2018 (filing 2018-035) and became effective on March 10, 2018.