

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF FINAL RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by sections 204 and 321 of the District of Columbia Procurement Practices Act of 1985, as amended, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§ 2-302.04 and 2-303.21) (PPA), and Mayor's Order 2002-117, dated June 28, 2002, hereby gives notice of the adoption of the following final rules, amending Chapter 18 of Title 27 of the *District of Columbia Municipal Regulations (Contracts and Procurements)*. The rules amend those sections of Title 27 *D.C. Municipal Regulations*, Chapter 18, that pertain to small purchase procedures. The rules were approved as emergency and proposed rules on October 2, 2002, and published in a Notice of Emergency and Proposed Rulemaking in the *D.C. Register* on November 1, 2002, at 49 DCR 9874. No substantive changes have been made to the text of the proposed rules as published.

The Council of the District of Columbia approved these rules on July 19, 2003, by Resolution 15-172, pursuant to section 205(b) of the PPA (D.C. Official Code § 2-302.05(b)).

CHAPTER 18

SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sections 1800 through 1803 are amended to read as follows:

1800 USE OF SMALL PURCHASE PROCEDURES

- 1800.1 The small purchase procedures set forth in this chapter may only be used for the procurement of supplies, services, and other items when the total of the procurement does not exceed \$500,000 for procurements for the Metropolitan Police Department (MPD) and \$100,000 for all other agencies, in accordance with §321 of the District of Columbia Procurement Practices Act of 1985 (Act) (D.C. Official Code §2-303.21).
- 1800.2 A contracting officer shall not use small purchase procedures when the requirement can be met by using a requirements contract, an indefinite quantity contract, a federal supply schedule, or other required source of supply as set forth in Chapter 21 of this title.
- 1800.3 A contracting officer shall not use small purchase procedures when the procurement requirement is initially estimated to exceed \$500,000 for procurements for MPD or \$100,000 for all other agencies, even though the resulting award does not exceed the applicable small purchase limit.

- 1800.4 A contracting officer shall not split a procurement totaling more than the applicable small purchase limitation into several purchases that are less than the limit in order to permit the use of the small purchase procedures.
- 1800.5 A contracting officer shall not parcel, split or divide a procurement requirement, or purchase a procurement requirement over a period of time, in order to avoid the dollar limitations for use of small purchase procedures.
- 1800.6 A contracting officer shall use the small purchase procedure that is most suitable, efficient, and economical based on the circumstances of each procurement.

1801 NON-COMPETITIVE SMALL PURCHASES

- 1801.1 A contracting officer may make a procurement for an amount of ten thousand dollars (\$10,000) or less without obtaining competitive quotations if the contracting officer determines that the purchase is in the best interest of the District government considering the price and other factors (including the administrative cost of the purchase).
- 1801.2 A contracting officer shall distribute non-competitive small purchases equitably among suppliers. When practical, a contracting officer shall solicit a quotation from a vendor other than the previous supplier before placing a repeat order.

1802 COMPETITIVE SMALL PURCHASES

- 1802.1 Except as provided in Sections 1802.2 and 1802.3, in order to promote competition to the maximum extent practicable, and to ensure that the purchase is in the best interest of the District government, considering price and other factors (including the administrative cost of the purchase), a contracting officer shall solicit quotations as follows:
- (a) For each procurement of goods and services in an amount greater than ten thousand dollars (\$10,000) and less than or equal to twenty-five thousand dollars (\$25,000), the contracting officer shall obtain at least three (3) oral quotations from vendors for the goods and services to be purchased;
 - (b) For each procurement of goods and services for more than twenty-five thousand dollars (\$25,000) and less than or equal to one hundred thousand dollars (\$100,000), the contracting officer shall obtain at least three (3) written quotations from vendors for the goods and services to be purchased; and
 - (c) The contracting officer shall, unless the award is to take into consideration factors other than price or price-related factors, award the contract to the vendor providing the lowest priced quotation for the goods or services solicited.
- 1802.2 Except as provided in Section 1802.3, for small purchases for MPD, a contracting officer shall solicit quotations as follows:
- (a) For each procurement for goods and services in the amount greater than ten thousand dollars (\$10,000) and less than or equal to twenty-five thousand dollars (\$25,000), the contracting officer shall obtain at least three (3) oral quotations from vendors for the goods and services to be purchased;
 - (b) For each procurement for goods and services for more than twenty-five thousand dollars (\$25,000) and less than or equal to five hundred thousand dollars (\$500,000), the contracting officer shall obtain at least three (3) written quotations from vendors for the goods or services to be purchased; and

- (c) The contracting officer shall, unless the award is to take into consideration factors other than price or price-related factors, award the purchase order to the vendor providing the lowest priced quotation for the goods or services solicited.
- 1802.3 If the contracting officer determines that it is impractical under the circumstances to obtain the number of quotations required under Sections 1802.1 or 1802.2 due to time constraints, lack of available sources, or other factors set forth in Section 1802.5, or if the contracting officer, despite a good faith effort, is unable to obtain the required number of quotations, the contracting officer may obtain quotations from fewer vendors than required in Sections 1802.1 or 1802.2. The contracting officer must document his or her attempts to obtain the required number of quotations.
- 1802.4 If the contracting officer determines that the best interest of the District (or other factors set forth in Section 1802.5) indicates that quotations should be obtained from more than the number of sources required under Sections 1802.1 or 1802.2, the contracting officer shall obtain additional quotations.
- 1802.5 In determining whether or not to obtain quotations from more or fewer vendors than required in Sections 1802.1 or 1802.2, the contracting officer shall consider the following factors:
- (a) The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or if it is relatively non-competitive;
 - (b) Information obtained in making recent purchases of the same or similar item;
 - (c) The urgency of the proposed purchase;
 - (d) The dollar value of the proposed purchase; and
 - (e) Past experience concerning specific contractor prices.
- 1802.6 For procurements in excess of the amounts specified in Section 1801, a contracting officer may award a small purchase solicitation on a sole source basis when the contracting officer determines that one (1) of the conditions in §305(a) of the Act is satisfied, in accordance with chapter 17 of this title.
- 1802.7 A contracting officer may orally solicit quotations for procurements valued at twenty-five thousand dollars (\$25,000) or less. However, a contracting officer shall use a written solicitation in the following circumstances:
- (a) When the contracting officer determines that obtaining oral quotations is not considered economical or practical; or
 - (b) When extensive specifications are involved.
- 1802.8 A contracting officer shall, to the greatest extent practicable under the circumstances, maximize competition for small purchases and shall not limit solicitations to suppliers of well known and widely distributed makes or brands, or solicit on a personal preference basis.
- 1802.9 Each contracting officer shall maintain a small purchase source list (or lists, if more convenient). The list shall indicate whether the business is a certified local, small, or disadvantaged business enterprise, for the purpose of applying preferences to be awarded in accordance with section 2(c) of D.C. Law 13-169.

