

MAINE PUBLIC UTILITIES COMMISSION

PLAN TO REFORM TELECOMMUNICATIONS REGULATION

**Presented to the
Joint Standing Committee on
Energy, Utilities and Technology
December 30, 2011¹**

¹ A correction was made to the text on page 53 of this report on January 4, 2012. See footnote 31 on page 53, *infra*. Changes to the pagination of the report occurred as a consequence of the footnote; the Report Outline has been updated to reflect the changes.

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Executive Summary

Introduction

The Maine Public Utilities Commission (the “MPUC” or the “Commission”) presents this Plan to Reform Telecommunications Regulation in Maine (the “Plan”) as directed by the 125th Maine State Legislature in Resolves 2011, Ch. 69 (the “Resolve”). The Commission developed the Plan to conform with the assumptions set forth in the Resolve – that competition in the telecommunications market in Maine exists, continues to grow, and should be encouraged. The Commission also accepted, as legislative fact, the findings articulated in the Resolve: that regulation of retail telecommunications should be minimized to a degree consistent with the public welfare and in a manner that does not increase regulation for any one sector of the industry. The Commission’s Plan outlines a path for significant and broad reform of the relevant statutes and regulations.

The Plan is not the product of an adjudicatory proceeding in which evidence is formally introduced and arguments advanced by interested, adversarial parties. There was no direct testimony, cross-examination, or expert witnesses, although interested persons were invited to offer comments at three “industry sector” meetings held over the course of the summer, and in written comments in August, 2011, and again on November 15, 2011 following the issuance by the Commission of a draft of its Plan.²

Nor was the process a “collaborative” one in which consensus was sought among various industry participants or segments. Instead, the Plan represents the Commission’s response to the mandate of the Resolve, as informed by its independent evaluation of the issues, the material submitted during the course of the Commission’s inquiry, consistent with the factors expressed in the Resolve and the factual premises upon which it is based.

In broad outline, the Plan eliminates virtually all oversight by the Commission of retail services offered by telephone companies except with respect to a narrowly defined Provider of Last Resort (“POLR”) service, designed as the minimum level of service that will permit a customer to engage in voice communication. The current incumbent telephone companies are designated as the initial providers of POLR service, and the Plan provides that such service must be offered at current prices by those carriers unless and until they can show the need for additional support (using a forward looking proxy cost model to be developed by the Commission) or can show that, based on competitive conditions in a particular area, no POLR service is required. Some, but not all, of the consumer protection rules that now apply to telephone service would be applied to POLR service; but, for all other retail services, customers would no longer be able to make use of Commission resources in resolving disputes.

² Section VII contains a discussion of the comments received by the Commission in response to the draft Plan; the entire Docket (2011-224) containing all submissions to the Commission can be viewed on the MPUC’s Virtual Case File at http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb_splashpage.

The State of the Telephone Market in Maine

Historically, telephone providers were monopolies and had exclusive franchises. This created a “regulatory bargain” by which the carrier was required to serve every person in its franchise, and consumers desiring telephone service were obligated to purchase it from the franchisee. Carriers were not permitted to discriminate between customers, and rates were set by the Commission according to traditional cost-of-service (*i.e.*, “revenue requirement”) regulation, the goal of which was to establish low residential prices while at the same time providing an opportunity for the carrier to earn a fair return on its investment.

Telephone rates were heavily cross-subsidized, principally through implicit subsidies embedded in the rate structure. Consumers in urban areas (where the costs of providing service are generally lower) subsidized the rates paid by rural consumers, and long distance service subsidized local exchange service. This was possible, in part, because rates were “averaged,” or made uniform, throughout a carrier’s service territory even though costs are not uniform. This regime advanced the policy of “universal service,” whereby service is available and affordable to all Maine citizens.

Competition has gradually eroded the regulatory bargain, in part because franchises are no longer exclusive. Moreover, competitors have no “obligation to serve” all customers. Instead, competitors self-select the areas that they serve and the products that they offer to maximize profits. Consequently, the traditional monopoly providers, now known as Incumbent Local Exchange Carriers (“ILECs”), are faced with intense competition in the most attractive (low cost / high profit) segments of their territories. The loss of customers to competitors diminished the opportunity for cross subsidization of rates between high cost and low cost areas.

The ILECs’ share of the wireline telephone market in Maine has steadily eroded. FairPoint-NNE³ (previously Verizon), the largest of Maine’s twenty-three ILECs, has seen its share of the wireline local exchange service market fall from approximately 64% in 2004 to 49% in 2010. Over the same period, the market share of cable companies offering voice over internet protocol (“VoIP”) telephone service has increased by a similar amount. Moreover, there has been dramatic growth of the wireless market in Maine such that, today, the number of wireless telephone numbers exceeds the number of wireline telephone numbers. Increasingly, cellular service is seen by consumers as a substitute for, rather than a supplement to, wireline service.

Notwithstanding these competitive alternatives, the average price of basic local exchange service offered by ILECs is lower than the price of the alternatives. There is little direct competition for basic, no-frills service because most competitors (as do the ILECs themselves given the choice) prefer to sell more expensive, bundled packages.

³ The parent company of FairPoint-NNE, FairPoint Communications, Inc., also owns several small ILECs in Maine.

The Existing Regulatory Regime

Telephone service providers (with the exception of wireless carriers) require the authorization of the Commission to provide service in Maine. However, since the opening of the local exchange market to competition, the authorization process no longer requires an assessment of the need for a second provider in a given territory. In fact, authorization is freely given, and in practical effect the certification requirement has become a means of monitoring and conserving telephone numbers in order preserve the viability of a single area code in Maine.

The Commission is authorized to regulate rates for all telephone utilities, to ensure that they are “just and reasonable.” However, in the interest of furthering a competitive market, and in recognition of the fact that the ILECs serve as carriers of last resort throughout the state, the Commission has taken a “hands-off” approach to the regulation of competitive carriers. As a result, Competitive Local Exchange Carriers (“CLECs”) do not file tariffs for Commission approval and they are not subject to service quality standards or investigations, and must comply with only minimal consumer protection rules.

The Commission does regulate the rates of ILECs, but for the most part only with respect to local exchange service. Rates are set either through traditional cost-of-service, “revenue requirement” analysis, or through an alternative form of regulation (“AFOR”) which creates an incentive for a carrier to find (and keep the benefit of) efficiencies in furtherance of maximizing profits. The key component of an AFOR is an established rate-cap for certain services over a fixed period of time. Under both types of regulation, rates are set by examining the utility’s costs of providing service.

In addition to the revenues they earn from ratepayers, Maine’s ILECs receive explicit support (*i.e.*, subsidies) paid through the federal and the Maine Universal Service Funds (“USF”), although FairPoint-NNE is currently not eligible to receive Maine USF support.⁴ The various forms of USF support account for a significant portion of the revenues for many carriers in the state, particularly the smaller rural companies. Moreover, Maine is a net recipient of federal USF dollars. The primary purpose of USF support is to help ensure that rates and the level of service are reasonably comparable between urban and rural areas. Without such support, the rates in some areas of the state would be substantially higher than they are today.

The Commission sets the support levels for the Maine USF, and is also responsible for designating and certifying carriers as eligible telephone carriers (“ETCs”) so that they may draw from the federal USF. The Commission also takes actions

⁴ Chapter 288 of the Commission’s Rules excludes FairPoint from eligibility for Maine USF support because its rates under the existing AFOR provides the benchmark for determining reasonable, affordable and comparable rates for the rural carriers. Under its AFOR, FairPoint bears the risk of both increased costs and declining revenues; thus it would be inconsistent with the AFOR for it to receive support from the Fund to offset cost increases or declines in revenues.

intended to maximize the amount of federal dollars available to Maine carriers. This is especially important now, as the FCC recently restructured the federal USF system to gradually shift its focus towards advancing the availability of broadband services. During this period of significant federal transition, the Commission should retain its authority to take actions necessary to maximize federal USF support, both for voice service and for broadband service.

The Commission also regulates service quality and enforces consumer protection regulations. Existing standards in these areas differentiate between ILECs and CLECs on the general theory that less protection is required in connection with competitive offerings because customers of CLECs are always free to take service from the provider of last resort – the ILEC. Increasingly, the applicability of different service and consumer protection standards has been viewed by the ILECs as a competitive disadvantage.

The Commission also regulates service quality through a service quality index (“SQI”) that may be established in conjunction with approval of an AFOR rate plan. Under an SQI, a carrier whose performance falls below established measures of service is obligated to provide rebates to its customers. The underlying premise of this mechanism is to ensure that a carrier subject to incentive regulation does not achieve efficiencies (and therefore higher profits) at the expense of quality service. Only FairPoint-NNE (and Verizon before it) is subject to an SQI because only FairPoint-NNE (and Verizon before it) requested that the Commission approve an AFOR.

Finally, under the existing regulatory structure, the Commission oversees the wholesale market for telephone service in Maine. This role is established by the provisions of the federal Telecommunications Act of 1996 which are designed to encourage competition in the local exchange markets. The Resolve expressly provides that the Commission’s responsibilities in the wholesale area should not be modified by the Plan.

Regulatory Reform

The Commission’s Plan abandons traditional “rate-of-return” regulation, and also the AFOR concept, for all telephone utilities. Carriers will now succeed or fail based upon their ability to compete in the marketplace.

The one exception to this deregulatory approach involves POLR service. In the Commission’s view, it is essential that a very basic level of telephone service be available to any customer in Maine who wants it, at an affordable price. POLR service, as defined in the Plan, consists of the minimal set of features which are essential for any customer connected to the telecommunications network. The obligation to offer POLR service will initially be assigned to the ILECs because those companies currently own and operate the wireline telephone infrastructure in the state. Collectively, the ILECs have the existing ability to serve every home in Maine. These companies also have experience in offering basic local service on a stand-alone basis. Under the

Commission's Plan, the price of POLR service will be set, initially, at the current rate charged by each of the ILECs for basic local exchange service.

Recognizing that the cost of providing POLR service in many of the rural areas of the state can be quite high and could become uneconomic for some providers in some segments of their service territories, the Commission's Plan permits a POLR service provider to seek additional revenues to cover the costs of POLR service by requesting a rate increase for POLR service. The need for a rate increase will not be evaluated using traditional, embedded cost-of-service principles. Instead, the Commission will develop a forward looking cost-model analysis. In essence, the Commission will determine, for a discrete geographic area of a POLR service provider's territory, the current costs of constructing and maintaining a network necessary to provide all of the services that the POLR service provider offers in that area, using modern technologies. For the "revenue" side of the analysis, the Commission will consider all revenues derived by the POLR service provider in that area from that network. Application of this procedure, on an exchange-by-exchange basis, could result in rate "de-averaging." That is, within some acceptable range, the rates for POLR service may vary according to where a customer lives.

Under the Plan, the Maine USF will provide support for POLR service only. Every designated POLR service provider will be eligible to seek support from the Maine USF. The amount of support, if any, will be determined only after the POLR service provider has increased its rates to a benchmark rate, established by the FCC, to represent a rate that is reasonably comparable to the national average urban rate for local exchange service. Under the Plan, FairPoint-NNE will become eligible to seek Maine USF funding to support its POLR service offering. In addition, contributions to the Maine USF fund will be made by every company providing voice service in the state based on company revenues, regardless of the technology deployed.

Service quality of POLR service will be measured and tracked on a provider-by-provider basis, according to a modest set of metrics established through a public rulemaking. The metrics established through this process will be used to calculate customer rebates for substandard service to be paid by the POLR service provider. Consumer protections presently enforced by the Commission will apply only to POLR service offerings and not to any other services or packages offered by POLR service providers.

The Plan provides two mechanisms by which a POLR service provider may seek relief from its POLR service obligation. First, the POLR service provider can seek to demonstrate that the public interest no longer requires that POLR service be available in a particular area. The burden of making such a showing will be high and not easily met. Second, the POLR service provider can seek to relinquish its designation as a POLR service provider in favor of another company. The Commission would agree to designate another carrier as the POLR service provider only if it found that the alternative provider is capable of providing POLR service throughout the entirety of the particular area at a reasonable price.

For retail communications services other than POLR service, the Plan eliminates most of the existing regulatory obligations established in statute and the Commission's rules. The Commission will no longer regulate the prices or practices or service quality of any carrier that is not designated as a POLR service provider, or of any non-POLR service offered by the POLR service provider. The Commission's plan thus limits the majority of its telecommunications rules to POLR service only, and eliminates many rules altogether.

Other Aspects of the Commission's Regulatory Reform Plan

The Resolve does not address issues related to the regulation of broadband. However, increased availability of broadband service, and the speed at which that service is provided to consumers, is undeniably an important factor in the future economic development of Maine. Indeed, 35-A M.R.S.A. § 7101 – the legislative statement of Maine's telecommunications policy – states that "it is the goal of the State that all Maine's businesses and citizens should have affordable access to an integrated telecommunication infrastructure capable of providing voice, data and image-based services." The Commission agrees that the availability and use of broadband services is important to Maine's economic development. The Legislature has not, however, delegated to the Commission statutory authority to regulate entry of companies into the market for broadband services or the price at which such services are offered. In light of issues of federal preemption, it is uncertain whether the Legislature could give such authority to the Commission. In any case, it is not clear to the Commission that the method used to ensure basic service ubiquity – *i.e.*, monopoly regulation coupled with an obligation to serve and subsidies for low income customers and for high cost areas – would be an efficient or effective model for broadband, where rapid technological change and vigorous competition are the rule rather than the exception. Although the Commission is not recommending the establishment of economic regulation of broadband, it nonetheless encourages the Legislature to consider other tools to the extent that it believes that market forces alone will not provide sufficient deployment of broadband throughout the state.

On October 27, 2011 the FCC adopted significant changes (to be phased in over time) to the \$9.0 billion federal USF program to shift its focus away from support for universal voice service and towards support for universal broadband service.⁵ At the same time, the FCC modified the system by which carriers compensate one another for terminating voice traffic ("intercarrier compensation"). These changes will have dramatic effects on the telephone industry in Maine, as in the rest of the country. In addition, the FCC plan maintains a state role in administering the federal USF program. In light of these changes, and the many unforeseen impacts they may have for Maine carriers, the Commission's Plan expressly authorizes it continue all activities necessary

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011).

to maximize the flow of federal support to companies providing both voice service and also broadband service in Maine.

The Plan also preserves the Commission's authority to enforce FairPoint-NNE's broadband build-out commitments and SQI rebates that were incorporated into the Commission's Order approving FairPoint's purchase of Verizon's network in Maine.

In addition, the Commission's Plan would change the requirements for voice service providers ("VSPs") to obtain a certificate of public convenience and necessity ("CPCN") before offering service in Maine; under the Plan, VSPs will be granted authority to provide service in Maine upon registering with the Commission. Application of this registration process to all VSPs is intended to ensure that all such entities are aware of, and fulfill, their obligations with regard to number conservation, to remit regulatory assessments to the Commission, and to contribute to the Maine USF, Maine Telecommunications Education Access Fund, 911 funding, and ConnectME. As authorization is essentially automatic upon fulfillment of the minimal registration requirements, the Commission does not consider it a barrier to entry for any Voice Service Provider. Further, the Plan eliminates the bonding requirement for CLECs as it is largely unnecessary to protect the public and in some instances may serve as a barrier to market entry and, therefore, competition. The Plan also authorizes the Commission to obtain necessary information from all telecommunications and broadband providers so that its annual report can contain useful data.

In sum, the Commission's Plan is a comprehensive reshaping of how telecommunications are regulated in Maine. Under the Plan, regulation will be targeted as opposed to broadly applicable, and minimalist as opposed to overreaching, while continuing to provide necessary protections to Maine consumers for POLR service.

List of Acronyms

AFOR:	Alternative Form of Regulation
CAD:	Consumer Assistance Division
CAF:	Connect America Fund
CDC:	Centers for Disease Control
C.F.R.:	Code of Federal Regulations
CLEC:	Competitive Local Exchange Carrier
COLR:	Carrier of Last Resort
CPCN:	Certificate of Public Convenience and Necessity
DEM:	Dial Equipment Minute
E911:	Enhanced 911
ESCB:	Emergency Services Communications Bureau
ETC:	Eligible Telecommunications Carrier
FCC:	Federal Communications Commission
ILEC:	Incumbent Local Exchange Carrier
IP:	Internet Protocol
ITC:	Independent Telephone Company
IXC:	Interexchange Carrier
LEC:	Local Exchange Carrier
MCAA:	Maine Community Action Association
MPUC:	Maine Public Utilities Commission
M.R.S.A.:	Maine Revised Statutes Annotated
MTEAF:	Maine Telecommunications Education Access Fund
NANPA:	North American Numbering Plan Administrator
NECA:	National Exchange Carriers Association
PAP:	Performance Assurance Plan
POLR:	Provider of Last Resort
POTS:	Plain Old Telephone Service
PRM:	POLR Service Reliability Metrics
PSAP:	Public Service Answering Point
RBOC:	Regional Bell Operating Company
SQI:	Service Quality Index
SQP:	Service Quality Plan
TAM:	The Telephone Association of Maine
TelAct:	Telecommunications Act of 1996
TELRIC:	Total Element Long-Run Incremental Cost
UNE:	Unbundled Network Element
U.S.C.:	United States Code
USF:	Universal Service Fund
VoIP:	Voice over Internet Protocol
VSP:	Voice Service Provider

I. Introduction

The 125th Maine State Legislature, in its First Regular Session, enacted a Resolve to Direct the Public Utilities Commission to Develop a Plan to Reform Telecommunications Regulation (the “Plan”). Resolves 2011, Ch. 69 (the “Resolve”). The Resolve requires the Maine Public Utilities Commission (the “MPUC” or the “Commission”) to develop a comprehensive plan to reform the way telecommunications is regulated in the State of Maine. The Plan must ensure that (1) the burdens of regulation be the minimum necessary to protect the public welfare; (2) to the greatest extent possible, the burdens of regulation fall equally on all providers of telecommunications service; and (3) the result of regulatory reform not result in any provider of telecommunications services being subject to a net increase in its existing regulatory burden.⁶

In developing the Plan, the Legislature directed the Commission to consider, at a minimum (1) the extent of existing and anticipated competition in the telecommunications industry; (2) the characteristics of Provider of Last Resort (“POLR”) service and any associated obligations or support mechanisms and whether or not POLR service should be subject to cost-of-service regulation; (3) the extent to which telecommunications providers should be allowed to “opt-in” or “opt-out” of regulation; (4) any potential implications of federal support mechanisms and federal preemption; (5) the need for robust telecommunications infrastructure in Maine; and (6) the status of Eligible Telecommunications Carriers (“ETCs”). The Legislature further directed the Commission to seek input from all parties who may be interested in the reform of telecommunications regulation in Maine. Additionally, as a part of the plan the Commission must include any draft legislation and describe changes to Commission Rules that will be necessary to implement the plan.

The Resolve, and the Legislature’s directives with regard to formulating the plan, rely on a number of assumptions. First and foremost is the assumption that significant, robust, and ubiquitous competition exists with regard to the market for telecommunications services in Maine. This assumption is embodied in the first operative paragraph of the Resolve where it states that “[a] plan for regulatory reform is needed because of the competition that exists in the telecommunications industry, which continues to grow and which the Legislature seeks to promote.” Resolve, § 1(1)(A). The assumption is also implicit throughout the Resolve in the Legislature’s requirements for the plan.

The second basic assumption in the Resolve is that because of the inherently competitive nature of telecommunications today, the existing regulatory regime must be reformed. The third basic assumption in the Resolve is that a basic level of telecommunications service (*i.e.*, POLR service) is important to the citizens of Maine and must be provided.

⁶ The Commission’s Plan will not address, and may not affect, any wholesale obligations telecommunications providers may have under either state or federal law.

Additionally, the Legislature through the Resolve has indicated that there are certain overarching policy considerations that the Commission should take into account in developing the plan. Among those considerations is the idea that competition in telecommunications is important, valuable, and needs to be nurtured and promoted. Hand-in-hand with the idea that competition is to be encouraged is the notion that the regulatory obligations of participants in the telecommunications market should be minimized to the greatest extent practicable consistent with the need to protect the public welfare and to encourage continued competition.

The Commission has taken the three basic assumptions set forth in the Resolve as legislative fact and has not, therefore, undertaken a comprehensive analysis of the exact extent of competition in various regions of the state. Consequently, it is with the Legislature's assumptions in mind, and the various guiding considerations set forth in the Resolve, that the Commission has formulated its Plan.

II. The Current State of the Telephone Industry in Maine

A. Historical Economics of the Telephone Industry

Historically, the rates charged for telephone service in Maine were substantially cross-subsidized. Rates in urban areas subsidized rates in rural areas. Business rates subsidized residential rates. Long distance rates between large cities subsidized long distance rates between small towns. In addition, the joint and common costs of equipment used to provide a variety of services were allocated among services so that sales of discretionary services, such as long distance, calling features, and even telephones (when telephone equipment was a phone company monopoly) subsidized basic telephone rates. Due to these subsidies, the rates for basic local exchange service in any given geographic location have never been tied to the actual, location-specific cost of providing basic local exchange service in that location.

These largely implicit subsidies were intended to keep basic local service rates low so that as many people as possible could afford to connect to the telephone network. The Commission was able to advance this policy of universal service through its authority to determine, in a rate case, the "revenue requirement" for each carrier. The revenue requirement was based on the company's total investments needed to provide all its services, its depreciation expenses and its return (*i.e.*, profit). Even though the total revenues from all services covered total company costs, the price for each particular service did not necessarily have a connection with either the economic or accounting cost of providing that service. Since the majority of costs for telephone service are "joint and common" among many services, the allocation of those costs to any given service depended as much on political and social welfare concerns as on economic principles. In part through the allocation of these costs, rates for urban exchange service, long distance service and access charges were set at levels often far above their direct costs. The current amount of these implicit subsidies is very large; without them, the rates for local service in some rural areas of the state could exceed

\$100 per month. In some rural areas, local revenues account for less than 20% of a company's revenue requirement. Moreover, the Maine Universal Service Fund ("Maine USF") provides explicit support to high-cost telephone companies against the backdrop of existing implicit subsidies. Consequently, to the extent that implicit subsidies are removed, the amount of explicit Maine USF support necessary to maintain existing rates could increase.

In Maine, as in most states, the Commission has historically set rural exchange rates at either the same level or, pursuant to a public policy of "value of service pricing," at levels lower than the local rates charged in urban areas. Likewise, intrastate long distance rates for calls between rural towns of a particular distance apart were set at the same level as the rates charged for intrastate long distance calls between larger cities separated by a similar distance, even though the cost of providing that service was greater for the rural routes. This practice is known as rate averaging, and it is, at present, a basic policy used by the Commission when it establishes intrastate rates.

B. The Monopoly "Regulatory Bargain" and its Gradual Erosion

Prior to introduction of competition in the telecommunications industry, there existed a so-called "regulatory bargain." Pursuant to this bargain, the State granted to the telephone carriers a monopoly franchise in a particular service territory. In exchange for this exclusive franchise, the carriers were expected to provide service to all customers residing in the territory. Today, these carriers are known as Incumbent Local Exchange Carriers ("ILECs"). For its part, the State, through the Commission, set rates at levels which would allow the ILEC an opportunity (but not a guarantee) to receive revenues that would cover all of its prudently incurred costs and also to earn a reasonable return on its investment in plant and equipment. Schedules of rates for various services were filed with the Commission as tariffs. Any customer within the ILEC's territory could purchase service pursuant to the terms, conditions, and rates set forth in the tariff. As noted above, the rate schedules were designed not only to cover the ILEC's revenue requirement, but also to advance policies such as rate averaging and implicit subsidization.

The introduction of competition, first in the long distance market and then in the local exchange market, has gradually eroded the underpinnings of the historical "regulatory bargain." The exclusivity of the "monopoly" franchises has been eliminated. Competitors, particularly those with considerable network facilities of their own, are able to select precisely where they will provide service. Such competitors generally favor lower-cost, more densely populated areas and are able to set their rates accordingly. The lower-cost areas for a competitor tend also to be the lower-cost areas for the ILEC. Through aggressive pricing, made possible in part by the fact that competitors are not obligated to serve in high-cost areas, competitors take customers from the ILEC whose rate structure is based on rate averaging principles. This phenomenon is commonly known as "cream skimming" or "cherry picking." As the ILEC loses its most "profitable" lines to competitors, the opportunity for cross-subsidization and rate averaging by the

ILEC diminishes. This situation began in Maine about ten years ago and is at least partly responsible for Maine's largest ILEC – Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE (“FairPoint-NNE”) – losing a substantial number of customers (over half in urban areas) to competitors.⁷

C. Description of the Telephone Industry in Maine

Regulated landline telephone service consists of the following services: local exchange service, intrastate interexchange (or “in-state” long distance) service, and interstate interexchange (“out of state” long distance) service. The Commission regulates local and in-state service and the Federal Communications Commission (“FCC”) regulates interstate service. Wireless mobile carriers are regulated by the FCC.

The Commission regulates three types of landline carriers: ILECs, Interexchange Carriers (“IXCs”) that provide in-state or interstate long distance services, and Competitive Local Exchange Carriers (“CLECs”) that provide local service in competition with ILECs and other CLECs. The Commission's regulation of CLECs and IXCs is more relaxed than its regulation of ILECs because market forces tend to discipline the prices charged by CLECs and IXCs.

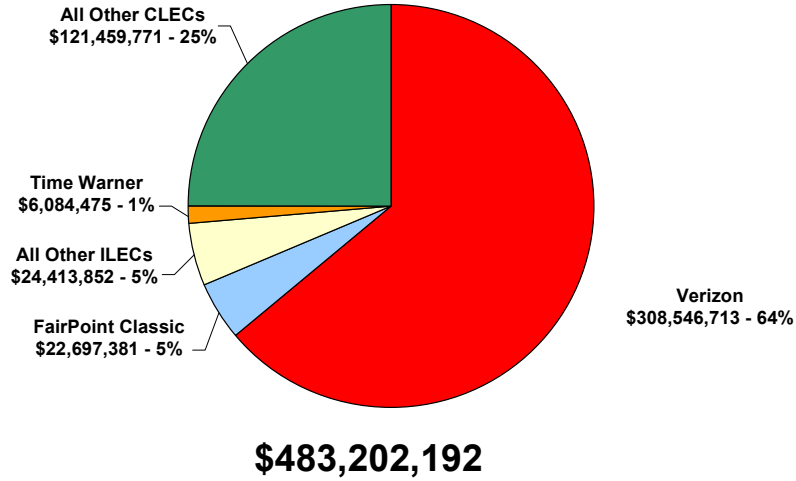
Traditionally, regulated ILECs have dominated the markets in their service territories. However, within a short period of time Maine's telecommunications industry has followed national trends and experienced substantial and transformational change. Cable television providers such as Time Warner Cable and Comcast now offer telephone service using fixed voice over internet protocol (“VoIP”) technology to their customers in most of their franchise territories. CLECs also offer voice and broadband services, and sophisticated information services to business customers. As phone and cable companies work to improve the quality of their broadband services, customers can now seek out a nomadic (or “over-the-top”) VoIP provider to receive phone service over the internet. This option, for those with broadband, allows a customer to bypass traditional phone providers and cable providers offering phone service through their networks. Finally, many customers receive voice and data services through mobile wireless devices.

Recent revenue reports from ILECs and CLECs suggest that consumers are migrating from traditional wireline service to other voice services. Specifically, the

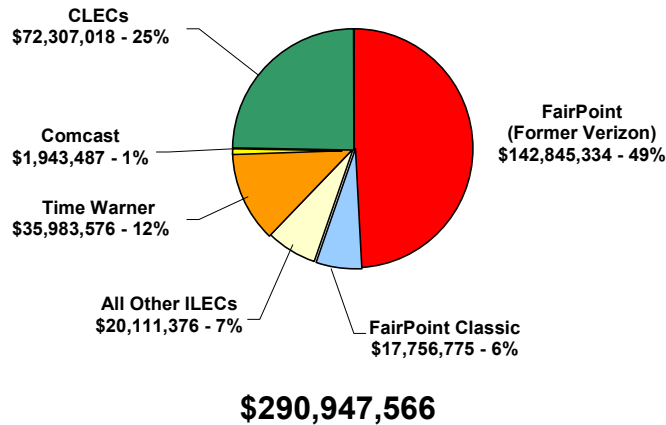
⁷ As part of the federal Telecommunications Act enacted in 1996, Congress adopted the so-called “rural exemption” which partially protects rural carriers from some competition and, therefore, allows a portion of the “regulatory bargain” to continue to exist. Five rural carriers in Maine have asserted this exemption with respect to requests made for interconnection meant to facilitate entry by Time Warner Cable into the local exchange market in a portion of these rural carriers' service territories. Resolution of these rural exemption issues has been, and continues to be, the subject of litigation before the Commission. However, the rural exemption has no insulating effect from competition by wireless providers. As a result, even those carriers which have thus far successfully asserted the rural exemption are experiencing an erosion of the regulatory bargain and cannot be expected to continue to provide ubiquitous service at average rates through a policy of implicit subsidy.

overall size (in dollars) of the market for retail wireline service is diminishing. Also, the cable VoIP providers' share of that diminishing market is increasing while FairPoint-NNE's share is decreasing by a like amount. The following pie charts delineate this trend beginning in 2004 and ending with the most recent report in 2010.⁸

2004 Intrastate Retail Telephone Revenues



2010 Intrastate Retail Telephone Revenue And Percentage of Revenue by Carrier



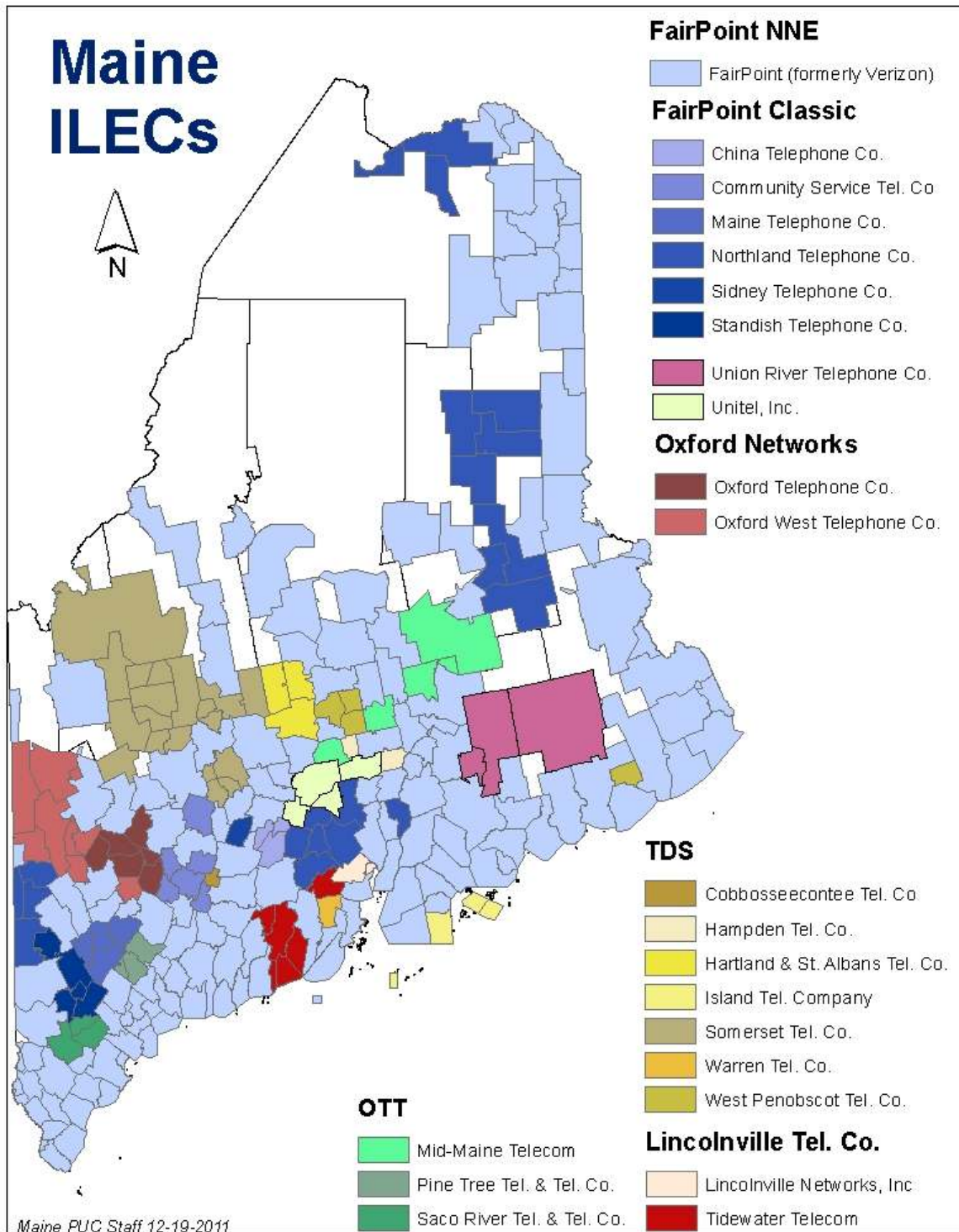
⁸ FairPoint-NNE operates the former Verizon network in Maine; the FairPoint Classic companies were owned by FairPoint Communications prior to the FairPoint/Verizon merger. FairPoint Classic includes China Telephone, Northland Telephone Co., Community Service Telephone Co., Sidney Telephone Co., Maine Telephone Co., and Standish Telephone Co

1. ILECs

There are twenty-three ILECs providing voice telephone service in Maine. The largest is FairPoint-NNE, which operates the network previously owned by Verizon Communications. The following table organizes the ILECs into ownership groups. UniTel and Union River are the only two ILECs that are independently owned (*i.e.*, not a part of a larger communications holding company such as FairPoint or TDS). The table also provides a profile of the number of access lines subscribed to by customers of each ILEC from 2008 through 2009.⁹

ILEC Group	ILEC Name	2008 Access Lines	2009 Access Lines	2010 Access Lines	Percent Change 2008-2009	Percent Change 2009-2010
FairPoint	China Telephone	2,700	2,265	2,032	-16%	-10%
	Northland Telephone	20,764	18,295	17,381	-12%	-5%
	Community Service Telephone	9,280	8,156	7,306	-12%	-10%
	Sidney Telephone	1,254	1,060	933	-15%	-12%
	Maine Telephone	8,163	6,870	5,928	-16%	-14%
	Standish Telephone	5,753	4,677	4,093	-19%	-12%
	FairPoint-NNE	411,345	378,969	340,333	-8%	-10%
Unitel	UniTel	4,386	4,282	4,001	-2%	-7%
Union River	Union River Telephone.	1,260	1,224	1,190	-3%	-3%
TDS	Cobbosseecontee Tel. & Tel.	645	554	501	-14%	-10%
	Hampden Telephone	2,857	2,581	2,439	-10%	-6%
	Hartland & St. Albans Telephone	3,659	3,350	3,104	-8%	-7%
	Island Telephone	620	600	591	-3%	-2%
	Somerset Telephone	10,509	9,634	9,200	-9%	-5%
	Warren Telephone	1,528	1,347	1,250	-12%	-7%
	West Penobscot Telephone	2,207	2,056	1,963	-7%	-5%
Lincolntonville Telephone	Lincolntonville Networks	1,794	1,749	1,689	-3%	-3%
	Tidewater Telecom	10,261	9,762	9,378	-5%	-4%
OTT Communications	Mid-Maine Communications	5,228	4,699	4,228	-10%	-10%
	Pine Tree Tel & Tel.	5,373	4,820	4,202	-10%	-13%
	Saco River Tel. & Tel.	7,079	6,202	5,444	-12%	-12%
Oxford Networks	Oxford West Telephone.	6,373	6,011	5,709	-6%	-5%
	Oxford Telephone.	5,595	5,277	5,032	-6%	-5%
Total Retail Access Lines		528,693	484,440	437,927	-8%	-10%

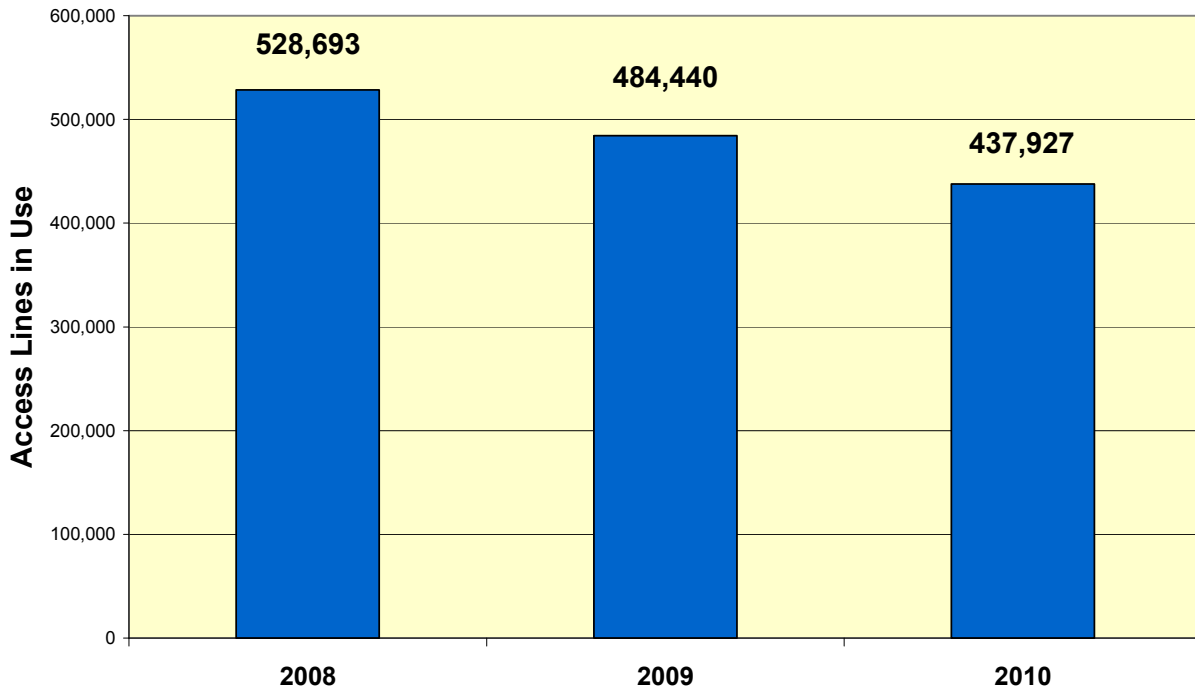
⁹ Data retrieved from Annual Reports by carriers to the Commission from 2008 to 2010 (Retail Access Lines includes ILEC lines resold by other companies).



i. ILEC Share of the Market for Telephone Service is Declining

Over the last several years, overall subscribership to traditional wireline telephone service has diminished.

Retail Access Lines



Source: 2008, 2009, 2010 Annual Reports from Carriers to Maine PUC

ii. ILEC Phone Rates

Under state and federal law, ILECs must provide voice service to all customers within their respective service territories. The cost to an ILEC of providing phone service varies. For example, while the cost of providing service to customers in urban areas may be relatively small, the cost of provisioning or maintaining service to rural areas can be high.

Under traditional cost-of-service regulation, the Commission sets the rates for phone service. The Commission-established rates for every service offering of an ILEC are set forth in a tariff that is filed by the ILEC with the Commission. The purpose of a tariff is to establish a publicly available document setting forth the price that may be offered for each service and, consequently, the price at which any individual customer is entitled to receive that service from the utility. A tariff also contains the “terms and conditions” on which such service may be offered. In effect, a tariff establishes a standard contract between the utility and its customers without the need for the negotiation of individual contracts for specific services.

The following chart shows the lowest-priced “basic” service rates of ILECs, cable companies, and wireless companies in Maine, and also the lowest priced unbundled broadband plans.¹⁰

Company	Type of Carrier	Lowest Priced Basic Service	Broadband Rate (unbundled)
FairPoint Classic ¹¹	ILEC ¹²	\$17.58	N/A
FairPoint-NNE	ILEC	\$14.69	\$20.99 and up
UniTel Co.	ILEC	\$17.58	\$44.95
Union River Telephone Co.	ILEC	\$17.58	\$44.95 and up
TDS ¹³	ILEC	\$17.58	\$34.95 and up
Lincolnvilleville Telephone Co. ¹⁴	ILEC	\$17.79	\$37.95 and up
OTT ¹⁵	ILEC	\$14.35	N/A
Oxford Networks ¹⁶	ILEC	\$11.85	\$37.95
Comcast Cable	Cable ¹⁷	\$24.95	49.95
Time Warner Cable	Cable	\$39.95	54.99
Polaris Cable	Cable	\$44.95	N/A
MetroCast	Cable	\$44.95	\$36 - \$73
Bee Line Cable	Cable	\$39.95	\$30 - \$63
AT&T	Mobile ¹⁸	\$39.99	N/A
T-Mobile	Mobile	\$39.99	N/A
Verizon	Mobile	\$39.99	N/A
Sprint	Mobile	\$29.99	N/A
U.S. Cellular	Mobile	\$29.99	N/A
TracFone	Mobile	\$20.00	N/A

¹⁰ The characteristics of services are not necessarily comparable. For instance, wireless rates include long distance calling and where ILEC basic service does not. Also, the figures presented in the chart do not include the Subscriber Line Charge, a federal rate charge that exceeds \$6.00 / month.

¹¹ FairPoint Classic includes China Tel. Co., Northland Tel. Co., Community Service Tel. Co., Sidney Tel. Co., Maine Tel. Co., and Standish Tel. Co.

¹² Some rates may vary between individual exchanges.

¹³ TDS includes Cobbosseecontee Tel. & Tel. Co., Hampden Tel. Co., Hartland & St. Albans Tel. Co., Island Tel. Co., Somerset Tel. Co., Warren Tel. Co., and West Penobscot Tel. Co.

¹⁴ Lincolnvilleville includes the companies of Lincolnvilleville Networks and Tidewater Telecom.

¹⁵ OTT includes Saco River Tel. & Tel. Co., Pine Tree Tel & Tel Co., and Mid-Maine Communications.

¹⁶ Oxford Networks includes Oxford Tel. Co. and Oxford West Tel. Co.

¹⁷ Lowest Priced Basic Service includes unlimited local and long distance calling plans from Time Warner, Polaris, Metrocast, and Bee Line Cable, and Comcast’s unlimited local calling plan.

¹⁸ Basic plans from mobile carriers are minute-based, as follows: AT&T (450 minutes); T-Mobile (500); Verizon (450); Sprint (200); U.S. Cellular (200); TracFone (100).

iii. ILEC Take Rates of Voice Services

ILECs offer their services throughout their service territories, and have fully built out their networks. Consequently, every resident in the state can purchase telephone service from an ILEC. Although many ILECs do not keep track of the percentage of customers living in their service areas who purchase service from them (a percentage commonly known as a “take rate”), information received from those ILECs that do track such data suggests take rates between eighty and one-hundred percent for most rural areas. In more urban areas, or areas closer to urban centers, the available data suggest a take rate of approximately fifty-five to seventy-five percent.

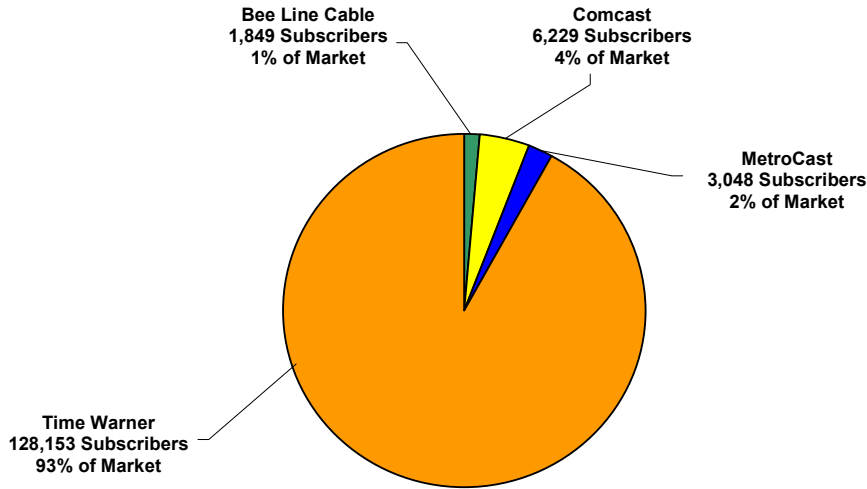
2. CLECs

ILECs offer telephone service to all households in Maine; however, in many parts of the state consumers have choices if they desire an alternative. Currently, there are seventy-two CLECs in Maine. As most of these CLECs focus on competing with the ILECs for business customers, the number of CLEC options available to residential consumers is more limited. Although CLECs must obtain authority to provide service from the Commission, they are subject to less Commission oversight than the ILECs. CLECs are not required to offer service to all residents in a given exchange, and they are not required to offer basic local phone service at all. To the extent that a CLEC purchases services from ILECs at wholesale rates, the CLEC may seek enforcement of the legally mandated obligation of ILECs to make their facilities available to competitors. Further, the Commission frequently resolves wholesale billing disputes between ILECs and CLECs.

