STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-319

June 10, 1997

PUBLIC UTILITIES COMMISSION
Proposed Amendment of Chapter 280 to Achieve Parity with Interstate Access Rates by May 30, 1999

NOTICE OF RULEMAKING
NOTICE OF INQUIRY

WELCH, Chairman; NUGENT AND HUNT, Commissioners

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND 1

III. PROPOSED RULE. 2

A. Parity with Interstate Access Rates Required . . 2

B. Reporting and Filing Requirements 2

C. Changes to the Existing Section 8 3

D. Questions for Commenters. 3

IV. NOTICE OF INQUIRY ON THE POTENTIAL IMPACTS OF REDUCTIONS IN INTRASTATE ACCESS RATES 4

A. Discussion 4

B. Analysis 5

V. CONCLUSION AND ORDERING PARAGRAPHS 7

I. INTRODUCTION

The Commission initiates this rulemaking and inquiry to achieve intrastate access rate levels in Maine that will be less than or equal to then-current interstate levels by May 30, 1999, as will be required by 35-A M.R.S.A. § 7101-B (P.L. 1997, Ch. 259). In addition to Section 7101-B, this rule is initiated pursuant to 35-A M.R.S.A. §§ 104, 111, 301, 1301, 7101, 7104-A and 7303.

Currently, New England Telephone & Telegraph Company d/b/a NYNEX (NYNEX) charges an average access rate of about $0.26 per minute for intrastate calls. The NYNEX access rate for federally-regulated interstate calls in Maine currently averages about $0.07 cents per minute. This proposed rule provides a flexible process for intrastate access rate decreases to accommodate opportunities to lower access rates in coordination with Federal Communications Commission (FCC) actions and other factors.

In this Order, we also begin an inquiry into the impact of our proposed Rule on NYNEX's Alternative Form of Regulation (AFOR). As a result of this proposed Rule, modifications to the AFOR may be needed to allow NYNEX's rates to change beyond those levels that would otherwise be permitted by the AFOR pricing rules.

II. BACKGROUND

35-A M.R.S.A. § 7101-B (P.L. 1997, Ch. 259) was enacted by the Legislature, was signed into law by Governor Angus S. King, Jr. on May 22, 1997, and will take effect 90 days after the adjournment of the 118th Legislative First Special Session. Section 7101-B will require that we establish, by May 30, 1999, intrastate access rates that are less than or equal to the interstate access rates that are established by the FCC, notwithstanding any other provisions of law. By January 1, 1998, we are required to report on our progress in achieving parity with interstate access rates to the Legislature's Joint Standing Committee on Utilities and Energy.

III. PROPOSED RULE

A. Parity with Interstate Access Rates Required

In this revision to Chapter 280, we require that intrastate access rates be lowered to levels that are equal to or less than then-current interstate access rates by May 30, 1999.

This Chapter 280 amendment adds provisions to the rule that are consistent with the statutory amendment and phases out the provisions of Chapter 280 that will be made obsolete by 35-A M.R.S.A. § 7101-B. The proposed changes to Chapter 280 are attached as Attachment A.

B. Reporting and Filing Requirements

In their filings, the local exchange companies will be required to structure their intrastate access rates in the same way as they structure their interstate access rates. We propose to adopt the federal structure for access rates billed to interexchange carriers because we believe that substantial differences between Maine's structure and the interstate structure can no longer be sustained. Moreover, it will be difficult to ensure compliance with this Rule if intrastate access charges are structured differently than the federal charges. Finally, we see no reason to depart, prospectively, from the federal structure recently announced by the FCC, because we agree with the principle that non-traffic sensitive charges should be recovered to the extent possible through flat charges to carriers.[1] *See Federal Communications Commission, In the Matter of Access Charge Reform,* CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers,* CC Docket No. 94-1*, Transport Rate Structure and Pricing*, CC Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order Adopted: May 7, 1997)

At a minimum, intrastate access rates will be reduced, by May 30, 1998, by at least 40% of the reduction projected as necessary to achieve parity with interstate access rates by May 30, 1999. The 1999 reduction shall be any additional amount necessary to achieve parity with then-current interstate access rates before May 30, 1999.

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[1] In the Chapter 280 rulemaking in Docket No. 96-526 that we have now terminated, we had proposed a similar flat-rate structure, based on revenues rather than access lines.

C. Changes to the Existing Section 8

We propose that several substantive subject areas (subsections F, I and J) presently contained in Section 8 be eliminated on the effective date of this proposed Rule and that other sections (subsections A-E, F, I and J) expire on May 30, 1999. We propose to eliminate the entire subject matters of present subsections F, I and J. We propose to eliminate the leakage access charge (Subsection F) because it never went into effect; it would be difficult to enforce; and the leakage problem (customers avoiding toll charges by effectively making all calls local through the use of private lines) has been significantly diminished by special contracts for large customers. We propose to eliminate subsections I and J because these subsections have never been used and are overly complex. We propose to eliminate the entire subjects matters of present subsections A-E, G, H and K effective May 30, 1999 because the intrastate access rate in Maine will mirror the federal interstate access rate under the proposed rule and therefore these sections will no longer be needed.