1803 DETERMINATION OF REASONABLE PRICE AND AWARD

- 1803.1 The contracting officer shall determine that the price to be paid to the successful offeror is fair and reasonable.
- 1803.2 When only one (1) response is received to a request for competitive quotations, or the price variance between multiple responses is so great that it reflects a lack of adequate competition, the contracting officer shall include a statement in the contract file giving the basis for the determination of a fair and reasonable price.
- 1803.3 The determination that a proposed price is fair and reasonable may be based on the following:
- (a) Competitive quotations;
 - (b) Comparison of the proposed price with (i) prices found reasonable on previous purchases, (ii) current price lists, (iii) catalogs, (iv) advertisements, or (v) similar items;
 - (c) Value analysis;
 - (d) The contracting officer's personal knowledge of the item being purchased, or
 - (e) Any other reasonable basis.
- 1803.4 The contracting officer shall establish and maintain records of oral and written price quotations and include the record in the purchase file. The records shall consist of the names of the suppliers contacted and the prices and other terms and conditions quoted by each.
- 1803.5 The contracting officer's records of solicitations shall include, at a minimum, notes of abstracts to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.
- 1803.6 The contracting officer shall retain records supporting small purchases for a minimum of three (3) years.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of an amendment to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Method Established for Determining Prescription Reimbursement". The effect of the amendment is to increase the pharmacy dispensing reimbursement from \$3.75 to \$4.50.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on July 4, 2003 (50 DCR 5344). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective one day after publication of this notice in the *D.C. Register*.

Amend subsection 924.1 (Method Established For Determining Prescription Reimbursement) of Chapter 9 of Title 29 DCMR by deleting the existing paragraph (a) and inserting the following paragraph (a) in its place:

924 METHOD ESTABLISHED FOR DETERMINING PRESCRIPTION REIMBURSEMENT

924.1 Pharmacy claims for services rendered on or after July 5, 2003 shall be reimbursed at the lower of the following:

- (a) The allowable cost, established pursuant to section 922 or 923, as appropriate, plus a dispensing fee of four dollars and fifty cents (\$4.50) per prescription.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of a new section 936 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Dental Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for dental services provided by a licensed dentist or dental hygienist to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for dental services.

On November 22, 2002, a notice of emergency and proposed rulemaking was published in the *D.C. Register* (49 DCR 10630). These rules amend the previously published rules by adopting the dental services available to eligible Medicaid recipients residing in an intermediate care facility (ICF/MR) for persons with mental retardation. This change will ensure that persons residing in an ICF/MR and Waiver participants receive the same dental services.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on August 8, 2003 (50 DCR 6474). Comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective one day after publication of this notice in the *D.C. Register*.

Amend Title 29 DCMR by adding the following new section 936 (Dental Services) to read as follows:

SECTION 936 DENTAL SERVICES

- 936.1 Dental services shall be reimbursed by the Medicaid Program for each participant in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 936.2 Dental services shall be provided consistent with the standards established by the American Dental Association.
- 936.3 Dental services shall be authorized and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).

- 936.4 Each dental services provider shall develop a written treatment plan after completion of a comprehensive evaluation. The services provided shall be consistent with the treatment plan.
- 936.5 The treatment plan shall be updated annually and shall serve as a guide for treatment to be completed over the course of one year unless special circumstances require a longer treatment plan.
- 936.6 The treatment plan shall be submitted to the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA) within thirty (30) days of completion of the comprehensive evaluation.
- 936.9 Each person providing dental services shall be a dentist or dental hygienist working under the supervision of a dentist who meets all of the following requirements:
- (a) Provide services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 et seq.); or consistent with the applicable professional practices act within the jurisdiction where services are provided; and
 - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for dental services under the Waiver or be employed by a provider that has a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for dental services under the Waiver.
- 936.10 The reimbursement rates for dental services shall be as follows:

| DESCRIPTION OF SERVICE | RATE |
|--------------------------------------|---------|
| Periodic Dental Screening | \$22.00 |
| ER Treatment Control Blood | \$30.25 |
| Periconitis Palliative Therapy | \$24.75 |
| Limit Oral Eval Problm Focus | \$30.25 |
| Comprehensive Oral Evaluation | \$85.25 |
| Intraor Complete Film Series | \$74.25 |
| Full Mouth X Rays | \$74.25 |
| Periapical X Ray; First Film | \$13.75 |
| One Periapical Film | \$13.75 |
| Two Periapical X Rays | \$24.75 |
| Three Periapical X Rays | \$27.50 |
| Peripical X Ray-Each additional film | \$22.00 |
| Occlusal X Ray | \$27.50 |
| Dental Bitewings Two Films | \$44.00 |

| DESCRIPTION OF SERVICE | RATE |
|---|----------|
| P.A. Film | \$110.00 |
| Panorex | \$74.25 |
| Cephalometric Film | \$110.00 |
| Pulp Test | \$16.50 |
| Study Models | \$38.50 |
| Prophylaxis, Mouth Exam | \$85.25 |
| Preventive Prohylaxis (Adult) | \$35.75 |
| Preventive Prohylaxis (Child) | \$24.75 |
| Topical Fluor w/o Prophy Child | \$22.00 |
| Sodium Floride Application | \$22.00 |
| Dental Sealants | \$16.50 |
| Fixed, Band Type | \$206.25 |
| Lingual Arch Wire | \$247.50 |
| Amalgam One Surface, Primary | \$27.50 |
| Amalgam Two Surfaces, Primary | \$38.50 |
| Amalgam, Three Surfaces, Primary | \$57.75 |
| Amalgam Four Surfaces, Primary | \$74.25 |
| Amalgam One Surface, Permanent | \$33.00 |
| Amalgam Two Surfaces, Permanent | \$46.75 |
| Amalgam Three Surfaces, Permanent | \$71.50 |
| Amalgam Four Surfaces, Permanent | \$93.50 |
| Acrylic or Plastic Restoration | \$55.00 |
| Esthetic Restoration Including Angle | \$68.75 |
| Acrylic or Plastic Restoration, III | \$33.00 |
| Esthetic Restoration Class IV | \$68.75 |
| Acrylic Jacket | \$247.50 |
| Gold (Full Cast) | \$324.50 |
| Dowel Crown | \$412.50 |
| Pulp Cap Direct Excluding Final Rest | \$27.50 |
| Pulpotomy | \$55.00 |
| One Canal; Excludes Final Restoration | \$258.50 |
| Three Canal; Excludes Final Restoration | \$398.75 |
| Gingivectomy or Gingivioplasty, 5 Mor.t | \$275.00 |
| Subgigival Currettage Root PLN Peri | \$137.50 |
| Deep Scaling | \$137.50 |
| Complete Lower Denture | \$481.25 |
| Partial Upper Denture With Gold | \$687.50 |
| Single Tooth Extraction | \$38.50 |
| Multiple Extractions | \$38.50 |
| Extraction of Tooth, Erupted | \$101.75 |
| Extraction of Tooth, Soft Tiss Imp | \$154.00 |
| Extraction of Tooth, Partial Bony Imp | \$203.50 |
| Extraction of Tooth Complete Bony Impac | \$222.75 |
| Root Tips | \$85.25 |

| DESCRIPTION OF SERVICE | RATE |
|-------------------------------------|----------|
| Replantation of Tooth with Splint | \$291.50 |
| Surgical Exposure of Bony Impaction | \$154.00 |
| Removal of Subcutaneous Tissue | \$308.00 |
| Incision Drainage Abscess, Intracol | \$85.25 |
| Bite Plane | \$154.00 |
| Habit Breaker | \$258.50 |
| Consultation | \$82.50 |
| Office Visit | \$49.50 |

936.99

DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Client- An individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities.

