

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 140

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Petition for Rulemaking to Revise)	
Billing and Collection Procedures)	ORDER REVISING
For Telecommunications Companies)	RULE R12-17(c)
Regarding Local Disconnection and)	
Toll Denial)	

BY THE COMMISSION: On August 27, 2007, the Commission issued an Order Adopting Revision to Commission Rule R12-17 and Requesting Further Information with respect to amendments to Rule R12-17(c).¹ Specifically, the Commission sought “empirical, statistical, and other information” from the North Carolina Telecommunications Industry Association (NCTIA)² and AT&T North Carolina (AT&T) regarding the following: (1) the raw number and percentage of disconnects of local service by company due to the customer’s failure to make payment, (2) the raw number and percentage of customers by company making partial payments for each month, (3) the raw number and percentage of customers that make partial payments and who lose service other than local, (4) the raw number and percentage of customers by company that make partial payments and who lose local services, (5) the types of services that are being lost, (6) the nature and amount of typical partial payments, (6) statistical information regarding the above to the extent practicable from other states that have adopted an approach to partial payments like that proposed by the NCTIA,

¹ Rule R12-17(c) currently reads: “(c) Partial payments to telephone utilities. Partial payments to local service providers will be allocated as follows: first to local service, second to other regulated services, and third to nonregulated service. In the event a customer or an agent of a customer makes a payment that is within \$1.00 of the past due amount and in the absence of the customer’s or agent’s specific instruction to apply the payment otherwise, the payment may be allocated as follows: first to past due local service, second to other past due regulated service, and third to past due nonregulated service.” The NCTIA’s proposed amendment to Rule R12-17(c) reads: “Partial payments to telephone utilities. In the absence of the customer’s instructions to apply the payment otherwise, partial payments to local service providers will be allocated as follows: first to the past due bundled or unbundled local service, then to past due other services, then to current bundled or unbundled local service and then to current other service.”

² When the NCTIA’s Petition was filed on May 7, 2007, NCTIA’s Commission regulated incumbent local exchange company (ILEC) members included Citizens Telephone Company, CT Communications, Inc., Ellerbe Telephone Company, Embarq, Lexcom Telephone Company, MebTel Communications, North State Communications, Pineville Telephone Company, Randolph Telephone Company, TDS Telecom, Verizon South, Inc., and Windstream Communications. Since that time, AT&T North Carolina has become a member of the NCTIA. In addition, the membership of the NCTIA includes a number of telephone membership corporations not regulated by the Commission.

and (7) any other empirical evidence derived from customer preference surveys or studies relevant to the NCTIA's partial payment approach.

The Commission also sought comment on certain other issues. The *first* issue related to the use of the terms "regulated" and "non-regulated". The Commission wanted to know what current working definition the members of the NCTIA were in fact using and whether those terms should continue to be used in the rule or be discarded and some other terminology used in their place. The *second* issue had to do with a non-uniform billing rule—that is, whether the NCTIA's proposed Rule R12-17(c) should be authorized for use as *an alternative* to the present rule. The *third* issue was the weight that should be assigned to customer preference versus the public policy of favoring preservation of access to local service in the context of Rule R12-17(c).

In the August 27th Order, the Commission observed that the NCTIA's proposed amendment to Rule R12-17(c) was "easily the most controversial issue in this docket." The Commission noted that the NCTIA had argued that customer surveys indicated that customers had "migrated toward a credit card mentality" and expected the minimum amount that must be paid so as to avoid local service disconnection to be analogous to the minimum payment on a credit card bill which keeps the entire account current. The NCTIA asserted that customers did not understand that, under the present rule, while a partial payment may allow them to retain local service, it may result in the loss of other services. This misunderstanding has created customer confusion. The NCTIA did not believe that the revised rule would operate to deny services to North Carolina customers and submitted affidavits that partial payment situations leading to cut-off are, in fact, relatively infrequent. The NCTIA noted that AT&T had opposed its proposed revision and attributed this opposition to the expenses AT&T would incur in shifting over to a new system.

