

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1629

H.P. 1175

House of Representatives, May 10, 1989

Submitted by the Public Utilities Commission pursuant to Joint Rule 24.
Reference to the Committee on Utilities suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Old Town.

Cosponsored by Representative MARSH of West Gardiner, Representative PAUL of Sanford and Senator CARPENTER of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Amend the Laws Concerning Service Territories of and
Additional Service by Public Utilities.



1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 35-A MRSA §102, sub-§13,** as enacted by PL 1987, c.
5 141, Pt. A, §6, is amended to read:

7 13. **Public utility.** "Public utility" includes every gas
9 utility, natural gas pipeline utility, electric utility,
11 telephone utility, telegraph--utility, water utility, public
13 heating utility and ferry, as those terms are defined in this
15 section and each of those utilities is declared to be a public
utility. "Public utility" does not include the operation of a
radio paging service, as that term is defined in this section.
Nothing in this subsection precludes the jurisdiction, control
and regulation by the commission pursuant to private and special
act of the Legislature.

17 **Sec. 2. 35-A MRSA §102, sub-§§17 and 18,** as enacted by PL 1987,
19 c. 141, Pt. A, §6, are repealed.

21 **Sec. 3. 35-A MRSA §2101,** as amended by PL 1987, c. 490, Pt.
23 C, §7, is further amended to read:

25 **§2101. Organization of certain public utility corporations**

27 Corporations for the operation of telegraphs--or telephones
29 and for the purpose of making, generating, selling, distributing
31 and supplying gas or electricity or for the operation of water
utilities, ferries or public heating utilities in any
municipality, or 2 or more adjoining municipalities, within the
State, may be organized under the general corporate law of the
State.

33 **Sec. 4. 35-A MRSA §2101-A** is enacted to read:

35 **§2101-A. Definitions**

37 **1. Area; providing service.** For the purpose of providing
39 service, as that term is used in section 2102-A, subsections 1
41 and 2, 2102-C and 2104, an area served by a public utility is an
43 area adjacent to or in the vicinity of a telephone or electric
45 distribution line or a gas main of the utility providing
47 service. For the purpose of this definition only, a fixed
49 customer location served by radiotelephone shall be considered a
51 place with a telephone distribution line. Any place within a
half mile of those facilities described in this subsection shall
be presumed to be adjacent to or within the vicinity of the
facility or place, provided that where a point of service is
within a half mile of the facilities described above when
operated by 2 or more utilities offering the same service, it
shall be presumed that the utility with facilities closest to
that point of service is the utility providing service. The
presumptions described in this subsection shall not operate

1 beyond a service territory boundary upon which 2 utilities
2 offering the same service have agreed, as shown by boundary maps
3 or other descriptions, including those filed with the commission
4 as terms or conditions pursuant to section 304 and effective
5 pursuant to section 307 or 310.

7 2. Area; constructing facilities. For the purpose of
8 constructing, owning, operating or managing a telephone line or
9 electric plant, as those terms are used in section 2102-A,
10 subsection 3, and 2105, areas within a municipality served by
11 another telephone exchange or electric utility include those
12 portions of a municipality in which another telephone exchange or
13 electric utility generally is providing or has undertaken to
14 provide telephone service to customers. A boundary map or other
15 description filed with the commission by a telephone exchange
16 utility as a term or condition pursuant to section 304, that has
17 become effective pursuant to section 307 or 310, shall establish
18 a presumption that the utility is providing or has undertaken to
19 provide service to customers in the areas shown by the map or
20 contained in the description.

21 3. Municipality. For the purpose of this chapter, a
22 municipality shall include organized towns and cities,
23 plantations and unorganized townships.

25 4. Telephone exchange service. For the purposes of section
26 2102-C, "telephone exchange service" means service between
27 customers within a telephone exchange and shall also include all
28 telephone service between exchanges which is designated by the
29 commission as exchange or local service, as provided in
30 subsection 5.