3. Cable VoIP Telephone Providers

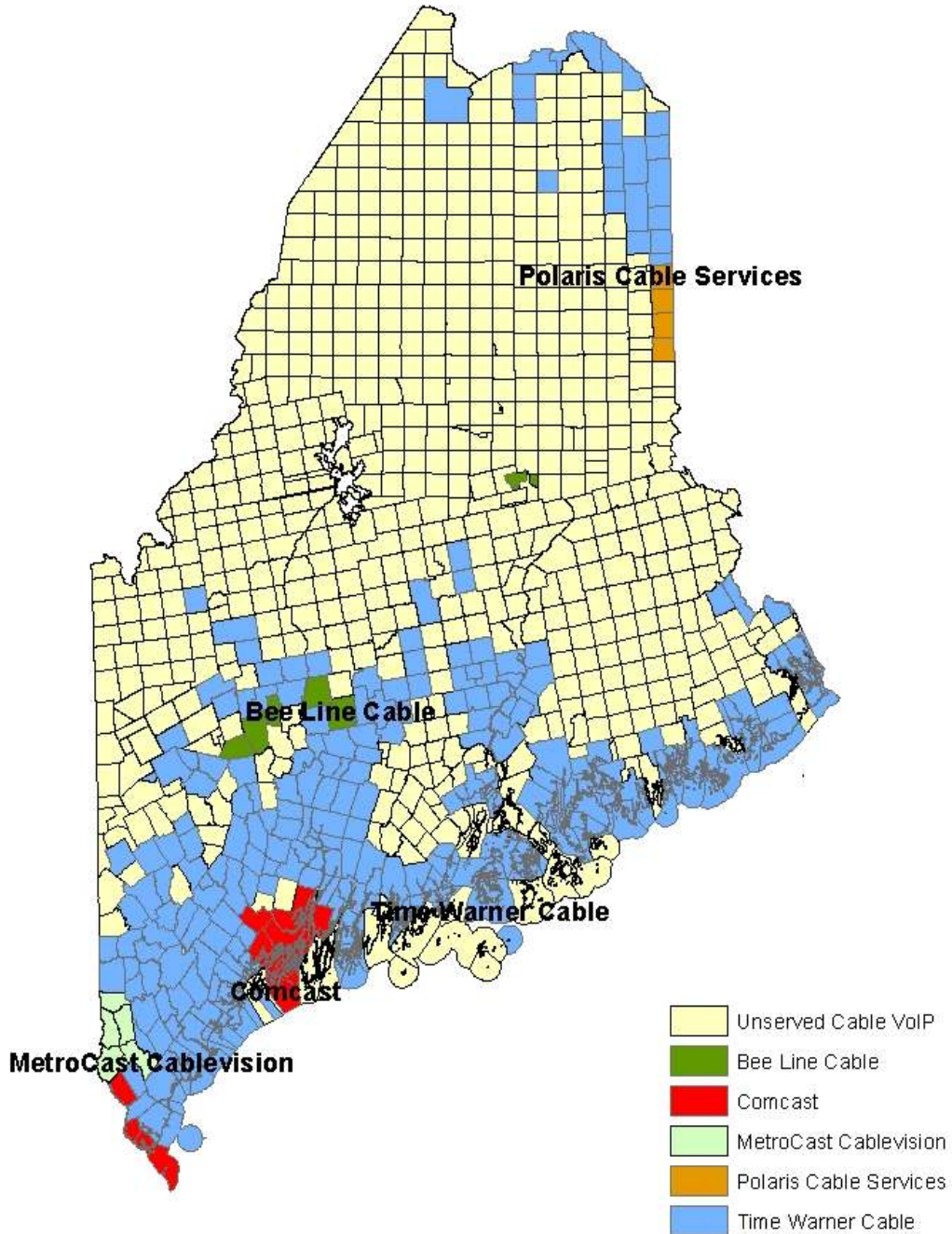
Five cable television companies provide retail telephone service using VoIP technology to residential and business customers in Maine. While the Commission has limited regulatory authority over these companies, they do provide the Commission with an annual report of their retail revenues from the phone service portion of their business each year. The report also includes the number of customers for each carrier broken down by service by zip code or town. As of December 31, 2010, a total of 139,279 customers purchase VoIP voice services from Time Warner Cable, Comcast, Bee Line Cable, and MetroCast Cablevision. Data is not available for Polaris Cable, which operates in Northern Maine.

Cable VoIP Subscribers by Major Provider 139,279 Total Cable VoIP Customers (2010 Annual Report Data)



The service territories of the cable companies are established through negotiated franchise agreements between the companies and municipalities – a process over which the Commission does not have jurisdiction. Many of those franchise agreements were first negotiated prior to the adoption by the cable companies of the technology through which they now provide voice services. The extent of a cable company’s obligation to build out its facilities is commonly established by the negotiated franchise agreement and, generally, cable companies have not built out their facilities throughout the entirety of their franchised territories. Moreover, in some instances a cable company offers cable television and broadband service, but not voice service, in particular sections of its territory. The following map provides an overview of the franchise territories, by zip code, of Maine’s cable VoIP providers. Again, cable service is not available ubiquitously throughout the territories displayed in the map.

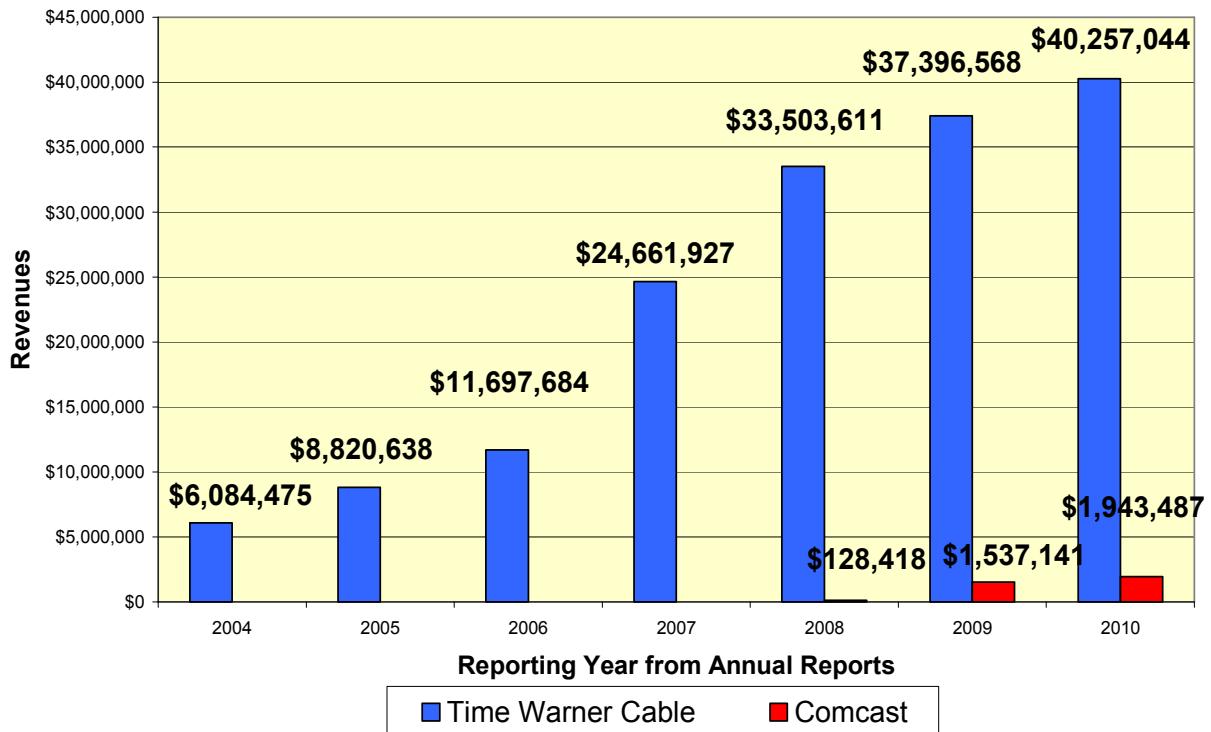
VoIP Phone Service Offered by Cable Provider



Updated December 8, 2011 (PUC Staff)

As the map and pie chart indicate, Time Warner possesses the largest, most densely populated cable service territory in Maine, and is the overwhelming market leader for cable VoIP service. The chart below details the overall growth of the phone revenues of Time Warner and Comcast since 2004.

Residential Retail Revenues for Time Warner Cable and Comcast



Cable VoIP providers employ technology which is somewhat different than that used by traditional ILECs or CLECs, even though both technologies depend on a wired connection to the customer’s premises. ILECs generally provision phone service over copper wires and the electronic signals carrying the voice communications are routed through switches. This service, commonly known as plain old telephone service (“POTS”), has been the basic model for traditional landline phone service for the past hundred years – although modern technology has improved the efficiency of this service. Phone service provided by a cable company is also carried over wires in the form of coaxial cable, but the data containing the voice communications are contained in packets conforming to internet protocol (“IP”) and are routed over the company’s proprietary network, without the use of traditional switches. Consequently, in order to receive telephone service from a cable company, a customer must also have a broadband connection supplied by that same company. Although some cable companies offer a voice-only plan, such service is also dependent on a broadband connection, although a customer choosing such a plan is not able to use that connection to access the internet. As of September 2011, cable providers offer stand

alone voice service at between \$40 and \$45, with several offering promotional plans, with contractual terms, starting at around \$29.95.

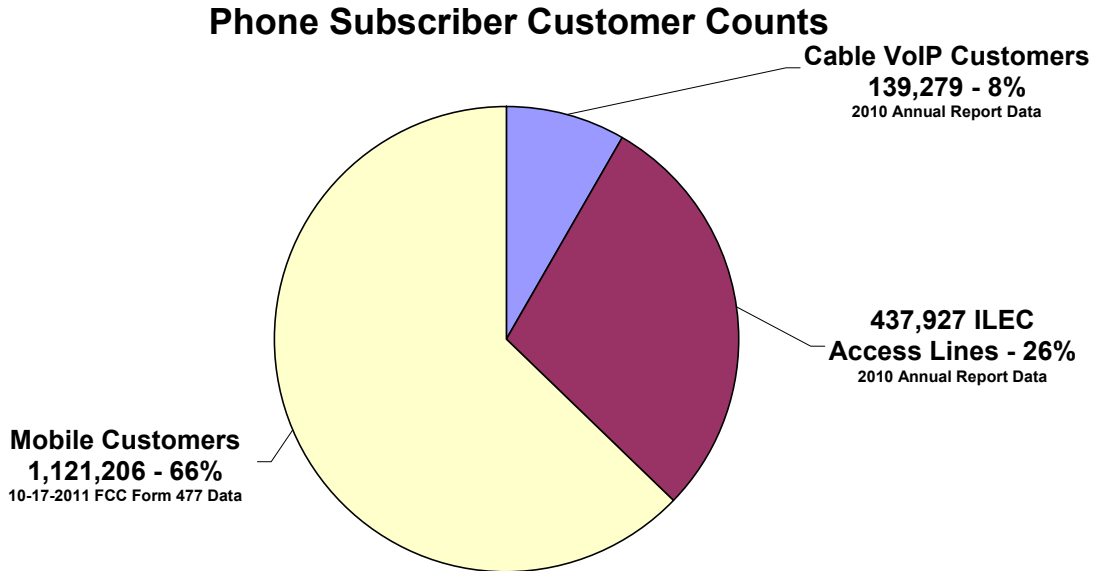
Another major distinction resulting from the difference in technology between traditional POTS phone service as offered by LECs and the telephone service offered by cable providers is that the POTS lines have an electrical current running through them independent of the general electrical service to a customer's premises supplied by the electric utility, whereas VoIP lines do not. As a consequence, cable VoIP service requires continuous power at the customer's premise. Unless a cable company provides its customer with a built-in battery backup system (and some do, although not Time Warner or Comcast), VoIP phone service (and broadband and television) is interrupted during a power outage. By contrast, a POTS customer will generally continue to have phone service during a power outage provided that: 1) the customer has at least one "corded" telephone attached directly to a telephone jack; and 2) the root cause of the power outage, such as downed tree severing a power line, has not also independently disrupted the telephone line.

4. "Over the Top" or "Nomadic" VoIP Providers

So-called "over the top," or "nomadic," VoIP service is a voice product that is available to consumers who have a broadband connection. These VoIP services are generally not bundled with broadband service. Examples of such services are those offered by Vonage, Magic Jack, and Ooma. There are various pricing models employed by such VoIP providers. Vonage, for example, provides packaged local and long distance plans starting at around \$14.95 and then increasing to \$24.99 a month after three months. Another model, adopted by Ooma, requires the up-front purchase of specific hardware, at a price in the \$200-\$300 range, and modest monthly fees of approximately \$3.50 to cover various taxes, USF fees, and E911 charges. The FCC has preempted the States from regulating both the entry into the local market of these "over the top" VoIP providers and the rates which they charge for their services.

5. Mobile Wireless Providers

Federal preemption generally limits regulatory oversight by the Commission of what is perhaps the most significant segment of the voice services market in the state – mobile wireless. According to estimates from the Federal Communications Commission, in 2010 there were 1,121,206 wireless users in Maine.

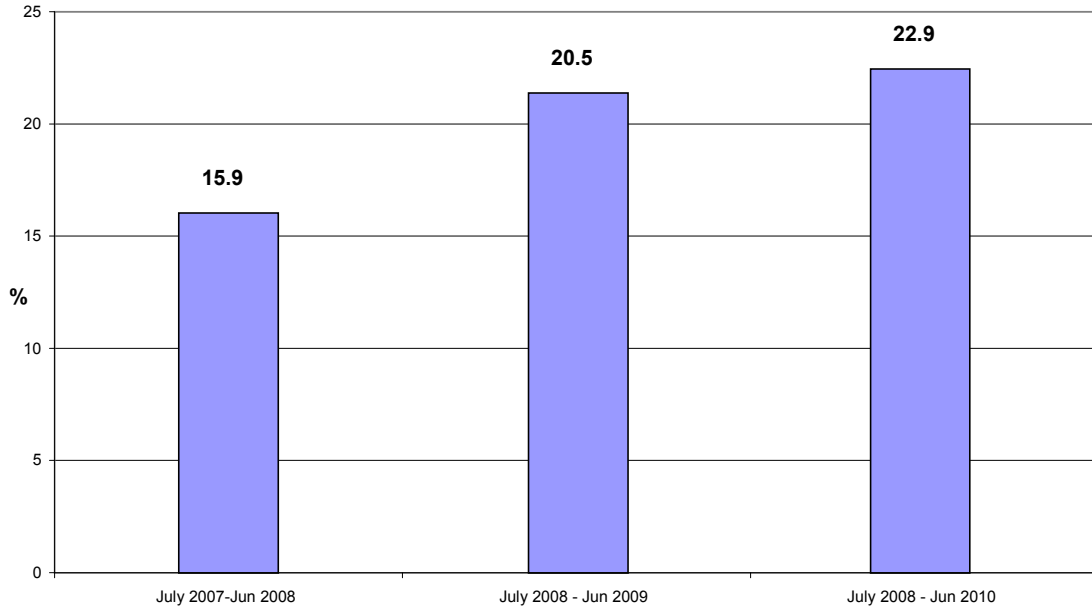


i. The Extent of Wireless Substitution for Land Lines

The wireless industry has grown dramatically in Maine. The number of wireless lines in Maine far exceeds the number of wired lines (both POTS and cable VoIP). Given the essential nature of cell phones (mobility) and their increasing popularity, it is common for more than one member of a household to subscribe to cellular service, and any given individual may have multiple subscriptions. In contrast, with the near extinction of the dedicated residential fax line, the dedicated line for dial-up internet access, and the separate “teenager” line, most households generally have a single wired telephone line if they have one at all. Consequently, it is difficult to determine, based on subscribership figures alone, precisely how many customers have completely “cut the cord” and substituted cellular service for wireline service. The United States Centers for Disease Control and Prevention (“CDC”), relying on data collected through a customer survey, recently published its estimate of wireless for wireline substitution rates for each state.¹⁹ The CDC report presents these estimates in the form of the percentage of adults and children living in households that do not have a landline telephone. These estimates, while certainly not conclusive, are consistent with a growing trend of “cord cutting” in Maine.

¹⁹ National Health Statistic Reports. Wireless Substitution: State-level Estimates from the National Health Interview Survey, January 2007-June 2010. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

Maine Wireless Substitution Estimates Percentage of Adults Living in Wireless-Only Households



Source: CDC Modeled Estimates, April 21, 2011

ii. Mobile Plan Comparisons

The following chart reflects the lowest-priced subscription plans offered by wireless providers, as advertised on each company’s web site. These low-priced plans do not necessarily include data plan options or other advanced features.

Mobile Company	Plan	Minutes	Monthly Cost	Notes
AT&T	Nationwide calling	450	\$39.99	
T-Mobile	Nationwide calling	500	\$39.99	
Verizon	Nationwide calling	450	\$39.99	
Sprint	Nationwide calling	200	\$29.99	
U.S. Cellular	Nationwide calling	200	\$29.99	
TracFone	Prepaid Nationwide	100	\$20.00	Based on 1200 minutes purchased annually; service is resold from another top tier carrier

D. Description of the Existing Regulatory Regime

1. Regulation of Entry into Market

i. Entry

Title 35-A M.R.S.A. § 2102 requires the Commission to regulate entry into all utility markets, including telephone service. Under that Section, all entities desiring to provide telephone service “in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service” must obtain the approval of the Commission. “Telephone service” and “Telephone utility” are defined in 35-A M.R.S.A. § 102(18-A) and (19). To grant authority to provide telephone service, 35-A M.R.S.A. § 2105 requires the Commission to find “that public convenience and necessity require a 2nd public utility.”

The federal Telecommunications Act of 1996 (“TelAct”) restricts the Commission’s authority to deny an application to provide telephone service by a “second” or any subsequent telephone utility (*i.e.*, a competitor). Title 47 U.S.C. § 253 requires states to remove “barriers to entry.” Subsection (a) of Section 253 states, “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). States, however, may “impose . . . on a competitively neutral basis . . . requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.” 47 U.S.C. § 253(b).

The Commission granted authority to provide competitive interexchange telephone service on numerous occasions prior to enactment of the TelAct. It has granted authority for both interexchange and local service hundreds of times since, thereby encouraging entry to both markets. It has never denied authority based on a consideration of “need.” It has, however, rejected requests for authority when the applicant fails to comply with the bonding or in-state asset requirements of 35-A M.R.S.A. § 2102(1)(A). Under that provision, the applicant must either show that it has \$250,000 in fixed assets in Maine or must “maintain a surety bond in the amount of \$250,000 to ensure that the telephone utility has the financial ability to meet its obligations under [Title 35-A].” Some applicants have been able to comply with these requirements; others have not.

ii. Number Conservation

Pursuant to 35-A M.R.S.A. § 2102, the Commission grants authority to local exchange carriers (“LECs”) where the carrier maintains its own facilities. These facilities-based LECs typically require “number resources,” *i.e.*, all or a portion of the three-digit number (an “NXX”) that follows the area code and precedes the last four digits in a 10-digit phone number (NPA-NXX-XXXX). Up to 10,000 four-digit

numbers are available within a 3-digit NXX. Within an area code (an “NPA”), there are up to 800 NXX codes (1 and 0 cannot be used as the first digit). The 207 area code for Maine has about 8,000,000 numbers available if all the four-digit (“XXXX”) numbers were used in an NXX.²⁰

The Commission has been vigilant in conserving numbering resources. Thus, every Commission order granting or expanding authority to serve is limited to those exchanges where the carrier can actually provide service within six months of the grant of authority. In addition, the North American Numbering Plan Administrator (“NANPA”) requires that LECs that obtain either new NXX codes or thousand-number blocks from the number pool must activate the code or block (and report such activation) within six months of the block assignment. If the LEC fails to make a timely report of activation of the block or NXX code, NANPA will reclaim the block or code after a reasonable remedy period and after consultation with the state regulatory commission. In the vast majority of cases, carriers have made timely reports of the activation of blocks (sometimes requiring gentle reminders from the Commission’s staff) or have promptly returned blocks if they determined that activation would not occur within a reasonable period of time.

The Commission has been involved in number conservation efforts since it first received reports from the NANPA stating that the 207 area code would soon be “exhausted” (all numbers used). The Commission’s efforts in this regard have been successful in preventing exhaustion. It is clearly not in the public interest for Maine to have a second area code as it would be disruptive to both residential and business customers. One method of adding an area code is to split a state into two geographic areas. One portion of the state would retain the 207 code, and the other portion would be assigned the new code, thereby precipitating a difficult economic and political decision. Customers in the area with the new code would need to change the first three digits of their phone numbers. The other alternative is an “overlay.” The 207 area code would continue to serve the whole state, but all new numbers would be assigned the new area code. Either relief method would require 10-digit dialing (rather than 7-digit) for all in-state calls. Callers in a local area would then have to know (or look up) the area code for all other customers in their local calling area as well as throughout the state. In light of the public interest in conserving a single area code for Maine, it is important that the Commission retain the power to require all LECs to obtain Commission authority before they enter the market.

²⁰ The “number portability” requirement of 47 U.S.C. § 251(b)(2) provides that when a customer leaves one local exchange carrier for another serving the same exchange, the first LEC must “port” a requesting customer’s number to the new LEC. In addition to encouraging competition by making it less disruptive for a customer to switch providers, this requirement has the effect of reducing the need for the new carrier to obtain numbering resources.

2. Regulation of Retail Rates

i. General Provision – Section 301

Title 35-A M.R.S.A. § 301 contains the foundational principles underlying regulation of the rates of public utilities. Subsection 2 of Section 301 states that “Every public utility shall furnish safe, reasonable and adequate facilities and service.” Subsection 3 states that “Every unjust or unreasonable charge for public utility service is prohibited and declared unlawful.” Finally, subsection 1 contains a service component: “Every public utility shall furnish safe, reasonable and adequate facilities and service.”

ii. Rate Regulation and Changes in Rates for Incumbent Local Exchange Carriers

Cost of service rate regulation, sometimes called “traditional” or “rate of return” regulation sets rates based on a utility’s expected costs. Although the utility’s recent historical costs and revenues serve as a starting point for determining expected costs and revenues, future costs and revenues may deviate from the historical ones.

There are various kinds of costs that are recognized in establishing rates under cost of service regulation. These include cash expenses such as maintenance, management, taxes, and billing functions. Expenses also include non-cash expenses such as depreciation, which is the gradual decline in the value of capital investment as those assets age. Finally, there is the cost of adding needed new investments in plant, whether to provide new forms of service, service to new areas or simply to replace plant that has depreciated to the point where it must be retired. This last group can be called “capital costs,” the cost of which affects rates over the life of the plant, not immediately, both through depreciation expense (return of capital) and return to investors and creditors (return on capital).

The net amount of the investment in plant necessary to provide utility service (the original investment less accumulated depreciation) earns a “return.” The net amount of a utility’s total investment is known as the “rate base.” The annual return is determined by multiplying the “rate base” by the utility’s “cost of capital,” which is a mixture of debt (interest) and equity (the return expected by the utility’s investors). The cost of capital (or the “rate of return,” expressed as a percentage) is the weighted average of the cost of debt (interest) and the cost of equity (return to investors).

Although this kind of rate-setting is often referred to as “rate of return” regulation, as can be seen from the description above, the rate of return (the amounts of return that investors receive for their investment) is only one of the components of the cost of service that serves as the basis for determining revenue requirements and setting rates under this type of regulation.

Rates of telephone carriers are subject to actual or potential rate regulation under the statutes contained in Title 35-A in three major ways. First, those carriers that are required to file “tariffs” (rate schedules and terms and conditions) with the Commission may file a proposed change in rates pursuant to 35-A M.R.S.A. § 307. For the past several years, only ILECs have been required to file tariffs. The Commission, pursuant to the authority in 35-A M.R.S.A. § 307-A, promulgated a rule in 2007 (Chapter 214) stating that CLECs and IXCs shall not file tariffs. Although ILECs must continue to file tariffs for their local exchange service, they are exempted by the Rule from filing tariffs for interexchange and some other forms of service.

If an ILEC files a change in its tariffed rates pursuant to Section 307, the Commission may either allow the change to become effective in 30 days, or it may “suspend” the rates for up to an additional eight months while it investigates the proposed rate change. A utility may file a “general increase in rates,” defined as an increase in total rates of more than one percent. It may file a general increase only once a year.

Under 35-A M.R.S.A. § 1303, the Commission on its own motion may investigate the rates of any public utility if it has reason to believe the utility’s rates are not “just and reasonable.” Finally, under 35-A M.R.S.A. § 1302, ten or more “persons aggrieved” may file a complaint against a utility about rates or any other “unreasonable” or “discriminatory” act or practice. The Commission must investigate the claims made in such a complaint unless it finds them to lack merit. *Agro v. PUC*, 611 A.2d 566 (Me. 1992).

In undertaking a formal rate investigation, the Commission must follow two principles in determining “just and reasonable” rates. First, the Commission “shall provide such revenues to the utility as may be required to perform its public service and to attract necessary capital on just and reasonable terms.” This statement is a classic summary of rate-of-return rate regulation. Second, the Commission “shall, to a level within the commission’s discretion, consider whether the utility is operating as efficiently as possible and is utilizing sound management practices, including the treatment in rates of executive compensation.” 35-A M.R.S.A. § 301(4).

Under 35-A M.R.S.A. §§ 9102-9103, the Commission may (and has, for Verizon and FairPoint-NNE) adopt an “alternative form of regulation” (“AFOR”) for telephone utilities. No other ILEC has ever asked the Commission that it be subject to an AFOR. Section 9102 states, “The alternative form of regulation . . . need not conform with [Sections 301-314] to the extent that the provisions of chapter 3 require the use of rate-base, rate-of-return or any other specific form of regulation of the rates of a telephone utility.” The Commission has never held, however, that it will ignore the general “just and reasonable” rate mandate of Section 301. Moreover, Section 9103(1) states:

[T]he commission shall, in order to ensure that rates at the starting point of the alternative form of regulation are just and reasonable, conduct a revenue requirement and earnings review pursuant to the standards of section 301. In conducting such a review under this subsection, the commission, at its discretion, may conduct the review in a manner designed to minimize the cost of the review.

35-A M.R.S.A. § 9103(1) (amended 2008).

An AFOR is “incentive regulation.” Its purpose is to provide an incentive for a utility to operate efficiently. Under incentive regulation, the Commission will not lower the utility’s rates if the utility increases profits by operating more efficiently. The fact that the utility may realize and keep extra profits under this system creates an incentive for efficient operation. Conversely, if a utility operates inefficiently, it is not permitted to file a rate case claiming it cannot meet its costs. The primary tool that creates this incentive is the “stay-out.” Section 9103(1) requires that an AFOR be at least five years long (and may be up to 10). Incentive regulation replaces strict cost-based “rate-of-return” regulation, under which rates are closely tied to costs, and rate cases can be filed frequently (as often as once a year in Maine). The perceived problems with strict cost-base regulation are that a utility can simply boost costs because there is no incentive not to do so, because it can readily increase rates to cover those costs, and it can be very difficult for utility commissions to uncover waste and “gold plating” of plant.

Although the starting point of an AFOR must be cost-based, over time the amount of revenue that a fixed level of rates will produce will depart from current costs, particularly if a utility responds to the incentive and is more efficient. Of course, such a departure can occur in the opposite direction, if, for some reason, the utility is less efficient. The Maine AFORs have allowed Verizon and FairPoint-NNE considerable pricing flexibility (upward or downward) for services other than basic local service. Moreover, for basic local service, the company has complete discretion to lower rates. The fact that the AFOR establishes only a cap on basic local service is significant, because it affords the company the freedom to lower its rates where the company determines that it is necessary to do so in a competitive market. That flexibility is another way for a company under an AFOR to increase “efficiency” if it can increase revenues (and profits) through pricing strategies.

The incentive to increase profits through efficiency can also act to increase profits in another way – cutting costs by degrading service quality. Thus, it is universal for AFORs to contain a Service Quality Index (“SQI”). The Commission has included SQIs in the two Verizon AFORs and the current FairPoint-NNE AFOR, and considers them integral to the AFOR rate structure. Under the SQI, if FairPoint-NNE fails to meet “benchmark” service quality standards, it must credit customer bills with a SQI rebate. The requirement to pay these rebates is intended as an incentive not to degrade service. During the second Verizon AFOR, it became apparent that the

incentive was not sufficiently strong because Verizon consistently failed to meet the benchmarks of several metrics. Accordingly, in the AFOR for FairPoint-NNE (approved simultaneously with the transfer of service from Verizon to FairPoint-NNE), the parties, including both Verizon and FairPoint-NNE, agreed to additional metrics and to a doubling and tripling of rebates for each metric benchmark that FairPoint-NNE failed to meet in consecutive years. Even with some initial phasing-in of several of the SQI benchmarks, FairPoint-NNE failed to meet ten of the fourteen metric benchmarks in the first three years of the current SQI, and incurred double rebates for the SQI year 2009-10. It would have incurred triple rebates for each of the four benchmarks that it missed during the 2010-11 SQI year, except that the Resolve removed the SQI rebate multiplier.

iii. Rates Changes and Rate Regulation for Other Carriers

As noted above, CLECs and IXC are not required to file tariffs. Thus, since 2007, the Commission has not had the ability to initiate a rate investigation pursuant to Section 310 of Title 35-A. The Commission may still investigate a competitive telephone utility's rates pursuant to Section 1303 or 1302 (10-person complaint) but, as a practical matter, CLECs are subject to market forces only.

iv. Universal Service Support of Rates

a. Federal USF

A number of federal support mechanisms now help keep prices low for rural subscribers. The National Exchange Carriers Association ("NECA") files average interstate access tariffs at the FCC under which local exchange carriers receive payments from long distance carriers for interstate long distance calls. Long distance carriers pay local carriers the average rate, and local carriers either pay into or draw from the NECA "pool" according to their actual costs. High cost rural carriers currently receive extra financial support through this "pooling" mechanism. Large companies pay into this "pool," but do not draw funds from the pool. This contribution to costs of smaller telephone carriers is called "long term support." Without this support, the average phone bill of rural US subscribers to carriers other than the former Bell companies would increase by almost \$4.00 per subscriber per month.²¹

"Separations" is another source of federal support. Local exchange carriers serving fewer than 50,000 telephone lines are permitted to allocate a higher proportion of their switching costs to the interstate jurisdiction for cost recovery through interstate rates and access charges. Even though switching costs are largely composed of the fixed costs of the local telephone switch, rural companies are permitted to allocate those costs in proportion to the minutes of use for interstate versus intrastate calls. Local carriers with fewer than 10,000 lines allocate three times

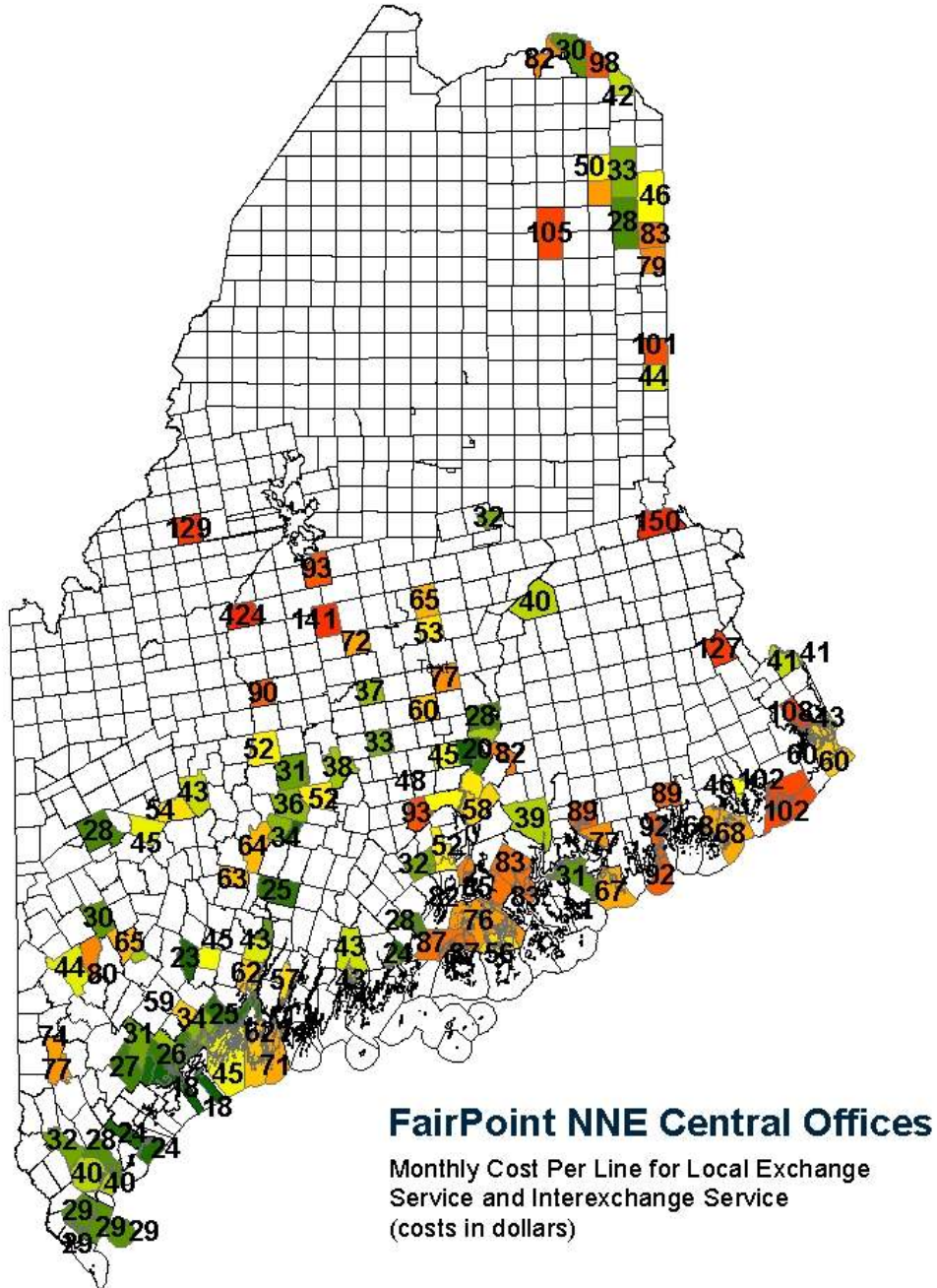
²¹ Northern New England Telephone Operations, LLC d/b/a FairPoint Communications-NNE is considered a former Bell company, referred to as a Regional Bell Operating Carrier or "RBOC."

the amount of switching costs to the federal, interstate jurisdiction, through a procedure called Dial Equipment Minute (“DEM”) weighting. Local carriers with 10,001 to 20,000 access lines have DEM weighting factor of 2.5 and carriers with 20,001 to 50,000 access lines have a DEM weighting factor of 2. In no case can carriers allocate more than 85 percent of the total switching costs for recovery through interstate rates. Without this federal subsidy through the separations DEM weighting factor for rural telephone carriers, intrastate rates for customers of such telephone carriers would increase by about \$4.00 per month per subscriber.

The FCC rules also currently assign 25 percent of the costs of the “local loops” to the interstate jurisdiction. Loops are the lines between the subscriber’s telephone and the local telephone switch. Many carriers recover those costs through the access charges paid by carriers to complete interstate toll calls and through end user charges that are limited to \$6.50 per month.

Rural telephone carriers generally have low subscriber densities and consequently high costs per subscriber. In addition to the support mechanisms, the FCC is required by federal law to create a USF (sometimes called the “high cost fund”) to subsidize these costs in rural areas. Local carriers with loop costs greater than 115 percent of the national average are eligible for additional support from this fund. NECA collects these additional funds from interstate carriers and then distributes such funds to high-cost local exchange carriers. Without this subsidy and the other support mechanisms, some rural telephone subscribers would see a monthly rate increase of over \$100 a month, with the average subscriber seeing an increase of approximately \$40 per month.

The following map depicts the cost per line (without the application of support mechanisms) for serving individual exchanges in FairPoint-NNE's territory.



Source: FCC Hybrid Cost Proxy Model (2000 Data) <http://transition.fcc.gov/wcb/tapd/hcprm/wcsupport.xls>

In addition, without this USF subsidy, the interstate access charges for rural telephone carriers would be higher than the access charges of large companies. These higher access charges would undermine the policy of geographic rate averaging for long distance calls.

The combined effect of de-averaging long distance rates and removing the four major federal support mechanisms for rural companies would be to increase the average monthly phone bill for rural subscribers (including both local and long distance charges) by approximately 70 percent to an average of over \$40.00 per month. The changes in rural phone bills, without these subsidies, would range from an increase of \$4.00 per month for subscribers to one rural telephone company in York County to an increase of over \$200 per month for subscribers to a rural telephone company in Washington County.

The historic methods of supporting rural telephone service are increasingly undermined by the pressures of competition. It is not possible to retain all of the support mechanisms in their present form indefinitely. Moreover, the FCC has recently announced significant changes in the structure and amounts available through inter-carrier compensation. While the impact on Maine is at this point uncertain, the task of maintaining a support mechanism for rural companies in Maine will likely become more of a challenge. The recently adopted FCC Order proposes to end all intercarrier compensation and move to a “bill-and-keep” mechanism which would eliminate access charges.²² Thus, it is entirely possible that the burden of supporting basic local exchange service, to the extent it is required, will fall increasingly on states.

b. Maine USF

35-A M.R.S.A. § 7104 (“Affordable Telephone Service”), requires the Commission to establish a state universal service fund. The statute authorizes the Commission to require “providers of intrastate telecommunications services to contribute” to the Maine USF, and the Commission has done so.

In addition, 35-A M.R.S.A. § 7104-B requires the Commission to establish a “telecommunications education fund” to fund telecommunications and internet services, computers, and training for schools and libraries. The statute requires the Commission to require “all telecommunications carriers offering telecommunications services in the State” to contribute to the Maine Telecommunications Education Access Fund (“MTEAF”).

The two Funds are similar in that they provide support for telecommunications and related activities. Under the Rules adopted by the

²² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011). Under bill-and-keep, a carrier generally looks to its end-users – which are the entities and individuals making the choice to subscribe to that network – rather than looking to other carriers and their customers to pay for the costs of its network. *Id.* ¶ 737.

Commission, collection of support for both of the Funds is virtually identical, although each Fund has a different collection rate. Both rates are set by the Commission, although the Legislature has established a maximum collection rate (presently 0.7%) for the MTEAF. The present collection rate established by the Commission for the MTEAF is 0.3%. The present collection rate for the Maine USF is 1.36%.

The Resolve, insofar as it prohibits the Commission from enforcing a recent Order finding that interconnected VoIP providers are telephone utilities under state law, has the legal effect of preventing the Commission from requiring such carriers to contribute to either of the Funds. However, the Resolve requires companies who were making voluntary contributions to these funds prior to October 27, 2010 (*i.e.*, Time Warner and Comcast) to continue to make contributions. Although the Commission has no reason to believe that these two companies would cease making such contributions in the future, the Commission believes that the obligation should be formalized in statute, and made applicable to all interconnected VoIP providers regardless of whether they have, to date, been making such contributions. The Commission Plan, described below, would do so.

For the Maine USF, the Legislature has required the Commission to “contract with an appropriate independent fiscal agent that is not a state entity to serve as administrator of the state universal service fund.” 35-A M.R.S.A § 7104(3). The MTEAF statute requires the Commission to “integrate the collection of the charge with any state universal service fund developed by the commission.” 35-A M.R.S.A § 7104-B(3)(C). Accordingly, the Commission has contracted with a single entity to administrate collection and disbursements for both Funds.

The determination of who receives funding and how much each entity receives differs for the two Funds. For the Maine USF, Chapter 288 of the Commission’s Rules presently limits Maine USF disbursements to “high cost” rural ILECs or to “a competitive local exchange carrier that provides service in an area served by a rural incumbent local exchange carrier.” The Rule also requires that for an entity to be eligible for Maine USF funding, the Commission must have found that it is an ETC pursuant to federal criteria. The Commission has found that all Maine ILECs are ETCs.

A “rural” carrier is defined in the TelAct. Essentially, the definition excludes the former Bell operating companies (e.g., Verizon) and their successors, which, for Maine, is FairPoint-NNE.²³ Rural telephone companies are also known as “independent telephone companies” (“ITCs”). Of the 22 Maine rural ILECs, 15 presently receive Maine USF funding. No CLEC providing service in a rural service area has applied for Maine USF funding.

The present funding levels for the rural ILECs that receive funding from the Maine USF were determined in proceedings that established

²³ Six other FairPoint companies in Maine are rural ILECs.

each ILEC's cost of providing service. These amounts were compared to revenues from customers and from federal USF support. The Maine USF funds the difference.

From time to time, the Legislature has required that the Maine USF also fund certain other programs. Subsection 5 of Section 7104 required funding for the "Communications Equipment Fund established under Title 26, section 1419-A," *i.e.*, a fund "to be used by the Division for the Deaf, Hard of Hearing and Late Deafened within the Bureau of Rehabilitation Services" for "specialized customer communications equipment for deaf, hard-of-hearing, late-deafened or speech-impaired persons and persons with disabilities." 35-A M.R.S.A § 7104(5); 26 M.R.S.A. § 1419-A(2). The statute also requires the Maine USF to provide funding for "public-interest pay phones" and "telecommunications relay services." 35-A M.R.S.A. § 7104(6) and (7).

v. Other Provisions Governing Rates

Section 702(1) of Title 35-A prohibits "unjust discrimination," described as "any undue or unreasonable, advantage, prejudice or disadvantage to a particular person." In many contexts, the Commission has recognized that providing lower rates for customers (often larger customers) that have significant competitive alternatives is not an "undue or unreasonable" preference. Often lower prices are provided under "special contracts," which have been authorized under 35-A M.R.S.A. § 703(3-A) and its predecessors since the Commission was established in 1913. Sections 701 and 703 of Title 35-A also contain anti-discriminatory provisions.

Section 309(1) of Title 35-A prohibits all public utilities from charging "a greater or lesser compensation than is specified in [the] printed schedules . . . or to demand, collect or receive any rate, toll or charge not specified in the schedules." Of course, as discussed above, for all competitive carrier service (and interexchange service provided by ILECs), there are no rate schedules (tariffs). For services that are still subject to tariff requirements, a carrier may offer a special contract. The Verizon and FairPoint-NNE AFORs have all contained a provision stating that those utilities could not offer special contracts that were priced below the long-run marginal costs of the utility. This provision was included because of concerns that Verizon or FairPoint-NNE could engage in anti-competitive pricing. The Resolve states that the Commission cannot enforce this provision.

3. Regulation of Retail Service Quality

The purpose of Title 35-A is to ensure that there is a regulatory system for public utilities in Maine that is consistent with the public interest and with other requirements of law and to provide for reasonable licensing requirements for competitive electricity providers. The basic purpose of this regulatory system is to ensure safe, reasonable and adequate service and to ensure that the rates of public utilities are just and reasonable to customers and public utilities. 35-A M.R.S.A §101.

