STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2008-15

June 24, 2008

PUBLIC UTILITIES COMMISSION
Requirements and Terms for Bundled Services Offered by Incumbent Local Exchange Carriers (Chapter 289)

ORDER ADOPTING RULE AND STATEMENT OF FACTUAL AND POLICY BASIS

REISHUS, Chairman, VAFIADES, Commissioner

I. SUMMARY

In this Order, the Maine Public Utilities Commission (Commission) adopts a new rule, Chapter 289, Requirements and Terms for Bundled Services Offered by Incumbent Local Exchange Carriers. Chapter 289 establishes consumer protection requirements associated with the provision of bundled services by incumbent local exchange carriers (ILECs); "safe harbor" financial and pricing procedures that shall be considered reasonable during future ratemaking or universal service proceedings; and terms governing miscellaneous other factors associated with the provision of bundled services.[1]

II. PROCEDURAL HISTORY

In 2005 and 2006, the Joint Standing Committee on Utilities and Energy (Committee) considered L.D. 1675, An Act to Make a Standard Alternative Form of Regulation Available to Rural Telephone Companies. After declining to recommend approval of the bill, the Committee requested that the Commission consider several issues raised by the bill. Specifically, by letter dated January 23, 2006, the Committee Chairs requested that the Commission convene a group of interested persons to review and discuss "the current alternative form of regulation (AFOR) process and its effects on small rural telephone companies." The letter requested that the group consider the existing process for establishing an AFOR and evaluate options for streamlining and simplifying that process for rural telephone companies. In March, 2007, the Commission issued an interim report to the Legislature describing the discussions that had occurred, a schedule for further discussions, and a request to file a final report on or about November 15, 2007.[2]

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[1] Chapter 289 is a routine technical rule as defined in Title 5, chapter 375, subchapter II-A.

[2] These reports may be found on the Commission's web page, www.maine.gov/mpuc, by accessing "Legislative Activities."

As contemplated by the interim report, the Commission staff (Staff), the Office of the Public Advocate (OPA) and the Telephone Association of Maine (TAM) subsequently held monthly meetings to address the issues raised by the Committee in its letter. As the Group[3] began its discussions, it quickly realized that issues associated with bundled services[4] addressed a number of the intersecting concerns of the telephone companies and the regulators. As a result, the monthly meetings focused on how rules or procedures for offering bundles could address the topics that each party considered important to the attaining the Group's goals. Group members held differing perspectives and opinions on the issues, and discovered that a proposed rule provided a useful format for identifying and examining all topics, possible approaches, and areas of agreement and disagreement. Furthermore, by creating a proposed rule, the Group hoped to improve the likelihood that the meetings would result in specific action. Thus, a process that began as an attempt to consider a group of wide-ranging topics led to the development of a more narrowly-focused proposed rule that would apply to bundled service offerings of the small rural telephone companies.[5]

On January 15, 2008, we issued a Notice of Rulemaking to consider Chapter 289, a proposed rule based upon the work of the Group. We held a public hearing on the proposed rule on February 12, 2008 in which OPA, TAM, and Verizon participated. In addition we received written comments from TAM and Verizon Maine (Verizon).

On February 1, 2008, in Docket No. 2007-67, the Commission approved the transfer of property and customer relations of Verizon to FairPoint Communications, Inc. (FairPoint). The transfer became effective on March 31, 2008. On May 29, 2008, FairPoint submitted a filing asserting that it concurs with Verizon's comments in this rulemaking, with the "possible exception" of the draft rule's provisions regarding Lifeline and Link-Up. Throughout this Order, we refer to Verizon's comments with the knowledge that they represent FairPoint's view as well, and we note any circumstance in which FairPoint is not in certain agreement with Verizon.

III. OVERARCHING CONSIDERATIONS

The following sections discuss policy goals and concerns that are relevant to the promulgation of this Chapter. Additional competitive products will likely develop as the

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[3] Throughout this Order we refer to representatives of TAM, the OPA and the Commission Staff as "the Group."

[4] Section IV(B) of this Order discusses the Group's definition of bundled service.

[5] The January 23rd letter to the Commission referred to "small rural telephone companies." Accordingly, the Group focused on the needs of the 22 smaller local carriers (collectively called the Independent Telephone Companies, or ITCs) generally represented by the Telephone Association of Maine, and did not focus on Verizon Maine. After concluding its work, the Group held an informational meeting at which it discussed its conclusions with any person interested in attending. Verizon representatives attended the meeting.

telecommunications market matures, and the principles discussed here may apply to those products as well. Thus, it is our view that approaches and procedures required by this Rule for bundles will form a platform for future relaxed regulation.

A. Bundled Services

In the Notice of Rulemaking, we defined "bundled service" to be a single retail telecommunications service offering that includes local exchange service and at least one additional service, and that is offered at a single price. This type of service has become pervasive throughout the telecommunications industry, and across all types of carriers. Common examples are packages that combine local service with long distance service (intrastate, interstate, or both), internet service, and/or video service, all offered at a single monthly rate. Bundled services are currently offered by landline and wireless providers, by various providers of Voice over Internet Providers (VoIP), and by both incumbent and competitive local exchange carriers.