The Public Staff and Attorney General strongly disagreed with the approach proposed by the NCTIA. They argued that the policy of assigning top priority to the distribution of partial payments to local service should be maintained because, otherwise, the likelihood of local service disconnection would be increased. They noted that the priority accorded to local service is an intentional policy and an important one. The Attorney General also criticized what it saw as a lack of proof for the NCTIA proposal. No complaints or letters from consumers pressing for the change NCTIA seeks were provided, and the Attorney General said it had received none.

In the August 27th Order, the Commission concluded that preservation of local service is certainly an important priority. However, the Commission acknowledged that major changes had taken place in the telecommunications marketplace since 2000, when Rule R12-17 was enacted. For example, there is an increasing emphasis on bundled as compared to unbundled or stand-alone services. The Commission also suggested that an ultimate question, which the parties had not directly addressed, was how much weight the Commission should give to the policy of preserving access to local service as compared to the policy of honoring customer preferences in developing a default rule governing the assignment of partial payments among the various portions

of the customer's bill. For reasons such as these, the Commission believed that it should request and receive further information as set forth in the Order. However, since there was general consensus concerning the other proposals put forth by the NCTIA, the Commission approved the balance of the amendments proposed by the NCTIA, together with certain other technical changes.

Responsive Data from the NCTIA and AT&T

The **NCTIA** on November 8, 2007, filed a Response to the Commission Order Requesting Information setting forth such data as was submitted to it by its membership. The actual statistical data was submitted in an attachment marked "Confidential" and consisted of submissions from Carolina Telephone and Telegraph Company—North Carolina Division (Embarq); Verizon South, Inc.—North Carolina (Verizon); Ellerbe Telephone Company (Ellerbe); and North State Communications (North State).

The NCTIA explained that not all members of the NCTIA were able to provide the information requested by the Commission and that one current member, AT&T, was asked to provide information separately. The absence of data from small ILEC members of the NCTIA resulted from the fact that most small ILECs do not maintain databases with partial payment information and that attempts at manual reconstruction had proved too burdensome. Moreover, even for those companies that do maintain databases with information related to partial payments, not all of those companies collect the same data or organize the data in the same way. For example, Verizon does not separately track the number of customers making partial payments, as distinguished from customers who fail to make any payment within the period that the payment was due. While Verizon's data suggests that in excess of 25% of its customers make partial payments each month, this is misleading because the data provided by Verizon in response to the Commission's second question represents the total number of Verizon customers who do not pay their account in full by the due date in a given month. Verizon does not maintain data that separates those customers making partial payments from those customers failing to make any payment within the time payment was due, but instead lumps all those customers into the same category. Thus, the Verizon data does not purport to show just the number and percentage of customers making partial payments. Similarly, the NCTIA could not draw definite conclusions from the data provided by North State and Ellerbe, except to say that the data does confirm that only a small percentage of customers make partial payment.

Nevertheless, the NCTIA argued that the data provided by Embarq was particularly probative because it was the only NCTIA member providing comprehensive data from more than one state, including other states where the partial payment rules are analogous to the revised rule proposed by the NCTIA. Embarq collected the Commission-requested data from its operations in North Carolina, South Carolina, and Texas. According to the NCTIA, "[t]he current rules in South Carolina and Texas allow Embarq to apply partial payments in the fashion proposed by the NCTIA, meaning that partial payments in South Carolina and Texas are applied first to past due balances and

then to current balances.”³ The data shows that the percentage of customers making partial payments who lose local service is fairly consistent among the three states, but considerably more North Carolina customers lose other services.⁴ The NCTIA argued that this showed that there is no harm to North Carolina customers in adopting the rule proposed by them and therefore urged the Commission to approve its partial payment proposal.

AT&T filed responsive information on November 8, 2007, and a revised data sheet on December 10th. AT&T also filed Responses and Reply Comments on December 10, 2007. In its December 10th filing, AT&T noted with respect to the responsive information submitted on November 8th that it had no statistical data relative to other states that may have adopted proposals similar to that made by the NCTIA. AT&T uses the same partial payment allocation procedures throughout the Southeast region and Texas as it does in North Carolina. Neither South Carolina nor Texas has rules addressing the application of partial payments as specific as North Carolina’s. AT&T is also not aware of any surveys or studies relevant to the adoption of the NCTIA’s partial payment approach.