It is this statutory mandate that guides the Commission with regard to the regulation of service quality for public utilities, including telephone utilities. If the Commission finds that a telephone utility is failing to meet its obligation to provide reasonable and adequate service, after a proper investigation is conducted pursuant to 35-A M.R.S.A. § 1303 and a finding of inadequate service is made, the Commission may by Order establish or change terms, conditions, measurement, practice, service, or acts as it finds just and reasonable. 35-A M.R.S.A. § 1306

Though the definition of “telephone utilities” includes ILECs, CLECs, and IXCs, in practice, the Commission regulates the service quality only of ILECs because these carriers are providing basic dial tone service, own the majority of telecommunications plant necessary to provide dial tone service (and allow competitors to provide service), and have the obligation to provide service to all customers within their franchise territories. Further, in some portions of the state, there may be little or no competition for dial-tone service; consequently, the dependability of an ILEC’s service is paramount. If the Commission becomes aware of potential problems with service quality provided by an ILEC, it may open an investigation to determine if the ILEC is meeting its statutory obligation to provide “reasonable and adequate service.”

The Commission has adopted a “hands off” approach with respect to the service quality of CLECs and IXCs based on the premise that if one carrier fails to provide reasonable and adequate service, a customer can simply choose another carrier that provides better service quality. In this manner, competition is substituted for regulation. Further, in the case of a CLEC, the customer always has the option of obtaining service from the ILEC, which must accept all customers.

As discussed above, in addition to the regulation of service quality pursuant to 35-A M.R.S.A §101, the Commission may also regulate the service quality of an ILEC through an AFOR. The only telephone utility in Maine that operates under an AFOR and an appurtenant SQI is FairPoint-NNE. FairPoint-NNE’s SQI contains 14 metrics that cover the various aspects of its service. Each metric has a benchmark that is based on historic performance. FairPoint-NNE’s actual annual performance for each metric must be equal to or better than the baseline or it will incur an obligation to pay a customer rebate for that metric. FairPoint-NNE’s present SQI contains 14 metrics which measure, among other things, whether FairPoint-NNE’s installation and repair appointments are kept in a timely manner, whether FairPoint-NNE’s customer service representatives promptly respond to service and outage calls, and the overall volume of customer complaints.

Under its SQI, FairPoint-NNE may incur a maximum total rebate obligation of \$1.135 million for each metric (except for the Service Outage metric, which is subject to a maximum of twice that amount \$2.27 million) and a maximum rebate liability of \$12.5 million. FairPoint-NNE’s SQI will expire on July 31, 2013 along with its AFOR.

Verizon also operated under an AFOR from 1995 through the time of the merger with FairPoint in 2008. Verizon's initial SQI was established as part of its first AFOR in 1996. The Commission continued the SQI with several modifications in 2001.

FairPoint-NNE, and Verizon before it, each failed to consistently meet their respective SQIs while operating under their AFORs. Verizon missed the benchmarks for six metrics in 2002/03, five metrics in 2003/04, two metrics in 2004/05, three metrics in 2005/06, and six metrics in 2006/07. In addition, Verizon did not meet the benchmark for the Residential Troubles Not Cleared Within 24 Hours metric during any year of the second AFOR. As a result of failing to meet several of the benchmarks, Verizon paid a rebate to customers each year of the Second AFOR. Under FairPoint-NNE's AFOR, the company missed 2 metrics in 2007/08, 12 metrics in 2008/09, 10 metrics in 2009/10, and four metrics in 2010/11.²⁴ The missed metrics in 2010/11 were Customer Trouble Reports Rate per 100 lines; Repeat Trouble Reports Rate per 100 lines, Duration of residential Outages; and PUC Complaint Ratio. FairPoint-NNE has paid a rebate to customers each year of its AFOR.

²⁴ The 2007/2008 SQI year ran from July 1, 2007 through July 31, 2008 – a 13 month period - due to the merger between Verizon and FairPoint. The merger was approved by the Commission on February 1, 2008. Nine months (July 2007 through March 2008) of that SQI year were under Verizon operation, and four months (April 2008 through July 2008) were under FairPoint operation. However, FairPoint paid the full penalty amount for that year. Subsequent SQI years run from August 1 through July 31 of the following year.

Annual SQI Customer Rebates

1995/96	\$134,566	Verizon
1996/97	\$220,211	Verizon
1997/98	\$79,147	Verizon
1998/99	\$455,243	Verizon
1999/00	\$0	Verizon
2000/01	\$0	Verizon
2001/02	\$524,905	Verizon
2002/03	\$876,670	Verizon
2003/04	\$576,404	Verizon
2004/05	\$639,127	Verizon
2005/06	\$711,657	Verizon
2006/2007	\$1,274,471	Verizon
2007/2008	\$401,114	FairPoint-NNE
2008/2009	\$8,021,257	FairPoint-NNE
2009/2010	\$9,125,984	FairPoint-NNE
2010/2011	\$592,415 ²⁵	FairPoint-NNE

²⁵ This amount reflects the first year where the “multiplier” component of the SQI rebate formula has been made unenforceable pursuant to section 3.2 of the Resolve. Section 3.2 states “The commission may not enforce provisions of any order establishing an alternative form of regulation pursuant to Title 35-A, chapter 91 that impose on an incumbent local exchange carrier multiplier penalties for repeated failures to meet service quality index performance standards with respect to any actions, inactions or other performance of that carrier occurring after July 31, 2010.” Because 2010/2011 was the third year in a row that FairPoint missed the particular metrics that resulted in a rebate, the rebate amount would have been \$1,777,245, absent the prohibition on enforcement of that provision of the AFOR by the Resolve.

4. Consumer Protection

Chapters 290, 291, and 292 of the Commission's rules establish the standards for billing, credit and collection, and termination of service for telecommunications carriers and were adopted in 2002. The three separate Chapters apply to: (1) ETCs (Chapter 290); (2) non-eligible telecommunications carriers ("non-ETCs") (Chapter 291);²⁶ and (3) IXC's (Chapter 292).

When the Commission adopted Chapters 290, 291 and 292, it found that competition had not arrived equally among the various segments of the telecommunications market, resulting in an asymmetric market where significant choice existed for toll service, but little or no choice existed for local exchange service, at least for the residential customer. The Commission also found that in a competitive market, consumer knowledge is necessary for consumers to realize the benefits of competition. In this setting, disclosure of the service offerings and customer rights can take the place of prescriptive regulation. The three separate rules were created to provide the appropriate level of consumer protection for the level of competition that existed in that particular market segment. Local exchange service provided by ETCs is more heavily regulated with lighter disclosure requirements, while the rules governing interexchange carriers are heavier on disclosure and lighter on prescriptive requirements.

When these rules were adopted, the Commission's goals were to: (1) ensure that basic telephone service is available at affordable rates to all the citizens of Maine; (2) remove regulatory barriers to competition; (3) account for the asymmetry that exists in the telecommunications market; and (4) substitute disclosure for regulation in the interexchange and local exchange markets where competition exists.

In addition to distinguishing between toll and local, the rules also distinguish non-ETCs from ETCs. Under federal law, a local exchange carrier will be eligible to receive federal universal support funds if it meets certain criteria, including a requirement that it serve all customers within its territory and that it offer programs aimed at assisting low income persons in maintaining their telephone service. 47 C.F.R. § 54.201. Eligibility for ETC status is open to both ILECs and CLECs; however, only ILECs and wireless carriers have sought ETC status in Maine.

When the Commission adopted Chapters 290 and 291, it found that asymmetrical rules for ETCs and non-ETCs were justified because ETCs received federal support and were required to accept all customers. ETCs are in the unique position of providing service to customers who may otherwise be unable to obtain service. In contrast, a non-ETC has no obligation to accept any given customer. Customers of a non-ETC who lose their service could obtain service through an ETC

²⁶ "Non-eligible telecommunications carrier" is any entity providing basic service to the public who is not designated by the Commission as an eligible telecommunications carrier pursuant to section 254 of the Telecommunications Act of 1996, 47 U.S.C., § 151 *et seq.* These carriers are also synonymously referred to as CLECs.

serving his or her area. This approach has created competitive concerns, especially because the current ETCs are also ILECs while the non-ETCs are CLECs.

5. Commission Regulation of the Wholesale Activities of Telephone Carriers

The Resolve expressly states that the plan for regulatory reform developed by the Commission “may not relieve any provider from complying with wholesale obligations under either state or federal law, including but not limited to those relating to access to network elements, interconnection, inter-carrier compensation, pole attachments, switched access and any other obligations established under the federal Communications Act of 1934, as amended, and must preserve any related rights of any provider under that Act.” The Commission has historically undertaken the responsibility of performing fully the role delegated to it by the federal Act, and has taken up wholesale issues in order to promote competition as envisioned by the Act.

The TelAct established a cooperative, joint federal-state regulatory scheme intended to promote competition in the market for local exchange services. Under the TelAct, all telecommunication carriers are obligated to interconnect their networks with one another. ILECs are required to offer at wholesale certain retail services that CLECs can resell to retail customers. ILECs must also provide CLECs with reasonable access to the ILEC’s poles, ducts, conduits and rights of way, and must provide for the portability of telephone numbers (so that when a former ILEC customer switches service to a CLEC, the customer’s telephone number will not change). Further, the TelAct requires that ILECs establish reciprocal compensation arrangements with a CLEC to enable payments between the ILEC and CLEC for the transport and termination of telephone calls. Finally, ILECs must ensure that customers experience no unreasonable dialing delays for long distance service irrespective of the long distance provider the customer selects, and that all long distance providers have nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listing.

ILECs must provide CLECs with access to certain portions of their network on an “unbundled” (a la carte) basis, and to allow the physical collocation at the ILEC’s premises of a competitor’s equipment that is necessary for interconnection and use of these network elements. The FCC is responsible for identifying those unbundled network elements (“UNEs”), such as loops, switches, operational support systems, and databases, which the ILECs must provide in order to prevent CLECs from being “impaired” in their ability to compete in the local exchange market. The basic notion is that duplication by competitors of certain parts of a telephone network (such as the wires, or loops, travelling to a customer’s premises) would be uneconomic to society at large, but that competition cannot occur unless competitors can obtain access to these facilities at prices which will allow them to earn a profit. Thus, in addition to identifying the network elements that an ILEC must offer to its competitors on an unbundled basis, the FCC has also established the methodology for determining the prices at which these UNEs must be offered in order to encourage investment by both incumbents and market

entrants. This methodology, known as Total Element Long-Run Incremental Cost (“TELRIC”), requires complicated estimates, on a UNE by UNE basis, of what it would cost to build particular network facilities (such as loops) using modern technology.

State public utility commissions have a significant role in the implementation of the TelAct. First, it is to the State commissions that the TelAct assigns the responsibility of approving, or rejecting, voluntarily negotiated interconnection agreements between ILECs and CLECs, and of mediating any differences between carriers that arise in the course of their negotiations. Further, where voluntary negotiations fail to result in a consensual interconnection agreement, either party may petition the state commission to arbitrate any open issues. In such circumstances, the state commission has the authority to impose conditions on the parties to ensure compliance by each with the requirements of the TelAct, to determine the rates for interconnection, services, or network elements (by applying the FCC’s TELRIC pricing methodology), and to establish a schedule for implementing the terms and conditions of the interconnection agreement.

Ever since the enactment of the TelAct, the Commission has performed the role assigned to it by these the market-opening provisions of the federal statute. Thus, the Commission reviews interconnection agreements, has conducted TELRIC pricing proceedings, and in various proceedings has enforced the requirements of the TelAct. In addition, the Commission has ongoing jurisdiction regarding a complex mechanism of wholesale bill credits whereby CLECs are entitled to receive credits from FairPoint-NNE resulting from “penalties” accrued whenever FairPoint-NNE does not meet certain performance measures in connection with its obligations to the CLECs pursuant to its interconnection agreements. This mechanism – the Performance Assurance Plan (“PAP”) – was among the conditions imposed by the Commission and the FCC on Verizon at the time that the FCC approved (upon recommendation of the Commission) Verizon’s petition to enter into the long-distance market (a market denied to the regional Bell operating companies following the court-mandated antitrust remedy resulting in the break-up of AT&T). The purpose of the PAP, in simple terms, is to ensure that FairPoint-NNE does not engage in anti-competitive behavior by placing barriers on the provisioning of wholesale services to its CLEC competitors which do not exist when FairPoint-NNE provisions those same wholesale services to the retail arm of its own (competitive) operations. The Commission is currently engaged in proceedings, and also a collaborate process with FairPoint-NNE, the CLECs, and the regulatory authorities in Vermont and New Hampshire, intended to simplify the metrics by which the PAP credits are measured, and to consider FairPoint-NNE’s request that the total amount of money at risk under the PAP be reduced.

One provision of the TelAct which some market participants view as antithetical to the generally pro-competitive aims of the TelAct, and which other participants view as an essential component of Congress’ intent to maintain universal service in rural areas, is the “rural exemption.” Specifically, rural ILECs (small carriers serving in areas that are below statutory thresholds in terms of population and population density) are expressly exempt from several of the market-opening

obligations that are generally applicable to ILECs. The rural exemption can be “lifted” by a state commission (but not by the FCC) following a “bona fide” request for interconnection, services, or network elements made by a CLEC of the rural ILEC. However, before lifting the exemption, the state commission must find that the requested interconnection, services or provision of network elements is technically feasible, is consistent with the universal service goals and requirements of the TelAct, and would not be unduly economically burdensome to the rural ILEC.

After conducting lengthy adjudicatory proceedings in which comprehensive evidence and expert testimony was submitted by the parties, the Commission recently issued orders in which it declined to lift the rural exemptions of five rural Maine ILECs. These cases arose out of the bona fide requests of CRC Communications for interconnection and services that CRC required in order to provide services which would enable Time Warner to offer its fixed VoIP service to those of its cable TV and broadband customers residing within the service territory of each of the rural ILECs. In general, the Commission found that the line-losses that the rural ILECs would likely experience as a result of Time Warner’s entry into the largely low cost/high profit portions of their service territories would have severe financial effects that would undermine the ability of these firms to attract capital and to fulfill their respective roles in providing universal service as the provider of last resort in the territories in which they serve.

Although no appeal was taken from the Commission’s rural exemption cases, CRC and Time Warner sought from the FCC an order preempting the Commission’s determination that their interconnection requests were of the sort to which the rural exemption applied in the first instance. The FCC did not preempt, but did issue a declaratory ruling intended to provide guidance to carriers and state commissions regarding the interconnection and service duties of all ILECs. Following the FCC ruling, CRC has again sought interconnection of the five rural ILECs involved in the Commission’s rural exemption cases. In response to these requests, in early September 2011, those companies filed petitions with the Commission, pursuant to a related section of the federal Act, for the suspension and/or modification of the various market-opening provisions of the Act. Those matters are pending before the Commission.

6. The Commission's Recent Approach to Regulation Already Recognizes, to a Significant Degree, Changes in the Telecommunications Competitive Landscape

In recent years, the Commission has substantially modified its approach to regulation to take into account the fact that competition exists in the telecommunications industry and that this competition is continuing to grow. Even before the enactment of the TelAct, the Commission routinely approved requests by competitive long distance carriers to enter the market in Maine, and upon passage of the TelAct the Commission implemented the market-opening provisions of the TelAct by approving interconnection agreements between CLECs and ILECs with prices established by applying the TELRIC pricing methodology established by the FCC.

As discussed above, although it is within the Commission's jurisdiction and statutory authority to determine whether the retail rates charged by CLECs to their customers are reasonable, the Commission has never set prices for competitive providers of telephone service. The rationale for this approach was two-fold. First is the belief that where competition is able to take root, the market itself will constrain prices. Second was the view that regulatory oversight of the prices charged by new entrants into the local exchange market is unnecessary, even where the market cannot be considered to be "competitive," because a dissatisfied customer of a CLEC is always free to revert back to service provided by the local ILEC, whose rates, service quality, and consumer protection obligations were fully regulated by the Commission. Dissatisfied CLEC customers have the opportunity to return for service to an ILEC, and customers to whom no CLEC offers service are able to remain customers of an ILEC.

An ILEC's obligation to serve all customers within its territory has, historically, been sustainable even in the face of new "competitive" entrants into the market because Maine's regulatory scheme gives to the Commission the authority ensure that rates are set at a level that ensures that the ILEC's revenues (after necessary operating expenses) are sufficient to provide it with an opportunity to earn a fair return on its investment in its network. Thus, in addition to ensuring that rates paid by consumers are as low as possible and are applied in a nondiscriminatory fashion, and that the quality and reliability of the ILEC's service meets the needs of consumers, existing regulatory mechanisms are designed to help ensure that the business of the ILEC, both in terms of current revenues and the opportunity for investment and growth, is a continuing and viable enterprise.

CLECs do not possess the ability to recover revenue that the ILECs have historically enjoyed. Rather, the ability of a CLEC to earn a return sufficient to satisfy investors and attract capital is dependent on its ability to carefully select the geographic areas in which it will offer service, identify the types of services it will offer and the class of customers to whom it will market them, deploy equipment and personnel in the most cost-efficient manner, and obtain favorable wholesale agreements with ILECs to obtain access to portions of the ILEC's network necessary for the CLEC to offer its service.

The regulatory obligations of CLECs have, as a class, been substantially reduced as competition has increased. Thus, CLECs are not required to file tariffs. They are not required to meet formal service quality measures, such as the SQI mechanism which forms a part of the FairPoint-NNE AFOR. Also, the Commission does not generally undertake formal or informal investigations of the quality of service a CLEC is providing. CLECs are not required to obtain Commission approval for the issuance of stocks, bonds, or notes, or for the acquisition of the stock of another public utility. CLECs are, by rule, also exempt from the requirement that they file end-of-year balance statements. Further, as part of its certification process for CLECs, the Commission waives the requirement that CLECs maintain their accounting records according to the system of accounts established for telephone carriers by the FCC, and that it file annual audited financial reports. CLECs are also exempted, through waiver, from the statutory requirement that they obtain Commission approval of reorganizations. The billing and collection regulations applicable to CLECs are far less comprehensive than those which apply to Maine's ILECs. Finally, CLECs do not have an obligation to serve every customer in their service areas and, as a consequence, the regulations governing a CLEC's desire to abandon service or relinquish their operating authority in Maine are substantially relaxed and are geared mainly towards facilitating the transfer of a CLEC's existing customers to another carrier.

The two-tiered system of Commission oversight, as it developed over the years, resulted in different types and levels of regulation for different types of carriers. This difference reflects the Commission's observation that CLECs and ILECs are not equal in terms of market share, market power, and the importance of their network facilities to the viability of the public switched network as a whole. Over time, and as competition for voice services has increased, the two-tiered approach of tailoring the Commission's regulations to each class of carrier has resulted in disparate regulatory obligations that are viewed by ILECs as contributing to an unlevel competitive playing field. This disparity is even greater in the context of competition between ILECs and wireless providers. Specifically, the State (and therefore the Commission) is preempted from regulating the terms of entry of wireless providers into the Maine market and the geographic location of where a wireless provider builds out its transmission towers and other infrastructure. The Commission also may not regulate the price charged for cellular service, or the terms and conditions under which such service is offered. Service quality, consumer protections, and the resolution of consumer complaints involving wireless service are likewise areas beyond the Commission's jurisdiction to address.

A similar disparity in regulatory obligations exists between ILECs and an ever increasing source of competition in the form of voice service offered by cable television companies. Although 35-A M.R.S.A. § 8301 provides that "[c]able television companies, to the extent they offer services like those of telephone utilities subject to regulation by the commission, shall be subject to the commission's jurisdiction over rates, charges and practices," in practice, this provision has not been enforced by the Commission and the retail voice services offered by cable companies has not been

the subject of Commission oversight. This is so because there has been considerable, and increasing, disagreement throughout the industry, the FCC, the courts, and state utilities commissions regarding whether the technology used by cable television companies to deliver voice service – VoIP – falls within the federal regulatory category of “information service” such that enforcement of a state statute such as Section 8301 is preempted by federal law. Although the Commission recently took steps to require that Time Warner and Comcast obtain certificates of public convenience and necessity authorizing them to offer VoIP service (by finding that the services which they offer fall within the state law definition of “telephone service” and are not, as a matter of federal law, “information services”), the Resolve provides that the Commission may not enforce that decision.

The unregulated cable VoIP segment of the market has grown considerably in recent years relative to the regulated ILEC segment and the lightly regulated CLEC segment. Specifically, the cable VoIP share of the intrastate retail market (wireline) in Maine totaled approximately 6% in 2007. By 2010, such services accounted for roughly 13% of all intrastate retail telephone (wireline) revenue. By contrast, during that same period, the Verizon/FairPoint-NNE share of total intrastate revenues (wireline) declined from roughly 60% to approximately 49%, and the “independent” ILEC share (including the so-called “classic” FairPoint operating companies) grew modestly, from approximately 11% in 2007 to approximately 13% in 2010, as did the share of total revenues earned by the CLECs as a class, which were roughly 23% in 2007 and 25% in 2010. These figures suggest that the gains in intrastate revenue share enjoyed by the CLECs and cable television companies came largely at the expense of Verizon and FairPoint-NNE.

In addition, the size of the intrastate retail telephone revenue pie has been steadily decreasing, from approximately \$426 million in 2007 to approximately \$290 million in 2010 – a 32% decrease in the size of the market. It is likely that increased wireless substitution for wireline service, and also, to a lesser degree, the substitution of over-the-top (nomadic) VoIP service for wireline service among those with broadband service, accounts for a substantial part of the decline of total intrastate retail telephone revenue during that period.²⁷

III. Regulatory Reform – Provider of Last Resort Service

A. Provider of Last Resort Service Should Remain an Option for Maine Consumers

The Commission’s implementation of the existing regulatory regime has helped to advance, rather than restrict, the growth of customer choice through competition in the telecommunications market. Nonetheless, the scope and the particulars of that regime were designed for an era of monopoly. The Resolve directs

²⁷ The Commission cannot be sure of this, however, because wireless providers and nomadic VoIP providers are not currently obligated to report their intrastate revenues to the Commission.

the Commission to propose changes to Title 35-A and the Commission's rules so that unnecessary and outmoded regulation is abandoned and replaced by a regulatory structure that is appropriate to the current competitive landscape. The Commission has, therefore, developed an approach, detailed below, that promotes the public good by preserving the availability of POLR service at a reasonable price, and preserves the Commission's oversight of service quality and consumer protections for POLR service. At the same time, the Commission's Plan essentially eliminates Commission oversight of all non-POLR services (excepting wholesale services) regardless of by whom they are provided. In essence, unless POLR service is directly implicated, the price, availability, and service quality of all retail telecommunications services in Maine will be governed entirely by the competitive market.

It is the advance of technology, rather than the burdens of regulation, that has been largely responsible for the decline in the size of the wireline market, and more generally, in the shift in market share from traditional wireline providers to wireless carriers and cable VoIP providers. In other words, ILECs may not be losing ground because they are overregulated, but because alternative providers are offering services that are more attractive to consumers. Nonetheless, the Commission's proposed regulatory reform plan eliminates several regulatory obligations of ILECs that have outlived their usefulness and will result in reductions in disparities of regulation across sectors of the market.

There is a continuing need throughout Maine for consumers to be able to choose an affordable, basic, no-frills form of voice service. The Commission is simply not convinced that at this time, and for a significant number of citizens, the need or desire for such a service can or will be met unless one carrier in each exchange is assigned the obligation to provide it. Although there has been a general decline in the traditional telephone market, many customers continue to purchase and rely on the simple basic service that has historically been provided by traditional wireline carriers (*i.e.*, POTS). The service is reliable, ubiquitous, and more affordable to consumers at current rates than the packaged services offered by companies employing newer technology. Many customers continue to choose basic POTS service even where alternatives exist.

Competition in telecommunications has arrived in Maine, but it does not exist everywhere in the state. In many areas, the ILEC is the only voice service provider. Maine is the least densely populated state east of the Mississippi and contains some of the most remote areas in the east. These areas are extremely costly to serve and are therefore less attractive to competitors. For instance, in certain geographic areas the construction and maintenance costs of a cell tower that will serve only a handful of residential and business customers simply cannot be cost-justified by a wireless provider. Where cellular service exists but does not offer a reliably strong signal, that service is, for many customers, an insufficient substitute for a wireline telephone phone at home or in the office. Likewise, cable companies may not invest in infrastructure to allow them to offer service (television, internet, or phone) to all of the

residences and businesses in their franchise areas, thereby limiting viable alternatives for customers.

Even in areas where competition is thriving, robust competition for essential, basic service may not exist. For example, competitors may not offer reasonably priced local service with no extras – preferring instead to sell only more expensive packages of services. In this sense, the mere existence of competitors for voice service does not by itself demonstrate that companies compete for those consumers seeking to purchase a low-priced service that meets the bare minimum requirements to ensure public health, safety, and welfare. Thus, while cable and wireless providers do compete with traditional wireline carriers, they are generally less interested in the segment of the market characterized by customers that need, want, or can afford only the most basic levels of service.

Competition has had the gradual effect of eroding the traditional “regulatory bargain,” and the ability of the Commission to continue to ensure not only that an ILEC has an opportunity to earn a reasonable rate of return on its investment but also that rate averaging and implicit subsidy policies will maintain basic local service as a low cost, uniformly available service to all consumers in the state. To advance the major policy goals of the Resolve – the promotion of competition through the reduction of unnecessary regulation and the preservation of basic, local “provider of last resort” service – the Commission’s Plan adopts an incremental, conservative approach. The Plan defines as POLR service the essential, basic service that the Commission believes represents the bare minimum level of voice service that should be available to all consumers. It is with respect to POLR service that Commission oversight of the retail market is preserved. That oversight is tailored specifically to POLR service. Outdated or unnecessary regulation of the retail market is abandoned, with the result that non-POLR retail services are no longer subject to most existing state regulation.

The Plan ensures the continued availability of POLR service by designating a single company to provide POLR service in each telephone exchange. POLR service will be the only retail service for which tariffs need be filed. The Plan permits companies assigned this obligation to seek additional revenues (in the form of increased rates and, if that is insufficient, state universal service support) to compensate them for providing POLR service in the event that the costs of doing so increase. The Plan also contains a mechanism for a carrier to petition the Commission to be relieved of its POLR service obligations (and the associated regulatory oversight). Under this mechanism, a carrier with POLR service obligations would be required to demonstrate to the Commission that, for a specific exchange (or exchanges) of the POLR service provider’s service territory, competitive alternatives for service that is substantially similar to POLR service in terms of characteristics and price are so pervasive and readily available to all customers that the ubiquitous availability of a designated POLR service is no longer necessary in that exchange (or exchanges). Finally, on an exchange-by-exchange basis, a carrier may petition the Commission to consider the assignment of the POLR service obligation to another provider of voice service.

POLR service is a minimal basic service that needs to be subsidized. If the obligation to fund the provision of POLR service was placed solely on the POLR service provider, that carrier may gradually lack the funds to carry out its obligation. In addition to revenues sufficient to cover the costs of POLR service, the providers obligated to offer that service must have the revenue necessary to maintain their infrastructure so that they can provide POLR service in a quality and reliable manner. Therefore, the Commission's Plan also restructures the Maine USF to permit the Commission to authorize support for any carrier with POLR service responsibilities upon a finding that additional revenues are necessary. Moreover, under the Commission's Plan, the obligation to contribute into the state universal service fund is shared by all carriers providing voice service in Maine.

B. Definition of POLR Service

Under the Commission's Plan, POLR service is defined as one which provides:

(1) Voice grade access to the public switched network. "Voice grade access" is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz;

(2) Local usage. "Local usage" means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;

(3) Dual tone multi-frequency signaling or its functional equivalent. "Dual tone multi-frequency" is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;

(4) Single-party service or its functional equivalent. "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;

(5) Access to emergency services. "Access to emergency services" includes access to services, such as 911 and enhanced 911 ("E911"), provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point ("PSAP") operated by the local government. E911 is defined as 911 service that includes the ability to provide automatic numbering information, which enables the PSAP to call back if the call is disconnected, and automatic location information, which permits emergency service

providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems;

(6) Access to operator services. "Access to operator services" is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;

(7) Access to interexchange service. "Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;

(8) Access to directory assistance. "Access to directory assistance" is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings;

(9) Toll limitation for qualifying low-income consumers. Toll limitation for qualifying low-income consumers is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call; and

[(10) The ability to maintain uninterrupted voice service during a power failure, either through the incorporation into the network and network interface devices of suitable battery backup, or through electrical current running through the communications line.]

The definition of POLR service set forth above includes a requirement that voice service remain uninterrupted during a power failure. POTS of the type offered by ILECs (and CLECs relying upon loops supplied by ILECs) is carried as electronic signals over copper wires through which an electric current runs. Consequently (and provided that the customer does not rely exclusively on cordless phones) electrical power disruptions due to failures of the electrical transmission network (as in a storm) do not, themselves, necessarily disrupt traditional telephone service. However, the telephone service provided by cable television companies is typically disrupted when the power goes out. Thus, under the proposed definition of POLR service, a carrier could not be designated as a POLR service provider unless it incorporated some method allowing the service continue to function in the event of a power outage, either through the incorporation into the network and network interface devices of suitable battery backup, or through electrical current running through the communications line.²⁸

²⁸ It is possible, and not economically infeasible, to include survivability through battery backup in newly constructed fiber and cable networks (Union River Telephone, for example, has done precisely this).

[The Commission is not unanimous in its view that characteristic #10 (the ability to maintain uninterrupted voice service during a power outage) should be a requirement of POLR service. The fact that a separate electrical current runs through the copper wires deployed by traditional wireline carriers was a technological choice adopted at the time that telephone (and telegraph) service was first commercialized. A technologically, and competitively, neutral approach to the definition of POLR service would not disqualify the designation of carriers deploying modern technology which does not require a separate electrical current running throughout the entire transmission pathway. The Telephone Association of Maine ("TAM") and the Maine Community Action Association ("MCAA") each submitted comments to the Commission advocating that uninterrupted service during a power outage be included in the definition of POLR service, and FairPoint advocated that it be removed.]

The definition of POLR service is intended to represent the minimum basic voice service that the Commission believes should be made available, at reasonable rates, to every consumer in Maine. The ten definitional attributes of POLR service are the same as those which under current federal law must be provided by any carrier receiving support from the federal USF, with the addition of the ability to maintain service during a power failure. In addition, the definition of POLR service is technologically neutral. Consequently, it is conceivable that, in the future, the obligation to offer POLR service in a specific territory (and the benefits deriving from such designation) could be assigned to not only wireline ILECs, but instead, to a wireline CLEC, a cable television company, a VoIP provider, or a wireless company.

POLR service also does not include certain attributes or features that many consumers consider desirable, but which are unnecessary to achieve the policy goal of promoting the general safety and welfare by ensuring that every consumer can connect to the voice network. Features such as call-waiting, caller-ID, voicemail, three-way calling, and call-forwarding, are not essential to this purpose, and therefore are not attributes of POLR service. Likewise, long distance service is not a part of the POLR service offering, although the ability of a POLR service customer to access a long distance provider is required.

[The Commission is not unanimous as to whether customers who purchase POLR service and also ancillary services such as call waiting or voicemail, should be entitled to seek the help of the Commission's Consumer Assistance Division ("CAD") to resolve disputes involving the consumer protections that attach to POLR service. Presently, the practice of the CAD is to address customer complaints only insofar as they implicate basic local service, irrespective of whether the complaining customer also purchases ancillary products or calling features. There are several approaches that the Legislature may wish to consider in resolving this policy issue. The first approach is to maintain the status quo by permitting the CAD to continue to process

Whether retrofitting existing cable and fiber networks to provide backup is economically feasible is an entirely different matter.

complaints regarding POLR service regardless of what other services or ancillary features a customer purchases. Alternatively, access to the services of CAD staff could be limited to those customers who purchase only POLR service from the designated provider. Another option is to permit customers who purchase both POLR service and services or calling features that must necessarily be purchased from the POLR service provider if the customer wants them at all (i.e., there is no alternative source from which a customer taking POLR service can purchase the feature on a “stand-alone” basis) to obtain the help of the CAD in enforcing consumer protections that attach to only the POLR service “component” of these packages. For example, under this third option a customer purchasing POLR service and “Caller ID” service could obtain the assistance of the CAD with respect to the POLR service, because there is no alternative source of “Caller ID,” but a customer purchasing POLR service and voicemail could not obtain such assistance because a customer can readily obtain “voicemail” functionality by purchasing an answering machine. The question of policy that is implicated by these various approaches requires consideration of the degree to which POLR service should be narrowly defined and the attendant minimization of regulatory obligations for the carriers obligated to provide the service.]

The Commission’s Plan recognizes POLR service as an essential component of a robust telecommunications marketplace in Maine. The Plan also requires that the Commission take steps to ensure that every customer has the ability to choose POLR service, either because there exists no other service options in a given geographic area, or simply because the customer prefers to purchase this type of service despite alternative options. The Plan achieves this goal by assigning the POLR service obligation to the state’s ILECs at the prices currently charged by them for basic service. The Commission’s regulatory oversight of service quality and price for retail voice service is re-focused to pertain mainly to POLR service.

Of particular significance to the development of the Commission’s Plan is the fact that on October 27, 2011, the FCC adopted significant changes to the amounts and form in which federal USF support will continue to be available to ensure the viability of POLR service throughout the country.²⁹ Each of the ILECs to be assigned the POLR service obligation under the Commission’s Plan, with the exception of the Sidney Telephone Company and the Maine Telephone Company, receives some form of federal USF support. Indeed, Maine is a net recipient of federal USF dollars. The FCC’s changes to the federal USF are designed to shift the focus of the program towards the promotion of broadband buildout in unserved areas, and it will continue to be a priority of the Commission to undertake actions designed to increase the flow of federal support to providers in Maine. At the same time, changes in the federal USF program will present challenges to the carriers who have, traditionally, relied upon such support to provide basic service throughout the entirety of their service territories. To address these potential challenges, the Commission’s Plan expressly broadens the contribution base of the Maine USF, and also provides the Commission with the

²⁹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011).

necessary flexibility to administer that fund to ensure that adequate support continues to be available to all companies with POLR service obligations.

C. The Plan for POLR Service Regulation

1. Consumer Protection Rules and the Consumer Assistance Division

The Commission's consumer protection rules will be limited to POLR service and those rules will be appropriately modified to reflect the regulatory environment that exists today.³⁰ Clearly defined standards for the provision of POLR service in the form of a well-balanced rule will best serve customers and carriers assigned to provide POLR service. POLR service will be covered by the Commission's consumer protection rules in much the same way that ETC providers are covered today. The Commission will continue to regulate service quality, the granting and denying of service, credit and deposit practices, disconnection, and customer complaint procedures. Further, the CAD will continue to resolve customer complaints regarding the aspects of POLR service covered by Commission rules and the CAD will retain its authority to issue decisions in these cases that are binding on both the utility, as well as the customer.

To accomplish the goal of regulating POLR service only, the Plan eliminates Chapters 291 and Chapter 292 of the Commission's Rules. With the elimination of these two chapters, the requirement that ILECs include three separate sections on their bill (basic service, toll service, and optional services) will also be eliminated. The "billing and payment" section of the POLR service rule will apply only to POLR service.

Under the Plan, the POLR service rule will be based upon Chapter 290 of the Commission's Rules, which applies today to ETCs and basic service. The Plan modifies the rule to reflect the current telecommunications landscape and the criteria specified in the Resolve. Under the Plan, the Commission will retain its oversight authority to prevent unfair or deceptive trade practices, to ensure compliance by POLR service providers with existing customer privacy regulations and billing and payment standards.

³⁰ In this context, the "Consumer Protection Rules" being referred to are Chapters 290, 291, and 292.

The following chart highlights the necessary changes to Chapter 290 of the Commission’s Rules:

Section	Title of Section	Comments
1	Purpose	Eliminate reference to ETCs, replace with POLR service
3	Jurisdiction	Specify rules apply only to POLR service
4	Emergency Moratorium	Retain
5	Non-Discrimination	Retain
6	Unfair or Deceptive Trade Practices	Retain
7	Customer Privacy	Retain
8	Customer Rights	Retain, modify to reflect revised POLR service requirements
9	Application for Service	Retain
10	Confirmation of Order with Written Terms and Conditions	Eliminate
11	Transfer of Service	Retain
12	Billing and Payment Standards	Retain
13	Payment Arrangements	Retain
14	Disconnections	Retain
15	Medical Emergency	Retain, but limit to 3 declarations in 12 month period (consistent with Chapter 815)
16	Reconnection of Service	Retain
17	Optional Service Providers	Eliminate
18	Dispute Resolution Procedures	Retain
19	Records; Reports	Retain
20	Waiver	Retain

The Plan eliminates Chapter 289, which establishes consumer protection requirements for bundled services, methods for recording revenue from those services, and sets upper and lower limits on prices for bundles. The purpose of the rule will remain intact, however, through the regulation of POLR service and deregulation of all other services. The POLR service rule will specify that a POLR service provider cannot transfer an existing account balance incurred as a result of non-payment of a bundled service offering to a new basic-service-only account, and will allow the POLR service provider to limit such customers to POLR service. In this way, the POLR service provider is protected from the bad debts of a customer, and the customer is afforded continued access to the public switched telephone network at an affordable price.

The Plan retains Chapter 294, which addresses Maine's Lifeline and Link Up programs. The State will continue to administer its own Lifeline and Link-up programs. By administering its own programs, Maine is able to maximize the monthly Lifeline benefit available to low income Mainers at \$13.50. Further, by administering its own Lifeline program, applicants may self-certify their eligibility subject to subsequent verification by the Department of Health and Human Services and the Maine State Housing Authority, thereby resulting both in a high participation rate and a low rate of fraud.

The Plan retains Chapter 293, which provides a method for CLECs to abandon service and terminate their authority to provide service, and governs transfers of customers from one carrier to another; Chapter 296, which prohibits "slamming" whereby a carrier changes customer's preferred carrier without the customer's authorization and allows customers to "freeze" their preferred carrier selections; and Chapter 297, which prohibits carriers from placing charges on a bill without first receiving the customer's authorization. These rules address problems that are sometimes created by the existence of a competitive market and are designed to ensure that abuses by carriers do not deprive customers of their right to choose their preferred carrier.

Finally, the Plan modifies Chapter 870. Chapter 870 establishes the maximum interest rate that may be charged on unpaid balances, the circumstances in which late payment charges may be imposed, provides a just and reasonable interest rate for customer deposits, and establishes the maximum fee that may be charged for checks returned for nonpayment. Under the Plan, Chapter 870 would apply to voice service providers only to the extent that they offer POLR service.

2. Service Quality Measures

Pursuant to 35-A M.R.S.A §101, it is the Commission's responsibility to ensure safe, reasonable and adequate service and to ensure that the rates of public utilities are just and reasonable to customers and public utilities. If the Commission finds that a carrier is failing to meet its obligation to provide reasonable and adequate service, after a proper investigation is conducted pursuant to 35-A M.R.S.A. § 1303 and a finding of inadequate service is made, the Commission may by Order establish or change terms, conditions, measurement, practice, service, or acts as it finds just and reasonable. The Commission's Plan retains this statutory framework, with respect to voice service providers, for POLR service only.

The Plan also authorizes the Commission to establish POLR service reliability metrics ("PRM") that will quantitatively measure the performance of each POLR service provider in providing reliable POLR service. The PRM will establish the floor for acceptable POLR service quality. Performance equal to or better than the benchmark for each metric will represent "reasonable and adequate service." Performance below the benchmark will represent inadequate service. As an incentive-based program, the PRM will include a customer rebate mechanism that is triggered by

substandard POLR service. The PRM, benchmarks, and customer rebate formulas will be established through a rulemaking proceeding.

3. Revenue Requirements of POLR Service Providers

If a POLR service provider believes that the revenues generated by the sale of POLR service in a particular geographic area within its service territory (*e.g.*, an exchange or census block) are insufficient to cover the costs of offering and providing the service throughout that area (plus a reasonable return on investment) it may request additional revenues. To evaluate whether such additional revenues are, in fact, required, the Commission will conduct an adjudicatory proceeding to establish the forward-looking revenue requirement for that specific geographic area. This analysis will employ a forward-looking cost model to determine the costs of providing all of the services that the POLR service provider offers in the specified area.

The forward-looking cost model (“cost model”) will be developed in the context of the first adjudicatory proceeding in which a POLR service provider seeks additional revenues. The Commission anticipates that the cost model will be designed to determine the total costs of constructing and maintaining a hypothetical network that capable of providing not only POLR service but also all of the other services offered by the POLR service provider in the relevant geographical area. The hypothetical network that would form the basis of the model would presume that it is built today using modern technologies (likely IP technology as opposed to traditional, and increasingly outmoded, circuit-switched technology) and present-day costs.

The Commission expects that its development of this model will coincide with, and benefit from, the FCC’s recently announced plan to develop just such a model over the course of 2012, in an open proceeding. It is the FCC’s stated intention to begin using this new model in 2013 for the purpose of calculating federal USF distributions to support broadband build-out, and to calculate high-cost support for voice service during the period in which that support is being phased out. The Commission believes that significant regulatory efficiencies may be realized by tailoring Maine’s model to that being developed by the FCC. Once completed, the Commission’s cost model will be applied to the geographic area in which the POLR service provider seeks additional revenues.

To determine the POLR service provider’s revenue requirement for a given geographic area, the Commission will obtain from the POLR service provider an accounting of its total current revenues derived from of all services that it offers in that area. Thus, the total revenue calculation will include not just the revenue derived from the sale of regulated POLR service, but also from the sale of all telecommunications and information services not regulated by the Commission (regardless of whether the service is regulated by the FCC). All current state and federal USF support received by the POLR service provider will be included in the total revenue calculation.

If total costs exceed total company revenues for the specific geographic area under consideration, the POLR service provider will be entitled to additional revenues. Under the Plan, these revenues must first take the form of an increase in the POLR service rate in that area, up to a level which under the FCC's existing rules is two standard deviations above the national average local exchange rate charged in urban areas. Presently, that two standard deviation benchmark is \$32.28 per month.

If the Commission's revenue analysis determines that there would still be a revenue shortfall in the relevant area after POLR service rates are increased to the maximum federal benchmark level, then some amount of support will be provided from the Maine USF. Such Maine USF support will enable POLR service providers to maintain POLR service rates at the benchmark. Under the existing Maine USF rule implemented by the Commission, Chapter 288, only rural ILECs are eligible for Maine USF support, and 15 of the 22 such carriers receive subsidization from the fund. Under the Plan, however, FairPoint-NNE (a non-rural ILEC) will become eligible to receive Maine USF support because it will be designated as a POLR service provider. Chapter 288 will need to be revised accordingly.

The approach to revenue requirement analysis outlined above is a substantial departure from the Commission's traditional rate-making techniques for telephone utilities. First, consideration of a POLR service provider's costs would be limited to specific geographic areas which could be subsets of the company's entire service territory. Second, the Commission would not seek to allocate costs according to the various types of services offered by the company (or the traditional "jurisdictional" characterization of service supported by those costs). Regardless of whether a portion of the cost of a particular piece of network equipment was formerly treated as an intrastate cost, an interstate cost, or an "unregulated" cost, the cost will be included in the model, on a forward-looking basis. Third, all revenues, regardless of whether they are revenues derived from services formerly characterized as "intrastate" revenues will be considered in setting the revenue requirement for the POLR service provider for the particular geographic area at hand. Finally, the need for a revenue increase in a particular geographic area will be met, in the first instance, through a rate increase for POLR service only, as under the Plan the Commission will not regulate the rates of any other voice service in the State and will therefore be unable to spread the need for additional revenues across a variety of different services offered by the POLR service provider.

Moreover, implementation of the Plan's approach to evaluating the revenue requirements of a POLR service provider will likely, over time, result in the rate for POLR service paid by customers residing in certain higher cost areas of a POLR service provider's territory to become comparatively higher than the rate paid by customers residing in other lower cost areas of the same carrier's territory. The degree to which there will be different "rate zones" for the same POLR service will depend upon if, when, and for which particular service areas a POLR service provider seeks and obtains approval for additional revenues. Likewise, the existing regime of nearly

identical rates among various rural carriers (a result of reforms to intrastate access rates, the contours of local service calling areas, and implementation of the Maine USF) is not guaranteed under the Plan. Stated another way, a significant consequence of implementing the Commission's Plan may be erosion of the viability of the rate-averaging policy that has, to date, been a significant component of price regulation of telephone service in Maine.

