STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-329

June 9, 1997

PUBLIC UTILITIES COMMISSION
To Amend Chapter 23, Installation, Maintenance and Ownership of Customer Premises Wire

ORDER ADOPTING AMENDMENTS TO RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. INTRODUCTION AND SUMMARY

We instituted this rulemaking to amend Chapter 23 of the Commission's Rules, MPUC Rules, ch. 23, Installation, Maintenance and Ownership of Customer Premises Wire. Subsequently, we issued a Notice of Further Rulemaking. Based on our review of the comments we have received, we have decided to reduce substantially the regulatory requirements relating to inside wire. We have also decided to open, in the near future, a proceeding to consider reducing those requirements further. In this Order, we adopt amendments to conform an important definition in the Rule to federal laws; to limit the rule's applicability to local exchange carriers (LECs); and to eliminate the requirement that LECs must offer pay-per-visit customer premises wire services.[1]

Standish, China and Maine Telephone Companies and NYNEX filed comments to the initial Notice of Rulemaking. The first three Companies' comments were identical and supported the proposed rule changes. NYNEX's comments supported most of the proposed changes, with certain qualifications. NYNEX's comments, however, suggested further changes that were not part of the scope of the initial Notice of Rulemaking.

Because NYNEX's comments addressed issues outside of the scope of the initial Notice, we could not act on them under the initial Notice. *See* 5 M.R.S.A. § 8052(5)(B). We determined that they raised issues that should be addressed, and we issued a Notice of Further Rulemaking pursuant to the last two sentences of section 8052(5)(B).[2]

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[1]The statutory authority for this rulemaking is contained in 35-A M.R.S.A. § 111.

[2]Those sentences state:

> If an agency determines that a rule that the agency intends to adopt is substantially

Part II of this Order addresses the changes we adopt pursuant to the initial Notice of Rulemaking. Part III addresses the changes we adopt pursuant to the Notice of Further Rulemaking.

II. AMENDMENTS ADOPTED PURSUANT TO INITIAL NOTICE OF RULEMAKING

A. Summary

Pursuant to the initial Notice of Rulemaking, we adopt five substantive changes to Chapter 23. In addition, the number of this rule is changed from Chapter 23 to Chapter 230, consistent with the Commission's practice to provide three-digit numbering of all its rules whenever a rule that has a two-digit number is amended.

We first amend the definition of "demarcation point" under Chapter 23 to conform the definition to federal regulations under 47 C.F.R. 68.3. Second, we make clear that rates for premises wire services for LECs under rate-of-return regulation must be cost-based; that those for a telephone utility subject to an alternative form of regulation (AFOR) shall not be priced below cost and otherwise shall comply with the rules governing the AFOR. Third, all references to "telephone company" are changed to "local exchange carrier" because we do not intend that this rule shall apply to interexchange carriers. Fourth, we amend section 5 of the Rule to require that when the local exchange carrier, upon request of the customer, performs diagnostic or maintenance services, and it finds that there is no network interface device (NID), it will not charge for the diagnosis and must install a network interface device without charge to the customer. Fifth, we amend section 2 to state that certain portions of the rule will not apply if the Commission, under 35-A M.R.S.A. § 7306 (Supp. 1995), should undertake to deregulate all or a portion of a telephone utility's services for providing installation and maintenance of customer premises wire. We also adopt other minor amendments to make terminology changes and for reasons of style. Some of the terminology changes are necessary to conform to terminology used in federal regulations.

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different from the proposed rule, the agency shall request comments from the public concerning the changes from the proposed rule. The agency may not adopt the rule for a period of 30 days from the date comments are requested pursuant to this paragraph.

B. Discussion

1. Definition of Demarcation Point

In January of 1985, the Commission adopted Chapter 23, setting forth the regulations that presently govern the installation, maintenance, and ownership of customer premises wire (CPW). Since that time, the Federal Communications Commission adopted regulations under 47 C.F.R. Part 68 that address customer premises wire. 47 C.F.R. § 68.3, defines the "demarcation point," as the point of demarcation and/or interconnection between a local exchange carrier's communications facilities and the wiring, protective apparatus or terminal equipment at a subscriber's premises.

The definition of the demarcation point contained in our Chapter 23, § 1(B) was not fully consistent with the federal definition, although for most installations in Maine the demarcation point would be the same under either the federal or state definition. Nevertheless, for some installations, the discrepancy would cause the demarcation point to be located at different places under Chapter 23 and under the federal regulations. Customer premises wire is used for both interstate and intrastate calls, but it is not possible to "separate" the physical wire into "interstate" and "intrastate" components. Thus, under properly applied preemption principles, the federal definition must control, and we amend Maine's definition to conform with the federal definition. We also adopt the federal definitions of "minimum point of entry" and "premises." Both of those definitions assist in determining the location of the demarcation point at actual premises.

NYNEX commented that the definition (§ 1(B)) should more clearly state that the demarcation point may be located at a "theoretical" point, i.e., a point along a piece of wire rather than at the protector or network interface device (NID). The first sentence of section 1(C) defines only what the demarcation point is (the boundary between LEC and customer facilities). The definition does not itself establish the permissible locations of the demarcation point. However, section 3 does make clear that the demarcation point may be a point along a piece of wire (at the point entering a building). In section 1(C), we have provided a cross-reference to section 3. The second sentence of the definition contained in the proposed section 1(C) was potentially confusing, however. It was not properly part of the definition; rather it was a substantive rule governing the types of devices that may constitute the demarcation point. In the final rule, we have moved the substance of that sentence to the various subsections in section 3.

NYNEX also suggested that section 3(A) (which defines the location of the demarcation point for single unit installations) should make clear that the demarcation point should always be on the customer's side of the protector, "consistent with § 4(A)." Section 4(A) states that "customers shall not be permitted access to the protector." We agree with NYNEX and have amended section 3(A) accordingly.

