

February 2, 2001

PUBLIC UTILITIES COMMISSION
Standards for Billing, Credit and Collection,
Termination of Service, and Customer Information
for Eligible, Non-Eligible, and Interexchange
Telecommunications Carriers (Chapters 290, 291
and 292)

NOTICE OF
RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we initiate a rulemaking to establish standards for billing, credit and collection, and termination of service. The rulemaking proposes three separate rules that apply to eligible telecommunications carriers, non-eligible telecommunications carriers and interexchange carriers, respectively. This rule will replace existing Chapter 81, Residential Utility Service Standards for Credit and Collection Programs and Chapter 86, Disconnection and Deposit Regulations for Non-Residential Utility Services, to the extent these chapters apply to telephone utilities services.

II. BACKGROUND

A. Status of the Telecommunications Market in Maine

The Commission adopted Chapters 81 and 86 (which govern credit and collections and disconnection and deposits, respectively), in the mid-1980s, when utilities were vertically integrated monopolies. At that time, a prescriptive approach to regulation was necessary to protect utility customers because they had no other choices for service if they were unsatisfied with, or disconnected from, their existing service. While this "one-size fits all" approach may have made sense in the 1980s, the utilities industry, particularly the telecommunications industry, has changed significantly since that time. The telecommunications industry has been steadily progressing from a structure of regulated monopoly to managed competition.¹ The passage of the federal Telecommunications Act of 1996 signaled the impending emergence of competition in virtually all segments of the telecommunications market. With the advent of competition, regulations must now have a dual role – protecting consumers during the transition to a competitive market, while creating an environment that encourages competition to flourish.

¹ Abel, R. Jaison and Clements, E. Michael "A Time Series and Cross-Sectional Classification of State Regulatory Policy Adopted for Local Exchange Carriers." NRR 98-25, December 1998.

Competition has not arrived equally among the various segments of the telecommunications market, resulting in an asymmetric market. Specifically, while competition exists in the intraLATA and interLATA toll markets, with over 250 companies competing for customers in Maine, competition in the local exchange market has not yet developed to any significant degree for residential customers. Although Maine's business customers are beginning to see some local exchange competition, there currently are no competitive local exchange carriers (CLECs) actively pursuing residential customers on a large scale in Maine. Thus, Maine has a telecommunications market where significant choice exists for toll service, but little or no choice exists for local exchange service, at least for the residential customer.

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 (and should) take the place of prescriptive regulation. A knowledgeable customer can choose the calling plan or carrier that best suits his needs. If a customer is not satisfied with the services of one company, she can choose another company. To do this, a customer must have the information necessary to compare one company to another, such as terms of service, rates, and calling plan information. Therefore, we propose rules for interexchange service that focus on "disclosure" as opposed to "prescriptive regulation."

In a non-competitive market, a customer must accept service from the incumbent carrier. Without competition and choice, the incumbent carrier does not have the same incentive to retain customers as a carrier does in a competitive market. As stated earlier, there is little competition in the local exchange market in Maine, and thus we propose more prescriptive rules for local exchange service than for interexchange service, until such time that sufficient competition exists to allay the need for prescriptive regulation.

For these reasons, the existing Chapters 81 and 860 must be revised to provide the appropriate level of consumer protection for the level of competition in each market segment. The goals of these rulemakings are:

- i. Ensure that basic telephone service is available at affordable rates to all the citizens of Maine;
- ii. Remove regulatory barriers to competition;
- iii. Account for the asymmetry that exists in today's telecommunications market; and
- iv. Substitute disclosure for regulation in the interexchange and local exchange markets where competition exists.

B. Structure of the Proposed Rules

We have created three (3) separate rules to provide the appropriate level of consumer protection for the level of competition that exists in that particular market segment. Local exchange service is more heavily regulated with lighter disclosure requirements, while the rules governing interexchange carriers are heavier on disclosure and lighter on prescriptive requirements.

In addition to distinguishing between toll and local, we have also distinguished non-eligible telecommunications carriers (non-ETCs) from eligible telecommunication carriers (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 incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs). However, in Maine, only the ILECs have sought ETC status thus far.

We believe asymmetrical rules for ETCs and non-ETCs are justified because ETCs receive federal support and must 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 can always obtain service through an ETC serving his or her area, as Federal law requires that the ETC accept all customers who meet minimum requirements.

We recognize that this approach creates competitive concerns, especially because the current ETCs are also the ILECs while the non-ETCs are the CLECs. Providing more stringent requirements for an ETC may put the ETC at a competitive disadvantage with respect to the non-ETCs. We have therefore tried to "even the playing field" by allowing the ETCs to offer enhanced, bundled services as competitive offerings. These services can be offered in addition to the basic service plan that must be offered to all customers. We feel that this will allow the ETCs to compete with non-ETCs, while also accommodating the requirement that ETCs accept all customers.

We seek comment on the general approach we have taken in these rulemakings. Specifically, does the creation of asymmetrical rules for local service versus toll service make sense given the current state of Maine's telecommunications market? Does the creation of more prescriptive rules for ETCs than non-ETCs put ETCs at a competitive disadvantage with respect to non-ETCs? Is there a better means to foster competition while protecting "captive" consumers? Could a single rule for local exchange service accommodate the differing obligations of ETCs and non-ETCs described above? If so, why?

C. Format of NOR

This NOR applies to all three of the proposed rules: Chapter 290 - ETCs, Chapter 291 - Non-ETCs, and Chapter 292 - Interexchange Carriers. We believe it is important to address all three rules in the same NOR to explain the rationale behind the differences among the three rules. To accommodate this, the NOR is organized by subject, e.g. application for service, billing, credit and collection, and termination of service. Within each subject area, we explain the rationale behind the difference in regulation between an ETC, a non-ETC, and an IXC. Aside from explaining the differences among the three rules, the NOR also explains the rationale behind particular rule requirements and requests comments regarding the proposed rules.

