STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-851

June 26, 2000

MAINE PUBLIC UTILITIES COMMISSION
Investigation into Bell Atlantic-Maine's
Alternative Form of Regulation

FURTHER NOTICE OF
INVESTIGATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Further Notice of Investigation (FNOI), we set forth our proposed resolution for continuation and modification of the Alternative Form Of Regulation (AFOR) for Bell Atlantic-Maine (BA-ME or the Company). In a separate order issued contemporaneously with this FNOI, we set out our decision regarding the request of the Office of the Public Advocate (OPA) to open a revenue requirements investigation of the Company. We also establish the process for the remainder of the case. We will require simultaneous filing of comments by all interested parties, followed by simultaneous reply comments. The comments and replies should address the specific attributes of the revised AFOR mechanism that we describe in this Notice and the procedures for implementing the revised AFOR.

The proposed AFOR described in this FNOI will cap basic local rates at their current levels and give BA-ME pricing freedom on all other retail services, except for Directory Assistance and other Operator Services. Intrastate access rates will be set according to the provisions of 35-A M.R.S.A. § 7101-B, with the next required adjustment to occur on May 30, 2001, and no change in any other rate that would provide revenue neutrality will be allowed at that time. We also propose to modify and expand the Service Quality Index (SQI) contained in the present AFOR to increase its usefulness and relevance in setting standards for and measuring the services that are most important to retail and wholesale customers of the Company. While not a part of the proposed AFOR, we commit to completing the proceeding to establish prices for Unbundled Network Elements (UNEs) that are used by Competitive Local Exchange Carriers (CLECs) to access BA-ME's local network. We also intend to take all appropriate steps to encourage the expeditious development of competition in the local exchange market, because in the long run, competition will best serve the interests of Maine's ratepayers.

While we seek responses to the specific questions contained in this FNOI, we emphasize that the AFOR described herein is only a proposal, and parties are invited to comment on all aspects it. Parties should provide whatever support they feel is necessary for their comments.

II. BACKGROUND

We opened this proceeding through a Notice of Investigation dated December 27, 1999, that sought comments from interested parties on the issues and procedures involved. We received comments from BA-ME, OPA, and the Maine State Planning Office (SPO) and jointly from the Maine Department of Education and the Maine State Library. Separately, we received a Motion of the Public Advocate to Commence Rate and Revenue Investigation of BA-ME. Bell Atlantic filed responsive comments to the OPA motion, and the OPA provided a response to BA-ME's comments.

On May 15, 2000, the Telephone Association of Maine (TAM) filed a petition to intervene in this Docket. TAM asserts that there are important public policy considerations that could arise in the course of this proceeding, and those considerations could substantially and directly affect TAM's members. TAM states that to be able to protect the interests of its members, the Independent Telephone Companies (ITCs), it needs to participate as party, including the right to file briefs or comments. TAM cites several recent cases in which the Commission granted intervention to proposed parties on a limited basis so that those parties would be able to address issues that affect their interests. Therefore, TAM requests the right to intervene, so that it will receive all filings and discovery and be able to file briefs and comments as may be appropriate. TAM requests that it be allowed to fully litigate any aspect of the case that involves a public policy issue that may affect TAM's members, with the understanding that if TAM wishes to participate more fully in any portion of the proceeding, TAM would first request approval from the Commission to do so.

We grant the request of TAM to intervene in this proceeding under the conditions stated in TAM's request.

III. RESPONSES OF THE PARTIES

A. The Company

Bell Atlantic states that the current AFOR was generally successful in meeting the criteria set out both in 35-A M.R.S.A. §9103 and in the Order implementing the AFOR, *Docket No. 94-123 Public Utilities Commission, Re: Investigation into Regulatory Alternatives for the New England Telephone and Telegraph Company d/b/a NYNEX* (AFOR Order), but that changes in the competitive landscape for telecommunications products and services require a fresh evaluation of any successor plan. The Company asserts that continuation of the present AFOR is not warranted and that current and emerging competition will ensure a more efficient response by BA-ME to customer demands than could any form of price regulation implemented by the Commission. The Company concurs that the criteria set out by the Commission in the initial AFOR Order are helpful in evaluating the past success of the AFOR, but the Commission should also consider the ability of the alternative regulatory mechanism to promote economic development in Maine and to advance the development of the

competitive market in telecommunications products and services. The Company states that while the current AFOR was a marked improvement over rate of return regulation, continuation of the present plan is not warranted because the telecommunications landscape has been permanently altered by competition, and the current AFOR is ill-suited for such an environment.

BA-ME also states that the goal of regulation is the efficient allocation of societal resources, and competition is the method employed in this country to achieve that goal. The Telecommunications Act of 1996, codified at 47 U.S.C.A. §§ 151 et seq. (TelAct), strives to promote competition by eliminating all legal and regulatory barriers to entry. The TelAct mandates that an incumbent local exchange carrier (ILEC) provide competitors with access to the incumbent's network through the sale of unbundled network elements on an economic cost basis and by resale of the incumbent's retail services. The TelAct also imposes additional responsibilities on the ILEC, such as interconnection, collocation, reciprocal compensation for the exchange of traffic and nondiscriminatory access to number resources. All of these requirements have "unleashed a torrent of competitive providers for telecommunications services," according to BA-ME.

BA-ME asserts that telecommunications competition has firmly taken hold and that a broad array of new service providers gives customers an ever-growing choice of products and services using several different technologies. BA-ME says that price regulation was adopted by the Commission to better emulate competitive market forces, but that continuing price regulation in an openly competitive market is unwarranted. The Company argues that the Commission must now afford market forces an opportunity to fully mature and that "second-best" regulatory outcomes are outmoded, unnecessary and counter-productive.

BA-ME asserts that the approach to an alternative regulation mechanism cannot be a backward-looking assessment of how to continue to regulate the incumbent provider, but rather must entail a comprehensive reexamination of the objectives of an AFOR in a competitive marketplace. The Company discusses each of the elements that must be considered in this process.

BA-ME claims that no additional service quality restraints are necessary. Because service quality performance is a central consumer safeguard in a competitive market, BA-ME says the Commission's focus should be on promoting competition in the telecommunications marketplace and ensuring the presence of regulatory parity for all providers.

The Company claims that the Commission need not expend the time and effort necessary to rework the Price Regulation Index (PRI), the elements of which can be highly subjective and contentious. Instead, the Commission should focus on how it can best promote further competition, which would result in a far better means of encouraging new and improved products and services for customers. The Company claims that the

pace of competition is increasing in Maine and endeavoring to fashion a prospective PRI to determine "allocative efficiency" is at cross-purposes with Congress's restructuring of the telecommunications marketplace. At best, the Company states, the Commission may want to consider a minimal level of transitional price regulation to ensure a competitive outcome for all consumers while a more competitive market fully matures. The Commission may want to consider price freezes on a transitional basis for certain essential services in markets where competition has not yet taken hold. Further, there is no need for pricing baskets, because only certain essential services in markets not fully open to competition would be subject to any form of price regulation.

The Company asserts that any form of price regulation adopted by the Commission runs the risk of tying BA-ME's hands unfairly in the competitive marketplace. The Commission should focus instead on ensuring that BA-ME's wholesale prices are properly set and that "all other enablers to competition are in place and working." The Company states that the Commission should focus on a forward-looking assessment of whether the prerequisites for the development of a competitive market are in place, and that a backward-looking analysis of present market shares is unnecessary.

The Company also asserts that there is no need for the Commission to separately consider cost savings attributable to the merger of NYNEX and Bell Atlantic as part of its assessment of the success of the AFOR. BA-ME says that the only conceivable reason for reducing rates to account for merger savings would be to introduce an adjustment to counteract any increase in rates attributable to the elimination of Bell Atlantic as a potential competitor. BA-ME asserts that the Commission was correct in concluding in Docket 96-388 that there was no credible evidence that Bell Atlantic either had plans to compete directly with NYNEX in Maine or that the elimination of Bell Atlantic as a competitor would harm the development of competition in Maine. Further, the Company asserts that subsequent history has confirmed both of the Commission's conclusions. Also according to the Company, because BA-ME has been under an AFOR both before and after the merger was completed and has complied with the pricing requirements of the PRI, there is no way the merger could have adversely affected rates. Finally, BA-ME asserts that consumers will continue to receive the benefits of the merger through the operation of competitive market forces in the form of future cost reductions, enhanced network features, accelerated product development and improved product performance.