2. Pricing Standard for Pay-Per-Visit Services

In our Notice, we proposed amendments to section 4, paragraph B, and to section 5, paragraph C. These amendments require that local exchange carriers that offer installation and maintenance services must do so at "cost-based" flat or time and materials rates.[3] The stated purpose of this proposed change to confirm existing state practice and to codify an existing federal requirement. When we approved unbundled premises work charges after enactment of this rule, we determined that they were generally based on the then-current cost of providing the services. Subsequently, the FCC ruled that states that require tariffing of customer premises wire services must assure that pricing was not below cost.[4]

In our initial Notice we proposed that rates be "cost-based," consistent with our practice at the time of unbundling. NYNEX pointed out in its comments that there is a difference between prohibiting rates that are below cost (setting a minimum, the FCC's goal) and requiring "cost-based" rates (establishing a general minimum and maximum). NYNEX argues that because it is now subject to an alternative form of regulation

[3]Whether LECs must offer those services was not placed in issue by the initial Notice; that Notice raised only the pricing issue. We raised the issue of whether LECs must provide pay-per-visit services in the Further Notice. *See* Part III.C below.

[4]Initially the FCC had attempted to preempt state tariffing and regulation of customer premises wire services, but was reversed by the Court of Appeals. *NARUC v. Federal Communications Commission*, 880 F.2d 422 (D.C. Cir. 1989). The Court of Appeals ruled, however, that because the FCC had authority over customer premises wire that is used for interstate purposes, and because of the inseparability of that wire, also used jointly for intrastate purposes, it could take certain actions necessary to advance its goal of ensuring a competitive market for customer premises wire services. Among those powers was the authority to prohibit states from approving rates that are below cost. On remand, the FCC did impose that restriction on state regulation.

(AFOR), it should not be restricted from pricing its inside wire services above cost and should be subject only to the pricing rules of the AFOR. In its first annual AFOR filing, recently completed, NYNEX proposed to change the categorization of its customer premise wire services from core nondiscretionary to core discretionary and to increase the prices. No party objected and NYNEX's proposals were approved.

We agree that NYNEX's pricing should be subject to the AFOR pricing rules without any additional constraint (beyond the federally-mandated constraint) imposed by this rule. As proposed in the Notice, however, we believe we should not on this record disturb our current policy that flat rate or time and materials rates should be cost-based, i.e., not substantially above or below cost for those ILECs that remain subject to rate-of-return regulation. As noted above, that requirement was not previously stated in the rule but was applied to all LECs' initial unbundling of inside wire services under this rule. No commenters, other than NYNEX, objected to our proposal to require cost-based pricing, and NYNEX objected only on behalf of itself because of its unique form of regulation. Other ILECs (i.e., the independent telephone companies) remain subject to rate-of-return regulation, and it generally would not be appropriate to allow them to increase their rates for one set of services without a review of their overall rate levels. *New England Telephone and Telegraph Co., Proposed Increase in Rates*, Docket No. 82-6, Order of Dismissal (May 11, 1982).

Because we do not regulate the earnings for CLECs, we will apply the same pricing rule that is applicable to ILECs under an AFOR to CLECs. Accordingly, in the final amendments, we have restated sections 4(B) and 5(C) to reflect an exception applicable to ILECs that are subject to an AFOR and to CLECs.[5]

3. Limitation of Applicability of Rule to Local Exchange Carriers or Incumbent Local Exchange Carriers

Throughout the rule, we proposed to replace the term "telephone company" with "local exchange carrier" to make clear that this chapter does not apply to carriers that provide only interexchange service. As defined in 35-A M.R.S.A. § 102(19), a "telephone utility" includes interexchange carriers as well as local exchange carriers. Both when Chapter 230 was

[5]In the near future, we will commence a new rulemaking, pursuant to 35-A M.R.S.A. § 7306, to deregulate inside wire services described in sections 4(B) and 5(C). If we do deregulate those services, we would also eliminate all pricing standards from those sections.

enacted and when it was last amended, local exchange carriers carried all interexchange as well as local traffic and no separate interexchange carriers provided service in Maine. We never intended to impose the service obligations of sections 4 and 5 on carriers that provide only interexchange services, as they cannot provide loops, drops, or network interfaces and historically have not provided customer premises wire services. Thus, we proposed to exclude interexchange carriers from the applicability of the rule. No comment addressed this proposal and we adopt it as proposed.[6]

In the initial Notice, issued almost a year ago, we discussed only the distinction between local and interexchange carriers. We did not draw the further distinction between ILECs and CLECs. In one respect, the different pricing standard for pay-per-visit rates discussed above at II.B.2, we have provided separate regulatory treatment for ILECs and CLECs. In other respects, for reasons discussed in other sections of this Order, we have not drawn a distinction.[7]

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[6]We note that the inapplicability of this chapter to IXCs does not mean that customer premises wire services that IXCs might offer, should they ever do so, are "deregulated" or that they do not need to include such services in their rate schedules. At present, no IXC offers customer premises wire services. Customer premises wire is a telephone utility function as defined in 35-A M.R.S.A. § 102(19) and (20). *See Bryant Pond Telephone Company, Proposed Schedule Revisions to Provide for Deregulation of Customer Premise Wiring*, Docket No. 89-287 and *Oxford County Telephone and Telegraph Company, Proposed Schedule Revisions to Provide for Deregulation of Customer Premise Wiring*, Docket No. 89-288, Order (April 27, 1990). 35-A M.R.S.A. § 7306 allows the Commission to deregulate customer premises wire services for "a telephone utility" upon certain findings that we may make in a rulemaking. We have not conducted that rulemaking although, as noted above, we intend to do so soon.