III. DISCUSSION OF INDIVIDUAL SECTIONS

A. Definitions – Chapters 290, 291, and 292 - §2

Section 2 in each of the three proposed rules (Chapters 290, 291, and 292) contains definitions of the terms and phrases used throughout the rule. While most definitions are used in all three rules, a few are not relevant to each chapter and have been left out of that chapter's list. Further, several of the definitions included in the proposed rules come from other Commission rules. Specifically:

- (1) the definition of “customer” is taken from Chapter 297, relating to slamming;
- (2) the definition of “deposit” is taken from Chapter 870, which governs the interest rates paid on deposits;
- (3) the definitions of “interexchange carrier” and “intrastate telecommunications” carrier are taken from Chapter 280, which governs interexchange service; and
- (4) the definition of “Lifeline/Link-up” is taken from Chapter 294, relating to the provision of Lifeline and Link-up service in Maine.

Finally, while the definitions themselves are generally self-explanatory, some warrant additional explanation.

First, the proposed rules define “basic service” in the same way as the Federal Communications Commission (FCC) did in its May 8, 1997 order which established the requirements for eligible telecommunications carriers (ETCs). In the Matter of the Federal-State Joint Board on Universal Service, Report and Order, CC 96-45 (May 8, 1997) at ¶56. As defined by the FCC, and proposed by the Commission, basic service means single-party service, voice grade access to the public switched telephone network, Dual Tone Multi-frequency or its functional digital equivalent, access to emergency services, access to operator services, access to interexchange service,

access to directory assistance, and access to toll limitation. It also includes all basic service attributes and standards mandated by federal and state statute as well as Commission Rules.

Proposed Chapter 290 defines "minimum basic service" as basic service that is not bundled with other services, complies with the provisions of that chapter, and is made available to all consumers. All carriers offering local service should provide this minimum level of service to all customers. However, nothing in these proposed rules prevents an ETC from offering competitive services (i.e., higher quality service, bundles of services, different service) so long as the carrier offers a minimum basic service that complies with the proposed rule.

The proposed rules' definition of a "bill" is the same as that currently found in Chapter 81 of the Commission's rules and provides that a bill is a written statement (printed or electronic) from a carrier 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. We believe that this definition allows carriers the flexibility to offer alternative types, formats, and periods for billing while ensuring that customers have the basic information they need to understand the charges for which they have been billed. We believe we should use a consistent definition for bill regardless of the provider of the services.

There are also several definitions relating to the federal Truth-in-Billing regulations that have been incorporated into our proposed rules. These definitions are "clear and conspicuous" and "new service provider," and are self-explanatory and support both the FCC's and this Commission's goals of ensuring that customer bills are understandable to the average citizen.

Finally, the proposed rules define "eligible telecommunications carrier (ETC)" as a company designated by the Commission as an eligible telecommunications carrier for purposes of Section 214(e) of the Telecommunications Act of 1996. Section 214(e) relates to the receipt of federal universal service support and requires each state commissions to designate those carriers in its jurisdiction that qualify for such support. As stated earlier, all twenty-four ILECs in Maine are so designated.

B. Jurisdiction – Chapters 290, 291, and 292 - § 3

Each of the three proposed rules applies to a different type of entity or service provider. Chapter 290 applies to all ETCs, Chapter 291 to all basic service providers that are not designated as ETCs, and Chapter 292 to all telecommunications carriers subject to the jurisdiction and supervision of the Commission that offer interexchange service. These proposed chapters also apply to the collection efforts of ETCs, non-ETCs and IXC's for amounts owed by customers who are provided with telecommunications service in the State, to the extent not preempted by federal law.

C. Emergency Moratorium – Chapters 290, 291, and 292 - § 4

Proposed section 4 is a modified version of the language found in section 15 of Chapter 81. The proposed section removes the time limits in that section and allows the Commission, in an emergency, to declare a partial or complete moratorium on the termination or disconnection of telecommunications service by any or all carriers. Because we carefully consider any potential moratorium to determine the appropriate period and continually monitor the emergency for the continued need for the moratorium, we have not proposed any specific time limits to the moratorium.

D. Interruption of Service - Chapters 290, 291, and 292 - § 105

The goal of proposed section 5 is to ensure that the Commission, and the customers of ETCs, non-ETCs, and IXCs, are informed about planned interruptions in service in advance of the interruption. We are especially concerned with the interruption of service to emergency agencies. Thus, notice to appropriate emergency services personnel must be provided for any interruption that is affecting or will affect any emergency services, i.e. 911, fire, police, and hospital. If a prolonged outage is expected, the public will also be notified by the method best suited to the nature of the interruption and the size of the area affected. We have defined a prolonged outage as one lasting for more than one hour. We seek comment on this standard.

With regard to other interruptions, when a carrier schedules a service interruption for maintenance or repairs that will last more than 10 minutes, the carrier must give reasonable notice of the cause and expected duration of the interruption to customers who may be affected. Reasonable notice is as soon as practicable, but before the interruption actually occurs.

Because extenuating circumstances may require a delay in a scheduled interruption, the proposed rule allows the Director of the Consumer Assistance Division to delay a scheduled service interruption for a reasonable period for good cause.

Finally, the refund/credit requirement in Section 5(E) duplicates provisions found in the current terms and conditions of many LECs and requires carriers to give all customers affected by a service interruption that exceeds twenty-four (24) hours in duration a proportional refund or credit on the next bill to reflect the period when service was unavailable.