B. Reason for Relaxed Regulation of Bundles

In recent Commission decisions, it has been necessary for us to decide when to impose identical requirements on competitive local exchange carriers (CLECs)[6] and incumbent local exchange carriers (ILECs), and when to impose differing requirements that acknowledge the differing characteristics of these two types of carriers. As we have stated in a number of our decisions, telephone carriers have different technologies, different market and commercial situations, and likely operate under different customer expectations. With this in mind, we have sometimes declined to impose identical requirements on CLECs and ILECs. Instead, we have treated CLECs and ILECs differently, choosing what we have viewed as the most effective and sensible approach to the goal we were trying to achieve.

If this policy is to be effective and equitable, we must simultaneously examine our rules for circumstances when ILECs and CLECs are treated unnecessarily differently, and avoid or remove those differences. We did that recently when we enacted Chapter 214, the so-called detariffing rule. In that rule, ILECs and CLECs are subject to different requirements regarding basic local service, but are treated identically regarding bundled services. Chapter 289 extends consistent treatment of bundled services to areas other than tariffing requirements, thereby creating consistency among carriers when consistency is reasonable and in the public interest.

In its comments, TAM strongly supports any Commission actions that will remove roadblocks to rural ILECs' ability to respond quickly and flexibly to competitive market threats to its own products. TAM points to cellular and nomadic VoIP providers as competitors operating in rural ILECs' territories, and notes the possibility of fixed

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[6] CLECs are carriers that entered the competitive market for local telephone service more recently than the longer-standing incumbent local exchange carriers.

VoIP service providers in rural territories. TAM is concerned that unless rural ILECs are permitted to actively compete in the market, they will experience a shrinking rate base of customers to cover revenue requirements, resulting in higher prices for the remaining customers. TAM asserts that Chapter 289 is an important step to allowing rural ILECs the certainty and flexibility they need to compete in today's market.

We agree that bundled services offered by CLECs, wireless carriers, and VoIP providers are widely available in the competitive market and appear to offer the strongest competition for ILEC services. Losing customers to a competitor results in lost revenue, which in turn may lead to increased rates for remaining ILEC ratepayers, as fixed costs are spread across fewer customers. To the extent that regulation makes competitive response more difficult for ILECs than for CLECs – by slowing the ILEC's market-response time or by adding costs - this problem is exacerbated. With this in mind, it is our view that regulation should not unnecessarily stand in the way of an ILEC's effort to retain customers. We find that developing procedures that allow ILECs to more expeditiously and profitably offer bundled services provides an effective response to an immediate and an ongoing need of ILECs and their customers. Chapter 289 supports this goal by removing regulatory financial uncertainty for ILECs offering bundled services and by clarifying the consumer protection requirements and programs as they apply to bundled services.

C. Relaxed Regulation Will Not Remove Necessary Protections for Consumers Who Choose Bundled Service From an ILEC

In our view, because of the voluntary nature of bundled service and the pervasive availability of bundles in the market, regulations associated with ILECs' bundles should be similar to regulations that govern competitive providers' services. Consumers do not receive bundled service as a *de facto* "default service," as is often true of stand-alone basic local service. Rather, consumers affirmatively choose bundled service from an ILEC, just as they affirmatively choose service from a CLEC. It has been our practice that consumer protections for competitive products may be "less prescriptive" because consumers may decide for themselves if the price and terms of service are acceptable and if they adequately understand what they are buying. We have already removed through Chapter 2 the requirement that ILECs submit the rates of their bundled services to the Commission for approval. Removing other potential regulatory burdens is a complementary step toward treating ILECs' competitive products similarly to products offered by other competitive carriers. Chapter 289 supports this goal.

D. Appropriate Regulatory Oversight of Carriers of Last Resort

Weighed against our efforts to lessen regulation of competitive products, we must consider that ILECs remain carriers of last resort for many customers in Maine. As such, unlike their competitive counterparts, they retain some ability to obtain revenue relief through higher rates or increased support from the Maine Universal Service Fund (MUSF). ILECs have often asserted to us that they do not wish to obtain relief through

either of these means, as the relief only serves to make their service less competitive. Nonetheless, our statutory obligation to ensure universal service at reasonably comparable rates, as set forth in 35-A M.R.S.A. § 7104, creates the possibility that we must indeed provide rate or MUSF relief for an ILEC that cannot otherwise survive financially.

With this in mind, a rule that offers flexibility must simultaneously protect existing ratepayers from harm that could result if flexibility resulted in negative financial impacts to the carrier as a whole. In particular, the rule must avoid the need for the body of ratepayers to experience a rate increase because an unregulated (or less regulated) segment of a carrier's business is managed poorly. One regulatory approach that is commonly used to avoid such an outcome is to require a utility to conduct unregulated (or less regulated) activities through an unregulated subsidiary. We find that this approach to the ILECs' bundles is not practical in all situations. Rather, Chapter 289 includes price and accounting guidelines that are intended to limit the exposure to risk that other ratepayers experience as a result of flexible regulation of bundles.

Appropriate oversight also must guard against giving ILECs an advantage over more competitive carriers through the ILECs' ability to obtain rate or MUSF relief from the Commission. Thus, the financial guidelines in Chapter 289 also serve to level the playing field with other carriers.

In summary, in considering Chapter 289, we have attempted to find the appropriate balance between the flexibility we seek and the protection that is still needed.

