

MAINE STATE LEGISLATURE

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L.D. 1784

Date: 4/2/12

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ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE HOUSE OF REPRESENTATIVES 125TH LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1309, L.D. 1784, Bill, "An Act To Implement Recommendations To Reform Telecommunications Regulation"

Amend the bill by striking out the title and substituting the following:

'An Act To Reform Telecommunications Regulation'

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

'PART A

Sec. A-1. 35-A MRSA §102, sub-§6-B is enacted to read:

6-B. Federal interconnection rights and obligations. "Federal interconnection rights and obligations" means the rights and obligations of a telecommunications entity under 47 United States Code, Sections 251 and 252 or any other provision of federal law or regulation governing telecommunications network facility interconnection or wholesale access rights and obligations to the extent the rights and obligations under the federal law or regulation may be regulated or overseen by the commission.

Sec. A-2. 35-A MRSA §102, sub-§§9-B to 9-E are enacted to read:

9-B. Incumbent local exchange carrier. "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that on February 8, 1996 provided telephone exchange service in the area and:

A. On February 8, 1996 was deemed to be a member of the exchange carrier association pursuant to 47 Code of Federal Regulations, Section 69.601(b); or

B. Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph A.

9-C. Interconnected voice over Internet protocol service. "Interconnected voice over Internet protocol service" means a service that enables real-time, 2-way voice communications; requires a broadband connection from the user's location; and permits

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1 users generally to receive calls that originate on the public switched telephone network
2 and to terminate calls to the public switched telephone network.

3 **9-D. Interexchange carrier.** "Interexchange carrier" means any person, association,
4 corporation or other entity that provides intrastate interexchange telecommunications
5 services, including a local exchange carrier that provides interexchange service.

6 **9-E. Local exchange carrier.** "Local exchange carrier" means any person that is
7 engaged in the provision of telephone exchange service or exchange access. "Local
8 exchange carrier" does not include a person insofar as that person is engaged in the
9 provision of a commercial mobile service under 47 United States Code, Section 332(c),
10 unless the commission by rule determines that the Federal Communications Commission
11 includes such service in the definition of the term. "Local exchange carrier" does not
12 include a person insofar as that person is engaged in the provision of interconnected voice
13 over Internet protocol service unless the person is providing provider of last resort
14 service. "Local exchange carrier" does not include a person insofar as the person is a
15 dark fiber provider.

16 **Sec. A-3. 35-A MRSA §102, sub-§11-A** is enacted to read:

17 **11-A. Provider of last resort service.** "Provider of last resort service" has the same
18 meaning as in section 7201.

19 **Sec. A-4. 35-A MRSA §102, sub-§12-A** is enacted to read:

20 **12-A. Public switched telephone network.** "Public switched telephone network"
21 means the network of equipment, lines and controls assembled to establish
22 communication paths between calling and called parties in North America.

23 **Sec. A-5. 35-A MRSA §102, sub-§18-B** is enacted to read:

24 **18-B. Telephone exchange service.** "Telephone exchange service" means service
25 within a telephone exchange, or within a connected system of telephone exchanges within
26 the same exchange area operated to furnish to subscribers intercommunicating service of
27 the character ordinarily furnished by a single exchange, and that is covered by an
28 exchange service charge, or comparable service provided through a system of switches,
29 transmission equipment or other facilities, or combination thereof, by which a subscriber
30 can originate and terminate a telecommunications service.

31 **Sec. A-6. 35-A MRSA §102, sub-§21-A** is enacted to read:

32 **21-A. Voice service provider.** "Voice service provider" means any person
33 providing, directly or indirectly, 2-way voice communications service for compensation
34 in this State. "Voice service provider" does not include a dark fiber provider.

35 **Sec. A-7. 35-A MRSA §102, sub-§24** is enacted to read:

36 **24. Wholesale competitive local exchange carrier.** "Wholesale competitive local
37 exchange carrier" means a local exchange carrier, other than an incumbent local exchange
38 carrier, that provides a wholesale telecommunications service but does not provide
39 telephone exchange service to a retail subscriber.

40 **Sec. A-8. 35-A MRSA §112, as amended by PL 2003, c. 505, §§7 and 8, is**
41 **further amended to read:**

1 **§112. Power to obtain information**

2 **1. Investigation of management of business.** The commission may inquire into the
3 management of the business of all public utilities and shall keep itself informed as to the
4 manner and method in which each is conducted. The provisions of this subsection do not
5 apply to any telephone utility other than a provider of provider of last resort service with
6 respect to the provision of provider of last resort service.

7 **2. Facilities and information to be furnished.** Every public utility shall furnish the
8 commission with:

9 A. All reasonable facilities for the prompt and faithful discharge of its duties; and

10 B. All information necessary to perform its duties and carry into effect this Title. If
11 it is unable to furnish the information, it shall give a good and sufficient reason for
12 the failure, and the reason for the failure shall be verified by an officer, owner or
13 agent of the public utility and returned to the commission at its office within the time
14 fixed by the commission.

15 The provisions of this subsection do not apply to any telephone utility other than a
16 provider of provider of last resort service with respect to the provision of provider of last
17 resort service.

18 **3. Inspection of books and papers; confidentiality.** The following provisions
19 apply to inspection of books and papers.

20 A. The commission or any commissioner or any person employed by it for that
21 purpose, may upon demand inspect and copy the books, accounts, papers, records and
22 memoranda of any public utility in relation to its business and affairs.

23 B. A person other than a commissioner must produce his authority to make an
24 inspection.

25 C. A person employed by the commission to inspect utilities documents may not
26 divulge information ascertained by inspection except:

27 (1) To the commission; or

28 (2) Under direction of the commission.

29 D. Any person who violates this subsection is guilty of a Class E crime.

30 The provisions of this subsection do not apply to any telephone utility other than a
31 provider of provider of last resort service with respect to the provision of provider of last
32 resort service.

33 **4. Production of documents; failure to obey.** The commission may require the
34 production of documents as follows.

35 A. The commission may require, by order or subpoena to be served on any public
36 utility or its agent in the same manner that a summons is served in a civil action in the
37 Superior Court, the production of any books, accounts, papers, records or verified
38 copies of them kept by a public utility or within the control of a public utility in any
39 office or place within or outside the State, so that an examination may be made by the
40 commission or under its direction.

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1 C. Subject to the requirements of the United States Constitution and the Constitution
2 of Maine and upon a finding that there is probable cause to believe that a public
3 utility is altering, amending, removing or destroying any of its books, accounts,
4 papers or records in an attempt to frustrate an investigation of the commission, a
5 Judge of the District Court or a Justice of the Peace, at the request of the commission
6 and without notice, may issue a search warrant requiring seizure of those documents
7 that are necessary for the commission to discharge its duties.

8 The provisions of this subsection do not apply to any telephone utility other than a
9 provider of provider of last resort service with respect to the provision of provider of last
10 resort service.

11 **5. Telephone utilities.** Every telephone utility, dark fiber provider, voice service
12 provider and wholesale competitive local exchange carrier shall provide to the
13 commission upon request or order information relevant to the commission's
14 implementation or enforcement of any provision of state or federal law or rule to which
15 the telephone utility, dark fiber provider, voice service provider or wholesale competitive
16 local exchange carrier is subject and over which the commission exercises authority or
17 jurisdiction. A telephone utility, dark fiber provider, voice service provider or wholesale
18 competitive local exchange carrier that fails to comply with a commission order directing
19 the production of information relevant to the commission's implementation or
20 enforcement of a provision of state or federal law or rule to which the telephone utility,
21 dark fiber provider, voice service provider or wholesale competitive local exchange
22 carrier is subject and over which the commission exercises authority or jurisdiction is in
23 violation of this subsection.

24 **Sec. A-9. 35-A MRSA §113, sub-§4** is enacted to read:

25 **4. Telephone utilities.** This section does not apply to any telephone utility other
26 than a provider of provider of last resort service. The commission may not conduct or
27 require a management audit under subsection 1 or 2 of a provider of provider of last
28 resort service unless the commission finds that there is no less burdensome means of
29 obtaining the information sought to be obtained in the management audit and:

30 A. The provider has filed for an increase in provider of last resort service rates;

31 B. The provider has filed for an increase in funding from a state universal service
32 fund under section 7104; or

33 C. The commission, following an investigation, finds that the provider's provider of
34 last resort service quality has declined in a manner contrary to the public interest.

35 **Sec. A-10. 35-A MRSA §508** is enacted to read:

36 **§508. Telephone utilities**

37 The provisions of this chapter do not apply to a telephone utility other than a provider
38 of provider of last resort service with respect to its provider of last resort service
39 accounts. The commission may not require a provider of provider of last resort service to
40 keep its accounts in a manner that is substantially different from federal accounting
41 standards applicable to telecommunications companies under 47 Code of Federal

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Regulations, Part 32 or any replacement accounting standards adopted by the Federal Communications Commission.