AT&T also commented with respect to its review of the NCTIA’s non-proprietary data that there appears to be a discrepancy in the data captured between Embarq and AT&T. AT&T’s information included “the customers that make partial payments and who lose service”—that is, those numbers represented customers whose dial tone was temporarily suspended but not completely disconnected as well as those whose service was completely disconnected. AT&T emphasized that the number of customers whose service was actually disconnected was considerably lower. AT&T’s additional data reveals that an average of 1.5% of its customers who made partial payments were completely disconnected as opposed to the approximately 11% who “lost service” through dial tone suspension or disconnection which was shown in the original information.

AT&T disagreed with the statement made by the NCTIA that the current rule increases AT&T’s operating costs. The payment allocation method currently in use is consistent throughout the AT&T region, and AT&T’s view is that a change in the system would require extensive resources and time.

³ NCTIA Comments, November 8, 2007, p. 3. Compare this with AT&T’s statement, noted at p. 4 above, that AT&T uses the same partial payment allocation procedures throughout the Southeast region and Texas as it does in North Carolina. Interestingly, the text of the Texas rule bears a greater degree of resemblance to current Rule R12-17(c) than to the NCTIA proposal in terms of the preference given to the maintenance of local service. Section 26.27(a)(8) of the Rules of the Public Utilities Commission of Texas provides: “(8) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service.” As for South Carolina, it does not appear that South Carolina has a rule that governs how partial payments are to be handled.

⁴ According to Embarq, the average percentage of customers making partial payments who lose local service is 2.03% for North Carolina, 2.29% for South Carolina, and 2.81% for Texas, whereas the average percentage of customers losing service other than local is 9.16% for North Carolina, 0.06% for South Carolina, and 3.11% for Texas.

In sum, AT&T held the view that a change in the current rule would likely cause only a small increase in the number of disconnects. Under the current rule, partial payments are applied to the oldest regulated bill amount and then to the current regulated bill amount, resulting in lower minimum payments. If the rule is changed to require partial payments to go to the oldest regulated amount and then to the oldest non-regulated amount, a customer who has a past due bill would have to pay the regulated amount in addition to the current regulated amount in order to avoid disconnection. This assessment is confirmed by the NCTIA's filing that compares disconnection rates in North Carolina to those in South Carolina and Texas—viz., N.C. 2.03%; S.C. 2.29%, and TX. 2.81%.

NCTIA Reply Comments Regarding AT&T and TWTC Comments⁵

On December 17, 2007, the NCTIA filed a Motion to File Attached Further Reply Comments. This Motion was granted with the proviso that other parties should have the opportunity to respond. In its further comments, NCTIA stated that it believed that the comments of AT&T and the late-filed comments of TWTC deserved a reply. With respect to AT&T's statement that the NCTIA had said that the current rule increased AT&T's operating costs, the NCTIA said that the portion of the statement concerning operating costs was not directed to AT&T but to other members of the NCTIA. The NCTIA also stated that AT&T had misunderstood the NCTIA's proposed changes when it asserted that, "[i]f the rule is changed to require partial payments to go to the oldest regulated amount and then to the oldest non-regulated amount, a customer who has a past due bill would have to pay the regulated past due amount plus the non-regulated past due amount in addition to the current regulated amount in order to prevent disconnection."⁶ The NCTIA said that its partial payment proposal does not change in any way the minimum amount that must be paid in order to maintain local service or the minimum amount that must be paid to maintain local and toll service. The NCTIA noted that, under Rule R12-17, the minimum payment due amount shown on the disconnect notice does not include any current charges, since service can only be disconnected for nonpayment of past due charges. If the current charges become past due, the customer will receive an additional disconnect notice for those charges prior to interruption of service. The NCTIA offered three scenarios to illustrate the point.

As for TWTC's statement that it read Rule R12-17 as exclusively concerned with residential services, the NCTIA stated that this was in error because Rule R12-17 applies to both residential and business services. It is true there are portions of

⁵ The TWTC comments are described beginning on page 7 below under the heading "Regulated vs. Non-Regulated." The AT&T comments are described beginning on page 4 above.