The Company also states that to process the case in a timely and efficient manner, the Commission should direct that there be two rounds of simultaneous filing of written comments by all parties. Hearings can be conducted to resolve disputed factual issues, with a single round of post-hearing briefs. The Company says that these materials would provide the Commission with sufficient information upon which to make its decision. This method would also not preclude the possibility of a negotiated settlement of some or all of the issues.

B. OPA

The OPA, in addition to its request that the Commission initiate a revenue and earnings investigation, states that it will submit testimony or comments suggesting that the current Service Quality Index be revised or updated to address more directly the types of telephone service problems that have occurred in Maine since the establishment of the current AFOR.

The OPA also asserts that its chief concern with the PRI mechanism is the level of productivity offset included in the formula. The OPA says the Commission should increase the offset beyond the 4.5% adopted at the outset of the current AFOR, and in making its decision, the Commission should consider the 6.5% productivity factor adopted by the FCC for the interstate access portions of the LEC's revenue requirement. If the Commission decides not to increase the productivity offset, the OPA states that the Commission should adopt a plan that contains direct earnings sharing.

The OPA states that, because BA-ME does not yet face direct competition for many of its services, adequate safeguards must be established to protect customers where elements of monopoly continue to exist. The OPA asserts that the single biggest flaw in the current AFOR is that the Company has the ability to apply all required price reductions to relatively discretionary services, and even though the PRI has been negative for each year of the AFOR, residential local exchange customers have experienced only price increases. The OPA asserts that under traditional rate of return regulation, basic exchange rates, rather than only rates of relatively discretionary services, would have been likely to receive their share of price reductions. The OPA says that this shortcoming should be corrected in the upcoming AFOR, and the Commission should reexamine fully the service categories to ensure that the benefits of declining costs and increasing productivity are shared with customers of necessary services who have no choices at this point. The OPA says it favors more specific pricing rules to govern services that are not subject to significant competition, especially basic exchange rates.

The Public Advocate says that truly competitive services should be removed from under the AFOR mechanism. However, the Commission must examine market share and market power factors before concluding that a service is sufficiently competitive to be removed from regulation, because premature relaxation of regulation for an incumbent that remains a predominant service provider can substantially undermine the goal of competition.

The OPA recommends that the term of the next AFOR be five years, adding that if the AFOR is to be in effect for five more years, there will be no need to review the pricing rules during its term.

The Public Advocate asserts that the effects of the Bell Atlantic/NYNEX merger should be examined in a full rate case investigation. Any expense or capital

savings that occurred as a result of the merger should now be passed back to ratepayers. The OPA also believes that the merger has had anti-competitive effects, and the Commission placed too high a burden of proof on the parties who alleged anti-competitive effects in the investigation of the proposed merger. The Public Advocate encourages the Commission to increase the productivity factor as an offset to the probable anti-competitive effects of the merger, and the Commission must devise a new paradigm to consider these effects. According to the OPA, traditional antitrust analysis is unsuitable for this task because the doctrine of "potential competition" is not sufficiently developed under current law.

The Public Advocate also believes that the Commission should require specific levels of infrastructure investment or service offerings only when a specific deficiency is identified. Similarly, the Commission should act if service quality problems are the likely result of inadequate infrastructure investment or if services are not available ubiquitously throughout the State. As an example, the OPA mentions Digital Subscriber Line (DSL) service as being cause for concern, because the Company may not be rolling out the service in all areas of Maine. In general, however, the OPA believes that the market should determine the levels of investment and the services that are developed, with the risks of such ventures placed on the Company's shareholders.

Finally, the Public Advocate urges the Commission to return any unspent funds from the School and Library Network to customers in the form of basic rate decreases. While the Commission indicated in the *Pease* Order that if any money remained at the end of the School and Library Network, it would be used for toll reductions, the OPA now believes that given the development of competition in the toll market and the recent increases to basic exchange rates, it would be more appropriate to use any remaining funds for basic rate reductions. The OPA asserts that the School and Library Network now envisioned by the Legislature goes well beyond the "minimum level of connectivity" originally envisioned by the Commission. The OPA states that future assessments under 35-A M.R.S.A. 7104-B should be used to pay for advanced gtelecommunications services for schools and libraries and that any unspent funds from the present program should be returned to BA-ME customers.[1]

C. State Planning Office

The State Planning Office (SPO) states that a substantive modification of the AFOR is needed to promote a vibrant and competitive telecommunications environment. The SPO asserts that the Commission was successful in its effort to ensure that customers fared better under the AFOR than under rate-of-return regulation, but that in its next iteration of the AFOR, the Commission should now look for evidence of success primarily in

[1] On April 10, 2000, we decided that any funds in the Bell Atlantic school and library account not projected to be spent by June 30, 2001, will be used to provide additional services to schools and libraries. Docket Nos. 96-900 and 94-254.

infrastructure deployment. The SPO urges the Commission to explore the possibilities of deregulation and to act where possible to create an environment that looks forward to a fully competitive future rather than to one rooted in a monopoly-provisioned past. Specifically, the SPO recommends that the Commission: focus on infrastructure deployment; establish benchmarks for technology and services; continue to ensure a fair, open and competitive market while moving towards retail and even wholesale deregulation; and retain the funding for the Maine School and Library Network.

The SPO states that BA-ME has or will be realizing the positive effects of several mergers, and a possible strategy would be to use the revenues generated by those savings to facilitate broadband deployment rather than to decrease other costs, given Maine's high telephone penetration rate and the access parity law. The SPO asserts that the PUC should recognize that need for increased speed and bandwidth is the primary goal in any AFOR modifications.

The SPO also says that service centers are hub communities around the state that serve suburban and/or rural "hinterlands." The SPO asserts that Maine must find ways to improve the speed and reliability of the systems that deliver its intellectual products to the market, and thus the PUC should look for ways to facilitate broadband investment in the service center communities.

Also, the SPO states that the PUC should consider the use of benchmarking as a strategy to ensure that affordable broadband capacity is deployed and to prevent a degradation of service due to the changing use of the network. The benchmarks should be based on the Company's existing performance and on the performance and infrastructure of those areas that Maine is competing against, such as the Route 128 corridor in Massachusetts.

The SPO says that pricing is no longer a major concern of regulators, although there may remain some minor and specific pricing issues that can be addressed on a case-by-case basis. Further, SPO states that Maine's basic rates remain below the national average, and the recent infusion of federal universal service funds will further reduce these rates. Maine has one of the highest percentage rates of telephone penetration in the nation, and Maine customers enjoy a pricing structure that encourages usage. The Commission can maintain this high penetration rate through programs such as Lifeline rather than through overall pricing regulation.

The SPO believes that through deregulation, the PUC should seek to eliminate the threat of any future consideration of ratepayer liability for previous potentially uneconomic investments by Bell Atlantic. The SPO asserts that technological innovations and the settling of the regulatory environment will lead to competition that will control pricing. In the near future, cable television companies, wireless companies and facilities-based competitive LECs will be providing telecommunications services, although the PUC must be vigilant in ensuring that citizens in all areas of the State have access to affordable

services. The PUC should embrace the opportunity to move towards greater deregulation as competition spreads, according to the SPO.

Finally, the SPO believes that continuation of the School and Library program is crucial to Maine's economic and educational future. The SPO notes that since collections for the new fund authorized by the Legislature will not begin until 2001, the remaining money in the current fund should be transferred to an interest-bearing account and be used to bridge the gap until the new program is in place. When collections for the new program begin, any remaining funds should be commingled with the new amounts in order to support the mission for the fund expressed in the law.

D. Maine Department of Education and the Maine State Library

The Maine Department of Education (DOE) and the Maine State Library (MSL) state that any remaining funds from the MSLN should be retained in that program and not used to reduce customers' rates. The DOE and MSL believe that investing the money in MSLN will have a far greater impact on customers' ability to access information electronically than would a modest reduction in rates. DOE and MSL urge that any remaining funds be retained in the MSLN escrow account and be used for future upgrades to the network and in extending and operating the system in the future. See Footnote 1 in Section III (B) for a description of our findings regarding the School and Library fund.