Sec. A-11. 35-A MRSA §707, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

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

A. "Affiliated interest" means:

~~(1) Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of a public utility; With respect to a public utility other than a provider of provider of last resort service:~~

~~(a) Any person who owns directly, indirectly or through a chain of successive ownership 10% or more of the voting securities of a public utility;~~

~~(b) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in division (a);~~

~~(c) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;~~

~~(d) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, if the person or group of persons beneficially owns more than 3% of the public utility's voting securities; or~~

~~(e) Any public utility of which any person defined in divisions (a) to (d) is an affiliated interest; or~~

~~(2) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1); With respect to a provider of provider of last resort service:~~

~~(a) Any person who owns directly, indirectly or through a chain of successive ownership 25% or more of the voting securities of a provider of provider of last resort service;~~

~~(b) Any person, 25% or more of whose voting securities are owned, directly or indirectly, by a provider of provider of last resort service;~~

~~(c) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a provider of provider of last resort service, if the person or group of persons beneficially owns more than 3% of the provider's voting securities; or~~

~~(d) Any provider of provider of last resort service of which any person defined in divisions (a) to (c) is an affiliated interest.~~

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~~(3) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;~~

~~(4) Any person, or group of persons acting in concert, which the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, provided that the person or group of persons beneficially owns more than 3% of the public utility's voting securities; or~~

~~(5) Any public utility of which any person defined in subparagraphs (1) to (4) is an affiliated interest.~~

B. "Transaction" means any dealings between a public utility and its affiliated interests as defined in paragraph A which affects that affect, directly or indirectly, any accounting entry of the public utility, as prescribed pursuant to section 501.

C. "Voting security" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company.

Sec. A-12. 35-A MRSA §707, sub-§6 is enacted to read:

6. Application. This section does not apply to any telephone utility other than a provider of provider of last resort service with respect to affiliated interests that are directly related to or that may directly affect provider of last resort service in this State, as determined by the commission by rule or order. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-13. 35-A MRSA §708, sub-§1, ¶C is enacted to read:

C. "Controlling interest" means:

(1) Voting power over voting shares of a corporation or entity that entitle the holders of those shares to cast at least 25% of the votes that all shareholders are entitled to cast in an election of the directors of the corporation or entity; or

(2) Voting power over at least 25% of the shares in any class of shares entitled to elect all the directors or any specified number of the directors.

For the purposes of this section, a person does not have a controlling interest if that person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified under this paragraph or who are not considered to have a controlling interest under this paragraph.

A person has voting power over a voting share if that person has shares, directly or indirectly, through any option, contract, arrangement, understanding, voting trust or conversion right or, by acting jointly or in concert or otherwise, has the power to vote, or to direct the voting of, that voting share.

Sec. A-14. 35-A MRSA §708, sub-§5 is enacted to read:

ROFS

5. Limitation. The provisions of this section do not apply to any telephone utility other than a provider of provider of last resort service and apply to a provider of provider of last resort service only if the reorganization results in a merger, sale or transfer of a controlling interest of the provider of provider of last resort service.

Sec. A-15. 35-A MRSA §912, as amended by PL 2001, c. 137, §5, is further amended to read:

§912. Exemption for certain telephone utilities

The provisions of this chapter do not apply to any telephone utility other than a provider of provider of last resort service.

The commission may adopt by rule standards and procedures for granting exemptions to ~~a telephone utility or a specified group of telephone utilities~~ providers of provider of last resort service from all or specified portions of this chapter. Any exemption granted pursuant to the rule must be accompanied by a finding that the exemption is in the public interest and will not have a negative impact on competitive markets for telephone services. ~~The commission may limit an exemption to specific geographic areas.~~ A utility granted an exemption pursuant to a rule adopted under this section remains subject to other applicable provisions of this Title and commission rules.

For good cause, as defined by the commission by rule, the commission may revoke any exemption granted pursuant to this section. A revocation may be in whole or in part and may be specific to a single ~~telephone utility or a single utility~~ provider of provider of last resort service.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

Sec. A-16. 35-A MRSA §2101, as corrected by RR 2001, c. 2, Pt. B, §54 and affected by §58, is amended to read:

§2101. Organization of certain public utilities

~~A public utility for the operation of telephones~~ provider of provider of last resort service, a local exchange carrier and a public utility for the purpose of making, selling, distributing and supplying gas or electric transmission and distribution service 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 as a legal entity authorized under the laws of the State, including Title 13-C.

Sec. A-17. 35-A MRSA §2102, as amended by PL 2009, c. 612, §§5 and 6, is further amended to read:

§2102. Approval to furnish service

The following provisions apply to furnishing service.

1. Approval required. Except as provided in subsection 2 and in section 4507, a public utility may not furnish any of the services set out in section 2101 in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service, ~~and a dark fiber provider may not offer federally supported dark fiber,~~

without the approval of the commission. The commission may condition approval upon the submission of a bond or other financial security if the commission determines that such a requirement is necessary to ensure that a public utility has the financial ability to meet its obligations under this Title.

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

2. Approval not required. Except as provided in section 2104, the commission's approval is not required for a public utility to furnish service in any municipality in which that public utility is furnishing service on October 8, 1967. ~~Approval is not required for the operation of a radio paging service or mobile telecommunications services.~~ Approval is not required for a transmission and distribution utility to distribute electricity to any other transmission and distribution utility.

3. Exemption for certain telephone utilities. ~~The commission by rule may exempt a specified telephone utility or group of telephone utilities from obtaining the approval required by subsection 1 if the commission finds that the exemption will not result in unjust or unreasonable rates or inadequate service for any telephone utility customers. The commission may limit the exemption to specified geographic areas. For good cause, as provided in the rule establishing the exemption, the commission may revoke an exemption in whole or in part, including an exemption granted to a single telephone utility. A telephone utility that is exempt from the approval requirement of subsection 1:~~ The provisions of this section do not apply to any telephone utility except a provider of provider of last resort service with respect to the provision of provider of last resort service and a local exchange carrier.

~~A. Before commencing service, shall notify the commission of its intent to commence the exempted service and provide any other information the commission may require;~~

~~B. Shall obtain the approval of the commission under subsection 1 to provide any service other than the services specified in the exemption granted by the commission under this subsection; and~~

~~C. Remains subject to any other applicable provisions of this Title and commission rules.~~

~~Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II A and must be submitted to the Joint Standing Committee on Utilities and Energy by January 1, 1999.~~

4. Dark fiber provider. ~~The commission shall issue its order approving or denying an application from a dark fiber provider for approval under this section, including its decision on any waivers or exemptions requested by the dark fiber provider in conjunction with its application, within 60 days of receipt of the application, except that if~~

ROFS

~~the commission determines that it requires additional time, it may extend its review and issue its order no later than 90 days after receipt of the application.~~

Sec. A-18. 35-A MRSA c. 72 is enacted to read:

CHAPTER 72

TELECOMMUNICATIONS REGULATORY REFORM

SUBCHAPTER 1

GENERAL PROVISIONS

§7201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Access to directory assistance. "Access to directory assistance" means access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings.

2. Access to emergency services. "Access to emergency services" means access to emergency services, as defined in Title 25, section 2921, subsection 5, through 9-1-1 or enhanced 9-1-1 service, as defined in Title 25, section 2921, subsection 6, to the extent a local government in the service area of a provider of last resort service provides 9-1-1 or enhanced 9-1-1 services.

3. Access to interexchange service. "Access to interexchange service" means the use of the wireline loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network.

4. Access to operator services. "Access to operator services" means access to any automatic or live assistance by a consumer to arrange for billing for or completion of a telephone call or both.

5. Dual-tone multifrequency signaling. "Dual-tone multifrequency signaling" means a method of signaling that facilitates the transportation of signaling through a network, shortening call set-up time.

6. Local usage. "Local usage" means an amount of minutes of use of exchange service within a certain area, prescribed by the commission, provided for a flat rate to end users.

7. Provider of last resort service. "Provider of last resort service" means a flat-rate service with voice grade access to the public switched telephone network; local usage within the basic service calling areas of incumbent local exchange carriers as of January 1, 2012; dual-tone multifrequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; toll limitation for qualifying low-income customers; and the capacity to maintain uninterrupted voice

1 service during a power failure, either through the incorporation into the network or
 2 network interface devices of suitable battery backup or through electric current.

3 **8. Service provider.** "Service provider" means an entity designated as a provider of
 4 provider of last resort service under this chapter.

5 **9. Single-party service.** "Single-party service" means telecommunications service
 6 that permits users to have exclusive use of a wireline subscriber loop or access line for
 7 each call placed or, in the case of wireless telecommunications carriers that use spectrum
 8 shared among users to provide service, a dedicated message path for the length of a user's
 9 particular transmission.

10 **10. Toll limitation for qualifying low-income customers.** "Toll limitation for
 11 qualifying low-income customers" means a service provided to customers of provider of
 12 last resort service that meet income qualifications established by the commission by rule
 13 that allows those customers:

14 A. To elect not to allow the completion of outgoing toll calls; or

15 B. To limit the amount of toll usage that the customer may incur.

16 With respect to a service provider that has the capacity to allow customers both options
 17 described in paragraphs A and B, "toll limitation for qualifying low-income customers"
 18 means a service that offers both options to those customers. With respect to a service
 19 provider that does not have the capacity to allow customers both options, "toll limitation
 20 for qualifying low-income customers" means a service that offers one of the options to
 21 those customers.