33 5. Interexchange service and facilities. For the purpose
34 of section 2102-D, "interexchange service" means service provided
35 by interexchange utilities between telephone exchanges, except as
36 provided in this subsection. The commission may designate
37 service between certain exchanges as exchange or local service if
38 some or all of the switched traffic between those exchanges is
39 priced on a flat-rated basis. Interexchange facilities are
40 facilities, including trunks, which provide service between
41 telephone exchanges, except for service between exchanges
42 designated by the commission as having exchange or local service.

43 Sec. 5. 35-A MRSA §2102, as enacted by PL 1987, c. 141, Pt.
44 A, §6, is repealed.

47 Sec. 6. 35-A MRSA §2102-A is enacted to read:

49 §2102-A. Approval to furnish service or construct facilities by
50 telephone exchange and electric utilities

1 The following provisions apply to furnishing service and
2 constructing facilities.

3
4 1. Service to additional municipality; approval required.
5 Except as described in subsection 4, an electric or telephone
6 exchange public utility which is not providing electric service
7 or telephone exchange service in a municipality shall not provide
8 those services in an area within that municipality if, in any
9 part of that municipality, another public utility is actually
10 providing electric or telephone exchange service, as applicable,
11 whether pursuant to lawful authority or not, or is authorized by
12 private and special law to provide electric or telephone exchange
13 service, as applicable, without the approval of the commission
14 pursuant to section 2105.

15
16 2. Service to same municipality; approval required. Except
17 as described in subsection 4, an electric or telephone exchange
18 public utility which is providing service in a municipality shall
19 not provide electric service or telephone exchange service in any
20 area within that municipality in which another public utility is
21 actually providing electric or telephone exchange service, as
22 applicable, whether pursuant to lawful authority or not, without
23 the approval of the commission pursuant to section 2105.

24
25 3. Constructing facilities by local exchange telephone
26 companies and electric utilities; approval required. Except as
27 described in subsection 4, no telephone exchange public utility
28 or electric utility shall construct, own, operate or manage a
29 telephone line or electric plant in any municipality in which it
30 is not providing service or in a municipality in which it is
31 providing service in any area in which another public utility is
32 providing exchange telephone service or electric service, as
33 applicable, without the approval of the commission pursuant to
34 section 2105.

35
36 4. Approval not required. The commission's approval is not
37 required for an electric or telephone exchange public utility to
38 provide service in any area within a municipality in which that
39 public utility was providing service on October 8, 1967.
40 Approval is not required for providing telephone exchange or
41 electric service or constructing, owning, operating or managing a
42 telephone line or electric plant in areas in which an acquired or
43 merged utility had those rights, as provided in section 2102-B.
44 Approval is not required for the operation of a radio paging
45 service. Approval is not required for an electric utility to
46 sell and distribute electricity to any other electric utility.
47 Further approval is not required under this section for an
48 electric utility to construct, own, operate or manage a
49 generating facility, transmission line or other electric plant
50 which are subject to approval under section 3132, 3133 or 3133-A.
51

1 5. Approvals for other services and utilities. Approval
2 for service by and facilities of an interexchange telephone
3 carrier is governed by section 2102-D. Approval for service by a
4 gas utility is governed by section 2104. Approval for facilities
5 and service by a natural gas pipeline utility is governed by
6 chapter 45.

7
8 Sec. 6. 35-A MRSA §2102-B is enacted to read:

9
10 §2102-B. Authority of acquired or merged utility

11
12 For the purposes of sections 2102-A, 2102-D and 2104, if a
13 utility has acquired or merged with another public utility that
14 has the right to serve specified areas pursuant to private or
15 special law or section 2102 or its predecessors, it shall also
16 have acquired those rights, whether the acquisition or merger
17 occurred before or after the effective date of this section,
18 provided that all applicable approvals for transfer, acquisition,
19 merger or reorganization in chapters 7 and 11 have been obtained.