IV. DISCUSSION

A. Prospective AFOR Structure

Based on the comments received, our knowledge of the telecommunications industry and our analysis of the initial AFOR period, we find that an incentive mechanism should remain in effect for BA-ME for five more years, but we propose to simplify the plan by reducing the services to which any price regulation will apply. We would continue to regulate only basic exchange rates, access rates, wholesale rates (e.g., Unbundled Network Elements, interconnection, resale and others) and a very limited number of other end-user rates for services that are essential for customers, but which currently have no effective competition. We would require ongoing reporting by the Company of the condition of its network and its provision of services in the State, so that we can monitor whether telecommunications services, particularly advanced services, are being provided adequately and ubiquitously. We agree with several of the comments that to the greatest extent possible, competition should function as the price control mechanism, because it will result in greater economic efficiency and better overall resource allocation. We will take all reasonable and necessary actions to foster fair and open competition by all telecommunications providers.

The AFOR that we propose includes only a few basic elements. First, basic exchange rates would be capped at their present levels for the 5-year term of the plan. The

only increases to basic rates that would be permitted during the term of the AFOR would result from the working of Chapter 204, the BSCA Rule, or from an extraordinary exogenous change, such as the enactment of state or federal legislation or a final (i.e., no further appeal is possible) ruling by a court of competent jurisdiction that *directly* affects only local, toll, access or wholesale rates in a substantial manner. Extraordinary exogenous adjustments would not be automatically applied, but the Company or other parties would be permitted to request a rate change from the Commission to account for such an event.

If customers receive expanded calling areas, they *may* experience a basic rate increase in accordance with the provisions of the BSCA Rule. Also, access rates would continue to be set according to the provisions of 35-A M.R.S.A. § 7101-B. The Federal Communications Commission (FCC) recently adopted a proposal by the Coalition for Affordable Local and Long Distance Service (CALLS)[2] that*, inter alia*, will result in significant reductions interstate access rates over the next several years. As a result of the interstate access reductions, intrastate access rates will be reduced on May 30, 2001, as required by Section 7101-B. We will require BA-ME to adjust its intrastate access rates in 2001 and in each second subsequent year, according to Section 7101-B, with no offsetting adjustment to any other rates. For all other retail service offerings, except for Directory Assistance and Operator Services, BA-ME has full pricing flexibility, including the ability to enter into special contracts without specific Commission approval, provided that any price it offers by tariff or special contract must at least cover the Long-Run Marginal Cost (LRMC) of providing the service. The Company will be required to continue to file a summary of each contract it enters. It need not provide any LRMC information with its contract summary filings, but it must be able to demonstrate that its prices meet the LRMC floor.

We also propose a revised Service Quality Index (SQI) that would measure many elements with greater precision and would require reporting by wire center. Our experience under the current AFOR convinces us that too many problems are hidden by measurements that are too general. If during the term of the proposed AFOR, the telecommunications market becomes sufficiently competitive so that customers have a genuine choice of their LEC, we might consider relaxing or abandoning some or all of the SQI measures that we now propose. The SQI is described in Part III.

Coincident with the modified AFOR we will undertake measures that promote the expansion of competition for telecommunications services. We will do this outside of the AFOR, but we intend to complete these actions as expeditiously as possible. Specifically we plan to establish 1) rates for Unbundled Network Elements (UNE) using Total Element Long Run Incremental Cost (TELRIC) principles; 2) a universal service

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[2] Bell Atlantic is a member of CALLS, which voluntarily proposed its plan to the FCC.

support mechanism that will encourage competitors to provide service throughout the State, not just in low-cost areas, and 3) just and reasonable rates for interconnection, collocation, resale and other services used by competitors, according to provisions of the TelAct. We will also ensure that adequate and reliable operational support systems are in place that will allow competitors to use or connect to BA-ME's network. We also propose certain SQI measures that will track Bell's performance in providing service to wholesale purchasers who are also competitors.

Because Bell Atlantic will be given considerable freedom in offering and pricing its services, and because the telecommunications market in Maine is not yet fully competitive, we must continue to monitor the Company's compliance with the principle that high quality telecommunications services, especially advanced services that permit high-speed information transfer, should be available uniformly throughout its service territory. Therefore, we will require BA-ME to continue to provide periodic reports on the condition of its network in Maine and on the types and locations of services it offers. We will require the Company to compare its infrastructure and service offerings in Maine with those in other states served by Bell Atlantic and GTE, providing the proposed merger of those companies is consummated. If we find that the Company is failing to maintain an adequate infrastructure in Maine, as compared to the other states it serves, or is failing to provide the services needed and demanded by customers throughout its service territory, we will take appropriate remedial action. We hope that we will not have to take this step and we will work to ensure that competition forces the Company to continually improve the products and services it offers to all of its Maine customers.

Price cap regulation has become the dominant form of regulation in the United States and in a significant portion of the remainder of the world. We adopted a form of price cap regulation in 1995 to provide incentives for Bell Atlantic to become more efficient and offer better products and services at lower prices. At the time we adopted the AFOR, we found that the plan met the nine criteria contained in Title 35-A § 9103. Now, after almost five years of experience with the AFOR, we can evaluate its effectiveness to determine if the mechanism should be continued, modified or terminated. We must ensure that for any continuation or modification of the AFOR, the criteria of Section 9103 continue to be met. As we stated in the 1995 AFOR Order, it would be very difficult to perform a post-AFOR comparison of the Company's performance under the AFOR with how it might have performed under continued rate of return regulation. Nevertheless, an examination of the workings of the AFOR is necessary to determine if it achieved the goals that we established in our Order and the objectives contained in the statute. The analysis also will provide useful information about the continuation of the mechanism and any modifications that will be incorporated into the prospective plan.

We seek comment on the proposed 5-year term of the AFOR. Should the term be longer or shorter, or should there be some type of review during the five years? If so, would the review occur periodically, or would it be triggered by specific events? We invite comments on the general design of the plan and the services to which it will apply.

Should any other services be included in the price cap rule? If so, parties should provide justification for their recommendation. Also, we seek comments on the inclusion and definition of exogenous events. Should they be included at all? Is the definition clear and free from being subject to undue interpretation?

The Commission seeks input on whether the network and service provision reporting requirements are adequate to accomplish their intended purpose. Alternatively, are these types of reports useful as benchmarking tools? If not, parties are invited to recommend substitute mechanisms. We also seek comments on our proposal to reduce or eliminate some or all SQI measures if effective competition renders them unnecessary. Finally, the Commission seeks comment on the steps it should take to encourage local competition in Maine.

B. Statutory Objectives

We will address each of the objectives contained in the AFOR statute. We found they were reasonably likely to be achieved when the current AFOR was adopted, and we will attempt to determine if they were indeed met. The proposed AFOR must continue to comply with all the criteria, and we will analyze its potential to meet the statutory objectives.

Objective 1. Alternative regulation; period

This objective requires that customers, especially residential and small business customers, not pay more for *local* telephone service as a result of the implementation of an AFOR than they would under traditional regulation. We discussed the first objective extensively in the AFOR Order and in the separate order issued concurrently with this Order. In adopting the current AFOR, we found that it was reasonably likely to meet the first objective. While we acknowledged that the statute strictly applied only to local service rates, we decided that it also was appropriate to apply the same consideration to toll rates, because they had been trending downward prior to the adoption of the AFOR. We found that the PRI mechanism was likely to limit any toll and basic increases, so that the pricing objective would be met.

The AFOR that we propose will continue to meet the statutory requirement that rates for local services be equal to or less than rates that would have been in place under traditional regulation. The proposed AFOR will cap basic rates for the duration of the plan, and it will require BA-ME to reduce its access rates according to the provisions of 35-A M.R.S.A. §7101-B. We also expect that the access rate reduction will lead to lower in-state toll rates,[3] and thus, we are effectively ordering a rate reduction for the Company that

[3] The Commission has the authority to order the pass-through of the access rate reductions in the form of lower toll rates if it finds that effective competition does not exist in the intrastate toll market.

it cannot recover through increased basic rates. The Company will have to become more efficient, which should be possible in an industry known for its declining cost structure, and/or find new sources of revenue in order to maintain or improve its earnings, which should be possible because of increased demand for new services. Placing a cap on basic rates, combined with declining access (and most likely toll, as a consequence) rates will not necessarily reduce the Company's total revenues. Even if overall revenues did decline, this might be consistent with the declining cost nature of the industry. Requiring a cap on basic rates and a reduction in access rates is also a fair trade-off for the elimination of the PRI mechanism and for the greater pricing freedom that we will allow.

One example of a potential source of new revenue could be from the provision of line sharing for Digital Subscriber Line (DSL) service. Because Bell Atlantic as the LEC will recover all of its make-ready costs and will not be required to make any new investment in the loop, all line sharing revenue is incremental. If Bell chooses to provide retail DSL service, it will have to do so through a separate advanced services subsidiary, which will purchase line sharing from BA-ME. Bell Atlantic recently announced that it will offer a rate for line sharing ($3.50 per month plus up-front costs) that may be very attractive to DSL providers.

