

Maine Public Utilities Commission

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Memorandum

*To: All Interexchange and Competitive
Local Exchange Carriers*
From: Maine Public Utilities Commission
Date: March 18, 1998
*Subject: Mergers and Other Corporate
Reorganizations*

The Maine Public Utilities Commission has granted authority to provide intrastate telephone service to numerous interexchange and competitive local exchange carriers. Recently, the Commission has received numerous inquiries from many carriers concerning whether the Commission imposes any approval requirements for mergers, purchases of a telephone utility by another telephone utility or by a non-utility, and other corporate reorganizations. This memorandum attempts to answer most of the questions that have been presented to us.

I. MERGERS AND OTHER REORGANIZATIONS BY INTEREXCHANGE CARRIERS

A Maine statute (35-A M.R.S.A. § 708) comprehensively requires approval for virtually any kind of reorganization of a public utility, including mergers and other acquisitions. However, that section allows the Commission to waive the approval requirement upon certain findings by the Commission. The Commission has made those findings and has waived those requirements in virtually all cases involving interexchange carriers. Chapter 280, § 12 of the Commission's rules grants a waiver to all *interexchange* carriers (IXCs) unless they are also *incumbent* local exchange carriers (ILECs). Although that section grants a waiver, it does impose a **notice** requirement. Chapter 280, § 12 states:

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 a reorganization described herein.

C. Changes of Name, Business Office and Contact Persons; 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.

NOTE: Prior to the adoption of section 12 of Chapter 280, the Commission granted similar waivers in virtually every order granting authority to interexchange carriers to provide service. Chapter 280, § 12 applies to all interexchange carriers regardless of the date that the Commission granted authority to that carrier.

II. REORGANIZATIONS BY CLECs

Chapter 280, § 12, discussed above, does not apply to competitive local exchange carriers (CLECs). However, in every CLEC approval granted thus far, the Commission has granted an identical waiver. There is no reason to believe that the Commission will not continue to grant such waivers. However, it would be prudent if the carrier's certificate of authority has been issued after the date of this Memorandum, it would be wise to review the order(s) granting authority to determine whether a waiver(s) was granted.

III. APPROVAL OF CONTRACTS BETWEEN AFFILIATED INTERESTS

35-A M.R.S.A. § 707 requires approval by the Commission of all contracts between a regulated public utility and any affiliated interest of that public utility. (Affiliated interests are defined in section 707.) The Commission has waived this requirement in all orders granting authority to interexchange carriers. Thus far, it has also granted such waivers to all CLECs. (Note, however, although waivers have been

granted to IXC's and to CLECs that are affiliates of existing ILECs, no waivers have been granted to ILECs themselves.

IV. ABANDONMENT OF SERVICE

A separate statute, 35-A M.R.S.A. § 1104, requires Commission approval if the utility will abandon service to the public. Unlike the reorganization statute, *the Commission does not have authority to waive the requirements of section 1104*. When one telephone utility buys another, it is possible that, after the merger, only one of the two entities will continue to provide service. If any existing telephone utility, either at the time of the merger or on some subsequent date, intends to cease providing service, it must obtain approval from the Commission as is required by section 1101. Normally in such circumstances the Commission will require the utility abandoning service to provide notice to its customers. If the abandoning utility proposes to transfer its customers to another utility that has higher rates, the Commission will require notice of the rate differences and a somewhat longer notice period.

V. TEXTS OF STATUTES AND RULES

You may find the texts of 35-A M.R.S.A. §§ 707, 708, and 1104, as well as Chapter 280 and most other Commission rules at <http://www.state.me.us/mpuc>.

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