Dental Hygienist- A person who is licensed as a dental hygienist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 et seq) or licensed as a dental hygienist in the jurisdiction in the jurisdiction where the services are provided.

Dentist- A person who is licensed or authorized to practice dentistry pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 et seq) or licensed as a dentist in the jurisdiction in the jurisdiction where the services are provided.

Individual Habilitation Plan (IHP)- Shall have the same meaning as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, 7-1304.03).

Individual Support Plan (ISP)- Shall have the same meaning as the successor to the individual habilitation plan (IHP) as defined in the court-approved *Joy Evans* Exit Plan.

Treatment Plan- A written plan that includes diagnostic findings and treatment recommendations resulting from a comprehensive evaluation of the client's dental health needs.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of a new section 944 to Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Adult Companion Services". These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for adult companion services provided by qualified professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also establish Medicaid reimbursement rates for adult companion services.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District that the maintenance and expansion of adult companion services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of adult companion services.

The final action to adopt these rules was taken on September 12, 2003, and will become effective on the date of publication of this notice of final rulemaking in the *D.C. Register*. A notice of emergency and proposed rulemaking was published on March 21, 2003, at 50 DCR 2370. The emergency rule expired on June 5, 2003. A second notice of emergency and proposed rulemaking was published on August 8, 2003, at 50 DCR 6479. No comments have been received in response to the August 8th notice, and no changes have been made to the text of the proposed rule.

Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 944, to read as follows:

944 ADULT COMPANION SERVICES

- 944.1 The Medicaid Program shall reimburse for adult companion services for each participant with mental retardation in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.
- 944.2 Adult companion services include non-medical care, supervision, socialization, and assistance services that enable a client to perform household activities and access community resources and services.
- 944.3 Adult companion services eligible for reimbursement include the following services:

- (a) Assistance in locating and using natural and informal supports;
- (b) Assistance accessing neighborhood and community resources;
- (c) On-site companionship to ensure health and safety;
- (d) Reinforcement and support for individual decision-making;
- (e) Assisting or supervising a client with activities including the following:
 - (1) Meal preparation, laundry, and shopping, provided that these services are not provided as discrete services; and
 - (2) Light housekeeping tasks that are incidental to the care and supervision of a client;
- (f) Assistance using public transportation, including accompanying the client to community activities; and
- (g) Transportation to participate in community activities necessary to carry out this service, provided that the transportation provider has a provider agreement to bill for transportation services pursuant to 29 DCMR § 943.

944.4 Adult companion services shall not be available to clients being served by a provider already responsible for the general care and supervision of the client. Adult companion services shall not be billed concurrently with personal care services, respite care services, chore services, homemaker services, attendant care services, residential habilitation services, or independent habilitation services.

944.5 Adult companion services shall not exceed four hundred eighty (480) hours per year beginning on the date the service is authorized.

944.6 Adult companion services shall be authorized by the client's interdisciplinary team and provided in accordance with each client's individual habilitation plan (IHP) or individual support plan (ISP).

944.7 Each provider of adult companion services shall:

- (a) Be a non-profit organization, home health agency, social service agency, or other business entity;
- (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for adult companion services under the Waiver;

- (c) Maintain a copy of the most recent IHP or ISP approved by the Department of Human Services, Mental Retardation and Developmental Disabilities Administration (MRDDA);
- (d) Ensure that all adult companion services staff are qualified and properly supervised;
- (e) Ensure that the service provided is consistent with the client's IHP or ISP;
- (f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules; and
- (g) Provide training in infection control procedures consistent with the requirements of the (Occupational Safety and Health Administration, U.S. Department of Labor) as set forth in 29 CFR 1910.1030.

944.8 Each person providing adult companion services shall meet all of the following requirements:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the client;
- (c) Demonstrate annually that he or she is free of communicable diseases as confirmed by an annual PPD Skin Test or documentation from a physician stating that the person is free of communicable diseases;
- (d) Be able to communicate with the client;
- (e) Be able to read and write the English language;
- (f) Complete required training;
- (g) Have the ability to provide adult companion services consistent with the client's IHP or ISP;
- (h) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check of 1998, effective April 20, 1999 (D.C. Law 12-238, D.C. Official Code § 44-551 *et seq.*); and
- (i) Have two (2) or more years of college education, or a high school diploma, or its equivalent, and five (5) years of experience working with persons with mental retardation and developmental disabilities.

944.9 The billable units of service shall be one (1) hour.

944.10 The reimbursement rate shall be twelve dollars (\$12.00) per hour.

944.99 **DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

Client -an individual with mental retardation who has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with mental Retardation and Developmental Disabilities.

Communicable disease- that term as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Individual Habilitation Plan or IHP-that plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan or ISP- the successor plan to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

Socialization- interaction in the community with non-handicapped peers and access to neighborhood and community resources that strengthen the development of natural and informal supports.

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE AND SECURITIES REGULATION**

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in section 12(f) of the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982, effective September 18, 1982, (D.C. Law 4-155; D.C. Official Code Section 31-2411(f)), hereby gives notice of the adoption of the following amendments to be included in Title 26 of the District of Columbia Municipal Regulation ("DCMR"). These amendments will afford producers registered with the District of Columbia Automobile Insurance Plan ("Plan") the option of filing application submissions through the Electronic Application Submission Interface ("EASi"). In addition, the EASi will be used to establish the immediate coverage and future effective dates of coverage. Further, the amendments provide for the registration for access to EASi, operating procedures for the retraction of an EASi reference number, the forwarding of completed and original applications to the Plan, the performance standards pertaining to EASi, and the procedures for handling violations of EASi standards.

These rules were published as proposed rules in the *D.C. Register* on March 14, 2003, at 50 DCR 2258. No comments were received during the comment period and no changes have been made to the text of the rules, which are incorporated in this Notice. These rules will be effective upon the publication of this Notice in the *D.C. Register*.

TITLE 26, CHAPTER 6 DCMR IS AMENDED TO READ AS FOLLOWS:

**616 DESIGNATION OF COMPANY AND EFFECTIVE DATE OF
 COVERAGE**

Section 616 is amended as follows:

- 616.2 If the postmark is not legible, is a metered mail postmark, electronic stamp, or other Postage service or stamp, the coverage shall be effective 12:01 A.M. on the day the application is received by the Plan Office.
- 616.6 For the purposes of this section, the postmark date which is to be recognized by the Plan shall be the postmark date of the United States Postal Service and shall not include a metered mail postmark, electronic stamp, or other postage service or stamp.
- 616.12 The producer of record may use Electronic Application Submission Interface (EASi) to transmit the application electronically to the Plan Office.

New sections 616.12 through 616.21 are introduced as follows: (Current sections 616.12 and 616.13 are redesignated as 616.22 and 616.23.).