[7]We include brief definitions of "local exchange carrier" and "competitive" and "incumbent" local exchange carriers in section 1. The first definition makes clear that a local exchange carrier is any utility that provides local exchange service, including those that offer other services as well. No person commented on the proposed definition, and we adopt it as proposed. The definitions of incumbent and competitive local exchange carriers are derived directly from 47 U.S.C. § 251(h) (the Telecommunications Act of 1996) and are consistent with the definitions we are adopting contemporaneously in Chapter 280.

4. Installation of Network Interface Device

Previously, Chapter 23, section 4(B) required telephone companies (LECs) to install a network interface device (NID) when the LEC was installing, modifying or adding to customer premises wire.[8] The primary purpose of a NID is to serve as a testing device. Either the utility or a customer may use the NID to determine whether a problem is located on the company's side of the demarcation point (the switch, loop or drop) or on the customer's side (customer premises wire).[9] The purpose of allowing customers, or third parties, to provide inside wire maintenance is to provide competitive options when the customer is responsible for maintenance. If there is no NID, a customer cannot easily determine whether the customer or the utility is responsible for the repair.

The Commission understands that many local exchange carriers (LECs) have installed NIDs and that it is the practice of others to install them when a service person is at a customer's premises for any reason and discovers that there is no NID at the demarcation point. In the initial Notice we proposed to amend the maintenance section 5 to make this practice mandatory. In the Notice this provision was designated section 5(E). We have adopted it without substantive change as section 5(D) to provide a more logical order for section 5.

Several LECs' terms and conditions require that a customer pay a diagnosis charge for premises visit if the customer requests the LEC to determine the nature or location of the problem and the LEC thereafter must make a premises visit and determine that the trouble is on the customer's side of the demarcation point, i.e., in the customer premises wire. The diagnosis charge applies even if the customer ultimately decides not to hire the LEC to perform the repair. We understand NYNEX and several of the independent LECs do not bill customers for a premises work charge for the diagnosis if no NID is present. (We are unable, however, to find this practice stated in NYNEX's

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[8]There is no parallel provision in section 5 (Maintenance), however. Section 6 allows customers or third parties hired by customers to install a NID. It also contains provisions addressing "programs" by local exchange carriers to install NIDs, but it contains no installation requirement.

[9]To test at the NID, the customer or a service person disconnects the plug from the jack that are both integral to the NID, and then plugs a telephone directly into the jack. If the problem persists, the problem is on the utility's side of the demarcation point. If the problem is no longer audible, the problem is on the customer's side.

terms and conditions.) In the initial Notice, we proposed to make this practice mandatory, and we have incorporated it in the new subsection 5(D).

Standish, China and Maine Telephone Companies stated that their present practice was consistent with the proposal. NYNEX did not comment on the proposal.

We find that it is in the public interest to encourage the widespread installation of NIDs, both to allow customers to diagnose problems and perform repairs and to encourage a competitive market for inside wire services. The new subsection therefore requires LECs, when they are called to a customer's premises for diagnosis and/or repair, to install NIDs without charge to customers if there presently is no NID at the demarcation point. It provides further that LECs shall not charge for diagnosing the location of a problem if there is no NID. Installation of NIDS at the time of installation of wire continues to be governed by section 4(B). We understand that LECs generally warn customers of terms and conditions that require a diagnosis charge, and that they also generally encourage customers to attempt to determine the location of the problem by testing at the NID, so that the customer may avoid the diagnosis charge. If there is no NID at the premises a customer is unable to test for the location of the problem. If there is a NID, however, the rule does not prohibit a LEC from charging for diagnosis under its rate schedule if called to a customer's premises, even if the customer does not then hire the LEC to make the repair. Finally, the rule provides that if, after a diagnosis, the customer does hire the LEC to repair or install customer premises wire, the LEC may charge for the repair as provided in its rate schedule whether a NID was in place or not.

The last sentence of new subsection 5(D) requires that LECs review their terms and conditions and propose modifications to ensure compliance with this new subsection. In the ordering paragraphs, we set a deadline of September 1, 1997 for those filings.

5. Ownership of Inside Wire

Section 1(A), defines customer premises wire. It specified that CPW may be owned either by the telephone company or the customer. NYNEX in its comments stated that this provision was outdated, at least in its case, because it no longer owns any inside wire. In 1984, the Federal Communications Commission ordered telephone utilities to begin expensing (rather than capitalizing) CPW that they installed and to amortize existing investment in CPW either on a flash-cut basis or over a 4-year period. In response to NYNEX's comment, we eliminate the

portion of section 1(A), (the last sentence) that addressed ownership.

Section 7 specifies the actual ownership rules. We did not propose to amend these in the initial Notice of Rulemaking. However, because of NYNEX's comment, we have now amended them to eliminate any reference to utility ownership of customer premises wire. Previously, under section 7, utility ownership was possible only while utilities continued to have investment in CPW. Section 7, until now, stated that if a customer installed the wire or upon termination of the utility's ownership, the customer would own the wire.

A determination of who shall own inside wire that is not owned by the telephone utility is beyond our authority. On the other side of the demarcation point from telephone company wire, either the customer or the building owner may own and/or have responsibility for the repair or maintenance of customer premises wire. The Public Utilities Commission has no authority to determine ownership rights or maintenance obligations between tenants and landlords. Thus, section 7, which formerly stated that customers must own fully expensed or full amortized customer premises wire, is amended to state that the telephone utility that installed the wire cannot own it and that it must be owned by either the customer or the premises owner as determined by law or contract.

Similarly, sections 4(A) and 5(B), which previously stated that "customers" may install or maintain customer premises wire, now states that the customer *or* the premises owner has that right. We do not, by either of those provisions, purport to expand any rights of either tenants or landlords beyond any rights they may have under law or that they may have established by contract.

