

65 - INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 280 - PROVISION OF COMPETITIVE TELECOMMUNICATIONS SERVICES

SUMMARY - This Chapter, adopted pursuant to 35-A M.R.S.A. §§ 104, 111, 301, 1301, 2102, 2105, 2110, 7101, 7101-B, 7104-A, and 7303, establishes economically efficient and equitable access charges for- the provision of competitive services; and describes the process for intrastate competitive telecommunications carriers to obtain authority from the Commission to provide service.

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STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

## CHAPTER 280

## COMPETITIVE TELECOMMUNICATIONS SERVICES

**§ 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 8 of this Chapter, that an interexchange carrier (defined herein) must pay in order to provide intrastate interexchange service in Maine.

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. 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).

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.

E. Interexchange Access. "Interexchange access" and "interexchange access services" refer to the access services provided by local exchange carriers and used by interexchange carriers for the carriage of intrastate interexchange traffic. The pricing for interexchange access services is governed by section 8 of this Chapter.

F. Interexchange Carrier (IXC). An "interexchange carrier" (IXC) is any person, association, corporation, or other entity 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.

G. 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."

H. 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.

I. 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.

J. Local Exchange Carrier (LEC). A "local exchange carrier" (LEC) is a telephone utility, as defined by 35-A M.R.S.A. § 102(19), 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)

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."

M. Telecommunications Carrier. A "telecommunications carrier" is any person, association, corporation, or other entity that provides intrastate telecommunications services, whether or not that entity is a public utility. 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 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 REQUIRED**

A. Public Convenience and Necessity; Required Findings. No telecommunications carrier that is a telephone utility, as defined by 35-A M.R.S.A. § 102(19), shall provide competitive local exchange or interexchange telecommunications service in or to a municipality in which another telephone utility is furnishing or is authorized to provide telephone service unless the Commission has first approved 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 to provide any service shall not be issued unless the applicant has presented sufficient evidence for the Commission to make the following findings:

- (1) The applicant has adequate financial ability and willingness to
- (2) The 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) 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.

B. Approval for Additional Service or Service Area. A telephone utility that is authorized to provide either interexchange service or local exchange service and that desires to provide the other service or to extend either service to additional areas 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 pursuant to 35-A M.R.S.A. § 2102 to operate as a telephone utility and to provide competitive telecommunications services shall contain the following information, as applicable, except to the extent a waiver is granted pursuant to section 14:

- (1) Name of the applicant and any names under which the applicant does business (d/b/a's).
- (2) Address of the principal office of the applicant.



- (3) State (s) under which the applicant is organized and form of
- (4) A statement that the applicant, if it is a corporation, is organized under the laws of the State of Maine; or, if it is a foreign corporation, 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) Names and addresses of the officers and directors of the 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.
- (7) A statement of whether the applicant is applying for authority to offer local service, interexchange service, or both, and the geographic areas for which the applicant seeks to obtain authority to serve. The application may designate those geographic area(s) by political boundaries or by the service areas of incumbent local exchange carriers or other areas specifically designated by the applicant.
- (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.
- (9) Name(s), address and telephone number(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.
- (10) Name(s), address and telephone number(s) of the person(s) whom the Commission should contact in regard to complaints by consumers.
- (11) Name(s), address and telephone number(s) that customers of the applicant should contact for inquiries about service, rates and bills.
- (12) A statement that the applicant is willing and able to comply with this Commiss
- (13) A statement whether the 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.

- (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 AVAILABILITY OF SERVICES AND FACILITIES

A. Requests. Any person may make a *bona fide* request to a local exchange carrier (LEC) for a specific service, using the LEC's network not available in the requester's area or for access to its network, facilities. The request shall specify particular locations, times, and quantities desired by the requester. A request that is made to managerial, marketing or business office personnel shall constitute a bona fide request if it complies with the requirements of this subsection.

B. Responses. the local exchange carrier shall respond to a bona fide request. Responses shall take one of the following forms:

- (1) Request Satisfied. The request will be considered satisfied if within 2 months of the request the telecommunications local exchange carrier has provided the requested service or facilities, or has agreed to provide it within 3 months of the request pursuant to special contract or rate schedules approved by the Commission.
- (2) Request Not Satisfied. Within 2 months after receipt of a request for service or facilities if the local exchange carrier has not provided the requested service or facilities, and has determined that it will not provide it, or will not seek Commission approval of schedules or

contracts governing such provision, it shall notify the Commission and the requester in accordance with the requirements in subsection C(1) below.

- (3) Disposition of Request Not Resolved. Within 2 months after receipt of a request for service or facilities or if the local exchange carrier has not determined whether the requested service or facilities will be provided, it shall notify the Commission and the requester in accordance with the requirements of subsection C(2) below.

C. Notification Requirements.

- (1) Request Not Satisfied. Notification required to be made in
  - (a) Identification of the person or other entity making the
  - (b) The date on which the request was made and/or received,
  - (c) Any determination made by the local exchange carrier as to
  - (d) The specific reason (s) that the requested service or facilities cannot or will not be provided, or reason (s) that the local exchange carrier's existing schedules, operating practice, contract(s), or corporate policy should not be changed to accommodate the request within the time requested or within 3 months after receipt of the request; and
  - (e) A report of any offer made by the local exchange carrier to the requester to furnish a similar or substitute service or facilities and the disposition of that offer.
- (2) Disposition of Request Not Resolved. The notification which is required to be made in subsection B(3) above shall contain the following information:
  - (a) The identification of the person or other entity making the request;
  - (b) The date on which the request was made and/or received, and any date(s) on which the service or provision of facilities was requested to be effective;

- (c) A description of any preliminary findings made with respect to provision of the requested service or facilities and
  - (d) The anticipated date on which a determination as to the provision of service or facilities will be made.
- (3) Filing of Responses. Notification required to be made under this subsection must be filed with the Commission within 2 months after receipt of the request. A copy of the notification must be provided to the requester.

D. Commission Review. A request may obtain review of an local exchange carrier's refusal to provide a requested service or facility pursuant to section 15 of this Chapter.

## **§ 6 PROVISION OF FACILITIES BY LOCAL EXCHANGE CARRIERS TO OTHER TELECOMMUNICATIONS CARRIERS.**

A. General Obligation of LECS. Upon request by an interexchange carrier, a local exchange carrier LEC shall provide access services and facilities in those areas where it provides service and where that provision is technically feasible, by using its own facilities or by obtaining them from another telecommunications carrier. Access 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.

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**

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.

## **§ 8 ACCESS RATES**

A. Rate Schedules. Each local exchange carrier authorized to provide local exchange 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.

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 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**

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.

## § 11 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 telecommunications carriers subject to the provisions of this Chapter shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all 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.

### **§ 15 WAIVER OF PROVISIONS OF CHAPTER**

Any 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, 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.

**BASIS STATEMENT:** The factual and policy basis for this rule is set forth in the Commission's Order Adopting Amended Rule, Docket No. 2002-598, issued on July 9, 2003; Statement of Factual and Policy Basis and Order Approving Rule, Commission Docket No. 2002-687, issued on March 17, 2003; and Statement of Factual and Policy Basis and Order Approving Rule, Docket No. 97-319, issued on December 1, 1997. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04330-0018.

**AUTHORITY:** 35-A M.R.S.A. §§ 104, 111, 301, 1301, 2102, 2105, 2110, 7101, 7101-B, 7104-A and 7303.

**EFFECTIVE DATE:** This rule was approved as to form and legality by the Attorney General on July 16, 2003. It was filed with the Secretary of State on July 17, 2003 and will be effective on July 22, 2003.