⁶ In Further Comments filed on January 11, 2008, responding to the NCTIA's Further Reply Comments of December 17, 2007, AT&T clarified that it did not believe that the NCTIA's proposed rule change would result in disconnection of a customer's service if the customer is current with his regulated charges. A customer's local service can only be disconnected for non-payment of past due local charges, and the minimum amount due that appears on disconnect notices does not include current charges. However, for a customer having limited funds and making only partial payments, the customer may have difficulty paying each subsequent month's current local charges if the partial payments are applied totally toward a past due balance, thus exacerbating the possibility of losing basic local service over time.

Rule R12-17 that specifically apply to residential services, such as the section dealing with disconnect notices, but there are other provisions, like the one dealing with treatment of debts for telephone service that are more than three years old, which apply to both residential and business service.

Public Staff and Attorney General Comments on Data

The **Public Staff** filed comments on December 10, 2007, regarding the informational filings. The Public Staff's first observation concerned the relative paucity of the statistical information submitted by the NCTIA. More specifically, the Public Staff noted that the NCTIA was basing its conclusions on data provided by just one company, Embarq. Embarq provided data pertaining to partial payments and disconnection of local service for North Carolina, Texas, and South Carolina, finding that, while there was little variation in the percentages of customers who lost local service, considerably more customers in North Carolina were disconnected from other services than in Texas or South Carolina. The implication that the NCTIA drew from this information was that this difference was due to the current North Carolina policy on partial payments as opposed to that applicable in Texas or South Carolina. However, even if the Embarq data is representative, there is no way to confirm whether the conclusion that Embarq draws from this data is correct. In any event, the data provided by North State conflicts significantly with the Embarq data. The Embarq data indicated that the ratio of customers making partial payments and losing services other than local, compared to customers making partial payments and losing local service, was over 4 to 1. The North State data was the reverse—a much larger percentage of customers making partial payments were disconnected from local service than from other services. While it is unclear how significant this difference between the two companies is, it does point to the difficulty of basing a decision on support data from just one company.

The Public Staff also noted that AT&T had provided statistical information based on a data over a two-year period. AT&T did not initially comment regarding the data it filed but it is worthwhile to note that, as with North State, a much larger percentage of AT&T customers lost local service than lost other services after making partial payments.

With respect to the data supplied by Embarq, the Public Staff disagreed with the conclusions reached by the NCTIA. While the data does reflect that North Carolina customers making partial payments lose services other than local service more frequently than similarly situated South Carolina and Texas customers, this may simply be a tradeoff with respect to the loss of local service. Embarq's data reflects that a larger percentage of customers making partial payments lose local service in South Carolina and Texas than in North Carolina. In South Carolina the difference is approximately 13% (2.03% compared to 2.29%) and in Texas approximately 38% (2.03% compared to 2.81%). In both South Carolina and Texas, the percentage of customers being disconnected for nonpayment is higher than in North Carolina. It is not unreasonable to believe that, if the rule were changed as the NCTIA proposes, the percentage of customers losing local service might rise.

The **Attorney General** argued that the NCTIA's data does not support the proposed rule change. First, it did not provide enough data for the Commission to give the data any weight. Second, it focused on information provided by one company, Embarq, in just three states. Third, to the extent the data showed anything, it showed that North Carolina customers had local service disconnected fewer times than consumers in Texas or South Carolina.

"Regulated vs. Non-regulated"

The **NCTIA** argued that, while the terms "regulated" and "non-regulated" may have specific legal meaning in telecommunications regulation, the terms have little practical significance to customers. NCTIA members have generally understood the term "regulated" as describing local service and the vertical services tied to local service, while the term "non-regulated" is typically used by its members as generally including all other types of service. The NCTIA also believed that customers tend to understand "regulated service" as referring to their local telephone service. A reasonable approach would be to substitute the term "local" for "regulated" service and "other services" for "nonregulated services" where they appear in Rule R12-17.

AT&T agreed that the terms "regulated" and "non-regulated" have little meaning for consumers. Definitions can vary by state. The most important information for consumers to understand is the amount they must pay in order to avoid denial of local service. AT&T concurred with the NCTIA's recommendation that "local" and "other" services should be used instead of "regulated" and "non-regulated."