20
21 Sec. 7. 35-A MRSA §2102-C is enacted to read:

22 §2102-C. Conflicts between utilities serving or claiming right
23 to serve same area; service to unserved areas by
24 lowest-cost utility

25
26 1. Investigation. Upon a complaint filed pursuant to
27 section 1302 or 1303, the commission may conduct an investigation
28 in the following cases:

29
30 A. Two or more utilities are providing electric, gas or
31 telephone exchange service to the same area, as defined in
32 section 2101-A, subsection 1;

33
34 B. Two or more electric, gas or telephone exchange
35 utilities claim a lawful right, pursuant to laws, commission
36 order or approved term or condition filed pursuant to
37 section 304 to serve in the same area providing the same
38 service;

39
40 C. A utility has actual or apparent lawful authority,
41 pursuant to law, commission order or approved term or
42 condition filed pursuant to section 304, to provide
43 electric, telephone or gas service to an area not served by
44 any utility, but it appears that another utility, with or
45 without present lawful authority, may be able to provide the
46 same service to that area at substantially lower cost.

47
48 2. Order. Following investigation, the commission may
49 determine which utility or utilities shall provide or continue to
50 provide service in the area which is the subject of the
51 investigation. In reaching its decision, the commission may

1 consider the cost to the utilities of providing service and the
3 cost of duplicate service, the convenience and desires of
5 customers and the amount which customers would be charged. For
7 the purpose of this section, the commission may also consider any
9 other relevant matters, including whether the utilities initial
11 provision of service was lawful, which utility provided service
13 first and the length of time since the commencement of service by
each utility. In determining whether a cost difference is
substantial in an investigation conducted under subsection 1,
paragraph C, or in making any cost comparison under this section,
the commission shall consider the absolute as well as the
percentage cost differential and the relationship of the costs to
the size of the utilities.

15 3. Compensation. If, pursuant to subsection 2, the
17 commission orders a utility to cease providing service in an area
19 and if the utility ceasing service can no longer use certain
21 utility property that can be used by the utility which will
23 continue to provide service, the property shall be transferred to
that utility. The transfer price shall be the same as the net
book value of the property, unless otherwise ordered by the
commission.

25 4. Recovery in rates. If the utility ceasing service and
27 the utility continuing to provide service cannot use certain
29 property, the commission may assign the costs of the property to
31 either utility or allocate the costs between them and may allow
33 recovery in rates. In determining any allocation and whether to
35 allow recovery in rates and the amounts thereof, the commission
37 may consider all relevant matters, including, but not limited to,
whether an investor-owned utility is subject to cost plus return
on investment regulation, whether a utility was providing service
lawfully or in reasonably good faith believed that it had the
right to provide service, whether a utility was providing service
in the area before or after other utilities and the
reasonableness of the amount of its investment.

39 **Sec. 8. 35-A MRS §2102-D is enacted to read:**

41 **§2102-D. Approval to furnish interexchange telephone service**

43 A telephone interexchange utility may provide interexchange
45 telephone service or facilities, as defined in section 2101-A,
47 subsection 5, only upon approval of the commission pursuant to
49 section 2105-A. Telephone utilities providing exchange service
51 which are also interexchange utilities pursuant to authority to
provide both exchange and interexchange service prior to the
effective date of this section shall not require further approval
to provide interchange service to the areas in which they provide
exchange service.

1 **Sec. 9. 35-A MRSA §2104**, as enacted by PL 1987, c. 141, Pt.
A, §6, is amended to read:

3
5 **§2104. Commission approval required for gas companies to furnish
service**

7 No gas utility organized--under--Title--13-A may furnish
provide its service in or to any municipality within in the State
9 in which it is not serving, without the approval of the
commission, even if no other gas utility is furnishing providing
11 or is authorized to furnish provide a similar service. No gas
utility which is serving an area within a municipality may
13 provide service in or to any other area within that municipality
in which another gas utility is actually providing service
15 without the consent of the commission. A-gas-utility-providing
service-on-January-1,-1982,-shall-have-until-January-1,-1983,-to
17 obtain-the-commission's-approval-to-continue-to-furnish-service-

19 **Sec. 10. 35-A MRSA §2105, sub-§1**, as enacted by PL 1987, c.
141, Pt. A, §6, is amended to read:

21 **§2105. Approval only after hearing**

23 1. **Approval only after hearing.** Except as provided in
25 subsection 2, no approval required by section 2102, 2103 or 2104
and-no-license,-permit-or-franchise- may be granted to-any-person
27 to-operate,-manage-or-control-a-public-utility-named-in-section
2101--in-a-municipality-where--there--is--in-operation-a-public
29 utility-engaged--in-similar--service--or--authorized--to--provide
similar-service, until the commission has made a declaration,
31 after notice to all affected utilities and affected customers or
potential customers and a public hearing of--all--parties
33 interested, that the public convenience and necessity require a
2nd-public-utility the proposed additional service or facilities.