22 **11. Voice grade access.** "Voice grade access" means a functionality that offers a
 23 minimum bandwidth range of 300 to 3,000 hertz that enables a user of
 24 telecommunications services to transmit voice communications, including signaling the
 25 network that the caller wishes to place a call, and to receive voice communications,
 26 including receiving a signal indicating there is an incoming call.

27 **SUBCHAPTER 2**

28 **PROVIDER OF LAST RESORT SERVICE**

29 **§7221. Designation of service providers**

30 **1. Initial designation of service providers.** An entity that was an incumbent local
 31 exchange carrier as of January 1, 2012 shall provide provider of last resort service within
 32 its service area.

33 **2. Reassignment of service provider obligation.** A service provider may petition
 34 the commission for authorization to assign its provider of last resort service obligation for
 35 a given geographic area to another voice service provider. The commission shall by rule
 36 develop a process for identifying and approving replacement service providers, but in no
 37 event may a voice service provider be designated as a replacement service provider
 38 without the express consent of the voice service provider. Before authorizing the
 39 reassignment of the provider of last resort service obligation to another voice service
 40 provider, the commission shall ensure that the voice service provider possesses the
 41 financial and technical capability to meet all provider of last resort service standards set

by the commission by rule. The commission may not reassign the provider of last resort service obligation to any entity that would provide the service only as a reseller, as determined by the commission by rule.

3. Modification of service obligations. Notwithstanding section 7201, subsection 7, the commission, in an adjudicatory proceeding, may relieve a service provider of the requirement that it have the capacity to maintain uninterrupted voice service during a power failure, either through the incorporation into the network or network interface devices of suitable battery backup or through electric current. The commission may grant the relief only if it finds that doing so is in the public interest. In determining that granting relief under this section is in the public interest, the commission must find that the benefits that would accrue to customers of the provider of last resort service from providing the relief would exceed the benefits to those customers of preserving the requirement.

§7222. Revenue requirements of service providers

The initial rates for provider of last resort service are those rates in effect for basic local exchange service for each incumbent local exchange carrier in the service area of that carrier as of January 1, 2012.

§7223. Provider of last resort service consumer protection

A service provider in accordance with rules adopted by the commission:

1. Information. Shall provide customers adequate and timely information about provider of last resort service including posting in an easily discoverable location on its publicly accessible website its rate for provider of last resort service;

2. Fairness. Shall treat its customers in a nondiscriminatory manner and may not unreasonably deny or disconnect provider of last resort service; and

3. Consumer protection. Shall comply with minimum consumer protection standards for provider of last resort service essential to the preservation of good quality, affordable provider of last resort service throughout the State.

A customer of a service provider may seek redress from the commission in accordance with any applicable provisions of this Title with respect to provider of last resort service, regardless of any other services the customer may take from the service provider. A service provider may not disconnect a provider of last resort service customer from provider of last resort service except in accordance with rules adopted by the commission. This section does not authorize the commission to regulate services other than provider of last resort service, including but not limited to discontinuance by the service provider of any other services to the customer.

§7224. Ancillary services

If a service provider offers an ancillary service to any customer, it shall offer that service to its provider of last resort service customers individually in conjunction with provider of last resort service and may not require that the ancillary service be bundled with any other ancillary services. For purposes of this section, "ancillary service" means a service that allows a customer to manage the display of information identifying the

ROFS

COMMITTEE AMENDMENT "A" to H.P. 1309, L.D. 1784

1 originator of a voice call or to manage the delivery of a voice call, including but not
2 limited to call waiting and call forwarding, and is related to the provisioning of voice
3 grade access to the public switched telephone network so that the customer is unable to
4 obtain a functionally equivalent service from any device or service offered by an entity
5 other than the service provider.

6 **§7225. Service quality**

7 **1. Service quality reporting.** The commission by rule shall establish service quality
8 indicators with respect to which service providers shall regularly report. The service
9 quality indicators may relate only to:

10 A. Network trouble rates;

11 B. The percentage of network troubles not resolved within 24 hours;

12 C. The percentage of installation appointments not met;

13 D. The average delay, in days, for missed installation appointments; and

14 E. Service outages.

15 **2. Commission review of service quality.** The commission by rule shall establish
16 provider of last resort service quality standards. The commission may impose penalties
17 or require a service provider to provide rebates or rate reductions if the commission finds,
18 after investigation, that a service provider has failed to meet service quality standards.

19 **3. Rules.** Rules adopted under this section may establish appropriate penalties,
20 rebates or rate reductions that may be applied if the commission finds, after investigation,
21 that a service provider has failed to meet service quality standards. Rules adopted under
22 this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

23 **§7226. Certain information requirements and limitations**

24 Notwithstanding section 112, the commission may not require a service provider:

25 **1. Infrastructure maps.** To provide to the commission infrastructure maps that
26 contain a level of detail that is greater than the infrastructure maps filed for that service
27 provider's service territory prior to March 1, 2012 or that depict the infrastructure
28 connecting interoffice facilities to remote terminals and digital loops; or

29 **2. Outage reporting.** To submit notices to the commission of unscheduled service
30 outages or notices of restorations of service earlier than 7 calendar days following the
31 restoration of service.

32 **§7227. Rules**

33 The commission shall adopt rules to implement this subchapter. Except as otherwise
34 provided in this subchapter, rules adopted under this section are routine technical rules as
35 defined in Title 5, chapter 375, subchapter 2-A.

36 **SUBCHAPTER 3**

37 **REGULATORY REFORM**

§7231. Laws that apply only to service providers

Notwithstanding any other provision of law, the provisions listed in subsections 1 to 4 do not apply to a telephone utility except service providers with respect to the provision of provider of last resort service:

1. Regulation and control of public utilities. The following sections of chapter 7:

A. Section 703 relating to discounts and discrimination;

B. Section 704 relating to termination of utility services;

C. Section 705 relating to utility deposits;

D. Section 706 relating to tenant liability for landlord utility bills;

E. Section 713 relating to unregulated business ventures; and

F. Section 715 relating to rules of the commission;

2. Sales, leases and mortgages of property. The following sections of chapter 11:

A. Section 1101 relating to authorization; and

B. Section 1103 relating to transfer of utility stock;

3. Procedure. The following sections of chapter 13:

A. Section 1302 relating to complaints; and

B. Section 1303 relating to investigations; and

4. Telephone lines. The following sections of chapter 79:

A. Section 7904 relating to purchasing and taking land for public use.

§7232. Laws that apply only to service providers and local exchange carriers for limited purposes

Notwithstanding any other provision of law, the provisions listed in subsections 1 to 5 do not apply to a telephone utility except service providers with respect to the provision of provider of last resort service and local exchange carriers with respect to federal interconnection rights and obligations:

1. Rates of public utilities. The provisions of chapter 3 relating to the rates of public utilities.

The commission may adopt by rule standards and procedures for granting exemptions from all or specified portions of chapter 3 to service providers with respect to the provision of provider of last resort service or to local exchange carriers with respect to federal interconnection rights and obligations. Any exemption granted pursuant to rule must be accompanied by a finding that the exemption is in the public interest and will not result in unjust or unreasonable rates or have a negative impact on competitive markets for telephone services. The commission may limit an exemption to specific geographic areas. An entity granted an exemption pursuant to a rule adopted under this section remains subject to otherwise applicable provisions of chapter 3.

ROFS

COMMITTEE AMENDMENT "A" to H.P. 1309, L.D. 1784

1 For good cause, as defined by the commission by rule, the commission may revoke any
2 exemption granted pursuant to this subsection. A revocation may be in whole or in part
3 and may be specific to individual entities or services.

4 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
5 chapter 375, subchapter 2-A;

6 **2. Regulation and control of public utilities.** The following sections of chapter 7:

7 A. Section 701 relating to special privileges;

8 B. Section 702 relating to unjust discrimination;

9 C. Section 709 relating to insider transactions;

10 D. Section 710 relating to accident investigations;

11 E. Section 712 relating to competitive bidding; and

12 F. Section 714 relating to notice of certain business activities;

13 **3. Authorization of sales, leases and mortgages of property.** The following
14 sections of chapter 11:

15 A. Section 1102 relating to unnecessary property; and

16 B. Section 1104 relating to abandonment of property or service;

17 **4. Procedure.** The following sections of chapter 13:

18 A. Section 1306 relating to commission decisions;

19 B. Section 1307 relating to enforcement of decisions;

20 C. Section 1308 relating to reparation or adjustments;

21 D. Section 1309 relating to adjustment of excessive rates; and

22 E. Section 1323 relating to exhausting of rights before the commission; and

23 **5. Sanctions and administrative penalties.** The following sections of chapter 15:

24 A. Section 1511 relating to revocation and suspension of authority to provide
25 service.

26 **§7233. Laws that apply only to service providers and local exchange carriers**

27 Notwithstanding any other provision of law, the provisions listed in subsection 1 do
28 not apply to a telephone utility except service providers with respect to the provision of
29 provider of last resort service and local exchange carriers:

30 **1. Organization, powers and service territory.** The following sections of chapter
31 21:

32 A. Section 2105 relating to approval after hearing;

33 B. Section 2107 relating to approval only to Maine corporations;

34 C. Section 2108 relating to holding real estate; and

35 D. Section 2110 relating to extension of service.

§7234. Interconnected voice over Internet protocol service

Notwithstanding any other provision of law, a person, insofar as that person is providing interconnected voice over Internet protocol service, is not subject to any regulation under this Title as a telephone utility or as a public utility unless the person is providing provider of last resort service. Nothing in this section affects the application of any provision of this Title that otherwise expressly applies to a person providing interconnected voice over Internet protocol service or to voice service providers.