By adopting a mechanism that caps basic rates and contemplates a direct reduction in access rates and an indirect reduction in toll rates, we find that the proposed AFOR will produce rates that meet the objective contained in subsection 1 of the AFOR Statute.

Objective 2. Costs of Regulation

The second objective of section 9103 is that the costs of regulation must be less under an AFOR than under rate of return regulation. In the first five years of the AFOR, there clearly was a learning curve for the Company, the Commission and other parties, but over the term of the plan, we find it is likely that the AFOR resulted in lower regulatory costs for all involved. Determining the process by which the provisions of the pricing rules would be implemented and administered required an expenditure of time and effort, and each annual filing by the Company required review and analysis, along with information gathering and discussion of modifications, if needed. The regulatory effort under the AFOR compared favorably with the effort that would have been necessary under continued ROR regulation. Assuming one rate case during the 5-year period, it is likely that regulatory expense would have been greater without the AFOR, because of the considerable amount of time and money that is normally expended on traditional rate cases. Overall, the annual process for administering the pricing rules worked as anticipated, and ratepayers received the benefit of price reductions in each year of the AFOR.

The issue that required the greatest expenditure of regulatory effort during the initial period of the AFOR was the implementation of the access charge reductions as required

by 35-A M.R.S.A. § 7101-B. The effort expended on this matter was not, however, a result of the implementation of the AFOR, because the access charge statute was enacted after the AFOR was in place and was completely exogenous to it. The implementation of the basic rate increase that accompanied the access charge reduction required a waiver of the AFOR pricing rules, but it was not a result of the AFOR itself.

Several service quality matters came to our attention during the course of the AFOR. The service quality issues generally involved changes in how services are provided, how the network is managed or how network usage changed. There is no evidence to conclude that the implementation of the AFOR had anything to do with the occurrence of the service quality issues. While the Commission will remain vigilant and will actively protect the interests of customers and competitors, we feel confident that the revised SQI will be less burdensome to administer.

In summary, we find that the current AFOR met the objective of Section 9103 (2), and that the modifications to the AFOR that we propose will further reduce the costs of regulation. The simplification of the pricing rules and the reduction in the number of services to which the AFOR pricing rules apply should result in lower regulatory costs over the term of the plan.

Objective 3. Mandates

Objective 3 of section 9103 states the AFOR must preserve the Commission's ability to carry out all Legislative and Commission mandates directed to telephone utilities. We found that the original AFOR would not interfere with this objective. Our finding has been confirmed during the initial AFOR term; in fact, we have spent considerable time and effort ensuring that all statutory mandates (especially those that could be interpreted to have conflicting or contradictory goals or requirements) have been implemented. Nothing in the proposed AFOR modifications will impair the Commission's ability to enforce all regulatory and statutory mandates. While we will stress competition as the key regulator of prices, we are not relinquishing any authority we have over the manner by which service is provided by the Company. We will continue to encourage the provision of advanced telecommunications services throughout Maine, while simultaneously protecting customers who need or desire only a basic level of service. We will require continued or improved reporting of the modified service quality indices that we will adopt, and BA-ME will be held to stringent standards for maintaining and improving the level of service that it provides to customers and competitors.

Objective 4. Safeguards

Objective 4 of the AFOR statute requires that the risks associated with the development, deployment and offering of telecommunications and related services offered by the telephone utility, other than local service, are not borne by local telephone subscribers, and that the telephone utility continues to offer a flat-rate voice-only service

option. The flat-rate part of this objective has clearly been met and will continue to be met in the proposed AFOR. In fact, as long as 35-A M.R.S.A. § 7303 (and the requirement in section 9102 that section 7303 apply to any AFOR) remains in effect and enforced, compliance with the flat-rate portion of Objective 4 is automatic. Section 7303 requires flat-rate local service to be the standard local service offering and places strict limits on the availability of residential local measured services. Flat-rate voice-only service is the standard local service option today and will remain so under the proposed AFOR.

This first part of this objective received extensive discussion in the 1995 AFOR Order, where we applied the standard to toll services as well as to local service. We found that under the provisions of the AFOR that we adopted at that time, local service ratepayers would not bear the risks associated with services other than local and toll. Through the PRI mechanism, particularly the productivity factor, and the designation of services as core or non-core, we were effectively able to insulate local and toll ratepayers from the entrepreneurial risks associated with the provision of other telecommunications services. The current AFOR has met this objective, because BA-ME has had no opportunity to pass the risks of its discretionary or non-core services on to basic ratepayers. The Company has had the responsibility for pricing all other services according to demand for each product and the availability of competitive alternatives, and the risk of recovering the costs associated with new or advanced services offerings remains with the Company.

The AFOR that we now propose meets the safeguards objective even more directly than does the current plan. Because we will be regulating only local, access, other wholesale, and a very limited number of other end-user rates at levels equal to or less than today's rates, BA-ME bears all responsibility for recovering its costs and earning a reasonable profit on all other services that it provides. The clear intent of the access charge statute, enacted after the implementation of the AFOR, to reduce in-state toll prices has been carried out. In addition, BA-ME has seen its share of the intrastate toll market drop steadily over the past few years. In the AFOR that we are now proposing, only basic service and a very limited number of other retail rates will be directly regulated through a capping provision, and the Company will bear the risk of all other services, including toll, that it provides to retail or wholesale customers.

We will continue to monitor the Company's level of investment and network expansion plans to ensure that BA-ME continues to maintain and upgrade its network, but BA-ME will have sole responsibility for inducing customers to use its services to the greatest extent possible in order to recover its costs and earn a profit.

Objective 5. Reasonable charges

This objective requires that customers pay only reasonable charges for local telephone service and is closely related to the first and fourth objectives and is discussed more thoroughly in those sections. We find that this objective has been achieved with the

current AFOR and will continue to be met through our proposal to cap charges for basic local rates and by encouraging competition as the method of regulating other prices.

Objective 6. Reasonable return

The objective of subsection 6 of the AFOR statute is that the Company be given a reasonable opportunity to earn a fair return on the investment necessary to provide local telephone service. In the AFOR Order, we addressed this requirement in the context of both basic and toll services, because at that time there was little competition for in-state toll. Moreover, 35-A M.R.S.A. § 7101-B had not yet been enacted. We stated that we were required to balance the reasonable return objective with others, such as those in Objectives 1 and 4. The AFOR we adopted met the reasonable return objective, and a review of BA-ME earnings reports during the term of the AFOR indicates that the Company was able to earn a reasonable return on its intrastate investment. It is not possible to separate the Company's ROR into component rates for various services, but it seems reasonably likely that AFOR Objective 6, as it applies to local service, has been met during the initial AFOR term.

Although the requirement of subsection 6 is stated only in terms of local service, the Company continues to have the right to a reasonable opportunity to earn a fair return on its investment employed in public utility service. *See* e.g., 35-A M.R.S.A. §§ 301(4)(A) and 303. The proposed AFOR continues to provide BA-ME with the fair return opportunity on local service, because the cap on local rates, in effect, establishes a productivity offset that is equal to the rate of inflation (along with the impact of any further access reductions), which we find to be fair, based on our understanding of the declining-cost structure of the industry.

In addition, we will take no specific action regarding any savings that may have resulted from the Bell Atlantic/GTE merger. We do not believe it would be a productive use of time and effort in this proceeding to try to determine: 1) if ongoing savings actually resulted from the merger; 2) what amount of any savings is attributable to BA/ME's intrastate operations; and 3) the amount of savings that should be "provided" to local ratepayers through rate reductions. In addition, when the pricing constraint we are proposing – namely, that decreases in intrastate access rates be absorbed without raising rates for local service – is coupled with the increasingly competitive nature of the Company's markets, we think it very unlikely that the Company will unjustly benefit from any merger efficiencies. The AFOR modifications that we propose are designed to place most of the risk of development, deployment and offering of telecommunications services, other than local, on the Company (e.g., see Objective 4 above). Simultaneously, we provide the Company with the opportunity to earn a return commensurate with its ability to operate efficiently and to provide the services desired by customers at a price that maximizes its revenues.