One reason why disparate rates may occur under the Plan is that the costs of providing service are undoubtedly higher in rural areas of the state. Another reason is that less robust competition in certain rural areas of the state may enable a POLR service provider to increase its POLR service rate without losing POLR service customers. Indeed, the view that competition as it presently exists constrains the market price for basic local service is true only to the extent that in a particular area there are several competitive providers for that service. For instance, in the case of FairPoint-NNE, the existing price caps set by the AFOR do not constrain FairPoint-NNE's ability to lower prices for basic local service to meet competition where it exists. However, under the AFOR, FairPoint-NNE may not increase its rates above the cap where it faces little or no competition for basic local service. In contrast, the Plan would permit FairPoint-NNE to seek a rate increase for POLR service selectively in a discrete geographic area, provided that application of the Commission's cost-model demonstrates that its costs in that area exceed its revenues.

The Commission's Plan may also cause changes in the size of the Maine USF. Even though POLR service rate increases up to the FCC benchmark will serve to temper undue reliance on Maine USF support, it is possible that the total size of the Maine USF will increase once the Plan is implemented. This is especially so because FairPoint-NNE will become eligible, for the first time, to obtain Maine USF subsidies. The economic effect of any increase in the size of the Maine USF fund is increased socialization of revenue shortfalls experienced by POLR service providers. The total cost of these subsidies will be borne by all providers of voice service in Maine through their contributions to the fund and, to the extent those costs are passed on to customers, by every user of voice service in the state.

In developing the revenue requirement provisions of its Plan, the Commission considered the possibility of establishing a mechanism to examine the economic cost to a company of providing only POLR service. However, this would be exceedingly difficult because POLR service is not a discrete service provided over dedicated facilities by the carrier. Instead, POLR service is one of many services, both regulated and unregulated, that are provided over the plant and equipment encompassing the carrier's entire network. Indeed, much of the carrier's investment is made to provide multiple services, and a significant portion of its expenses are incurred on a company-wide basis. The complexities of attempting to correctly separate and allocate the investments in plant and the joint and common costs of providing only POLR service would not only be extremely time-consuming but also would be sure to generate considerable controversy. Conducting POLR service-specific rate cases is simply not, in the Commission's view, a viable option.

4. Relief from POLR Service Obligation by ILECs

Maintaining POLR service, as defined above, as a choice universally available to customers irrespective of the existence of other options for voice service, is necessary to ensure the health, safety and economic opportunities of all Maine citizens. Under the Plan, the obligation to offer POLR service is initially assigned to each of the ILECs, as it is these firms that have historically, and successfully, provided “universal” voice service. Nevertheless, as an alternative to petitioning for additional revenue in order to continue offering POLR service, any POLR service provider may petition the Commission to be relieved of its POLR service obligation. Thus, a POLR service provider may come before the Commission and present, in an adjudicatory hearing, granular, detailed, and persuasive quantitative evidence that there no longer exists within a discrete geographic area (e.g., an exchange or census block) a public interest need for the POLR service offering. The Commission expects that the burden of making such a showing will be quite heavy and not easily met.

Among the factors that the Commission would be required to consider in reaching a decision in such a proceeding are: (1) the number of customers who purchase only POLR service (*i.e.*, do not purchase POLR service as a component of a package of other services such as internet or video programming); (2) verifiable data identifying the physical locations of all customers who presently take POLR service from the provider; (3) verifiable data identifying the physical locations of all customers who presently take service from the provider that is not POLR service, and the particular service offerings that these non-POLR service customers take from the provider; (4) verifiable data identifying those physical locations within the exchange area where customers presently taking POLR service have the ability to take service from two or more alternative service providers; (5) verifiable data demonstrating that each of the alternative services available to such customers is materially comparable in price, quality (at the physical location of the customer), and terms and conditions of service; (6) any other verifiable data which demonstrates that it would be in the public interest to relieve the provider of its obligation to provide POLR service in the specific geographic area. Satisfaction of all of the above factors would likely be indicative of the presence of effective competition in a given area.

To the extent that other criteria may reveal themselves as germane to the Commission’s evaluation of a provider’s petition to be relieved of its obligation to offer POLR service in particular exchanges, such factors, and the quality of data necessary to support them, would be identified either over the course of case-by-case evaluations or in the context of an open rulemaking proceeding. In other respects, existing rules and practices of the Commission are easily applied to an adjudicatory proceeding held on a petition to relinquish the POLR service obligation. Such proceedings would be limited to a particular exchange in which the POLR service provider seeks to be relieved of its POLR service obligations.

Alternatively, where a POLR service provider (initially an ILEC) is not able to present a compelling case that POLR service is not necessary in a given geographic area, the provider may seek to demonstrate that one or more viable alternative POLR service providers are available and willing to replace the original provider. In this instance, the Commission would conduct an in-depth analysis, in an adjudicatory proceeding, to ensure that any proposed “replacement” POLR service provider is fully qualified to meet the POLR service standards and do so at a reasonable price. The original provider of POLR service would not be relieved of its POLR service obligations until the replacement provider demonstrates its capabilities (financial and technological) to assume the role. There are a variety of ways in which the Commission might identify other potential replacement POLR service providers, such as through a Request for Proposals process or a “reverse auction.” The Commission’s Plan affords it sufficient discretion and flexibility to establish, on a case-by-case basis, the particular process that it will adopt to evaluate a replacement POLR service provider, and to explore and consider whether or not less costly, but equally effective, alternatives exist. Again, the POLR service provider’s burden of demonstrating that it should be relieved of its POLR service obligations in favor of a substitute provider will be quite high, and there must be a willing and capable replacement.

D. Universal Service Funds

It is not possible to predict whether, and to what extent, additional explicit support may be required to ensure the continued viability of POLR service once the rates of non-POLR service are deregulated. This is especially so in light of the fact that the FCC has made significant changes to the structure of the federal USF program. Currently, Maine’s ILECs (and also U.S. Cellular) receive annual support from the federal USF and/or the Maine USF. In 2010, Maine’s telephone companies received a total of approximately \$18 million in federal support, and \$7.4 million in state support. These ongoing USF disbursements are a form of explicit support (*i.e.*, subsidization) to companies providing service in high-cost areas. They are meant to further the policy of universal service which, as articulated in federal law, is to ensure that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas . . . have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those service provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. § 254(b)(3).

The federal subsidies received by U.S. Cellular are used exclusively for expanding the availability of its service into high-cost areas. By contrast, the bulk of the support received by the ILECs is intended to allow the Commission-approved rates to be lower than they otherwise would be based on traditional cost-based ratemaking principles and, therefore, to approach, in terms of comparability, the lower rates enjoyed by customers residing in more urban areas of the country. As presently implemented, the Maine USF provides a supplemental subsidy to rural ILECs so that the rates paid by

customers of smaller, “independent” ILECs will be comparable to the rates paid by FairPoint-NNE’s customers.

For most of the carriers receiving explicit support, the subsidy is an important source of revenues. The chart on the following page indicates the amount of support received by Maine telephone companies. As a rough measure of the impact which that support has on monthly rates paid by customers, the last column of the chart, entitled “support per line per month” suggests that for customers of thirteen of the ILECs, monthly rates are subsidized in amounts greater than \$24, with the per-line monthly subsidization exceeding \$100 for the customers of two ILECs operating in very high-cost, low density areas.

Explicit Support Paid to Maine Telephone Companies - 2010

Carrier	Total Support	ME USF [‡]	FED USF [†]	Lines**	Support per Line per Year	Support per Line per Month
U.S. Cellular	\$9,444,445	\$0	\$9,444,445	n/a*	n/a*	n/a*
Somerset Tel. Co.	\$3,400,811	\$2,480,126	\$920,685	9,200	\$369.65	\$30.80
UniTel	\$2,079,857	\$822,215	\$1,257,642	4,001	\$519.83	\$43.32
Standish Tel.	\$2,039,298	\$203,028	\$1,836,270	4,093	\$498.24	\$41.52
Lincolnton/Tidewater	\$1,753,954	\$145,078	\$1,608,876	11,067	\$158.49	\$13.21
Northland Tel.	\$1,710,315	\$0	\$1,710,315	17,381	\$98.40	\$8.20
Union River Tel.	\$1,442,456	\$235,367	\$1,207,089	1,190	\$1,212.15	\$101.01
Mid Maine Tel.	\$1,378,310	\$564,098	\$814,212	4,228	\$326.00	\$27.17
Community Service	\$1,371,147	\$0	\$1,371,147	7,306	\$187.67	\$15.64
FairPoint-NNE	\$1,269,091	\$0	\$1,269,091	340,333	\$3.73	\$0.31
Oxford/Oxford West	\$2,030,685	\$0	\$2,030,685	10,741	\$189.06	\$15.75
Hartland/St. Albans	\$901,877	\$610,802	\$291,075	3,104	\$290.55	\$24.21
Saco River Tel.	\$869,352	\$0	\$869,352	5,444	\$159.69	\$13.31
W. Penobscot Tel.	\$838,899	\$618,153	\$220,746	1,963	\$427.36	\$35.61
Island Tel. Co.	\$814,672	\$626,953	\$187,719	591	\$1,378.46	\$114.87
Hampden Tel.	\$774,259	\$270,763	\$503,496	2,439	\$317.45	\$26.45
Pine Tree Tel.	\$757,914	\$0	\$757,914	4,202	\$180.37	\$15.03
Warren Tel. Co.	\$692,457	\$425,064	\$267,393	1,250	\$553.97	\$46.16
China Tel. Co.	\$648,750	\$107,985	\$540,765	2,032	\$319.27	\$26.61
Cobosseecontee	\$263,385	\$90,387	\$172,998	501	\$525.72	\$43.81
Sidney Tel.	\$858	\$858	\$0	933	\$0.92	\$0.08
Maine Tel. Co.	\$196,501	\$196,501	\$0	5928	\$33.15	\$2.76
Total	\$25,234,848	\$7,397,378	\$17,837,470	437,927		

[†] 2010 Monitoring Report, Federal-State Universal Service Joint Board Staff.

[‡] Maine USF disbursements were established at the time of the recipient’s last rate case.

* This information was not made available by U.S. Cellular.

** Line totals obtained from company annual reports to the Commission.

The Commission's Plan modifies the Maine USF to permit support to be disbursed to each carrier designated to provide POLR service. Initially, the amount of Maine USF support that each POLR service provider will receive will be the same amount that it currently receives (these amounts have not changed since they were first established). As described above, subsequent adjustments may be made on a company by company basis, in the context of a petition for an increase in the revenues for POLR service. In such circumstances, consideration of increased support will be made in conjunction with consideration of an increase in rates for POLR service, and the authorized amount of Maine USF support for a given carrier will be established based upon the amount that is necessary to support the carrier's entire network in the discrete geographic area, taking into account all of the revenues that the POLR service provider receives as a result of its sale of all types of service in that area..

It is possible that the overall size of the Maine USF fund will increase as the Plan is implemented. This is most likely to occur in the event that FairPoint-NNE seeks an increase in the rates it charges for POLR service after the expiration of its existing AFOR in 2013. To the extent that the Commission's forward looking cost analysis demonstrates that the costs to FairPoint-NNE of providing its services in a given geographic area exceed the revenues it receives in that area (from all sources), the Commission will consider the disbursement of Maine USF subsidies to support service in that area. Assuming no previous change in the support provided to the other POLR service providers, a decision to provide FairPoint-NNE with Maine USF support would necessarily increase the size of the fund by the amount of the authorized support.

The Commission's Plan also ensures that the contribution base of the Maine USF is as broad as possible, and that the contribution obligation does not depend upon the technology (e.g., VoIP, wireline, wireless) that a particular carrier deploys to offer voice service. To more equitably distribute the contribution obligation, Maine USF contributions will be made by every company providing voice service in the state based on company revenues, regardless of the technology deployed.³¹

IV. Regulatory Reform – Other

A. Broadband

The Resolve does not address issues related to the regulation of broadband. Increased availability of broadband service, and the speed at which that service is provided to consumers, is undeniably an important factor in future economic development in Maine. Indeed, 35-A M.R.S.A. § 7101 – the legislative statement of Maine's telecommunications policy – states that "it is the goal of the State that all Maine's businesses and citizens should have affordable access to an integrated

³¹ This sentence was changed on January 4, 2012 to correct an error. The original sentence stated, incorrectly, that the Commission's Plan would collect Maine USF contributions on a per telephone number basis; the Commission intended to state, however, that Maine USF contributions would be collected on the basis of company revenues.

telecommunication infrastructure capable of providing voice, data and image-based services.” The Legislature has also found that “computer-based information services and information networks are important economic and educational resources that should be available to all Maine citizens at affordable rates,” and that “[i]t is the policy of the State that affordable access to those information services that require a computer and rely on the use of the telecommunications network should be made available in all communities of the State without regard to geographic location.”

The Commission agrees that the availability and use of broadband services is important to Maine’s economic development. The Legislature has not, however, delegated to the Commission statutory authority to regulate entry of companies into the market for broadband services or the price at which such services are offered. Indeed, in light of federal preemption concerning broadband regulation, it is uncertain whether the Legislature could give such authority to the Commission. Even without federal preemption, it seems unlikely that the method used to ensure basic service ubiquity – *i.e.*, monopoly regulation coupled with an obligation to serve and subsidies for low income customers and high cost areas – would be an efficient or effective model for broadband, where rapid technological change and vigorous competition are the rule rather than the exception. In any event, the Commission is not recommending the establishment of state economic regulation of broadband. Broadband service is not an element of the POLR service addressed in the Commission’s Plan.

The Commission thus recommends that the Legislature consider other tools to the extent that it believes that market forces alone will not provide sufficient deployment of broadband throughout the state. Tools could include a state fund dedicated to the purpose or an expansion of the grant program presently administered by the ConnectME Authority. In addition, the FCC has adopted a National Broadband Plan and, on November 18, 2011, announced substantial changes in the federal USF. Part of those changes involve a shift in the use of those funds from the support of high-cost basic telephone service to supporting efforts to expand broadband penetration into areas that are not presently served by any provider. Consequently, the Commission recommends that the Legislature give it broad authority to assume whatever state role might emerge from these changes in the federal USF program so that it can coordinate state efforts to maximize the amount of federal funding available to broadband providers in Maine. Pending full implementation of these changes, the Commission should retain its existing authority to take actions intended to maximize the flow to Maine companies of funds from the legacy USF mechanism during any transition period.

Finally, as a condition of its approval of the purchase by FairPoint of the telephone network assets in Maine formerly operated by Verizon, the Commission approved commitments made by FairPoint-NNE to expand the geographic scope of its broadband offerings by making capital expenditures to update its telephone network facilities. Those commitments, which by their terms provide access to FairPoint-NNE’s broadband services to at least 87% of its Maine customers, are embodied in orders of the Commission and are currently enforceable by the Commission. The Commission

recommends that the Legislature not adopt any statutory revision to Title 35-A that would diminish the authority of the Commission to enforce FairPoint's obligations regarding its broadband build-out commitments.

B. Chapter 200 Outage Reporting

Section 3(4) of the Resolve prohibits the Commission from requiring the filing of service outage reports any earlier than seven days after restoration of service. Carriers are required to make reports to the Commission's Emergency Services Communications Bureau ("ESCB") within 30 minutes of an outage that affects the E911 network. However, not all outages affect E911 (*i.e.*, the E911 "network" is working properly in that the state's PSAPs are all up and running and connected to each other, but individual customers may not have service and, thus, not be able to reach a PSAP).

The Commission is of the view that the Legislature intends for it to be kept abreast of significant network outages impacting the ability of Maine citizens to access the voice services upon which they rely. After-the-fact reporting of service outages does not accomplish this public safety goal. Nor does reliance on the reporting thresholds of the FCC, which are substantially higher than is useful for a largely rural state such as Maine.

The ILECs, and particularly FairPoint, object to the existing outage reporting requirements because they view the effort they expend to comply as unjustified by the public safety benefits of the reporting regime. To simplify the outage reporting requirements, and to make them less burdensome, the Plan calls for all Voice Service Providers to report to the Commission the fact that a key component of its network is not functional. Under the Plan, the Commission proposes amending Chapter 200 to provide that these reports are to be submitted to the Commission electronically as soon as is practicable, but not more than four hours after the outage is discovered. The report should identify the location of the network component that is out of service, and should include the contact information for the person making the report. No further information need be submitted to the Commission regarding the outage unless requested by the Commission. As soon as practicable after the outage is resolved, the carrier should so advise the Commission.

The Commission will conduct a major substantive rulemaking proceeding to modify its Chapter 200 rule to identify, for each type of carrier, the particular network component outages that will trigger this simplified outage reporting requirement. For instance, the Commission anticipates that, for ILECs, the outage of a central office or remote terminal will be a reportable event, and that for interconnected VoIP providers an outage experienced at its analogous facilities (such as critical servers, soft-switches, or nodes) should be reported.

C. Modifications to Financial and Accounting Reporting Requirements

Under the Commission's regulatory reform proposal, only the provision of POLR service will be regulated. Thus, only POLR service providers will be required to file accounting and financial reports pursuant to existing state statutory and regulatory law. Non-POLR service providers will be required to submit only such financial information as is necessary to accurately report revenues for annual regulatory, Maine USF, MTEAF, and ConnectME assessment purposes. Although the Plan eliminates the need for an explicit chart of accounts, the Commission will continue to require each voice service provider ("VSP") and each POLR service provider to keep its books in a manner that allows appropriately segmented reporting of all revenue generated in Maine.

In the event that a POLR service provider seeks additional revenues with respect to a specific geographic area, the carrier will be required to submit audited cost and revenue information necessary for the Commission to conduct the forward-look cost analysis and total company, un-separated revenue review mandated under the Plan. Finally, in the event that a non-POLR service provider is under consideration by the Commission for designation as a replacement POLR service provider (should the existing POLR service provider petition for relief from its POLR service obligations), then the potential replacement will be required to file such financial information as the Commission determines is germane to the question of whether that carrier is qualified to become a POLR service provider.

D. Other Modifications to Title 35-A and Commission Rules

There are existing provisions of Title 35-A that, in the view of the Commission, either create impediments to competition or which may not demonstrably advance the public interest. The Commission's Plan would remove these provisions.

The Plan would remove the bonding required for CLECs in Section 2102 of Title 35-A. The bonding (or in-state asset) requirement was added to Section 2102 because of concerns about "slamming" (the unauthorized change of a customer by a carrier from another carrier authorized by the customer). Slamming is prohibited by 35-A M.R.S.A. § 7106, which also provides remedies and penalties. This requirement, in the absence of a showing that a particular applicant has a history of "slamming" or other illegal activities, may constitute a "barrier to entry" prohibited by 47 U.S.C. § 253(a). Other states have imposed bond requirements; however, the Commission is not aware of any state whose bond requirement is as high as Maine's. In addition, the Commission's CAD receives very few slamming complaints. For these reasons, the Commission's Plan removes the bonding requirement.

The Plan eliminates Section 307-A of Title 35-A (exemption for certain telephone utilities from the requirements regarding the filing of, and changes to, rates and terms and conditions). As POLR service providers are the only telephone carriers

which remain public utilities under the Plan, there is no need for there to be continued authority to grant exemptions for carriers which are deregulated under the Plan.

The Plan eliminates Section 507 of Title 35-A (exemption for certain telephone utilities from the requirements regarding the filing of balance sheets and the time for closing accounts). As POLR service providers are the only telephone carriers which remain public utilities under the Plan, there is no need for there to be continued authority to grant exemptions for carriers which are deregulated under the Plan.

The Plan eliminates Title 35-A, Chapter 8 (collection for audiotext services) in its entirety. Audiotext services, to the extent they even remain a viable business in the internet age, are not POLR services, and there remains no continuing need for the Commission to regulate in this area.

The Plan eliminates Section 912 of Title 35-A (exemption for certain telephone utilities from the requirements regarding the issuance of stocks, bonds, and notes). As POLR service providers are the only telephone carriers which remain public utilities under the Plan, there is no need for there to be continued authority to grant exemptions for carriers which are deregulated under the Plan.

The Plan eliminates Section 7301 of Title 35-A (telephone charges for local calls from pay telephones). Public telephone service is not POLR service, and therefore, under the Plan, there is no longer Commission jurisdiction over payphone service.

The Plan eliminates Section 7303 of Title 35-A (mandatory local measured telephone service prohibited). POLR service is defined as requiring unlimited local service. Any other local service offered by a POLR service provider or any service offered by a carrier that is not a POLR service provider, is entirely unregulated under the Plan, there is no continuing basis to require that local service not be provided on a measured basis.

The Plan eliminates Section 7303-A of title 35-A (basic service calling areas). POLR service requires unlimited local calling in an area determined by the Commission. The local calling area for POLR service under the Plan is the basic local calling area in effect as of January 1, 2012. There is no continuing need for a mechanism, as provided in § 7303-A, for consumers to petition for a change in the basic local service area of a voice service provider.

The Plan eliminates Section 7304 of Title 35-A (prohibition against ordering competitive bidding). As only POLR service is regulated under the Plan, there is no longer Commission jurisdiction to review the company-wide requisition practices of telephone carriers.

The Plan eliminates Section 7305 of Title 35-A (notice of charges for use of public telephones). Public telephone service is not POLR service, and therefore, under the Plan, there is no longer Commission jurisdiction over payphone service.

The Plan eliminates Section 7306 of Title 35-A (customer premise wire). Services related to the telephone wires located inside a customer's premises are not POLR service under the Plan. There is therefore no longer Commission jurisdiction over such services.

The Plan eliminates the tariffing requirement of Section 7307 of Title 35-A (notice of intrastate toll rate changes). Toll service is not POLR service under the Plan, and thus tariffs for such services are no longer subject to Commission jurisdiction. The consumer protection aspect of this section (that toll carriers provide notice to their customers of rate increases) is retained under the Plan.

The Plan eliminates Section 7308 of Title 35-A (prepaid calling service). Prepaid calling service (prepaid calling cards) are not POLR service, and therefore, under the Plan, such services are no longer subject to Commission jurisdiction.

The Plan eliminates Section 7504 of Title 35-A (special telephone equipment.). Special telephone equipment (volume control devices and bone conducting receivers) are not POLR service. Under the Plan, the sale and lease of such items are no longer subject to Commission jurisdiction.

The Plan eliminates Title 35-A, Chapter 77 (emergency use of Telephone Party Lines). There are no longer party lines in Maine and, in any event, such service is not POLR service.

The Plan eliminates Section 8301 of Title 35-A (Commission regulation of cable television companies). The voice service offered by cable television service (VoIP) is not POLR service under the Plan, unless a cable television carrier were to become a POLR service provider pursuant to the POLR service provisions of the Plan. Therefore, under the Plan, the Commission does not have plenary jurisdiction to regulate the voice offerings of cable companies unless and until they become POLR service providers, in which case they would be regulated under the POLR service provisions of Title 35-A.

The Plan eliminates Title 35-A, Chapter 85 (radio paging service). Radio paging service is not POLR service. Under the Plan, therefore, there is no continuing Commission jurisdiction over such service.

The Plan eliminates Section 8901 of Title 35-A (separate accounting for mobile telecommunications services). Mobile wireless service is not POLR service under the Plan, unless a mobile wireless carrier was to become a POLR service provider pursuant to the POLR service provisions of the Plan. Moreover, to the extent that a POLR service provider were to operate a wireless network which uses, directly,

the network infrastructure of the POLR service provider, the cost of that overlapping network would be included in the forward-looking cost model under the revenue requirement provisions of the Plan (as would the revenues derived from the use of those facilities).

The Plan contemplates the expiration of the existing FairPoint-NNE AFOR, by its own terms, on July 31, 2013. Thus, 35-A M.R.S.A. § 9106 (expiration of Title 35-A, Chapter 91) is added to reflect that the AFOR mechanism will sunset, in its entirety, on July 31, 2013 and, further, that no new AFORs (for FairPoint-NNE or any other Voice Service Provider, will be adopted in the interim.

The Plan also contemplates elimination of several Commission Rules, many of which were discussed in earlier Sections of this Plan. The Rules the Plan would eliminate include, but are not necessarily limited to: Chapter 202 (audiotext), Chapter 212 (exemption for CLECs), Chapter 214 (exemption for certain telephone utilities from filing requirements), Chapter 230 (inside wire), Chapter 240 (mobile telecommunications), Chapter 250 (coin-operated telephones), Chapter 289 (bundled services), Chapter 291 (billing and collection for non-ETCs), and Chapter 292 (billing and collection for IXCs). The Commission will repeal its Rules only after a public rulemaking process for each rule, and careful consideration of effect of the repeal of each Rule on other Commission Rules and with an eye toward preventing adverse unintended consequences.

V. Program to Educate Public About POLR Service

It may be necessary to educate consumers regarding how the changes in the Commission's oversight of the Telecommunications Industry will affect the services they currently purchase. For instance, consumers will need to be made aware of the fact that consumer protections, and recourse to the Commission's Consumer Assistance Division, will be limited to POLR service. This outreach effort will be designed to minimize customer confusion during the transition period.

VI. Convergence of the Goals of the Commission's Plan and the FCC Restructuring of the Federal Universal Service System

On November 18, 2011, the FCC issued an Order adopting comprehensive reforms to the federal high-cost USF mechanism. The primary purpose of the changes to the federal USF is to help fund a modern broadband network that reaches customers throughout the nation. With respect to wireline providers, there will be a gradual shift in funding from the existing high-cost component of the federal USF (which has largely subsidized voice networks in high-cost areas) to a new Connect America Fund ("CAF") that is intended to support the buildout and provisioning of networks capable of providing both voice and high-quality broadband service.

The CAF mechanism will be implemented in two phases. In Phase I, which begins in 2012, the existing levels of high-cost federal USF support disbursed to ILECs

that are ETCs will be frozen at current levels. All carriers receiving this support must use it in a manner that is consistent with achieving universal availability of both voice and broadband. In addition, \$300 million in additional CAF funding will be made available to ETCs which agree to use it to deploy new broadband facilities in unserved areas which are capable of delivering actual speeds of at least 4 Mbps downstream and 1 Mbps upstream. In Phase II, the CAF funding will be disbursed in amounts determined by using of a forward-looking cost model. The recipients of CAF funding will be determined through a mechanism of competitive bidding. In Phase II, all CAF funding must be used to deploy new broadband at speeds to be determined by the cost model but which meet the minimum threshold of 4 Mbps downstream and 1 Mbps upstream.

It is too early to predict precisely how these changes to the federal USF will impact carriers in Maine, in part because the Commission does not know whether, and to what extent, Maine's ILECs will seek a portion of the \$300 million in additional CAF funding to build out broadband at the required speed thresholds, or successfully bid for Phase II CAF funding. Nonetheless, certain aspects of the FCC's Order suggest that the Commission's Plan is consistent with the new federal USF regime.

First, the FCC's Order recognizes the importance of establishing a definition for "voice telephony service" that is based on the functionality of the service as opposed to the technology used to deliver it. This comports both with the Plan's use of the technologically neutral term Voice Service Provider to refer to all carriers the offer a voice transmission service, and also with the definition of POLR service, which is not dependent on any particular technology.

Second, the FCC expressly retained the authority of state commissions to enforce "carrier of last resort ('COLR')" obligations. Specifically, the FCC noted that no evidence had been presented of "specific legacy service obligations that represent an unfunded mandate that makes it infeasible for carriers to deploy broadband in high cost areas." Thus, to the extent that the Commission's Plan seeks to preserve the availability of POLR service, it is entirely consistent with the FCC's Order. In fact, the FCC observed that "states could consider providing state support directly to the incumbent LEC to continue providing voice service in areas where the incumbent is no longer receiving federal high-cost universal support or, alternatively, could shift COLR obligations from the existing incumbent to another provider who is receiving federal or state universal service support in the future." Such flexibility is, indeed, anticipated by the Commission's Plan.

Third, as noted previously, the FCC's CAF mechanism will rely on the development of a forward looking cost model approach in much the same way in which the Commission's Plan will employ such a model to determine the cost-side of any revenue requirements analysis undertaken upon the request of a POLR service provider for additional revenues. As the FCC explains, it intends to construct its model to analyze the costs of a modern communications network capable of supporting voice and broadband, and that CAF funding will not be awarded based upon "embedded

costs.” This is precisely the vision of a forward-looking cost analysis articulated in the Commission’s Plan. Moreover, just as the Commission’s Plan anticipates the application of a cost model to discrete geographic areas of a POLR service provider’s service territory, the FCC intends to “model forward-looking costs to estimate the cost of deploying broadband-capable networks in high-cost areas and *identify at a granular level the areas where support will be available.*” The FCC suggests that the level of granularity of its approach will be to calculate “costs based on the plant and hardware required to serve each location in a small area (i.e., census block or smaller),” and that this will enable it to “accurately capture the true costs of subscale markets.” The Plan also anticipates an analysis of costs at a similar level of granularity. In all, the FCC’s forward-looking cost model approach is strikingly similar to the approach recommended by the Commission’s Plan.

Fourth, the FCC recognizes that “there are instances where an unsubsidized competitor offers broadband and voice” to a significant portion of an ILEC’s service area “typically where customers are concentrated in a town or other higher density sub-area,” but not throughout the entire territory. Consequently, the FCC will phase out high-cost support for ILECs only in areas where a non-satellite unsubsidized competitor offers service for 100% of the locations in territory. This recognition that competition may not be ubiquitous, and that competitors are able to selectively determine where they wish to offer service (cream skimming), is consistent with the Commission’s Plan to enable all POLR service providers (even those facing competition) to seek, where it is justified, Maine USF support.

Finally, the FCC’s Order retains the role of the state commissions in certifying each year that the recipients of federal support (*i.e.*, ETCs) have used and will use the funds for approved purposes. Moreover, the Commission will receive annual broadband performance reports filed by CAF recipients, including verification of speed and latency testing results. The FCC’s Order anticipates that the Commission will share the responsibility of ensuring that the CAF recipients are, in fact, using funds to build a broadband network capable of achieving specified performance benchmarks.

VII. Comments of Interested Persons

Several interested persons filed comments in response to the draft of the Plan released by the Commission on November 1, 2011. This section provides a summary of the most significant of those comments, and a discussion of the Commission’s consideration of those comments as it prepared its final version of the Plan. To the extent more than one company made the same (or substantially similar) comment, that fact is noted, but discussion of the merits of the point is not repeated for each such instance.

Finally, a complete copy of all of the comments received by the Commission over the course of the public inquiry it conducted in preparation for the development of the Plan can be viewed, and downloaded from the Commission’s Virtual Case File under

Docket 2011 at:

http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb_splashpage.

A. FairPoint

FairPoint believes that the “the ability to maintain uninterrupted voice service during a power failure,” is not an attribute that should be required of POLR service. In FairPoint’s view, this requirement is not technologically neutral and perpetuates the sort of competitive disparity that the Resolve was intended to address. As noted above, the Commission is not unanimous on this issue, and has offered alternative approaches for consideration by the Legislature.

FairPoint agrees that POLR service should not include packages or services. Also, FairPoint believes that customers who purchase POLR service along with ancillary features or services should not be permitted to seek the assistance of the Commission’s Consumer Assistance Division in resolving complaints that are related to the “POLR” service (but not the ancillary features) that they purchase. Again, the Commission is not unanimous on this issue and has therefore presented options for the Legislature to consider.

FairPoint agrees that with the forward-looking cost model approach to be used in analyzing the revenue requirements for POLR service providers. However, FairPoint suggests that the costs modeled should include the entire network costs (construction and maintenance) in a given geographic area (e.g. exchange or census block) necessary for a POLR service provider to “to stand ready to provide POLR service” to any customer in the area requesting that service. The final Plan, as submitted by the Commission, is in accord with this view by mandating a total network cost analysis. As noted above, however, if the total network costs are considered in a revenue requirements analysis, so to should total company, un-separated and un-regulated revenues.

FairPoint agrees that its FairPoint-NNE subsidiary, along with the other rural ILECs owned by the Company, should be designated as the POLR service providers throughout their respective service territories. It also agrees that it should become eligible for rate increases and, for the first time, Maine USF subsidies for POLR service provided by FairPoint-NNE. It also agrees that the costs of these subsidies should be socialized across all consumers of voice services in Maine, through the contributions to the Maine USF made by all VSPs.

However, FairPoint-NNE also seeks immediate, “interim” Maine USF subsidies on the grounds that immediate subsidization is necessary to help underwrite the “unfunded costs” of providing local exchange service that is currently bears. This assertion, which is in essence a petition for a legislatively mandated revenue increase, is one with which the Commission emphatically disagrees. FairPoint-NNE presently operates under an AFOR with an expiration date of July 31, 2013. In light of the existing incentive-based rate plan (which is legislatively authorized form of ratemaking

to which FairPoint consented), it is entirely incorrect to assert that FairPoint-NNE's costs of service are "unfunded," or that the revenues it obtains through its rates are inadequate to meet existing service obligations. FairPoint expressly agreed to the terms of this AFOR for its FairPoint-NNE subsidiary as part of a thoroughly negotiated stipulation it signed at the time that it purchased the Verizon network in Maine. In the Commission's view, it would be bad public policy to legislatively unwind the obligations and ratepayer benefits of any such stipulation, especially as it was adopted by the Commission following an intensely litigated proceeding involving numerous, adverse, parties.

Moreover, the existing AFOR provides FairPoint-NNE with the flexibility to pursue revenue-enhancing business strategies such as attempts to "win back" customers previously lost to competitors by offering discounts in the form of lower rates. Thus, legislative repeal of the AFOR would accomplish only one thing with respect to rates: it would allow FairPoint-NNE to immediately *raise* rates in areas where the company believes that it can do so without losing customers to competitors. FairPoint agreed to a rate cap plan for FairPoint-NNE, and the Commission approved it. FairPoint should not be permitted to seek an increase in revenues (through increased rates or Maine USF subsidies) until after the expiration of the AFOR. At that time, the Commission will consider any such request in the context of the forward-looking cost model approach set forth in the Plan.

FairPoint also suggests that the SQI provisions of the existing AFOR be completely eliminated entirely. Although the Resolve relieved FairPoint-NNE of the multiplier provisions of the SQI, it did not relieve it of the "base" amount of any rebates due to customers on account of substandard service quality through the remaining term of the AFOR. FairPoint's suggestion, in its comments, that complete elimination of the SQI is necessary to make permanent the temporary relief provided by the Resolve is inaccurate. For the same reasons that the Commission rejected FairPoint-NNE's request that it be allowed additional revenues through rates or Maine USF subsidies prior to the expiration, in July, 2013, of the existing AFOR, the Commission also rejects the suggestion that the Plan itself dissolve what remains of the AFOR's service quality component.

FairPoint would also make permanent the temporary provision of the Resolve which prohibits the Commission from requiring that any ILEC be required to report significant service outages to the Commission as they are occurring. Thus, FairPoint rejects, as inconsistent with its view of parity, any requirement that would obligate it to report such outages any earlier than 7 days after service is restored. For the reasons set forth previously, the Commission believes that modification of the outage reporting requirements, through a major substantive rulemaking proceeding, is a more considered approach to balancing the burdens that such reporting may impose on VSPs against the public safety interest that is advanced by system in which the Commission is kept abreast of significant service outages as they are occurring.

Likewise, FairPoint would make permanent the provision of the Resolve which would freeze the technological standards of the infrastructure maps that must file with the Commission. A consequence of this provision will be that the Commission will be prohibited from modernizing, through a rulemaking proceeding, the standards and level of detail of infrastructure maps, even as incremental improvements are made to GIS mapping technologies and such improvements are adopted both by government and relevant industries. The Commission believes that modern mapping technologies are a useful tool both for policymakers, and recommends that Title 35-A not prohibit the Commission from proposing modifications to its requirements in the future. The Legislature might, however, consider whether such modifications should be presented to it in the form of a major substantive rulemaking.

The draft of the Plan circulated by the Commission for comments included its proposal that the Broadband Sustainability Fee, established by 35-A M.R.S.A. § 9216, be eliminated. In the Commission's view, this fee is anti-competitive. FairPoint objected, on the grounds that the transfer payments required by the Fund are not anti-competitive as compared to the award, by the federal government, of stimulus funds to assist in the construction of the Three Ring Binder dark fiber project. The Commission strongly disagrees with FairPoint's analysis. Nonetheless, as is the case with the existing AFOR, the Broadband Sustainability Fee will expire, by its own terms, on a date-certain. To advance a consistent policy of honoring the expectations of the affected parties regarding sun-setting provisions of law and of Commission Orders (such as the AFOR), the Commission has removed from the Plan its suggestion that the Legislature repeal Section 9216.

Finally, FairPoint advocates for the complete elimination of the Commission's jurisdiction to evaluate and approve the sale or restructuring of the ownership of any telephone company. This was not contemplated by the Resolve. Moreover, it is the Commission's view that there is a continuing need for oversight over proposals that would transfer ownership of critical telephone infrastructure in Maine. With respect to FairPoint, this is especially important, not only because the company owns the network backbone relied upon by many competitors, but also because the possibility of a change of ownership is, if anything, greater in light of the continued precariousness of the firm's financial condition. Accordingly, the Plan preserves the Commission's authority over reorganizations of telephone companies which result in a change of control in their operations. In addition, under the Plan, a definition of the term "change of control" (which was not provided by the Resolve) is supplied in a proposed amendment to 35-A M.R.S.A. §708 (reorganizations).

B. TAM

TAM believes that the definition of POLR service should include the attribute that service be survivable during power outages. As noted above, the Commission is not unanimous on this issue, and has offered alternative approaches for consideration by the Legislature.

TAM seeks confirmation that the POLR service offering will be one which requires flat-rate local service, as opposed to local service in which the rate charges is, in whole or in part, based upon a measurement of minutes of use (local measured service). The Commission's Plan does not contemplate a deviation from the existing "unlimited local service" regime for POLR service.

TAM agrees that POLR service should not include packages or services. It is unclear whether TAM concurs with FairPoint's view that customers who purchase POLR service along with ancillary features or services should not be permitted to seek the assistance of the Commission's CAD in resolving complaints that are related to the "POLR" service (but not the ancillary features) that they purchase. As noted above, the Commission is not unanimous on this issue and has therefore presented options for the Legislature to consider.

TAM agrees that the mix of rates for POLR service and Maine USF subsidies should be set at a sufficient amount to allow the carrier to recover the costs not only the costs of the POLR service itself, but also the cost of an entire network that is capable of providing POLR service. However, TAM does not agree that the approach of a forward-looking cost model be codified by the Legislature. Instead, it proposes that the Commission be granted the flexibility to determine which method of cost-recovery to apply (cost-model, traditional rate of return, or "some form of benchmarking") in the context of any future requests by a POLR service provider for additional Maine USF support, provided that the Commission "adhere[s] to the basic principle of providing sufficient support for a ubiquitous network capable of providing POLR service to customers regardless of where they live in the State at comparable rates for comparable service." As noted above, the Commission's Plan does include a total network cost analysis. However, as also noted above, the consideration of total network costs analysis requires, also, that all revenues deriving from the network be considered, on an un-separated basis. The Commission does not believe, however, that each POLR service provider seeking increased revenues should be able to select among a variety of revenue requirements methodologies.

TAM also suggests, in the event that an ILEC's POLR service obligation is at some future point transferred to a non-ILEC, that the ILEC relieved of its POLR service obligations should also be relieved of its wholesale obligations under federal law. The Resolve expressly directed that the wholesale obligations of providers should not be modified by the Commission's Plan. The Commission is of the view that its general authority, under the Plan, to fulfill its oversight role with respect to wholesale matters, is sufficiently broad for such issues to be considered at the time they may arise.

TAM disagrees with language in the draft Plan which intimated that the relinquishment by a carrier of its POLR service provider designation would be considered as a relinquishment also of its right to receive federal USF support as an ETC. Without deciding the matter, the Commission has removed the language to which TAM objects from the final version of its Plan.

TAM is of the view that the measurement and reporting of service quality by POLR service providers in general and recommends that any formal measurement process be used for the purpose of determining whether a service related investigation is warranted. The Commission's final Plan would authorize the Commission to establish, by rule, a POLR Service Reliability Metric to measure service performance.

TAM maintains that the ILECs should not be required to file outage reports any earlier than 7 days following restoration of service. As noted above, the Commission believes that modification of the outage reporting requirements, through a major substantive rulemaking proceeding, is a more considered approach to balancing the burdens that such reporting may impose on VSPs against the public safety interest that is advanced by system in which the Commission is kept abreast of significant service outages as they are occurring.

TAM agrees with FairPoint's view that the Broadband Sustainability Fund is not anticompetitive. As noted above, the final Plan does not propose the elimination of the Fund.

TAM would also make permanent the freeze (set forth in the Resolve) of the standards for the submission of infrastructure maps. As noted above, the Commission believes that modern infrastructure maps are a useful tool and that rather than prohibiting updates to the specifications for such maps, that it allow the Commission to propose modifications to the Chapter 140 (infrastructure mapping) rule in the form of a major substantive rulemaking.

TAM would make permanent the limitation of the Commission's jurisdiction over reorganizations of telephone carriers set forth in the Resolve. As noted above, the Commission recommends that 35-A M.R.S.A. § 708 be modified to define the term "change of control" that was effectively undefined by the Resolve.

C. Lincolnville Telephone

Lincolnville Telephone (a TAM member) submitted comments suggesting that the existing regulatory regime is, in all respects, not burdensome and that it has well served consumers in Maine.

D. Office of the Public Advocate (OPA)

The OPA questions the Legislature's findings regarding the competitiveness of the telecommunications market in Maine. Notwithstanding the OPA's view that a particularized analysis of the extent of competition is a necessary predicate for regulatory reform, the Commission has taken the Legislature's findings as fact. At the same time, however, the focus of the Commission's Plan is on ensuring the viability of POLR service – the minimum level of basic service that should be available to all customers in the state at modest expense. With respect to POLR service, the

Commission's Plan is conservative in that ubiquitous competition for this level of service is not assumed. Rather, a mechanism is put in place to permit a location-by-location examination, in the course adjudicatory cases in which POLR service providers seek POLR service rate increases or additional Maine USF subsidies, of the extent to which competition for basic local service provides viable alternatives to POLR service and constrains the price for such service.

Much of the OPA's commentary focuses on whether the *broadband* market is competitive. Although the Commission recognizes that an IP-based voice service model appears to be the direction in which the market is moving, the Resolve does not direct the commission to develop a plan related to broadband service. In any event, the approach of the Plan, particularly the use of a forward-looking cost model to evaluate POLR service rates and subsidies, provides sufficient flexibility to adopt a rate and Maine USF support mechanism that incorporates the cost structure of an IP-based telephony network as such networks continue to develop.

The OPA also presses the idea that a loosening of regulatory oversight is poor public policy as applied to FairPoint – a company that in the OPA's view is poorly managed and remains in financial distress. The Commission's Plan is not intended to either reward or punish based on past performance. Rather, it is designed to ensure that basic local service remains available, at modest rates, for all consumers desiring to purchase it.

It may very well be that, in a very technical, economic sense, the OPA's criticism of the use of the term "subsidy" in describing the varying degree in which low-cost, urban areas, as opposed to high-cost, rural areas, contribute to "joint and common costs" of the entire network is well founded. This is so because an "economic" subsidy exists only where a service is priced below its incremental direct cost. Nonetheless, the Commission's use of the term "subsidy" in its more colloquial sense lends to the readability of the report. Readers with an economics background may substitute the phrase "differential between the contribution made to joint and common costs" for the term "subsidy" in the sections of the report describing the underlying premise of the traditional "regulatory bargain" and the policy of rate averaging.

The OPA argues that the existing SQI/customer rebate mechanism of the AFOR is a reasonable and necessary means of advancing the public's interest in quality telephone service. This is especially so, according to the OPA, because FairPoint operates the "ubiquitous backbone network in the State of Maine, and this network supports all competitors, including wireless." Commission enforcement of quality of service standards is necessary, according to the OPA, because it "sets a 'floor' (or a minimum) reasonable and adequate level of service quality for rivals in the marketplace." As noted above, the Commission agrees that the AFOR (including the existing SQI mechanism) should remain in place until the expiration of the AFOR, by its own terms, on July 31, 2013. Moreover, the Commission agrees that a service quality mechanism, in the form of a PRM, should be established for POLR service providers, in a rulemaking proceeding.