D. Questions for Commenters

We request that the parties provide comments to the following questions:

1) At what pace should the reductions in access rates, which must be completed by May 30, 1999, be phased in during the period July 1, 1997 to May 30, 1999?

2) To what extent should the timing of the phase in and the level of intrastate access rate reductions be synchronized with receipt by the local exchange companies of potentially increased federal Universal Service Fund (USF) support payments (received pursuant to the requirements of Section 254 (b) of the federal Telecommunications Act of 1996)?

(3) Should the rule require each independent telephone company to file individual access rates? Should they be required to enter into a mandatory pool with NYNEX, a voluntary pool with NYNEX, or a voluntary pool with each other?

(4) If “mirroring” of interstate access rates produces substantially lower revenues for a high-cost independent telephone company, how should these issues be coordinated with the development of a state universal service fund?

IV. NOTICE OF INQUIRY ON THE POTENTIAL IMPACTS OF REDUCTIONS IN INTRASTATE ACCESS RATES

A. Discussion

On May 15, 1995, we adopted an AFOR to regulate the Maine intrastate operations of NYNEX during the 5-year period December 1, 1995 to November 30, 2000. The AFOR includes a price cap structure and a pricing rule that applies to all of NYNEX’s “core” services. Core services include non-discretionary services (e.g., basic exchange, toll services) and discretionary services (e.g., existing Custom Calling, Phonesmart services, and special contracts to customers with options).

The overall price rule for core service is the Price Regulation Index (PRI). The PRI is based on a formula that determines the amount by which NYNEX can adjust annually the aggregate weighted level of all its prices for core services to reflect cost changes caused by inflation, offset by the growth in productivity and by changes in a very limited group of exogenous costs. The inflation factor of the formula is the Gross Domestic Product Price Index (GDP-PI), which is designed to measure changes in national output prices. The productivity factor is set at 4.5%.

Any price increase for a non-discretionary core service (primarily basic service and toll) is limited to the increase in the aggregated PRI. NYNEX may change the price of any particular discretionary core service to any level, but revenues from all core services (non-discretionary and discretionary combined) will be subject to the PRI. NYNEX is allowed to raise the prices for core services only at the time of its annual rate adjustments. NYNEX may decrease the price of any service at any time and there are no limits on the amount that the price of any service may be decreased.

The AFOR does not include a profit-sharing component and its “exogenous cost change” component is narrowly written to include only those exogenous *cost* changes that: (1) have a very substantial and plainly disproportionate effect on NYNEX’s *costs* and that are totally outside the control of NYNEX; or (2) are

jurisdictional separations changes and significant accounting changes mandated by regulatory agencies that apply only to NYNEX or the telecommunications industry. The exogenous cost component does not include changes in revenues.

B. Purpose of this Inquiry

The purpose of this Inquiry is to determine whether, as a result of changing circumstances, it is desirable to review the AFOR (including the baseline rate levels) comprehensively.

The NYNEX AFOR was designed to replace rate-of-return regulation. Both rate-of-return regulation and the AFOR are methods of adjusting NYNEX's revenue requirement, which is a function of NYNEX's investment and its costs. Accordingly, all of the adjustments to the revenues allowed under the AFOR are related to items that impact NYNEX's cost of providing service. Exogenous costs are one kind of cost that is included in the AFOR formula.

Changes in access revenue are not cost changes. Those changes are not considered exogenous under the AFOR. Changes in access rates will affect NYNEX's revenue and its earnings. However, that fact does not make that change exogenous under the AFOR's terms. The AFOR does not permit NYNEX to flow through revenue losses as exogenous under the AFOR.

The AFOR's pricing rules do not permit an increase in basic rates if the PRI is zero or negative. That portion of the AFOR Order is consistent with our statutory responsibility to keep rates for basic service as low as possible pursuant to 35-A M.R.S.A. § 7303. Therefore, a waiver of that portion of the pricing rules would be necessary for NYNEX to be able to recover any portion of lost revenues through increases in basic rates greater than that allowed by the PRI. In light of 35-A M.R.S.A. § 7303, we are reluctant to grant major waivers or changes to the AFOR at this time to allow NYNEX to recover revenues that would not otherwise be recoverable under the AFOR without an examination of possible revenue requirement offsets and other new sources of revenue.

In addition to 35-A M.R.S.A. § 7101-B access rate reform requirements, there have been significant regulatory and revenue requirement changes that could be considered in conjunction with our consideration of a waiver of the AFOR's pricing rules. Therefore, if NYNEX chooses to seek an increase in any of its rates beyond what is permitted under the AFOR

because of the requirements of this Rule, we will carefully consider whether it is appropriate to begin two proceedings: (1) a proceeding that would include a comprehensive review of NYNEX's revenue requirement; and (2) a comprehensive review of the NYNEX AFOR, which would include a review of all elements of the AFOR, including the level of the productivity offset.