E. Non-discrimination - Chapters 290, 291, and 292 - § 6

This section is self-explanatory. A carrier will provide 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.

F. Customer Privacy – Chapter 290 - § 7, Chapter 291 - § 8, and Chapter 292 - § 8

We take very seriously customers' comments and complaints to the Commission regarding marketing solicitation. While it is clear that customer-specific usage and payment information should be protected, we seek comment on the level of protection basic customer information such as name, address and telephone number should be given and the effect of any federal statutes or court decisions on this subject. Current Commission rules are silent on the confidentiality of customer records in the possession of a utility. 35-A M.R.S.A. § 704(5) and Chapter 89 only address the treatment of utility customer information in the possession of the Commission. Our proposed rules would require a carrier (ETC, non-ETC, or IXC) to maintain the confidentiality of a customer's personal information, including name, address, telephone number, usage and historic payment information. That information could not be released without the specific affirmative written consent of the customer to any entity other than the Commission except for the purpose of directory listings, debt collection by or for the carrier, credit reporting pursuant to state and federal law, responding to law enforcement agencies pursuant to lawful process, or pursuant to other applicable law. We seek comment on our proposed rules. Specifically, do they strike an appropriate balance between a customer's right to protect personal information and a utility's ability to carry out its obligations?

G. Unfair or Deceptive Practices - Chapters 291 and 292 - § 7

This section is self-explanatory. A carrier may not use a company name that is deceptive or unreasonably confusing to consumers. All carriers are subject to the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A - 214 and related consumer protection statutes.

H. Customer Rights – Chapter 290 - § 8

This section of proposed Chapter 290 is a minor revision of the information required in Chapter 81 § 16(C) of the Commission's current rules. The proposed rule provides that at least annually, ETCs will provide all basic service customers with a written summary of their basic rights. The summary must contain information concerning, but not limited to, billing, payment, and dispute resolution.

I. Application for Service, Confirmation of Orders, and Transfers

1. ETCs – Chapter 290 - §§ 9-11

As explained earlier, federal regulations require that ETCs offer service to all applicants as a condition of their receipt of federal universal service support. 47 C.F.R. § 54.201. Section 9 reflects these federal requirements by generally prohibiting an ETC from refusing to provide basic service to an applicant. An ETC, however, may condition the provision of service on the payment of an undisputed

amount overdue for basic service previously provided by the ETC and/or require the applicant to provide a deposit. These exceptions provide the necessary balance between requiring ETCs to provide service to all customers and requiring ETCs to provide free service to customers who fail to make payments.

Under Section 9(A)(1)(a), an ETC will be required to offer a payment arrangement on an undisputed balance before service is initiated. This allows a customer who has previously incurred charges to pay off those charges over time while providing the customer and the general public with the benefit of having that customer on the public switched network. Absent fraud, if an ETC fails to identify a past due balance before service is initiated, it waives its right to condition or disconnect service on a prior amount overdue. This is a change from the existing Chapter 81 that allows up to sixty (60) days for an unpaid account balance to be added to a new customer's account. We made the change because we believe the time to add a past due balance to new account, as well as the time to negotiate a payment arrangement on the past due balance if necessary, is at the time a customer initiates a new account. Further, Section 9(B) prohibits an ETC from requiring an applicant to pay for service provided in another person's name unless legally required to do so.

Section 9(C) provides that the deposit requirement for residential service must be based on the existence of an undisputed amount overdue for basic service billed to the applicant within the prior six years. Overdue amounts relating to toll service cannot be considered when determining whether an applicant must pay a deposit. In addition, the amount of the deposit is limited to the equivalent of charges for two months of basic service. Again, any charges relating to toll service cannot be considered. This provision is consistent with the requirements of Chapter 81 and our policy of separating toll and local service.

Non-residential applicants may be required to provide a deposit regardless of the customer's creditworthiness, but any such deposit may not exceed the charges for two months of basic service.

Section 9(E) requires an ETC to inform the applicant of the charges associated with the least cost service available to applicant at the time the applicant seeks service. Given the many different levels of service already available and the likely development of new types of services as competition develops, we believe it is important that customers be told what the most basic service available to them is and how much it costs so that they can make an informed decision regarding the type of service they ultimately request.

Section 10 requires an ETC to provide the customer with written confirmation of its order for service within five business days. The confirmation must include information relating to all fees associated with the service, terms and conditions, instructions on how to dispute charges, and any other relevant matters. We believe that as we move to a more competitive marketplace, customer information and disclosure will be essential to ensuring that the market works for consumers. For consumers to

make an informed choice, they must understand what they are choosing. Finally, section 10 allows customers the option of canceling the order without penalty within five days of the postmark of the confirmation notice.

Section 11 clarifies that a customer who transfers service from one location to another or who orders new service within 30 days of disconnecting prior service cannot be considered an “applicant.” This prevents an ETC from imposing deposit and other “applicant” requirements on persons who are merely transferring their service, but with an intervening time lag.

2. Non-ETCs – Chapter 291 - §§ 9-11

Our proposed rules relating to applications to non-ETCs are based upon our belief (discussed above) that giving customers relevant information is essential to a properly functioning competitive marketplace. Thus, Section 9 of Chapter 291 requires a non-ETC to inform all applicants that it can disconnect a customer for any reason with 30 days notice, that it may charge a termination fee, what the geographic scope of the customer’s local calling area will be, whether pre-subscribed toll service will be available and any limitation regarding access to toll providers, and the billing period for basic service, including any advance billing requirements. We believe that each of these items of information is essential to a customer’s decision to leave their current carrier. We also believe that this does not place an onerous burden on the carrier – all of this information should be readily available.

