

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1778

H.P. 1265

House of Representatives, February 8, 2010

An Act To Enable the Installation of Broadband Infrastructure

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Utilities and Energy suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DILL of Cape Elizabeth.
Cosponsored by Senator BARTLETT of Cumberland and
Representatives: FLETCHER of Winslow, HINCK of Portland, MacDONALD of Boothbay,
Speaker PINGREE of North Haven, Senators: BLISS of Cumberland, RECTOR of Knox.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the development and expansion of broadband telecommunications service
4 is essential to economic development in the State; and

5 **Whereas,** federal grants are available under the American Recovery and
6 Reinvestment Act of 2009 to certain organizations for the development and expansion of
7 broadband telecommunications service and infrastructure; and

8 **Whereas,** it is important for broadband development and expansion to begin
9 immediately to provide the best opportunities for businesses within the State; and

10 **Whereas,** in order to enable rapid broadband development and expansion, statutory
11 changes are needed to facilitate the efforts of dark fiber providers; and

12 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
13 the meaning of the Constitution of Maine and require the following legislation as
14 immediately necessary for the preservation of the public peace, health and safety; now,
15 therefore,

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

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

18 **4-A. Dark fiber.** "Dark fiber" means one or more strands within a bundle of fiber-
19 optic cable through which an associated light signal or light communication transmission
20 must be provided to provide communications service, but excluding the electronic
21 equipment required in order to render the fiber capable of transmitting communications.

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

23 **4-B. Dark fiber provider.** "Dark fiber provider" means a person, or that person's
24 lessee, trustee, receiver or trustee appointed by any court, owning, controlling, operating
25 or managing dark fiber that:

26 A. Offers its dark fiber on an open-access basis to all carriers and end users without
27 unreasonable discrimination as confirmed in a schedule of rates, terms and conditions
28 filed for informational purposes with the commission; and

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

33 **Sec. 3. 35-A MRSA §102, sub-§13,** as amended by PL 1999, c. 579, §3, is
34 further amended to read:

35 **13. Public utility.** "Public utility" includes every gas utility, natural gas pipeline
36 utility, transmission and distribution utility, telephone utility, water utility and ferry, as

1 those terms are defined in this section, and each of those utilities is declared to be a public
2 utility. "Public utility" does not include a dark fiber provider or the operation of a radio
3 paging service, as that term is defined in this section, or mobile telecommunications
4 services unless only one entity or an affiliated interest of that entity, as defined in section
5 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency
6 spectrum assigned by the Federal Communications Commission to provide mobile
7 service to the service area.

8 Nothing in this subsection precludes:

9 A. The jurisdiction, control and regulation by the commission pursuant to private and
10 special act of the Legislature;

11 B. The commission's jurisdiction and control over and regulation of a public utility
12 that provides, in addition to other services, radio paging service or mobile
13 telecommunications services;

14 C. The commission's jurisdiction and control over and regulation of basic exchange
15 telephone service offered by a provider of mobile telecommunications services if,
16 after investigation and hearing, the commission determines that the provider is
17 engaged in the provision of basic exchange telephone service; and

18 D. Negotiations for, or negates agreements or arrangements existing on the effective
19 date of this paragraph relating to, rates, terms and conditions for interconnection
20 provided by a telephone utility to a company providing radio paging or mobile
21 telecommunications services.

22 **Sec. 4. 35-A MRSA §711**, as amended by PL 1991, c. 708, §1, is further amended
23 to read:

24 **§711. Joint use of equipment**

25 **1. Joint use permitted.** The commission may order that joint use be permitted and
26 prescribe reasonable compensation and reasonable terms and conditions for the joint use
27 when, after a hearing had upon its own motion or upon complaint of a public utility, dark
28 fiber provider or cable television system affected, it finds the following:

29 A. That public convenience and necessity require the use by one public utility, dark
30 fiber provider or cable television system of the conduits, subways, wires, poles, pipes
31 or other equipment, or any part of them, on, over or under any street or highway and
32 belonging to another public utility, dark fiber provider or cable television system;

33 B. That joint use will not result in irreparable injury to the owner or other users of
34 the conduits, subways, wires, poles, pipes or other equipment or in any substantial
35 detriment to the service; and

36 C. That the public utilities utility, dark fiber provider or cable television system ~~have~~
37 has failed to agree upon the use or the terms and conditions or compensation for the
38 use.

39 **2. Liability of user.** If joint use is ordered, the public utility, dark fiber provider or
40 cable television system to whom the use is permitted ~~shall be~~ is liable to the owner or

1 other users of the conduits, subways, wires, poles, pipes or other equipment for damage
2 that may result from its use to the property of the owner or other users.