- 616.13 Coverage shall become effective in accordance with Section 616.1, 616.2, 616.3, 616.4 or 616.5 provided all of the following requirements are met:
- (a) the producer of record and the applicant shall certify on the application prescribed by the Plan the date (day, month, and year) and time (hour,

- A.M. or P.M.) that the application information was completed.
- (b) the producer uses EASi described above.
 - (c) the original and one copy of the paper application produced by EASi, and deposit premium must be mailed to the Plan in accordance with Section 616.8. If the original and one copy of the paper application produced by EASi and deposit premium are not mailed or delivered to the Plan Office in accordance with Section 616.8, the Plan will consider this a producer violation of performance standards.
- 616.14 For the purposes of this Section, the Postmark to be recognized by the Plan shall be the Postmark of the United States Postal Service. A metered mail postmark, electronic stamp, or other postage service or stamp shall not be considered a postmark of the United States Postal Service for the purpose of effecting coverage.
- 616.15 The producer of record completing and signing the application may not transmit the application using EASi until the deposit premium has been received and the application for coverage has been completed.
- 616.16 Appropriate records of all risks submitted using EASi must be maintained. The producer agrees to permit the inspection or photocopying of such office records by the Plan or by a company representative.
- 616.17 Following assignment of an EASi reference number and prior to the mailing of a completed signed application to the Plan, the producer of record may complete and mail a Retraction Form to the Plan if
- (a) the applicant has notified the producer of record that coverage through the Plan is no longer required, or
 - (b) the producer of record has made an error in the information provided, or
 - (c) the producer of record has, in error, requested more than one reference number for the same application.
- 616.18 The producer of record shall complete the Retraction Form and forward it to the Plan no later than the first working day after the date the application is voided. If the Plan does not receive the Retraction Form within 20 days after the date of assignment of the EASi reference number, the producer to whom the reference number is assigned will be considered in violation of performance standards.
- 616.19 If EASi is not available due to the failure of transmission or receiving equipment as a result of a disaster or emergency, the producer of record must submit an original and one copy of the application form in accordance with Section 616.
- 616.20 The Plan shall maintain a record of producer violations of EASi in accordance with Section 630. Violation of procedures of EASi outlined in this section may result in referral to the Governing Committee.
- 616.21 Access to EASi shall not be construed as constituting the producer as an agent of the Plan or any company to which an applicant is assigned. In all transactions between the applicant and the Plan, the producer shall be deemed to be the agent of the applicant and not the agent of the Plan or any company to which an applicant is assigned.

619 FIRST AND SECOND RENEWAL POLICIES

Section 619.1(a) is amended as follows:

- 619.1 At least 30 days prior to the inception date of the first and second renewal policies, the designated company shall notify the insured of the following:
- (a) that a renewal policy shall be issued within 30 days provided the renewal premium stipulated by the company is received on or before the inception of the policy. Payment made in a transmittal envelope, which bears a legible postmark affixed by the United States Postal Service prior to the expiration date, shall be deemed to be in time. For the purposes of this section, United States Postal Service postmark does not include metered mail postmark, electronic stamp, or other postage service or stamp; or

**621 ADDITION/DELETION OF VEHICLES OR
ADDITION/REDUCTION/ELIMINATION OF COVERAGES**

Section 621.1 is amended as follows:

- 621.1 In the event additional coverages as described in sections 610 through 613 of these regulations are desired during the policy period, or coverage for an additional or replacement vehicle is desired, a completed approved Policy Change Request form shall be submitted directly to the designated company no later than the first working day after completion. If an additional vehicle or if additional coverages as described in sections 610 through 613 of these regulations are desired during the policy period before the producer of record receives the Notice of Designation identifying the assigned company, a completed Policy Change Request form accompanied by a photocopy of the original application shall be submitted to the Plan Office no later than the first working day after completion. The Plan Office shall forward the Policy Change Request form and the photocopy of the original application to the designated company.

Section 621.4(b) is amended as follows:

- 621.4 If the requirements of subsections 621.3(b) and (c) above are not met, the effective date of coverage shall be determined as follows:
- (b) If the transmittal envelope does not bear a legible postmark affixed by the United States Postal Service, or if the envelope is stamped by a postage metering device, electronic stamp, or other postage service or stamp, coverage shall be made effective at 12:01 A.M. on the day the Policy Change Request form is received by the company.

630 PERFORMANCE STANDARDS FOR PRODUCERS OF RECORD

New section 630.1(d) is introduced as follows:

- 630.1 Original applications shall be fully completed and must include
- (d) For those applications where the Electronic Application Submission Interface (EASi) has been used to transmit the application to the Plan in accordance with Section 616, the producer and applicant shall certify on

the application the date (day, month, and year) and time (hour, A.M. or P.M.) that the application was completed.

Section 630.9 is amended as follows:

- 630.9 The Plan shall maintain a record of infractions of performance standards and shall report such infractions to the Department of Insurance and Securities Regulation in the manner required by the Department. If violations pertaining to the use of EASi have occurred, the Governing Committee may limit, suspend, or terminate producer access to EASi.

631 REGISTRATION TO ACCESS THE ELECTRONIC APPLICATION SUBMISSION INTERFACE (EASi)

New section 631 is introduced as follows:

- 631.1 Producers licensed to transact automobile insurance in the District of Columbia, must be registered to access EASi, which is available for private passenger applications. A producer cannot access EASi unless registered with the Plan. Each producer will be provided with the rules and prescribed procedures for EASi.
- 631.2 A registration identification code may be obtained by completing an Application for Registration to Access the Electronic Application Submission Interface. The application may be obtained by contacting the Plan Office or in electronic format by accessing www.aipso.com/dc. The completed application accompanied by a copy of a valid producer's license must be submitted to the Plan by mail or by fax (804) 217-9950.
- 631.3 Within five working days following receipt of the application, the Plan shall approve any application that meets all requirements. However a producer whose privilege to use EASi has been previously revoked or suspended shall be subject to the following exceptions:
- (a) A producer whose access to EASi has been revoked shall not be eligible to reapply for registration until all outstanding violations are resolved. Upon reapplication, the producer must demonstrate to the satisfaction of the Governing Committee the producer's ability to comply with EASi standards and procedures. In its review of the reapplication, the Governing Committee may deny or grant the reapplication or grant the reapplication with certain restrictions or conditions.
 - (b) If a producer's access to EASi has been suspended, the producer's access to EASi shall automatically be reinstated effective the day following the termination date of the suspension provided all outstanding violations have been resolved.

699 DEFINITIONS

Section 699.1 is amended to include the following definition:

- 699.1 "EASi" means Electronic Application Submission Interface.

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLESNOTICE OF FINAL RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1425 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-901 et seq.) (2001), Section 5 of An Act to Provide for Annual Inspection of All Motor Vehicles in The District of Columbia, approved February 18, 1938 (52 Stat. 78; D.C. Official Code § 50-1105) (2001); and 18 § DCMR 752.4, took final action to adopt the following amendment to Chapter 6, sections 603 and 604, and Chapter 7, section 752, of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The amendment allows for a vehicle that is deficient in a minor inspection requirement to receive an approved sticker that will require that the deficiency be corrected by the next inspection. In addition, the amendment adopts the federal On Board Diagnostic emissions inspection requirements, as requested by the D.C. Department of Health Air Quality Program. No comments were received. A change was made to Section C: an implementation date of January 1, 2004, was established. Also, the reference to "Class D" motor vehicle in the proposed rulemaking was corrected to read "Class A", in order to accurately reflect classifications set forth in the D.C. Code. No other changes have been made to the text of the proposed rules, as published with the Notice of Proposed Rulemaking in the D.C. Register on August 15, 2003, at 50 DCR 6717. These rules will be effective upon publication of this notice in the D.C. Register.