E. Adding Regulatory Certainty

Any regulations that are not clear regarding bundled services pose a barrier to effective offering of those services. In our view, such uncertainty should be resolved now, rather than after impacts are irreversible. Chapter 289 does so in various ways. For example, treatment of revenue allocation is determined before an active rate case is underway in which the topic will affect an ILEC's rates. Similarly, consumer protections are clarified before a consumer lodges a complaint.

F. ILECs with an Alternative Form of Regulation (AFOR)

Because of the legislative mandate to address small rural telephone carriers' needs, the Group intentionally focused on the 22 small rural ILECs in Maine, and not on Verizon. However, in the Notice of Rulemaking, we invited commenters, and particularly any AFOR-governed ILEC, to comment on the impacts that the proposed rule may create simply by virtue of the existence of an ILEC's AFOR.

TAM comments that the Rule should not apply to AFOR-governed ILECs. TAM notes that "the entire purpose of this Rule was designed to address the

Legislature's questions regarding streamlined AFORs for rural ILECs, namely those ILECs other than Verizon." TAM notes that a company with a price-capped AFOR already has the flexibility to offer bundled services successfully, and that the Rule is intended to provide such flexibility to the remaining ILECs that do not now enjoy it. TAM believes that, because the rule was developed for the rural ILECs, extending it to a traditional AFOR company would "only confuse the issues and could result in unintended consequences." TAM advocates retaining consistency between the scope of the legislative directive and the final Rule. When TAM discussed this view during the Public Hearing, its representative commented that there was nothing preventing the Commission from considering the wisdom of extending the terms of the Rule to a company with a price-capped AFOR, but that such a consideration was not appropriate in this rulemaking. In support of applying Chapter 289 only to rural ILECS, TAM notes that AFOR-governed ILECs are already treated differently than rate-of-return ILECs (e.g., an AFOR-governed ILEC has Service Quality Index goals to influence its consumer practices).

It appears to us that TAM's opposition to extending the terms of the Rule to FairPoint stems, understandably, from its strong desire to obtain the benefits that the Rule will provide for rural companies. Indeed, TAM made this fact clear during the Public Hearing. However, while we recognize that the Rule was developed in response to concerns held by rural ILECS, we do not find that fact to be a sufficient reason to confine its terms to those utilities if, indeed, the terms are equally applicable to FairPoint. Applying portions of the Rule to FairPoint will not dilute the rule's benefits to the rural ILECs. Thus, we will apply the Rule to FairPoint when doing so does not conflict with the terms or impacts of FairPoint's AFOR.

Verizon asserts that proposed Chapter 289 does not lessen the regulatory burden associated with offering bundled services, but rather "would frustrate and impair" ILECs' ability to compete in this market with flexibility and speed. Verizon feels that the rule would increase "ILECs' costs, lessen their revenue potential, and limit their marketing flexibility."

We disagree with Verizon's assessment that Chapter 289 would increase the utility's costs and decrease its competitive flexibility. The Rule somewhat lessens consumer protection regulations. It clarifies the hard-of-hearing discount requirement. The price and revenue allocation safe harbors are optional (i.e., they are a safe harbor, not requirements), and thus do not impose new regulatory burdens on the ILEC (indeed, they add regulatory certainty to the ILEC's procedures, as discussed later). However, we recognize that the price and revenue allocation safe harbors in the rule may not be useful to a utility which, like Verizon (now FairPoint) is governed by an AFOR. Thus, as discussed later, we do not apply these sections of Chapter 289 to an AFOR-governed utility. Finally, we acknowledge that the Rule's Lifeline/Link-Up requirements impose a new burden on Verizon, but we find that this provision is the appropriate implementation of the Lifeline/Link-Up programs.

IV. DISCUSSION OF INDIVIDUAL SECTIONS OF THE PROPOSED RULE

The following summary briefly describes the content and goal of each section of the Rule.

A. Section 1 - Purposes

Section 1 describes the purpose of the Rule's terms to an ILEC's offering of bundled service:

- establish minimum consumer protection standards;
- establish financial treatment of revenues;
- establish pricing limiters that will result in predictable regulatory treatment; and
- establish the treatment of miscellaneous consumer programs.

We have added language that reflects changes we have made to the proposed rule. In particular, the revised language states that the Chapter's consumer protection and consumer program requirements apply to all ILECs, while the financial provisions apply only to ILECs not governed by an AFOR.[7]

B. Section 2 - Definitions

Section 2 sets forth definitions used in the Rule. Most are derived from existing Commission rules or practice and are self-explanatory. Of interest is the definition of "bundled service." For the purpose of this Rule, "bundled service" means "a single retail service offering that includes local exchange service and at least one additional service, and that is offered at a single price." As discussed in Section III in this Order, common examples of bundled service subject to the rule would include packages that combine local service with long distance service (intrastate, interstate, or both), internet service, and/or video service. The definition also states that bundled service shall not include a package containing only local service and vertical features (e.g., voicemail, call waiting, and call forward). Also as discussed in Section III, the Rule is intended to apply to the packaged products that experience the most significant competition from other companies. The term "single price" within the definition refers to a single price that encompasses more than one service. The term is not limited to a fixed, per-month price, but also encompasses a price that varies with usage but nonetheless is one price for multiple products at the time it is imposed.