6. Miscellaneous Changes to Chapter 23

In addition to the substantive changes described above, we also proposed several minor changes that are necessary to update terminology and to conform the language to current policies. We received no comments about these proposals and adopt all of them. First, we have amended section 2 (Applicability) to recognize the existence of our statutory authority in 35-A M.R.S.A. § 7306 to deregulate customer premises wire services and to indicate that the rule would not apply if, in a future rulemaking, we were to make the findings required by that statute. Second, we amend section 4, which governs the installation of customer premises wiring performed by the customer, in order to incorporate the language of federal regulations that addresses the installation of customer premises

wiring under 47 C.F.R. § 68.213(b). Generally, section 4 of Chapter 230 is consistent with its federal counterpart; however, the federal regulation explicitly provides that the subscriber may "remove, reconfigure, and rearrange" customer premises wiring. In the interest of conformity, and because the language of the federal regulation is preemptive, the amendments to section 4 adopt the language of the federal regulation.

Finally, we amend Chapter 230 to include, as a new section 9, a waiver provision that allows the Commission to waive some or all of the requirements of the Chapter where good cause is shown. As is generally the case in the waiver provisions that are in our rules, proposed section 9 provides that the granting of a waiver must not be inconsistent with the policies and intent of the Chapter.

III. AMENDMENTS PURSUANT TO NOTICE OF FURTHER RULEMAKING

A. Summary

Pursuant to the Notice of Further Rulemaking, we adopt two changes to Chapter 23. First, as discussed in Part III.B, we implement new policies that govern requirements or exclusions that local exchange carriers may include in optional wire maintenance plans. Second, as discussed in Part III.C, we eliminate the former requirement (in sections 4.B and 5.C of the rule) that LECs must provide customer premises wire services on a pay-per-visit basis.

B. Exclusions of Coverage from Optional Wire Maintenance Plans

In the initial Notice of Rulemaking, we did not propose any changes to then section 5(D) (now section 5(E)),[10] which governs various aspects of optional wire maintenance plans. An optional wire maintenance plan is an offering by a telephone company to provide maintenance of customer premises wire in exchange for a monthly fee; no charge is imposed at the time the repair or replacement is made.[11] Despite the fact that we had not proposed any change to then section 5(D), NYNEX argued that we should amend it to "clarify that it is permissible for a local exchange carrier to offer a wire maintenance service for *inside*

[10]For reasons described above at II.B.4, we have switched sections 5(D) and 5(E).

[11]By contrast, for pay-per-visit maintenance, a telephone company or any other person charges only for the visit, either on a flat fee or on a time and materials basis. *See* further discussion below at III.C.

premises wire only" (emphasis in original). It is clear from context that NYNEX is referring to "indoors" and "out-of-doors" customer premises wire.

The term "inside" wire is commonly used as a synonym for customer premises wire, i.e., all wire that, as defined by the FCC and this rule, is on the customer's side of the demarcation point. Customer premises wire may be located physically outside, e.g., between two buildings on the same property. In its first comments, NYNEX stated that its optional wire maintenance plan is "intended" only to apply to indoors wire and that in "several" recent Consumer Assistance Division (CAD) rulings "the Company's coverage has been improperly extended beyond inside (sic) wire." We are aware of *Sisson v. New England Telephone (d/b/a NYNEX), Appeal of Decision of Consumer Assistance Division*, dated July 24, 1995, CAD Complaint No. 21598, Order on Appeal (June 18, 1996). In that case, the CAD ruled that the outdoors wire in question was not covered. On appeal, we ruled that it was covered, based in part on NYNEX's filed terms and conditions, which contain references to "customer premises wire" (which is defined in this rule as the wire on the customer's side of the demarcation point) and did not contain any exclusion for customer premises wire that is located out-of-doors.

NYNEX's proposal for a substantive amendment to section 5(E) was beyond the scope of the rulemaking as described in the initial Notice. The Administrative Procedures Act requires notice of the terms or substance of the "proposed rule." 5 M.R.S.A. § 8053(3)(D). An agency may adopt provisions different from those contained in the "proposed rule" in response to comments or "specific findings." 5 M.R.S.A. § 8052(5). In the context of a rulemaking that proposes to amend an existing rule, we understand the term "proposed rule" in sections 8052 and 8053 to refer to "proposed amendments," thus limiting substantive changes to those that are within the scope of those proposed in the Notice of Rulemaking. Because we found NYNEX's suggestion worthy of consideration in a more general context, we issued the Notice of Further Rulemaking (NFRM).

NYNEX's proposal in its first comments addressed only two possible exclusions of coverage. Given that optional wire maintenance plans are both optional for telephone utilities that provide them and optional for customers to subscribe, it is possible that various coverage exclusions may be reasonable. We therefore proposed in the NFRM to amend the rule to allow any reasonable requirements or exclusions of coverage from optional wire maintenance plans, including the current exclusion relating to wire that was not installed in conformity with the LEC's technical standard. Whether a proposed exclusion is reasonable

may be addressed when a telephone utility files a proposed term and condition containing that exclusion. We also proposed a more specific notice requirement to ensure that potential subscribers to optional wire maintenance plans are properly warned of any exclusions. The former subsection requires "prominent" notice. We proposed to retain this requirement but also proposed that the rule state expressly that the notice shall be provided to a potential subscriber in writing. In the event of any dispute over whether adequate written notice was provided, the telephone utility would have the burden of proof on that issue.