§7235. Dark fiber providers

Notwithstanding any other provision of law, a person, insofar as that person is a dark fiber provider, is not subject to any regulation under this Title as a telephone utility or as a public utility. Nothing in this section affects the application of any provision of this Title that otherwise expressly applies to a dark fiber provider.

Sec. A-19. 35-A MRSA §7501, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. A-20. 35-A MRSA §7501-A, as enacted by PL 1991, c. 45, is repealed.

Sec. A-21. 35-A MRSA §7501-B is enacted to read:

§7501-B. Directories

A telephone utility is not required to publish a hard-copy telephone directory. A provider of provider of last resort service shall annually offer its provider of last resort service customers the option to receive a telephone directory in an electronic format or in the form of a printout of the electronic database showing the names, addresses and telephone numbers of persons and businesses, other than of those who have requested unlisted numbers. The service provider shall annually provide notice to each of its provider of last resort service customers of this option.

Sec. A-22. 35-A MRSA §7502, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. A-23. Alternative form of regulation. The Public Utilities Commission may not enforce provisions of any order establishing an alternative form of regulation for an incumbent local exchange carrier pursuant to the Maine Revised Statutes, Title 35-A, chapter 91 that:

1. Prohibit an incumbent local exchange carrier from charging rates for nonresidential service that are below the long-run incremental cost of providing that service or that establish some other minimum price requirement for services to nonresidential customers;

2. Impose multiplier penalties for repeated failures to meet service quality index performance standards with respect to any actions, inactions or other performance of that carrier occurring after July 31, 2010. This subsection does not affect the authority of the commission to impose base penalties for violations of service quality index performance standards or to require continued payment of penalties that have been established for violations that occurred prior to August 1, 2010;

3. Impose service quality index performance standards, or impose penalties for failure to meet such standards, with respect to any actions, inactions or other performance of that carrier occurring after July 31, 2012; or

4. Require the tariffing of any rates or services other than those relating to provider of last resort service under Title 35-A, chapter 72.

For any incumbent local exchange carrier subject to an order establishing an alternative form of regulation pursuant to Title 35-A, chapter 91, the commission, in an adjudicatory proceeding, shall establish service standards relating to provider of last resort service for the period of August 1, 2012 to July 31, 2013. The standards must relate only to network trouble rates, the percentage of network troubles not resolved within 24 hours, the percentage of installation appointments not met, the average delay, in days, for missed installation appointments and service outages. The commission may impose penalties, which may not exceed an annual amount of \$2,000,000, for violations of the standards.

The Legislature finds that the provisions of this section are appropriate because of extraordinarily compelling and unique circumstances, including but not limited to dramatic changes in the telecommunications market in recent years, the bankruptcy and subsequent emergence from bankruptcy of the largest telecommunications provider in the State and the need for regulatory reform of the telecommunications industry.

Sec. A-24. Directories. Each incumbent local exchange carrier shall publish at least one more edition of each telephone directory that it published within the 24 months prior to the effective date of this Act. In the last published edition, the carrier shall include on the directory cover a prominent notice of customer options relating to receiving the directory information pursuant to the Maine Revised Statutes, Title 35-A, section 7501-B.

Sec. A-25. Rates for provider of last resort service. The Public Utilities Commission shall convene a stakeholder group to create an appropriate framework for establishing rates for provider of last resort service, including methodology, appropriate cost considerations and standards for the availability and amount of support from a universal service fund established in the Maine Revised Statutes, Title 35-A, section 7104. The commission shall seek to find the most effective framework to avoid rate deaveraging and that keeps rates in high-cost areas as low as is reasonably possible. The commission shall invite the participation of as broad and inclusive a group of entities as possible, including the Office of the Public Advocate and representatives of affected telecommunications industry entities or groups and consumer interest entities or groups, and shall involve those entities or groups in a collaborative process that seeks to find as much common ground and agreement as reasonably possible. The commission shall submit a report to the joint standing committee of the Legislature having jurisdiction over utilities and technology matters by January 15, 2013 describing the work of the stakeholder group, where agreement was found and where disagreements remain, the commission's recommendations and the positions of the stakeholders on those recommendations. The joint standing committee may report out a bill related to the subject of the report to the First Regular Session of the 126th Legislature.

PART B

Sec. B-1. 35-A MRSA §116, sub-§1, as amended by PL 2007, c. 478, §1, is further amended to read:

1. Entities subject to assessments. Every transmission and distribution, gas, telephone and water utility and ferry subject to regulation by the commission and every qualified telecommunications provider is subject to an assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for the Public Utilities Commission Regulatory Fund established pursuant to this section. The budget for the Public Utilities Commission Regulatory Fund is subject to legislative review and approval in accordance with subsection 2. The portion of the total assessment applicable to each category of public utility or qualified telecommunications provider is based on an accounting by the commission of the portion of the commission's resources devoted to matters related to each category. The commission shall develop a reasonable and practicable method of accounting for resources devoted by the commission to matters related to each category of public utility or qualified telecommunications provider. Assessments on each public utility or qualified telecommunications provider within each category must be based on the utility's or qualified telecommunications provider's gross intrastate operating revenues. The commission shall determine the assessments annually prior to May 1st and assess each utility or qualified telecommunications provider for its pro rata share for expenditure during the fiscal year beginning July 1st. Each utility or qualified telecommunications provider shall pay the assessment charged to the utility or qualified telecommunications provider on or before July 1st of each year. Any increase in the assessment that becomes effective subsequent to May 1st may be billed on the effective date of the act authorizing the increase.

A. The assessments charged to utilities and qualified telecommunications providers under this section are just and reasonable operating costs for rate-making purposes.

B. For the purposes of this section, "intrastate gross operating revenues" means intrastate revenues derived from filed rates and rates ~~that are exempt from filing requirements pursuant to rules adopted by the commission under section 307-A charged by a qualified telecommunications provider~~, except revenues derived from sales for resale.

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety are not subject to any assessment.

D. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities or qualified telecommunications providers in the current year.

E. The commission may exempt utilities or qualified telecommunications providers with annual intrastate gross operating revenues under \$50,000 from assessments under this section.

For purposes of this section, "qualified telecommunications provider" means a provider of interconnected voice over Internet protocol service that paid any assessment under this

ROFS

1 subsection, whether voluntarily, by agreement with the commission or otherwise, prior to
2 March 1, 2012.

3 **Sec. B-2. 35-A MRSA §116, sub-§3**, as enacted by PL 1987, c. 141, Pt. A, §6, is
4 amended to read:

5 **3. Deposit of funds.** All revenues derived from assessments levied against utilities
6 or qualified telecommunications providers described in this section ~~shall~~ **must** be
7 deposited with the Treasurer of State in a separate account to be known as the Public
8 Utilities Commission Regulatory Fund.

9 **Sec. B-3. 35-A MRSA §116, sub-§8**, as amended by PL 2007, c. 539, Pt. KK,
10 §13, is further amended to read:

11 **8. Public Advocate assessment.** Every utility or qualified telecommunications
12 provider subject to assessment under this section is subject to an additional annual
13 assessment on its intrastate gross operating revenues to produce sufficient revenue for
14 expenditures allocated by the Legislature for operating the Office of the Public Advocate.
15 The portion of this assessment applicable to each category of public utility or qualified
16 telecommunications provider is based on an accounting by the Public Advocate of
17 resources devoted to matters related to each category. The Public Advocate shall develop
18 a reasonable and practicable method of accounting for resources devoted by the Public
19 Advocate to matters related to each category of public utility or qualified
20 telecommunications provider. Assessments on each public utility or qualified
21 telecommunications provider within each category must be based on the utility's or
22 qualified telecommunications provider's gross intrastate operating revenues. The
23 revenues produced from this assessment are transferred to the Public Advocate
24 Regulatory Fund and may only be used to fulfill the duties specified in chapter 17. The
25 assessments charged to utilities and qualified telecommunications providers under this
26 subsection are considered just and reasonable operating costs for rate-making purposes.
27 The Public Advocate shall develop a method of accounting for staff time within the
28 Office of the Public Advocate. All professional and support staff shall account for their
29 time in such a way as to identify the percentage of time devoted to public utility and
30 qualified telecommunications provider regulation and the percentage of time devoted to
31 other duties that may be required by law.