We received no comments on these definitions and they remain unchanged in the final Rule.

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[7] 35-A M.R.S.A. §§ 9101 et. seq. establishes statutory requirements associated with an Alternative Form of Regulation for telephone utilities.

C. Sections 3 through 12 – Consumer Protection Standards

The consumer protection standards set forth in Sections 3 through 12 of the Rule are largely derived from the existing language of Chapter 291, which establishes minimum consumer protection standards that a CLEC[8] must follow when providing local service to its customers. In promulgating Chapter 291 for competitive carriers, we concluded that the level of protection it affords is adequate for consumers who choose to obtain local service from a competitive carrier. Consistent with that view, we find that those protections are adequate for consumers who choose to obtain the optional bundled services offered by an ILEC.

Currently, the local service portion of an ILEC's bundled service must be offered in compliance with the Commission's Chapter 290, which is applicable to all ILECs. Chapter 290 requirements are more stringent than those in Chapter 291 in order to protect those customers who have or believe they have little or no choice for basic local telephone service. Thus, as discussed in Section III of this Order, Chapter 289 removes a potential regulatory burden that currently applies to ILECs and not to their competitive counterparts, for an ILEC service that faces direct competition from other carriers.

Currently, the long distance service in an ILEC's bundled service must be offered in compliance with the Commission's Chapter 292, which sets forth consumer protections required for intrastate interexchange (IXC) service. Many of the requirements in Chapter 292 are identical to those in Chapter 291. IXC service is well-established as a competitive service in Maine, and we have concluded that consumers view it that way. As with Chapter 291, we find that the level of protection Chapter 292 affords is adequate for a competitive service, and that those protections are similarly adequate for consumers who choose to obtain the optional bundled services offered by an ILEC. Unless specifically noted below, we received no comments on each section

1. Section 3 – Emergency Moratorium. Section 3 establishes the ability of the Commission to declare an emergency moratorium on disconnecting a customer from service in the event that disconnection would present a clear danger to the health or safety of customers. The terms are identical to those in Chapters 290, 291, and 292.

2. Section 4 – Non-discrimination. Section 4 establishes the general obligation to provide bundled services in a non-discriminatory manner. The terms are identical to those in Chapters 290, 291, and 292.

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[8] Chapter 291 applies to non-Eligible Telecommunications Providers (non-ETCs). Chapter 290 applies to ETCs. Currently, the ETCs in Maine include all ILECs and two wireless carriers, but no CLECs. Proposed Chapter 289 does not apply to the wireless carriers. Thus, for consistency within this Notice, when discussing Chapters 290 and 291, we continue to use the terms ILEC and CLEC rather than the more accurate terms, ETC and non-ETC.

3. Section 5 – Unfair or Deceptive Practices. Section 5 prohibits unfair or deceptive practices. The terms are identical to those in Chapters 290, 291, and 292.

4. Section 6 - Customer Privacy. Section 6 clarifies that the FCC's Customer Proprietary Network Information (CPNI) must be kept private and confidential pursuant to the FCC's rules. The terms are identical to those in Chapters 290, 291, and 292.

5. Section 7 – Information Disclosure. Section 7 sets forth the information a carrier must provide to a customer before serving the customer with a bundled service, including rights regarding disconnection and the scope of the service the customer will receive. The terms are similar to those in Chapter 291.[9] Chapter 290 contains additional consumer protections appropriate for customers with minimal or no other choice for local service. Thus, Chapter 289 reduces the amount of information that an ILEC must currently provide about the local portion of a bundled service. Chapter 292 contains no comparable protection, because the information addressed in this provision is generally related to local service.

6. Section 8 – Confirmation of Order with Written Terms and Conditions. Section 8 requires companies who sign up customers for bundled services through outbound calling to provide the customer with written confirmation of the order, including a clear description of the terms, rates and conditions of the service. The terms are identical to those in Chapters 290, 291, and 292.

7. Section 9 – Notification of Price Increases and Changes in Terms and Conditions. Section 9 requires ILECs to notify customers 25 days in advance of any price increase or change in terms that would result in a de facto price increase, for bundles subscribed to by the customers. Section 9 also establishes consumer rights associated with announced rate increases and circumstances when an ILEC does not provide adequate notice of a price increase. The terms are identical to those in Chapters 291 and 292.

Chapter 290 does not contain a comparable term. An ILEC customer is not at risk of receiving a rate increase without notice because the ILEC must obtain Commission approval before a basic rate change and the Commission rate proceedings include their own requirements for customer notification.

8. Section 10 – Billing and Payment Standards. Section 10 establishes billing and payment standards to ensure that bills are clear and understandable. Section 10 also governs allowable late payment charges and how the ILEC must respond to billing errors. The terms of the requirement are identical to those

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[9] Section IV(C)(9) of this Notice, below, discusses a deviation from Chapter 291 that occurs in Section 11 of the Rule, and which requires a change to Section 7 to maintain consistency within the proposed rule.

in Chapters 291 and 292. They are identical to some portions of Chapter 290, however, many of Chapter 290's provisions such as bill frequency, advance billing limitations, and payment method guarantees are not included here.