Title 18, DCMR, is amended as follows:

A. Section 603, VEHICLE INSPECTION: APPROVED VEHICLES, is amended as follows:
by adding a new subsection 603.4 to read as follows:

603.4 Any Class A passenger vehicle that exhibits one or more of the following deficiencies upon inspection shall be issued an approved inspection sticker together with a warning that the vehicle will be rejected at the next inspection if the defects are not corrected:

- (a) Missing, inaccurate, or mutilated registration document;
- (b) Improper tag mounting;
- (c) Damaged or rusted door, provided there are no visible holes;
- (d) Damaged body;
- (e) Minor dent on vehicle that does not affect the vehicle's operation;
- (f) Missing or broken mirror on passenger side;

- (g) Low decibel horn;
 - (h) Missing or broken gear indicator;
 - (i) Inoperative tag light;
 - (j) Inoperative clearance light;
 - (k) Inoperative tail light, provided the vehicle has three (3) operative tail lights;
 - (l) Inoperative stop light, provided the vehicle has three (3) operative stop lights;
 - (m) Inoperative marker lights;
 - (n) Inoperative fog lights;
 - (o) Damaged or missing rear or side reflectors;
 - (p) Minor cracked or damaged windshield, provided no crack or damaged portion is larger than three (3) inches in diameter; or
 - (q) Missing one (1) lug nut on tire.
- B. Section 604, VEHICLE INSPECTION: REJECTED VEHICLES, subsection 604.2 is amended by inserting after the phrase "rejection sticker" the phrase ", except as provided in § 603.4".
- C. Section 752, MAXIMUM ALLOWABLE LEVELS OF EXHAUST COMPONENTS, subsection 752.3 is amended to read as follows:
- 752.3 Notwithstanding any other provision in this Section, effective January 1, 2004, all vehicles 1996 or newer shall comply with federal On Board Diagnostic testing standards in effect on July 1, 2003, as published in the Code of Federal Regulations, Title 40, Chapter 1, Part 85.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., WEST TOWER, SUITE 200
WASHINGTON, DC 20005

NOTICE OF FINAL RULEMAKING

Formal Case No. 988, In the Matter of the Development of Universal Service Standards and a Universal Service Trust Fund for the District of Columbia

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to its authority under D.C. Code § 34-802 and D.C. Code § 34-2003 (2001 Ed.), hereby gives notice of the adoption of Chapter 28 of Title 15 DCMR. This Chapter establishes the Commission's regulations governing the provision of the District's Universal Service and Telecommunications Relay Service in conformance with the District of Columbia Telecommunications Competition Act of 1996.

2. The Notice of Proposed Rulemaking ("NOPR") was published in the *D.C. Register* on March 21, 2003.¹ Sprint Communications Company and the Office of the People's Counsel filed comments on the NOPR.² On May 6, 2003, Verizon Washington, DC Inc., filed reply comments.³ OPC filed reply comments on June 9, 2003.⁴ On September 23, 2003, final action addressing all comments and adopting the final rules was taken by the Commission in Order No. 12922. The Commission made clarifying changes to the regulations based on the parties' comments. The Commission's changes do not substantially change the intent, meaning, or application of the proposed rules or exceed the scope of the rules published in the NOPR. The final rules will become effective upon the date of publication of this Notice in the *D.C. Register*.

CHAPTER 2800 UNIVERSAL SERVICE

2801 APPLICABILITY

2801.1 This Chapter establishes the Public Service Commission of the District of Columbia Rules and Regulations Governing the Provisioning of the District's Universal Services, in conformance with the District of Columbia

¹ 50 *D.C. Register* at 2354-2367.

² *Formal Case No. 988, In the Matter of the Development of Universal Service Standards and the Universal Service Trust Fund for the District of Columbia ("Formal Case No. 988")*, Comments of the Office of the People's Counsel on the Proposed Universal Service Regulations ("OPC Comments"), filed April 21, 2003, and Comments of Sprint Communications Company ("Sprint Comments"), filed April 3, 2003.

³ *Formal Case No. 988*, Verizon Washington, DC Inc.'s Motion for Leave to File Reply Comments ("Verizon DC Motion") and Verizon Washington, DC Inc.'s Reply Comments ("Verizon DC Reply"), filed May 6, 2003.

⁴ OPC Motion at 1.

Telecommunications Competition Act of 1996. This Chapter shall be cited as the District of Columbia Universal Service Rules.

- 2801.2 This Chapter shall be applicable to all local exchange carriers ("LEC"). However, providers of mobile service are exempt from regulation under this Chapter pursuant to § 34-2006(b) of the District of Columbia Telecommunications Competition Act of 1996.

2802 DISTRICT OF COLUMBIA UNIVERSAL SERVICES

- 2802.1 District of Columbia Universal Services shall consist of the following services:

- (a) Voice grade access to the public switched network, with the ability to place and receive calls;
- (b) Dual Tone Multifrequency ("DTMF") signaling or its functional equivalent;
- (c) Single-party service;
- (d) Access to emergency services, including in some instances, access to 911 and enhanced 911 ("E911") services;
- (e) Access to operator services;
- (f) Access to interexchange services;
- (g) Access to directory assistance;
- (h) Telecommunications Relay Service ("TRS"); and
- (i) Toll limitation services for qualifying low-income consumers.

- 2802.2 The Commission may expand universal services to be supported by the District of Columbia Universal Service Trust Fund ("DC USTF" or "Fund") after notice and comment.

2803 DISTRICT OF COLUMBIA UNIVERSAL SERVICE TRUST FUND

- 2803.1 Funds from the DC USTF will be used to support the enumerated services listed in 2802.1 as follows:

- (a) To reimburse eligible local exchange carriers for the reasonable investments and expenses not recovered from the federal universal service low-income fund. The amount to be reimbursed shall be calculated for

each eligible telecommunications carrier ("ETC") to be the remainder of the ETC's retail tariffed rate less funding from the Federal Universal Service Low Income Fund less the tariffed lifeline rate for each eligible customer subscribing to the ETC's lifeline.

- (b) To pay costs associated with verification of lifeline eligibility;
- (c) To pay costs associated with the provision of TRS;
- (d) To pay the costs of administering the DC USTF, including the costs of an annual independent audit, if Commission staff does not perform this audit.

2804 FUNDING OF THE DISTRICT OF COLUMBIA UNIVERSAL SERVICE TRUST FUND

- 2804.1 The DC USTF shall be funded through monthly contributions paid by each LEC in an amount proportionate to each carrier's share of local telecommunications service revenue, determined annually by the DC USTF Administrator as described in this Chapter.
- 2804.2 Each local exchange carrier shall submit payment to the Administrator within thirty (30) days from the date of billing for contributions.

2805 SIZING THE DISTRICT OF COLUMBIA UNIVERSAL SERVICE TRUST FUND

- 2805.1 The size of the DC USTF shall be the sum of the total local lifeline subsidy, the cost of lifeline eligibility verification, the cost of providing TRS, and reasonable administration costs for the Fund. The lifeline subsidy shall be determined by taking the difference between subsidized lifeline rates and the comparable tariffed residential rates, less the federal USF support, times the number of customers who subscribe to lifeline service.
- 2805.2 The Fund Administrator shall submit to the Commission by August 31 of each year a report, which shall include an income statement of the Fund's activity for the preceding calendar year and a proposed budget for the upcoming calendar year.
- 2805.3 The Commission shall issue a Notice of Proposed Rulemaking on the Fund Administrator's report to be published in the *D.C. Register*. Interested persons may file comments within thirty (30) days after publication, and reply comments within forty-five (45) days of publication.
- 2805.4 On or before November 30 of each year, the Commission shall establish a budget for the upcoming year after notice and comment on the Fund Administrator's report.