Objective 7. Encourage telecommunications services

This objective states that the AFOR must encourage the development, deployment and offering of new telecommunications and related services in the State. In the 1995 AFOR Order, we explained that, because non-core services were not subject to the PRI, the Company had a strong incentive to provide new, mainly non-core, services at rates that provided maximum revenue and return possibilities. We rejected all of the Company's arguments that the plan would result in deficient earnings. We also found that the Company was not restrained in its ability to earn as much as its best efforts would produce, no matter what the investment level involved.

We conclude that the AFOR has generally succeeded in meeting this goal. The Company has continued to upgrade and improve its network, and it has generally kept pace with modernization efforts in other states. We also observe that competition for local and other non-toll services is still quite limited in Maine. We believe competition is the best means to encourage new and improved service offerings, whether they are offered by BA-ME or by competitors, and we will undertake all efforts to encourage the provision of the advanced services that customers in Maine demand.

The AFOR that we propose will strongly encourage the Company to develop, deploy and offer new services, by removing nearly all constraints on prices and marketing efforts, except that predatory pricing, based on a LRMC pricing floor, and unfair marketing practices will be prohibited. We will require the Company to report its activities in the area of new service offerings compared with the same activities in other states in which the Company operates, and we will closely monitor the Company's efforts to allow competitors to use portions of the BA-ME network and facilities or to interconnect with competitors' networks when requested.

Objective 8. Nondiscriminatory charges

Subsection 8 of section 9103 states that the AFOR must ensure that other telephone utilities pay the telephone utility providing local telephone service reasonable and nondiscriminatory charges for services used to provide competing services. In the AFOR Order, we considered the strict statutory language to include interexchange access service, as well as interconnection charges for local service. We also discussed the establishment of nondiscriminatory interconnection charges for local service, even though, as we noted, no local service competition existed at that time. We did not address the issues of interconnection charges or access charge structure or rates in the AFOR Order, as those issues were to be addressed in any Chapter 280 or other proceedings that might occur.

Several events have occurred since we adopted the initial AFOR. First, passage of the TelAct by Congress opened the door to competition in the local service market and established parameters for interconnection for local service. While local competition is still in the beginning stage in Maine, the Commission has certified more than 40 CLECs, with

many more applications in process, and BA-ME has entered into numerous resale and interconnection agreements with potential competitors. In most cases, BA-ME and the competitors were able to agree on the terms for interconnection or for the use of all or part of Bell's network, but we have arbitrated two disputes over the rates and terms to be included in interconnection agreements. Also, enactment of the access charge statute in Maine produced substantial reductions in intrastate access rates and concurrent reductions in in-state toll rates. The AFOR has had little, if any, effect on the use of the network for local service or interexchange competition. The existence of numerous agreements for interconnection, resale and use of network elements indicates that the market is working reasonably well and competitors are paying reasonable and nondiscriminatory charges. Thus, the objectives of subsection 8 of section 9103 the AFOR statute have been satisfied by the current AFOR.

The proposed AFOR will continue to have little effect on the charges paid by other telephone utilities, and we plan to conduct one or more proceedings, which will not be directly connected to the AFOR, that will address these issues. While we initiated a proceeding (Docket 97-505) to set standard rates for use of various parts of the local network (known as unbundled network elements, or UNEs), that proceeding is currently inactive but is being revived. Because Bell Atlantic may attempt to enter the interstate toll market for calls originating in Maine, it may need to have in place a Statement of Generally Available Terms and Conditions (SGAT) with UNE prices based on the TELRIC costing methodology. We will use the FCC model, modified as necessary, as the basis for the TELRIC-based rates. To the extent permitted by the TelAct and FCC rules, we will decide what elements should be considered UNE's and what the rates should be established for those elements. In addition, we will continue to mediate or arbitrate interconnection agreements, including collocation in Company offices, as required by the TelAct.

We also will soon commence a universal service proceeding to encourage the ubiquitous provision of local service competition in the Company's exchanges by providing a competitively neutral "subsidy" (based on forward looking costs) to companies that offer local service in high cost exchanges. This will encourage competition for local service in all exchanges, not only in those that have low costs compared to current local rates. The system will be designed on a revenue neutral basis for the Company, and customers will not see a net change in their bill, at least initially. Competition should work to drive down rates over time.

The AFOR that we propose will continue to have virtually no effect on the charges that competitors pay for access to or use of the network to provide local service competition. Also, as we have stated, intrastate access rates will be established according to section 7101-B. Therefore, in all respects the proposed AFOR will meet the goal of nondiscriminatory charges to competing telephone companies.

Objective 9. General Safeguards

The ninth objective of section 9103 is that the AFOR must include consumer and competitive safeguards. In the AFOR Order, we discussed the ways in which consumers and competitors would be protected under the AFOR. First, customers received protection from unreasonable prices under the PRI mechanism that we adopted, and as discussed in Objective 4 above, they were protected from the risk of investment in new technologies and services by the Company through the categorization of services as core and non-core with separate pricing rules for each category. Also, customers received protection against service quality deterioration through the SQI mechanism that we adopted.

Likewise, we found that the AFOR contained sufficient protections for competitors, so that the goals of Objective number 9 would be met. First, we established pricing restrictions on non-discretionary core services (including access) that prevented increases beyond the amount of the PRI increase. Prices for non-core services are subject to a marginal cost floor. Further, we adopted a requirement that the Company develop a procedure to ensure that the prices for any new services or services whose prices were being reduced by more than 20% would meet the marginal cost floor pricing requirement.

Retail customers of the Company have been protected from unfair practices and prices during the initial term of the AFOR. We have examined the trend of prices during the AFOR and found it caused no harm. We also have no evidence to indicate that BA-ME has done anything to harm competition or competitors through its pricing policies. During the current AFOR we received no complaints that BA-ME under-priced any competitive service. We find that the AFOR has not induced anti-competitive behavior on the part of BA-ME.

The AFOR that we propose will continue, and in most cases strengthen, the consumer and competitive safeguards that are already in place. We will refine the SQI mechanism to better meet the goal of protecting customers and competitive carriers from poor quality service, and outside of the AFOR proceeding, we will move forward with several initiatives designed to further encourage competition and provide access to the Company's network functions at reasonable charges.

The Commission invites comments regarding its findings that each of the statutory objectives has been met in the current AFOR and that the objectives will continue to be met in the proposed AFOR. Any comments should discuss the interrelationship among the various objectives and recommend ways in which any potentially competing objectives may be met.

C. Policy Objectives

While it is essential that we evaluate the current and proposed incentive mechanism plans in terms of the objectives set out in the authorizing statute, the adoption

of an AFOR also entails consideration of certain other policy goals. We discussed the most important of these in our AFOR Order, and found that the AFOR was likely to either satisfy the goals or at least not impede them.

The first major policy consideration in the initial AFOR was that service quality be maintained at its historic high level. This concern could be considered as included in Objectives 3, 4 and 9, but we believe it deserves specific attention. The SQI and rebate mechanism that we established were designed to achieve this objective by requiring the Company to meet at least its own worst-case performance results from the three years preceding the AFOR. We established standards that measured the most important aspects of providing service, and although the Company was required to pay some rebate amounts over the initial term of the AFOR, we find that the current plan generally met the goal of maintaining service quality to customers. We describe the proposed SQI mechanism and seek comment on specific issues in Section V. of the Notice.

Another major policy objective of the AFOR was that universal service should be improved. We did not establish any specific guidelines or principles for this goal, but we indicated that it would be considered in other proceedings. We can draw no conclusion about the direct effect that the AFOR had on universal service in Maine. While our household penetration ratio rose to one of the highest in the country, it is likely that this development was more a result of continued outreach efforts than a consequence of the operation of the AFOR. We are extremely pleased with the increased penetration rates that have occurred in Maine, and we will again not place any specific objectives into the proposed AFOR for universal service levels. We will continue to monitor penetration rates in Maine and act appropriately outside of the AFOR, if we see a deterioration.

In the initial AFOR Order, we discussed ways by which the plan could be judged as a success or a failure when compared to traditional regulation. We stated that it would not be possible at the end of five years to determine with certainty whether the AFOR was more successful than continued ROR regulation in protecting ratepayers and improving the quality and quantity of telecommunications services offered. The Advocacy Staff presented a three-pronged test: 1) universal service should be up; 2) quality of service should be maintained or improved; and 3) prices should go down. The Company assumed that the AFOR would be a better regulatory method than traditional regulation, and that the only need would be to determine if the details of the plan were properly set. The OPA stated that the Commission should retain some link between the Company's costs and revenues and should provide a method of sharing any benefits between the Company and ratepayers. We did not formally adopt the measures that any of the parties presented, but we did indicate that if the measures that the Staff proposed actually occurred, and if the Company were able to earn a reasonable return on its investment, we would likely judge the AFOR to be successful.