We also proposed that in the event of certain specified requirements and exclusions, if the telephone utility offering the plan does not discover non-compliance with a condition or the existence of an exclusion within 2 years, the condition or exclusion shall no longer apply. We proposed that the provision would apply to exclusions of coverage for customer premises wire that does not meet the technical specifications of the telephone utility offering the plan, for wire installed or maintained by entities other than the telephone utility offering the plan, and for locational exclusions. If the utility discovered noncompliance with the requirement or existence of the exclusionary condition within the 2-year period, it could cancel coverage under the plan, but would be required to refund any money paid to it under the plan with interest. If the utility did not discover the exclusionary condition within the 2-year period, the exclusion would no longer apply and coverage must be provided even if the noncompliance or exclusionary condition in fact exists.

NYNEX and the Telephone Association of Maine (TAM) filed comments that addressed these proposals. Both NYNEX and TAM supported the proposal to allow telephone utilities to impose reasonable requirements or exclusions, although it also appeared that NYNEX partially contradicted that position by stating that problems such as that in the *Sisson* case were rare and that it would be content to leave its terms and conditions unchanged. NYNEX's statement appears to overlook the fact that the issue in this rulemaking is not what its terms and conditions state, but what range of terms or conditions the rule will permit.

We have been presented with no reason not to adopt our proposal to allow "reasonable" conditions and exclusions in a telephone utility's terms and conditions. As noted above, reasonableness will be determined when a utility files a proposed change to its terms and conditions. The rule specifically requires that all requirements and exclusions be contained in the LEC's approved terms and conditions. The rule specifically requires that all requirements and exclusions be contained in the LEC's approved terms and conditions.

NYNEX opposed the written notice proposal on the grounds that such notice would be "burdensome and costly" and "of little value in that the typical customer will not read or retain such "documents." TAM did not address the written notice provision. Allowing telephone utilities greater freedom to impose conditions or create exemptions to optional wire maintenance plans could result in lack of coverage for some customers who may in good faith have paid for maintenance coverage and believe that they will receive it. We believe it is essential that all potential customers be fully informed of any conditions or exclusions that affect coverage before they purchase an optional wire maintenance plan, and we adopt the notice requirement as proposed, and will also require that the wording of the notice shall be contained in the LEC's terms and conditions, thus requiring Commission review and approval. For any given proposed exclusion or condition, a telephone utility may request a waiver or propose an alternate method of notice pursuant to new section 9 of the Rule (Waivers).

Only TAM provided a comment on the proposal to limit exclusions or conditions if they are not discovered within 2 years. TAM characterizes the proposed requirement as burdensome and claimed that it requires

> the telephone utility to police the premises of its customers in order to protect the utility for the nullification of its conditions or exclusions. The apparent premise of the proposal, i.e., that it is reasonable to expect that a utility would discover such circumstances within two years, does not reflect the day-to-day practicalities of the telephone business. In most cases, it is unlikely that, on average, a customer's premises will be visited within two years of subscribing to the wire maintenance plan. Thus, the proposal would effectively erase most of the conditions and exclusions within two years, and lead to confusion and administrative burden in keeping track of the rules which apply to each customer.

We will not adopt the 2-year limit provision, although we do so mostly for reasons other than those stated by TAM. The rule clearly does not require telephone utilities to "police premises," nor was the proposal based on the premise that it is reasonable to expect that conditions that give rise to exclusions would be discovered within 2 years. The proposal was based on the premise that if a customer has paid a telephone utility for

over 2 years, for what the customer believes is an insurance plan to cover needed repairs in customer premises wire, the utility offering the plan should provide that coverage.

We will not adopt the 2-year limit because of some potential difficulties in administering the provision,[12] and because we believe the other requirements of amended section 5(E) contain adequate safeguards for consumers. First, we must determine that a proposed requirement or exclusion is reasonable. Second, the rule imposes stringent notice provisions designed to inform the customers of those requirements or exclusions. If requirements or exclusions are not designed to trap the unwary, and if notice is effective, there is less need for after-the-fact protection of the type represented by the 2-year limit proposal. Under the rule as amended, customers will have fair warning not to participate if an exclusion applies to them, and effective notice may well deter participation by customers who are subject to an exclusion.

As proposed in the Further Notice, we have also eliminated the requirement in section 5(E) that any offering of any optional wire requirement be offered in two mailings. That requirement is obsolete because optional wire maintenance plans replaced the automatic inclusion of maintenance services with basic service during the time frame 1985-1987. At that time of transition to unbundled wire services, the double notice requirement ensured that customers who wanted to continue coverage as if the unbundling had not occurred would be provided with an ample opportunity to do so. NYNEX supported the proposal to eliminate two mailings, but also urged us to eliminate the "requirement" of a written return card. The rule does not "require" a customer to return a card; rather it states that a customer shall be a participant only if the customer "has positively indicated a desire to participate by return card *or otherwise*." (emphasis added) Nevertheless, the "return card" provision is clearly associated with the two mailings provision, and we therefore have eliminated it. The rule adequately

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[12]At the least, it would be necessary to maintain records of when each customer first subscribed. There also might be some difficulty in determining when some conditions occurred. We do not agree with TAM's argument, however, that the proposal would have created an "administrative burden in keeping track of the rules which apply to each customer." After 2 years, all customers who continue to pay into the plan would simply be "covered;" there would be no need to keep a separate list of those customers who had conditions that, if they had been discovered within the 2-year period, would have resulted in an exclusion.

protects consumers if it provides that a customer must "positively" indicate a desire to participate.

Former section 5(D), like the Chapter generally, had applied to "telephone companies." As discussed in Part II above, we have restricted the application of the rule generally to "local exchange carriers." Notwithstanding that change, we proposed to continue to apply this particular provision to all "telephone utilities," including interexchange carriers because, while no telephone utility is required to offer an optional wire maintenance plan, any telephone utility (including and IXC) may offer one. Upon further consideration, we believe that this subsection should apply only in the case of LECs, because only those carriers have an initial contact with new customers that can be used as an opportunity to market optional wire maintenance plans. This initial contact with an LEC may create opportunities for customer confusion (e.g., what services are "required" for basic service) that are not present in contacts by other providers.

