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Maine Public Utilities Commission

**Report Regarding Whether Any Changes May Be
Needed To Conform The Laws And Rules
Relating To Provider Of Last Resort Service,
As They Apply To A Price Cap Incumbent Local
Exchange Company, To The Provisions Of
Public Law 2015, Chapter 462**

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

December 15, 2016



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Mark A. Vannoy
CHAIRMAN

Harry Lanphear
ADMINISTRATIVE DIRECTOR

Carlisle J. T. McLean
R. Bruce Williamson
COMMISSIONERS

December 14, 2016

Energy, Utilities and Technology Committee
100 State House Station
Augusta, Maine 04333

Re: Provider of Last Resort Report Pursuant to Public Law 2015, Chapter 462

Energy, Utilities and Technology Committee:

During its 2016 session, the Legislature enacted An Act to Increase Competition and Ensure a Robust Information and Telecommunications Market (Act), PL 2015, ch. 462. Among its provisions, the Act directed the Commission to examine all laws and rules relating to provider of last resort (POLR) service as they apply to price cap incumbent local exchange carriers (ILECs) and determine whether any changes may be needed to conform those laws and rules to the provisions of the Act. The Act also directed the Commission to submit a report, and any necessary draft legislation to implement the Commission's recommendations, to the Committee by December 15, 2016. Attached is the Commission's report.

If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Vannoy'.

Mark A. Vannoy, Chairman

On behalf of the Chairman and

Carlisle J. T. McLean, Commissioner
R. Bruce Williamson, Commissioner
Maine Public Utilities Commission

Attachment

cc: Energy, Utilities and Technology Committee Members
Deirdre Schneider, Legislative Analyst

I. Introduction

In early 2016, the 127th Maine State Legislature, in its Second Regular Session, enacted An Act to Increase Competition and Ensure a Robust Telecommunications Market (the "Act"), P.L. 2015, ch. 462. Among its provisions, the Act removed the obligation contained in Title 35-A of the Maine Revised Statutes that certain Incumbent Local Exchange Carriers ("ILECs") – referred to in the Act as "Price Cap ILECs"¹ – furnish Provider of Last Resort ("POLR") telephone service in designated municipalities.² The Act also made several other changes to Title 35-A with regard to service quality obligations of Price Cap ILECs, abandonment of service by Price Cap ILECs, and the rates for POLR service customers of the Price Cap ILECs. Section 8 of the Act requires the Commission to "examine all laws and rules of this State relating to provider of last resort service as they apply to a price cap ILEC . . . and determine whether any changes may be needed to conform those laws and rules to the provisions of this Act." The Act also requires the Commission to submit any necessary draft legislation that would be needed to implement the Commission's recommendations.

In this Report, the Commission describes the two rulemaking proceedings conducted pursuant to the Act and two recommended statutory changes that the Commission believes are necessary to conform the laws relating to POLR as they apply to Price Cap ILECs to the provisions of the Act.

¹ A "Price Cap ILEC" is defined in the Act as "an incumbent local exchange carrier that agreed to accept Connect America Fund Phase II support pursuant to the Federal Communications Commission's Report and Order released on December 18, 2014, in In the Matter of Connect America Fund, WC Docket No. 10-90, FCC 14-190, for locations within the State on or before January 1, 2016 and does not receive funding from a state universal fund under [Title 35-A] section 7104." P.L. 2015, ch. 462, Sec. 1 now codified at 35-A M.R.S. § 7102(6-A). There are three carriers in Maine that meet this definition: Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE ("FairPoint"), Community Service Telephone Co., and Northland Telephone Company.

² The Act removed the POLR service obligation in Portland, Lewiston, Bangor, South Portland, Auburn, Biddeford, and Sanford 30 days after the effective date of the Act (August 29, 2016). The Commission may remove the POLR service obligation from fifteen additional designated municipalities over time if the relevant Price Cap ILEC complies with certain service quality requirements in the Act.

II. Rule Changes To Conform To The Act

A. POLR Service Quality - Chapter 201

Chapter 201 of the Commission's Rules establishes the service quality indicators (SQI), or "metrics," and the standards, or benchmarks, for each metric, to which Maine's POLR service providers must adhere. Section 5 of the Act, now codified at 35-A M.R.S. § 7225-A, changes the SQI metrics and benchmarks that apply to Price Cap ILECs, adjusts the confidentiality of the SQI results and provides that specific steps be taken by the Commission when a Price Cap ILEC fails to meet the service quality requirements in the Act. The Act directed the Commission to review its POLR service quality rule and make any changes to be consistent with service quality provisions in the Act by January 1, 2017. On June 3, 2016, the Commission initiated a Notice of Rulemaking and proposed amendments to the rule (Docket No. 2016-00095). Initial written comments were due on July 18, 2016. The Commission held a public hearing on the proposed rule changes on August 24 and additional written comments were due on September 6, 2016. By Commission Order dated November 14, 2016, the Commission amended Chapter 201 to conform with Section 7225-A.³ The amended rule became effective on November 26, 2016.