Now that almost five years have elapsed, we can draw some conclusions about the criteria that we described in our initial AFOR Order. All of the tasks that Staff set out have been met, although the actual level of local, access and toll prices has been greatly affected by the access charge legislation that was unanticipated at the inception of the AFOR. We have already discussed this occurrence extensively (particularly in the concurrent Order regarding the OPA Motion to commence a revenue requirements proceeding), but in general, local service rates have risen somewhat while toll rates have decreased dramatically. Further, the Company's earnings have been improving in the past two years, although we cannot determine with any certainty how much of the increase was due to the Company's own efficiency improvements (whether caused by its merger with Bell Atlantic or through other means) and its marketing efforts versus the effect of the general trends toward greater telecommunications usage and declining costs. It is not necessary to complete that analysis. Rather, based on the entire package of results that we have, we conclude that the AFOR has met the non-statutory objectives that we established.

The Commission seeks comments on whether the policy goals it has articulated are appropriate and adequate. Specifically, are the objectives described by the Advocacy Staff in Docket 94-123 still valid? If not, are there other policy goals that are more appropriate, given the telecommunications environment that exists today? Parties are invited to recommend and provide justification for any alternative means of evaluating the AFOR.

V. SERVICE QUALITY INDEX

In the current AFOR, the Commission included a set of service quality measurements (the "Service Quality Index" (SQI)) that provides customer rebates for service performance below baseline standards. The main reasons we did so were, first, to meet our service quality goals[4] and second, because we were moving from regulation of BA-ME's earnings and costs to regulation of its prices, to provide BA-ME (then NYNEX) with strong financial incentives not to cut its costs at the expense of service quality.

We believe the SQI has proven to be an effective component of the AFOR. Thus, although BA-ME has had to pay customer rebates for below standard service quality in each year, the rebate amounts have been small relative to what was possible ($11 M/year),

[4] "[E]nsure that telecommunications service quality, reliability, customer treatment, and credit, collection, and sales practices (including possibly anti-competitive activities), receive adequate regulatory consideration and protection; and maintain adequate quality of service standards and reporting requirements so that achievement of goals can be evaluated." Docket No. 94-123 Notice at 4.

which indicates that BA-ME's service quality – as measured by the SQI's service territory-wide averages – generally has been good.[5]

We will include a Service Quality Index in the revised AFOR for the same reasons we included it in the current AFOR, and for two additional reasons: (1) our proposal to limit the revised AFOR to capping basic exchange rates and setting UNE prices constitutes a substantial reduction in the Commission's regulation of BA-ME's rates, and (2) at present there is insufficient local exchange competition in BA-ME's service territory (and, so far, virtually none for its residential customers) for competition alone to discipline BA-ME's service quality.

Accordingly, we will continue the Service Quality Index in the revised AFOR, and propose several additions and modifications:

1) We propose to add new customer service and service reliability measurements we believe are necessary.

2) We propose to require reporting by wire center (instead of service territory-wide averages) for most measurements. As a result of our recent network congestion investigation (Docket No. 99-132), we found that BA-ME's service territory-wide averages can mask inadequate service performance of wire centers – especially the smaller, more rural wire centers.

3) We propose to require separate reporting for business and residential customers for most measurements. We note the NARUC service quality standards recommend separate reporting for all measurements.

4) We propose to require BA-ME to provide information on its services to CLECs that are related to the performance of the Company's Operational Support System (OSS) and its network. The Commission believes standards covering these services are necessary to provide assurance that BA-ME does not engage in anti-competitive or discriminatory behavior that will retard the growth of local exchange competition in its service territory.

Revised SQI

For the additional customer service and service reliability measurements that we propose to include in the revised SQI, we have relied on the service quality standards adopted by NARUC in Convention November 11, 1998;[6] NARUC's "Model

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[5] BA-ME maintains the Commission's SQI baseline standards are the most stringent in the country and that BA-ME has had the best service quality performance of all Bell Atlantic local exchange companies.

[6] Available at www.fcc.gov/ccb/mcot/service_quality.

Telecommunication Service Rules," last issued July 22, 1987;[7] our experience with the current SQI and with service events, such as network congestion, that have occurred since we put the AFOR into operation.

A. Customer Service

We propose the following standards be adopted to measure the Company's response to service and repair requests from customers:

1. Service Installation

a) Installation of services requiring premise visits: % commitments not met for Company reasons.

b) Installation of services not requiring premise visits: % not installed correctly and on time.

Both standards will be reported by wire center, and separately for business and residential customers, as well as in the aggregate (service territory-wide) form required in the current SQI.

The second (b) portion of this standard supplements an existing standard: "percent appointments not met for Company reasons." We want to distinguish service installations that require premise visits from those that can be done remotely, via software, from BA-ME's central offices, network operations center, or other remote location.

We seek comment on these standards and on whether they should be restricted to the installation of basic exchange service. Bell Atlantic should indicate in its comments whether it has at least three years of historical data on these standards, which would be used to establish baseline performance levels.

2. Held Orders

a) Total delayed orders.
b) Total delay days.
c) Average delay days per delayed order.

We note that, as a condition of the SBC-Ameritech merger, the FCC required the SBC companies to file quarterly reports on their performance as measured by the NARUC service quality standards.

[7] Available from NARUC at www.naruc.org and from the Commission's library.

Each of these measures will be reported monthly by wire center, and separately for business and residential customers.

These criteria are a refinement of an existing SQI standard, "Held Orders: Average Total Delay Days." "Delay days" are defined as the number of days beyond the installation commitment date the Company gave the customer. Data elements (a) and (c) measure the number of held orders each month and the length of the typical "held order" . We note that data element (b) should be reported as indicated, not as an average (total delay days ÷ 12), as the current standard is reported.

3. Answer time performance

Separately, for customer calls both to BA's Business Office and to its Repair Service, we propose requiring the following data:

a) Percent of calls answered only by recorded information.
b) Percent of calls answered live by attendants.
c) Percent of calls abandoned or dropped.
d) Percent of calls answered live that take 20 seconds or more to answer.

The time interval in 3(d) is to be measured from the time the customer chooses to talk to a live operator (and not continue responding to recorded information).

These standards are a refinement of an existing standard: "Business Office calls: "percent answered over 20 seconds." Business Office and Repair Service calls are covered by the NARUC service quality standards, as are the data elements (a)-(c).

We seek comment on these standards and on whether they should be reported by wire center, separately for business and residential customers, or both. In our recent network congestion investigation, test calls made by our staff and customer comments made to our Consumer Assistance Division indicate that Repair Service responses related to call completion problems of customers can be inaccurate or incorrect. We, therefore, seek comments on whether there should be an additional standard that measures the accuracy of the response Repair Service attendants provide, relative to customers' reported troubles.

Bell Atlantic should indicate in its comments whether it has historical data on the accuracy of the responses that Repair Service attendants provide, and on data elements (a)-(c). If Bell Atlantic does not have historical data on these criteria, we seek comments on whether periodic test calls would be a valid way to measure the accuracy or correctness of Repair Services responses to customers' reported service problems.

4. Customer Complaints

The current SQI includes standards that measure both the quality of and customer satisfaction with service provisioning and maintenance. The current SQI lacks standards that measure the quality of and customer satisfaction with such services as billing, credit and collection, operator services, responses made by the Company's "Customer Care Centers," and responses to general inquiries.

The NARUC service quality standards include the following customer complaint standard: "Report the number of customer contacts to the state commission that were referred to the carrier for action and/or investigated by the state commission. Disaggregate into business and residential customers and, where feasible, rural and urban (wire centers)."

At a minimum, we are inclined to adopt some version of the NARUC standard. Other standards we are considering are:

- The number of customer complaints made to Bell Atlantic;
- The number of *repeat* complaints made to Bell Atlantic;
- The percent of repeat complaints made to Bell Atlantic; and
- The percent of complaints investigated by the Commission's Consumer Assistance Division in which the Company was determined to be at fault.

There are numerous other service quality measures that could be used to evaluate the overall quality of service provided to customers. These include surveys of customers who call BA-ME's Business and Customer Care offices that assess the knowledge and helpfulness of the BA employee, average resolution time for customer complaints, percent of bills issued containing errors, and possibly others.