C. Requirement That Carriers Provide Local Exchange Premises Wire Services on a Pay-Per-Visit Basis

The second issue that we raised in the Further Notice is whether we should continue to require local exchange carriers to provide inside wire installation and maintenance services on an as-needed (or pay-per-visit) basis. We decide that we will not continue that requirement.

Section 4(B) required each "telephone company" (or, as proposed in the initial Notice, each "local exchange carrier") to offer installation of customer premises wire (CPW) "under tariff at a flat rate or at a time and materials rate." Section 5(C) requires each LEC to provide maintenance of CPW "under tariff at a flat rate or at a time and materials rate."

The order adopting the original rule stated that the Commission believed that "telephone companies should continue to offer installation and maintenance of customer premises wire . . . . " Although no particular reason was stated, the Commission may have been concerned that there be a supplier of last resort. The Commission in 1985 was, of course, aware that these services could be supplied from sources other than telephone companies because sections 4(A) and 5(B) both expressly allow customer premises wire to be installed or maintained by customers or by "third parties hired by a customer."

In the Further Notice we raised the question of the extent to which we should require any local exchange carrier to

provide customer premises wire installation and maintenance services on a time-and-materials or per-visit basis.[13]

Pursuant to the initial Notice in this rulemaking, we narrowed the applicability of the rule, including the provisions requiring provision of pay-per-visit services, from "telephone companies" to "local exchange carriers." That limitation was intended to exclude interexchange carriers from being subject to this rule. It did not, however, address the second-level question of whether a continuing requirement should apply to ILECs, CLECs or both.

In our Further Notice, we asked for comments regarding what, if any, entities should be required to offer these services on a time-and-material or per-visit basis. We asked commenters to discuss what alternatives are available to customers and whether they are sufficient to allow elimination of any provider of last resort requirement, whether those alternatives are reasonably available and reasonably priced, and whether they would remain so if the provider of last resort requirement were eliminated. We further asked if there is a need for a supplier of last resort requirement, whether that need varies geographically. We requested the Public Advocate and other consumer and trade groups to provide us with information about these issues and sent the Further Notice to such organizations.

We received comments on these issues only from NYNEX and AT&T. NYNEX states there should be no requirement for any telecommunications provider to provide pay-per-visit services "because of the widespread availability of do-it-yourself materials for use by the consumer, and skilled craftspeople who regularly install and maintain wire systems . . . ." NYNEX provided little information in support of these statements beyond a statement that "an analysis of the Company's new installation activities indicates that more than 90% require no inside wire activity."[14] AT&T apparently argues that ILECs should be required to provide pay-per-visit services, but there is apparently some confusion on AT&T's part between optional inside wire maintenance plans (that have a monthly charge) and pay-per-visit services. AT&T does not provide any reason in support of its conclusion. AT&T argues that CLECs should not be required to offer such services. Again, no clear reason is

[13]As discussed above, LECs are not required to provide optional wire maintenance plans.

[14]NYNEX has clarified that "new installations" include both new construction and existing buildings that have been previously occupied. Existing buildings presumably almost always have at least some wiring in place.

stated. No commenter provided answers to most of the questions we asked in the Further Notice.

The commenters did not provide detailed answers to most of our questions and little support for those questions that were answered. Nevertheless, we have been aware since the unbundling of inside wire services was ordered by this Rule that pay-per-visit services are also available from electricians and others. We believe it is likely that electricians install telephone wire for a very large percentage of new construction. We have no reason to doubt that these same providers would be available for inside wire repair. We therefore see no need to continue the requirement that ILECs provide pay-per-visit services or that we impose any new requirement on CLECs. We see little risk that ILECs will abandon the market if we eliminate the requirement. Recently, NYNEX (in its first annual AFOR filing) raised the rates for both optional wire maintenance plans and for its pay-per-visit services, which may indicate that NYNEX believes that its share of those markets is secure.

The Notice of Further Rulemaking raised the question only of whether we should continue the *requirement* that LECs must provide pay-per-visit customer premises wire services in their rate schedules. The NFRM did not raise the question of whether we should detariff or deregulate those services. Thus, if a LEC does choose to offer pay-per-visit customer premises wire services, it must continue to include those services in its filed schedule of rates and in its terms and conditions. We intend, in the near future, to commence a separate rulemaking that will address the question of whether we should in fact deregulate those services for all or for individual LECs, as well as for other telephone utilities, pursuant to the provisions of 35-A M.R.S.A. § 7306.

Therefore, we

O R D E R

1. That the Administrative Director send copies of this Order and attached rule to:

a. All local exchange carriers in the State of Maine;

b. All persons who have applied for local exchange service authority in Maine;

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

d. The Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

2. That all local exchange carriers shall review their terms and conditions to determine if any of them are inconsistent with the provisions of section 5(E) of Chapter 230, and to file revisions to bring those terms and conditions into compliance by September 1, 1997.

Dated at Augusta, Maine, this 9th day of June, 1997.

BY ORDER OF THE COMMISSION

Dennis L. Keschl

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt

65 - INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 230 - INSTALLATION, MAINTENANCE AND OWNERSHIP OF CUSTOMER PREMISES WIRE

SUMMARY: This rule establishes the Commission's policies concerning the installation, maintenance and ownership of customer premises wire by local exchange carriers.

§1 Definitions.

A. Customer Premises Wire. Customer premises wire is wire at a customer's premises that is connected to the local exchange carrier's communication facilities. It is located on the customer's side of the demarcation point.

B. Competitive Local Exchange Carrier; Incumbent Local Exchange Carrier. A local exchange carrier is a local exchange carrier, as defined herein, that is not an incumbent local exchange carrier. An incumbent local exchange carrier is a local exchange carrier or its successor that provided local exchange service in a defined service territory in Maine on February 6, 1996.