32 A. The Public Advocate shall submit its budget recommendations as part of the
33 unified current services budget legislation in accordance with Title 5, sections 1663
34 to 1665. The assessments and expenditures provided in this section are subject to
35 legislative approval. The Public Advocate shall make an annual report of its planned
36 expenditures for the year and on its use of funds in the previous year. The Public
37 Advocate may also receive other funds as appropriated by the Legislature.

38 B. The Public Advocate may use the revenues provided in accordance with this
39 section to fund the Public Advocate and 9 employees and to defray the costs incurred
40 by the Public Advocate pursuant to this Title, including administrative expenses,
41 general expenses, consulting fees and all other reasonable costs incurred to
42 administer this Title.

C-1. Funds that are not expended at the end of a fiscal year do not lapse but must be carried forward to be expended for the purposes specified in this section in succeeding fiscal years.

Sec. B-4. 35-A MRSA §711, sub-§§1 and 2, as enacted by PL 1987, c. 141, Pt. A, §6, are amended to read:

1. Joint use permitted. The commission may order that joint use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use when, after a hearing had upon its own motion or upon complaint of a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system affected, it finds the following:

A. That public convenience and necessity require the use by one public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system of the conduits, subways, wires, poles, pipes or other equipment, or any part of them, on, over or under any street or highway and belonging to another public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system;

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

C. That the public utilities, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system have failed to agree upon the use or the terms and conditions or compensation for the use.

2. Liability of user. If joint use is ordered, the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system to whom the use is permitted ~~shall be~~ is liable to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment for damage that may result from its use to the property of the owner or other users.

Sec. B-5. 35-A MRSA §1508-A, sub-§1, as enacted by PL 2003, c. 505, §23, is amended to read:

1. Penalty. Unless otherwise specified in law, the commission may, in an adjudicatory proceeding, impose an administrative penalty as specified in this section.

A. For willful violations of this Title, a commission rule or a commission order by a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or a competitive electricity provider, the commission may impose an administrative penalty for each violation in an amount that does not exceed \$5,000 or .25% of the annual gross revenue that the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or the competitive electricity provider received from sales in the State, whichever amount is lower. Each day a violation continues constitutes a separate offense. The maximum administrative penalty for any related series of violations may not exceed \$500,000 or 5% of the annual gross revenue that the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or the competitive electricity provider received from sales in the State, whichever amount is lower.

1 B. For a violation in which a public utility, voice service provider, dark fiber
 2 provider, wholesale competitive local exchange carrier or a competitive electricity
 3 provider was explicitly notified by the commission that it was not in compliance with
 4 the requirements of this Title, a commission rule or a commission order and that
 5 failure to comply could result in the imposition of administrative penalties, the
 6 commission may impose an administrative penalty that does not exceed \$500,000.

7 C. The commission may impose an administrative penalty in an amount that does not
 8 exceed \$1,000 on any person that is not a public utility, voice service provider, dark
 9 fiber provider, wholesale competitive local exchange carrier or a competitive
 10 electricity provider and that violates this Title, a commission rule or a commission
 11 order. Each day a violation continues constitutes a separate offense. The
 12 administrative penalty may not exceed \$25,000 for any related series of violations.

13 D. In addition to the administrative penalties authorized by this subsection, the
 14 commission may require disgorgement of profits or revenues realized as a result of a
 15 violation of this Title, a commission rule or a commission order.

16 **Sec. B-6. 35-A MRSA §2301**, as amended by PL 2009, c. 612, §7, is further
 17 amended to read:

18 **§2301. Telephone providers and television corporations may construct lines**

19 Except as limited, every ~~corporation organized under section 2101 for the purpose of~~
 20 ~~operating telephones, every~~ voice service provider, wholesale competitive local exchange
 21 carrier and dark fiber provider for the purposes of constructing and maintaining its
 22 federally supported dark fiber, and every corporation organized for the purpose of
 23 transmitting television signals by wire may construct, maintain and operate its lines upon
 24 and along the route or routes and between the points stated in its certificate of
 25 incorporation; and may construct its lines and necessary erections and fixtures for them
 26 along, over, under and across any of the roads and streets and across or under any of the
 27 waters upon and along the route or routes subject to the conditions and under the
 28 restrictions provided in this chapter and chapter 25.

29 **Sec. B-7. 35-A MRSA §2305-A**, as amended by PL 1999, c. 398, Pt. A, §35 and
 30 affected by §§104 and 105, is further amended to read:

31 **§2305-A. Transmission and distribution utilities and telephone providers to**
 32 **conform to standards**

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

- 35 A. "Cable television company" has the same meaning as in Title 30-A, section 2001.
 36 B. "Most recent edition of the Standard" means the 1993 edition or any subsequent
 37 edition of the Standard adopted by the commission pursuant to this section.
 38 C. "Standard" means the National Electrical Safety Code (NESC)-ANSI-C2.

39 **2. Applicable national standard.** Except as otherwise provided in this section or by
 40 rule of the commission adopted pursuant to this section, every transmission and
 41 distribution utility, ~~telephone utility~~ entity authorized under section 2301 to construct

lines and cable television company shall design, construct, operate and maintain its lines and equipment in conformance with the applicable provisions of the most recent edition of the Standard.

3. Review of standards by commission. Whenever a new or revised edition of the Standard is published, a transmission and distribution utility, ~~telephone utility~~ entity authorized under section 2301 to construct lines or cable television company may request the commission to hold a hearing on whether the new or revised Standard should be adopted.

A. If a hearing is requested within 120 days of the publication of the new or revised Standard, the commission shall hold a hearing and shall either adopt the new or revised Standard or, pursuant to subsection 4, amend or reject the new or revised Standard. If a hearing is requested and held under this paragraph, the new or revised Standard does not go into effect in any form except as expressly provided by the commission in its order.

B. If a hearing is not requested within 120 days of the publication of the new or revised Standard, the commission is deemed to have adopted the new or revised Standard effective on the 180th day after publication. Existing facilities that meet the requirements of the previously applicable Standard but which do not meet the requirements of the new or revised Standard may remain in noncompliance only if grandfathered under the new edition.

4. Modifications, deletions and waivers to Standard. The commission may, at its discretion and after appropriate hearing, modify, delete or waive individual requirements of the Standard. The commission may make a modification or deletion or grant a waiver of a national standard of practice contained in the Standard only if it finds one of the following:

A. Other measures achieving equivalent levels of safety will be substituted for the modified, deleted or waived national standard; or

B. The national standard is not applicable or is unduly burdensome for the level of safety achieved under local conditions.

Modifications, deletions or waivers of individual requirements of the Standard remain in force until the next edition of the Standard is adopted by the commission pursuant to subsection 3 or the modification, deletion or waiver is repealed by the commission, whichever occurs first.

Pursuant to subsection 3, paragraph A, a transmission and distribution utility, ~~telephone utility~~ entity authorized under section 2301 to construct lines or cable television company may petition the commission to continue approved modifications, deletions or waivers under a new or revised Standard. Unless the commission reaffirms a modification, deletion or waiver in its order adopting a new or revised Standard, a modification, deletion or waiver is deemed repealed on adoption of the new or revised Standard.

5. Additional safety measures. The commission may, at its discretion and after appropriate hearing, require safety measures in addition to those required by the Standard. An additional requirement remains in force for 10 years from its effective date unless the commission:

- 1 A. Repeals the requirement; or
- 2 B. Reaffirms the requirement by order. Each reaffirmation must occur within 10
- 3 years of the original effective date of the requirement or within 10 years of the last
- 4 affirmation.

5 **Sec. B-8. 35-A MRSA §2307**, as enacted by PL 1987, c. 141, Pt. A, §6, is
6 amended to read:

7 **§2307. Public utilities and telephone providers may lay wires, pipes and cables**
8 **under streets subject to municipal permit**

9 Public utilities and entities authorized under section 2301 to construct lines may, in
10 any municipality, place their pipes and appurtenances, wires and cables and all conduits
11 and other structures for conducting and maintaining the pipes, wires and cables under the
12 surface of those streets and highways in which the utilities or entities are authorized to
13 obtain locations for their pipes and appurtenances, poles and wires, subject to the written
14 permit of the licensing authority, as defined in section 2502 and subject to such rules as to
15 location and construction as the municipal officers or the Department of Transportation
16 may designate in their permit. A permit must be obtained under sections 2501 to 2508.
17 Permits to open streets and highways for the purpose of relaying or repairing the pipes
18 and appurtenances, wires, cables, conduits and other structures may be granted without
19 notice.

20 **Sec. B-9. 35-A MRSA §2308**, as enacted by PL 1987, c. 141, Pt. A, §6, is
21 amended to read:

22 **§2308. Protection of utility facilities upon discontinuance of public ways**

23 In proceedings for the discontinuance of public ways, public ways may be
24 discontinued in whole or in part. The discontinuance of a town way ~~shall~~ must be
25 pursuant to Title 23, section 3026. Unless an order discontinuing a public way
26 specifically provides otherwise, the public easement provided for in Title 23, section
27 3026, includes an easement for public utility facilities and for the permitted facilities of
28 entities authorized under section 2301 to construct lines. A utility or entity may continue
29 to maintain, repair and replace its installations within the limits of the way or may
30 construct and maintain new facilities within the limits of the discontinued way, if it is
31 used for travel by motor vehicles, in order to provide utility or telecommunications
32 service, upon compliance with the provisions of sections 2503, 2505, 2506, 2507 and
33 2508.