B. Removal of POLR Service Obligation - Chapter 220

Section 3 of the Act, now codified at 35-A M.R.S. § 7221 subsections 4 to 7, directed the Commission to conduct a major substantive rulemaking to implement certain provisions of the Act relating to the removal of the POLR obligation in certain municipalities specified in the Act as well as possible additional municipalities, and abandonment of service. The Act specifies that the rules must be provisionally adopted by January 1, 2017. On July 12, 2016, the Commission opened a Notice of Inquiry (Docket No. 2016-00133) to seek input from interested persons on a number of issues in advance of the rulemaking proceeding. Comments were due on August 15, 2016.

On October 24, the Commission issued a Notice of Rulemaking (NOR) and proposed rule (Docket No. 2016-00235). A public hearing was held on November 22, 2016 and written comments were due December 2, 2016. The Commission will deliberate this matter and provisionally adopt a new rule, Chapter 220, by the end of the year. The provisionally adopted rule will be considered by the Legislature during the 2017 session.

³ Pursuant to Section 6 of the Act, changes to Commission Rules necessitated by Section 7225-A are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

III. Statutory Changes That May Be Needed To Conform To The Act

A. Valuation of Property For Fixing Rates - 35-A M.R.S. § 303

Title 35-A M.R.S. § 303 provides in part that “[i]n determining just and reasonable rates, tolls and charges, the [C]ommission shall fix a reasonable value upon all the property of a public utility . . . to the extent paid for by the utility on the premises of any of its customers, which is used or required to be used in its service to the public within the State and a fair return on that property.”⁴

Section 4 of the Act, now codified at 35-A M.R.S. § 7222-A, sets a statutorily-mandated maximum rate for POLR service for price cap ILECs of \$20 per month, and authorizes Price Cap ILECs to increase that rate by up to 5% per year. The language in Section 303 that requires a valuation of property before setting rates for a public utility as under rate of return regulation no longer applies to a Price Cap ILEC because those rates are now set by statute. As a result, the Commission recommends that Section 303 be amended to exempt Price Cap ILECs from this section. Draft implementing legislation is attached to this report.

B. Customer Premise Wire - 35-A M.R.S. § 7306

Title 35-A M.R.S. § 7306 deals in part with the ratemaking treatment of expenses and revenues associated with customer premise wire services offered by a telephone utility. These services include contracts for the installation, maintenance and repair of customer premise wire. The POLR service rate for Price Cap ILECs is now set by statute and, thus, no longer subject to a Commission ratemaking proceeding. As a result, the Commission recommends that Section 7306 be amended to exempt Price Cap ILECs from this section. Draft implementing legislation is attached to this report.

⁴ The value of property that a public utility is allowed to earn a specific rate of return is commonly referred to as a utility's "rate base."

DRAFT STATUTORY LANGUAGE

**Maine Revised Statutes
Title 35-A: PUBLIC UTILITIES**

§303. Valuation of Property for Fixing Rates

1. Valuation of Property. In determining just and reasonable rates, tolls and charges, the commission shall fix a reasonable value upon all the property of a public utility and upon an electric plant to the extent paid for by the utility on the premises of any of its customers, which is used or required to be used in its service to the public within the State and a fair return on that property. In fixing a reasonable value, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use and the prudent acquisition cost to the utility, less depreciation on each, and any other material and relevant factors or evidence, but the other factors shall not include current value. In making a valuation, the commission may consult reports, records or other information available to it in the office of any state office or board.

2. Exception. Price Cap ILECs. This section does not apply to a price cap ILEC as that term is defined in section 7102 subsection 6-A of this title.

§7306. Customer Premise Wire

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

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

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

3. Ratemaking treatment of customer premise wire services. Nothing in subsection 2 restricts the commission's authority over the ratemaking treatment of expenses and revenues associated with customer premise wire services offered by a telephone utility **except that this section does not apply to a price cap ILEC as that term is defined in section 7102 subsection 6-A of this title.**