The OPA cautions that it is important for the Commission to maintain its jurisdiction to approve, under 35-A M.R.S.A. §§ 707 and 708, any sale or significant reorganization of FairPoint. This is necessary, according to the OPA, not only in light of existing and widespread concerns regarding the financial health of FairPoint, but also because the adoption of a POLR service-centered regulatory regime could create an incentive for FairPoint to spin off the portion of its operations with POLR service obligations. The OPA maintains that the “Commission should be able to prevent any plan what would allow the disintegration or bankruptcy of the POLR service business while shareholders go on to take profits in unregulated businesses that rely on FairPoint’s network. Without expressing its view of the likelihood of any such structural mayhem, the Commission does agree that it would be prudent for the Commission to retain the regulatory authority, and flexibility, in approving reorganization under Section 708.

The OPA offers useful suggestions regarding how the Commission should evaluate any request by FairPoint-NNE for Maine USF support and/or rate increases for POLR service. For instance, the OPA suggests a total-earnings cap to ensure that the disbursement of Maine USF support does not lead to the unintended consequence of reduced infrastructure investment. In addition, the OPA suggests that the cost-model adopted by the Commission should be limited to evaluating only POLR service, but rather should consider the costs of a modern telecommunications network through which POLR service, and other services, are provided. Also, it will be necessary, according to the OPA, for the costs of a multi-service model to be allocated among all of the various services using the model even though only the POLR service offerings will be regulated by the Commission. These, and other, observations made by the OPA demonstrate the complexity of developing a forward-looking cost model, and thus are consistent with the Commission’s Plan that the model be developed in the course of an open, adjudicatory hearing. The Commission notes, however, that its view of the forward-looking cost model approach would evaluate the costs associated with the entirety of a POLR service provider’s network in a particular geographic area, and the revenue side of the formula would include all revenues derived from those facilities on an un-separated basis.

The OPA also suggests that the Maine USF be modified so that the state match portion of the federal Lifeline program is paid through the state fund. The Commission is not convinced that there would be substantial, net benefits to this approach, but believes that consideration of the proposal should be made in the context of a Maine USF rulemaking proceeding, as contemplated by the Plan.

E. Time Warner and Comcast

Time Warner and Comcast (“cable companies”) filed joint comments with the Commission. These companies agree that the Maine USF contribution base should be broad, and they recommend that the Plan clearly establish that “nomadic” VoIP providers are required to contribute to the fund. The Commission agrees, and the

definition of Voice Service Provider adopted by the Plan includes all companies that provide any form of voice service, and obligates each such company to contribute to the Maine USF.

The cable companies suggest that Maine USF funds should not be provided to POLR service providers in areas where there already exists competition for voice service. The Commission's Plan, however, focuses on POLR service, and the obligation of a POLR service provider to offer a stripped-down, basic level of service to all customers in its service territory. This is an obligation that non-POLR service providers do not bear. Moreover, no Maine USF funds will be disbursed to a POLR service provider unless its rates for POLR service in any given geographic area are at least as high as two standard deviations above the national average for urban local exchange service. The requirement should ameliorate the cable companies' concerns that the Maine USF will distort their continued ability to compete against POLR service providers for customers.

The cable companies also suggest that the Plan clearly state that the Commission's role in the area of requiring reporting of broadband providers shall extend only so far as expressly authorized by the FCC. The Commission agrees, as is reflected in the Commission's Plan.

The cable companies also suggest that the Commission should not be authorized to require reports from VoIP providers of service outages. The Commission, however, believes that it is the expectation of the Legislature that the Commission should be kept abreast of significant service outages that impact the ability of Maine's citizens to access the voice network in the State. As is demonstrated in the sections of the Commission's report describing the state of the telecommunications market in Maine, a significant number of customers in the State receive voice service from the cable companies. Thus the Plan also recommends that outage reporting requirements be established for all Voice Service Providers (a term that includes all wireline and wireless providers, regardless of the technology deployed) through a major substantive rulemaking.

The cable companies also suggest that they should not be burdened with unnecessary financial reporting obligations. The Commission agrees, and the Plan requires of all Voice Service Providers only such information as is necessary to calculate each carrier's contribution to the Maine USF, E-911, MTEAF, Connect ME authority, and the MPUC and OPA regulatory assessments.

Finally, the cable companies seek express affirmation, in the Plan, of the importance of interconnection to a competitive marketplace. As the companies acknowledge, there is a pending matter before the Commission involving ongoing disputes between Time Warner and several rural carriers regarding the scope of their respective interconnection obligations, and remedies, under federal law. The Commission does not believe that the Resolve intended that the Commission prejudge a pending adjudicatory matter.

F. Maine Community Action Association

The Maine Community Action Association (“MCAA”) agrees that the Commission needs continued authority to ensure that POLR service is available to customers who desire to purchase a basic voice product at reasonable rates. MCAA also agrees that customer disputes regarding POLR service should continue to be resolved by the Commission’s CAD.

In addition, MCAA believes that POLR service should be defined as to require that the service survives during power outages. As noted above, the Commission is not unanimous on this point, and has presented alternatives for consideration by the Legislature.

MCAA also agrees that continued enforcement of FairPoint’s broadband build-out obligations is essential. It also agrees that service outage reporting is necessary, and that a post-restoration reporting obligation is insufficient to protect the public welfare.

MCAA notes that there are significant uncertainties regarding precisely how the forward-looking cost model approach to determining revenue requirements of POLR service providers will be implemented, but agrees that the Commission should be able to capitalize on the efforts of the FCC in developing such a model by adapted the federal model for use in POLR rate cases.

MCAA agrees that the Commission’s authority to over reorganizations should not be eliminated with respect to POLR service providers. Likewise, it urges that the Plan authorize the Commission to adopt service quality measures for POLR service providers. The final Plan adopts each of these recommendations.

Finally, the MCAA offers its well-reasoned concern that implementation of the Commission’s Plan could result in disparate rates paid by customers residing in different parts of the State. As the MCAA observes:

If you have the bad luck to live (or operate a business) where there is no clear cell signal and VoIP is unavailable, you might have to resign yourself to paying a lot more than someone (or a business competitor) in York County or Portland. If this trend were to occur, you can be sure that the Legislature would hear about it and be asked to reverse the deregulatory direction that Maine took with enactment of Resolves 2011, Chapter 69.”

The Commission does not dispute that it is possible that implementation of the Plan could have this effect. The Commission was careful to underscore this possibility in this report. Further, the Commission agrees with MCAA’s assessment that the decision of whether to pursue a deregulatory path

that could lead to “rate de-averaging” falls firmly within the Legislature’s policy-making authority.

G. Verizon

Verizon believes that the Plan is an appropriate path towards eliminating “archaic monopoly-style regulation,” and is thus consistent with the Resolve. Verizon seeks clarification that a non-ILEC could not be designated a POLR service provider against its will. The Commission’s Plan does not contemplate otherwise.

Verizon also believes that the Plan should not include new reporting requirements for carriers that are not POLR service providers. The final Plan is consistent with this view, and requires reporting by carriers that are not POLR service providers of only such information as is necessary to calculate the required contributions to the Maine USF, MTEAF, E-911, ConnectME, and for regulatory assessment purposes.

H. AT&T

AT&T disagrees with nearly every feature of the Plan, including the proposition that the availability to all consumers of POLR service (as narrowly defined in the Plan) is important and should become the narrowed focus of the Commission’s regulatory activities with respect to the retail telecommunications market. AT&T simply does not believe that POLR service is necessary. In the view of AT&T, it is self-evident that the market is already sufficiently competitive throughout the entire state to remove any concerns there may be for those who prefer, or can only afford, the most basic level of local service.

As the Commission notes in its report, the findings set forth in the Resolve were taken as “legislative fact,” as the Plan was developed. Thus, the Commission did not conduct a rigorous examination of where, and to what extent, competition is so pervasive as to obviate any need for the Commission to ensure the availability of POLR service. Rather, the Commission took a conservative and incremental approach, in which only the most basic, POLR service is subject to any degree of rate regulation. Further, the Plan contemplates the possibility that a POLR service provider could demonstrate, with concrete evidence subject to rigorous analysis (as opposed to unrestrained assumption), that a particular geographic area is so competitive that it ought to be relieved of its POLR service obligation in that area.

The Commission disagrees with underlying premise of the majority of AT&T’s comments. As noted above, however, several of the specific suggestions outlined in AT&T’s comments, such as the preservation of the Broadband Sustainability Fee until the date on which it sunsets under existing statute, have been incorporated into the final Plan. Other specific objections, such as the advisability of requiring reports of service outages, and the extent of financial reporting by carriers other than POLR

service providers, are addressed above, in connection with the comments of other interested persons.

I. GWI

GWI recommends the elimination of the Broadband Sustainability Fee, but questions the Commission's interpretation of the statutory provisions establishing the fee. As noted above, in the interests of consistency regarding the continuing viability of specific regulatory or legislative "bargains," that have existing and certain expiration dates, the Commission's final Plan does not recommend elimination of the fee.

APPENDIX A

LEGISLATIVE EDIT OF TITLE 35-A³²

Title 35-A: PUBLIC UTILITIES

Part 1: PUBLIC UTILITIES COMMISSION

Chapter 1: ORGANIZATION, GENERAL POWERS AND DUTIES

35-A §101. STATEMENT OF PURPOSE

The purpose of this Title is to ensure that there is a regulatory system for public utilities and Voice Service Providers in the State that is consistent with the public interest and with other requirements of law and to provide for reasonable licensing requirements for competitive electricity providers. The basic purpose of this regulatory system is to ensure safe, reasonable and adequate service and to ensure that the rates of public utilities and providers of Provider of Last Resort Service are just and reasonable to customers and public utilities.

35-A §102. DEFINITIONS

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

4. Customer. "Customer" includes any person, government or governmental division which has applied for, been accepted and is currently receiving service from a public utility or Voice Service Provider.

9-A. Incumbent Local Exchange Carrier. An "Incumbent Local Exchange Carrier" is with respect to an area, the Local Exchange Carrier that—

(A) on February 8, 1996, provided telephone exchange service in such area; and

(1) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. 69.601(b); or

(2) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (1).

9-B. Interexchange Carrier. An "Interexchange Carrier" is any person, association, corporation, or other entity that provides intrastate interexchange telecommunications services, including a Local Exchange Carrier that provides interexchange service.

9-C. Local Exchange Carrier. A "Local Exchange Carrier" is any person that is engaged in the provision of Telephone Exchange Service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under 47 U.S.C. § 332(c), except to the extent that the Federal Communications Commission finds that such service should

³² Sections of Title 35-A that the Commission's Plan does not propose to change are omitted from this Legislative Edit.

be included in the definition of such term.

9-AD. Mobile telecommunications services. "Mobile telecommunications services" means telecommunications services licensed by the Federal Communications Commission for mobile use.

11-A. Provider of Last Resort Service. "Provider of Last Resort Service" is a service as described in Section 7201 of this Title.

13. Public utility. "Public utility" includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. ~~"Public utility" does not include the operation of a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area.~~ "Public utility" includes a smart grid coordinator as defined in section 3143, subsection 1, paragraph B. Nothing in this subsection precludes:

~~A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature;~~

~~B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services;~~

~~C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and~~

~~D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services.~~

18-A. Telephone Exchange Service. "Telephone Exchange Service"

(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or

(B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

18-A.B Telephone service. "Telephone service" is the offering of a service that transmits communications by telephone, whether the communications are accomplished with or without the use of transmission wires.

19. Telephone utility. "Telephone utility" includes every person, its lessees, trustees, receivers or trustees appointed by any court, that provides ~~telephone service~~ Provider of Last Resort Service for compensation inside this State. "Telephone utility" also includes a dark fiber provider. "Telephone utility" does not include any person or entity that is excluded from the definition of "public utility" as defined in subsection 13, subject to the provisions of subsection 13, paragraphs A to C.

21-A. Voice Service Provider. "Voice Service Provider" means any Person doing business in this State that offers its Customers the means, directly or indirectly, to initiate or receive voice communications.

35-A §116. FUNDING OF THE COMMISSION

1. Utilities subject to assessments. Every transmission and distribution, gas, telephone and water utility and ferry subject to regulation by the commission and every Voice Service Provider offering service within the State is subject to an assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for the Public Utilities Commission Regulatory Fund established pursuant to this section. The budget for the Public Utilities Commission Regulatory Fund is subject to legislative review and approval in accordance with subsection 2. The portion of the total assessment applicable to each category of public utility or Voice Service Provider is based on an accounting by the commission of the portion of the commission's resources devoted to matters related to each category. The commission shall develop a reasonable and practicable method of accounting for resources devoted by the commission to matters related to each category of public utility or Voice Service Provider. Assessments on each public utility or Voice Service Provider within each category must be based on the utility's or Voice Service Provider's gross intrastate operating revenues. The commission shall determine the assessments annually prior to May 1st and assess each utility or Voice Service Provider for its pro rata share for expenditure during the fiscal year beginning July 1st. Each utility or Voice Service Provider shall pay the assessment charged to the utility or Voice Service Provider on or before July 1st of each year. Any increase in the assessment that becomes effective subsequent to May 1st may be billed on the effective date of the act authorizing the increase.

A. The assessments charged to utilities and Voice Service Providers under this section are just and reasonable operating costs for rate-making purposes.

B. For the purposes of this section, "intrastate gross operating revenues" means intrastate revenues derived from filed rates and rates ~~that are exempt from filing requirements pursuant to rules adopted by the commission under section 307-A~~ charged by Voice Service Providers, except revenues derived from sales for resale.

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety are not subject to any assessment.

D. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities in the current year.

E. The commission may exempt utilities or Voice Service Providers with annual intrastate gross operating revenues under \$50,000 from assessments under this section.

2. Committee recommendations; legislative approval of budget. The commission shall submit its budget recommendations as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1666. The commission shall make a presentation of its budget recommendations contained in any current services budget legislation and any supplemental budget legislation to the joint standing committee of the Legislature having jurisdiction over public utilities matters. The joint standing committee of the Legislature having jurisdiction over public utilities matters shall review the commission's recommendations and make recommendations to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs regarding the budget of the commission, including but not limited to all expenditures from the fund established pursuant to this section. The commission shall make an annual report in accordance with section 120 of its planned expenditures for the year and on its use of funds in the previous year. In addition to the assessments authorized under this section, the commission may also receive other funds as appropriated or allocated by the Legislature.

3. Deposit of funds. All revenues derived from assessments levied against utilities described in this section shall be deposited with the Treasurer of State in a separate account to be known as the Public Utilities Commission Regulatory Fund.

4. Use of funds. The Public Utilities Commission may use the revenues provided in accordance with this section to defray the costs incurred by the commission pursuant to this Title, including administrative expenses, general regulatory expenses, consulting fees and all other reasonable costs incurred to

administer this Title.

5. Unexpended funds. Any amount of the funds that is not expended at the end of a fiscal year does not lapse, but is carried forward to be expended for the purposes specified in this section in succeeding fiscal years.

~~**6. Violations.**~~

~~**7. Special assessment.**~~

86. Public Advocate assessment. Every utility or Voice Service Provider subject to assessment under this section is subject to an additional annual assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for operating the Office of Public Advocate. The portion of this assessment applicable to each category of public utility or Voice Service Provider is based on an accounting by the Public Advocate of resources devoted to matters related to each category. The Public Advocate shall develop a reasonable and practicable method of accounting for resources devoted by the Public Advocate to matters related to each category of public utility or Voice Service Provider. Assessments on each public utility or Voice Service Provider within each category must be based on the utility's or Voice Service Provider's gross intrastate operating revenues. The revenues produced from this assessment are transferred to the Public Advocate Regulatory Fund and may only be used to fulfill the duties specified in chapter 17. The assessments charged to utilities and Voice Service Providers under this subsection are considered just and reasonable operating costs for rate-making purposes. The Public Advocate shall develop a method of accounting for staff time within the Office of Public Advocate. All professional and support staff shall account for their time in such a way as to identify the percentage of time devoted to public utility and Voice Service Provider regulation and the percentage of time devoted to other duties that may be required by law.

A. The Public Advocate shall submit its budget recommendations as part of the unified current services budget legislation in accordance with Title 5, sections 1663 to 1665. The assessments and expenditures provided in this section are subject to legislative approval. The Public Advocate shall make an annual report of its planned expenditures for the year and on its use of funds in the previous year. The Public Advocate may also receive other funds as appropriated by the Legislature.

B. The Public Advocate may use the revenues provided in accordance with this section to fund the Public Advocate and 9 employees and to defray the costs incurred by the Public Advocate pursuant to this Title, including administrative expenses, general expenses, consulting fees and all other reasonable costs incurred to administer this Title.

C-1. Funds that are not expended at the end of a fiscal year do not lapse but must be carried forward to be expended for the purposes specified in this section in succeeding fiscal years.

35-A §120. ANNUAL REPORT

The commission shall report annually, before February 1st, to the joint standing committee of the Legislature having jurisdiction over public utilities on:

1. Budget. The commission's planned expenditures for the year and its use of funds in the previous year, including the expenditures from the Public Utilities Commission Regulatory Fund as established pursuant to section 116;

2. Various fees. The waiver, exemption, receipt and expenditure of any filing fees, expenses, reimbursements or fines collected under this Title, on a case-by-case basis;

3. Regional issues. The commission's efforts undertaken in accordance with its authority under this Title to promote and protect consumer interests through participation in and presentations before regional entities and federal agencies with jurisdiction over regional marketplaces that affect the State's

consumers. The commission must provide an assessment of staffing requirements to undertake these responsibilities;

4. Rural issues. The commission's efforts undertaken in accordance with its authority under this Title to ensure that rural areas of this State are not disadvantaged as utility industries are restructured and competitive markets developed. The commission shall identify any rural issues that it has determined may require legislative action;

5. Telephone exemptions. The commission's activities undertaken pursuant to its authority to grant exemptions to Voice Service Providers ~~telephone utilities~~ from certain portions of this Title;

6. Significant developments. Any significant developments in the utility sectors or other areas of commission oversight; and

7. Other. All other subjects that the commission is required to include in the annual report pursuant to law.

Chapter 3: RATES OF PUBLIC UTILITIES

35-A §304. FILING OF SCHEDULES OF RATES, TERMS AND CONDITIONS

Every public utility which is not a Voice Service Provider shall file with the commission, within a time to be fixed by the commission, schedules which shall be open to public inspection. The schedules shall show all rates, tolls and charges which the utility has established and which are in force at the time for any service performed by it within the State, or for any service in connection with or performed by any public utility controlled or operated by it or in conjunction with it. Every public utility shall file with and as part of its schedules all terms and conditions that in any manner affect the rates charged or to be charged for any service.

Telephone Utilities shall file with the commission, within a time to be fixed by the commission, schedules relating to Provider of Last Resort Service which shall be open to public inspection. The schedules shall show all rates, tolls and charges which the utility has established for Provider of Last Resort Service and which are in force at the time for any Provider of Last Resort Service performed by it within the State, or for any Provider of Last Resort Service in connection with or performed by any Telephone Utility controlled or operated by it or in conjunction with it. Every Telephone Utility shall file with and as part of its schedules all terms and conditions that in any manner affect the rates charged or to be charged for Provider of Last Resort Service.

Public utility sSchedules which were formerly designated as rules shall be designated as terms and conditions. All such schedules to be filed with the commission shall be designated as terms and conditions.

~~35-A §307-A. EXEMPTION FOR CERTAIN TELEPHONE UTILITIES~~

~~The commission may adopt by rule standards and procedures for granting exemptions from all or specified portions of sections 304 and 307 and for suspending its powers of suspension and investigation under section 310 with respect to a telephone utility, a specified group of telephone utilities or specified services offered by one or a group of telephone utilities. Any determination granting an exemption or suspension pursuant to the rule must be accompanied by a finding that the exemption or suspension will not have a negative impact on competitive markets for the specified services, that the utility or group of utilities does not exercise significant power over pricing in the markets for the specified services and that the determination will not result in unjust or unreasonable rates for any customers in the markets for those services. The commission may limit its determination to specific geographic areas. A utility whose rates or terms and conditions are subject to a determination made pursuant to a rule adopted under this section~~

~~remains subject to other applicable provisions of this Title and commission rules.~~

~~For good cause, as defined by the commission by rule, the commission may revoke any determination made pursuant to this section. A revocation may be in whole or in part and may be specific to a single telephone utility or a single utility service.~~

~~Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

Chapter 5: ACCOUNTING

~~35-A §507. EXEMPTION FOR CERTAIN TELEPHONE UTILITIES~~

~~The commission may adopt by rule standards and procedures for granting exemptions to a telephone utility or a specified group of telephone utilities from all or specified portions of section 504. Any exemption granted pursuant to the rule must be accompanied by a finding that the exemption is in the public interest and will not have a negative impact on competitive markets for telephone services. The commission may limit an exemption to specific geographic areas. A utility granted an exemption pursuant to a rule adopted under this section remains subject to other applicable provisions of this Title and commission rules.~~

~~For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this section. A revocation may be in whole or in part and may be specific to a single telephone utility or a single utility service.~~

~~Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

Chapter 7: REGULATION AND CONTROL OF PUBLIC UTILITIES

35-A §703. REBATES; DISCOUNTS AND DISCRIMINATION

1. Free or special rates prohibited. No person may knowingly solicit, accept or receive any rebate, discount or discrimination in respect to any service rendered, or to be rendered by a public utility, or for any related service where the service is rendered free or at a rate less than named in the schedules in force, or where a service or advantage is received other than is specified.

2. Free and special rates allowed under certain circumstances. This Title does not prohibit:

A. A public utility from granting service at free or reduced rates for charitable or benevolent purposes or for national or civilian defense purposes;

B. A public utility from supplying water and service free or at reduced or special rates to any person, firm or corporation for fire protection purposes through or by means of any apparatus or appliances furnished, installed or maintained by the person, firm or corporation, provided it is approved by the commission; or

C. A public utility from making special rates for its employees or in case of emergency service.

3. Existing contracts. The furnishing by a public utility of a product or service at the rates and upon terms and conditions provided for in a contract in existence January 1, 1913, may not be construed as constituting a discrimination or undue or unreasonable preference or advantage within the meaning specified. When any such contract or contracts are or become terminable by notice of a utility, the commission may order that the contract or contracts be terminated by the utility as and when directed by the order.

3-A. Special contracts. A public utility, subject to the commission's approval, may make a contract for a definite term for its product or service, but the published rates for the product or service may not be changed during the term of the contract without the commission's consent. ~~If the commission grants to a telephone utility or a group of telephone utilities an exemption pursuant to section 307-A from the requirement to file rate schedules or terms and conditions, that telephone utility or group of telephone utilities is exempt from the requirements for commission approval and consent under this subsection to the same extent as the exemption granted by the commission pursuant to section 307-A.~~

~~4. Forfeiture.~~

35-A §705. UTILITY DEPOSITS

The following provisions apply to deposits of utility customers:

1. Residential customers. No public utility may require any deposit of any residential customer without proof that the customer is likely to be a credit risk or to damage the property of the utility. That proof shall be furnished to the customer upon request. Absence of previous experience with the utility shall not be proof that the customer is a credit risk or threatens to damage utility property.

2. Nonresidential customers. Every public utility shall file with the commission schedules containing its terms and conditions for requiring a deposit from nonresidential customers, which terms and conditions shall be subject to the commission's power under this Title. Every public utility shall comply with its terms and conditions. The commission shall adopt rules which provide a procedure for resolution by the commission or its delegate of disputes as to whether a deposit being required by a public utility is in compliance with its terms and conditions. If the rules authorize a delegate to resolve disputes, the rules shall include a procedure for appeal of the decision to the commission.

3. Interest rate on deposits. The commission shall adopt reasonable rules, after hearing, to provide for a just and reasonable interest rate to be paid by the utility on any deposit of any customer.

4. Limitation. The provisions of this section apply to telephone utilities only to the extent they relate to Provider of Last Resort Service.

35-A §708. REORGANIZATIONS

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Controlling interest" means:

1. A person who has, or a group of persons acting in concert that has, voting power over voting shares of a corporation or entity that entitle the holders of those shares to cast at least 25% of the votes that all shareholders are entitled to cast in an election of the directors of the corporation or entity; or

2. A person who has, or a group of persons acting in concert that has, voting power over at least 25% of the shares in any class of shares entitled to elect all the directors, or any specified number of them,

For the purposes of this section, a person does not have a controlling interest if that person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified under this paragraph or who are not considered to have a controlling interest under this paragraph.

A person has voting power over a voting share if that person has shares, directly or indirectly,

through any option, contract, arrangement, understanding, voting trust, conversion right, or by acting jointly or in concert or otherwise, the power to vote, or to direct the voting of, that voting share.

A. "Reorganization" means any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property. The commission may decide what other public utility actions constitute a reorganization to which the provisions of this section apply. Reorganizations include any reorganization for which a proceeding for approval is pending before any state or federal agency or court on or after July 13, 1982. For purposes of this subsection, a reorganization does not include any proceeding under the federal antitrust laws or the transfer of voting securities by gift, devise or inheritance.

B. "Voting security" means any security presently entitling the owner or holder of any security to vote in the direction or management of the affairs of a company or any proprietary or other interest serving the same purposes.

2. Reorganization subject to commission approval. Reorganization shall be subject to commission approval as follows.

A. Unless exempted by rule or order of the commission, no reorganization may take place without the approval of the commission. No reorganization may be approved by the commission unless it is established by the applicant for approval that the reorganization is consistent with the interests of the utility's ratepayers and investors. The commission shall rule upon all requests for approval of a reorganization within 60 days of the filing of the request for approval. If it determines that the necessary investigation cannot be concluded within 60 days, the commission may extend the period for a further period of no more than 120 days. In granting its approval, the commission shall impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of ratepayers. These conditions shall include provisions which assure the following:

- (1) That the commission has reasonable access to books, records, documents and other information relating to the utility or any of its affiliates, except that the Public Utilities Commission may not have access to trade secrets unless it is essential to the protection of the interests of ratepayers or investors. The commission shall afford trade secrets and other information such protection from public disclosure as is provided in the Maine Rules of Civil Procedure;
- (2) That the commission has all reasonable powers to detect, identify, review and approve or disapprove all transactions between affiliated interests;
- (3) That the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;
- (4) That the ability of the utility to provide safe, reasonable and adequate service is not impaired;
- (5) That the utility continues to be subject to applicable laws, principles and rules governing the regulation of public utilities;
- (6) That the utility's credit is not impaired or adversely affected;
- (7) That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;
- (8) That the commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors. A divestiture order shall provide a reasonable period within which the divestiture shall be completed; and
- (9) That neither ratepayers nor investors are adversely affected by the reorganization.

B. The commission may intervene on behalf of the State in any proceeding before any state or federal agency or court before which an application for approval of reorganization is pending. The

commission may enter into any binding settlement related to any proceeding in which the commission has intervened and may exercise any powers or rights provided by that settlement and may enforce these powers or rights.

2-A. Approval does not affect rate-making powers. Commission approval of a reorganization under this section may not limit or restrict the powers of the commission in determining and fixing any rate, fare, tolls, charge, classification, schedule or joint rate as provided in this Title.

3. Waiver. The commission may, by general rule, exempt classes of reorganizations from the requirements of subsection 2.

4. Filing fee. Within 30 days after the application for approval of a reorganization is filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee not to exceed \$50,000, if the commission determines that the application may involve issues which will necessitate significant additional costs to the commission. The applicant may request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days. Notwithstanding any other provision of law, filing fees paid as required in this subsection shall be segregated, apportioned and expended by the commission for the purposes of processing the application. Any portion of the filing fee that is received from an applicant and is not expended by the commission to process the application shall be returned to the applicant.

5. Limitation. The provisions of this section apply to telephone utilities only if the reorganization results in a merger, sale, or transfer of a controlling interest of the telephone utility or any entity that owns more than 50% of the telephone utility.

35-A §711. JOINT USE OF EQUIPMENT

1. Joint use permitted. The commission may order that joint use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use when, after a hearing had upon its own motion or upon complaint of a public utility, Incumbent Local Exchange Carrier, or cable television system affected, it finds the following:

A. That public convenience and necessity require the use by one public utility, Incumbent Local Exchange Carrier, or cable television system of the conduits, subways, wires, poles, pipes or other equipment, or any part of them, on, over or under any street or highway and belonging to another public utility, Incumbent Local Exchange Carrier or cable television system;

B. That joint use will not result in irreparable injury to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment or in any substantial detriment to the service; and

C. That the public utilities, Incumbent Local Exchange Carrier, or cable television system have failed to agree upon the use or the terms and conditions or compensation for the use.

2. Liability of user. If joint use is ordered, the public utility, Incumbent Local Exchange Carrier, or cable television system to whom the use is permitted shall be liable to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment for damage that may result from its use to the property of the owner or other users.

3. Interests of cable television subscribers. Any actions taken or orders issued by the commission under this section shall take into account the interests of the subscribers of the affected cable television system, as well as the customers of the affected public utilities or Incumbent Local Exchange Carriers.

4. Rules. The commission shall adopt a rule governing the resolution of pole attachment rate disputes. The commission shall consider various formulas, including, but not limited to, the formula adopted by the Federal Communications Commission as codified in 47 Code of Federal Regulations, Part

1, Subpart J, as amended.

5. Dark fiber provider. This section applies to a dark fiber provider only with respect to the construction and maintenance of federally supported dark fiber.

~~Chapter 8: COLLECTION FOR AUDIOTEXT SERVICE CHARGES~~

~~35-A §801. DEFINITIONS~~

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

~~1. Audiotext services.~~ "Audiotext services" means informational or other services for which, in addition to any message toll service charge, a fee is levied on a per-call or per-minute basis by a provider that leases telephone lines from a long-distance telephone company for the purpose of providing such services to consumers. "Audiotext services" includes informational or other services provided for a charge, in addition to any message toll service charges by means of prerecorded messages on 900, 976 and similar leased telephone lines and includes usage-sensitive or interactive recordings. "Audiotext services" also includes informational or other services provided for a charge by means of collect telephone calls to consumers.

~~2. Carrier.~~ "Carrier" means the long-distance telephone company or other person or entity that is the lessor of the telephone lines leased to the provider for the purpose of providing audiotext services to consumers for a charge.

~~3. Collecting utility.~~ "Collecting utility" means the local utility that is responsible for collecting from consumers the charges imposed for audiotext services.

~~4. Provider.~~ "Provider" means the person or entity providing audiotext services to consumers for a charge.

~~5. Solicitation program.~~ "Solicitation program" means all advertising messages used by a provider to solicit purchases of audiotext services, whether in print or a recorded or live message, however transmitted.

~~35-A §802. DISCONNECTION PROHIBITED~~

~~1. Prohibition.~~ A collecting utility may not disconnect a customer's basic telephone service or send a customer any notice of basic telephone service disconnection because of a customer's failure to pay an audiotext service charge.

~~2. Expedited procedures.~~ If requested by a local exchange carrier, the commission shall adopt expedited procedures to allow blocking of audiotext services by a collecting utility when a customer repeatedly fails to pay undisputed charges assessed for use of audiotext services.

~~35-A §803. BLOCKING SERVICE~~

Where facilities are available, a collecting utility shall provide all one-party residential and single-line business telephone subscribers with an opportunity to block the access of audiotext service providers to subscribers' telephone lines free of charge and with an opportunity to reopen such access. A utility may not charge for customers' first exercise of either option. Thereafter, collecting utilities shall continue to offer subscribers the ability to block and reopen such access, but may charge a fee for provision of this

~~service, which may not exceed \$5 for each occasion on which the service is provided. The collecting utility may appeal to the commission for an extension to meet the requirements of this section. The commission may, for good cause shown, grant an extension.~~

~~35-A §804. COLLECTION PROCEDURES~~

~~**1. Billing.** A collecting utility that includes charges for audiotext services in a bill for basic telephone services must individually highlight or identify the charges for audiotext services. In addition, a collecting utility shall on a quarterly basis, either on the bill or on an insert, provide information describing the consumer's rights and responsibilities regarding audiotext services.~~

~~**2. Rules.** No later than April 1, 1992 the commission must complete a rule-making proceeding to determine the bill and insert formats described in subsection 1. Collecting utilities may appeal to the commission for an extension to meet the requirements of this section. The commission may, for good cause shown, grant an extension.~~

~~**3. Special considerations.** In establishing a compliance deadline and specific requirements under this section, the commission may take into account the costs incurred by the collecting utility and the utility's ability to shift those costs to carriers or providers of audiotext services.~~

~~35-A §805. COMPLAINT PROCEDURES~~

~~**1. Review for compliance with standards.** When a consumer disputes a charge for audiotext services, the collecting utility, if responsible for billing for audiotext services, must either delete the charges from the customer's bill for basic telephone service or investigate and in good faith attempt to resolve the dispute. At a minimum, "investigate and in good faith attempt to resolve the dispute" means that the collecting utility, if responsible for billing audiotext services, must require the provider or carrier to demonstrate compliance with applicable rules of the Federal Communications Commission and any applicable rules adopted by the Attorney General pursuant to the Maine Unfair Trade Practices Act.~~

~~**2. Compliance with commission rules.** The collecting utility must observe complaint procedures established by applicable commission rules.~~

~~**3. Access to records.** Collecting utilities shall afford reasonable access to all records and documents relating to consumer complaints to the commission and to the Attorney General upon request.~~

~~35-A §806. AUDIOTEXT SERVICE STANDARDS~~

~~Any audiotext provider who does business in this State providing live or recorded solicitation programs and audiotext services must provide these programs and services in a manner that is free of extraneous sounds or other distractions that unduly delay the conveyance of the message, that is clearly audible, articulate and intelligible, and that uses plain language spoken at a normal cadence. Audiotext services must employ the same language used in the related solicitation program.~~

~~35-A §807. COMMISSION RULES~~

~~The commission may adopt rules pursuant to the Maine Administrative Procedure Act to implement the requirements of this chapter.~~

~~35-A §808. PENALTIES~~

~~Violation of this chapter is a violation of the Maine Unfair Trade Practices Act.~~

Chapter 9: APPROVAL OF STOCKS, BONDS AND NOTES BY PUBLIC UTILITIES COMMISSION

~~35-A §912. EXEMPTION FOR CERTAIN TELEPHONE UTILITIES~~

~~The commission may adopt by rule standards and procedures for granting exemptions to a telephone utility or a specified group of telephone utilities from all or specified portions of this chapter. Any exemption granted pursuant to the rule must be accompanied by a finding that the exemption is in the public interest and will not have a negative impact on competitive markets for telephone services. The commission may limit an exemption to specific geographic areas. A utility granted an exemption pursuant to a rule adopted under this section remains subject to other applicable provisions of this Title and commission rules.~~

~~For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this section. A revocation may be in whole or in part and may be specific to a single telephone utility or a single utility service.~~

~~Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

Chapter 13: PROCEDURE

35-A §1302. COMPLAINTS

1. Filing a complaint. When a written complaint is made against a public utility by 10 persons aggrieved that the rates, tolls, charges, schedules or joint rate or rates of a public utility are in any respect unreasonable or unjustly discriminatory; that a regulation, measurement, practice or act of a public utility is in any respect unreasonable, insufficient or unjustly discriminatory; or that a service is inadequate or cannot be obtained, the commission, being satisfied that the petitioners are responsible, shall, with or without notice, investigate the complaint.

2. Processing of complaint. The commission, immediately upon the filing of a complaint, shall notify in writing the public utility complained of that a complaint has been made and of the nature of the complaint. The utility shall file its response to the complaint within 10 days of the date the notice of complaint is issued. After receipt of the response, if the commission is satisfied that the utility has taken adequate steps to remove the cause of the complaint or that the complaint is without merit, the complaint may be dismissed. If the complaint is not dismissed, the commission shall promptly set a date for a public hearing. The commission may allow for all parties to attempt to resolve the complaint to their mutual satisfaction. If a mutually satisfactory resolution does not appear to be forthcoming, the hearing shall be held on the complaint pursuant to section 1304. The commission may not enter an order affecting the rates, tolls, charges, schedules, regulations, measurements, practices or acts complained of without an opportunity for public hearing. In the absence of an informal disposition pursuant to Title 5, section 9053, the commission shall render a decision upon the complaint no later than 9 months after its filing.

3. Complaint by utility or commission. The commission may institute or any public utility may make complaint as to any matter affecting its own product, service or charges. The complaint shall be processed in accordance with subsection 2.

4. Limitation. This Section does not apply to telephone utilities, with the exception of complaints filed

| with regard to Provider of Last Resort Service.

35-A §1304. PUBLIC HEARINGS

Public hearings conducted by the commission under this Title are subject to the following provisions.

| **1. Notice to utility and parties.** The commission shall notify the public utility or Voice Service Provider, other parties and interested persons it considers proper of the time and place of the formal public hearing as provided in Title 5, section 9052.

| **2. Notice to subscribers.** If, after the commission has notified the public utility or Voice Service Provider of the hearing as provided in this section or in section 310, it appears that the time, place and nature of the hearing will not be reasonably publicized by newspaper or otherwise, the following provisions apply.

| A. The commission may by rule or upon written notice to the public utility or Voice Service Provider require it to:

- (1) Give reasonable notice of the time and place of the hearing to each subscriber affected or to be affected by the subject of the hearing; or
- (2) File pertinent information as to the rates or service involved, including schedules of proposed rates, in the office of the clerk of the municipality where the subscribers reside.

B. The notice given by the public utility shall:

- (1) Be given by first class mail; and
- (2) Include a statement that pertinent information as to rates or service is on file in the office of the clerk of the municipality where the subscribers reside.

C. Nothing in this section relieves the utility from the provisions of section 308.

3. Subpoenas. The commission may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence relating to any fact at issue in the hearing. A party to a hearing is entitled to have subpoenas issued by the commission in the manner described in Title 5, section 9060.

4. Hearings. A party to a hearing is entitled to be heard in the manner described in Title 5, section 9056.

| **5. Commission authorized to act on an expedited basis.** In proceedings pursuant to section 1302, 1303 or 1321, after reasonable notice and opportunity to be heard, the commission may issue a temporary order pending the conclusion of the formal public hearing. In making the order, the commission shall consider the likelihood that it would be issued at the conclusion of the proceeding, the benefit to the public or affected customers compared to the harm to the utility or Voice Service Provider or other customers of issuing the order and the public interest. Notwithstanding any other provisions of law, upon a written finding that the procedural requirements otherwise required by law will result in unreasonable harm to a utility, a Voice Service Provider, a customer or the public, the commission may establish accelerated notice periods, schedules and limitations on hearings as may be necessary to expedite consideration of the order.

6. Commission authorized to waive public hearing. Unless one or more parties request a public hearing, the commission may waive the requirement for a public hearing under any provision of this Title.

35-A §1311-B. SECURITY OF CERTAIN UTILITY INFORMATION

1. Designation of information as confidential. If the commission, on its own motion or on petition of any person or entity, determines that public access to specific information about public utility or Voice Service Provider technical operations in the State could compromise the security of public utility systems to the detriment of the public interest, the commission shall issue an order designating that information as confidential. Information designated as confidential pursuant to this section may include, but is not limited to, emergency response plans and network diagrams. Information designated as confidential under this section is not a public record under Title 1, section 402, subsection 3.

2. Treatment of information by commission; generally. Except as otherwise provided in this section, the commission may not release information designated as confidential under subsection 1 and shall take appropriate steps to protect such information in its possession.

3. Access to information by parties in proceeding. Designation of information as confidential under subsection 1 does not limit the right of a party in a proceeding before the commission to obtain discovery of that information. Notwithstanding section 1311-A, subsection 1, paragraphs A and C, the commission may issue a protective order limiting discovery of information designated as confidential pursuant to subsection 1 if the commission finds that specific limits are necessary to protect the public interest.

4. Release of information to other state agencies. The commission may release information designated as confidential pursuant to subsection 1 or require the release of that information by a public utility or Voice Service Provider to another state agency to the extent necessary to support emergency preparedness or response, law enforcement or other public health and safety activities. The commission shall consult with a public utility or Voice Service Provider before releasing or requiring the release of confidential information about that utility to a state agency unless the commission determines that the public health and welfare require immediate release without such consultation. The commission shall notify a public utility or Voice Service Provider within 2 business days of providing information about that utility or Voice Service Provider to a state agency pursuant to this subsection. As soon as practicable after receiving notice from a state agency pursuant to subsection 5, paragraph B of the agency's intent to release the information, the commission shall notify the public utility or Voice Service Provider of the agency's intent.

5. Release by other state agencies. A state agency that receives information about a public utility or Voice Service Provider pursuant to subsection 4:

- A. May not use that information for any purpose other than for the support of emergency preparedness or response, law enforcement or other public health and safety activities;
- B. May not release that information to any other person or entity without prior notice to the commission unless the agency determines that immediate release of the information to one or more persons or entities is necessary for the protection of public health and safety; and
- C. Shall, when finished with the use of any documents received from the commission or from a public utility pursuant to subsection 4, return the documents to the commission or the public utility, as appropriate.

35-A §1312. WITNESSES AND FEES

1. Witnesses. Each witness who is ordered to appear before the commission shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the Superior Court. This provision does not apply to the employees, officers, directors, trustees and holders of more than 10% of the common stock of a public utility or Voice Service Provider which is the subject of the commission's proceeding.

2. Fees. The State shall audit and pay the fees in the same manner as other state expenses are audited and paid upon the presentation of proper vouchers approved by the commission.

**35-A §1316. TESTIMONY PRESENTED BY EMPLOYEES OF PUBLIC UTILITIES,
VOICE SERVICE PROVIDERS OR COMPETITIVE SERVICE PROVIDERS TO
LEGISLATIVE COMMITTEES AND TO THE PUBLIC UTILITIES COMMISSION**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, expressed or implied, but does not include an independent contractor.

B. "Employer" means a public utility or competitive service provider licensed to do business in this State with one or more employees.

C. "Legislative committee" means a joint standing committee or a joint select committee of the Legislature, a task force, commission or council or any other committee established by the Legislature and composed wholly or partly of Legislators for the purpose of conducting legislative business.

D. "Own time" means an employee's vacation or personal time, earned as a condition of employment.

2. Right to provide testimony. Employees of a public utility, Voice Service Provider, or competitive service provider have the right to represent themselves and to testify before a legislative committee or the commission on their own time. An employee of a public utility, Voice Service Provider, or competitive service provider who complies with this section may not be denied the right to testify before a legislative committee or the commission.

3. Discharge of, threats to or discrimination against employees of utility service providers or Voice Service Providers for testimony presented to legislative committees or the commission.

Unless otherwise provided for, a supervisor may not discharge, threaten or otherwise discriminate against an employee of a public utility, Voice Service Provider, or competitive service provider regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, in compliance with this section, in good faith testifies before or provides information to a legislative committee or to the commission regarding the operation of the business of a public utility, Voice Service Provider -or competitive service provider or because the employee brings the subject matter of the testimony or information to the attention of a person having supervisory authority.

This subsection does not apply to an employee who has testified before or provided information to a legislative committee or to the commission unless the employee has first brought the subject matter of the testimony or information in writing to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable time to address the subject matter of the testimony or information. If appropriate, the employer shall respond in writing.

4. Exceptions. The protection created in subsection 3 does not apply to testimony that, upon reasonable inquiry by the employee, would be found to be false, slanderous, libelous or defamatory or to testimony that violates a term or condition of a collectively bargained agreement or to testimony that discloses trade secrets or corporate strategy, the disclosure of which would result in harm to the employer.

5. Civil actions for injunctive relief or other remedies. An employee of a public utility, Voice Service Provider or competitive service provider who alleges a violation of rights under this section and who has made reasonable efforts to exhaust all grievance procedures, as provided for in the contract of employment or which otherwise may be available at the employee's place of employment, may bring a civil action, including an action for injunctive relief, within 90 days after the occurrence of that alleged violation or after the grievance procedure or similar process terminates. The action may be brought in the Superior Court for the county where the alleged violation occurred, the county where the complainant resides or the county where the person against whom the civil complaint is filed resides. An employee

must establish each and every element of the employee's case by a preponderance of the evidence.