3 **3. Interests of cable television subscribers.** Any actions taken or orders issued by
4 the commission under this section shall must take into account the interests of the
5 subscribers of the affected cable television system, as well as the customers of the
6 affected public utilities or the dark fiber providers.

7 **4. Rules.** The commission shall adopt a rule governing the resolution of pole
8 attachment rate disputes. The commission shall consider various formulas, including, but
9 not limited to, the formula adopted by the Federal Communications Commission as
10 codified in 47 Code of Federal Regulations, Part 1, Subpart J, as amended.

11 **5. Make-ready work for dark fiber providers.** In the case of a dark fiber provider
12 that, as to aerial facilities, seeks to attach its dark fiber solely in the communications
13 space, the dark fiber provider may carry out any required make-ready engineering and
14 perform all required make-ready work at its own expense. In exercising its jurisdiction
15 under this section, the commission shall ensure that make-ready engineering and make-
16 ready work undertaken by or at the request of a dark fiber provider must, to the extent
17 reasonably possible, be completed in a timely fashion taking into account any project
18 completion requirements imposed by the Federal Government in connection with a grant
19 extended to the dark fiber provider.

20 **Sec. 5. 35-A MRSA §2301,** as amended by PL 1995, c. 225, §8, is further
21 amended to read:

22 **§2301. Telephone utilities, dark fiber providers and television corporations may**
23 **construct lines**

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

32 **Sec. 6. 35-A MRSA §2501, sub-§2,** as amended by PL 2007, c. 268, §2, is
33 further amended to read:

34 **2. Applicability of section 2503:** ~~Except as otherwise provided, a person may not~~
35 ~~construct facilities upon and along highways and public roads without applying for and~~
36 ~~obtaining a written location permit from the applicable licensing authority under section~~
37 ~~2503. Included within this requirement is every person operating telephones or~~
38 ~~transmitting television signals by wire; every person that owns, controls, operates or~~
39 ~~manages any pipeline within or through this State for the transportation as a common~~
40 ~~carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases; every water~~
41 ~~utility and every person making, generating, selling, distributing and supplying gas or~~

1 electricity; every water utility or sewer company, district or system privately or
2 municipally owned; every municipally owned or operated fire alarm, police alarm or
3 street lighting circuit or system; every cooperative organized under chapter 35; the
4 University of Maine System, for purposes described in section 2301-A; every dark fiber
5 provider; and any other person engaged in telecommunications or the transmission of heat
6 or electricity.

7 **Sec. 7. 35-A MRSA §7902**, as amended by PL 1995, c. 225, §14, is further
8 amended to read:

9 **§7902. Lines along highways and across waters**

10 Every telephone utility, dark fiber provider or person transmitting television signals
11 by wire may, except as limited, construct, maintain and operate its lines upon and along
12 the routes and between the points stated in its certificate of incorporation; and may,
13 subject to the conditions and under the restrictions provided in this Title, construct its
14 lines along, over, under and across any of the roads and streets and across or under any of
15 the waters upon and along the routes, with all necessary erections and fixtures.

16 **Sec. 8. 35-A MRSA c. 94** is enacted to read:

17 **CHAPTER 94**

18 **DARK FIBER PROVIDERS**

19 **§9301. Dark fiber provider schedules**

20 For public informational purposes, dark fiber providers shall, prior to either seeking
21 joint use under section 711 or providing dark fiber to carriers or end users, make an
22 informational filing with the commission consisting of a schedule of rates, terms and
23 conditions applicable to the provision of dark fiber. The dark fiber provider shall
24 simultaneously make its schedule available for inspection on its publicly accessible
25 website and shall provide copies for inspection by the public on reasonable request. The
26 schedule is effective upon filing. If a dark fiber provider elects to file changes to its
27 schedule, such changes must be filed for informational purposes with the commission and
28 posted on the dark fiber provider's publicly accessible website and are effective upon
29 filing. Dark fiber providers shall provide dark fiber on terms consistent with their
30 schedules on file with the commission.

31 **Emergency clause.** In view of the emergency cited in the preamble, this
32 legislation takes effect when approved.

33 **SUMMARY**

34 This bill establishes a new entity known as a "dark fiber provider." A dark fiber
35 provider is an entity providing fiber-optic cable without equipment for transmitting
36 communications and that provides dark fiber to all carriers and end users on an open-
37 access basis and without unreasonable discrimination and is subject to grant-related
38 requirements, restrictions and conditions imposed by the Federal Government and

1 secured by security interests granted to the Federal Government. Dark fiber providers
2 must file informational rate schedules with the Public Utilities Commission and adhere to
3 those rate schedules and must post their rates on publicly accessible websites. A dark
4 fiber provider may use the public right-of-way for its facilities and may enter into joint
5 use agreements with respect to the facilities of public utilities and cable television
6 providers and may opt to carry out any required make-ready engineering and make-ready
7 work at its own expense.