34 **Sec. B-10. 35-A MRSA §2310, sub-§1**, as enacted by PL 1987, c. 141, Pt. A, §6,
35 is amended to read:

36 **1. Trespass.** A person commits trespass on a utility pole if, without the prior consent
37 of the utility-owning owner of the pole, ~~he~~ that person places any object or makes any
38 attachment on any utility pole, whether or not it is within the limits of a public way.

39 **Sec. B-11. 35-A MRSA §2515, first ¶**, as amended by PL 1999, c. 398, Pt. A,
40 §37 and affected by §§104 and 105, is further amended to read:

1 Every corporation organized under section 2101 and former section 2109 and every
2 entity authorized under section 2301 to construct lines is liable in all cases to repay a
3 municipality all sums of money that the municipality is obliged to pay on a judgment
4 recovered against it for damages caused by an obstruction, digging up or displacement of
5 a way or street by the corporation or entity, together with attorney's fees and expenses
6 necessarily incurred in defending the municipality in the actions. The corporation ~~shall~~ or
7 entity must:

8 **Sec. B-12. 35-A MRSA §2522**, as amended by PL 1999, c. 398, Pt. A, §39 and
9 affected by §§104 and 105, is further amended to read:

10 **§2522. Maintenance of utility facilities**

11 Notwithstanding any other provision of law, a transmission and distribution utility or
12 ~~telephone utility~~ entity authorized under section 2301 to construct lines may trim, cut or
13 remove by cutting trees located within the public right-of-way of a public way and may
14 trim or cut portions of trees encroaching upon the public right-of-way when necessary to
15 ensure safe and reliable service if:

16 **1. Notice to applicable licensing authority.** Notice is provided by the utility or
17 entity to the applicable licensing authority, as defined in section 2502, at least 30 days
18 before the trimming, cutting or removal of trees;

19 **2. Consultation with applicable licensing authority.** Upon request of the
20 applicable licensing authority, the utility or entity consults with the applicable licensing
21 authority before the trimming, cutting or removal of trees. Notice must be sent to each
22 municipality in which trimming, cutting or removal of trees is to be conducted and the
23 utility or entity shall consult with the applicable municipal licensing authority or, if none,
24 the municipal officers before commencing operations. The municipal licensing authority
25 or, if none, the municipal officers may elect to hold a public hearing on the utility's or
26 entity's proposal and, if so, the utility or entity may not commence operations until after
27 the public hearing has been held;

28 **3. Public notice.** Public notice is placed in at least 2 newspapers with circulation in
29 the area where trimming, cutting or removal of trees is scheduled to occur at least 30 days
30 before the trimming, cutting or removal of those trees. The notice must state that
31 customers may request to be placed on the list, required under subsection 4, of persons
32 who have requested to be personally consulted before the trimming, cutting or removal of
33 trees;

34 **4. Customer notice list.** Before the trimming, cutting or removal of trees, the utility
35 or entity confers with any person who requests personal consultation concerning the
36 trimming, cutting or removal of trees on property in which the person has a legal interest.
37 The utility or entity shall keep a list of persons who have requested personal consultation
38 under this subsection. The utility or entity shall notify annually, in the form of a bill
39 insert, all of the utility's or entity's customers of the opportunity to be on the list required
40 under this subsection; and

41 **5. Shade and ornamental trees.** Before removing a shade or ornamental tree, the
42 utility or entity consults with the owner of the land upon which the tree is located. For

ROFS

1 purposes of this subsection, "owner" includes a person who owns the underlying fee
2 interest in land encumbered with a public easement.

3 This section does not apply to trimming, cutting or removal of trees undertaken in
4 emergency situations.

5 **Sec. B-13. 35-A MRSA §7104, sub-§2**, as enacted by PL 1997, c. 692, §1, is
6 amended to read:

7 **2. General availability.** The commission shall seek to ensure that ~~similar~~
8 ~~telecommunication services are~~ provider of last resort service is available to consumers
9 throughout all areas of the State at reasonably comparable rates.

10 **Sec. B-14. 35-A MRSA §7104, sub-§3**, as amended by PL 1999, c. 60, §1, is
11 further amended to read:

12 **3. Authority.** The commission shall adopt rules to implement this section and may
13 require ~~providers of intrastate telecommunications services~~ voice network service
14 providers and providers of radio paging service to contribute to a state universal service
15 fund to support programs consistent with the goals of applicable provisions of this Title
16 and the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56.
17 Prior to requiring that ~~providers of intrastate telecommunications services~~ voice network
18 service providers and providers of radio paging service contribute to a state universal
19 service fund, the commission shall assess the telecommunications needs of the State's
20 consumers and establish the level of support required to meet those needs. If the
21 commission establishes a state universal service fund pursuant to this section, the
22 commission shall contract with an appropriate independent fiscal agent that is not a state
23 entity to serve as administrator of the state universal service fund. Funds contributed to a
24 state universal service fund are not state funds. Rules and any state universal service fund
25 requirements established by the commission pursuant to this section must:

26 A. Be reasonably designed to maximize federal assistance available to the State for
27 universal service purposes;

28 B. Meet the State's obligations under the federal Telecommunications Act of 1996,
29 Public Law ~~104-104~~ 104-104, 110 Stat. 56;

30 C. Be consistent with the goals of the federal Telecommunications Act of 1996,
31 Public Law ~~104-104~~ 104-104, 110 Stat. 56;

32 D. Ensure that any requirements regarding contributions to a state universal service
33 fund be nondiscriminatory and competitively neutral; and

34 ~~E. Require explicit identification on customer bills of contributions to any state~~
35 ~~universal service fund established pursuant to this section; and~~

36 ~~F. Allow consideration in appropriate rate making proceedings of contributions to~~
37 ~~any state universal service fund established pursuant to this section.~~

38 G. Require, if a voice network service provider recovers its contributions under this
39 section by means of a charge placed on a bill issued to a customer, explicit
40 identification on that bill of any charge imposed under this section.

For purposes of this ~~subsection~~ section, ~~"providers of intrastate telecommunications services" includes providers of radio paging service and mobile telecommunications services~~ "voice network service provider" means a voice service provider that offers its subscribers the means to initiate or receive voice communications using the public switched telephone network. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

Sec. B-15. 35-A MRSA §7104, sub-§4, as enacted by PL 1997, c. 692, §1, is repealed.

Sec. B-16. 35-A MRSA §7104, sub-§7, ¶A, as enacted by PL 2005, c. 305, §2, is amended to read:

A. In establishing the total level of support for the state universal service fund, the commission shall include funding levels for telecommunications relay services as recommended by the Telecommunications Relay Services Advisory Council, as established in section 8704, unless the commission determines, upon its own motion or upon the request of a ~~provider of intrastate telecommunications services~~ voice network service provider, that the recommended funding levels may be unreasonable. If the commission determines that the funding levels may be unreasonable, the commission shall open a proceeding to determine a reasonable funding level for telecommunications relay services, including related outreach programs. Upon the conclusion of the proceeding, the commission shall establish funding support for telecommunications relay services, including related outreach programs, that it has found to be reasonable within the state universal service fund. The commission shall require contributions to the state universal service fund on a quarterly basis to meet the established funding support levels.

Sec. B-17. 35-A MRSA §7104, sub-§8 is enacted to read:

8. Maximization of support. The commission shall pursue all activities necessary to maximize the amount of federal support received by voice service providers offering voice and broadband service in the State.

Sec. B-18. 35-A MRSA §7104-B, sub-§1, ¶C, as enacted by PL 1999, c. 409, §2, is repealed.

Sec. B-19. 35-A MRSA §7104-B, sub-§1, ¶D is enacted to read:

D. "Voice network service provider" means a voice service provider that offers its subscribers the means to initiate or receive voice communications using the public switched telephone network.

Sec. B-20. 35-A MRSA §7104-B, sub-§2, as amended by PL 2001, c. 522, §1, is further amended to read:

2. Authority. Pursuant to the authority granted in section 7104 and in order to carry out the policy goals established by section 7101, subsections 1, 2 and 4, the commission shall establish a telecommunications education access fund, referred to in this section as the "fund," and require all ~~telecommunications carriers offering telecommunications services~~ voice network service providers providing service in the State and any other entities identified by the commission ~~pursuant to subsection 8~~ to contribute to the fund.

The fund must be available, with any accumulated interest, to qualified libraries, qualified schools and the Raymond H. Fogler Library at the University of Maine to assist in paying the costs of acquiring and using advanced telecommunications technologies.