9. Section 11 – Disconnection. Section 11 establishes the procedures by which an ILEC may terminate a customer's bundled service. Chapter 289 retains the informational protections associated with disconnections contained in Chapter 291; in particular, the ILEC must provide prior written notice of an impending disconnection that includes the disconnection date and means of curing the disconnection. However, the Rule deviates from Chapter 291 in one important respect. Under Chapter 291, a CLEC may disconnect the customer from the public switched network. Under the Chapter 289, when an ILEC disconnects a customer's bundled service, the ILEC must transfer the customer to its own basic service without interrupting basic service rather than simply disconnect the customer from the network altogether. Once this move occurs, the customer will receive all protections that are afforded by Chapter 290. In this regard, the Rule imposes a requirement on ILECs that it does not impose on CLECs.

This added consumer protection mirrors the process that an ILEC must currently follow pursuant to Chapters 290 and 292 combined, when it wishes to remove a customer from a local/toll bundled service. Under Chapter 292, the ILEC may discontinue the long distance portion of bundled service without advance warning. However, under Chapter 290, the ILEC must provide the series of procedures to protect the customer from loss of the basic portion of its bundled service.[10] Furthermore, the ILEC cannot disconnect the customer's basic service for non-payment of the long distance portion of the bill. As a practical matter, a customer disconnected from CLEC service would likely apply to the ILEC for service, resulting in a process that is essentially identical to the process required by Chapter 289.

Chapter 289 treats any partial past-due payments a customer has made at the time the ILEC discontinues bundled service in a manner that results in ILECs and CLECs being treated in an identical fashion. Currently, if a customer pays less than the full amount of a bundled service bill and is consequently transferred to stand-alone local service, the ILEC must apply any partial payment toward the customer's local service bill. Under the final Rule, the ILEC is not required to transfer the partial payment to the local service bill. Thus, the ILEC receives payment exactly as it would if it were a CLEC. In this way, the new local-only account for the customer "starts fresh" with no payments already pending, just as it would if the customer had taken a bundled service from a CLEC and then transferred to an ILEC.

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[10] These requirements include offering a payment arrangement, providing reconnection in certain circumstances, and carrying out a series of notification steps meant to fully inform the customer of the impending disconnection and provide plentiful options for avoiding it.

10. Section 12 – Dispute Resolution Procedures. Section 12 establishes the dispute resolution procedures for bundled service offerings. The terms are identical to those in Chapters 291 and 292.

In its comments, Verizon asserts that, because bundles may contain internet or TV services, rules related to "moratoriums, service shut-offs, and billing rules" exceed the Commission's jurisdictional authority. We disagree. Bundled services include local and, possibly, intrastate toll service, over which the Commission does have jurisdiction. Currently, Chapters 290 and 292 apply to jurisdictionally mixed bundled services; Chapter 289 establishes requirements in areas that are no different than those currently in effect through those two rules. The assertion that the Commission does not have jurisdiction over jurisdictionally mixed bundles is inconsistent with the Commission's long-standing practices under which Verizon (now FairPoint) operates today. Thus, we decline to change Chapter 289 based upon Verizon's argument.

While TAM does not explicitly discuss the consumer protection provisions in its comments, its active participation in their development makes clear that TAM supports these provisions. However, as discussed above, while TAM argues that the Rule was developed for the rural ILECs and should apply only to them, at the Public Hearing it did not object to consideration of their application to FairPoint at a future date.

We see no reason why customers receiving bundled packages from FairPoint should be subject to different consumer protection provisions than customers receiving bundled packages from other ILECs. Indeed, we find that it would be inconsistent and confusing to establish two different sets of consumer protections within the State. Thus, Sections 3 through 12 of Chapter 289 will apply to all ILECs.

D. Section 13 – Miscellaneous Consumer Programs

1. Section 13(A) – Lifeline and Link-Up. Section 13(A) clarifies that customers eligible for Lifeline or Link-Up service must be given the programs' discounts when purchasing bundled service. Chapter 294 of the Commission's rules establishes the criteria for, and discounts associated with, ILECs' provisioning of these two programs, which make local telephone service more affordable for low-income customers. At least one ILEC in Maine (i.e., Verizon, now FairPoint) has taken the view that it must offer Lifeline benefits only to customers who receive stand-alone local service. In the Notice of Rulemaking, we asserted our view that Lifeline and Link-Up benefits should be provided for any local service an ILEC offers, including the basic service portion of a bundled package. The cost of a bundle may be considerably less than the combined cost of stand-alone local service and separate long distance service. In this case, removing the incentive to enroll in bundled service would remove some of the benefit that the Lifeline program provides.

In its comments, TAM states that it recognizes that the evolving competitive market has not fully matured in rural areas, and that regulatory safeguards

for Maine's citizens remain necessary. With this in mind, TAM supports making Lifeline and Link-Up available for bundles which include basic service.

Verizon objects to requiring Lifeline or Link-Up for customers receiving bundled service, arguing that FCC rules expressly prohibit the application of Lifeline benefits to bundled services. According to Verizon, the FCC's goal in establishing Lifeline is to preserve universal service, that Lifeline is applicable to only the nine functions enumerated in 47 U.S.C. § 54.101,[11] and that Lifeline "was never intended to subsidize the use of toll and other telecommunications services."