The Non-ETC confirmation of order requirements are identical to the ETC requirements.

Section 11 of Chapter 291 requires non-ETCs to notify customers 30 days in advance of any price increases or changes in terms and conditions, but excludes any increases or changes associated with individual customer contracts or promotional offerings (provided the customer was notified of the changes before entering the contract or accepting the offer). Because the Commission does not closely regulate CLEC pricing, we believe such a requirement is necessary to ensure that customers have the information necessary to make informed decisions regarding telephone service.

3. IXCs – Chapter 292 - §§ 9, 10, 12

The only proposed changes relating to the application process for interexchange service relate to confirmation of the order with written terms and conditions and notification of price increases and changes in terms and conditions. Sections 9 and 10 of Chapter 292 are identical to Sections 10 and 11 of Chapter 291. Again, we believe that for a competitive market to operate properly, customers must be informed of all charges, terms, and conditions associated with their telephone service. Finally, similar to the requirement in section 9 of Chapter 290, section 12 of Chapter 292 requires IXCs that offer more than one service plan to identify and describe the lowest

cost service plan when requested to do so by a customer. Given the many different levels and packages of services already available and the likely development of new types of services as competition develops, we believe it is important that customers be told what the most basic service available to them is and how much it costs so that they can make a more informed decision regarding the type of service they ultimately request. The IXC may, however, require the customer to provide it with information relating to the customer's expected usage so that the carrier representative, using due care, may identify the plan that would most likely produce the lowest bill for the customer.

J. Billing and Payment Standards - Chapter 290 - § 12-13, Chapter 291 - § 12, and Chapter 292 - § 11

In general, the proposed rules for all three types of carriers are very similar. They are based upon the FCC's Truth-In-Billing rules which define a rational and systematic approach to achieving a reasonable level of customer protection in the area of telephone billing practices. Both the FCC's rules and our proposed rules promote consistency and ensure that state efforts complement, and are consistent with, FCC and Federal Trade Commission (FTC) rules concerning consumer protection and cramming. Both the FCC's rules and our proposed rules will help consumers make informed choices and will facilitate telecommunications competition by setting minimum standards for bills. The proposed rules also ensure that information on bills is accurate, understandable, and useful and contains consistent definitions and labels for common charges.

1. Specific requirements for ETCs

In addition to following the rules relating to billing, ETCs (as well as non-ETCs) must comply with Chapter 87 of the Commission's rules, which limit the amounts that may be charged for late payments and returned checks. Also, all ETCs must bill on a regular recurring basis, offer at least one option that provides for monthly billing, and not require more than one month's service be prepaid. These provisions ensure that customers will not be forced to pay for large increments of service at any one time but do not prevent an ETC from offering discounts for prepayment of more than one month's service. Thus, they further one of our universal service goals -- ensuring that all customers in the State of Maine are economically able to obtain basic telephone service.

Finally, the due date for basic service must be at least 25 days after the bill is mailed to the customer. If the ETC mails the bills from outside the state, it must provide for 30 days. This provision ensures that consumers will have at least two weeks between receipt of the bill and the date for payment and, therefore, reasonable time to obtain the funds necessary to pay the bill. This is also consistent with existing Chapter 81.

2. Bill information

There are approximately 15 different pieces of information that must be included in all carriers' bills. As stated above, the goal of these requirements is to provide consumers with the information they need in an easily-readable and understandable format so that they can make informed decisions regarding their telecommunications service. Thus, we propose to require that carriers separate amounts due, amounts paid, due date, late payment dates, and the monthly interest rate applied. We also require itemization of each type of charge and separation of the different services included on the bill (basic, toll, optional). IXCs must also provide the price per minute for all calling cards and calling periods, if applicable, the minimum amount for volume calling plans and the billing increment for the plan selected. Finally, we require all carriers to include information describing how a subscriber may obtain information from the carrier, including a toll-free phone number and address for customer service representatives.

3. Quantification of bill charges

We require all three types of carriers to segregate all direct dial and calling card charges by service provider and place the calls in proximity so that the customer can calculate the average billed prices per minute.² This provides consumers with the opportunity to determine whether they are receiving the service they were promised at the rates that were promised. It also allows customers to comparison shop with other carriers.

a. Bill organization, description, and rate changes

We require all three types of carriers to organize their bills so that consumers can easily identify any new service providers included on the bill and determine which charges are associated with any one carrier.³ Any line item that reflects an addition of service or change in rates must be clearly identified. We also require carriers to clearly label all fees, surcharges, rates, and incentives associated with their service as well as provide a brief, plain language description of the product or service. Finally, we require each carrier to provide a summary section within the bill to help consumers determine with one glance the total amount due, as well as the various activities that result in charges on consumer bills. One of the best ways to combat cramming⁴ is to provide consumers with the means of readily identifying service

² See Chapter 290, § 12(F), Chapter 291, § 12(B) and Chapter 292, § 11(B).

³ See Chapter 290, § 12(G, H and I), Chapter 291, § 12(C, D and E) and Chapter 292, § 11(C, D and E).

⁴Cramming is a charge for a good or service on a customer's telephone bill when the purchase of the good or service was not authorized by the customer.

providers, including new service providers. We believe that this section accomplishes this objective.

b. Disclosures and billing errors

ETCs and non-ETCs that include charges on a bill must clearly identify those charges for which non-payment will not result in disconnection of basic service.⁵ This provision ensures that consumers who are unable to pay their bill understand that their basic service cannot be terminated for failure to pay for toll service and optional services. This will also allow customers to direct partial payments to basic service first to ensure that they retain that service.