6. Remedies ordered by court. A court, in rendering a judgment in an action brought pursuant to this section, may order reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights or any combination of these remedies. A court may also award the prevailing party all or a portion of the costs of litigation, including reasonable attorneys' fees and witness fees, if the court determines that the award is appropriate.

7. Collective bargaining rights. This section does not diminish or impair the rights of a person under any collective bargaining agreement.

8. Jury trial; common-law rights. Any action brought under this section may be heard by a jury. Nothing in this section derogates any common-law rights of an employee or employer.

35-A §1322. ORDERS TEMPORARILY SUSPENDED, ALTERED OR AMENDED

1. Orders temporarily amended. When the commission finds it necessary to prevent injury to a public utility's or Voice Service Provider's business or to the interest of the people, or if the commission finds there is an emergency, it may temporarily alter, amend or, with the public utility's or Voice Service Provider's consent, suspend existing rates, schedules or orders affecting the public utility or Voice Service Provider. When the commission finds it necessary to prevent injury to a competitive service provider's business or to the interest of the people, or if the commission finds there is an emergency, it may temporarily alter, amend or, with the competitive service provider's consent, suspend existing orders affecting the competitive service provider.

2. Rates. Rates made under this section:

- A. Apply to one or more of the public utilities in the State or to any part of them as the commission directs; and
- B. Take effect and remain in force as the commission prescribes.

3. Limitation of authority. Nothing in this section is intended to grant the commission authority to establish or approve the rates charged by competitive service providers.

Chapter 15: SANCTIONS AND ADMINISTRATIVE PENALTIES

35-A §1501. UTILITY LIABLE FOR CIVIL DAMAGES

If a public utility or Voice Service Provider violates this Title, causes or permits a violation of this Title or omits to do anything that this Title requires it to do it may be liable in damages to the person injured as a result. Recovery under this section does not affect a recovery by the State of the penalty prescribed for the violation.

35-A §1502. CONTEMPT

Every public utility, Voice Service Provider, or person that fails to comply with an order, decision, rule, direction, demand or requirement of the commission or of a commissioner is in contempt of the commission and shall be punished by the commission for contempt in the same manner as contempt is punished by courts of record. Punishment for contempt is not a bar to and does not affect any other remedy prescribed in this Title, but is cumulative and in addition to other remedies.

35-A §1508-A. ADMINISTRATIVE PENALTY

1. Penalty. Unless otherwise specified in law, the commission may, in an adjudicatory proceeding, impose an administrative penalty as specified in this section.

A. For willful violations of this Title, a commission rule or a commission order by a public utility, Voice Service Provider, or a competitive electricity provider, the commission may impose an administrative penalty for each violation in an amount that does not exceed \$5,000 or .25% of the annual gross revenue that the public utility, Voice Service Provider or the competitive electricity provider received from sales in the State, whichever amount is lower. Each day a violation continues constitutes a separate offense. The maximum administrative penalty for any related series of violations may not exceed \$500,000 or 5% of the annual gross revenue that the public utility, Voice Service Provider or the competitive electricity provider received from sales in the State, whichever amount is lower.

B. For a violation in which a public utility, Voice Service Provider or a competitive electricity provider was explicitly notified by the commission that it was not in compliance with the requirements of this Title, a commission rule or a commission order and that failure to comply could result in the imposition of administrative penalties, the commission may impose an administrative penalty that does not exceed \$500,000.

C. The commission may impose an administrative penalty in an amount that does not exceed \$1,000 on any person that is not a public utility, Voice Service Provider or a competitive electricity provider and that violates this Title, a commission rule or a commission order. Each day a violation continues constitutes a separate offense. The administrative penalty may not exceed \$25,000 for any related series of violations.

D. In addition to the administrative penalties authorized by this subsection, the commission may require disgorgement of profits or revenues realized as a result of a violation of this Title, a commission rule or a commission order.

2. Considerations. In determining the amount of an administrative penalty under this section, the commission shall take into account:

A. The severity of the violation, including the intent of the violator and the nature, circumstances, extent and gravity of the prohibited act;

B. The reasonableness of the violator's belief that the violator's action or lack of action was in conformance with this Title, a commission rule or a commission order;

C. The violator's history of previous violations;

D. The amount necessary to deter future violations;

E. The violator's good faith attempts to comply after notification of a violation; and

F. Such other matters as justice requires.

Part 2: PUBLIC UTILITIES

Chapter 21: ORGANIZATION, POWERS, SERVICE TERRITORY

35-A §2102. APPROVAL TO FURNISH SERVICE

The following provisions apply to furnishing service.

1. Approval required. Except as provided in subsection 2 and in section 4507, a public utility may not furnish any of the services set out in section 2101 in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service, and a dark fiber provider may not

offer federally supported dark fiber, without the approval of the commission. The commission may condition approval upon the submission of a bond or other financial security if the commission determines that such a requirement is necessary to ensure that a public utility has the financial ability to meet its obligations under this Title.

~~A. The commission may not grant approval to a telephone utility under this subsection unless the telephone utility submits evidence satisfactory to the commission that the telephone utility has at least \$250,000 in fixed assets in this State or the telephone utility purchases and maintains a surety bond satisfactory to the commission in the amount of \$250,000 to ensure the telephone utility has the financial ability to meet its obligations under this Title. This paragraph does not apply to a telephone utility authorized to provide telephone service in this State on the effective date of this paragraph.~~

2. Approval not required. Except as provided in section 2104, the commission's approval is not required for a public utility to furnish service in any municipality in which that public utility is furnishing service on October 8, 1967. Approval is not required for the operation of a radio paging service or mobile telecommunications services. Approval is not required for a transmission and distribution utility to distribute electricity to any other transmission and distribution utility.

~~**2-A. Northern Maine Transmission Corporation.**~~

~~**3. Exemption for certain telephone utilities**Registration by Voice Service Providers. The commission by rule may exempt a specified telephone utility or group of telephone utilities from obtaining the approval required by subsection 1 if the commission finds that the exemption will not result in unjust or unreasonable rates or inadequate service for any telephone utility customers. The commission may limit the exemption to specified geographic areas. For good cause, as provided in the rule establishing the exemption, the commission may revoke an exemption in whole or in part, including an exemption granted to a single telephone utility. A telephone utility that is exempt from the approval requirement of subsection 1:~~

Except as otherwise prohibited by state or federal law:

A. Before commencing service, a Voice Service Provider must register with the commission by notifying the commission of its intent to commence the exempted providing voice service in Maine. The Commission shall provide the Voice Service Provider authorization to provide voice service in Maine upon receipt of such notice;

B. Shall obtain the approval of the commission under subsection 1 to provide any service other than the services specified in the exemption granted by the commission under this subsection; and

B. The commission may request information from Voice Service Providers and take other measures necessary to preserve number resources; and

C. Remains subject to any other applicable provisions of this Title and commission rules.

C. The commission may, for good cause, including but not limited to failure to pay an assessment pursuant to Section 116 of this Title and failure to pay contributions pursuant to Sections 7104 and/or 7104-B of this Title, and after an opportunity to be heard, revoke the authority of a Voice Service Provider to provide voice service in Maine.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

~~Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be submitted to the Joint Standing Committee on Utilities and Energy by January 1, 1999.~~

4. Dark fiber provider. The commission shall issue its order approving or denying an application from a dark fiber provider for approval under this section, including its decision on any waivers or exemptions requested by the dark fiber provider in conjunction with its application, within 60 days of

receipt of the application, except that if the commission determines that it requires additional time, it may extend its review and issue its order no later than 90 days after receipt of the application.

Chapter 23: UTILITY FACILITIES IN THE PUBLIC WAY

35-A §2301. TELEPHONE UTILITIES, FEDERALLY SUPPORTED DARK FIBER PROVIDERS AND TELEVISION CORPORATIONS MAY CONSTRUCT LINES

Except as limited, every corporation organized under ~~section 2101~~ for the purpose of ~~operating telephones providing telephone service~~, every dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber, and every corporation organized for the purpose of transmitting television signals by wire may construct, maintain and operate its lines upon and along the route or routes and between the points stated in its certificate of incorporation; and may construct its lines and necessary erections and fixtures for them along, over, under and across any of the roads and streets and across or under any of the waters upon and along the route or routes subject to the conditions and under the restrictions provided in this chapter and chapter 25.

35-A §2306. NO TAKING PROPERTY WITHOUT CONSENT

A public utility, Local Exchange Carrier organized under section 2101 and former section 2109, or any Voice Service Provider, may not take, appropriate or use the location, pipes, lines, land or other property of any other person doing or authorized to do a similar business, without consent of the other person, except by Private and Special Act of the Legislature.

35-A §2307. PUBLIC UTILITIES MAY LAY WIRES, PIPES AND CABLES UNDER STREETS SUBJECT TO MUNICIPAL PERMIT

Public utilities and Voice Service Providers may, in any municipality, place their pipes and appurtenances, wires and cables and all conduits and other structures for conducting and maintaining the pipes, wires and cables under the surface of those streets and highways in which the utilities are authorized to obtain locations for their pipes and appurtenances, poles and wires, subject to the written permit of the licensing authority, as defined in section 2502 and subject to such rules as to location and construction as the municipal officers or the Department of Transportation may designate in their permit. A permit must be obtained under sections 2501 to 2508. Permits to open streets and highways for the purpose of relaying or repairing the pipes and appurtenances, wires, cables, conduits and other structures may be granted without notice.

35-A §2308. PROTECTION OF UTILITY FACILITIES UPON DISCONTINUANCE OF PUBLIC WAYS

In proceedings for the discontinuance of public ways, public ways may be discontinued in whole or in part. The discontinuance of a town way shall be pursuant to Title 23, section 3026. Unless an order discontinuing a public way specifically provides otherwise, the public easement provided for in Title 23, section 3026, includes an easement for public utility or Voice Service Provider facilities. A utility or Voice Service Provider may continue to maintain, repair and replace its installations within the limits of the way or may construct and maintain new facilities within the limits of the discontinued way, if it is used for travel by motor vehicles, in order to provide utility or telephone service, upon compliance with the provisions of sections 2503, 2505, 2506, 2507 and 2508.

35-A §2310. TRESPASS ON A UTILITY POLE

1. Trespass. A person commits trespass on a utility pole if, without the prior consent of the utility owner or owner of the pole, he places any object or makes any attachment on any utility pole, whether or not it is within the limits of a public way.

2. Violation; forfeiture. Trespass on a utility pole is a civil violation for which a forfeiture of not less than \$25 nor more than \$100 shall be adjudged.

35-A §2522. MAINTENANCE OF UTILITY FACILITIES

Notwithstanding any other provision of law, a transmission and distribution utility or Local Exchange Carrier or telephone utility may trim, cut or remove by cutting trees located within the public right-of-way of a public way and may trim or cut portions of trees encroaching upon the public right-of-way when necessary to ensure safe and reliable service if:

1. Notice to applicable licensing authority. Notice is provided by the utility or Local Exchange Carrier to the applicable licensing authority, as defined in section 2502, at least 30 days before the trimming, cutting or removal of trees;

2. Consultation with applicable licensing authority. Upon request of the applicable licensing authority, the utility or Local Exchange Carrier consults with the applicable licensing authority before the trimming, cutting or removal of trees. Notice must be sent to each municipality in which trimming, cutting or removal of trees is to be conducted and the utility shall consult with the applicable municipal licensing authority or, if none, the municipal officers before commencing operations. The municipal licensing authority or, if none, the municipal officers may elect to hold a public hearing on the utility's proposal and, if so, the utility or Local Exchange Carrier may not commence operations until after the public hearing has been held;

3. Public notice. Public notice is placed in at least 2 newspapers with circulation in the area where trimming, cutting or removal of trees is scheduled to occur at least 30 days before the trimming, cutting or removal of those trees. The notice must state that customers may request to be placed on the list, required under subsection 4, of persons who have requested to be personally consulted before the trimming, cutting or removal of trees;

4. Customer notice list. Before the trimming, cutting or removal of trees, the utility or Local Exchange Carrier confers with any person who requests personal consultation concerning the trimming, cutting or removal of trees on property in which the person has a legal interest. The utility or Local Exchange Carrier shall keep a list of persons who have requested personal consultation under this subsection. The utility or Local Exchange Carrier shall notify annually, in the form of a bill insert, all of the utility's or Local Exchange Carrier's customers of the opportunity to be on the list required under this subsection; and

5. Shade and ornamental trees. Before removing a shade or ornamental tree, the utility or Local Exchange Carrier consults with the owner of the land upon which the tree is located. For purposes of this subsection, "owner" includes a person who owns the underlying fee interest in land encumbered with a public easement.

This section does not apply to trimming, cutting or removal of trees undertaken in emergency situations.

Part 7: TELECOMMUNICATIONS

Chapter 71: GENERAL PROVISIONS

35-A §7101. TELECOMMUNICATIONS POLICY

1. Universal service. The Legislature declares and finds that the 50-year effort to bring affordable, universally available telephone service to the public has served the State well; universal telephone service has contributed to the State's economic, social and political integration and development; the public benefits from universal telephone service because each telephone subscriber receives a more valuable service when virtually anyone else in the State can be called; and a significant rate increase may threaten universal service by forcing some Maine people to discontinue their telephone service. It is the policy of the State that telephone service must continue to be universally available in the form of Provider of Last Resort Service, especially to the poor, at affordable rates.

2. Economic development. The Legislature further declares and finds that a modern state-of-the-art telecommunications network is essential for the economic health and vitality of the State and for improvement in the quality of life for all Maine citizens. Therefore, it is the goal of the State that all Maine's businesses and citizens should have affordable access to an integrated telecommunication infrastructure capable of providing voice, data and image-based services. The State shall consider policies that:

- A. Encourage economic development;
- B. Employ methods of regulation that encourage the development and deployment of new technologies; and
- C. Encourage acceptable service applications that support economic development initiatives or otherwise improve the well-being of Maine citizens.

~~3. Report.~~

43. Information access. The Legislature further declares and finds that computer-based information services and information networks are important economic and educational resources that should be available to all Maine citizens at affordable rates. It is the policy of the State that affordable access to those information services that require a computer and rely on the use of the telecommunications network should be made available in all communities of the State without regard to geographic location.

54. Homeland security and emergency alerts. The Legislature further finds that seamless, integrated, robust and redundant means of communication, including, but not limited to, voice and alphanumeric pagers, landline telephones, wireless telephones, text radio and wireless e-mail, create a robust communication system that enables rapid contact with first responders, ensures emergency alert notification to all affected persons in the State, including at-risk populations such as the hearing or visually impaired, and enhances homeland security. It is the policy of the State to encourage the deployment of the infrastructure necessary to support such a communications system.

5. Maximization of Support. The Commission shall pursue all activities necessary to maximize the amount of federal support received by Voice Service Providers offering voice and broadband service in Maine.

35-A §7101-A. TELECOMMUNICATIONS PRIVACY; POLICY

The Legislature declares and finds the following.

1. Privacy right. ~~Telephone~~Voice service subscribers have a right to privacy and the protection of this right to privacy is of paramount concern to the State.

2. Exercise of right. To exercise their right to privacy, ~~telephone-voice service~~ subscribers must be able to limit the dissemination of their telephone numbers to persons of their choosing.

35-A §7101-B. ACCESS RATES

1. Definitions. As used in this section, the term "intrastate access rates" means rates that a ~~telecommunications-voice service~~ provider pays for access to a local exchange carrier's facilities and services in order to provide intrastate interexchange service.

2. Access rates. After any decrease of interstate access rates by the Federal Government, the commission shall consider corresponding reductions in intrastate access rates, taking into account both the disadvantages to customers of intrastate access rates that exceed interstate access rates and the disadvantages to customers of increases in rates for local telephone service that may result from reductions in intrastate access rates.

A. By May 31, 2005, the commission shall ensure that intrastate access rates are equal to interstate access rates established by the Federal Communications Commission as of January 1, 2003.

B. If achieving the result required under paragraph A would result in an increase of more than 50% in the price of local telephone service, whether as a result of an increase in local service rates or an increase in universal service fund collections, the commission shall:

(1) Phase in intrastate access rate reductions through stepped reductions so as to produce as smooth a transition as possible; and

(2) To the maximum extent possible, keep increases in the price of local telephone service to no more than 50% for each stepped reduction in the intrastate access rate.

C. If interstate access rates are reduced by the Federal Communications Commission below the rates as of January 1, 2003, the commission may further require reductions in intrastate access rates beyond what is required under paragraph A, except that, within any 2-year period, the commission may not require such further access rate reduction if the result will be an increase of more than 50% in local service rates or an increase of more than 50% in the collection rate for the state universal service fund.

The commission may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Consumer rates. If the commission finds that effective competition in the intrastate interexchange market does not exist, the commission shall require all persons providing intrastate interexchange service to reduce their intrastate long-distance rates to reflect net reductions in intrastate access rates ordered by the commission pursuant to subsection 2.

35-A §7102. DEFINITIONS

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Access to directory assistance. "Access to directory assistance" means access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings.

2. Access to emergency services. "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point ("PSAP") operated by the local government. "Enhanced 911" is defined as 911 service that includes the ability to provide automatic

numbering information ("ANI"), which enables the PSAP to call back if the call is disconnected, and automatic location information ("ALI"), which permits emergency service providers to identify the geographic location of the calling party. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems.

3. Access to interexchange service. "Access to interexchange service" is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network.

4. Access to operator services. "Access to operator services" means access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call.

~~**1. Emergency.** "Emergency" means a situation in which property or human or animal life is in jeopardy and the prompt summoning of aid is essential.~~

~~**1-A5. Caller-ID.** "Caller-ID" means a service that allows a person who receives a telephone call to know, by means of an appropriate device, the telephone access line identification number or other telephone access line identification information. "Caller-ID" does not include the following:~~

- ~~A. An identification service that is used within the same limited system, including but not limited to a private branch exchange, or PBX, system or a Centrex system;~~
- ~~B. An identification service provided in connection with ~~audiotext services, as defined in section 804,~~ toll-free, or "800" access code, telephone service or a similar telephone service;~~
- ~~C. An identification service that provides billing information to another ~~telephone utility~~ Voice Service Provider or to others providing service to a customer;~~
- ~~D. An identification service that is used on a public agency's emergency telephone line or on the line that receives the 9-1-1 or primary emergency telephone number; and~~
- ~~E. An identification service provided in connection with legally sanctioned call tracing or tapping procedures.~~

6. Dual tone multi-frequency signaling. "Dual tone multi-frequency" ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time.

~~**1-7. Emergency.** "Emergency" means a situation in which property or human or animal life is in jeopardy and the prompt summoning of aid is essential.~~

~~**1-B8. Line-item charge.** "Line-item charge" means a discrete charge identified separately on a customer's telephone bill.~~

9. Local usage. "Local usage" means an amount of minutes of use of exchange service within a certain area, prescribed by the Commission, provided free of charge to end users.

210. Party line. "Party line" means a subscribers' line telephone circuit, consisting of 2 or more main telephone stations connected with the circuit, each station with a distinctive ring and telephone number.

311. Public telephone. "Public telephone" means a telephone made available for voice message use by members of the transient or general public for compensation, including pay telephones and any telephones provided for the use of lodgers in or patrons of hotels, motels, hospitals, medical and convalescent care facilities, academic institutions, transportation terminals, government offices, public buildings, restaurants or other places of public accommodation or prisons and other confinement facilities.

12. Single-party service. "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of

wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission.

13. Toll limitation for qualifying low income customers. "Toll limitation for qualifying low-income consumers" means a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

14. Voice grade access. "Voice grade access" means a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should have a minimum range of, 300 to 3,000 Hertz.

35-A §7104. AFFORDABLE TELEPHONE SERVICE

1. Low-income support. The commission shall require telephone utilities to participate in statewide outreach programs designed to increase the number of low-income telephone customers on the network through increased participation in any universal service program approved by the commission.

2. General availability. The commission shall seek to ensure that ~~similar telecommunication services are~~Provider of Last Resort Service is available to consumers throughout all areas of the State at reasonably comparable rates.

3. Authority. The commission shall adopt rules to implement this section and may require ~~providers of intrastate telecommunications services~~Voice Service Providers and providers of radio paging service to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of this Title and the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56. ~~Prior to requiring that providers of intrastate telecommunications services~~Voice Service Providers and providers of radio paging service contribute to a state universal service fund, the commission shall assess the telecommunications needs of the State's consumers and establish the level of support required to meet those needs. If the commission establishes a state universal service fund pursuant to this section, the commission shall contract with an appropriate independent fiscal agent that is not a state entity to serve as administrator of the state universal service fund. Funds contributed to a state universal service fund are not state funds. Rules and any state universal service fund requirements established by the commission pursuant to this section must:

- A. Be reasonably designed to maximize federal assistance available to the State for universal service purposes;
- B. Meet the State's obligations under the federal Telecommunications Act of 1996, Public Law 104 - 104, 110 Stat. 56;
- C. Be consistent with the goals of the federal Telecommunications Act of 1996, Public Law 104 - 104, 110 Stat. 56;
- D. Ensure that any requirements regarding contributions to a state universal service fund be nondiscriminatory and competitively neutral;
- E. Require, if a Voice Service Provider elects to recover its contributions under this section by means of a charge placed on a bill issued to a customer, explicit identification on customer bills of any charge imposed under this section.~~Require explicit identification on customer bills of contributions to any state universal service fund established pursuant to this section; and~~
- F. ~~Allow consideration in appropriate rate making proceedings of contributions to any state universal service fund established pursuant to this section.~~

~~For purposes of this subsection, "providers of intrastate telecommunications services" includes providers~~

~~of radio paging service and mobile telecommunications services.~~ Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

~~**4. Standards and reporting.** The commission, annually, shall assess the penetration rate of basic telecommunications services. If this penetration rate ever falls more than 2% below the national average penetration rate, the commission shall commence an investigation and take steps to enhance telecommunications market penetration. The commission, annually, shall assess the success of any actions taken by the commission to achieve the purposes of this section. In the annual report submitted by the commission pursuant to section 120, the commission shall include a description of any actions taken pursuant to this section and assessments made pursuant to this subsection.~~

54. Funds for Communications Equipment Fund. The commission shall annually transfer \$85,000 from a state universal service fund established pursuant to this section to the Communications Equipment Fund established under Title 26, section 1419-A.

If the Department of Labor, Bureau of Rehabilitation Services does not receive from federal or other sources funds in addition to the \$85,000 sufficient to carry out the purposes of Title 26, section 1419-A, the commission, at the request of the Department of Labor, Bureau of Rehabilitation Services, may transfer from the state universal service fund to the Communications Equipment Fund an additional \$100,000.

~~A. [.]~~

~~B. [.]~~

The commission may, upon the request of the Department of Labor, Bureau of Rehabilitation Services and after a finding that the funds are necessary and that sufficient attempts have been made by the Bureau of Rehabilitation Services to maximize federal support to support emergency alert telecommunications service, annually transfer up to \$57,500 from the state universal service fund established by this section to the Communications Equipment Fund established under Title 26, section 1419-A for the exclusive purpose of supporting the discount program established under Title 26, section 1419-A, subsection 6.

The commission may require contributions to the state universal service fund in an amount necessary to collect amounts transferred pursuant to this subsection.

56. Public-interest pay phone support. The commission may require contributions to a state universal service fund established pursuant to this section in an amount sufficient to collect up to \$50,000 each year to fund public-interest pay phones pursuant to section 7508. The commission shall maintain an accounting of all funds contributed to the state universal service fund pursuant to this subsection and all funds expended pursuant to section 7508. Funds contributed to the state universal service fund pursuant to this subsection may be expended only for the purposes of section 7508.

76. Telecommunications relay services support. In order to ensure the affordability of telecommunications relay services throughout the State, the commission shall establish funding support for telecommunications relay services, including related outreach programs, within the state universal service fund established pursuant to subsection 3.

A. In establishing the total level of support for the state universal service fund, the commission shall include funding levels for telecommunications relay services as recommended by the Telecommunications Relay Services Advisory Council, as established in section 8704, unless the commission determines, upon its own motion or upon the request of a ~~provider of intrastate telecommunications services~~ Voice Service Provider, that the recommended funding levels may be unreasonable. If the commission determines that the funding levels may be unreasonable, the commission shall open a proceeding to determine a reasonable funding level for telecommunications relay services, including related outreach programs. Upon the conclusion of the proceeding, the commission shall establish funding support for telecommunications relay services, including related outreach programs, that it has found to be reasonable within the state universal service fund. The commission shall require contributions to the state universal service fund on a quarterly basis to meet

the established funding support levels.

B. In determining reasonable funding levels for telecommunications relay services, including related outreach programs, the commission may consider whether the recommended funding is for telecommunications relay services, including related outreach programs, that are:

- (1) Federally required services;
- (2) Services provided in other states with a similar deaf, hard-of-hearing and speech impaired population as this State; or
- (3) Services that are designed to maximize the effectiveness of telecommunications relay services through the application of new technologies.

35-A §7104-B. ACCESS TO INFORMATION SERVICES

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Qualified library" means a public library as defined in Title 27, section 110, subsection 10; a research center as defined in Title 27, section 110, subsection 12; or a library that provides free public access to all advanced telecommunications services available at that library and whose collection serves as a statewide resource, if the commission determines, in consultation with the Maine Library Commission, that including that library as a qualified library is in the public interest.

B. "Qualified school" means a public school as defined in Title 20-A, section 1, subsection 24; a private school approved under Title 20-A, section 2901 or 2951; or a school that provides free public access to all advanced telecommunications services available at that school, if the commission determines, in consultation with the Department of Education, that including that school as a qualified school is in the public interest.

~~C. "Telecommunications carrier" and "telecommunications service" have the same meanings as set forth in 47 United States Code, Section 153.~~

2. Authority. Pursuant to the authority granted in section 7104 and in order to carry out the policy goals established by section 7101, subsections 1, 2 and 4, the commission shall establish a telecommunications education access fund, referred to in this section as the "fund," and require all ~~telecommunications carriers offering telecommunications services~~ Voice Service Providers providing service in the State and any other entities identified by the commission pursuant to subsection 8 to contribute to the fund. The fund must be available, with any accumulated interest, to qualified libraries, qualified schools and the Raymond H. Fogler Library at the University of Maine to assist in paying the costs of acquiring and using advanced telecommunications technologies.

3. Limitations. In carrying out the authority granted by subsection 2, the commission shall:

- A. Limit the amount collected to no more than 0.7% of retail charges for telecommunications services as determined by the commission, excluding interstate tolls or interstate private line services;
- B. Ensure that the funds are collected in a competitively neutral manner;
- C. Integrate the collection of the charge with any state universal service fund developed by the commission;
- D. Require, if a Voice Service Provider elects to recover its contributions under this section by means of a charge placed on a bill issued to a customer, explicit identification on customer bills of any charge imposed under this section; and
- E. ~~Commence any assessment for this fund no earlier than July 1, 2001.~~

4. Use of fund. The fund must be used to provide discounts to qualified libraries, qualified schools and the Raymond H. Fogler Library at the University of Maine for the following:

- A. Telecommunications services;
- B. Internet access;
- C. Internal connections;
- D. Computers;
- E. Training; and
- F. Content.

4-A. State Librarian; Commissioner of Education. The State Librarian or the Commissioner of Education may enter into contracts or order services on behalf of qualified schools and qualified libraries in connection with the fund and may take advantage of any discounts available pursuant to the federal Telecommunications Act of 1996.

5. Guidelines for funding. The commission shall allocate money from the fund using the following guidelines:

- A. To ensure a basic level of connectivity for all of the qualified schools and qualified libraries in the State;
- B. To ensure that all qualified schools, qualified libraries and the Raymond H. Fogler Library at the University of Maine are capable of using the advanced technology equipment obtained through the fund;
- C. To ensure that more technologically sophisticated equipment is available to students in grades 9 to 12 and in larger qualified libraries in the State;
- D. To provide for necessary equipment to use the services obtained through the fund;
- E. To provide for internal connections necessary to use the services obtained through the fund;
- F. To provide training to teachers so that they may assist and educate their students in the use of the advanced technology equipment;
- G. To provide for the establishment of computer technology training programs in schools to provide training to students in areas such as, but not limited to, electronic commerce, Internet proficiency and World Wide Web-enabled systems; and
- H. To provide for electronic database content to be used for the purposes of accessing information by schools and libraries.

6. Coordination with federal funds. Except as provided in paragraph A, qualified schools and qualified libraries shall apply for any federal discounts available pursuant to the federal Telecommunications Act of 1996. The level of discount, pursuant to subsection 4, is determined by the commission.

- A. A qualified library is not required to apply for a federal discount pursuant to the federal Telecommunications Act of 1996 if the library determines that satisfying conditions for receiving that discount would substantially compromise the library's standards or mission. If the qualified library does not receive a federal discount as a result of a determination made in accordance with this paragraph, the commission shall establish an enhanced level of discount pursuant to subsection 4 to ensure the library is not substantially disadvantaged by that determination. The commission shall establish a level of discount that mitigates, to the maximum extent the commission determines appropriate, the financial impact on the library resulting from its not receiving the federal discount.

7. Coordination with existing facilities. Any existing facilities developed to provide services to qualified schools, qualified libraries and the Raymond H. Fogler Library at the University of Maine, as directed by the commission under this section, must continue to provide services to qualified schools, qualified libraries and the Raymond H. Fogler Library at the University of Maine at rates that reflect the incremental costs to use those facilities.

~~8. Review by commission.~~ The commission shall periodically examine the services provided and entities assessed a fee under this section. The purpose of the review is to ensure that the fees assessed under this section are competitively neutral by including services provided by any entity, including but not limited to cable television companies, Internet service providers or any other relevant business, to the extent that those entities offer services that provide a method of delivering 2-way interactive communications services comparable to those offered by telecommunications carriers. In accordance with subsection 2, the assessment of fees on entities that provide services other than 2-way interactive communications services comparable to those offered by telecommunications carriers must be based on the entities' retail charges for delivering 2-way interactive communications, excluding interstate toll and interstate private line services, and may not be related to other services provided by the entity.

35-A §7105. CALLER-ID

Caller-ID services provided in this State are subject to the following.

1. Per-call blocking. At least 2 months prior to initiating any caller-ID service, and throughout the period that caller-ID service is offered to subscribers in this State, ~~telephone utilities~~ Voice Service Providers must advertise and immediately upon initiating such service must offer to all subscribers free per-call blocking. ~~The commission shall review the form and content of advertising required under this section.~~

2. Per-line blocking. ~~In any order in which the commission approves the offering of caller ID in this State, the commission shall require~~ Voice Service Providers must provide per-line blocking to be provided to individuals, agencies and groups that submit a written request to the ~~telephone utility~~ Voice Service Provider asserting a specific need for per-line blocking for reasons of health and safety. ~~Telephone utilities~~ Voice Service Providers may not charge a subscriber a fee for the first per-line blocking or unblocking of the subscriber's line. Except as otherwise authorized by law or to confirm that a subscriber has made a valid request, ~~telephone utilities~~ Voice Service Providers may not disclose information concerning the request for per-line blocking submitted by an individual, agency or group.

~~3. Penalty.~~

35-A §7106. CONSUMER PROTECTION UNAUTHORIZED CHANGE OF CARRIER

1. Unauthorized change of carrier. This subsection governs the initiation of a change in a customer's ~~local or intrastate interexchange carrier~~ Voice Service Provider that is not authorized by that consumer.

A. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, and except as otherwise provided by the commission by rule adopted pursuant to subsection 3, a Voice Service Provider ~~local or intrastate interexchange carrier~~ may not initiate the change of a customer's Voice Service Provider ~~local or intrastate carrier~~ unless the change is expressly authorized by the customer as verified by one of the following methods:

- (1) Written or electronically signed authorization from the customer;
- (2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order; or
- (3) Oral authorization of the customer obtained by an independent 3rd party.

B. When a customer's Voice Service Provider service is changed to a new Voice Service Provider ~~local or intrastate interexchange carrier~~, the new Voice Service Provider ~~local or intrastate interexchange carrier~~ shall maintain for 24 months a record of nonpublic customer-specific information that establishes that the customer authorized the change.

~~C.~~

~~D.C.~~ A Voice Service Provider ~~local or intrastate interexchange carrier~~ that has initiated an unauthorized customer change shall:

- (1) Pay all usual and customary charges associated with returning the customer to the customer's original Voice Service Provider~~local or intrastate interexchange carrier~~;
- (2) Return to the customer any amount paid to that carrier by the customer or on the customer's behalf;
- (3) Pay any access charges and related charges to access providers or to an underlying carrier when applicable; ~~and~~;
- (4) ~~Upon request, provide all billing records to the original local or intrastate interexchange carrier from which the customer was changed to enable the original local or intrastate interexchange carrier to comply with this section and any commission rules adopted under this section.~~

~~E.~~ Except as otherwise provided by the commission by rule in accordance with subsection 3, a customer subjected to an unauthorized change of local or intrastate interexchange carrier is responsible for charges of the authorized carrier for the customer's usage during the period the customer was served by the unauthorized carrier unless:

- (1) The customer has paid the unauthorized carrier for the usage; and
- (2) The amount paid by the customer has not been returned by the unauthorized carrier to the customer in accordance with paragraph D, subparagraph (2).

~~If the unauthorized carrier has not returned to the customer the amount paid by the customer to the unauthorized carrier in accordance with paragraph D, subparagraph (2), the unauthorized carrier shall pay to the authorized carrier the charges of the authorized carrier for the customer's usage during the period the customer was served by the unauthorized carrier.~~

2. Penalty. A Voice Service Provider ~~local or intrastate interexchange carrier~~ that violates this section is subject to penalty in accordance with this subsection.

A. The commission may impose an administrative penalty against any person who violates this section or any rule or order adopted pursuant to this section. In determining whether to impose a penalty, the commission may consider whether the violation was intentional. The penalty for a violation may be in an amount not to exceed \$5,000 for each day the violation continues, up to a maximum of \$40,000 for a first offense and a maximum of \$110,000 for subsequent offenses. The amount of the penalty must be based on:

- (1) The severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;
- (2) The history of previous violations;
- (3) The amount necessary to deter future violations;
- (4) Good faith attempts to comply after notification of a violation; and
- (5) Such other matters as justice requires.

~~B.~~ If the commission finds that a local or intrastate interexchange carrier has repeatedly violated this section or rules adopted under this section, the commission shall order the utility to take corrective action as necessary. In addition, the commission, if consistent with the public interest, may suspend, restrict or revoke the registration or certificate of the local or intrastate interexchange carrier, so as to deny the local or intrastate interexchange carrier the right to provide service in this State.

~~C.~~

~~D.B.~~ The commission may order a Voice Service Provider~~telephone utility~~ to withhold funds collected on behalf of a Voice Service Provider~~carrier~~ that is subject to an administrative penalty proceeding conducted pursuant to this section if it finds that it is more likely than not that penalties will be imposed or customer refunds will be ordered that are equal to or greater than the amount ordered

withheld. The commission shall provide the Voice Service Provider~~carrier~~ notice and an opportunity to be heard prior to ordering funds to be withheld. If the commission finds that there is a clear danger that, if notified in advance, the Voice Service Provider~~carrier~~ will conceal or otherwise make funds unavailable to satisfy penalties or customer refunds prior to providing notice and an opportunity to be heard, it may issue an order to the Voice Service Provider~~public utility~~ to withhold the funds without providing notice or an opportunity to be heard. To issue such an order, the commission must also make the first finding required by this paragraph. The commission shall, without delay, provide a copy of the order to the Voice Service Provider~~carrier~~ along with written notice that the Voice Service Provider~~carrier~~, on request, will be provided with an opportunity to contest the finding that it is more likely than not that penalties will be imposed or customer refunds will be ordered that are equal to or greater than the amount ordered withheld.

3. Rules. The commission shall adopt nondiscriminatory and competitively neutral rules to further implement this section.

~~A. Except as otherwise provided in this subsection, rules adopted by the commission under this subsection, including rules regarding customer verification of a change of carrier, must be consistent with the rules adopted by the Federal Communications Commission governing the initiation of a change of a customer's interstate carrier.~~

~~B. The commission, in adopting rules governing customer verification of a change of carrier, shall consider whether customer verification is necessary in the case of customer-initiated calls.~~

~~C. The commission shall adopt by rule a definition of those actions that constitute initiation of a change of carrier under this section and a definition of actions that do not constitute the initiation of a change of carrier. The commission shall consider whether actions not constituting the initiation of a change of a customer's carrier include actions of a local exchange carrier to change a customer's carrier:~~

~~(1) Undertaken at the direction of a carrier to which the customer's service is changed or with the oral or written authorization of the customer; and~~

~~(2) That do not result in the customer being changed to the service of the carrier undertaking the actions or to an affiliate of the carrier undertaking the actions.~~

~~D. Notwithstanding subsection 1, paragraph E, if the Federal Communications Commission provides by rule that customers are not responsible for charges of an authorized interstate carrier for the customer's usage during the period the customer was served by an unauthorized interstate carrier, the commission by rule may provide that a customer is not responsible for charges of an authorized local or intrastate carrier for the customer's usage during the period the customer was served by an unauthorized local or intrastate carrier.~~

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

4. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before the court.

5. Notice to the Attorney General. If the commission has reason to believe that any Voice Service Provider~~carrier~~ has violated any provision of the law for which criminal prosecution is provided and would be in order or any law regarding fraud or consumer protection, the Commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

6. Customer education. The Public Advocate shall periodically inform telephone customers in the State of the protections and rights provided by this section.

35-A §7107. UNAUTHORIZED SERVICES

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Billing agent" means a ~~telephone utility~~ Voice Service Provider that includes in a bill it sends to a customer a charge for a product or service offered by a service provider.
- B. "Billing aggregator" means any person, other than a service provider, who forwards the charge for a product or service offered by a service provider to a billing agent.
- C. "Service provider" means any person, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.
- D. "Unauthorized service" means the provision of any service or product by a service provider from whom a billing agent has not obtained sufficient evidence of customer authorization and for which a charge appears on the customer's telephone bill. For the purposes of this section, a charge for a collect call is deemed to be authorized by the customer receiving the call.

2. Registration requirements. The following acts are prohibited.

- A. A service provider may not offer a product or service to a customer, the charge for which appears on the bill of a billing agent, unless the service provider is properly registered with the commission.
- B. A billing aggregator may not forward to a billing agent charges for a service or product offered by a service provider unless the billing aggregator is properly registered with the commission.
- C. A billing aggregator may not forward charges to a billing agent from a service provider who is required to be registered under this subsection and who is not properly registered under this subsection.
- D. A billing agent may not knowingly bill on behalf of a service provider who is required to be registered under this subsection and who is not properly registered under this subsection.

A ~~telephone utility that is authorized by the commission or by law to provide telephone services in this State~~ Voice Service Provider is not required to be registered under this subsection.

The commission by rule may establish the manner and form of the registration. A registration properly filed with the commission takes effect 14 days after the filing date unless the commission objects to the registration and provides notice of its objection to the registrant within the 14 days. If the commission objects to the registration, the registration does not become effective unless expressly approved by the commission. The commission shall offer a person whose registration has been rejected an opportunity for a hearing. A registration, once effective, remains effective until revoked by the commission or surrendered by the service provider or billing aggregator.

~~3. Revocation of registration; notice.~~

3-A. Denial or revocation of registration; notice. The commission may by order, after notice and opportunity for hearing, deny, suspend or revoke an application for registration as, or the registration of, a service provider or billing aggregator if the commission finds that the order is in the public interest and that the applicant or registrant, or a principal of the applicant or registrant:

- A. Has knowingly misrepresented or omitted a material fact on the application for registration as a service provider or billing aggregator or has filed an incomplete application and does not take reasonable steps to provide the missing information;
- B. Has, in the case of a service provider, knowingly or repeatedly billed one or more customers for unauthorized service or, in the case of a billing aggregator, knowingly or repeatedly forwarded the charge for a service or product to a billing agent on behalf of a service provider who was required to be registered with the commission under subsection 2 and was not properly registered;
- C. Has engaged in any other false or deceptive billing practices prohibited by commission rule;

D. Has acted as a service provider or billing aggregator in the State without being licensed to do so;

E. Is then permanently or temporarily enjoined by any court of competent jurisdiction from violating any law governing the conduct of billing aggregators or service providers or from engaging in, or continuing, any conduct or practice indicating a lack of fitness to engage in the business of a billing aggregator or service provider;

F. Has, within the last 10 years, pleaded guilty or nolo contendere to, or been convicted of, any crime indicating a lack of fitness to engage in the business of a billing aggregator or service provider;

G. Is the subject of any of the following orders currently effective that were issued within the last 5 years:

(1) An order by a state or federal agency, entered after notice and opportunity for hearing, denying, suspending or revoking the person's license or registration as a service provider or billing aggregator, or the substantial equivalent of those terms, as defined in this section;

(2) A cease and desist order issued by any state or federal agency with general authority to enforce laws prohibiting unfair or deceptive acts or practices in a trade or business or with specific authority to regulate billing aggregators or service providers; or

(3) An order entered by a court of competent jurisdiction or entered after notice and an opportunity for hearing by any state or federal occupational licensing agency denying, suspending, revoking or restricting the person's occupational license as a result of allegations of misconduct. This subparagraph also applies when the denial, suspension, revocation or restriction of the license is pursuant to a consent agreement between the person and the licensing agency, whether or not the agency also issued an order; or

H. Has, within the last 5 years, entered into a consent agreement with a state or federal enforcement or regulatory agency in which the person agreed to discontinue engaging in one or more practices alleged by the agency to have been an unfair or deceptive act or practice.

4. Procedure upon complaint. If a customer of a billing agent notifies the billing agent that a charge for an unauthorized service has been included in the customer's telephone bill, the billing agent shall:

A. Immediately suspend collection efforts on that portion of the customer's bill; and

B. Either cease collection efforts entirely with regard to the disputed charge or request evidence from the service provider that the customer authorized the service for which payment is sought. If the billing agent ceases collection efforts or sufficient evidence of customer authorization is not presented to the billing agent within a reasonable time, as defined by the commission by rule, the billing agent shall:

(1) Immediately remove any charges associated with the unauthorized service from the customer's bill; and

(2) Refund to the customer any amounts paid for the unauthorized service that were billed by the billing agent during the 6 months prior to the customer's complaint or during any longer period in which the customer can prove the customer was billed by the billing agent for unauthorized services.

If sufficient evidence of customer authorization is provided to the billing agent, the billing agent may restore the charges on the customer's bill and reinstitute collection efforts. The customer or the service provider may appeal the billing agent's determination to the commission.

5. Enforcement authority. In addition to any authority the commission may have pursuant to other law, the commission may enforce this section in accordance with this subsection.

A. In an adjudicatory proceeding, the commission may impose an administrative penalty upon the following entities for the following violations:

(1) A service provider who provides or charges for an unauthorized service;

(2) A service provider or billing aggregator who is required to be registered under subsection 2

and who is not properly registered pursuant to that subsection;

(3) A billing agent who knowingly bills on behalf of a service provider who is required to be registered under subsection 2 and who is not properly registered pursuant to that subsection at the time the billing agent's bill is generated; and

(4) A billing agent that fails to comply with any of the requirements of subsection 4.

B. The amount of any administrative penalty imposed under paragraph A may not exceed \$1,000 per violator for violations arising out of the same incident or complaint and must be based on:

(1) The severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;

(2) The history of previous violations;

(3) The amount necessary to deter future violations;

(4) Good faith attempts to comply after notification of a violation; and

(5) Such other matters as justice requires.

6. Rulemaking. The commission shall adopt rules to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. ~~Rules adopted by the commission must at least:~~

~~A. Establish clear standards for interpreting and applying the state-of-mind standard applicable to billing agents who bill on behalf of service providers not properly registered with the commission;~~

~~B. Define types of evidence that constitute sufficient evidence of customer authorization in a manner that imposes the least economic and technical burdens on customers and service providers; and~~

~~C. With regard to direct dialed telecommunications services, provide that evidence that a call was dialed from the number that is the subject of the charge is sufficient evidence of authorization for the charge for that call.~~

Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, subsection 4, rules adopted by the commission pursuant to paragraph B may define "sufficient evidence of customer authorization" to include oral authorization obtained by an independent 3rd party.