FairPoint has not reached a conclusion on this issue and states that it is "open to consideration of the applicability of the Lifeline/Link-Up programs to bundled services." However, FairPoint states that it requires further analysis on the matter, and must also determine the costs of implementing the provision. FairPoint requests that the Commission defer any decision regarding the application of Lifeline to FairPoint's bundled services until after its "cutover" from the Verizon systems.

We disagree with Verizon's assertion that Section 13(A) conflicts with FCC rules. In an April 2004 Report and Order, the FCC explicitly refused to restrict Lifeline and Link-Up recipients from purchasing non-basic services such as Caller ID Call Waiting, and Three-way Calling. *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking,19 F.C.C.R. 8302, ¶ 51 (April 29, 2004). The FCC agreed with the Joint Board on Universal Service that prohibiting qualified Lifeline customers from purchasing these services would discourage them from taking advantage of the Lifeline program. *Id*. We believe the same reasoning would apply to bundles of service which often includes local service, Caller ID and other vertical services, and long distance service. We see no reason why Lifeline-qualified customers should be discouraged from purchasing the most cost-effective services for their needs just because they include long distance or other services. The Lifeline discount can, and should, be applied to the local service portion of the bundled price. Thus, we do not view Lifeline as subsidizing toll service; we view it as applying to the local service portion of the bundle. We also note that a number of other states, including California, Texas, Utah, Wisconsin, Missouri, Indiana, Oregon, Michigan, Ohio, Kentucky, Vermont, Nebraska, Tennessee, Oklahoma, and South Carolina support the application of the Lifeline discount to bundled packages. Thus, we retain Section 13(A) of the draft rule and its application to all ILECs.

However, we recognize that FairPoint could not implement Section 13(A) before cutover because until then it will operate under Verizon's procedures, which do not provide Lifeline to bundled service customers. Furthermore, we are sympathetic to the many operational issues that FairPoint will deal with immediately after cutover. Thus, we urge FairPoint to request a waiver of Section 13(A) for a fixed, pre-determined period of time, pursuant to the waiver provision of the Rule.

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[11] The nine functions include local usage but do not include toll service.

2. Section 13(B) – Discounted Service for Deaf, Hard-of-Hearing, and Speech-Impaired Persons. Section 13(B) clarifies the operation of the programs required in subsection 7302 of Title 35-A, as they apply to bundled service. This statute requires that a 70% rate reduction be applied to "intrastate toll calls made on lines, or via credit cards assigned to lines, used for making calls from certified deaf, hard-of-hearing or speech-impaired persons who must rely on teletypewriters for residential telephone communications…" (the subsection also authorizes a 70% reduction for other, similar calls). It is not clear how the law is intended to relate to fixed-price bundled services. The goal of the rate reduction program is to compensate the recipients for the fact that their telephone calls last longer because of the teletype translation process, thus causing a "toll call" to be more costly. However, a fixed-price call[12] is not more costly when it is longer; thus, it may never have been intended that a compensatory price reduction apply in this circumstance. As with the Lifeline and Link-Up programs, the Rule removes any question on how the price reduction program should be applied to bundled services by requiring companies to offer the 70% discount to eligible customers only for interexchange service whose price varies with the length of the call.

TAM notes that, at a Board Meeting of the Telecommunications Relay Service Advisory Council, TAM discussed with members of the deaf community the operation of the 70% discount when a bundled service is offered. TAM asserts that the reaction at the Board meeting was that the 70% discount does not serve its intended purpose when telecommunications service is unlimited for a fixed price. We sent the Notice of Rulemaking to the Department of Labor, Bureau of Rehabilitation Services so that it could comment on this term in the rule. Neither the Bureau nor any member of the deaf community commented in the rulemaking.

Having received no comments to change our initial view, Section 15(B) remains unchanged.

E. Section 14 – Bundled Service Price – Safe Harbor

Section 14 establishes a safe harbor for the pricing of bundles. As set forth in Section 14(B), if an ILEC charges a price for a bundled service that falls within the parameters established in this section, that price would be considered just and reasonable for the purposes of ratemaking and establishing the level of Maine Universal Service Fund (MUSF) funding the ILEC receives. The goal of this safe harbor is to remove regulatory uncertainty. Currently, if an ILEC seeks rate or MUSF relief, it cannot be certain how the Commission will view the revenue collected from bundled services. For example, if we concluded that the ILEC charged a price that was unnecessarily low, we might disallow rate relief by the amount we estimated was "lost" through the low rate. Creating a level of certainty before the ILEC establishes its price

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[12] It is unclear whether a fixed-price call is a "toll call" pursuant to the law. At one time, "toll call" and "long distance call" were synonymous terms; they are no longer synonymous.

lowers the risk of disallowed revenue relief for the ILEC, and reduces the time and resources that all participants will expend on protracted discussions during the rate or MUSF proceeding.

Given the difficulty of pre-judging appropriate limits, Chapter 289 establishes that the safe harbor only defines a range which, if observed, will remove disagreement later. The Rule does not preclude an ILEC from charging a price outside the safe harbor. Section 14(B) states that, if a price outside the limiter is charged, the treatment of the revenues received from the bundled service will be determined when the Commission determines the ILEC's revenue requirements or MUSF funding level. At that time, the ILEC will explain its pricing decision and we will judge, based on the situation, how to treat the associated revenues.