With regard to billing errors, ETCs and non-ETCs must both notify their customers of a billing error after they discover or are notified of the error.⁶ The carrier must correct the error within 45 days and investigate the possibility that the error may affect multiple customers. If the error affects more than 10 consumers, the carrier must notify the CAD so that it can assist any consumers who contact the Commission directly. Make-up bills are limited to any unbilled service that was provided during the previous billing period only. This will help ensure that billing errors are promptly corrected by carriers. Refunds, however, must be paid for all service incorrectly billed during the previous six years. The reason for this different treatment is the difference in expertise and knowledge between carriers and consumers. Consumers must depend upon billing information provided to them by the carriers to detect billing errors. If the information provided to a consumer is incorrect, the consumer may have no way of detecting the errors. The carrier, on the other hand, has full control of billing information through its own billing system and, therefore, has the means to readily identify billing errors. We seek comment on this provision. Specifically, is the 30-day limitation too brief for carriers to detect a billing mistake? If yes, what timeframe is necessary for a carrier to detect and remedy billing errors? Please provide a detailed explanation for the recommendation.

K. Payment And Payment Arrangements – Chapter 290 - § 13

Proposed Chapter 290 includes a number of provisions relating to payment and payment arrangements that apply to ETCs only. Once again, ETCs' universal service obligations necessitate additional efforts to keep consumers on the public switched network. In most cases, the ETC will be the "last chance" for consumers to retain their basic telephone service. Thus, with regard to billing, we require ETCs to extend the due date of a bill to the next business day if it falls on a Saturday, Sunday, legal holiday, or any other day the carrier is not open for business. We also require ETCs to apply partial payments to basic service first and then to non-

⁵ See Chapter 290, § 12(J), Chapter 291, § 12(F).

⁶ See Chapter 290, § 12(K), Chapter 291, § 12(G).

basic service. This ensures, as does section 14, that consumers do not get disconnected from basic service for failure to pay for non-basic service.

We also continue our current practice of requiring ETCs to offer customers who do not pay their basic service account in full the option of entering into a payment arrangement. This obligation does not apply if the amount overdue is a result of a broken payment arrangement that was entered into previously. The consumer must agree to both the payment arrangement and to pay each future bill for basic service on time – the payment arrangement should be a method for catching up on past payments and not deferring future payments. The ETC must mail a written confirmation of the arrangement within three business days after the arrangement is made. The written confirmation must include the specific terms, the CAD's address and toll free numbers, and a statement that the ETC can disconnect on seven days notice for failure to comply with the payment arrangement.

L. Disconnection

1. ETCs – Chapter 290 - §§ 14

Our proposed rule relating to the disconnection of basic service by ETCs reflects the federal and state goal of universal service, i.e. to keep as many people as possible on the public switched network. Thus, ETCs may only disconnect basic service for reasons associated with basic service, such as failure to pay undisputed basic service charges,⁷ unauthorized use, and abandonment. An ETC may not disconnect basic service due to a customer's failure to pay for toll or optional services. Further, an ETC is prohibited from disconnecting or threatening to disconnect basic service until after prepaid service is provided. Finally, an ETC may not disconnect or threaten disconnection if it has been notified of a medical emergency pursuant to Section 15 of the proposed rules.

The ETC must provide written notice at least 14 calendar days before the disconnection date stated on the notice if the disconnection is for failure to pay or make a payment arrangement and seven calendar days before the disconnection date stated on the notice if the disconnection is for a broken payment arrangement, failure to pay a security deposit, or failure to comply with a Commission or CAD decision. The longer, 14-day period provides the consumer with the time necessary to contact the utility to negotiate an affordable payment arrangement prior to disconnection. The shorter, seven-day period, is issued in situations where the consumer has already contacted the utility or the CAD regarding the payment issue (usually to negotiate a payment arrangement).

The seven-day period is longer than the three days that are currently provided in Chapter 81. The reason that only three days was provided in the

⁷The overdue amount can also include late payment fees assessed on the overdue basic service.

past was to minimize the carrier's potential exposure for incurring additional monetary losses associated with customer non-payment for both basic and toll charges. However, because the proposed limitation applies only to the provision of local service and not toll, the threat of incurring additional losses is minimized. The additional time will, however, assist the customer with retaining his or her phone service. For this reason, we believe the benefit of providing additional time outweighs the potential for increasing a carrier's exposure.

The written notice must contain eight pieces of information, including a statement of the customer's right to postpone disconnection because of a medical emergency, a statement of the customer's right to submit a disputed matter to the Consumer Assistance Division prior to the disconnection date and a statement of the requirements for reconnection. Each written notice will be effective for the disconnection date stated in the notice and for five business days after that date. If the disconnection does not occur during this time, the ETC must re-notice the disconnection pursuant to the rules so that the customer will have adequate notice of the disconnection.

In addition to the specific written notice requirements, an ETC must make a reasonable effort to contact the customer by phone before the basic service is disconnected. This is to ensure that consumers are aware that they are in imminent jeopardy of losing their basic telephone service prior to the actual disconnection. It also addresses situations where the consumer did not receive the notice through the mail. In order to ensure that customers are able to contact either the Commission regarding a disputed matter or the ETC to re-establish service, disconnection may not occur on a Friday, weekend, legal holiday, any other day when the ETC or the Commission is not open for business, or on the day before any day when the ETC or the Commission is not open for business. Disconnection notices cannot be issued or mailed until the business day after the due date of the bill or payment arrangement amount, the failure of which to pay provides the basis for the disconnection. These requirements are similar to those found in Chapter 81.

An ETC is not required to provide any notice if the disconnection is at the customer's request or if it arises from unauthorized use, a dangerous condition, or abandonment.