Sec. B-21. 35-A MRSA §7104-B, sub-§3, ¶A, as amended by PL 2005, c. 251, §1, is further amended to read:

A. Limit the amount collected to no more than 0.7% of retail charges for ~~telecommunications~~ 2-way voice communications services as determined by the commission, excluding interstate tolls or interstate private line services;

Sec. B-22. 35-A MRSA §7104-B, sub-§3, ¶¶C and D, as enacted by PL 1999, c. 409, §2, are amended to read:

C. Integrate the collection of the charge with any state universal service fund developed by the commission; and

D. Require, if a voice network service provider recovers its contributions under this section by means of a charge placed on a bill issued to a customer, explicit identification on customer bills of any charge imposed under this section; and.

Sec. B-23. 35-A MRSA §7104-B, sub-§3, ¶E, as enacted by PL 1999, c. 409, §2, is repealed.

Sec. B-24. 35-A MRSA §7104-B, sub-§8, as enacted by PL 1999, c. 409, §2, is repealed.

Sec. B-25. 35-A MRSA §7105, sub-§§1 and 2, as enacted by PL 1991, c. 654, §4 and affected by §5, are amended to read:

1. Per-call blocking. At least 2 months prior to initiating any caller-ID service, and throughout the period that caller-ID service is offered to subscribers in this State, telephone utilities must advertise and immediately upon initiating such service must offer to all subscribers free per-call blocking. ~~The commission shall review the form and content of advertising required under this section.~~

2. Per-line blocking. ~~In any order in which the commission approves the offering of caller ID in this State, the commission shall require~~ A telephone utility must provide per-line blocking ~~to be provided~~ to individuals, agencies and groups that submit a written request to the telephone utility asserting a specific need for per-line blocking for reasons of health and safety. Telephone utilities may not charge a subscriber a fee for the first per-line blocking or unblocking of the subscriber's line. Except as otherwise authorized by law or to confirm that a subscriber has made a valid request, telephone utilities may not disclose information concerning the request for per-line blocking submitted by an individual, agency or group.

Sec. B-26. 35-A MRSA §7106, as amended by PL 2007, c. 638, §§2 and 3, is further amended to read:

§7106. Unauthorized change of carrier

1. Unauthorized change of carrier. This subsection governs the initiation of a change in a customer's local or intrastate interexchange carrier that is not authorized by that consumer.

ROFS

1 A. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, and
2 except as otherwise provided by the commission by rule adopted pursuant to
3 subsection 3, a local or intrastate interexchange carrier may not initiate the change of
4 a customer's local or intrastate carrier unless the change is expressly authorized by the
5 customer as verified by one of the following methods:

- 6 (1) Written or electronically signed authorization from the customer;
7 (2) Toll-free electronic authorization placed from the telephone number that is
8 the subject of the change order; or
9 (3) Oral authorization of the customer obtained by an independent 3rd party.

10 B. When a customer's service is changed to a new local or intrastate interexchange
11 carrier, the new local or intrastate interexchange carrier shall maintain for 24 months
12 a record of nonpublic customer-specific information that establishes that the customer
13 authorized the change.

14 D. A local or intrastate interexchange carrier that has initiated an unauthorized
15 customer change shall:

- 16 (1) Pay all usual and customary charges associated with returning the customer
17 to the customer's original local or intrastate interexchange carrier;
18 (2) Return to the customer any amount paid to that carrier by the customer or on
19 the customer's behalf; and
20 (3) Pay any access charges and related charges to access providers or to an
21 underlying carrier when applicable; and.
22 ~~(4) Upon request, provide all billing records to the original local or intrastate~~
23 ~~interexchange carrier from which the customer was changed to enable the~~
24 ~~original local or intrastate interexchange carrier to comply with this section and~~
25 ~~any commission rules adopted under this section.~~

26 ~~E. Except as otherwise provided by the commission by rule in accordance with~~
27 ~~subsection 3, a customer subjected to an unauthorized change of local or intrastate~~
28 ~~interexchange carrier is responsible for charges of the authorized carrier for the~~
29 ~~customer's usage during the period the customer was served by the unauthorized~~
30 ~~carrier unless:~~

- 31 ~~(1) The customer has paid the unauthorized carrier for the usage; and~~
32 ~~(2) The amount paid by the customer has not been returned by the unauthorized~~
33 ~~carrier to the customer in accordance with paragraph D, subparagraph (2).~~

34 ~~If the unauthorized carrier has not returned to the customer the amount paid by the~~
35 ~~customer to the unauthorized carrier in accordance with paragraph D, subparagraph~~
36 ~~(2), the unauthorized carrier shall pay to the authorized carrier the charges of the~~
37 ~~authorized carrier for the customer's usage during the period the customer was served~~
38 ~~by the unauthorized carrier.~~

39 **2. Penalty.** A local or intrastate interexchange carrier that violates this section is
40 subject to penalty in accordance with this subsection.

ROFS

1 A. The commission may impose an administrative penalty against any person who
2 violates this section or any rule or order adopted pursuant to this section. In
3 determining whether to impose a penalty, the commission may consider whether the
4 violation was intentional. The penalty for a violation may be in an amount not to
5 exceed \$5,000 for each day the violation continues, up to a maximum of \$40,000 for
6 a first offense and a maximum of \$110,000 for subsequent offenses. The amount of
7 the penalty must be based on:

8 (1) The severity of the violation, including the intent of the violator, the nature,
9 circumstances, extent and gravity of any prohibited acts;

10 (2) The history of previous violations;

11 (3) The amount necessary to deter future violations;

12 (4) Good faith attempts to comply after notification of a violation; and

13 (5) Such other matters as justice requires.

14 ~~B. If the commission finds that a local or intrastate interexchange carrier has~~
15 ~~repeatedly violated this section or rules adopted under this section, the commission~~
16 ~~shall order the utility to take corrective action as necessary. In addition, the~~
17 ~~commission, if consistent with the public interest, may suspend, restrict or revoke the~~
18 ~~registration or certificate of the local or intrastate interexchange carrier, so as to deny~~
19 ~~the local or intrastate interexchange carrier the right to provide service in this State.~~

20 D. The commission may order a telephone utility to withhold funds collected on
21 behalf of a carrier that is subject to an administrative penalty proceeding conducted
22 pursuant to this section if it finds that it is more likely than not that penalties will be
23 imposed or customer refunds will be ordered that are equal to or greater than the
24 amount ordered withheld. The commission shall provide the carrier notice and an
25 opportunity to be heard prior to ordering funds to be withheld. If the commission
26 finds that there is a clear danger that, if notified in advance, the carrier will conceal or
27 otherwise make funds unavailable to satisfy penalties or customer refunds prior to
28 providing notice and an opportunity to be heard, it may issue an order to the public
29 utility to withhold the funds without providing notice or an opportunity to be heard.
30 To issue such an order, the commission must also make the first finding required by
31 this paragraph. The commission shall, without delay, provide a copy of the order to
32 the carrier along with written notice that the carrier, on request, will be provided with
33 an opportunity to contest the finding that it is more likely than not that penalties will
34 be imposed or customer refunds will be ordered that are equal to or greater than the
35 amount ordered withheld.

36 **3. Rules.** The commission shall adopt nondiscriminatory and competitively neutral
37 rules to further implement this section.

38 ~~A. Except as otherwise provided in this subsection, rules adopted by the commission~~
39 ~~under this subsection, including rules regarding customer verification of a change of~~
40 ~~carrier, must be consistent with the rules adopted by the Federal Communications~~
41 ~~Commission governing the initiation of a change of a customer's interstate carrier.~~

~~B. The commission, in adopting rules governing customer verification of a change of carrier, shall consider whether customer verification is necessary in the case of customer-initiated calls.~~

~~C. The commission shall adopt by rule a definition of those actions that constitute initiation of a change of carrier under this section and a definition of actions that do not constitute the initiation of a change of carrier. The commission shall consider whether actions not constituting the initiation of a change of a customer's carrier include actions of a local exchange carrier to change a customer's carrier:~~

~~(1) Undertaken at the direction of a carrier to which the customer's service is changed or with the oral or written authorization of the customer; and~~

~~(2) That do not result in the customer being changed to the service of the carrier undertaking the actions or to an affiliate of the carrier undertaking the actions.~~

~~D. Notwithstanding subsection 1, paragraph E, if the Federal Communications Commission provides by rule that customers are not responsible for charges of an authorized interstate carrier for the customer's usage during the period the customer was served by an unauthorized interstate carrier, the commission by rule may provide that a customer is not responsible for charges of an authorized local or intrastate carrier for the customer's usage during the period the customer was served by an unauthorized local or intrastate carrier.~~

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter H-A 2-A.

4. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before the court.

5. Notice to the Attorney General. If the commission has reason to believe that any carrier has violated any provision of the law for which criminal prosecution is provided and would be in order or any law regarding fraud or consumer protection, the ~~Commission~~ commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

6. Customer education. The Public Advocate shall periodically inform telephone customers in the State of the protections and rights provided by this section.