We seek comments regarding the service quality measures mentioned above, as well as other measurements and methods that can be used to evaluate the overall quality of BA's customer service.

In its comments, Bell Atlantic should indicate if it has historical data on the standards mentioned above.

B. Service Reliability

With one exception, all service reliability standards are to be reported by wire center and separately for business and residential customers. The exception is the Major Service Outage measure (No. 5, below), which should be reported for all wire centers and both customer classes combined. In its comments, Bell Atlantic should indicate if it has at least three years of historical data for each of the following data elements, which we propose to adopt:

1. Customer Trouble Reports

   a. Initial Trouble Reports

      1) The number of out-of-service initial trouble reports per 100 lines

      2) The total number of initial trouble reports per 100 lines

      3) The percentage of out-of-service initial trouble reports (Item a. (1) divided by Item a.(2))

   b. Repeat Trouble Reports

      1) The number of out-of-service repeat trouble reports per 100 lines

      2) The total number of repeat trouble reports per 100 lines

      3) The percentage of out-of-service repeat trouble reports (Item b(1) divided by Item b(2))

      4) The percentage of total number of repeat trouble reports relative to the total number of initial trouble reports (Item b (1) divided by Item a(2))

These measurements are a refinement of an existing SQI standard: "Customer trouble Reports per 100 lines-Network." NARUC's service quality standards focus on out-of-service and repeat trouble reports, which relate to troubles reported by customers within 30 days of their initial trouble reports.

2. Maintenance and Repair Performance

   a. Percent of out-of-service troubles not cleared within 24 hours

   b. Average time (in hours) to repair out-of-service troubles

c. Percent of repair commitments not met for Company reasons

Data element 2.(a) is an existing SQI standard. Data elements 2. (b) and 2. (c) are NARUC service quality standards.

3. Network Congestion

a. Call Blocking: a maximum call blocking rate of X%, based on the average of call blocking rates measured during normal weekday busy hours in the reporting month[8]

b. Dial Tone Delay: not more than Y% of call attempts will experience dial tone delay greater than three seconds, based on the average of dial tone delays measured during normal weekday busy hours in the reporting month

These standards are derived from NARUC's "Model Telecommunications Service Rules," which recommend that X equal 2 and Y equal 3. We seek comments on what values to use as call blocking and dial tone delay baseline performance levels.

The current SQI has a Dial Tone Delay standard that initially was measured as a service territory-wide average over all BA-ME's wire centers. Because of congestion problems, the Commission agreed to raise the standard to 0.36%. We propose a Call Blocking standard because of network congestion problems that were the subject of a recent investigation.

4. Emergency Service Outages

a. Number of outages affecting only Emergency Service lines (such as E-911, 911, Police, Fire, Ambulance services, and Hospitals).

b. Average outage duration (in hours).

c. Average time to restore service (in hours).

d. Percent of outages caused by Company actions.

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[8] "Normal" weekdays do not include days with weather emergencies and special days such as Mother's Day, which have abnormal calling volumes. The calling capacity of telephone switching and trunking facilities are supposed to be sized to meet calling demands during normal weekday busy hours.

The Commission believes the revised SQI must give special focus to outages of lines that serve emergency services.

5. Major Service Outages (reported in aggregate)[9]

a. Number of major service outages.

b. Current "service outages" measure.

c. Percentage of outages caused in whole or in part by Company errors or deficient or defective Company equipment.

d. The Service Outages measure (5(b)) calculated for company-caused outages only.

Data element 5(b) is in the current SQI. It is measured by a formula that is a weighted function of the duration of the outage, the number of access lines affected, and the services affected by the outage. If standard 5(b) is included in the revised SQI, its baseline level should be updated to better reflect BA-ME's recent outage performance.

C. BA-ME's Service to CLECs

The Commission believes the revised SQI should include standards that measure the quality of BA-ME's services to competitive local exchange carriers. We especially want to develop standards that can detect discriminatory or anti-competitive treatment in BA's provision of service to CLECs.

The critical link for CLECs to obtain access to the services and facilities they need from BA-ME is its Operational Support System (OSS), a group of computer interfaces that provide CLEC-to-BA links for the five OSS functions: pre-ordering, ordering, provisioning, repair and maintenance, and billing. The Commission is aware of two models that contain standards for BA's services to CLECs, both of which focus on OSS functions and network performance.

As a condition of the FCC's approval of the merger of Bell Atlantic and NYNEX, all Bell Atlantic companies file quarterly "Performance Monitoring Reports" with the FCC.[10] The state-specific report includes 20 metrics that measure all OSS functions and two that measure network (trunk blocking) performance.

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[9] In Chapter 200 of the Commission's rules, a "major service outage" is one that interrupts service for at least 5 minutes to the fewer of 500 access lines or 10% of the access lines in the affected wire centers.

[10] Available on the FCC's website at www.fcc.gov/ccb/asd/BA_NYNEX/perform.html

The New York Public Service Commission, in collaboration with CLECs, has developed an elaborate service quality model "[to] ensure that Bell Atlantic-New York (BA-NY) provides high quality service to Competitive Local Exchange Carriers."[11] This model includes the metrics in BA's FCC Performance Monitoring Report (plus others), scoring mechanisms to determine whether CLECs are receiving non-discriminatory treatment from BA-NY, and billing credits for unsatisfactory performance by BA-NY.

The Commission seeks comments on the following questions:

- Should the Commission incorporate into the revised Service Quality Index BA-ME-to-CLEC service quality standards that include billing credits or refunds, or should we wait until Bell Atlantic obtains Section 271 approval in Maine to implement such a system?

- If the Commission does implement BA-to-CLEC service quality standards in the new AFOR, should they be part of the revised SQI, or be administered separately?

- Should the Commission use either BA's FCC "Performance Monitoring Report" or the NYPSC's "Performance Assurance Plan" to develop BA-ME-to-CLECs service quality standards? If so, which would be superior? Please provide support for any such recommendations.

- If neither the BA /FCC nor the NYPSC model should be used, what LEC-to-CLEC measurements and standards should the Commission use to construct a service quality system that offers reasonable assurance that BA-ME provides OSS and network services to CLECs that are at least as good as those it provides itself?[12]

- Another condition of the FCC's approval of the BA-NYNEX merger was that BA develop performance standards for the measurements in the Performance Monitoring Reports. BA-ME should provide those standards in its comments and indicate whether they are Maine-specific.

D. Customer Satisfaction

The Commission proposes to continue to measure how satisfied customers are with the service they receive from BA-ME.

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[11] Called "Performance Assurance Plan," available on the NYPSC's website at www.dps.state.ny.us/39212.pdf

[12] 47 USC § 251(C)(2) applies that performance requirement to an ILEC's obligation to provide interconnection to CLEC's.

Based on Company-sponsored sample surveys, this measurement would provide the % of customers not satisfied with:

1. Residence service provisioning

2. Small business service provisioning

3. Residence service maintenance

4. Small business service maintenance

These standards are in the current SQI. As we understand it, the calculated survey results are based on small samples of BA-ME's customers (approximately 50 per month) who have had services installed or repaired. We seek comment on whether these standards are useful, whether BA-ME's sampling level is adequate and, if not, what level would be adequate.

In its comments, BA-ME should provide information on who does the customer interviews, when they are performed, the typical size of the customer base from which samples are drawn and how recently services were provided to them, and how the sampling is done (including the sample size, margin of error, and confidence level). It should also provide the scripts interviewers use.

E. SQI Baseline Performance Levels

In the current AFOR, BA-ME must pay customer rebates whenever its annual average performance does not meet any SQI standard's baseline performance level. In the AFOR proceeding, the Commission did not want the AFOR to have any significant adverse impact on BA-ME's (then NYNEX's) service quality. Accordingly, the Commission set baseline performance levels to reflect BA-ME's typical recent performance, as measured by the annual averages of the SQI standards over the previous three years ('92, '93 and '94). Specifically, the Commission set the baseline performance levels in the current SQI at BA-ME's worst annual average performance over the previous three years.

In the AFOR proceeding, the staff had proposed that baseline levels be calculated from statistical confidence intervals for the theoretically "true" averages of the SQI standards, using either the lower or upper limits of the confidence intervals, whichever, for each standard, would be the least stringent.

As with the current AFOR, the Commission does not want the revised AFOR to have any significantly adverse impact on BA-ME's service quality. We believe, therefore, that the baseline performance levels in the revised SQI should continue to reflect

BA-ME's typical recent service quality performance. We seek comments on how baseline performance levels should be set for the standards in the revised SQI.