35 **Sec. 11. 35-A MRSA §2105-A** is enacted to read:

37 **§2105-A. Approval for additional interexchange telephone service**

39 1. **Notice and hearing.** Upon application by an
41 interexchange telephone utility to provide interexchange service,
the commission shall provide notice to all telephone utilities
43 which may be affected by the additional service and, upon request
by a party intervening, shall hold a hearing.

45 2. **Public convenience and necessity.** The commission may
47 approve the furnishing of interexchange telephone service upon a
finding that the public convenience and necessity will be served
49 by allowing service by an additional interexchange telephone
utility. If the commission makes a general policy determination
51 pursuant to rule that interexchange telephone competition is in
the public interest, it may make the finding of public

1 convenience and necessity required by this section upon a finding
2 that the interexchange telephone utility proposing additional
3 service is fit to provide the service. The commission in its
4 order shall specify the exchanges or areas to which the
5 interexchange telephone utility may provide service and may
6 attach limitations and conditions to its approval, including the
7 payment of charges established by the commission to connecting
8 local exchange carriers.

9
10 **Sec. 12. 35-A MRSA §2110**, as enacted by PL 1987, c. 141, Pt.
11 A, §6, is repealed.

12 **Sec. 13. 35-A MRSA §2110-A** is enacted to read:

13 **§2110-A. Extension of service by water utilities**

14 The commission may authorize a water utility organized by
15 private and special act of the Legislature to furnish or extend
16 its service in, to or through a city or town notwithstanding any
17 territorial limitations, express or implied, in the private and
18 special act of the Legislature by which it was organized or under
19 which it is enfranchised. Within 20 days after the commission's
20 final authorization, the water utility shall file a certificate
21 that shows the authorization with and pay \$20 to the Secretary of
22 State. When the certificate is filed, the water utility's power
23 to extend its service becomes effective.

24
25 **Sec. 14. 35-A MRSA §2301**, as enacted by PL 1987, c. 141, Pt.
26 A, §6, is amended to read:

27 **§2301. Telegraph or telephone utilities and television**
28 **corporations may construct lines**

29 ~~Except as limited~~ Subject to the limitations of chapter 21,
30 every corporation organized under section 2101 for the purpose of
31 operating telegraphs or telephones and every corporation
32 organized for the purpose of transmitting television signals by
33 wire may construct, maintain and operate its lines upon and along
34 the route or routes and between the points stated in its
35 certificate of incorporation; and may, construct its lines and
36 necessary erections and fixtures for them along, over, under and
37 across any of the roads and streets and across or under any of
38 the waters upon and along the route or routes subject to the
39 conditions and under the restrictions provided in this chapter
40 and chapter 25.

41
42 **Sec. 15. 35-A MRSA §2306**, as enacted by PL 1987, c. 141, Pt.
43 A, §6, is amended to read:

1 This bill also establishes a separate provision for approval
2 of interexchange telephone services because the commission
3 generally considers those services to be competitive, and
4 somewhat different considerations apply from those for exchange
5 services.

7 This bill enacts Title 35-A, section 2102-B, which overrules
8 that portion of Biddeford and Saco Gas Co. v. Portland Gas Light
9 Co., 237 A.2d 730 (1967) which held that a utility acquiring
10 another company with service territory rights by private and
11 special charter did not acquire the charter rights.

13 The bill limits the provisions of Title 35-A, section 2110
14 to water utilities. In the case of other utilities, that section
15 was made unnecessary by the 1967 amendments to former Title 35,
16 section 2301, now Title 35-A, section 2102-A.

17 Other sections terminate commission jurisdiction over
18 telegraph service, provide necessary definitions and make
19 conforming changes to Title 35-A, chapters 21 and 23 and section
20 3137.
21