2. Non-ETCs – Chapter 291 - § 13

The proposed rules relating to disconnection by non-ETCs reflect our belief that in a competitive marketplace, a carrier who does not receive universal service funding should be free to disconnect a customer for any non-discriminatory reason so long as proper notice is provided to the customer. The one limitation we believe necessary is that disconnection must be postponed if the customer certifies a medical emergency. Thus, the proposed rules require non-ETCs to provide 30-days written notice of the disconnection, including a statement of the customer's right to postpone disconnection due to a medical emergency. In addition, the disconnection

notice must contain a statement of the customer's right to obtain service from an ETC and direct the customer to the Commission and its website for a list of ETCs. We believe this information is essential to promote our universal service goals – customers must know that they can obtain service from an ETC.

Unlike an ETC, a non-ETC may include a notice for termination of intrastate toll and/or optional service on the same notice issued for disconnection of basic service as long as the notice complies with these rules and as long as the overdue amount for intrastate toll and/or optional service is clearly and completely separated from the amount overdue for basic service and provides the same date for disconnection for all services. A non-ETC may also disconnect prepaid service before the customer uses all of the prepaid service as long as the unused balance is refunded to the customer.

3. IXCs – Chapter 292 § 14

The disconnection procedures for IXCs are less stringent than those for non-ETCs due to the many carrier options for toll service and the availability of pre-paid calling cards. In order to disconnect intrastate toll service, the carrier must provide written notice seven days prior to the disconnection date. The notice must include a statement of the customer's right to submit a disputed matter to the Commission prior to the termination date. There are also provisions relating to medical emergencies that are discussed below.

We recognize that the notification period proposed could create a situation where a customer purposely incurs significant toll charges once the customer receives notice of a pending disconnection. We seek comment on this issue. Specifically, if the seven day notice period proposed in the rule puts an IXC at undue financial risk, what alternative is available that both balances the need to notify customers of a pending disconnection (thereby allowing the customer to remedy the situation and prevent the disconnection) and that minimizes the financial risk put on carriers by customers running up their toll bill?

M. Medical Emergency – Chapter 290 - § 15, Chapter 291 - § 14 and Chapter 292 - § 14

Proposed Chapter 290 prohibits an ETC from disconnecting and refusing to connect or reconnect minimum basic service to any residence when a member of the household is certified by a physician as having a medical condition that without access to basic service would pose a serious risk of harm to that individual. The proposed rule does, however, allow the disconnection of basic service in situations where the household has multiple telephone lines phones, provided that minimum basic service continues through at least one telephone line in the household. An ETC must also accept and provide basic service to a customer who is transferred to the ETC by a non-ETC when the customer or member of the customer's household is certified for a medical emergency. The ETC is prohibited from assessing a charge for the transfer of

service under these circumstances. We believe this requirement is consistent with the requirement that an ETC accept all customers, as described earlier in this order. We seek comment on the appropriateness of requiring an ETC to accept a transfer from a non-ETC.

Once a customer notifies an ETC that a medical emergency exists, the ETC may not disconnect service for at least five (5) calendar days during which time the customer must have the medical emergency certified by a physician. The certification may be oral or written, although the ETC may require written confirmation. The ETC may not disconnect the customer for the time period specified in the certification or sixty (60) days, whichever is less. A certification may be renewed for additional periods of up to sixty days as long as the medical emergency continues. This is a change from the existing Chapter 81 that limited the disconnection period to 90 days after a customer declared a medical emergency. The reason the Commission has strengthened this protection is to ensure that customers who most need telephone service (i.e. critically ill consumers) retain the service.

Proposed Chapter 291 prohibits a non-ETC from disconnecting basic service to any residence when a member of the household is certified by a physician as having a medical condition that without a basic service would pose a serious risk of harm to that individual. The same five-day extension period and length of service and renewals apply to a non-ETC as do for an ETC under Chapter 290. However, during the medical emergency, the non-ETC may transfer the customer's basic service to an ETC. The non-ETC cannot assess a fee for the transfer and must notify the customer when the transfer is complete.

Section 15 of proposed Chapter 292 prohibits an IXC from disconnecting a customer during a medical emergency when the customer must dial an interexchange number to reach critical medical personnel or medical services for which the customer depends for treatment or emergency services without receiving approval from the Commission. The rationale for this provision is the same as that described above.

The Commission recognizes that there may be situations where the loss of basic service will not necessarily have an adverse impact on a customer's medical condition. In those situations, the Commission will have the authority to authorize disconnection. We seek comment on this provision. Specifically, are there alternative ways of ensuring that customers that require immediate contact with medical personnel have the ability to make such contact?

N. Warm Jack – Chapter 290 - § 16, Chapter 291 - § 15

Proposed Chapters 290 and 291 require ETCs and non-ETCs to maintain a "warm jack" or similar service in all residences after disconnection. A warm jack allows a consumer to plug in a phone and dial the local emergency services number. Warm jacks are standard procedure in the telephone industry and ensure access to emergency services.

O. Reconnection -- Chapter 290 - § 17

An ETC must reconnect basic service within one business day after the cause of disconnection has been removed. An ETC must also offer a customer a payment arrangement as a means for reconnection if the customer was disconnected for non-payment. Finally, ETCs may establish reasonable charges for re-connection of service.

Non-ETCs and IXCs are not required to reconnect service to a customer that they have disconnected.

P. Optional Services – Chapter 290 - §18, Chapter 291 - § 16

Section 18 of Chapter 290 requires ETCs that offer optional services (anything other than basic service) to inform customers that such services are optional and not necessary to receive basic service. Section 18 also requires ETCs to inform customers of all the costs associated with optional services and to make certain disclosures on any bills for optional services. Specifically, the bill must clearly state each service provided, the cost, and each payment or credit made to the account during the billing period.