The **Public Staff** noted that, when Rule R12-17 was initially proposed, the services regulated by the Commission included local service and intrastate intraLATA toll service. Regulated toll service was generally the service being referred to when the phrase "other regulated service" was used in the rule. Since then, intrastate toll service has been deregulated, and the phrase has lost its significance. The Public Staff proposed that Rule R12-17(c) be rewritten as follows: "(c) Partial payments to telephone utilities. In the absence of the customer's or agent's instruction to apply the payment otherwise, partial payments to local service providers will be allocated as follows: first to local service, and second to other service, except that if the partial payment is within \$1.00 of the past due amount, the payment will be allocated first to past due local service and second to other past due service."

The **Attorney General** did not oppose eliminating the language in Rule R12-17(c) referring to "nonregulated service." The distinction is not as important as it once was. The phraseology "First to local service and second to other services" would be appropriate.

Time Warner Telecom of North Carolina (TWTC) filed a Motion to Intervene and Comments on December 10, 2007. The Motion to Intervene was granted. TWTC's comments were directed to the issue of "regulated v. non-regulated." As an initial matter, TWTC observed that the terms "regulated" and "non-regulated mean different

things in different contexts. Since context is so important, TWTC urged the Commission to adopt an interpretation which goes no further than necessary to resolve the question at hand. In the instant case, TWTC reads Rule R12-17 as exclusively concerned with residential services. The numerous references in Rule R12-17 to “regulated” and “non-regulated” appear to flow from the definitions of “local service” and charges for “local service” set forth in Rule R12-17(a)(1) (setting out what local service includes)⁷ and Rule R12-17(a)(2) (setting forth what charges for local services are not included).⁸

While TWTC agreed with the NCTIA’s view that consumers did not understand the “regulated”/“non-regulated” distinction, TWTC did not believe that this lack of appreciation should guide the Commission’s determination. As for the NCTIA’s recommendation that the Commission substitute “local” for “regulated” and “other services” for “non-regulated” in Rule R12-17, TWTC believed that this proposal would lead to more confusion, not less, because, among other things, the definition of local services includes the notion of “any other NCUC-regulated service.” TWTC, however, argued that the NCTIA’s proposal suggested another resolution—that is, to simply limit the application of many of the provisions of Rule R12-17 to basic local exchange service, as that term has been defined in Rule R12-17, provided on a residential basis. In practical terms, TWTC believes that carriers understand the terminology used by the Commission in Rule 12-7. “Regulated” service for the purposes of the rule refers to basic local residential service and any other service (e.g., vertical features) that is not a long distance service and that the Commission can assert jurisdiction over.

TWTC concluded by requesting the Commission to refrain from setting forth a general definition of “regulated” versus “non-regulated” services in this proceeding and, to the extent clarification of the scope of regulated services is deemed necessary, to consider limiting the application of Rule R12-17 to basic local exchange services.

“Non-uniform Rule”

The **NCTIA** strongly favored allowing companies to adopt the NCTIA proposal as an alternative to current Rule R12-17(c).

⁷ Rule R12-17(a)(1) reads: “(1) For the purposes of this rule, ‘Local service’ includes basic local exchange service (including extended area service [EAS], expanded local calling (ELCA) and any other NCUC-regulated telephone service offered by a single corporate entity within a single LATA.”

⁸ Rule R12-17(a)(2) reads: “(2) Charges for local service” include charges for local service, as defined in Rule R12-17(a)(1), the state sales tax and federal excise tax associated with local service, the subscriber line charge (SLC), the primary interexchange carrier charge (PICC) applied by and on behalf of the local carrier, the local number portability charge, and state and federal universal service surcharges applied by and on behalf of the local carrier. ‘Charges for local service’ do not include charges applied by the local carrier on behalf of another carrier or entity, the E911 and telecommunications relay service surcharges or other nonregulated charges, e.g., charges for intraLATA toll service, interLATA toll service, or operator service, charges for voicemail, Internet service, inside wiring, customer premises equipment, and wireless service.”

AT&T stated that it would not object to the Commission promulgating a rule allowing companies to choose whether they wished to operate under the existing Rule R12-17(c) or the proposed rule.