35-A §7109. UNLAWFUL TELEPHONE CHARGES

1. Unauthorized and duplicative line-item charges prohibited. A Voice Service Provider ~~telephone utility~~ may not charge a customer for, or include as a separate line-item charge on the customer's bill, any charge unless that charge represents:

A. An actual service or fee authorized by the customer; or

B. An actual tax, fee or charge authorized or required by federal or state law or by a federal or state agency rule or order.

A Voice Service Provider ~~telephone utility~~ may not include in a line-item charge on a customer's bill any element of the telephone utility's costs that is charged for elsewhere on the customer's bill.

2. Description of line-item charges required. A Voice Service Provider ~~telephone utility~~ shall provide on the customer's bill a brief, clear, nonmisleading, plain language description of each line-item charge included on the bill and the authorized service, tax or fee represented by that line-item charge.

3. Enforcement. In addition to any authority the commission may have pursuant to other law, the commission may impose an administrative penalty upon a Voice Service Provider ~~telephone utility~~ for violation of this section. The amount of any administrative penalty imposed under this subsection may not

exceed \$1,000 per violator for violations arising out of the same incident or complaint and must be based on:

- A. The severity of the violation, including the intent of the violator and the nature, circumstances, extent and gravity of any prohibited acts;
- B. The history of previous violations by the violator;
- C. The amount necessary to deter future violations;
- D. Good faith attempts to comply after notification of a violation; and
- E. Such other matters as justice requires.

The commission shall provide a simple process for a customer of a Voice Service Provider telephone utility to report to the commission a line-item charge that the customer believes may violate this section.

This subsection is not intended to limit any enforcement action or penalty pursued by the Attorney General for violations of Title 5, chapter 10 where applicable.

Chapter 72: PROVIDER OF LAST RESORT SERVICE

35-A § 7201. PROVIDER OF LAST RESORT SERVICE

Provider of Last Resort (POLR) Service is a flat-rate service with voice grade access to the public switched telephone network; local usage within a certain calling area as determined by the commission; dual tone multifrequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services, including 911 and enhanced 911; access to operator services; access to directory assistance; toll limitation for qualifying low income customers; [and the ability to maintain uninterrupted voice service during a power failure, either through the incorporation into the network and network interface devices of suitable battery backup, or through electrical current].³³

35-A § 7202. DESIGNATION OF POLR SERVICE PROVIDERS

1. Initial Designation of POLR Service Providers. All entities that were Incumbent Local Exchange Carriers as of January 1, 2012 shall provide POLR service within their respective service areas.

2. Relief from POLR Service Provider Obligations. A POLR service provider may petition the commission for authorization to discontinue offering POLR service in a given geographical area. In considering such a petition, the commission may consider the following factors:

A. The number of customers in the given geographic area who purchase only POLR service (i.e., do not purchase POLR service as a component of a package of other services such as internet service or video programming);

B. The physical locations of all POLR service customers in the given geographic area;

C. The physical locations of all customers who take service other than POLR service from the POLR service provider and the particular service offerings the non-POLR service customers take from the provider;

D. The physical locations in the given geographic area where POLR service customers have the ability to take basic exchange service or its equivalent from two or more alternate service providers;

³³ The Commission is not in agreement on whether the bracketed provision should be included in this Section.

E. The price of basic exchange service or its equivalent offered by alternate service providers in the given geographic area; and

F. The public interest.

The commission may adopt rules to implement the provisions of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

3. Reassignment of POLR Service Provider Obligation. A POLR service provider may petition the commission for authorization to assign its POLR service obligation for a given geographic area to another voice service provider. The commission shall by rule develop a process for identifying and approving replacement POLR service providers, but in no event shall a voice service provider be designated as a replacement POLR service provider without the express consent of the voice service provider. Before authorizing the reassignment of POLR service obligations to another voice service provider, the commission shall ensure that the voice service provider possesses the financial and technical capability to meet all POLR service standards set by the commission. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

35-A § 7203. REVENUE REQUIREMENTS OF POLR SERVICE PROVIDERS

1. POLR Service Rates.

A. Initial Rates. The rates for POLR service shall be those rates in effect for basic local exchange service for each Incumbent Local Exchange Carrier in the service territory(ies) of that carrier as of January 1, 2012.

B. Subsequent Rates. After January 1, 2012, the commission may establish rates for POLR service within any given geographic area in accordance with the provisions of this Section.

2. POLR Rate Adjustment. A POLR Service Provider may petition the commission for an increase in its POLR service rate in a given geographic area. In evaluating whether such an increase is required, the commission shall establish the revenue requirement for the geographic area. In adjusting POLR service rates, the commission shall consider the forward-looking network costs of the POLR service provider in the geographic area, and the revenues, from all sources and services, generated by the POLR service provider through its operation of its network in that area. The commission may adopt rules to implement the provisions of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

3. POLR Revenue Support from the Maine Universal Service Fund. If the commission determines, after a proceeding pursuant to Subsection 2 of this Section, that the revenues generated by POLR service rates are insufficient to meet the revenue requirements of a POLR service provider in a given geographical area, the commission may, upon the petition of the POLR service provider, designate a support amount to be provided to the POLR service provider from the Maine Universal Service Fund. In any such proceeding, the Commission may not award Maine Universal Service Fund support unless the POLR service rate is first raised to a level equal to two standard deviations above the national average basic local exchange rate in urban areas as determined by the Federal Communications Commission. The commission may adopt rules to implement the provisions of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

35-A §7204. POLR CONSUMER PROTECTION

1. Policy. The Legislature declares and finds the following:

A. POLR service customers must receive adequate and timely information about POLR service;

B. POLR service providers must treat their POLR service customers in a nondiscriminatory

manner and must not unreasonably deny or disconnect the POLR service of their POLR customers; and

C. Minimum consumer protection standards for POLR service are essential to preserving quality, affordable POLR service throughout the State.

2. Rulemaking. The commission shall adopt rules to implement the policies described in this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Chapter 73: TELEPHONE RATES

~~35-A §7301. TELEPHONE CHARGES FOR LOCAL CALLS FROM PAY TELEPHONES~~

~~The rate charged by a telephone utility for a local telephone call made from a public or semipublic pay telephone shall be the same throughout its service territory for calls of equal duration.~~

~~35-A §7303. MANDATORY LOCAL MEASURED TELEPHONE SERVICE PROHIBITED~~

~~1. Mandatory measured service. Mandatory local measured telephone service is prohibited in the State.~~

~~2. Traditional flat rate local service. The commission shall establish rates for telephone companies which will preserve traditional flat rate local telephone service at as low a cost as possible, allowing for unlimited local exchange calling for a single monthly fee as the standard phone service in the State for both business and residential customers. Flat rate service with unlimited local calling shall be described by the telephone company as the "standard" service in all its communications with the public and the commission. Any other local calling service shall be described as an "optional" service.~~

~~3. Standard. In any proceeding before the Supreme Judicial Court or the commission to review the reasonableness and lawfulness of a local telephone rate approved by the commission, it shall be presumed that any rate which results in less than 3/4 of the residential customers maintaining standard flat rate service in those exchanges offering optional measured service is in violation of subsection 2, requiring the commission to establish a rate structure which will preserve traditional flat rate local telephone service at as low a cost as possible. The presumption established in this subsection may be overcome by clear and convincing evidence that no reasonable alternative rate could be implemented which will maintain 3/4 of the residential customers as standard flat rate customers.~~

~~35-A §7303-A. BASIC SERVICE CALLING AREAS~~

~~1. Petition. Upon written petition of 50 or more customers of a local exchange carrier who receive local, flat rate, basic service within no more than a single exchange area, the commission shall open a proceeding to investigate expanding that basic service calling area. The commission shall hold at least one public hearing. The commission, within 6 months of the filing of the written petition, shall issue an order that must either expand the basic service calling area or state the commission's reasons for refusing to expand the basic service calling area. If the commission expands the basic service calling area pursuant to this subsection, the commission may allow a carrier affected by the expansion to recover, to the extent reasonable, its costs, including lost revenues, attributable to the expansion.~~

~~2. Rules; limitation on petitions. No later than 30 days after the effective date of this subsection, the commission shall by rule establish standards for expanding single exchange basic service calling~~

~~areas pursuant to this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. A petition may not be filed with or accepted by the commission pursuant to subsection 1 prior to 30 days after the effective date of this subsection.~~

~~35-A §7304. PROHIBITION AGAINST ORDERING COMPETITIVE BIDDING~~

~~The commission may not issue any order or adopt any rule that requires a local exchange carrier to consider competitive bids on, or requires notice to potential bidders of, the construction of any interexchange facility. Nothing in this section limits the ability of the commission to establish reasonable rates for customers.~~

~~35-A §7305. NOTICE OF CHARGES FOR USE OF PUBLIC TELEPHONES~~

~~**1. Notice of charges.** Any person who owns, controls, operates or manages a public telephone shall provide a written notice within the immediate vicinity of the telephone and plainly visible to any person using the telephone. The notice must:~~

- ~~A. Identify the name, address and telephone number of the person who owns, controls, operates or manages the public telephone to whom complaints regarding that telephone may be directed;~~
- ~~B. Inform the person using the public telephone how to contact a local telephone company operator or "911" service operator in case of emergency;~~
- ~~C. Specify the rates or charges for use of the public telephone, including charges for local calls, intrastate calls, "800" or other toll free calls, uncompleted calls, incoming calls, collect calls, 3rd party calls and credit card calls; and~~
- ~~D. Contain the identity of the long distance company that serves the public telephone, explain how the user of the public telephone may, at no charge, obtain information on the rates or charges imposed by the long distance company, and any additional charges imposed on the user for long distance services.~~

~~**2. Charges limited when no notice.** Any person who owns, controls, operates or manages a public telephone and fails to provide the notice required by subsection 1 may not demand or receive compensation for use of the telephone in excess of charges imposed by the local exchange telephone utility serving that area with respect to that use.~~

~~35-A §7306. CUSTOMER PREMISE WIRE~~

~~**1. Definitions.** For purposes of this section, unless the context otherwise indicates, the following term has the following meaning.~~

- ~~A. "Customer premise wire" means the segment of telephone wiring from the customer's side of the protector, or such other point that may be determined by the commission, to the customer's telephone equipment.~~

~~**2. Deregulation of customer premise wire.** The commission may by rule deregulate all or a portion of a telephone utility's service providing installation, maintenance and repair of customer premise wire. Prior to deregulation, the commission must find that a reasonable degree of competition exists between providers of installation, maintenance or repair services on customer premise wire. The commission must include the results of any action taken pursuant to this subsection in the annual report filed with the Legislature pursuant to section 120.~~

~~**3. Ratemaking treatment of customer premise wire services.** Nothing in subsection 2 restricts~~

~~the commission's authority over the ratemaking treatment of expenses and revenues associated with customer premise wire services offered by a telephone utility.~~

35-A §7307. NOTICE OF INTRASTATE TOLL RATE CHANGES

~~1. **Notice required.** A telephone utility Voice Service Provider offering intrastate toll service may not increase the price for such voice service or change its terms or conditions for such service in a manner that results in an increase in costs for any customer without first:~~

~~A. Filing a tariff revision with the commission identifying the new price or the change in the terms or conditions of service unless the utility is exempt from filing tariffs pursuant to rules adopted by the commission under section 307-A; and~~

~~B. Providing prior adequate written notice to each retail subscriber receiving intrastate toll service from the utility customer identifying the change in terms or conditions or price increase and the effective date of the change or increase. The notice, which may take the form of a bill insert or notice by electronic means, must be provided no less than 25 days prior to the effective date of the increase in price or change in terms or conditions. The commission by rule shall may define what constitutes adequate written notice and shall specify whether notice by electronic means is adequate written notice.~~

~~2. **Failure to notify.** An increase in price or a change in the terms or conditions of service that results in an increase in costs for a customer receiving intrastate toll service from a telephone utility voice service may not take effect until the customer has been supplied with adequate written notice in conformity with subsection 1. A customer that has not been supplied with adequate written notice under subsection 1 is not obligated to make payment for any increase in the customer's bill attributable to an increase in price or change in the terms or conditions. A telephone utility Voice Service Provider shall refund to a customer any increase in the customer's payments attributable to an increase in price or change in terms or conditions if the Voice Service Provider telephone utility fails to provide adequate written notice in accordance with subsection 1.~~

~~3. **Notice of rights.** A telephone utility offering intrastate toll service shall provide notice to customers of the requirements of subsection 1, paragraph B and of customer rights pursuant to subsection 2. The commission by rule shall specify the form and frequency of the notice.~~

~~43. **Rules.** The commission shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

35-A §7308. PREPAID CALLING SERVICE

~~1. **Definition.** For purposes of this section, "prepaid calling service" has the same meaning as in Title 36, section 2551, subsection 9.~~

~~2. **Prohibition on retroactive rate increase for prepaid calling services.** A provider of prepaid calling services may not increase the rate charged for the quantity of service that the consumer purchased until the balance of the purchased service is consumed or expires in accordance with an expiration date of which the consumer had notice at the time of purchase. The quantity of service must be determined by the rates, terms and conditions in effect at the time of the purchase.~~

~~3. **Notice of rate increase for prepaid calling service purchased by telephone or on the Internet.** A provider of a prepaid calling service shall notify a consumer of the prepaid calling service of an increase in the rate charged for that service before that consumer purchases additional service from that provider by telephone or on the Internet. This notice may be in the form of a telephone recording.~~

~~4. Notice of variance between in-state and interstate rates.~~ A provider of a prepaid calling service shall notify a consumer of the prepaid calling service if that provider charges different rates for in-state and interstate service. If that service is purchased in a store, this notice must be on the packaging of the prepaid calling service product. If that service is purchased by telephone, this notice must be in the form of a telephone recording. If that service is purchased on the Internet, this notice must be on the website on which that service is purchased.

Chapter 75: SERVICE

~~35-A §7504. SPECIAL TELEPHONE EQUIPMENT~~

~~The commission shall retain jurisdiction over the sale or lease of volume control and low speech power telephone equipment and of bone conductor receivers, pursuant to section 103, until it makes an affirmative finding, based on full consideration of an evidentiary record, that there are adequate retail outlets in the State to ensure affordable and competitive pricing of this equipment and its availability in sufficient quantities to satisfy the current and projected demand for that equipment by customers with hearing or speech impairments. The commission shall have discretion not to regulate any person whose share of the total market in the State of volume control or low speech power telephone equipment or of bone conductor receivers is considered not to be substantial.~~

~~35-A §7507. EMERGENCY INTERRUPTION OF SERVICE FOR LAW ENFORCEMENT PURPOSES~~

~~1. Definitions.~~ As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- ~~A. "Critical incident" means a situation in which there is probable cause to believe that a person is holding a hostage while committing a crime or who is barricaded and resisting apprehension through the use or threatened use of force.~~
- ~~B. "Commanding law enforcement officer" means a law enforcement officer who has jurisdiction and is in charge at a critical incident.~~
- ~~C. "Law enforcement officer" means a person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders and to make arrests for crimes.~~

~~2. Order.~~ The commanding law enforcement officer at a critical incident may order a previously designated Voice Service Provider ~~telephone utility~~ security employee to arrange to cut, reroute or divert telephone lines for the purpose of preventing telephone communication by a suspected person with a person other than a law enforcement officer or a person authorized by a law enforcement officer.

~~3. Security employee designation.~~ A Voice Service Provider ~~telephone utility~~ shall designate a security employee and an alternate security employee to provide required assistance to law enforcement officers involved in a critical incident.

~~Chapter 77: EMERGENCY USE OF TELEPHONE PARTY LINES~~

~~35-A §7701. EMERGENCY USE OF PARTY LINES; REFUSAL TO SURRENDER; PENALTY~~

~~1. Surrender of party line required.~~ Any person using a party line shall surrender it on request to another person who needs the line to report a fire or summon police, medical or other aid in case of emergency.

~~2. Offense.~~ A person is guilty of unlawful interference with a party line if that person:

~~A. Intentionally or knowingly refuses to surrender the use of a party line to another person in accordance with subsection 1; or~~

~~B. Requests the use of a party line on pretext that an emergency exists, knowing that an emergency does not exist.~~

~~3. Penalty.~~ Unlawful interference with a party line is a Class E crime.

Chapter 79: TELEPHONE LINES

35-A §7901. TELEPHONE LINES

1. Connection between the lines of 2 or more utilities. When the commission, after a hearing, finds that a physical connection can reasonably be made between the lines of 2 or more ~~telephone utilities~~ Voice Service Providers whose lines can be made to form a continuous line of communication by the construction and maintenance of suitable connections for the transfer of messages or conversations and that public convenience and necessity will be served by the connection, or finds that 2 or more Voice Service Provider~~telephone utilities~~ have failed to establish joint rates, tolls or charges for service by or over their lines, and that joint rates, tolls or charges ought to be established, the commission may, by its order:

A. Require that the connection be made, except where the purpose of the connection is primarily to secure the transmission of local messages or conversations between points within the same city or town;

B. Require that conversations be transmitted and messages transferred over the connection under such rules as the commission may establish; and

C. Prescribe through lines and joint rates, tolls and charges to be made and to be used, observed and enforced in the future.

2. Division of costs between ~~utilities~~ carriers. If Voice Service Providers~~the telephone utilities~~ do not agree upon the division between them of the cost of the physical connection or connections or the division of the joint rates, tolls or charges established by the commission over the through lines, the commission may, after further hearing, establish the division by supplemental order.

35-A §7902. LINES ALONG HIGHWAYS AND ACROSS WATERS

Every Voice Service Provider~~telephone utility~~ or person transmitting television signals by wire may, except as limited, construct, maintain and operate its lines upon and along the routes and between the points stated in its certificate of incorporation; and may, subject to the conditions and under the restrictions provided in this Title, construct its lines along, over, under and across any of the roads and streets and across or under any of the waters upon and along the routes, with all necessary erections and fixtures. The authority provided under this section applies to a dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber.

35-A §7903. CONNECTION WITH OTHER TELEPHONE LINES

Every Voice Service Providers ~~telephone utility~~ in the State may, upon such terms as may be agreed upon by the contracting parties, ~~subject to the control of the commission:~~

1. Connect lines. Connect its lines with those of any other like ~~utility~~ Voice Service Providers;

2. Sell or lease lines. Sell or lease its lines and property, in whole or in part, to any other like utility Voice Service Providers; and

3. Purchase or lease lines. Purchase or lease the lines and property, in whole or in part, of any like utility Voice Service Providers.

Chapter 83: CABLE TELEVISION COMPANIES

~~35-A §8301. PUBLIC UTILITIES COMMISSION REGULATION~~

~~Cable television companies, to the extent they offer services like those of telephone utilities subject to regulation by the commission, shall be subject to the commission's jurisdiction over rates, charges and practices, as provided in this Title.~~

35-A §8302. POLE ATTACHMENTS

Where a cable television system, dark fiber provider, and/or Voice Service Provider public utility have failed to agree on the joint use of poles or other equipment or on the terms and conditions or compensation for the use, the matter shall be subject to section 711.

~~Chapter 85: RADIO PAGING SERVICE~~

~~35-A §8501. SEPARATE ACCOUNTING REQUIRED~~

~~Any public utility which operates a radio paging service shall either maintain a separate set of accounting records with respect to that service or establish a separate subsidiary, the creation of which shall be subject to commission approval and conditions under section 708, subsection 2. The commission may exempt a public utility from this requirement for good cause shown.~~

~~35-A §8502. CENTRAL OFFICE CODE CONSERVATION~~

~~To the extent permitted under federal law, the commission may exercise jurisdiction, control and regulation over radio paging service for the purpose of implementing central office code conservation measures.~~

Chapter 89: MOBILE TELECOMMUNICATIONS SERVICES

~~35-A §8901. SEPARATE ACCOUNTING REQUIRED~~

~~Any public utility that provides mobile telecommunications services in addition to public utility services shall maintain a separate set of accounting records with respect to those services or establish a separate subsidiary for that purpose. The creation of a subsidiary is subject to commission approval under section 708, subsection 2. The commission may exempt a public utility from this requirement for good cause. The commission has jurisdiction over the manner in which joint and common costs, investments, overhead and expenses are allocated between mobile telecommunications services and public utility services.~~

Chapter 91: ALTERNATIVE FORM OF REGULATION OF TELECOMMUNICATIONS SERVICES

35-A §9106. EXPIRATION OF CHAPTER

Notwithstanding anything to the contrary in this Chapter, the provisions of this Chapter shall apply only to an alternative form of regulation approved by the commission prior to January 1, 2012, and will cease to have effect after July 31, 2013.

Chapter 93: ADVANCED TECHNOLOGY INFRASTRUCTURE

35-A §9207. COLLECTION OF DATA

Subject to the provisions in this section, the authority may collect data from communications service providers and any wireless provider that own or operate advanced communications technology infrastructure in the State concerning infrastructure deployment and costs, revenues and subscribership.

1. Confidential information. If the authority, on its own or upon request of any person or entity, determines that public access to specific information about communications service providers in the State could compromise the security of public utility systems or communications infrastructure to the detriment of the public interest or that specific information is of a competitive or proprietary nature, the authority shall issue an order designating that information as confidential. Information that may be designated as confidential pursuant to this subsection includes, but is not limited to, network diagrams. The authority may designate information as confidential under this subsection only to the minimum extent necessary to protect the public interest or the legitimate competitive or proprietary interests of a communications service provider. The authority shall adopt rules pursuant to section 9205, subsection 3 defining the criteria it will use to satisfy the requirements of this paragraph and the types of information that would satisfy the criteria. The authority may not designate any information as confidential under this subsection until those rules are finally adopted.

Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.

2. Protection of information. A communications service provider may request that confidential or proprietary information provided to the authority under subsection 1 not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information.

APPENDIX B

DRAFT OF PROPOSED POLR SERVICE RULE

§ 1 PURPOSES

The purposes of this Chapter are to:

- A. **Inform consumers.** Ensure that customers and applicants for service from POLR service providers are provided adequate and timely information about POLR service and optional service.
- B. **Prevent discrimination; ensure reasonable access to service.** Ensure that all customers and applicants are treated in a nondiscriminatory manner and are not unreasonably denied or disconnected from POLR service.
- C. **Establish minimum consumer protection standards.** Establish minimum consumer protection standards that apply to POLR service. A POLR service provider may provide greater levels of consumer protection than those established in this Chapter.

§ 2 DEFINITIONS

- A. **Account balance.** "Account balance" is the total amount owed by a customer that has been billed in accordance with this Chapter.
- B. **Advance billing.** "Advance billing" is a requirement that a customer prepay charges for services that will be provided during a specific, identifiable period in the future. Advance billing does not include any funds retained as a security deposit.
- C. **Amount overdue.** "Amount overdue" is the amount that a POLR service provider has billed to a customer and that has not been paid by the due date of the bill or by a date otherwise agreed upon.
- D. **Applicant.** "Applicant" is any person who applies for POLR service , toll, or optional services and who is not a customer of the POLR service provider.
- E. **Bill.** "Bill" is a written statement (printed or electronic) from a POLR service provider to a customer that states the amount owed by the customer for the current billing period, the amount overdue, the account balance, late fees and any other charges owed by the customer.

- F. **Billed Account.** "Billed account" is an account that is assigned a unique identification number by the POLR service provider for tracking purposes
- G. **Commission.** "Commission" is the Maine Public Utilities Commission.
- H. **CAD.** "CAD" is the Consumer Assistance Division of the Maine Public Utilities Commission.
- I. **Customer.** "Customer" is any person who has applied for, been accepted and is receiving POLR service in this State or has agreed to be billed for the same.
- J. **Deposit.** "Deposit" is any funds, however designated, that are held as security for future payment or performance.
- K. **Dispute.** "Dispute" is a grievance of an applicant or customer regarding a POLR service provider's provision of service, application of Title 35-A, or any Commission rule.
- L. **Due date.** "Due date" is the date by which payment must be received and after which the account is considered overdue.
- M. **Lifeline/Link-up.** "Lifeline/Link-Up" is a program that provides financial assistance to qualifying low-income customers to obtain and receive POLR service pursuant to Chapter 294 of the Commission's rules.
- N. **Optional service.** "Optional service" is any telecommunications or information service other than POLR service.
- O. **Payment arrangement.** "Payment arrangement" is an agreement between an applicant or customer and a POLR service provider that allows the applicant or customer to pay an account balance or deposit in installments.
- P. **Provider of last resort service provider .** "Provider of Last Resort (POLR) service provider includes every telephone utility that has been authorized by the Commission to provide provider of last resort service to all residents of one or more exchanges in the State.
- Q. **Provider of last resort service.** "Provider of last resort service" is as flat-rated stand alone service as described in 35-A M.R.S.A. § 7201.
- R. **Service provider.** "Service provider" is any entity that offers a product or service to a customer, the charge for which appears on the bill of a POLR service provider.

§ 3 JURISDICTION

This Chapter applies only to POLR service offered by POLR service providers. *[The provisions of this Chapter do not apply to POLR service customers who also receive one or more optional services from their POLR service provider.]*³⁴

§ 4 EMERGENCY MORATORIUM

When the Commission or the Director of the CAD determines that, due to an emergency, termination of POLR service by one or more POLR service providers would present a clear danger to the health or safety of one or more customers, the Commission or the CAD Director may declare a partial or complete moratorium on the termination or disconnection of POLR service by any or all POLR service providers.

§ 5 NON-DISCRIMINATION

A POLR service provider shall provide POLR service and apply credit and collections policies to applicants and customers without discrimination on the basis of race, color, ancestry, sex, age, national origin, religion, marital status, receipt of public assistance or the exercise of rights under state or federal consumer protection laws.

§ 6 UNFAIR OR DECEPTIVE PRACTICES

- A. **Deceptive names prohibited.** A POLR service provider may not use a company name that is deceptive or unreasonably confusing to consumers.
- B. **Application of Maine Unfair Trade Practices Act.** A POLR service provider shall not engage in conduct prohibited by the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A-214 and related consumer protection statutes.

§ 7 CUSTOMER PRIVACY

A POLR service provider shall comply with the Federal Communication Commission's Customer Proprietary Network Information Rules, 47 CFR §§ 64.2001-2009.

§ 8 CUSTOMER RIGHTS

- A. **Notice.** A POLR service provider shall provide a summary of a customer's rights and responsibilities under this Chapter to all new

³⁴ The Commission is not in agreement on whether the bracketed provision should be included in any final POLR Service rule.

customers. The notice may be provided either through a direct mailing, bill inserts, email, or by including the notice in the POLR service provider's directory. A POLR service provider shall also post such a summary on its website,

B. Content of notice. The Notice shall:

1. **Billing procedures.** Describe the POLR service provider's billing procedures, e.g. billing frequency and assessment of late fees (if any);
2. **Accuracy verification.** Explain how a customer can verify the accuracy of her or his bill;
3. **Payment options.** Identify a customer's options for making payment, e.g. location of payment agencies, and optional payment programs offered by the POLR service provider;
4. **Deposit requirements.** Describe the POLR service provider's security deposit requirements;
5. **Disconnection procedures.** Describe the POLR service provider's procedures for disconnection and reconnection of POLR service;
6. **Dispute resolution procedures.** Describe the POLR service provider's dispute resolution and appeal procedures;
7. **Emergency service.** Describe the procedures that a customer or occupant may follow during emergency service interruptions, including how to notify the POLR service provider of the need for priority restoration due to the presence of life support systems;
8. **Third-party notice.** Describe procedures for having a third party receive copies of notices;
9. **Limitations of liability; abatement and damages.** Describe the POLR service provider's limitations on liability for service interruptions contained in its tariff, when a customer may request a claim for abatement, and how a customer can submit a claim for damages or abatement due to service interruptions; and
10. **Contact information.** Identify telephone numbers and addresses of the POLR service provider and of the Commission where further inquiries may be made.

- C. **Notice of significant changes to terms and conditions.** A POLR service provider shall provide notice to all customers affected by a significant change in the POLR service provider's terms and conditions. The notice shall thoroughly describe the change and may be provided either through a direct mailing, email, or bill insert, or by including the notice in the POLR service provider's directory.

§ 9 APPLICATION FOR SERVICE

- A. **Obligation to provide service.** A POLR service provider may not refuse to provide POLR service to an applicant. A POLR service provider may condition the granting of service in specific circumstances as described below:
 - 1. **Past overdue amount.** A POLR service provider may condition the granting of service on the applicant paying an undisputed amount overdue for previous POLR service provided by that POLR service provider if the applicant accrued the debt within the prior 6 years and if the applicant is legally responsible for the debt, and subject to a, b and c below.
 - a. The POLR service provider must offer a payment arrangement to the applicant on the undisputed balance before service is initiated.
 - b. Within 60 days of the customer's request for service, the POLR service provider must provide written notice to the customer of the outstanding debt and its intention to collect the outstanding debt.
 - c. The POLR service provider must allow the customer at least 30 days after receipt of the written notice to pay the debt or enter into a payment arrangement. If the customer fails to respond during this time period, the unpaid amount may be transferred to the customer's current account and disconnection procedures may be initiated for failure to pay or make a payment arrangement.
 - 2. **Deposits for applicants for residential service.** A POLR service provider may condition the granting of service on the payment of a deposit if there exists an undisputed amount overdue for POLR service billed to the applicant within the prior 6 years.
 - a. **Amount of deposit.** The amount of the deposit may not exceed the applicant's POLR service charges for 2 months.

- D. **Due date of bills.** The due date of a bill for POLR service must be at least 25 days after the bill is mailed or otherwise delivered to the customer.
- E. **Bill content.** Each bill issued by a POLR service provider shall:
1. **Identification of POLR Service Provider.** Include a clear and conspicuous identification of the POLR service provider providing the customer's POLR service. If the POLR service provider has more than one name, the name appearing on the bill must be the name used to market the service;
 2. **Date.** Identify the date on which the bill was issued;
 3. **Balance.** Identify the balance in each billed account at the beginning of the current billing cycle, using a term such as "previous balance";
 4. **Charges debited for current billing cycle.** Identify the amount of the charges debited to each billed account during the current billing cycle, using a term such as "current service;"
 5. **Payments made.** Identify the amount of payments made to each billed account from the previous billing cycle, using a term such as "payments;"
 6. **Charges debited for past charges.** Identify the amount of the charges debited to each billed account during the current billing cycle for untimely payment of past charges, using a term such as "late charge;"
 7. **Closing dates and balance.** Include a listing of the closing dates of the current billing cycle and the outstanding balance in each billed account on that date, specifying the "current amount due" and the "past due;"
 8. **Class of service.** Identify the applicable class of service as POLR service;
 9. **Due date.** Include a statement, or payment, due date;
 10. **Receipt deadline.** Include the date by which payment of the new balance must be received to avoid assessment of a late charge;
 11. **Interest rate.** Identify the effective monthly interest rate that will be imposed if the bill is not paid by the due date;

12. **POLR service charges.** Include an itemization of current POLR service charges and other fees related to POLR service, including installation or reconnection fees, deposit amounts, late payment interest charges, taxes, and separate surcharges provided by the POLR service provider;
 13. **Contact information.** Clearly and conspicuously disclose any information that the subscriber may need to make inquiries about, or contest, charges on the bill; and
 14. **Toll-free number.** Include the toll-free phone number(s) for customer service representatives of the POLR service provider and any other service provider to which charges are due, and to which customer questions or disputes concerning bills or services should be directed.
- F. **Compliance with federal “Truth-in-Billing” rules.** A POLR service provider shall comply with the Federal Communication Commission's "Truth-in-Billing" Rules, 47 CFR §§ 64.2400-2401.
- G. **Billing errors.** A POLR service provider shall promptly notify a customer of a billing error after it discovers or is notified of the error. The POLR service provider shall correct the error within 45 days of discovery or notice. A POLR service provider shall investigate the possibility that a billing error may affect multiple customers and shall immediately notify the CAD if more than 10 customers in the State are affected by a billing error.
1. **Make-up bills.** The POLR service provider may issue a corrected bill for previously unbilled service, or for service billed below the tariffed rate, that was provided in the previous 12 months. A POLR service provider may agree to a settlement that abates all or a portion of the previously unbilled service.
 2. **Refunds.** The POLR service provider shall refund any charge billed in excess of correct rates within the previous 6 years from the date of discovery or notice.
- H. **Payment.**
1. **Extension of due date required.** If the due date for payment falls on a Saturday, Sunday, legal holiday, or any other day when the POLR service provider's offices are not open for business, the POLR service provider shall extend the due date to the next business day.

2. **Payment by mail.** If the customer sends payment by mail, payment is made on the date the POLR service provider receives the payment.
 3. **Payment at a remote office.** If the customer pays at a branch office or authorized agency of the POLR service provider, payment is made on the date of receipt at that location.
 4. **Conflicting due dates.** When a POLR service provider provides a customer with multiple notices or contacts containing different due dates, payment is due on or before the latest due date.
- I. **Application of partial payments.** A POLR service provider shall apply payments that are insufficient to pay the full account balance beginning with the oldest balances. *[Any remaining amounts shall be applied to non-POLR services.]*³⁵

§ 12 PAYMENT ARRANGEMENTS

- A. **Payment arrangement required.** A POLR service provider shall continue to serve a customer who does not pay a POLR service account balance in full if the customer agrees to enter a payment arrangement for the account balance and agrees to pay each future bill for POLR service on or before the due date of the bill until the payment arrangement is completed.
- B. **Written confirmation of payment arrangement.** A POLR service provider shall mail or deliver a written confirmation of a payment arrangement to the customer within 3 business days after a payment arrangement is agreed to. The written confirmation shall:
1. **Terms of Payment Arrangement.** Inform the customer of the terms of the payment arrangement;
 2. **Contact Information.** Include the CAD's address and toll free telephone number; and
 3. **Disconnection Notice.** Inform the customer of the POLR service provider's right to issue a 3-day disconnection notice for failure to comply with a payment arrangement.

³⁵ The Commission is not in agreement on whether the bracketed provision should be included in any final POLR Service rule.

- C. **Right to payment arrangement limited.** A POLR service provider is not required to enter a payment arrangement for an amount overdue as a result of a broken payment arrangement.
- D. **POLR service payment arrangement to be separate.** Any agreement permitting installment payments on an account balance for non-POLR service must be separate from a payment arrangement for POLR service.

§ 13 DISCONNECTIONS

- A. **Disconnection at a customer's request.** A POLR service provider shall disconnect a customer's POLR service on the date requested by the customer, except that the POLR service provider may require a customer to provide up to 3-business days notice before the requested disconnection date. A POLR service provider may require the customer to pay for service until the customer's POLR service is disconnected or the 3 business day notice period expires, whichever occurs first.
- B. **Disconnection without consent.** A POLR service provider may begin disconnection procedures for POLR service without the customer's consent only if:
 - 1. **Non-payment of undisputed overdue amount.** The customer does not pay or make a payment arrangement on an undisputed amount overdue for the provision of POLR service. Late fees may be included only to the extent the late fee is based upon an amount overdue for POLR service;
 - 2. **Unauthorized use.** There is unauthorized use of POLR service, such as service being used without applying for customer status or for criminal activities;
 - 3. **Safety risk.** The customer's use poses a safety risk to others or the network;
 - 4. **Deposit.** The customer does not pay or make a payment arrangement for a properly required deposit;
 - 5. **Commission decision.** The customer does not comply with a decision of the Commission or the CAD; or
 - 6. **Abandoned premises.** The customer's premises are clearly abandoned.

C. **Limitations.** A POLR service provider may not disconnect POLR service without the customer's consent or threaten the disconnection of POLR service under the following circumstances:

- [1. **Non-payment of non-POLR services.** A POLR service provider may not disconnect a customer's POLR service for the non-payment of toll or other non-POLR services.]³⁶
2. **Prepaid POLR service.** A POLR service provider may not disconnect a customer's POLR service until after any prepaid POLR service has been provided.
3. **Medical emergency.** A POLR service provider may not disconnect a customer's POLR service if the POLR service provider has been notified of a medical emergency in accordance with section 14.

D. **Notice requirements.**

1. **POLR Service customers.** A POLR service provider shall provide a disconnection notice at least 14 calendar days before the stated disconnection date if the reason for disconnection is failure to pay or make a payment arrangement on undisputed charges for the provision of POLR service.
2. **Three business-day disconnection notice.** A POLR service provider shall provide a disconnection notice to customers at least 3 business days before the stated disconnection date if the disconnection is for:
 - a. failure to meet the terms of a payment arrangement;
 - b. failure to provide a properly required deposit; or
 - c. failure to comply with a decision of the Commission or the CAD.
3. **No notice.** A POLR service provider may disconnect POLR service without any prior notice if the disconnection is:
 - a. at the customer's request;

³⁶ The Commission is not in agreement on whether the bracketed provision should be included in any final POLR Service rule.

- b. for unauthorized use;
- c. for use posing a risk to others or to the network; or
- d. for abandonment.

4. **Time of issuance**

- a. A POLR service provider may not issue a 14-day or 7-day disconnection notice until after the due date of the bill for which charges have not been paid and until prepaid services are used.
- b. A POLR service provider may not issue a 3-day disconnection notice until at least 1 business day after the date a payment was due pursuant to a payment arrangement.

5. **Period of effectiveness.** A disconnection notice is effective for the disconnection date stated in the notice and for 10 business days after that date. If a POLR service provider fails to disconnect POLR service within 10 business days after the disconnection date, the disconnection notice procedures must be repeated.

6. **Dishonored check**

- a. If the customer has paid by a check that is not honored by the bank before the disconnection notice expires, the POLR service provider shall attempt to contact the customer to obtain payment before disconnecting service.
- b. If a check is not honored by the bank after the disconnection notice expires, the POLR service provider may issue a 3-business-day disconnection notice and require payment by cash or certified check. A disconnection notice issued as a result of a dishonored check supersedes any other pending disconnection notice.

7. **Content of disconnection notice.** A POLR service provider's disconnection notice must be in writing and conspicuously contain the following information:

- a. **Amount overdue.** The amount overdue or the reason for disconnection if not for an amount overdue.

- b. **Steps to avoid disconnection.** The steps the customer may take to avoid disconnection of POLR service.
- c. **Disconnection date.** The disconnection date and the effective period of the disconnection notice.
- d. **Customer's right to postpone disconnection due to a medical emergency.** A statement of a residential customer's right to postpone disconnection of POLR service for a medical emergency and a description of how to declare a medical emergency under section 14 of this Chapter.
- e. **Customer's right to a payment arrangement.** A statement that the customer can avoid disconnection of POLR service by agreeing to a payment arrangement. This disclosure is not required if the notice is for a broken payment arrangement.
- f. **Customer's right to file a complaint with the CAD.** A statement of the customer's right to submit a disputed matter prior to the disconnection date to the CAD. The statement must include the Division's current address and telephone numbers. The statement must also state that the customer may not submit a dispute to the CAD until the customer has first tried to resolve the dispute with the POLR service provider.
- g. **Contact person and toll free number for POLR Service Provider.** The title and toll-free phone number of an appropriate customer representative of the POLR service provider.
- h. **Requirements for reconnection.** A statement of the requirements for reconnection of POLR service, reconnection charges, if any, and the POLR service provider's security deposit requirements.

E. Timing of Disconnection

- 1. **Attempt to contact.** A POLR service provider shall make a reasonable effort to contact the customer by phone before the customer's POLR service is disconnected. If the POLR service provider contacts the customer before disconnection, the POLR service provider shall orally provide the customer with the information previously included in the written disconnection notice under section 13(D)(8).

2. **Timing.** Disconnection of a residential customer's POLR service must occur between 8:00 a.m. and 3:00 p.m. on the disconnection date specified in the notice or during the effective period of the notice. Disconnection may not occur on a Friday, weekend, legal holiday, any other day when the POLR service provider or the Commission is not open for business, or on the day before any day when the POLR service provider or the Commission is not open for business. These restrictions do not apply if:
 - a. the POLR service provider has made special arrangements with the customer to disconnect at an alternative time;
 - b. the disconnection is for unauthorized use or the existence of a safety risk; or
 - c. the POLR service provider has personnel available to resolve disputes and reconnect POLR service for at least two hours after the disconnection occurs. In that case, the POLR service provider may disconnect service no later than 5:00 p.m.

§ 14 MEDICAL EMERGENCY

- A. **Service required during a medical emergency.** A POLR service provider may not disconnect POLR service and may not refuse to connect or reconnect POLR service to any residential customer when the customer or an occupant of the customer's residence is certified by a physician to have a medical condition such that a lack of POLR service would pose a serious risk of harm to that individual. In situations where the household has multiple telephone lines, POLR service may be disconnected pursuant to section 13 of this rule, provided that POLR service continues in at least one telephone line. A POLR service provider must also accept and provide POLR service to a customer who is transferred to the POLR service provider by a non-POLR service provider when the customer or a member of the customer's household is certified by a physician to have a medical condition such that a lack of POLR service would pose a serious risk of harm to that individual. The POLR service provider shall charge the non-POLR service provider any non-recurring service installation costs associated with the transferred customer.
- B. **Disconnection postponed pending certification.** If the customer or member of the customer's household notifies the POLR service provider that a medical emergency exists and that certification will be obtained, the POLR service provider may not disconnect POLR service for at least 3 business days or until the final date of a disconnection notice, whichever

date is later. If the certification is not provided within the 3-day period, the effective period of a pending disconnection notice can be extended to accommodate this 3-day period if the POLR service provider notified the customer of the extension at the time the POLR service provider was notified of the medical emergency.

C. **Certification procedure.** A physician's certification of a medical condition may be oral or written. A POLR service provider may not challenge the validity of an oral or written certification with a physician or a physician's agent, unless the POLR service provider has reason to believe that fraudulent information has been provided by the customer. If the POLR service provider has reason to believe that certification is not valid, it should file a request for an exemption of this Section with the CAD. The POLR service provider may require written confirmation within seven days of an oral certification. The POLR service provider may require that a written certification include the following if the utility provides a form for the physician to complete:

1. The name and service location of the customer (to be provided by the POLR service provider).
2. The name and address of the person with the medical emergency.
3. A statement that a serious illness or medical condition exists which would be seriously aggravated by lack of utility service.
4. The anticipated length of the medical emergency.
5. The specific reason why continued service is required.
6. The name, office address, telephone number and signature of the certifying physician.

If the written certification is not provided within the seven day period, the POLR service provider may proceed with disconnection pursuant to Section 13.

D. **Connection or reconnection of service.** When a POLR service provider is required to connect or reconnect POLR service under this section, the POLR service provider shall attempt to provide service on the day it receives the certification. In any case, service must be provided before the end of the next day.

E. **Length of service; renewals.** The POLR service provider may not disconnect the customer for the time period specified in the certification or 30 days, whichever is less. A certification may be renewed a total of two times during any 12-month period. This limitation applies to the premises as a whole, i.e., regardless of how many different people with serious medical conditions reside at the same premises, the POLR service provider is not required to accept more than a total of three serious medical condition certifications for the premises within a 12-month period.

- F. **Customer's duty to pay or make a payment arrangement.** Whenever service is provided due to the existence of a medical emergency, the POLR service provider shall inform the customer of the continuing duty to pay or make a payment arrangement for the amount overdue.
- G. **Disconnection upon expiration of certification.** A POLR service provider may begin disconnection procedures when a certification of a serious medical condition expires if the customer has failed to pay or enter into a payment arrangement for the amount overdue.

§ 15 RECONNECTION OF SERVICE

- A. **Duty to reconnect.** If POLR service has been disconnected, a POLR service provider shall, upon the customer's request, reconnect POLR service after the cause of disconnection has been removed. If the request to reconnect service is made within 10 days following the disconnection of service, the reconnection shall take place within one business day of the request. If the request to reconnect service is not made within 10 days following the disconnection, the reconnection should take place as soon as possible.
- B. **Payment arrangement.** A POLR service provider shall offer the customer a payment arrangement on the account balance if the disconnection was for nonpayment, unless the cause of the disconnection was the customer's failure to honor a previously established payment arrangement.
- C. **Reconnection fee.** A POLR service provider may file a rate schedule to charge a reasonable fee for reconnection. The fee may be higher for reconnection after normal business hours.