Finally, Section 18 requires ETCs that combine optional and basic service bills to ensure that the optional service charges are readily identifiable as non-basic. The ETC must also disclose that failure to pay for optional services cannot cause disconnection of basic service. In situations where the ETC is offering an "Enhanced Bundled Service," the ETC must notify the customer that failure to pay for the bundled service may result in the customer defaulting to the minimum basic service plan. We believe this requirement to be very important to our universal service goal of ensuring that all persons have basic access to the public switched network.

Q. IXC Marketing Efforts – Chapter 292 - § 13

The purpose of Section 13 of Chapter 292 is to ensure that customers are not subjected to either direct or mass marketing efforts by carriers who are unwilling or unable to provide the services advertised. The Commission has received numerous complaints regarding these practices - they both anger and confuse consumers. We believe the requirements of the proposed rule will curtail these practices. Section 13(A) addresses direct marketing efforts such as mailings or phone calls and requires any such IXC to be both ready and willing to provide the marketed service to all customers who are the subject of the direct marketing effort. Section 13(B) addresses mass marketing efforts such as national television or newspaper ads and requires that the IXC disclose the fact that service may not be available in all areas.

R. Dispute Resolutions – Chapter 290 - § 19, Chapter 291 - § 17, Chapter 292- § 15

The dispute resolution section is substantively the same for the three rules. While the services that each provide, as well as the particular regulation applicable to each type of carrier, are different, the procedure that the carriers must follow to resolve customer complaints and inquiries are similar.

1. Employees Available, Toll-Free Line

The proposed rules require that ETCs, Non-ETCs, and IXC's have a toll-free telephone number that customers can call to make inquiries and resolve billing and service disputes.⁸ The proposed rules also require the carriers to have an adequate number of trained employees available to respond to customer inquiries and resolve customer complaints. The aforementioned employees must be authorized by the carrier to enter into payment arrangements, resolve disputes, address requests for service, and answer questions from customers.

A common complaint from customers is that they often have difficulty reaching a person at the company to answer a question or resolve a dispute. We believe it is critical for customers to be able to call a carrier toll-free and reach a live person who can resolve the customer's issue. Many complaints received by the Commission begin as simple questions or inquiries that are not addressed by the carriers. If a customer cannot reach a live person to answer a question or resolve a dispute, the customer may become frustrated and contact the Commission to seek a resolution to the matter.

2. Automated Attendants

As stated in the previous paragraph, we believe it is critical for customers to be able to reach a company representative to answer questions and resolve complaints. With this in mind, we also require carriers that use automated attendants to inform customers of the action of holding for a live attendant, the amount of time that customers can expect to wait while on hold, and the opportunity to connect to a customer representative at the first menu level.⁹ With the significant use of automated attendants by telecommunications carriers, customers often complain about not being able to reach a live person or navigate their way through the myriad of menu options that some companies provide. In addition, unscrupulous companies may "hide behind" an automated attendant system, making it so difficult for customers to reach a representative who can resolve their problems that they simply give up.

⁸ See Chapter 290, § 19(A and C), Chapter 291, § 17(A and C) and Chapter 292, § 15(A and C).

⁹ See Chapter 290, § 19(B), Chapter 291, § 17(B) and Chapter 292, § 15(B).

3. Dispute Resolution Process

The proposed rules require carriers to investigate customer disputes, to report the results of the investigation to the customer or the applicant, as well as attempt in good faith to resolve the dispute.¹⁰ It is critical for customers to be able to resolve disputes quickly and easily directly with the carriers. Carriers should also preserve a record of their investigation in the event a customer files a complaint with the Consumer Assistance Division (CAD). Using the record created by the carrier, the CAD can determine if the carrier made a "good faith effort" to resolve the dispute as well as render a decision regarding a customer complaint filed with the CAD.

4. Notification of Right to File a Complaint with the CAD

The proposed rules require carriers to notify customers of their right to file a complaint with the CAD, as well as provide the customer with the CAD's toll-free number, if the carrier cannot resolve a dispute directly with an applicant or a customer after the carrier has made a "good faith effort" to do so.¹¹ For customers to take advantage of their right to appeal a carrier's decision to the CAD, they must be aware of such a right. Because the carrier is the sole entity that is aware of the customer's dispute (besides the customer), the carrier is the logical entity to make a customer aware of her right to file a complaint with the CAD.

5. Limitation of Disconnection/Termination of Service Pending Resolution

The proposed rules prohibit the disconnection or termination of service for customers who have filed a complaint with the CAD, pending the resolution of the complaint.¹² This is to allow the CAD time to review the complaint and any relevant evidence and make a determination regarding the carrier's compliance with the rule, prior to the customer being disconnected.

The proposed rules also limit the reconnection of customers who file a complaint after a disconnection has occurred to situations where the Director or the Assistant Director of the CAD has determined that reasonable grounds exist that the carrier failed to notify the customer of his right to file a complaint with the CAD or the carrier issued a disconnection or termination notice that fails to conform with the requirements of the proposed rule. The purpose of this subsection is to prevent undue administrative burden and cost to carriers associated with reconnecting a customer simply because that customer files a complaint with the CAD, while also ensuring that carriers do not disconnect or terminate a customer's service without issuing proper

¹⁰ See Chapter 290, § 19(E), Chapter 291, § 17(D) and Chapter 292, § 15(D).

¹¹ See Chapter 290, § 19(F), Chapter 291, § 17(E) and Chapter 292, § 15(E).

¹² See Chapter 290, § 19(G), Chapter 291, § 17(F) and Chapter 292, § 15(F).

notices and informing customers of their right to dispute disconnections by complaining to the CAD.