F. Service Quality "Surveillance Levels"

The service standards in NARUC's "Model Telecommunications Service Rules" include "service objectives" (which are the equivalent of the SQI's performance baselines) and "surveillance levels," which appear to be 10%-20% less stringent than performance baselines. If a carrier does not meet a standard's surveillance level for three consecutive months, the carrier must "investigate, take appropriate corrective action, and provide a report of such activities to the Commission."

We seek comments on whether some or all of the revised SQI's standards, should include surveillance levels and, if so, whether a separate customer rebate mechanism should be triggered by BA-ME service performance that fails to meet surveillance levels for three consecutive months. Parties who advocate such an arrangement in the revised SQI should describe how a customer rebate mechanism associated with surveillance levels would work, and whether rebates should be specific to affected wire centers or service territory-wide.

G. Customer Rebate Mechanism

As indicated earlier, BA-ME must pay a customer rebate when its average annual performance fails to meet any SQI standard's baseline performance level. The current SQI's rebate mechanism caps total rebates at $11,000,000 per year, and caps rebates for each SQI standard at $1,000,000 per year, except for the "service outages" standard, which is capped at $2,000,000 per year. The rebate calculation method is described in our May 15, 1995, Order in Docket No. 94-123 (at 85-86), which is available on the Commission website at www.state.us/mpuc.

We seek comments on whether the rebate mechanism should be changed. Parties who advocate changes should explain and provide support for why and how it should be changed. Parties recommending changes to the annual rebate cap should provide supporting analysis.

We seek comments on whether rebates should be given to all customers ("across the board") or only to the customers (and customer classes) in the affected wire centers. In the latter case, we seek comments on how to calculate the rebates.

We seek comments on whether some standards should be given greater weight – i.e., higher rebate caps – than others. Parties who advocate different weights should provide supporting analysis.

We also seek comments on what the rebate (or penalty) cap should be for the Emergency Services Outage standard we propose, particularly outages caused by BA-ME's actions, and how and to which customers such rebates should be distributed (or penalties imposed on BA-ME).

Finally, for standards that are defined by multiple measurements, we seek comments on whether customer rebates should apply to each such measurement, and if not, to which measurements rebates should be applied.

H. Reporting

In the current SQI, BA-ME reports monthly for all standards, which we propose to continue.

VI. PRICING RULES

We will concentrate our efforts on encouraging the development of competition and ensuring that the competitive landscape is as level as possible for all participants. Most, if not all, of this activity will occur outside of the AFOR, however. In the proposed AFOR, Bell Atlantic will have pricing freedom for all services except basic rates, a very limited number of other retail services, wholesale services (i.e., UNEs, collocation, and resale) and access. Although not an AFOR pricing rule, we must, of course, continue to enforce the provisions of §7101-B by requiring that intrastate access rates remain equal to or less than the interstate access rates at the dates specified in the statute. Basic rates will be capped at their present levels for the term of the AFOR, but BA-ME will be allowed to reduce its basic rates at any time. The Company will be permitted to apply any surcharges mandated by law to customers' bills, and it will be able to apply the provisions of the BSCA rule to the rates of customers in exchanges that receive a calling area increase.

As stated previously, we will soon revive a proceeding that will establish rates for UNEs based on the TELRIC methodology.[13] We will establish the appropriate UNEs and set separate zone rates for each of the elements. In that way, competitive local exchange carriers (CLEC) will be able to purchase the functionalities needed to use parts of or connect to the incumbent's network at any feasible point, as required by the TelAct, without having to negotiate with the Company. In addition, we will continue to enforce the provisions of the TelAct that cover the charges imposed by ILECs on competitors, as well as all other provisions that are within our authority.

[13] This methodology, as proposed by the FCC, has recently been appealed to the U.S. Supreme Court. If the use of TELRIC is found to be illegal or unconstitutional, we will, of course, need to determine an alternative cost basis for the UNE's.

Under our proposed mechanism, which relies on the development of a competitive market for basic service, there is no need for other pricing rules, and because we have chosen to cap basic service rates, there is no need to establish a PRI type of mechanism for ongoing price adjustments. We will carefully monitor the development of competition in the State, and if we observe any anti-competitive behavior on the part of BA-ME, will not hesitate to act to promptly and appropriately. We anticipate that the Company will be seeking from the FCC in the future interLATA long-distance authority for calls originating in Maine, and we will participate in that process fully, as provided under the TelAct. At that time, we will have ample opportunity and ability to seek additional corrective or preventive measures designed to open the local service market in Maine to competition.

We seek comment on whether some type of benchmark should be established to gauge the development of local competition in BA/ME's service territory, and if such a standard is desirable, we seek recommendations about its design and administration. A competitive standard would enable us to determine the pace at which competition in the local exchange market is developing in Maine. If at some point in the future, competition has evolved to a sufficiently robust level, it may allow the additional easing of the limited regulatory restraints that we propose for BA/ME in the future AFOR, or conversely, if competition does not develop as rapidly as we hope, we may consider modifying the freedoms that we are now proposing.

We seek comment on the how a competition benchmark should be designed, specifically, what measure(s) or indices are most appropriate for measuring the development of competition. Also, how often should the measurements be taken? How can the integrity and independence of the standards be maintained, so that the results cannot be manipulated or skewed in any way? And, should we establish targets for competitive levels that must be met by certain dates during the term of the AFOR? Finally, should competition in Maine be measured against some regional or national benchmarks?

The Commission seeks comment on what action it should take if it were to determine at some point during the prospective AFOR that competition had not reached an acceptable level (or a pre-established objective, if one is set). Should the Commission reopen the AFOR examination if competition fails to grow to a satisfactory level, or should specific actions that would be triggered automatically (up to and including terminating the AFOR and/or opening a rate case) be laid out at the start of the proposed AFOR? We seek input on all issues related to the establishment and monitoring of a competitive benchmark.

The only other retail services that we propose to continue under direct regulation are Directory Assistance (DA) and Operator Services (OS), because we cannot conclude that there is sufficient competition or ease of access to accurate and reliable alternatives at this time. If the Company wishes to raise the rates for DA and OS, it may file with the Commission for an increase, but it must include cost support for its proposal. It may

decrease these rates at any time, subject to the LRMC price floor that applies to all services. Further, if the Company can show that these services have effective competition, we will consider removing the price constraint we have placed on them.

We invite comments on the adequacy of the proposed pricing rules. Parties may recommend other retail services that should continue to be regulated. Those recommendations should include a rationale for continuing price regulation of the services proposed and provide a suggested mechanism for that regulation.

VII. INFRASTRUCTURE and SERVICE OFFERINGS

Because we propose to allow the Company significant pricing freedom and are taking all reasonable steps to encourage competition, we will not place any specific requirements on BA-ME regarding amounts of investment, infrastructure deployment or service offerings. We will require the Company, however, to continue to report its activities in these areas to us on a semi-annual basis and to compare its activities in Maine with those in other states where it provides local service. The Company must present comparisons not only with the current Bell Atlantic states, but also with states in which GTE provides local service, assuming the proposed merger of the two companies is consummated as planned. In this way, we will be able to examine how Maine is faring in comparison to the other states of the combined Bell Atlantic/GTE territory. If we observe any failure on the part of BA-ME to continue to modernize and improve its telecommunications network in Maine, compared to other states, we will not hesitate to take appropriate action, including modification or termination of the AFOR if necessary.

VIII. CONCLUSION AND SCHEDULE

The AFOR that we propose for BA-ME meets both the statutory objectives and our own policy goals for an incentive mechanism that will advance the telecommunications industry in Maine while simultaneously protecting consumers and competitors during the next five years. We seek comments on all aspects of the proposal, not just on areas where specific questions have been posed. We have placed our proposal for continuation and modification of the AFOR before the prospective parties and the public to facilitate the processing of this investigation. This procedure allows interested persons to know our thinking and to provide suggested modifications. It provides an efficient but fair method of designing an incentive regulatory mechanism that meets all statutory and policy requirements.

Interested parties may file responsive comments to our proposal on or before August 4, 2000. The tentatively date for reply comments is September 1, 2000. This date may change based on the length and type of initial comments that we receive.

While we will not schedule a procedural conference at this time, one may be held within the time frame for the written submissions. We will establish the schedule for any further proceedings, such as hearings, oral arguments and briefs, as the investigation progresses.

Dated at Augusta, Maine, this 26th day of June, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.