

MAINE STATE LEGISLATURE

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R. 25/10

Date: 3/25/10

L.D. 1778
(Filing No. H-784)

UTILITIES AND ENERGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1265, L.D. 1778, Bill, "An Act To Enable the Installation of Broadband Infrastructure"

Amend the bill in the emergency preamble by striking out all of the 2nd to 5th paragraphs (page 1, lines 3 to 11 in L.D.) and inserting the following:

'Whereas, it is important to address in a timely fashion certain important issues relating to a dark fiber project that was recently awarded a grant by the United States Department of Commerce, National Telecommunications and Information Administration pursuant to the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009); and'

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

'Sec. 1. 35-A MRSA §102, sub-§4-A is enacted to read:

4-A. Dark fiber provider. "Dark fiber provider" means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that:

A. Offers its federally supported dark fiber on an open-access basis without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission;

B. Is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act; and

C. Does not transmit communications for compensation inside this State.

Sec. 2. 35-A MRSA §102, sub-§4-B is enacted to read:

4-B. Federally supported dark fiber. "Federally supported dark fiber" means one or more strands within a bundle of fiber-optic cable through which an associated light

COMMITTEE AMENDMENT

12-28-09

1 signal or light communication transmission must be provided to provide communications
2 service, but excluding the electronic equipment required in order to render the fiber
3 capable of transmitting communications, the construction of which is financed in whole
4 or in part with funds provided by a grant awarded before January 1, 2010 by the United
5 States Department of Commerce, National Telecommunications and Information
6 Administration pursuant to the federal American Recovery and Reinvestment Act of
7 2009, Public Law 111-5, 123 Stat. 115 (2009).

8 **Sec. 3. 35-A MRSA §102, sub-§19**, as amended by PL 2003, c. 153, §1, is
9 further amended to read:

10 **19. Telephone utility.** "Telephone utility" includes every person, its lessees,
11 trustees, receivers or trustees appointed by any court, that provides telephone service for
12 compensation inside this State. "Telephone utility" also includes a dark fiber provider.
13 "Telephone utility" does not include any person or entity that is excluded from the
14 definition of "public utility" as defined in subsection 13, subject to the provisions of
15 subsection 13, paragraphs A to C.

16 **Sec. 4. 35-A MRSA §711, sub-§5** is enacted to read:

17 **5. Dark fiber provider.** This section applies to a dark fiber provider only with
18 respect to the construction and maintenance of federally supported dark fiber.

19 **Sec. 5. 35-A MRSA §2102, sub-§1**, as amended by PL 2007, c. 638, §1, is
20 further amended to read:

21 **1. Approval required.** Except as provided in subsection 2 and in section 4507, a
22 public utility may not furnish any of the services set out in section 2101 in or to any
23 municipality in or to which another public utility is furnishing or is authorized to furnish
24 a similar service, and a dark fiber provider may not offer federally supported dark fiber,
25 without the approval of the commission. The commission may condition approval upon
26 the submission of a bond or other financial security if the commission determines that
27 such a requirement is necessary to ensure that a public utility has the financial ability to
28 meet its obligations under this Title.

29 A. The commission may not grant approval to a telephone utility under this
30 subsection unless the telephone utility submits evidence satisfactory to the
31 commission that the telephone utility has at least \$250,000 in fixed assets in this State
32 or the telephone utility purchases and maintains a surety bond satisfactory to the
33 commission in the amount of \$250,000 to ensure the telephone utility has the
34 financial ability to meet its obligations under this Title. This paragraph does not
35 apply to a telephone utility authorized to provide telephone service in this State on
36 the effective date of this paragraph.

37 **Sec. 6. 35-A MRSA §2102, sub-§4** is enacted to read:

38 **4. Dark fiber provider.** The commission shall issue its order approving or denying
39 an application from a dark fiber provider for approval under this section, including its
40 decision on any waivers or exemptions requested by the dark fiber provider in
41 conjunction with its application, within 60 days of receipt of the application, except that if
42 the commission determines that it requires additional time, it may extend its review and
43 issue its order no later than 90 days after receipt of the application.

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Sec. 7. 35-A MRSA §2301, as amended by PL 1995, c. 225, §8, is further amended to read:

§2301. Telephone utilities, federally supported dark fiber providers and television corporations may construct lines

Except as limited, every corporation organized under section 2101 for the purpose of operating telephones, every dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber, and every corporation organized for the purpose of transmitting television signals by wire may construct, maintain and operate its lines upon and along the route or routes and between the points stated in its certificate of incorporation; and may construct its lines and necessary erections and fixtures for them along, over, under and across any of the roads and streets and across or under any of the waters upon and along the route or routes subject to the conditions and under the restrictions provided in this chapter and chapter 25.