C. Demarcation Point. The point of demarcation and/or interconnection between local exchange carrier communication facilities and customer premises wire, protective apparatus or terminal equipment at a subscriber's premises. The demarcation point shall be located as provided in section 3 of this rule.

D. Local Exchange Carrier. As used in this rule, a local exchange carrier is any telephone utility that provides local exchange services.

E. Minimum Point of Entry. The minimum point of entry is either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multi-unit building or buildings. A local exchange carrier's reasonable and nondiscriminatory standard operating practices shall be stated in its terms and conditions and shall determine which shall apply.

F. Network Interface Device. A device that includes a jack and plug conforming to Part 68, subpart F of the rules of the Federal Communications Commission, and that permits disconnection of the customer premises wire from the local exchange carrier's communication facilities. When installed it shall serve as the

demarcation point, provided that it is located in compliance with the requirements of Section 3. The network interface device shall function as a point that allows testing of whether a malfunction is in the local exchange carrier's communications facilities or is in the customer premises wiring or terminal equipment. The network interface device may be contained in the same unit as a protector, but shall always be on the customer's side of the protector.

G. Optional Wire Maintenance Plan. A plan under which a local exchange carrier, for a monthly or other periodic charge, will maintain customer premises wire without further fee or charge.

H. Premises. Premises as used in this rule means a dwelling unit, other building or legal unit of real property such as a lot on which a dwelling unit is located, as determined by the local exchange carrier's reasonable and nondiscriminatory standard operating practices which shall be stated in its terms and conditions.

§2 Applicability.

This Chapter applies to one and two line business and residential telephone customer premises wiring. Sections 4, 5, and 8 of this Chapter apply to one and two line businesses and residential telephone customer premises wire installation and maintenance services provided by local exchange carriers, unless the customer premises wire services of a local exchange carrier have been deregulated pursuant to 35-A M.R.S.A. § 7306.

§3 Location of the Demarcation Point.

A. Single Unit Installations. For single unit installations the demarcation point, if it consists of a jack and plug conforming to Part 68, subpart F of the rules of the Federal Communications Commission or is a network interface device as defined in this rule, shall be located within 30 cm (12 inches) of the protector or, where there is no protector, within 30 cm (12 inches) of where the telephone wire enters the customer's premises. If there is no jack and plug or network interface device, the demarcation point shall be at the customer's side of the protector. If there is no protector, the demarcation point shall be at the location that the telephone wire enters the customer's premises.

B. Multi-unit Premises Existing as of August 13, 1990. For multi-unit premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local exchange carrier's reasonable and non-discriminatory

standard operating practices which shall be stated in its terms and conditions. Provided, however, that where there are multiple demarcation points within the multi-unit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point 30 cm (12 inches) from where the wiring enters the customer's premises. Facilities installed by a local exchange carrier or other person at, or constituting, the demarcation point, including any network interface devise, shall consist of a jack and plug conforming to Part 68, subpart F of the rules of the Federal Communications Commission.

C. Multi-unit Installations after August 13, 1990. For multi-unit premises in which wiring is installed after August 13, 1990, the local exchange carrier may establish in its terms and conditions a reasonable and non-discriminatory practice of placing the demarcation point at the minimum point of entry. If the local exchange carrier does not elect to establish such a practice, the multi-unit premises owner shall determine the location of the demarcation point or points. The multi-unit premises owner shall determine whether there shall be a single demarcation point for all customers or separate such locations for each customer. Provided, however, that where there are multiple demarcation points within the multi-unit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point 30 cm (12 inches) from where the wiring enters the customer's premises. Facilities installed by a local exchange carrier or other person at, or constituting, the demarcation point, including any network interface device, shall consist of a jack and plug conforming to Part 68, subpart F of the rules of the Federal Communications Commission.

§4 Installation of Customer Premises Wire.

A. Installation by Customers and Premises Owners. The subscriber and/or premises owner, or a third party hired by such person, may install wiring on the subscriber's side of the demarcation point, and may remove, reconfigure, and rearrange wiring on that side of the demarcation point including wiring that may have been installed by the local exchange carrier. The customer or premises owner may not access carrier wiring and facilities on the carrier's side of the demarcation point. All plugs and jacks used in connection with inside wiring shall conform to Part 68, subpart F of the rules of the Federal Communications Commission. Installation performed by the customer shall also comply with any reasonable notice to the carrier and testing requirements and with all applicable technical specifications. Customers shall not be permitted access to the protector.

B. Installation by Local Exchange Carriers. Each local exchange carrier that offers services for installation of customer premises at a per visit or time and materials rate shall include those rates in its schedule of rates and terms and conditions. The rate may be the same as that provided in its schedule of rates for other premises work. The rate established by an incumbent local exchange carrier that is subject to rate-of-return regulation shall be based on cost. The rate established by an incumbent local exchange carrier that is subject to an alternative form of regulation (as defined in 35-A M.R.S.A. §§ 9101-03) or by a competitive local exchange carrier shall be set at no less than cost. When a local exchange carrier installs, modifies or adds to wiring at a customer premises, it shall install a network interface device without charge to the customer at any customer premises that does not have a network interface device. The network interface device shall be installed at the demarcation point as required by Section 3.

§5 Maintenance of Customer Premises Wire.

A. Disaggregation of Maintenance Charges from Basic Rates. The customer or premises owner has the financial responsibility for maintenance of customer premises wire. Charges for the maintenance of customer premises wire that have been included in the basic exchange rate shall be disaggregated from the basic exchange rate, which shall be correspondingly reduced. Charges for optional maintenance performed by the local exchange carrier shall be as provided in subsections C and D.