6. CAD Complaint Process

The proposed rules prescribe the process the CAD will follow when taking and resolving consumer complaints.¹³ The proposed rules provide the CAD with the discretion to reject, without investigation, complaints that are outside its jurisdiction or are patently without merit. This is a change from the existing Chapters 81 and 86 where the CAD accepts all complaints from customers, regardless of whether the complaint has merit. Carriers often complain that complaints that are outside the CAD's jurisdiction or that are patently without merit should not be addressed by the CAD. We agree.

This change will also provide the CAD with discretion to reject complaints from customers when the CAD has already issued a decision in the case or when the complaint is clearly intended to avoid an appropriate action by a carrier. Under Chapters 81 and 86, customers can repeatedly break payment arrangements established by the CAD and/or the utility and continue to file complaints with the CAD to avoid disconnection or to change the terms of the payment arrangements. In addition, consumers can file complaints against utilities for virtually any reason, and the CAD must process the complaint, even though the CAD may not have jurisdiction or the authority to issue a decision. The proposed language will allow the CAD to reject complaints that are clearly outside its jurisdiction or that are patently without merit, without the need to invest the time to process the complaint.

The proposed rules also require the CAD to complete its investigation and issue an oral or written decision on the complaint's merits as soon as practicable, as well as to inform the customer and the carrier of the right of both parties to appeal the CAD's decision. This is a change from the existing rules that require the CAD to complete its investigation and issue a decision no later than 20 business days after it receives the complaint. This 20-day requirement has proven to be an unrealistic timeframe to resolve complex complaints. Complex cases often require a significant amount of time to collect and review data, research past decisions issued by CAD staff, and render an appropriate decision. If information is not provided to the CAD in a timely manner, or if additional information is needed to resolve a complaint after an initial request for information is made, the 20-day period can lapse before the CAD has the information necessary to make an informed decision. In addition, the quality of a decision may be impacted if the CAD is forced to rush its review of a complaint.

¹³ See Chapter 290, § 19(H), Chapter 291, § 17(G) and Chapter 292, § 15(G).

7. Appeal Process

This subsection prescribes the process by which appeals of CAD decisions will be processed.¹⁴ The proposed rules provide customers with ten (10) calendar days from the date of a CAD decision to file an appeal. This is a change from the five (5) business days that consumers currently have under Chapters 81 and 86. The reason for this change is to provide an easily distinguishable date to customers by which an appeal must be filed. By using calendar days as opposed to business days, the ambiguity regarding whether a particular day is considered a business day or not is eliminated.

The proposed rules state that the Commission will review the CAD 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. Once the Commission's review of the CAD's decision is completed, the proposed rules require the Commission either to affirm the decision or if the decision, remand the complaint to the CAD for reconsideration with an explanation of the remand, or issue an order reversing or altering the CAD's decision.

This provides the Commission with the flexibility to effectively resolve appeals of CAD decisions. In some situations, the Commission may decide that sufficient evidence exists for it to reverse or alter the CAD's decision. In other situations, the Commission may decide that additional evidence must be gathered and/or considered by CAD. In these situations, the matter may be referred back to the CAD for the collection of additional evidence and reconsideration of the matter by the CAD based on this new evidence. The Commission may also provide direction in its remand to the CAD for the CAD to follow in its further examination.

S. Records; Reports -- Chapter 290 - § 20

The information requested in the reports section allows ETCs, as well as the Commission, to evaluate the ETC's performance regarding credit and collection activities. The information will also allow the Commission to track the effectiveness of the LEC's collection of previously unpaid accounts that are transferred to an applicant's new account at the time of the application for service (section 9). We note that while non-ETCs and IXC's are not required to submit these reports, the Commission retains its statutory authority to request information from any utility.

T. Waiver – Chapter 290 - § 21, Chapter 291 - § 18, Chapter 292 – § 16

All three rules contain identical provisions allowing the granting of waivers for any part of the rule that is not required by statute. Waivers may be requested by any person subject to the rule and may be granted by the Commission, the Director of CAD

¹⁴ See Chapter 290, § 19(I), Chapter 291, § 17(H) and Chapter 292, § 15(H).

or a Hearing Examiner assigned to a proceeding related to the rule. A carrier may make a request to the CAD for an exemption from any provision of the rule as applied to an individual customer whose conduct and known financial condition pose a clear danger of substantial losses to the carrier. For example, a customer may seek to terminate service in his or her name and re-establish service in another name to avoid payment of an overdue amount. The carrier involved could request a waiver of our rules regarding the establishment of service in this specific situation. The request must include a detailed statement of facts and may be made in writing or orally. However, all oral requests must be followed up with a written version and the carrier must notify the individual customer of the requested exemption.

The CAD may summarily reject the request without further investigation if a carrier fails to satisfy the standard in its request for exemption. In all other cases, the CAD must conduct an informal investigation before issuing a decision. The CAD may orally notify all affected parties of the decision but must promptly issue a written decision which describes the exemption, explains the rationale, and informs the parties of their right to appeal. A party may appeal the CAD decision to the Commission under the appropriate section of each rule.

IV. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing will be held on March 21, 2001, at 9:00 a.m. in the Public Utilities Commission hearing room. Please notify the Commission if special accommodations are needed to make the hearing accessible to you by calling 1 (207) 287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

Written comments on the proposed rule may be filed with the Administrative Director no later than April 30, 2001. Written documents should refer to the Docket Number of this proceeding, Docket No. 2001-43.

V. FISCAL AND ECONOMIC IMPACT

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

VI. SERVICE

The Administrative Director shall send copies of this Order and the attached Rule to:

1. All telephone utilities operating in Maine;
2. The American Association of Retired People (AARP);