Sec. 8. 35-A MRSA §2501, sub-§2, as amended by PL 2007, c. 268, §2, is further amended to read:

2. Applicability of section 2503. Except as otherwise provided, a person may not construct facilities upon and along highways and public roads without applying for and obtaining a written location permit from the applicable licensing authority under section 2503. Included within this requirement is every person operating telephones or transmitting television signals by wire; every person that owns, controls, operates or manages any pipeline within or through this State for the transportation as a common carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases; every water utility and every person making, generating, selling, distributing and supplying gas or electricity; every water utility or sewer company, district or system privately or municipally owned; every municipally owned or operated fire alarm, police alarm or street lighting circuit or system; every cooperative organized under chapter 35; the University of Maine System, for purposes described in section 2301-A; every dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber; and any other person engaged in telecommunications or the transmission of heat or electricity.

Sec. 9. 35-A MRSA §7902, as amended by PL 1995, c. 225, §14, is further amended to read:

§7902. Lines along highways and across waters

Every telephone utility or person transmitting television signals by wire may, except as limited, construct, maintain and operate its lines upon and along the routes and between the points stated in its certificate of incorporation; and may, subject to the conditions and under the restrictions provided in this Title, construct its lines along, over, under and across any of the roads and streets and across or under any of the waters upon and along the routes, with all necessary erections and fixtures. The authority provided under this section applies to a dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber.

Sec. 10. 35-A MRSA §9216 is enacted to read:

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§9216. Broadband sustainability fee

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "First assessment period" means the period:

(1) Commencing on the first day of the month following the date on which a dark fiber provider first sells, leases or otherwise provides one or more strands of federally supported dark fiber to an entity in this State; and

(2) Ending on the last day of the 60th month following the commencement under subparagraph (1).

B. "Incumbent local exchange carrier" means a telephone utility that provided single-party service, voice grade access to the public switched telephone network in a defined service territory in the State on February 8, 1996, or its successor, or that is designated as an incumbent local exchange carrier pursuant to 47 United States Code, Section 251(h)(2).

C. "Second assessment period" means the period:

(1) Commencing on the first day of the month following the end of the first assessment period; and

(2) Ending on December 31, 2017.

2. Broadband sustainability fee. An entity that purchases, leases or otherwise obtains federally supported dark fiber from a dark fiber provider is subject to the following broadband sustainability fees:

A. During the first assessment period, a monthly fee equal to \$3 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month; and

B. During the 2nd assessment period, a monthly fee equal to \$2 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month.

3. Collection. A dark fiber provider shall collect the broadband sustainability fees under subsection 2 and within 15 days after the end of each month remit the amounts collected to the authority. When remitting funds to the authority, the dark fiber provider shall include sufficient information to allow the authority to determine the number of miles of federally supported dark fiber strands sold, leased or used in the service territory of each incumbent local exchange carrier.

4. Deposit. The authority shall:

A. Deposit 5% of the funds received under subsection 3 into the ConnectME Fund established under section 9211 and may use these funds to support the activities of the authority under this section and for the purposes of section 9204; and

B. Deposit 95% of the funds received under subsection 3 into the broadband sustainability fund established pursuant to subsection 5.

1 **5. Broadband sustainability fund.** The authority shall establish a broadband
2 sustainability fund, separate and distinct from any other funds held or maintained by the
3 authority, for use in accordance with subsection 6. The fund is nonlapsing and all interest
4 on funds in the fund remains in the fund for use in accordance with subsection 6. The
5 authority may contract with an appropriate independent fiscal agent that is not a state
6 entity to serve as the administrator of the fund. All funds deposited in the broadband
7 sustainability fund are deemed to be encumbered for purposes of subsection 6 at the time
8 the funds are deposited in the fund.

9 **6. Use of the broadband sustainability fund.** The authority shall use the
10 broadband sustainability fund established pursuant to subsection 5 in accordance with this
11 subsection.

12 **A.** The authority shall allocate funds in the broadband sustainability fund established
13 pursuant to subsection 5 to each incumbent local exchange carrier in accordance with
14 this paragraph. Each month, the authority shall allocate to each incumbent local
15 exchange carrier an amount equal to the total amount deposited that month into the
16 broadband sustainability fund multiplied by a fraction, the denominator of which is
17 the total number of miles of federally supported dark fiber leased, sold or used in this
18 State during the previous month and the numerator of which is the total number of
19 miles of federally supported dark fiber leased, sold or used in that incumbent local
20 exchange carrier's service territory during the previous month. Any accumulated
21 interest in the fund must be allocated proportionally. Only those amounts allocated to
22 an incumbent local exchange carrier under this paragraph are available for
23 disbursement to that carrier pursuant to paragraph B. By December 31st of each
24 calendar year, the authority shall make an accounting of the total funds allocated
25 during that calendar year to each incumbent local exchange carrier under this
26 paragraph, and if by December 31st of the following calendar year some or all of
27 those funds allocated to a carrier are not disbursed to that carrier in accordance with
28 paragraph B, the authority shall transfer those unspent funds to the ConnectME Fund
29 established under section 9211 for use in accordance with that section. Funds
30 transferred to the ConnectME Fund under this paragraph cease to be available to any
31 incumbent local exchange carrier pursuant to the provisions of this section. The
32 authority, at the request of a carrier, may, for good cause shown, maintain funds
33 allocated to that carrier within the broadband sustainability fund for a longer period.