Section 14(A)(1) of the proposed rule contained an upper limiter. As we noted in the Notice of Rulemaking, we preliminarily did not support the inclusion of an upper price limiter. Under the proposed rule, the upper safe harbor price of a bundled service would be the sum of the rates for each bundled service component if those components were purchased separately. In theory, this limiter would offer protection to the purchasing consumer by guaranteeing that he or she would pay no more for telecommunications service because of the choice to purchase the bundled package.

In the Notice, we questioned whether the limiter is necessary. We commented that the basis for Chapter 289 is that bundled services are a competitive product that a consumer chooses willingly. If a consumer concludes that the ILEC's bundle is the most cost-effective product at the price it is offered, there is no reason to question that choice. Indeed, a consumer may choose the ILEC's bundle for reasons other than price. Thus, we commented that we preliminarily would not retain this term in the rule.[13]

In its comments, TAM opposes the inclusion of an upper price limit. TAM comments that any customer who wishes to purchase services individually may do so; if the bundle's price is higher than the price of separate purchases, the customer can choose between the advantage of the lower price and convenience or other features characteristic of the bundle. TAM claims that an upper limit (even as a safe harbor only) is counter to the principle of treating the bundle as a competitive product.

Given our initial view, TAM's comments, and the fact that we received no comments in favor of Section 14(A)(1), we have removed it from the final Rule.

Section 14(A)(2) establishes the lower limit of the safe harbor as the ILEC's marginal cost of providing the bundled service. The primary purpose of the lower limit is to protect the body of ILEC ratepayers from revenue loss that would occur

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[13] We recognize that retaining this term would not preclude an ILEC from offering a higher price. However, we do not wish to establish a safe harbor that is not reasonable in our own view.

if the ILEC priced a bundle below its own costs and made up the loss from remaining ratepayers. This danger is one that is appropriate to address through regulation because of the ILECs' ability to obtain revenue regulatory relief. An ILEC certainly has no short-term inducement to price below cost and lose revenues. Furthermore, we suspect that, in practice, the lower limit is as difficult to calculate as the upper limit would be. We expect that ILECs would develop this limiter to the best of their ability and that the result would not be perfectly accurate. Nonetheless, as long as all of ILECs' rates are not disciplined by the market, the lower limit would provide needed protection for other ratepayers.

No commenter objected to this section, and it remains unchanged.

F. Section 15 – Revenue Allocation – Safe Harbor

1. Sections 15(A) and (B) – Safe harbor discount allocation and treatment. Section 15 establishes a Safe Harbor for the allocation of revenue received from bundled services. The goal of this safe harbor and the conditions under which it applies mirror those of Section 14. Section 15(B) states that, if an ILEC allocates the revenues it receives from bundled services in the manner established in this section, the allocation will be considered just and reasonable for the purposes of ratemaking and establishing the level of MUSF funding the ILEC receives. The regulatory uncertainty that would be removed through this provision is significant. Currently, ILECs follow a variety of allocation procedures. No rate proceedings have occurred that serve to establish a Commission decision on the correct procedure. As with the safe harbor associated with price, a safe harbor associated with revenue allocation would create a level of certainty now, while ILECs are carrying out their business, rather than later, when the ILEC and Commission find themselves in a proceeding during which ILEC and Commission time and resources are expended on disagreement over the issue.

The question this section seeks to answer is how to apportion the bundled service "discount" among the various components of the bundle, for accounting purposes. For example, if a bundled service is composed of local, intrastate long distance, interstate long distance, and video service, and the bundle costs 25% less than the four component services would cost if purchased separately, how must the ILEC account for the 25% discount on its books? One approach might be to allocate such that local service receives full allocation and the discount is spread over the other three components. The result would avoid any possibility that regulated local service subsidizes the more competitive products, but it might render the ILEC unable to pay an unregulated carrier of video or internet service the price that the carrier demands, thereby limiting the ILEC's ability to offer such a bundle. Another approach might be to allocate the discount proportionally among the four components; this approach could also result in an ILEC's unable to pay an unregulated carrier of video or internet service the price that the carrier demands, thereby limiting the ILEC's ability to offer the bundle. A third approach might be to allow unlimited allocation flexibility; this would raise the concern that the ILEC (through an affiliate) earns an unusually high profit on an unregulated portion of its bundle at the expense of its less mobile regulated local

service customers, who shoulder the full discount and experience a rate increase to compensate for the lost local revenue. Other situations make an appropriate allocation complex to calculate. An ILEC might purchase portions of the bundled service (e.g., internet or video) from an unregulated and unrelated company whose prices are outside of the ILEC's control, making allocation of a discount meaningless. Furthermore, allocation between interstate and intrastate long distance may be subject to federal requirements for certain purposes and certain components of regulate service (e.g., the Subscriber Line Carrier Circuit charge, or SLCC) may be mandated by regulators.

With these complexities in mind, Section 15(A)(1) establishes a safe harbor, stating that the discount percentage applied to jurisdictional revenues shall not exceed the discount percentage applied to non-jurisdictional revenues.[14] This would allow carriers some level of flexibility to tailor revenue allocation based on actual component costs, profit levels required for business purposes, and federal or state requirements. It guards against the risk that relatively captive customers receiving regulated local service subsidize unregulated competitive services – a protection that we noted earlier in this Order as being one that regulators should continue to consider until the telephone industry is fully competitive.