The **Public Staff** was opposed to a non-uniform rule because such a rule would tend to weaken the protection from local disconnection currently built into the rule. Indeed, the NCTIA's data supports a conclusion that the NCTIA proposal would likely result in an increase in the disconnection of local service.

The **Attorney General** was opposed to a non-uniform rule. This would weaken current protections designed to prevent disconnection of local service and would cause confusion. The Attorney General also noted that the Federal Communications Commission (FCC) requires all phone companies to allocate partial payments received from Lifeline consumers to local service.⁹ North Carolina's current rule is consistent with the FCC's mandate for Lifeline customers. The establishment of a different rule would require companies to set up different allocation systems for different customers, one for Lifeline customers and one system for everyone else.

"Customer Preference v. Public Policy"

The **NCTIA** argued that individual customer preference should be afforded the highest priority because blanket policies will not reflect individual customer priorities, preferences, or expectations. Nowadays, it is not unusual for customers to request specific payment arrangements or to exhibit a preference for partial payments. NCTIA members have an obvious and logical interest in meeting customer expectations by accommodating their requests for payment options and by keeping customers on the network to the extent possible. The NCTIA believed strongly that its members need the ability to apply partial payments in the manner provided by the NCTIA's proposed rule revision and to honor any reasonable customer request for partial payments.

The **Public Staff** agreed that, when a customer expressly instructs the utility how a payment should be allocated, the customer's instructions should control. However, when the customer has failed to provide any express instructions, the Public Staff did not believe that it is helpful to speculate what his intentions might have been. Instead, the rule should specify allocation procedures reflecting the Commission's policy of protecting local service. The most important conflict between the current rule and the change proposed by the NCTIA arises when a customer makes a partial payment larger than the amount required to avoid disconnection of local service but not equal to the total past due balance. In such situations, the current rule requires allocating the payment to the past due balance for local service and the current balance for local

⁹ "[C]arriers offering Lifeline service must apply partial payments received from Lifeline consumers first to local service charges and then to toll charges, in keeping with our goal of maintaining low-income consumers' access to local telecommunications services....We find that any administrative burden this initially may cause is outweighed by the benefit of maintaining Lifeline consumers' access to local telecommunications services." *FCC Report and Order, In the Matter of Federal-State Joint Board on Universal Service*, FCC 97-157, CC Docket No. 96-45, May 8, 1997, Paragraph 393.

service *prior* to any allocation for non-regulated services. By contrast, the NCTIA proposal would allocate payment to the past due balance of non-regulated service before any allocation to the current charges for local service. The Public Staff believed that the current rule should remain in place in order to favor the protection of basic local service.

The **Attorney General** favored consumer preference and noted that it was already incorporated in Rule R12-17(c). The question is the nature of the default rule. If the members of the NCTIA wanted to increase the number of express instructions from consumers regarding partial payments, there are a number of things they can do, such as providing a box to check on the portion of the bill accompanying payment which allows a consumer to provide an instruction regarding a partial payment or have customer representatives ask consumers what their preference is with respect to a particular payment. The current rule gives due regard for consumer preference while providing a default rule that protects local service. The NCTIA has not shown that the Commission should change this rule.

AT&T pointed out that the present rule allows for consumers to provide specific payment allocation instructions. AT&T agreed with the Public Staff and Attorney General that a default rule which gives preference to the maintenance of local service should remain in effect.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

First, the Commission cannot draw firm conclusions for use in formulating policy from the data submitted by the NCTIA and AT&T. The Commission appreciates the effort that the NCTIA and AT&T put into compiling the requested information; unfortunately, the information provided was less than comprehensive. The NCTIA was able to provide data from only four companies—Embarq, Verizon, Ellerbe, and North State—and, in its argumentation, the NCTIA relied almost exclusively on data from a single company, Embarq. Citing Embarq's operations in South Carolina and Texas, NCTIA reported that there was little variation as between those states and North Carolina in the percentage of customers losing local service but that more customers in North Carolina than in those other states were disconnected from other services. However, even within that "little variation" in the percentage of customers losing local service, the statistics favored North Carolina at 2.03% versus 2.29% in South Carolina and 2.8% in Texas.