2806 ELIGIBILITY TO RECEIVE UNIVERSAL SERVICE FUNDING

- 2806.1 Upon request by a local exchange carrier, and after notice and comment, the Commission shall consider designation of the requesting carrier as an Eligible Telecommunications Carrier ("ETC") to receive funding from the DC USTF under the District of Columbia Telecommunications Competition Act of 1996 and 47 U.S.C. § 214(e). Interested parties may file comments within thirty (30) days after publication of the Commission's Notice of Proposed Rulemaking, and reply comments within forty-five (45) days of publication.
- 2806.2 The Commission shall designate a requesting local exchange carrier as an ETC, provided:
- (a) The LEC is certificated by the Commission to provide local exchange service, and offers all universal services to all residential customers in the District in a nondiscriminatory manner;
 - (b) The LEC has a compliant tariffed lifeline service in the District and advertises the availability and charges for lifeline service(s) it provides through multiple media of general distribution reasonably expected to reach eligible residents;
 - (c) The LEC has been designated as an ETC for purposes of Federal Universal Service support, or such designation is granted concurrent with designation of eligibility for District funding; and
 - (d) The Commission determines that the designation is in the public interest and that the LEC complies with the appropriate Commission regulations.
- 2806.3 In order to be designated as an ETC for purposes of Federal Universal Service support, the local exchange telecommunications service provider shall meet the requirements of 47 U.S.C. § 214(e).

2807 RELINQUISHMENT OF DC USTF SUPPORT ELIGIBILITY

- 2807.1 A local exchange carrier may seek to relinquish its ETC designation.
- 2807.2 If the District is served by more than one ETC, the Commission may permit a carrier to relinquish its designation as an ETC upon:
- (a) Written notification not less than 90 days prior to the proposed effective date that the carrier seeks to relinquish its designation as an ETC; and
 - (b) Determination by the Commission that the remaining eligible telecommunications carrier or carriers can offer federally and District of Columbia supported services to the relinquishing ETC's customers; and

- (c) Determination by the Commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.

2807.3 If the District is served by only one local exchange carrier that is the only ETC, the Commission may permit it to relinquish its ETC designation upon:

- (a) Written notification not less than 90 days prior to the proposed effective date that the LEC seeks to relinquish its designation as an ETC; and
- (b) Commission approval and designation of another ETC.

2808 SELECTION AND DUTIES OF THE DC USTF ADMINISTRATOR

2808.1 The DC USTF Administrator ("Administrator") will be selected through a competitive bidding process as provided for in 15 DCMR § 2200 *et seq.*

2808.2 The Administrator shall:

- (a) Manage the daily operations and affairs of the DC USTF in an efficient, fair, and competitively neutral manner;
- (b) Calculate and collect the proper assessment amount from every local exchange carrier operating in the District of Columbia;
- (c) Disburse the proper support amounts ensuring that only ETCs receive funds;
- (d) Perform any periodic audits of the DC USTF deemed necessary by the Administrator and/or the Commission regarding contributions to the DC USTF;
- (e) Notify the Commission of any local exchange service providers that are in violation of any of the requirements;
- (f) Compute the anticipated funding required and costs of the DC USTF programs as specified earlier in this Chapter;
- (g) Establish a reserve for such contingencies as late payments and uncollectibles, in an amount to be approved by the Commission;
- (h) Provide information necessary to support external audits of the DC USTF;
- (i) Resolve informal assessment disputes with local exchange service providers;

- (j) Maintain thorough records of costs directly and reasonably associated with implementation of the DC USTF;
- (k) Establish an appropriate true-up methodology for the DC USTF assessment;
- (l) Protect the proprietary nature of information reported to the DC USTF administrator in conjunction with the Commission while recognizing that the DC USTF administrator is subject to the Freedom of Information Act (FOIA), D.C. Code §§ 2-531 to 2-539;
- (m) Perform any other duties as required by law or this Chapter or ordered by the Commission;
- (n) Contract with a vendor to provide TRS for calls originating in the District, monitoring and auditing the TRS provider's compliance with the Commission's and the FCC's requirements for the provision of TRS;
- (o) Maintain insurance to indemnify the Commission and the fund against the Administrator's and TRS provider's improper use of the funds;
- (p) Disburse the proper support amounts to the TRS vendor; and
- (q) Ensure that funds are received from each local exchange carrier and that the funds are deposited in the DC USTF.

2809 UNIVERSAL SERVICE FUND AUDIT

- 2809.1 The Administrator or the Commission shall have the authority to audit contributors and local exchange carriers reporting data to the Administrator.
- 2809.2 The DC USTF is subject to an annual audit by:
- (a) An independent certified public accountant selected by the Commission or its designee; and
 - (b) The Commission.
- 2809.3 The cost of the annual DC USTF audit shall be paid by the DC USTF.
- 2809.4 Those portions of the report that are not confidential in nature will be made available to the public for review.
- 2809.5 If the result of the audit reveals evidence of fraud or mismanagement, such results will be forwarded to the Office of the Inspector General and the District of Columbia Corporation Counsel for further review.

2810 RESOLUTION OF DISPUTES REGARDING CONTRIBUTIONS

- 2810.1 Any local exchange carrier may dispute the amount of contribution it is required to pay into the DC USTF.
- 2810.2 The local exchange carrier shall make a written request to the Fund Administrator of the DC USTF, on or before the payment due date, setting forth its dispute and the Administrator shall attempt to resolve the dispute within 30 days. This time may be extended upon a showing of good cause.
- 2810.3 If the dispute is not resolved by the Fund Administrator, the LEC may file an application with the Commission requesting that the Commission resolve the dispute.
- 2810.4 During the consideration of the dispute, the disputing LEC shall pay both the disputed and undisputed amounts to the DC USTF.
- 2810.5 If a disputing contributor prevails in its protest of the required contribution, the contributor will be entitled to a refund of any excess amount paid plus interest.

2811 RESOLUTION OF OTHER DISPUTES

- 2811.1 Any adversely impacted party may dispute the actions of a local exchange carrier related to the provisioning of Universal Services. The adversely affected party may contact the Fund Administrator for resolution of the dispute.
- 2811.2 If resolution is not achieved, the local exchange carrier or Fund Administrator may file an application requesting the Commission to resolve the dispute.

2812 REPORTING REQUIREMENTS FOR LOCAL EXCHANGE CARRIERS

- 2812.1 By October 31 of each year, each ETC shall submit to the Fund Administrator a report, based on the 12-month period ending September 30 of that year, containing the total revenues for local exchange service provided in the District of Columbia.