As is the case in Section 14, if an ILEC allocates the revenues from a bundle in a manner that does not conform to the safe harbor, the Commission would consider during a revenue requirements or MUSF proceeding whether the revenue was allocated properly and would decide on the appropriate treatment of those revenues for ratemaking purposes based on the individual circumstances.

Section 15(A)(2) defines certain calculations and determines how particular revenues shall be treated within the calculations.

TAM strongly supports the development of safe harbor allocation provisions, stating that they are the key to the success of the Rule. TAM notes that swift market response can only occur if an ILEC knows the long-term impact on

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[14] For example, if an ILEC normally offered basic service for $19 per month, call waiting and caller ID for $6 per month, and internet for $40 per month and it created a bundle that includes local service, caller ID, call waiting, and internet all for $50 per month, the revenues allocated to the regulated side of the ILEC's books (local service, call waiting, and caller ID) must have a percentage discount from the regulated equivalent rate ($25) equal to or less than the percentage discount from unregulated side of its books ($40 internet). In this instance, the company could allocate $30 of the $50 revenue to the unregulated side of the books, which would represent a 25% discount on the internet price. The remaining $20 could be allocated to the regulated side of the books, which would represent a 20% discount from the rates a customer would have paid if he or she purchased stand-alone regulated local service, caller ID, and call waiting. Because the percentage discount for the regulated services (20%) does not exceed the percentage discount for the unregulated services (25%), the bundle would be deemed to be within the safe harbor for allocation.

ratepayers and shareholders of a new bundled offering. TAM feels that the presence of certainty will remove a roadblock to rural ILECs' ability to aggressively market new products made necessary by market conditions. TAM states that the terms of the provision are reasonable (with one exception, discussed below) and that the terms of the proposed rule appropriately comply with 35-A MRSA § 713, which addresses the proper allocation to ratepayers of costs attributable to unregulated business ventures.

TAM disagrees with Section 15(A)(2)(b), which requires that, for the purpose of complying with the safe harbor, revenues allocated as jurisdictional shall include intrastate interexchange service offered by the ILEC's affiliate. This requirement stems from the principle that, before market competition developed, ILECs received revenue stemming from intrastate interexchange calls (either from access rates or from explicit tolls) that served to lower the price of local service. These revenues have now transferred to affiliates in some instances. Nevertheless, if they are not considered with local revenues in the allocation procedure, their mitigating effect on local rates and ratepayers will be lost. Put differently, allowing those revenues to be considered "non-jurisdictional" could result in a lower percentage of revenue being allocated to the jurisdictional portion of the bundle, resulting in a need for rate or USF relief that would not occur if the interstate interexchange revenue were allocated as jurisdictional. This position is consistent with the position taken by Commission Staff in the Examiner's Report in Docket No. 2005-155, Investigation into Verizon's Alternative Form of Regulation. We did not reach a decision on this issue because the case settled. Our decision in this rulemaking is confined to the impacts created by this rule, and we do not reach a decision on whether imputing such revenues to an ILEC is appropriate in all situations. Rather, we find only that under the particular circumstances at issue here, the potential negative impact on ratepayers of excluding intrastate toll revenues warrants the ratemaking treatment set forth in Section 15(B).

2. Section 15(C) – Reporting. Section 15(C) requires that ILECs report information that allows the Commission to monitor the effects associated with this Rule and potential problems created by the rule's pricing and revenue allocation terms.. The reporting requirements would put us on notice of any activities that appear to threaten ratepayers or that are otherwise not in the public interest. Under this section ILECs must submit a summary of its offered bundles, how many customers subscribed to each bundle, the ILEC's revenue from each bundle, and whether the bundles are offered and managed within the safe harbors. The provision requires the ILEC to report annually at a time determined by the Commission. No commenter objected to this provision, and it remains unchanged in the final Rule.

G. Section 16 – Application of this Rule

As discussed above in Section IV(C) of this Order, many terms in this rule apply to portions of bundled service that are currently subject to the terms of Chapters 290 and 292 of the Commission's rules. In promulgating Chapter 289, we might inadvertently establish conflicts between the two existing rules and the new Chapter

289. To avoid confusion or misinterpretations, Section 16 clarifies that bundled services are subject to this rule, and not to comparable, conflicting requirements of Chapters 290 or 292. No commenter objected to this section, and it remains unchanged in the final rule.

H. Section 17 - Waiver

Section 16 allows a utility to request a waiver from portions of this Chapter. Consistent with waiver provisions contained in other Commission rules, this provision allows the Commission to grant waivers for good cause, when the waiver is not inconsistent with the purposes of the Chapter or Maine statute.

Accordingly, it is

O R D E R E D

1. That the attached rule, Chapter 289 – Requirements and Terms for Bundled Services Offered by Incumbent Local Exchange Carriers, is hereby adopted;

2. That the Administrative Director shall file the rule and related materials with the Secretary of State; and

3. That the Administrative Director shall notify the following of this Order:

   a. All persons who commented in this rulemaking;

   b. All Telephone Utilities certificated to provide service in Maine; and

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

Dated at Augusta, Maine, this 24th day of June, 2008.

BY ORDER OF THE COMMISSION

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Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Reishus
Vafiades