There were other anomalies as well. The North State data tended to show that North State had a much larger percentage of customers making partial payments who were disconnected from local service compared to those who lost other services than Embarq. AT&T's November 8th data tended to show that, like North State, a much larger percentage of AT&T customers lose local service than lose other services after making partial payments, though AT&T pointed out in its December 10th filing that the

category of “customers that make partial payments and who lose services” also included customers whose dial tone was temporarily suspended but whose service was not completely disconnected. If this distinction were observed, AT&T stated that, on average, only 1.5% of its customers who made partial payments were completely disconnected as opposed to 11% who lost service. The Commission would observe that this is an apt illustration of how numbers can change significantly depending upon how they are reported. As is evident from the record, there is a lack of uniformity in the way the companies keep and compile statistics.

The Commission does not believe that it is possible to draw firm conclusions *from the data provided* as to whether the rule proposed by NCTIA or the rule already in place would lead to fewer customers being cut off, either as to local service or other services. This being the case, the Commission must determine whether there is justification for altering the existing default rule as a matter of public policy.

Second, the terms “regulated” and “non-regulated” should be removed from Rule R12-17(c) and the terms “local” and “other service”, respectively, should be substituted. A question about the use of the terms “regulated” and “non-regulated” was the first supplementary issue about which the Commission asked for responses from the parties. The Commission stated that it was interested in how the parties were using the terms in practice and whether the terms should continue to be used or discarded. There was a general consensus that most customers did not understand these terms and that, in any event, the terms are not as useful as they once were in describing the present telecommunications environment. There was near unanimity that Rule R12-17(c) ought to be changed to accommodate this fact, but there were differences in the degree of change advocated. The NCTIA and AT&T appeared to recommend a general substitution of “local” for “regulated service” and “other services” for “non-regulated services” in Rule R12-17 as a whole, while the Public Staff and the Attorney General recommended that only R12-17(c) be modified in this respect. TWTC, however, believed that a general substitution might lead to even more confusion. Its preference was for “regulated” to be defined as referring to residential basic local exchange service and any other residential service that is not long distance service and over which the Commission has jurisdiction.

The Commission believes that a cautious approach is in order in this matter. Nearly the entire focus of this proceeding has been on Rule R12-17(c).¹⁰ The terms “regulated” and “non-regulated” are used numerous times in Rule R12-17, and it is unclear what the implications would be in specific contexts if there were to be a wholesale elimination and substitution of these terms. Should any party wish to pursue this matter, we would urge that party to work with the Public Staff, the Attorney General, and other parties in a non-adversarial framework to assess the impacts of a general revision of those terms in Rule R12-17 and make a joint recommendation to the Commission. In the meantime, however, the better course of action is to revise only Rule R12-17(c) as set out below.

¹⁰ Numerous other changes recommended by the NCTIA were accepted by the other parties and the Commission without demur as set forth in our August 27, 2007, Order.

Third, the central remaining question in this docket does not revolve around “consumer preference versus public policy” *per se* but, rather, what the appropriate default policy should be in the absence of a *stated* consumer preference. In this regard, it is worthwhile to notice that *both* the present rule and the rule proposed by the NCTIA contain provisions that allow the customer in question to state his or her preference as to how payments should be applied. The real argument is what the default policy should be when the consumer has not stated a preference.

In the earlier phase of this proceeding, the NCTIA said it based its argument in favor of its proposed change to Rule R12-17(c) in part on its companies’ experience with customers, focus groups, and surveys. The Attorney General questioned the extent and quality of that proof and criticized the NCTIA’s proposal as being based on “its own general and abstract ‘beliefs’ about what consumers want.” The NCTIA presented no further data in the current phase of the proceeding regarding customer preferences regarding a different default rule.