34 **B.** To receive a disbursement from the broadband sustainability fund established
35 pursuant to subsection 5, an incumbent local exchange carrier must file with the
36 authority a request for funds together with a certification indicating that the funds
37 requested will be used to deploy broadband infrastructure in unserved areas within
38 the carrier's service territory or, if the authority verifies that there are no unserved
39 areas within the carrier's service territory, that the funds will be used to increase
40 available broadband speeds for customers within the carrier's service territory. The
41 certification must include the projected cost for the project and the scope of work,
42 which must indicate how the funds will be spent. Upon receipt of a request for funds
43 accompanied by the required certification, the authority shall disburse the requested
44 amount to the incumbent local exchange carrier up to an amount not to exceed the
45 total amount allocated under paragraph A to the requesting carrier.

1 C. An incumbent local exchange carrier may not expend funds received under
2 paragraph B in a manner inconsistent with the certification provided by the carrier
3 under paragraph B. The authority may audit the use by an incumbent local exchange
4 carrier of funds disbursed in accordance with paragraph B.

5 D. On the last day of the 36th month following the end of the 2nd assessment period,
6 the authority shall transfer all funds remaining in the broadband sustainability fund
7 established pursuant to subsection 5 to the ConnectME Fund established under
8 section 9211 for use in accordance with that section. Funds transferred to the
9 ConnectME Fund pursuant to this paragraph cease to be available to any incumbent
10 local exchange carrier pursuant to the provisions of this section.'

11 **SUMMARY**

12 This amendment replaces the bill and also modifies the emergency preamble. This
13 amendment:

14 1. Defines a dark fiber provider as an entity that owns, controls, operates or manages
15 federally supported dark fiber and that meets other qualifications and establishes that a
16 dark fiber provider is a telephone utility under the public utility laws of the Maine
17 Revised Statutes, Title 35-A;

18 2. Authorizes a dark fiber provider to construct lines and to place facilities along
19 public roads in the same manner as other telephone utilities for the purposes of
20 constructing and maintaining its federally supported dark fiber and authorizes the Public
21 Utilities Commission to resolve pole attachment disputes involving a dark fiber provider
22 with respect to the construction and maintenance of federally supported dark fiber;

23 3. Requires that a dark fiber provider apply for approval from the Public Utilities
24 Commission to offer federally supported dark fiber and requires that the commission
25 approve or deny the application and make its decision on any waivers or exemptions
26 requested by the dark fiber provider within 60 days of its receipt of the application. The
27 commission may extend its review if it determines that it requires additional time, but
28 must issue its order no later than 90 days after receipt of the application; and

29 4. Establishes a broadband sustainability fee that a dark fiber provider must collect
30 from entities that obtain federally supported dark fiber from the dark fiber provider. For
31 the first 5 years the fee is \$3 per month multiplied by the number of miles of strand
32 purchased, leased or used; the fee then drops to \$2 per month. The fee ends on December
33 31, 2017. The funds are administered by the ConnectME Authority. Five percent of the
34 funds is deposited in the ConnectME Fund and is available to support the authority's
35 administrative expenses and for use in accordance with the authority's current statutory
36 purposes. The remaining funds are deposited in a separate broadband sustainability fund
37 administered by the authority. These funds may be disbursed to an incumbent local
38 exchange carrier to fund deployment of broadband infrastructure in unserved areas within
39 the carrier's service territory or, if there are no unserved areas, to increase available
40 broadband speeds for customers within the carrier's service territory. The portion of the
41 funds within the broadband sustainability fund available to each incumbent local
42 exchange carrier is calculated based on that portion of the total miles of leased, sold or
43 used federally supported dark fiber in the State that is leased, sold or used within the

1 carrier's service territory. The funds remain available in the broadband sustainability
2 fund for one year and, if not disbursed to carriers, are transferred to the ConnectME Fund,
3 unless the authority for good cause shown extends this period. To receive funds the
4 carrier must provide a request and a certification relating to the use of the funds for
5 deployment of broadband infrastructure in unserved areas or to increase available
6 broadband speeds. The carrier is required to use the funds in accordance with that
7 certification. All funds remaining in the broadband sustainability fund at the end of the
8 3rd year after the broadband sustainability fee ceases are transferred to the ConnectME
9 Fund.

FISCAL NOTE REQUIRED
(See attached)



124th MAINE LEGISLATURE

LD 1778

LR 2565(02)

An Act To Enable the Installation of Broadband Infrastructure

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Utilities and Energy

Fiscal Note Required: Yes

Fiscal Note

Potential future biennium revenue increase - General Fund

Potential future biennium revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

Establishing an approval process for the Public Utilities Commission (PUC) to facilitate the offering of federally supported dark fiber may result in future revenue increases to the General Fund in the form of additional state telecommunications personal property taxes paid by lessees of dark fiber for interactive two-way communications. Maine Revenue Services has indicated the complexity of assumptions required to estimate the revenue that might be received by the state and no estimates are made at this time. The collection of a broadband sustainability fee and remission of same to ConnectME will also increase Other Special Revenue Funds. Any additional cost to the PUC associated with administration of dark fiber applications and hearings can be absorbed within existing budgeted resources.