2813 REPORTING REQUIREMENTS FOR THE DC USTF ADMINISTRATOR

- 2813.1 On a quarterly basis, the Fund Administrator shall submit to the Commission a report including:

- (a) A statement of collections and distributions from the universal service fund for each local exchange carrier;
 - (b) A statement detailing the purpose for which the universal service funds were used (i.e. to support an enumerated service listed in § 2801.1 or for verification of lifeline eligibility)
 - (c) A record of total cost of universal service fund administration.
- 2813.2 On October 31 every year after the establishment of the DC USTF, the Fund Administrator shall submit to the Commission a report, which shall include:
- (a) An audit and recommendation report of the DC USTF provided by an independent accountant; and
 - (b) A proposed budget for the upcoming year.

2814 CONTRIBUTIONS TO THE DC USTF

- 2814.1 The amount of contribution required from each LEC shall be based on total revenues for local exchange services of the local exchange carrier as a percentage of all the LEC's total retail revenues for local exchange service provided in the District of Columbia, for the previous 12-month period ending September 30.
- 2814.2 The Fund Administrator shall, based on the amount to be contributed to the DC USTF, calculate the contribution required to be made to the Fund by each contributor, based on the fund level established by the Commission and the information provided pursuant to 15 DCMR §§ 2804.1-2804.2.
- 2814.3 Each LEC shall pay its contribution directly to the Fund Administrator on a monthly basis. The check or other negotiable instrument shall be payable to the "DC USTF." The invoice or other request for DC USTF contributions shall be past due thirty (30) calendar days after the date on the invoice or other request for DC USTF contributions, unless otherwise ordered by the Commission.
- 2814.4 Interest shall be charged on any payment not received by the past due date at the rate of 1.5 percent monthly.
- 2814.5 All contributions and interest payments made to the DC USTF shall be deposited into the DC USTF account by the Fund Administrator.

2815 RECOVERY OF CONTRIBUTIONS

- 2815.1 A LEC may recover no more than the amount of its contributions to the DC USTF from its non lifeline retail customers.
- 2815.2 Prior to recovering its DC USTF contributions from its customers, a LEC shall have a tariff specifying the charge to be assessed, in accordance with the rules and Orders of the Commission.
- 2815.3 The LEC shall ensure that any recovery from its retail customers shall be in a fair, equitable, and nondiscriminatory manner.
- 2815.4 The LEC shall also ensure that no over-recovery of contributions occurs. Any over-recovery of Fund contributions for the preceding year shall be carried forward to the ensuing year and shall be included as a reduction in the calculation of the retail end-user recovery amount for the ensuing 12-month period of the carrier's contributions or refunded in the event its reimbursements for that year are insufficient to offset such over-recovery. Any under-recovery of contributions for the preceding year, may at the option of the carrier, be recovered from the end-users within the following twelve months.
- 2815.5 In the event a local exchange carrier elects to recover its DC USTF contributions from its customers, the amount of the recovery shall be explicitly stated as a line item on its customers' bills.

2816 REQUEST FOR DC USTF FUNDING

- 2816.1 Any ETC may request funding from the DC USTF for the provision of Lifeline service to an eligible customer.
- 2816.2 The appropriate "Request for DC USTF Funding" forms shall be available and may be obtained from the Commission Secretary's Office, the Commission's website, or the Fund Administrator.
- 2816.3 An ETC requesting funds from the DC USTF for the provision of Lifeline service to eligible customers shall submit a Request for DC USTF Funding Application ("Application") with supporting documentation to the DC USTF Administrator and the Commission Secretary's Office.
- 2816.4 Concurrent with the filing of the Application, the ETC requesting funding shall serve each District ETC and OPC with a copy of the Application. The Fund Administrator shall provide a list of the contributors to the DC USTF upon request by the ETC.

2817 REVIEW AND DECISION ON APPLICATION FOR FUNDING

- 2817.1 The Fund Administrator may request additional information from the Applicant. The Applicant must provide the requested information to the Fund Administrator within fifteen (15) calendar days of the receipt of the request.
- 2817.2 If there is a deficiency with the Application, the Fund Administrator will notify the Applicant of the deficiency(ies) in writing. Upon notification, the Applicant will have fifteen (15) calendar days to amend the Application or resubmit another Application to the Fund Administrator. If the Applicant does not correct or complete the Application within the 15-day deadline, the Application will be denied.
- 2817.3 Notwithstanding § 2817.2 of this Chapter, each funding request shall be reviewed by the Fund Administrator on a case-by-case basis. Within thirty (30) days of receipt of an Application, the Fund Administrator shall review the submission and advise the Commission and Applicant of eligibility in writing.
- 2817.4 After receiving notice from the Fund Administrator, the Commission shall issue an Order denying or approving the Application within forty-five (45) days of receipt of the Administrator's determination.
- 2817.5 Upon approval of the Application, the Applicant may elect to use the funding to offset future contributions, request that the funds be mailed, or request that the funds be deposited in a designated account. The Administrator shall provide the approved funding to the ETC within fifteen (15) calendar days of the request.
- 2817.6 Unless good cause is shown, any request for DC USTF funding should be made within twelve (12) months from the date the carrier provided the Lifeline service for which funding is requested.
- 2817.7 If an ETC receives funding from alternative sources for an investment or expense already reimbursed by the DC USTF, the ETC shall reduce the amount of any prospective funding request from the DC USTF by the equivalent amount. Under no circumstances will double recovery be allowed.
- 2817.8 If the Commission does not issue an Order within the time frames set forth in § 2817.4, the request shall be deemed approved, on an interim basis, subject to refund, with interest at a rate determined by the Commission. Any refund shall include interest at a rate of not more than the interest rate established by the Commission on customer deposits and shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting provider.

2817.9 Any party adversely affected by the Commission's decision shall have fifteen (15) days to file a request for reconsideration. Upon filing a request for reconsideration, the Commission shall render a decision in accordance with Chapter 1 of this Title.

2818 PRIORITY OF DISTRIBUTION IN THE EVENT OF A SHORTFALL

2818.1 If the DC USTF experiences a shortfall, the available funds will be distributed in the following order:

- (a) To support the services designated as universal services; and
- (b) Any residual funds will be used to cover the costs associated with administering the fund.

2818.2 The remaining costs associated with administering the fund will be paid as additional funds become available.

2819 TELECOMMUNICATIONS RELAY SERVICE

2819.1 Provision of TRS in the District shall be administered by the Fund Administrator.

- (a) The Fund Administrator shall monitor service levels to ensure that minimum service requirements specified in this Chapter are satisfied.
- (b) The Fund Administrator shall attempt to resolve any complaints regarding TRS in a reasonable timeframe. If unable to do so, the Fund Administrator shall refer the complaint to the Commission.
- (c) The Fund Administrator shall draft the Application for Recertification to be submitted to the FCC every five years, and shall file the draft Recertification Application with the Commission no later than 12 months prior to expiration of the current certification.

2819.2 The Commission shall select the TRS provider through a competitive bidding process.

2819.3 A TRS Advisory Board, comprised of community, industry and governmental representatives, shall monitor the provision of TRS in the District.