B. Maintenance by Customers or Premises Owners. A customer or the premises owner, or a third party hired by a customer or premises owner, may maintain or repair customer premises wire, including customer premises wire that was installed by local exchange carrier. Maintenance performed by the customer shall comply with any reasonable notice to the carrier and testing requirements and with any applicable technical specifications. Customers or third parties hired by customers shall not be permitted access to the protector.

C. Maintenance by the Local Exchange Carrier. Each local exchange carrier that offers services for the maintenance of customer premises wire at per-visit or a time and materials rate shall include those rates in its schedule of rates. The rate may be the same as that provided in the carrier's schedule of rates for other premises work. The rate established by an incumbent local exchange carrier that is subject to rate-of-return regulation shall be based on cost. The rate established by an incumbent local exchange carrier that is subject to an alternative form of regulation (as defined in 35-A M.R.S.A.

§§ 9101-03) or by a competitive local exchange carrier shall be set at no less than cost.

D. Installation of Network Interface Device at Time of Diagnosis or Maintenance. When a local exchange carrier, upon the request of a customer, performs any diagnosis at the customer's premises to determine the location or nature of a problem, or performs maintenance at the customer's premises, including any service performed on the carrier's side of the demarcation point, and there is no network interface device at the premises, the carrier shall not charge for the diagnostic service and shall install a network interface device at no charge to the customer. Pursuant to Section 4, this section, and its own terms and conditions, the local exchange carrier shall charge for maintenance or installation of new customer premises wire, if the customer requests those services. If the terms and conditions of the local exchange carrier are inconsistent with the requirements of this paragraph, the carrier shall file a revision to its terms and conditions to comply with this subsection within 60 days of the effective date of this subsection.

E. Optional Wire Maintenance Plans.

1. Participation.

No local exchange carrier is required to offer an optional wire maintenance plan. If a local exchange carrier does offer an optional wire maintenance plan, a customer shall be a participant in the plan only if that customer has positively indicated a desire to participate.

2. Exclusions. A local exchange carrier in its terms and conditions may requires that customer-installed premises wire must meet company or National Electric Code specifications in order to be covered by the optional wire maintenance plan or may impose other reasonable conditions or exclusions of coverage. All such requirements or exclusions shall be stated in the local exchange carrier's terms and conditions approved by the Commission. For any such requirement or exclusion, a telephone utility shall provide prominent written notice of the requirement or exclusion to each subscriber prior to the time of subscription or within 30 days thereafter. The contents of the notice shall be included in the local exchange carrier's terms and conditions approved by the Commission.

3. Inapplicabilty of Requirements or Exclusions. No requirements or exclusion described in paragraph 2 shall apply if (a) the requirement is not contained in the local exchange carrier's approved terms and conditions; (b) the contents of the

notice of the requirement or exclusion is not contained in the local exchange carrier's approved terms and conditions; or (c) the local exchange carrier failed to provide notice to the customer in compliance with the requirements of paragraph 2. In any dispute concerning whether prominent written notice was reasonable or was provided, the telephone utility offering the plan shall have the burden of proof.

§6 Installation of Network Interface Device by Customers or Premises Owners.

Customers, premises owners, or third parties hired by a customer or premises owner, may install a standard jack and plug or a network interface device at the demarcation point, provided that the jack and plug comply with Part 64, subpart F of the rules of the Federal Communications Commission and that the location complies with Section 3 of this rule. The jack and plug or network interface device shall be accessible to the customer. Customers shall not be permitted access to the protector.

A local exchange carrier may state in its terms and conditions that it has undertaken a program to install network interface devices or combined network interface-protector units that are weatherproofed or have special testing abilities or other features at demarcation points as provided in Section 3 and that are outside buildings or otherwise accessible to the carrier at convenient times. Local exchange carrier engaged in a program as described may provide in its terms and conditions that combination network interface-protector units must be installed by the local exchange carrier or that customers who install a network interface device that is not combined with a protector shall install a type approved by the carrier and in a location approved by the carrier. A local exchange carrier engaged in a program as described may also provide in its terms and conditions that in the event that both the carrier and the customer install devices that are capable of serving as the network interface device and as the demarcation point in accordance with Section 3, the carrier-installed network interface device shall be the demarcation point.

§7 Ownership of Customer Premises Wire.

Customer premises wire shall be owned by the customer or premises owner, as determined by law or contract, whether it is installed by a telephone utility or by another person.

§8 Inconsistent Rate Schedules and Terms and Conditions.

This Chapter supersedes any inconsistent rate schedules and terms and conditions of a local exchange carrier. All local

exchange carriers shall revise their terms and conditions or schedule of rates to implement and to be consistent with this chapter, including the 1997 amendments to this chapter, and shall file revisions that comply with the 1997 amendments by September 1, 1997.

§9 Waiver.

Any provider of telecommunications services subject to the provisions of this Chapter may request that the Commission waive some or all of its requirements of this Chapter. Where good cause exists, the Commission may grant the requested waiver, provided that the granting of the waiver would not be inconsistent with the policies and intent of this Chapter.

BASIS STATEMENT: The factual and policy basis for this rule as amended is set forth in the Commission's Orders Adopting Rule and Statement of Factual and Policy Basis, Commission Docket No. 96-329, issued on June 9, 1997; Commission Docket No. 85-150, issued on September 12, 1985; and Commission Docket No. 84-135, issued on January 22, 1985. The factual and policy basis for the original Chapter 23 is set forth in the Commission's Order Adopting Rule and Statement of Factual and Policy Basis, Commission Docket No. 84-135, issued January 22, 1985. Copies of these Statements and Orders have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, Augusta, Maine 04333-0018.

AUTHORITY: 35-A M.R.S.A. § 111

EFFECTIVE DATE OF 1997 AMENDMENTS: June 18, 1997.