In considering whether to begin these two proceedings, we will evaluate whether it is appropriate to explore the following issues:

(1) Changes in NYNEX's revenue that result from stimulation of network usage as a result of access rate reductions;

(2) NYNEX's estimates of the savings resulting from the merger with Bell Atlantic;

(3) Changes in the appropriate cost of capital;

(4) Changes in productivity trends since our AFOR decision in May, 1995, including possible increases in NYNEX's productivity factor to account for NYNEX's opportunity to exploit its considerable spare capacity;

(5) Changes in separations and settlements procedures (including Other Billing and Collection or OB&C);

(6) The prudence of NYNEX's investments in digital switches;[2]

(7) The prudence of NYNEX's depreciation policies;

(8) The ratemaking treatment of NYNEX's continued investments in infrastructure that will be used to provide broadband services; and

(9) Changes in NYNEX's regulated jurisdictional revenue requirement caused by the application of the cost allocation model necessitated by the FCC's payphone detariffing and deregulation order.

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[2] See *Order,* Docket No. 94-254 (May 15, 1995), at 29.

We continue to be committed to the NYNEX AFOR and intend to continue to rely on it to regulate NYNEX's rates in Maine. We believe that the AFOR has provided efficiency incentives to NYNEX.

We will reluctantly depart from the NYNEX AFOR if requested to do so only because of the number and magnitude of unpredicted and unexpected events that have taken place during the past 2 years in telecommunications, including the merger with Bell Atlantic, federal enactment of the TelAct of 1996, federal regulatory changes (federal access rates, universal service fund, etc.), and passage of 35-A M.R.S.A. § 7101-B. It would not be appropriate to only take account of some of those changes without considering the other changes that might have an offsetting effect.

A Conference of Interested Persons will be held in the Commission's Hearing Room on June 26, 1997 at 9:00 a.m.

V. CONCLUSION AND ORDERING PARAGRAPHS

This rulemaking will be conducted according to the procedures in 5 M.R.S.A. §§ 8051-8058. No public hearing is presently scheduled, but one will be held if requested by any five (5) interested persons. Persons wishing to request a public hearing on this proposed rule amendment must notify the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, on or before July 10, 1997.

Written comments on the proposed rule amendment and the inquiry may be filed with the Administrative Director no later than August 25, 1997. We set the deadline of August 25, 1997 to provide the parties with adequate opportunity to achieve among themselves a comprehensive resolution of the issues raised in this Inquiry. Please refer to the docket number of this proceeding, Docket No. 97-319, when submitting comments.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. It is expected to provide a substantial economic benefit to small businesses. A more precise understanding of the fiscal impact of this rule should be possible once comments have been received. The Commission invites all interested parties to comment on the fiscal impact and all other implications of this proposed rule.

The following persons are being sent copies of this Order and the attached rule.

1. All telephone utilities in the State;

2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

3. The Secretary of State, for publication in accordance with 5 M.R.S.A. § 8053(5); and

4. The Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333 (twenty copies).

The Commission plans to conclude this rulemaking proceeding by October 15, 1997.

Accordingly, we

O R D E R

1. That the Administrative Director send copies of this Order and the attached proposed rule to all of the persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule.

2. That the Administrative Director send a copy of this Order Commencing Rulemaking to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, this 10th day of June 1997.

BY ORDER OF THE COMMISSION

_____
Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt

Attachment A

The following subsection L would be added to Section 8 of the revised Chapter 280 that the Commission deliberated and adopted on June 4, 1997.

Ch. 280

§ 8

L. Parity with Interstate Access Rates Required

1. General description. This subsection sets forth the process for achieving intrastate access rates in Maine that are less than or equal to the interstate carrier access rates, as determined by the Federal Communications Commission (FCC), by May 30, 1999.

2. Reporting and filing requirements.

a. For the 1998 decrease in intrastate access rates, the local exchange companies shall make their filings by April 1, to be effective May 30, 1998.

b. No later than their 1999 filings, the local exchange companies shall structure their intrastate access rates in the same way as they structure their interstate access rates.

c. The minimum required reduction in 1998 shall be at least 40% of the reduction necessary to achieve parity with interstate access rates by May 30, 1999. The 1999 reduction shall be any additional amount necessary to achieve parity with interstate access rates before May 30, 1999. The local exchange companies may seek waiver of the requirements of this subsection pursuant to Section 16 of this Rule.

d. The local exchange companies shall file proposed changes at least 120 days prior to May 30, 1999. This filing must contain access rates that mirror the structure and level of interstate access rates (or interstate NECA-pool disbursements).

e. For the purpose of the filings in a, b, c and d above, any company may voluntarily pool with other companies and file access rate tariffs for the pooled entity (i.e., there could be a Maine Exchange Carrier Association that would file consolidated access rate tariffs for any or all Maine local exchange carriers).

f. Subsections F, I and J of Section 8 of this Rule will expire on the effective date of this Rule.

g. Sections A-E, G and H of Section 8 of this Rule will expire on May 30, 999.