2819.4 The Board shall consist of the following:

- (a) One representative of the Commission;
- (b) One representative of the Office of the People's Counsel;

- (c) One representative of the TRS Provider;
 - (d) One representative of a District of Columbia government agency responsible for issues involving the hearing and speech impaired communities;
 - (e) One individual recommended by the president of Gallaudet University, if so desired;
 - (f) Two individuals recommended by the D.C. Association of Deaf Citizens, if so desired;
 - (g) One individual recommended by the District of Columbia chapter of the Association of Late-Deafened adults, if so desired;
 - (h) One individual recommended by Self Help for Hard of Hearing Persons, if so desired;
 - (i) One individual recommended by Black Deaf Advocates, if so desired;
 - (j) One individual recommended by the Metro Washington Association of Deaf/Blind, if so desired;
 - (k) One individual recommended by the District of Columbia chapter of the American Speech Language Hearing Association, if so desired;
 - (l) One individual recommended by Deaf Pride Incorporated, if so desired;
 - (m) One representative of the federal government, if so desired; and
 - (n) One individual selected "at-large" by the Commission who is familiar with the needs of the hearing and speech impaired communities in the District of Columbia.
- 2819.5 The Board shall meet at least once every six months and provide input to the Fund Administrator and to the TRS provider regarding operation of TRS in the District.
- 2819.6 The Commission representative shall:
- (a) Serve as facilitator to the Advisory Board;
 - (b) Schedule meetings and provide notice of the meetings to members;
 - (c) Take minutes and circulate the minutes to members; and

(d) Report urgent matters to the Fund Administrator when necessary.

2819.7 The TRS provider shall meet the following minimum service requirements:

- (a) The overall typing speed of at least 60 words per minute;
- (b) The TRS system shall be designed to a P.01 standard;
- (c) TRS shall, except during network failure, answer 85% of the calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in queue or on hold;
- (d) TRS users shall be able to connect to any interexchange carrier requested;
- (e) Communication assistants ("CA") must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications. CAs must provide a typing speed of 60 words per minute. CAs must be high school graduates or shall have passed a high school equivalency examination;
- (f) The TRS provider must have "in-house" processes to resolve customer complaints;
- (g) The TRS provider shall have redundancy features functionally equivalent to the equipment in normal central offices including uninterruptible power for emergency use;
- (h) The TRS provider shall operate everyday, 24 hours a day; and
- (i) The TRS provider shall meet the requirements of 47 C.F.R. § 64.601 *et seq.* and any other requirements specified in FCC rules and regulations.

2820 DISTRICT OF COLUMBIA LIFELINE SERVICE PROGRAM

- 2820.1 The District of Columbia Lifeline Service Program is a program designed to operate in conjunction with the Federal Lifeline Program, to provide a low monthly recurring rate to qualifying residential subscribers for basic local exchange service.
- 2820.2 In order to qualify for Lifeline service, a customer must meet the requirements of 47 CFR §§ 54.400 through 54.415 and show that they fall below 150% of the Federal Poverty income guidelines.
- 2820.3 Each ETC shall file tariffs implementing a Lifeline service that is consistent with both FCC and Commission regulations.

- 2820.4 Lifeline subsidies shall not be available to customers on a retroactive basis.
- 2820.5 When the District of Columbia Energy Office or the entity responsible for certifying Lifeline customers notifies an ETC that the customer no longer qualifies for Lifeline service, the Lifeline rate will revert to the serving ETC's standard tariffed retail rate.
- 2820.6 Lifeline service is only available at the qualifying customer's principal residence. An applicant for Lifeline service may report only one address in the District of Columbia as the principal place of residence.
- 2820.7 No additional local exchange service is permitted in a household with lifeline service.
- 2820.8 Participants in the District's Lifeline Program are eligible to receive Toll Restriction Service at no charge.
- 2820.9 District of Columbia residents who meet all eligibility requirements shall not be denied Lifeline service because of unpaid toll charges.

2821 WAIVER

- 2821.1 Whenever compliance with any requirement of this Chapter would result in unreasonable hardship upon or excessive expense to a party or parties subject to the rules of this Chapter, the Commission may, upon application and for good cause shown, waive or modify the requirements of this Chapter.

2822 VIOLATIONS

- 2822.1 Failure to pay an assessed contribution to the DC USTF shall be deemed a violation of this Chapter.
- 2822.2 If the Commission determines after notice and hearing that an ETC has acted in violation of this Chapter, the Commission may file an action on behalf of the DC USTF to recover any unpaid fees and charges the Commission has determined are due and payable, including interest, administrative and adjudicative costs, and attorney fees. Upon collection of the above charges and costs, the Fund Administrator shall pay the costs of the actions and deposit the remaining funds in the DC USTF as appropriate.

2823 DEFINITIONS

- 2823.1 When used in this Chapter, the following terms and phrases shall have the following meaning:

"Administrator" or **"Fund Administrator"** means the person(s) or entity(ies) responsible for administering the District of Columbia Universal Service Trust Fund.

"Applicant" means a local exchange carrier that has submitted a request for funding from District of Columbia Universal Service Trust Fund.

"Application" means the Request for DC USTF funding forms.

"Commission" means the Public Service Commission of the District of Columbia.

"Competitive local exchange carrier" ("CLEC") means a provider of telecommunications service that was not an incumbent local exchange carrier on January 31, 1996 but that is now certified to provide local exchange telecommunications service within the District.

"Customer" or **"Subscriber"** means any person, firm, partnership, cooperative corporation, corporation or lawful entity that receives telecommunications services.

"District of Columbia Universal Service Trust Fund" or **"DC USTF"** or **"Fund"** means the fund established and required to be implemented by the Commission pursuant to D.C. Code § 34-2003 (2001 Ed.)

"Eligible telecommunications carrier" or "ETC" means any LEC that is designated as an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e) and 15 DCMR 2806, *et seq.*

"Facilities" means any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under 47 U.S.C. § 214(e)(1).

"FCC" means the Federal Communications Commission.

"Incumbent local exchange carrier" or **"ILEC"** means the local exchange carrier that provided local exchange telecommunications service in the District on the date of enactment of the federal Telecommunications Act of 1996 (P.L. 104-104).

"Lifeline Service" means the service or benefits established by federal and District programs designed to keep low-income subscribers on the telecommunications network.

"Local exchange telecommunications service" means a switched telecommunications service capable of originating and terminating calls within the Washington Metropolitan local calling area.

"Local exchange carrier" or **"LEC"** means any person or entity that is engaged in the provision of local exchange telecommunications service or exchange access. The term

"local exchange carrier" does not include a person or entity engaged in the provision of a commercial mobile service.

"**Network**" includes a telecommunications service provider's or telecommunication carrier's facilities used to originate and terminate traffic.

"**Person**" means any individual, partnership, corporation, association, joint-stock company, or any other entity.

"**P.01**" means the probability (P), expressed as a decimal fraction, of a telephone call being blocked. The P.01 grade of service is the probability that one call of one hundred during the average busy hour will be blocked.

"**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.

"**Telecommunications Act of 1996**" means the Federal legislation cited as 47 U.S.C. Section 151 *et. seq.*

"**Telecommunications Relay Service**" or "**TRS**" means a transmissions service that provides the hearing impaired or speech impaired the ability to engage in communication by wire or radio with a non-hearing impaired individual. TRS includes services that enable two-way communication between an individual who uses a Telecommunications Device for Deaf ("TDD") or other non-voice terminal device and an individual who does not use such a device.

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

"**U.S.C.**" means United States Code.

"**Universal Service**" means an evolving set of telecommunications services determined to be essential for residential customers' health and welfare, and as such, must be available throughout the District of Columbia.

3. Additional copies of these final rules may be obtained by writing Sanford M. Speight, Acting Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor, West Tower, Washington, DC 20005.