In the current phase of this proceeding, the Attorney General,¹¹ the Public Staff, and AT&T continued to favor a default policy that gives priority to the preservation of local service (past and current) followed by “other service,” while the NCTIA continued to favor its proposal that would put past due bundled and unbundled local service first, other past due services second, current bundled or unbundled local service third, and current other service fourth. In this regard, the Commission concludes that the statistical data and supplementary comments have not advanced the argument very much on either side. The record simply does not contain convincing evidence tending to show that customers would prefer a different default rule or that the use of a different default rule would reduce the level of disconnection of “other” services without increasing the disconnection of local service. At the end of the day, at least at this time, the decision comes down to whether the default rule, which was formulated to favor the preservation of local service as a first priority, should be altered on the basis of the record before us. Resolution of this issue hinges on whether NCTIA, the party with the burden of proof, has presented sufficient evidence that the default rule presently in place should be altered in the manner NCTIA proposes.

The Commission concludes that the NCTIA has not carried its burden of proof to show that the current Rule R12-17(c) should be changed as it recommends. The NCTIA has not proved that the specific default rule it has advanced is “preferred” by customers and therefore the Commission cannot conclude that it should abandon the public policy principle favoring preservation of local service. As the Commission stated in the August 27th Order, we share “the Public Staff’s and Attorney General’s view that the maintenance of local service to partial payment customers is an important priority.” Accordingly, in the absence of better evidence of customer preferences, the Commission concludes that the present Rule R12-17(c) should be amended as recommended by the Public Staff at this time. The amended Rule R12-17(c) will read:

¹¹ The Attorney General also made suggestions regarding how the companies could better assist their customers in becoming aware of and exercising their option to direct partial payments.

(c) Partial payments to telephone utilities. In the absence of the customer's or agent's instruction to apply the payment otherwise, partial payments will be allocated as follows: first to local service, and second to other service, except that if a partial payment is within \$1.00 of the past due amount, the payment will be allocated first to past due local services and second to other past due service.

As noted above, both the current and proposed rules contain a provision allowing the customer to direct how partial payments are to be applied. The Commission determines that "customer preference" regarding partial payment can best be effectuated at this time by making customers better informed about the options *that already exist*. This means making customers aware that they have the right to request that their payments be distributed as they request *and* to be educated on the implications of their choices. The extent to which customers realize they even have a choice as to how payments can be distributed is unclear. This information does not necessarily appear in the phone books, and it is unclear what the various companies do when a customer calls up to discuss a partial payment.¹²

Fourth, Rule R12-17(c) should not be rewritten so as to allow companies to choose which portion of the rule they wish to utilize. In its comments, the NCTIA said that it strongly favored a "non-uniform" rule which would allow companies to choose between using the NCTIA proposal and the existing rule, while AT&T stated that it would "not object" if the Commission allowed such an option. Both the Public Staff and Attorney General opposed a non-uniform rule, saying that to do so would tend to weaken protection from local disconnection.

The Commission concurs with the Public Staff and Attorney General on this issue. As stated above, the Commission determines that NCTIA has failed to carry its burden of showing that the existing rule on default should be changed. Consequently, the issue of a non-uniform rule is moot. To allow a non-uniform rule would be inconsistent with this decision. As noted above, the only sure way to determine customers' preferences about the allocation of their partial payments is by asking them—which points to a policy of educating customers on what their options are.

¹² It is of interest that the Rules of the Public Utility Commission of Texas address the alternative payment issue in some detail. Section 26.27(a)(5) of the Texas Commission rules states as follows: "(5) **Notice of alternative payment programs or payment assistance.** When a customer contacts a DCTU [Dominant certificated telecommunications utility] and indicates inability to pay a bill or need of assistance with payment, the DCTU shall inform the customer of *all alternative payment options and payment assistance programs* available from the DCTU, such as payment arrangements, deferred payment plans, and disconnection moratoriums for the ill, as applicable, of the eligibility requirements and applications procedures for each." [Emphasis added] Compare our Rules R12-17(i)(2)(B) and (C), which do not address alternative payment options or payment assistance programs.

IT IS, THEREFORE, ORDERED that Rule R12-17(c) should be amended as set forth in the third conclusion above effective as of the date of this Order; provided, however, that this decision is without prejudice to the ability of the NCTIA or any other party to propose changes to Rule R2-17 in the future supported by adequate and competent evidence.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of February, 2008.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Patricia Swenson".

Patricia Swenson, Deputy Clerk

Commissioner Robert V. Owens, Jr. did not participate.

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