§ 16 DISPUTE RESOLUTION PROCEDURES

- A. **Toll-free line.** A POLR service provider shall have a toll-free number for customers to call to resolve billing and service disputes.
- B. **Employees available.** A POLR service provider shall have an adequate number of properly trained employees available during business hours to respond to questions from applicants and customers, resolve disputes, and address requests for service. Customers calling the toll-free number discussed in subsection A above must be provided the opportunity to talk to a live customer representative without spending an unreasonable amount of time on hold and without being forced to navigate through an unreasonable number of menu levels in an automated phone answer system.

- C. **POLR service disconnection limited.** A POLR service provider may not threaten disconnection or disconnect the POLR service of a customer if the customer has informed the POLR service provider that the customer disputes liability for the POLR services portion of the bill, an POLR service provider's deposit request, or the terms of a payment arrangement required by a POLR service provider to avoid disconnection, until the dispute is resolved pursuant to subsection D below. When a customer disputes only a portion of the POLR service bill, the POLR service provider may require payment of that portion not in dispute to prevent disconnection.
- D. **Dispute resolution process.** When a POLR service provider becomes aware of a dispute by an applicant or customer, whether or not disconnection is pending, the POLR service provider shall:
1. **Investigate dispute.** Investigate the dispute, preserving a record of the substance and results of the investigation;
 2. **Report results.** Report the results of its investigation to the applicant or customer based on the record; and
 3. **Attempt to resolve dispute.** Attempt in good faith to resolve the dispute.
- E. **Notification of right to file a complaint with the CAD.** If a POLR service provider cannot resolve the dispute with the applicant or customer after the procedures set forth above have been completed, the POLR service provider shall orally inform the applicant or customer of the right to file a complaint with the CAD and of the toll-free telephone number of the CAD. If the complaint concerns a pending disconnection of POLR service, the POLR service provider shall orally inform the customer that the complaint must be filed before the disconnection date or within 2 business days of the oral notice, whichever is later. During that time, the POLR service provider may not disconnect or cancel the customer's POLR service.
- F. **Limitation of disconnection during the CAD investigation.**
1. **Limitation on disconnection pending resolution.** A POLR service provider may not threaten disconnection or disconnect service to a customer who has filed a complaint with the CAD until the complaint is resolved pursuant to subsection G below.
 2. **Reconnection pending resolution.** If a customer files a complaint after service has been disconnected or terminated, the customer is

entitled to reconnection pending resolution of the complaint only if the Director of the CAD finds reasonable grounds to believe that the POLR service provider has failed to issue a disconnection or termination notice, has issued a disconnection or termination notice that fails to substantially conform to this Chapter or has failed to notify the customer of the right to file a complaint with the CAD as required by subsection E above. If the CAD orders the POLR service provider to reconnect service on this basis, the POLR shall reconnect the customer's service without reconnection charges or deposit.

G. CAD complaint process

1. **CAD acceptance of complaint.** The CAD may reject, without investigation, a complaint that is outside its jurisdiction or is without merit or related to any retail service other than provider of last resort service. A complaint may be considered to be "without merit" if, among other things, the CAD has previously issued a decision regarding the same issue that is the basis for the complaint. The customer may appeal the rejection of a complaint to the Commission, except that a pending disconnection, termination or cancellation will not be delayed as provided in subsection F(1) above. If the CAD accepts a complaint, the CAD shall investigate the complaint.
2. **CAD investigation of a complaint.** The CAD will inform a POLR service provider in writing, by telephone, by e-mail, by fax, or by any other means that is acceptable to both the utility and the POLR service provider, that a complaint has been filed and the date of the filing. The CAD will conduct an informal investigation of the dispute that may include:
 - a. an informal meeting with the customer and/or a POLR service provider representative;
 - b. a review of the written record of the POLR service provider's investigation required by subsection D above; and
 - c. an examination of other records, such as billing and payment information, notice of disconnection, or any other information that the CAD deems relevant to the dispute.
3. **Provision of information to the CAD by a POLR Service Provider.** A POLR service provider shall provide information requested by the CAD within 10 business days of its receipt of the request. This information may include, but is not limited to, billing and payment information, notice of disconnection information, the

written record of the utility's investigation of the customer's dispute required by subsection D above, or any other information in the POLR service provider's possession or that is readily available to the POLR service provider that the CAD deems necessary to investigate the customer's dispute. If the POLR service provider cannot provide the requested information within the 10-day time period, it may request an extension from the Director of the CAD or his designee. The extension request may be made orally or in writing and it may be granted or denied orally or in writing.

4. **Decision.** The CAD shall complete its investigation and issue a written decision as soon as practicable. The decision by the CAD shall impose any just and reasonable requirements necessary to resolve the dispute.
5. **Notice of appeal rights.** When a decision is rendered, the CAD shall inform the customer and the POLR service provider of the right to appeal the CAD's decision to the Commission and of the rights of both parties while an appeal to the Commission is pending.

H. **Appeal to the Commission.**

1. **Appeal process.** The customer or the POLR service provider may appeal a CAD decision to the Commission by filing a notice of appeal with the Administrative Director of the Commission within 10 calendar days after the date of the decision. Notwithstanding section 6(D) of the Maine Rules of Civil Procedure and section 305 of the Commission's Rules of Practice and Procedure (Chapter 110), no additional time is allowed for mailing.
2. **Disconnection delayed.** If an appeal is filed with the Commission, a POLR service provider may not disconnect or terminate the customer's service until the appeal is decided.
3. **Commission review.** The Commission shall review the decision to determine if it complies with applicable statutory and regulatory requirements, is based on sound facts, and does not represent an abuse of discretion by the CAD.
4. **Order.** The Commission shall issue an order affirming the CAD's decision or, if the decision is not affirmed, the Commission shall:
 - a. remand the complaint to the CAD for reconsideration with an explanation of the basis for the remand;

- b. remand the complaint back to the CAD to gather further facts; or
- c. issue an order reversing or altering the CAD's decision.

§ 17 RECORDS; REPORTS

- A. **Record maintenance.** A POLR service provider shall preserve records of disputes for two years and keep those records readily available for examination by the Commission and its staff. Dispute records must include:
- 1. **Name and address.** The name and address of the applicant or customer with the dispute;
 - 2. **Date and subject matter.** The date and subject matter of the dispute;
 - 3. **Record of investigation.** The record of the investigation required by section 16(D) above;
 - 4. **Communications.** A summary of all communications to or from the customer regarding the dispute;
 - 5. **Offer.** The adjustment or resolution offered by the POLR service provider to the customer; and
 - 6. **Final resolution.** The final adjustment or resolution of the dispute.
- B. **Reports to the Commission.** A POLR service provider's annual report to the Commission shall include:
- 1. **Number of accounts.** The POLR service accounts for the year;
 - 2. **Disconnection notices.** The number of POLR service disconnection notices issued per month, by type, for the year;
 - 3. **Disconnections.** The number POLR service disconnections (except those performed at the customer's request) per month for the year;
 - 4. **Reconnections.** The number of reconnections of POLR service following disconnection without consent per month for the year;
 - 5. **Disputes.** The total number of POLR service customer disputes handled for the year;

6. **Deposits.** The number POLR service deposits requested and received and their average dollar amount for the year; and
7. **Denials.** The number POLR service applications for service that were denied for the year.

§ 18 WAIVER

- A. **General waiver.** Upon the request of any person subject to this Rule or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of the CAD, or the Hearing Examiner assigned to a proceeding related to this Chapter, may grant the waiver.
- B. **Individual customer exemption**
 1. **Request requirements.** A POLR service provider may request that the CAD grant an exemption from any provision of this Chapter in any case involving an individual applicant or customer whose conduct and known financial condition pose a clear danger of substantial losses to the POLR service provider. A request for exemption under this subsection must be made to the CAD. The request may be written or oral, but an oral request must be followed promptly by a written confirmation. The written request or confirmation shall include a detailed statement of the facts alleged by the POLR service provider in support of the request. The POLR service provider shall immediately notify, in writing, the individual applicant or customer whose service would be affected by the proposed exemption, describing the nature and effect of the exemption requested and the facts alleged in support of the request.
 2. **CAD investigations.** The CAD may reject, without investigation, any request that does not present facts that satisfy the standard of subsection 1 above. Before granting any exemption, the CAD shall informally investigate the matter.
 3. **Decision.** When the CAD completes its investigation or summarily rejects the request, it shall issue a decision granting, denying, or granting in part the requested exemption. When the CAD determines that an exemption is required to avoid a clear danger of substantial losses to the POLR service provider, it shall notify the customer and the POLR service provider of the decision. The notification may be made orally, but the CAD shall promptly issue a

written confirmation of the decision. The decision or written confirmation shall:

- a. describe the nature and effect of the exemption;
- b. explain why the exemption was granted or denied; and
- c. inform the customer and the POLR service provider of the right to appeal the CAD's decision to the Commission, as provided in subsection 4 below.

4. **Appeals to Commission.** By following the procedures in section 16(H) of this Chapter, a party may appeal a decision by the CAD granting or denying, in whole or in part, a request for an exemption. If the CAD grants an exemption, the POLR service provider may not act on the exemption until the appeal period expires.

APPENDIX C

LEGISLATIVE EDIT OF CHAPTER 210 OF THE COMMISSION'S RULES

1. Accounting Systems

- A. Except as provided in B, ~~C and D~~, below, and in sections ~~4, 5 and 6~~, every telephone utility as defined in 35-A M.R.S.A. § 102 (19) shall maintain its books of account according to the manner and form prescribed by the Federal Communications Commission (FCC) Part 32 Uniform System of Accounts for Telecommunications Companies (USOA) 47 C.F.R. 32, adopted May 1, 1986 and as amended by the FCC periodically.; ~~provided that each telephone utility shall adhere to the system of accounts specified for Class A companies as modified by the accounting conventions and procedures contained in Section 8 of this Rule; and each telephone utility shall comply with all of the other applicable requirements of section 8, unless waived pursuant to section 6.~~
- B. Any telephone utility which has total intrastate revenues under \$10 million dollars may, at its option, maintain its books of accounts according to the FCC Part 32 USOA for Class B companies; provided that each ~~such~~ telephone utility shall maintain its Telecommunications Plant In Service detail accounts and corresponding accumulated depreciation subsidiary records according to the Class A system.
- GC. Any Voice Service Provider, as defined in 35-A M.R.S.A. § 102(21-A), that is not a public utility shall maintain in books of account in accordance with Generally Accepted Accounting Principles, and shall maintain its books of account in a manner that allows the Voice Service Provider to provide all information required to be provided in the annual report to the Commission.
- ~~C.~~ ~~Every Radio Common Carrier, As defined in Chapter 24 of the Commission's Rules and Regulations, shall maintain its books of account in the manner prescribed in the Uniform System of Accounts for Radio Common Carriers, July 1987, as promulgated by the National Association of Regulatory Utility Commissioner.~~
- ~~D.~~ ~~Every Cellular Service provider, as defined in Chapter 24 of the Commission's Rules and Regulations, shall maintain its books of account in the manner prescribed in the Uniform System of Accounts for prescribed in the Uniform System of Accounts for Cellular Communications Licensees, July 1985, as promulgated by the National Association of Regulatory Utility Commissioners. All cellular providers who~~

~~have implemented the 1987 RCC USOA prior to the effective date of this revision may continue to use the July 1987 RCC USOA as promulgated by NARUC.~~

~~E. Every telephone utility which uses a cost of service methodology for either interstate or intrastate toll revenue settlements must use the accounting system prescribed in paragraphs A and B effective January 1, 1988.~~

~~Any telephone utility which does not use a cost of service methodology for either interstate or intrastate toll revenue settlements must use the accounting system prescribed in paragraphs A and B on or before January 1, 1990.~~

2. Accounts closed

~~All~~The accounts of all telephone utilities subject to this Chapter shall be closed annually on the 31st day of December unless otherwise specifically authorized by the Commission.

3. Reporting

A. Filing of Annual Report.

~~Within 90 days of the annual closing of the annual accounts, each telephone utility and Voice Service Provider shall file a report verified by an officer or owner of the utility or Voice Service Provider, containing such information as the Commission may prescribe, provided, however, that to the extent such information includes investments in or income or loss from unregulated activities, such information relating to unregulated activities shall be contained in a separate report which shall satisfy all of the other requirements of this rule. The Commission shall also prescribe the information that each Voice Service Providers who is not a telephone utility shall provide in its annual report to the Commission. The information to be provided in the annual reports filed by all Voice Service Providers that are not telephone utilities shall be the minimum amount that is necessary for the Commission to carry out its regulatory responsibilities.~~

B. Filing of Audit Report.

~~All accounts of all telephone utilities shall be audited in accordance with Chapter 710 of the Rules of the Maine Public Utilities Commission (65-407 C.M.R. 710). A copy of the auditor's opinion letterreport, accompanied by the audited financial statements, shall be filed with the Commission as soon as reasonably possible after the auditor provides it to the utility, but in no case shall the letter be filed not later than the first day of the fourth month following the 12-month period for which the audit was conducted,~~

~~except that audit reports based on a fiscal year ending December 31 must be filed by the following July 1 of the following calendar year. The utility shall file with the audited financial statements a cover sheet describing any discrepancies between the audited financial statements and the annual report or reports filed by the utility under section 3(A). If the auditor issues a qualified opinion, the utility must file a revised annual report, if necessary, and it must file a description of the steps it has taken or will take to correct the accounting, reporting or control deficiencies that caused the auditor to issue a qualified opinion.~~

~~4. Exemption for Utilities Operating a Radio Paging Service~~

~~Any public utility which operates a radio paging service shall maintain a separate set of books of accounts or establish a separate subsidiary for its paging operations, unless exempted by the Commission pursuant to 35-A M.R.S.A. § 8501 for good cause shown. If a separate set of books is used, the requirements contained in Part 32 shall apply.~~

~~5. COCOT Exemption~~

~~Any public utility which is a utility, as defined in 35-A M.R.S.A. § 102(13), only because of its operation of a Customer Owned Coin Operated Telephone (COCOT) as defined in Chapter 25(1)(A) of the Commission's Rules (650407 C.M.R. Ch. 25) shall be exempt from the accounting requirements of this Rule as set forth in section 1.A.~~

46. Waivers

For good cause shown, the Commission may waive any of the requirements of this Rule, provided such waiver does not unduly undermine the purposes of this Rule and is permitted by statute. The Commission may also subsequently rescind, alter, or amend any such waiver for good cause. The Commission delegates to the Director of Finance Telephone and Water Utility Industries the authority to issue, rescind, alter, or amend a waiver with respect to any of the requirements of this Rule. This delegation in no way limits the Commission's authority to review the decision of the Director of Finance Telephone and Water Utility Industries or to issue, rescind, alter, or amend a waiver directly.

57. Confidential Information

Pursuant to the provisions of 35-A M.R.S.A. §§ 1311-A or 1311-B, and any Commission Rules established under those Sections, any Voice Service Provider may request that the Commission designate as confidential any information that the Voice Service Provider must provide on its annual report to the Commission. The Commission will consider each request individually, but will designate information as confidential only with a clear and convincing showing is necessary

to protect the legitimate business interests of the requesting Voice Service Provider. The Commission may, on its own motion and after such process as it finds necessary, designate as confidential some or all of the information provided by some or all Voice Service Providers.

- ~~A. Any other provision of this Chapter notwithstanding, any separate report containing information on unregulated activities which is filed as a separate report pursuant to the provision clause in Section 3(A) shall be considered and treated by the Commission and by all other persons to whom access thereto may be accorded pursuant to the terms of this section as confidential ("Confidential Information").~~
- ~~B. The Commission shall physically segregate all such Confidential Information in its possession and shall keep the same in separate located facilities.~~
- ~~C. Access to Confidential Information shall be limited to the Commission's members, employees and agents (including, without limitation, its consultants, experts and counsel). No other person shall be granted access except by order of the Commission or by a Hearing Examiner in a proceeding before the Commission.~~
- ~~D. Only such copies of Confidential Information as are necessary to the efficient functioning of the Commission shall be made and all such copies shall themselves be deemed and treated as Confidential Information.~~
- ~~E. In the event that the Commission receives a request from any person other than those specified in Paragraph C under the Freedom of Access Law (1 M.R.S.A. §§ 401 et seq.) or otherwise to inspect or copy such Confidential Information, it shall promptly notify the affected telephone utility of the request. It shall also provide prompt notification to the affected utility of any judicial action filed against the Commission for disclosure.~~
- ~~F. In deciding whether to issue an order permitting access to Confidential Information, the Commission or Hearing Examiner shall take into account the utility's need for confidentiality and the person's need for the information. If access is granted, appropriate provisions shall be made for the protection of confidential information from unwarranted public disclosure.~~
- ~~G. A notice in the following form shall be posted at the locked facilities in which confidential information is located:~~

~~NOTICE~~

The information in this file is designated confidential by Chapter 210 of the Rules of the Maine Public Utilities Commission. Disclosure of any such Confidential Information to any person other than Commission members, employees, or agents is prohibited, unless permitted by order of the Commission or a Hearing Examiner.

8. Part 32 Implementation Requirements

This Section establishes the accounting and implementation requirements.

A. Initial Notice of Intent -

No later than 4 months after the effective date of this rule, all telephone utilities shall file an Initial Notice of Intent (Initial Notice) with the Commission concerning the implementation of the Part 32 USOA. the change in USOA shall automatically take effect according to the information contained in the Initial notice. The Initial Notice shall contain a statement concerning the following information and practices:

- (1) The effective date of implementation of Part 32 for intrastate purposes (see section 1.E.) and the class of company (see sections 1.A. and 1.B.).
- (2) The accounting methods adhered to when GAAP or Part 32 requires or allows and option. Where GAAP permits more than one accounting method, the telephone utility shall include a statement as to which method it shall adhere to. For intrastate purposes, a telephone utility must petition for any change from the methods set forth in the Initial Notice.
- (3) A representation of the utility's continued adherence to prior Commission ratemaking policies, including a statement that no accounting and ratemaking requirements instituted by the Commission, of which the utility is aware, will be negated by the adoption of Part 32 and that separate accounts shall be established to account for any difference. A list of those policies which would otherwise be overridden by the adoption of Part 32 and the account number in which jurisdictional differences shall be recorded. A statement listing the amount of any embedded liability which results from adopting Part 32.
- (4) A description of the procedures for recording affiliate transactions, and transactions between the utility and its affiliated interests, as defined by 35-A M.R.S.A. § 707.

~~(5) An estimate of the costs associated with implementing Part 32.~~

~~Future changes to any of the provisions set out in the Initial Notice require prior written notice to and approval by the Commission or the Director of Finance.~~

~~**B. Adoption of GAAP**~~

~~Any utility desiring to implement an accounting change to reflect a GAAP pronouncement for intrastate purposes shall notify the Director of Finance 90 days prior to the proposed date of implementation or the filing of its annual report, whichever is sooner. Such notice shall contain an estimate of the effect on revenue requirements. If the Director of Finance does not respond within 81 days of the filing of the Notice, the utility may implement the change until subsequently required to do otherwise by rule or order.~~

~~**C. Retention of Records**~~

~~Books and records shall be retained on an intrastate basis for as long as they may be material in establishing the utility's revenue requirement. The utility shall adopt a reasonable retention policy, which shall be at least 7 years. Property records shall be available for at least three (3) years after the physical retirement of the property.~~

~~**D. Auditor's Attestation Function**~~

~~With the utility's first auditor's report, in accordance with Chapter 710, following adoption of Part 32, each Company's Independent Auditor shall attest to the accuracy of the opening journal entries, and that prior balances have been transferred in conformity with Part 32 requirements.~~

~~**E. Comparative Reporting**~~

~~1. No later than 4 months after the effective date of this rule, each telephone utility following the Class A USOA shall provide a report to the Commission which restates 1987 financial data according to the new Part 32 USOA, using best estimates, if necessary. Each utility following the Class A system of accounts shall include with its annual report for fiscal years 1988 and 1989 its balance sheet and income statement for those years based on its previous chart of accounts. Only items of a material nature need be considered, and each utility may use its best estimate or use a special study to complete the required comparison.~~

- ~~2. Each utility adhering to the Class B system of accounts shall provide the above-specified comparative financial information for the first fiscal year in which it adopts the new Part 32 Class B USOA and for the fiscal year immediately preceding the year of adoption. as in Section E.1, best estimates may be utilized.~~

~~**F. Accounting methods and practices required in place of certain provisions of Part 32.**~~

~~The following accounting methods and practices are required for intrastate accounting and the necessary jurisdictional accounts shall be established in order to properly account for such differences:~~

- ~~1. The flow through method of treatment of tax timing differences shall be used unless specifically prohibited by provisions of the Internal Revenue Code.~~
- ~~2. Class A utilities may charge the costs of short-term projects estimated to cost less than \$100,000, or such lesser amount as a utility may select, directly to plant accounts. class B utilities may charge the costs of short-term projects estimated to cost less than \$25,000, or such lesser amount as a utility may select, directly to plant accounts. Interest during construction shall be accrued on all amounts of telephone plant under construction, both short-term and long-term.~~
- ~~3. Pension cost shall be accounted for on a funded (cash) basis.~~
- ~~4. Post-retirement benefits shall be accounted for on a funded (cash) basis.~~

APPENDIX D

LEGISLATIVE EDIT OF CHAPTER 280 OF THE COMMISSION'S RULES

§ 1 PURPOSE

The purposes of this Chapter are to establish economically efficient and equitable access charges for the provision of competitive-services and to describe the process for intrastate competitive telecommunications carriers to obtain authority from the Commission to provide service.

§ 2 DEFINITIONS

A. **Access Charges.** "Access charges" and "access rates" are those charges and rates, required by section 85 of this Chapter, that an local exchange carrier charges to an interexchange carrier (defined herein) must pay in order to provide intrastate interexchange service in Maine for use of the local exchange carrier's network equipment and facilities to complete interexchange telephone calls.

~~B. **Common Line; Common Line Costs.** A "common line" is a facility that carries telecommunications between a local switch and a customer premises. The common line is also known as a "loop," and, for local exchange purposes, a "link." Common lines may carry intrastate local exchange, intrastate interexchange and interstate communications. Common line costs are subject to recovery as provided in section 8(C).~~

~~C.B.~~ **Competitive Local Exchange Carrier (CLEC).** A competitive local exchange carrier" (CLEC) is any local exchange carrier (LEC) (defined herein) that is not an incumbent local exchange carrier (ILEC) (defined herein).

~~C.D.~~ **Incumbent Local Exchange Carrier (ILEC).** "Incumbent local exchange carrier" (ILEC) means a local exchange carrier (defined herein) or its successor that provided local exchange service in a defined service territory in Maine on February 8, 1996. A local exchange carrier that is defined as an ILEC pursuant to this subsection shall not be considered to be an ILEC in any area to which it expands its service after February 8, 1996, and in which another ILEC or competitive local exchange carrier (CLEC) was providing service on the date of that expansion, unless it is found to be an ILEC by this Commission or by the Federal Communications Commission pursuant to 47 U.S.C. § 252(h)(2) provider as defined by federal law.

- ED. Interexchange Access.** "Interexchange access" and "interexchange access services" ~~refer~~mean to the access services provided by local exchange carriers and used by interexchange carriers or CMRS providers for the carriage origination or termination of intrastate interexchange traffic. ~~The pricing for interexchange access services is governed by section 8 of this Chapter.~~
- EF. Interexchange Carrier (IXC).** An "interexchange carrier" (IXC) is any ~~person, association, corporation, or other entity~~Voice Service Provider that provides intrastate interexchange telecommunications services, ~~including a local exchange carrier (LEC), whether or not that entity is a public utility.~~ An interexchange carrier includes an entity that provides services using facilities that it owns, leases, controls, operates or manages, including ~~leased private lines or special access facilities, and an entity that resells switched services provided by other carriers.~~ An IXC does not include a commercial mobile radio service (CMRS) provider as defined by federal law.
- EG. Interexchange Communications or Traffic; Interexchange Service.** For the purposes of this Chapter, "interexchange communications" or "interexchange traffic" are any switched or private line telecommunications between telephone exchanges or wire centers, except that switched traffic between points having local calling with one another (extended area service or EAS) under local exchange carrier's schedule approved by the Commission is not considered "interexchange." The provision of facilities or services for the carriage of interexchange traffic is an "interexchange service."
- GH. Intrastate.** "Intrastate" as used in this chapter refers to the provision or carriage of an "intrastate communication" ~~(as defined in this section), or to a carrier or service that provides intrastate communications.~~
- HI. Intrastate Communication or Telecommunication.** An intrastate communication" or "intrastate telecommunication" is a telecommunication that is functionally intrastate, with points of origination and termination within Maine, regardless of the actual routing of the communication. In the case of mobile telecommunications services, the points of origination and termination of the communication shall be assumed to be the antenna locations at which the carrier acquires and passes on the end user's signal, unless the actual location of the end user can be determined.
- IJ. Local Exchange Carrier (LEC) .** A "local exchange carrier" (LEC) is a ~~telephone utility~~Voice Service Provider, ~~as defined by 35 A.M.R.S.A. § 402(1921-A),~~ that provides telephone exchange service or interexchange access service within a telephone exchange pursuant to authority granted

by or under Private and Special Law of the State of Maine; or Public Law 1895, ch. 103, § 103 or subsequent codification's thereof; or 35-A M.R.S.A. § 2102, or prior codification's thereof; ~~LECs include incumbent local exchange carriers (ILECS) (defined herein) and competitive local exchange carriers (CLECS) (defined herein), and local resellers (defined herein). A local exchange carrier does not include a commercial mobile radio service (CMRS) provider.~~

~~K. **Operator Services.** "Operator services" are services performed by a live operator or by electronic means to obtain billing and other information for telephone calls not billed automatically to the telephone line from which the call is originated. Telephone calls that use operator services include, but are not limited to, credit or calling card calls, debit card calls collect calls, calls billed to a third number, and person-to-person calls. Information that is collected by an operator service includes, but is not limited to, a calling or credit card number, a debit card number, the name of the caller and a third-party billing number.~~

~~L. **Resale And Sharing.** "Resale" is the acquisition by a telecommunications carrier of a service authorized by the Commission from an authorized telephone utility, or from an entity that by law does not require authority, and the subsequent sale of that service, in a technically unaltered form, with or without a different price structure, to end-users. If the carrier uses the acquired service together with its customers, the resale is termed "sharing."~~

JM. **Telecommunications Carrier.** A "telecommunications carrier" is any person, association, corporation, or other entity Voice Service Provider that provides intrastate telecommunications services, whether or not that entity is a public utility.

K. **Voice Service Provider (VSP).** A "voice service provider" ("VSP") is any person or entity doing business in this State that offers its customers the means, directly or indirectly, to initiate or receive voice communications.

~~Telecommunications carrier include all interexchange carriers (IXPS) (defined herein) and all local exchange carriers (LECS) (defined herein).~~

§ 3 APPLICABILITY

~~A. **General Applicability.** This Chapter applies to the provision of all interexchange and local competitive telecommunications voice services, except as provided in subsection B.~~

~~B. **Exception: Inapplicability to Pay Telephone Service Providers.** Nothing in this Chapter will apply to the certification or provision of local service by pay telephone service providers, which are governed by Chapter 250 of the Commission's rules, 65-407 C.M.R. 250.~~

- ~~C. **Exception: Inapplicability to CMRS Providers for Intrastate Traffic Within a Single MTA.** This Chapter shall not apply to Commercial Mobile Radio Service (CMRS) providers, as defined by Federal law, to the extent their intrastate Maine traffic is contained entirely within a single Major Trading Area (MTA), as established by Federal Communications Commission regulation.~~

§ 4 APPROVAL REGISTRATION REQUIRED

~~A. **Public Convenience and Necessity; Required Findings.** No telecommunications carrier that is a telephone utility Voice Service Provider, as defined by 35-A M.R.S.A. § 102(4921-A), shall provide ~~competitive~~ local exchange or interexchange telecommunications service in or to a municipality in which another telephone utility Voice Service Provider is furnishing or is authorized to provide telephone service unless the Commission has first ~~approved~~ authorized the furnishing of that service pursuant to 35-A M.R.S.A. §§ 2102 and 2105 ~~by making a declaration that the public convenience and necessity require an additional public utility.~~ Approval ~~authority~~ to provide any service shall ~~not be issued~~ upon the filing by the Voice Service Provider of notice that it intends to offer such service. The notice filed by the Voice Service Provider must contain the following; unless the applicant has presented sufficient evidence for the Commission to make the following findings:~~

~~(1) A statement by the ThVoice Service Provider e applicant that it has adequate financial viability, including the ability and willingness to cover any customer advances and deposits; and to pay any assessments or similar charges required by Maine statute or PUC Rule, and to pay, if applicable, any intrastate access charges and interconnection charges on all intrastate telecommunications services; and~~

~~(2) A statement by the ThVoice Service Provider e applicant (other than a interexchange carrier that is a reseller or A local exchange carrier that provides service solely through resale of local service purchased from a wholesale schedule of another LEC) that it has the technical ability to measure and record intrastate traffic information and billing amounts that may be necessary for the calculation of access and interconnection charges; and;~~

~~(3) The applicant is willing and able to comply with State law and Public Utilities Commission rules, including, but not limited to, this Chapter.~~

~~(3) A statement by the Voice Service Provider that it will cooperate with reasonable efforts by the Commission to preserve numbering resources in the State.~~

~~B. **Approval for Additional Service or Service Area.** A telephone utility Voice Service Provider that is authorized to provide either interexchange service or facilities-based local exchange service and that desires to may not provide the other service or to extend either its provision of local exchange service to additional areas until it has received authorization to do so from the Commission pursuant to 35-A M.R.S.A. § 2102, and this Chapter shall obtain further approval pursuant to 35-A M.R.S.A. § 2102, but does not need to provide the information required by this section unless the information supplied previously has changed since the time of the any earlier application. Any further application shall provide a reference by docket number to a prior application.~~

~~C. **Contents of Application.** Any application for approval uthority to provide service pursuant to 35-A M.R.S.A. § 2102 to operate as a telephone utility and to provide competitive telecommunications services Voice Service Provider shall contain the following information, as applicable, except to the extent a waiver is granted pursuant to section 14:~~

~~(414) The nName of the Voice Service Provider and applicant and any names under which it the applicant does business (d/b/a's).~~

~~(522) The Aaddress of the principal office of the Voice Service Provider applicant.~~

~~(3) The State (s) under which the Voice Service Provider applicant is organized and form of organization (corporation, partnership, association, firm, individual, etc.), including the date of organization.~~

~~(4) A statement by the Voice Service Provider, thatthat the applicant, if it is a corporation, it is organized under the laws of the State of Maine; or, if it is a foreign corporation, that it evidence that it is authorized to do business in Maine pursuant to 13-A M.R.S.A. § 1201 et seq. and the name and address of the corporation's registered office and agent in Maine, as required by 13-A M.R.S.A. § 1212.~~

~~(5) The nNames and addresses of the officers and directors of the Voice Service Provider applicant.~~

~~(6) Names and addresses of any affiliated interests of the applicant, as defined by 35-A M.R.S.A. § 707(1), that are public utilities in Maine, as defined by 35-A M.R.S.A. § 102(13), or that own more than 10%~~

~~of the applicant. An organization chart that includes all entities within the organization up to the parent, all entities that are on the same organizational level as the applicant, and all entities that are direct affiliated interests of the applicant.~~

~~(7) A statement of whether the services that the Voice Service Provider will offer applicant is applying for authority to provide offer local service, interexchange service, or both, and the geographic location of where those services will be offered. areas for which the applicant seeks to obtain authority to serve. Such locations may be The application may designated those geographic area(s) by political boundaries or by the service areas of incumbent local exchange carriers or other areas specifically designated by the Voice Service Provider applicant. In addition, the Voice Service Provider An shall indicate applicant for local exchange carrier authority msut indicate whether it will provide facilities-based service, resale service, or both and, in the case of facilities-based service, shall indicated . Applicants for facilities-based authority must indicate the exchanges of the incumbent LEC in which such services will be offered. for which authority is sought.~~

~~(8) A proposed initial schedule setting forth rates and terms and conditions of the proposed services, or an explanation of why a proposed initial schedule is not included.~~

~~(983) Name(s), address(es) and telephone number(s) and email(s) of the person(s) whom the Commission should contact in regard to the proposed rate schedule and terms and conditions required by paragraph 8 and for future filings following the granting of authority. service-related problems or outages efecting custoemers in Maineregulatory matters.~~

~~(109) Name(s), address and telephone number(s) of the person(s) whom the Commission should contact in regard to complaints by consumers.~~

~~(11(121) A statement that the applicant is willing and able to comply with thisall Commission's rules, including this Chapter.~~

~~(1321) A statement whether the Voice Service Provider applicant presently or within the past 5 years has, to its knowledge, been the subject of an investigation (not including the initial application to provide service) by a state or federal regulatory authority, and, if so, a copy of the final order or settlement if the proceeding has concluded, or a copy of the notice of investigation and any interim orders if the~~

~~proceeding is pending. The Voice Service Provider applicant must shall disclose all information relating to any revocation or suspension of its authority to provide telecommunications service by any other jurisdiction, and of its authorization to conduct business by any other state or federal agency.~~

~~(14) A statement whether the applicant proposes to offer operator services (as defined in section 2(K) and, if so, a reference to the pages of the applicant's proposed rate schedule at which the proposed operator service rates are located.~~

~~(15) A statement of the means of access (feature group, special access, etc.) that the applicant intends to use for the provision of intrastate service in Maine; the location of any points of presence (POPS) at which that access is or is intended to be obtained and the local exchange carrier(s) from which it will be obtained; and a description of the means the applicant will use to identify its traffic as intrastate or interstate for the purpose of any intrastate billing reporting requirement required by this Chapter or the access administrator.~~

~~**§ 5 PROVISION OF FACILITIES EXCHANGE ACCESS BY LOCAL EXCHANGE CARRIERS TO OTHER TELECOMMUNICATIONS CARRIERS.**~~

~~A.A. **General Obligation of LECS.** Upon request by an interexchange carrier, a local exchange carrier LEC shall provide exchange access services and facilities in those areas where itthe LEC provides service and where that provision is technically feasible, by using its own facilities or by obtaining them from another telecommunications carrier. Exchange Access services or facilities should be provided in a timely manner and in a quantity sufficient to accommodate the traffic expected to be generated by the interexchange carrier pursuant to all applicable provisions of federal and Maine law.~~

~~**B. Excessive Traffic.**~~

~~1. **Limitation or Delay.** If the provision of the access services or facilities will cause substantial concentration, redirection, or other change to traffic volumes carried on the public switched network that may result in a degradation of service to the LEC's other customers, the LEC shall apply to the Commission for a waiver of these provisions to allow it to terminate, limit, or delay temporarily the provision of service to the requesting interexchange carrier until sufficient facilities can be made available.~~

~~2. **Capital Additions; Payment.** If an interexchange carrier wishes to offer competitive services from an exchange which has Extended~~

~~Area Service (EAS) calling to another exchange, it must obtain Feature Group D (FGD) type access from the affected local exchange carrier(s) at each of the exchanges in which the IXC competitive telecommunications services are to be provided. If FGD is unavailable, the IXC shall pay the affected local exchange carrier all the capital and other costs it incurs that are reasonably necessary to ensure that the access provided to the competitive carrier will not significantly degrade the service to the affected local exchange carrier's own end users. A reasonable portion of those costs shall be collected in the form of an installation charge to the IXC at the time the capital additions are required.~~

§ 7 UNAUTHORIZED INTEREXCHANGE SERVICE; BLOCKING OF UNAUTHORIZED TRAFFIC

~~B. All interexchange carriers shall pay access charges as required by section 8 of this Chapter, and their continued authorization to provide service is contingent upon such payment. Where it is technically possible to distinguish and separate intrastate from interstate traffic, LECs shall deny intrastate access to interexchange carriers (IXCs) that are telephone utilities as defined in 35-A M.R.S.A. § 102(19) but are not authorized to provide intrastate telecommunications services. Where the LEC or LECs cannot deny access and the unauthorized IXC can block unauthorized traffic, the IXC shall block all such intrastate traffic. For unauthorized intrastate interexchange traffic that cannot be blocked, the unauthorized IXC shall pay a charge that is equal to the undiscounted Message Telecommunications Service (MTS) of the local exchange carrier.~~

§ 85 ACCESS RATES

A. **Rate Schedules.** Each local exchange carrier authorized to provide local exchange voice service in the State of Maine shall file and maintain rate schedules establishing that carrier's access rates pursuant to 35-A M.R.S.A. § 307. Charges or rates for exchange access shall comply with the provisions of 35-A M.R.S.A. §7101-B.

B. **Rates for All LECs Effective June 1, 2003 and Thereafter.** No later than June 1, 2003 (or such later date as may be established by statute), all local exchange carriers shall establish intrastate access rates that are less than or equal to the interstate access rates for that carrier that are in effect on June 1, 2003 (or such other date as may be established by statute). On or before June 1 of every two years thereafter (all each odd-numbered years), except to the extent that the need for subsequent changes is modified by statute, all local exchange carriers shall reestablish intrastate access rates that are less than or equal to the interstate rates for that carrier that are in effect on June 1 of that year. ~~If a date later than June 1,~~

~~2003, is established by statute for the implementation of intrastate access rates that are less than or equal to specified interstate access rates, the Commission, by order issued in a rate proceeding or in a proceeding under Chapter 288, § 3, may require a LEC to change its access rates to a level specified by the Commission prior to the final date established by statute, provided such an order is not precluded by statute.~~

~~C. **Direct End-User Access Charges Prohibited.** All access charges imposed by LECs shall be charged directly to interexchange carriers and no component of an access charge shall be charged by an local exchange carrier directly to an end-user.~~

~~§ 9 **SCHEDULE FILINGS BY INTEREXCHANGE CARRIERS; CHANGES IN RATES**~~
~~**INTEREXCHANGE RATES FOR DEAF, HEARING IMPAIRED, AND SPEECH IMPAIRED PERSONS**~~

~~A. **Rate Schedules.** Interexchange carriers subject to the authority of the Commission shall file schedules of rates, terms and conditions as provided in 35-A M.R.S.A. § 307. Those rates, terms and conditions shall be subject to provisions of all applicable statutes, including 35-A M.R.S.A. §§ 309 and 701-703.~~

~~B. **Telecommunication services for the deaf, hearing impaired, and speech impaired.** Interexchange carriers are required to provide a 70% rate reduction for intrastate toll calls for deaf, hard-of-hearing or speech-impaired persons as required by 35-A M.R.S.A. § 7302.~~

~~C. **Exemption from Filing Requirements.** Interexchange carriers other than ILECs shall be exempt from those provisions of Chapters 110 and 120 that require notice to customers and to the Commission and the filing of specified information at the time a utility files a "general increase in rates" as defined in 35-A M.R.S.A. § 307, unless the Commission orders otherwise in a particular case.~~

~~§ 10 **NOTICE BY ALL INTEREXCHANGE CARRIERS PRIOR TO EFFECTIVE DATE OF RATE INCREASES**~~

~~A. **General Requirement.** At least 15 days prior to the effective date of a rate increase of 20% or more in the rate for any individual interexchange service offered by any interexchange carrier (IXC) (including LECs offering interexchange service) that is subject to the authority of the Commission, the IXC shall send notice by a bill insert or by separate mailing to all affected customers, as defined in subsection C. For the purpose of this section, a rate shall be considered to be increased by 20% if rate increases for the service, including the current increase, cumulatively amount to 20% or more over the year prior to the current increase. For the~~

~~purpose of this section, a "rate increase" shall include any term and condition that has the effect of raising a rate for one or more customers.~~

- ~~B. **Cancellation Period Added to Notice Period.** If a rate (including a rate pursuant to special contract) contains a term and condition stating that cancellation of a service by a customer will not be effective until a stated time period following notice given by the customer to the interexchange carrier, the notice period applicable to the interexchange carrier required by subsection A of this section shall equal 15 days plus the length of the period required for the customer to provide notice of cancellation.~~
- ~~C. **Affected Customer: Definition.** A customer is affected by a rate if the customer has used the service that is subject to the rate increase of 20% or greater and has incurred total charges for the service of \$5 or more, during either the month prior to or after the filing of the proposed increase, or has incurred charges for the service that total \$15 or more for the 3 month period prior to the filing of the proposed increase.~~
- ~~D. **Alternative Compliance.** An interexchange carrier may satisfy this requirement by sending notice of all increases of 20% or more to all its customers.~~
- ~~E. **Exemption.** An incumbent local exchange carrier or any other interexchange carrier that has complied with the notice requirements of Chapter 110, § 718 following a general rate case is not required to comply with this subsection.~~

§ 447 REPORTS AND RECORDS

- ~~A. **Annual Reports.** All interexchange carriers subject to the authority of the Commission are exempt from the annual report and other requirements of Chapter 210 (Uniform System of Accounts for Telephone Utilities) of the Commission's Rules. They shall, however, annually provide the Commission, in a manner prescribed and on forms specified by the Commission, with a report of its annual revenues, total minutes of use sold, the annual revenues derived from sales for resale and the number of minutes of use sold to resellers.~~
- ~~B. **Records.** All local exchange carriers and interexchange carriers Voice Service Providers telecommunications carriers subject to the provisions of this Chapter shall, for the purposes of calculating access or interconnection charges in accordance with this Chapter, maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all other necessary information that is necessary to calculate access or~~

~~interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.~~

~~§ 12 WAIVER OF 35-A M.R.S.A. §§ 707 AND 708; NOTICE REQUIREMENT~~

- ~~A. **Waiver.** Subject to the conditions described in subsections B and C below, interexchange carriers subject to the jurisdiction of the Commission shall be exempt from the requirement of 35-A M.R.S.A. § 708(2) that each reorganization (defined in 35-A M.R.S.A. § 708(1)) of a public utility be approved by the Commission.~~
- ~~B. **Notice Requirement.** Each telephone utility that is exempt pursuant to subsection A from the requirement that reorganizations be approved shall file notice with the Commission of a reorganization if that reorganization results in a merger, sale or transfer of a controlling interest of the public utility or of any entity that owns more than 50% of the public utility. The notice required by this subsection shall be filed within 10 days following any reorganization described herein.~~
- ~~C. **Changes of Name, Business office and Contact Person; Notice.** Each public utility subject to the exemption contained in subsection A that has changed its name, the name under which it does business (d/b/a), the location of its business office, and its contact person shall provide the Administrative Director of the Commission with notice of that change within 30 days following the change.~~

~~§ 13. REPEALED~~

~~§ 14 COMMISSION REVIEW~~

~~Any person aggrieved may obtain review of decisions by any local exchange carrier that has not provided a retail service, wholesale access services or any telecommunications facilities requested by that person, following the process described in section 5. The aggrieved person may refer the matter to the Commission for Staff resolution. The matter will be treated as an informal complaint submitted for resolution by the Staff under section 1102 of Chapter 110 of the Commission's rules. If a party is not satisfied with the Staff's resolution, it must file a written request for Commission review within 7 business days following the issuance of the resolution by the Staff. Failure to file a timely request for Commission review of the Staff's resolution shall constitute acceptance of the resolution and waiver of further opportunity to be heard with respect to the matter.~~

~~Receipt of a request for Commission review shall be treated as a request for investigation pursuant to 35-A M.R.S.A. § 1303. A summary investigation shall~~

~~be conducted, after which the Commission shall determine whether a formal investigation is warranted. If it decides to commence a formal investigation, the Commission shall may affirm, reverse, or modify the Staff's resolution. If the Commission decides not to commence a formal investigation, failure to act in accordance with the Staff's resolution shall constitute grounds to commence a formal investigation pursuant to section 1303 and the initiation of a proceeding to issue a temporary order pursuant to 35-A M.R.S.A. § 1322.~~

§ 458 WAIVER OF PROVISIONS OF CHAPTER

Any Voice Service Provider ~~telecommunications carrier~~ subject to the provisions of ~~this Chapter~~ may request that the Commission waive some or all of the requirements of this Chapter. Where good cause exists, the Commission, the Administrative Director, the Director of ~~Technical Analysis~~ Telecommunications and Water Utility Industries, or the Hearing Examiner assigned to a proceeding involving the subject matter of the waiver may grant the requested waiver, provided that the granting of the waiver would not be inconsistent with the intent of this Chapter. The waiver shall be applicable only to the specific application under consideration.