Sec. B-27. 35-A MRSA §7107, sub-§6, as corrected by RR 2003, c. 2, §113, is amended to read:

6. Rulemaking. The commission shall adopt rules to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. ~~Rules adopted by the commission must at least:~~

~~A. Establish clear standards for interpreting and applying the state of mind standard applicable to billing agents who bill on behalf of service providers not properly registered with the commission;~~

ROFS

COMMITTEE AMENDMENT "A" to H.P. 1309, L.D. 1784

~~B. Define types of evidence that constitute sufficient evidence of customer authorization in a manner that imposes the least economic and technical burdens on customers and service providers; and~~

~~C. With regard to direct dialed telecommunications services, provide that evidence that a call was dialed from the number that is the subject of the charge is sufficient evidence of authorization for the charge for that call.~~

~~Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, subsection 4, rules adopted by the commission pursuant to paragraph B may define "sufficient evidence of customer authorization" to include oral authorization obtained by an independent 3rd party. The commission may not adopt any rule that requires any 3rd-party verification of customer authorization of the provision of any service or product by a service provider that is an affiliate of the billing agent, as defined by the commission by rule.~~

Sec. B-28. 35-A MRSA §7902, as amended by PL 2009, c. 612, §9, is further amended to read:

§7902. Lines along highways and across waters

Every ~~telephone utility~~ entity authorized under section 2301 to construct lines 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. B-29. 35-A MRSA §7903, first ¶, as amended by PL 1995, c. 225, §14, is further amended to read:

Every telephone utility in the State may, upon such terms as may be agreed upon by the contracting parties, ~~subject to the control of the commission:~~

Sec. B-30. 35-A MRSA §8302, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§8302. Pole attachments

~~Where~~ If a cable television system and a voice service provider, dark fiber provider, wholesale competitive local exchange carrier or public utility ~~have failed~~ fail to agree on the joint use of poles or other equipment or on the terms and conditions or compensation for the use, the matter ~~shall be~~ is subject to section 711.

PART C

Sec. C-1. 35-A MRSA §307-A, as amended by PL 2001, c. 137, §3, is repealed.

Sec. C-2. 35-A MRSA §507, as enacted by PL 2001, c. 137, §4, is repealed.

COMMITTEE AMENDMENT "A" to H.P. 1309, L.D. 1784

3-A. Special contracts. A public utility, subject to the commission's approval, may make a contract for a definite term for its product or service, but the published rates for the product or service may not be changed during the term of the contract without the commission's consent. ~~If the commission grants to a telephone utility or a group of telephone utilities an exemption pursuant to section 307 A from the requirement to file rate schedules or terms and conditions, that telephone utility or group of telephone utilities is exempt from the requirements for commission approval and consent under this subsection to the same extent as the exemption granted by the commission pursuant to section 307 A.~~

ROFS

1 **Sec. D-2. 35-A MRSA §101**, as amended by PL 1999, c. 398, Pt. A, §2 and
2 affected by §§104 and 105, is further amended to read:

3 **§101. Statement of purpose**

4 The purpose of this Title is to ensure that there is a regulatory system for public
5 utilities in the State and for other entities subject to this Title that is consistent with the
6 public interest and with other requirements of law and to provide for reasonable licensing
7 requirements for competitive electricity providers. The basic purpose of this regulatory
8 system as it applies to public utilities subject to service regulation under this Title is to
9 ensure safe, reasonable and adequate service and to ensure that the rates of public utilities
10 subject to rate regulation are just and reasonable to customers and public utilities.

11 **Sec. D-3. 35-A MRSA §103, sub-§2, ¶A**, as enacted by PL 1987, c. 141, Pt. A,
12 §6, is amended to read:

13 A. All public utilities and certain other entities as specified in this Title are subject to
14 the jurisdiction, control and regulation of the commission and to applicable
15 provisions of this Title.

16 **Sec. D-4. 35-A MRSA §120, sub-§5**, as amended by PL 2009, c. 122, §9, is
17 further amended to read:

18 **5. Telephone exemptions.** The commission's activities undertaken pursuant to its
19 authority to grant exemptions to telephone utilities providers of provider of last resort
20 service from certain portions of this Title;

21 **Sec. D-5. Merger obligations unaffected.** Nothing in this Act is intended or
22 may be interpreted to modify or affect any provision of or the rights and obligations of
23 any entity under any order of the Public Utilities Commission that establishes, approves,
24 modifies, amends or in any way relates to any condition or requirement imposed by the
25 commission in connection with the merger of FairPoint Communications, Inc. and
26 Verizon Communications Inc. and the transfer to FairPoint Communications, Inc. of
27 facilities previously owned or operated by Verizon Communications Inc., including but
28 not limited to orders entered in the following commission dockets: Docket No. 2005-
29 155; Docket No. 2007-67; Docket No. 2008-108; Docket No. 2010-76; Docket No. 2010-
30 77; and Docket No. 2010-78.

31 **Sec. D-6. Entities approved to furnish service.** Nothing in this Act is intended
32 or may be interpreted to remove or otherwise affect any approval granted by the Public
33 Utilities Commission to any entity under the Maine Revised Statutes, Title 35-A, section
34 2102 prior to the effective date of this Act.

35 **Sec. D-7. Regulatory assessments and special funds.** The Public Utilities
36 Commission shall examine whether it is appropriate to require any voice service
37 providers that are not required to pay assessments under the Maine Revised Statutes, Title
38 35-A, sections 116, 7104 and 7104-B to pay such assessments and if so the reasons why
39 they should be included and how they may appropriately and fairly be included. The
40 commission shall submit a report of its findings and recommendations to the joint
41 standing committee of the Legislature having jurisdiction over utilities and technology

1 matters by January 15, 2013. The joint standing committee may report out a bill related
2 to the subject of the report to the First Regular Session of the 126th Legislature.

3 **Sec. D-8. Statutory revisions.** The Public Utilities Commission shall review the
4 provisions of the Maine Revised Statutes, Title 35-A and the commission's implementing
5 rules relating to or affecting telecommunications and shall determine what, if any, further
6 changes to law are required to clarify or bring into effect the regulatory changes made by
7 this Act. The commission shall specifically examine whether the expansion of the
8 application of Title 35-A, section 711 creates any regulatory or other issues that should be
9 addressed. The commission may submit a bill to the First Regular Session of the 126th
10 Legislature proposing any recommended changes to law to clarify, adjust or bring into
11 effect the regulatory changes made by this Act.'

12 SUMMARY

13 This amendment replaces the bill. This amendment preserves many of the
14 substantive elements of the bill, but reorganizes them, rewrites some of them, removes
15 others and adds still others. While the basic regulatory structure proposed in the bill is
16 largely maintained, many of its details are modified or replaced.

17 In general, this amendment establishes a new regulatory structure for the telephone
18 industry. It establishes a regulated basic local flat-rate dial-tone service called "provider
19 of last resort service." Providers of this service, called "service providers," continue to be
20 regulated as public utilities, though many provisions of law currently relating to
21 telephone utilities are modified as they apply to this service. Local exchange carriers also
22 remain subject to Public Utilities Commission jurisdiction to the extent their federal
23 interconnection rights and obligations are regulated or overseen by the commission. All
24 other providers of telephone services either remain unregulated or are largely deregulated,
25 though certain provisions of the Maine Revised Statutes, Title 35-A are amended to apply
26 to some of these entities, notably provisions relating to certain assessments, provisions
27 granting certain rights to build lines in public roadways and across waters and provisions
28 relating to joint use of facilities. A number of provisions of law are repealed entirely,
29 either because they are obsolete or to conform with the streamlined regulatory structure
30 established by the amendment.

31 Part A of this amendment, which relates mainly to providers of provider of last resort
32 service and local exchange carriers, does the following.

33 1. It establishes various definitions for the various types of entities that provide
34 telephone or telephone-like service.

35 2. It establishes provider of last resort service. This service is a basic local service
36 provided by incumbent local exchange carriers unless a carrier petitions to have the
37 service transferred to another entity willing to take on the responsibility and the
38 commission determines the alternative provider can adequately meet the obligations. The
39 service must have the capacity to maintain service during power outages, unless the
40 commission finds that by waiving this requirement benefits would accrue to customers
41 that would exceed the benefits to those customers of preserving the requirement.

42 3. It provides that customers of the service retain access to the commission for
43 redress of problems relating to the service, regardless of what other services the customer

ROFS

COMMITTEE AMENDMENT "A" to H.P. 1309, L.D. 1784

1 takes from the service provider, but the other services are not thereby made subject to any
2 commission regulation.

3 4. It provides that certain ancillary services closely related to the service, such as call
4 forwarding and call waiting, must be offered, if at all, on an individual basis; the provider
5 may not require the customer to take the ancillary services as a bundle.

6 5. It provides that the commission retains many of its traditional regulatory powers
7 over the service, though some powers are modified as they apply to service providers,
8 including:

9 A. The law governing management audits, which is changed to provide that the
10 commission may only conduct such audits if no less burdensome means of obtaining
11 information is available and certain preconditions are met;

12 B. The law governing accounting standards, which is changed to limit its application
13 only to provider of last resort accounts and to require the commission's standards be
14 based on applicable federal standards;

15 C. The law governing approval of stocks and bonds, which is modified to permit the
16 commission by rule to exempt providers from some or all of its provisions; and

17 D. The law governing directories, which is modified to remove requirements for
18 publication of directories but to provide that at least one more edition of directories
19 be published and that going forward customers are given the option of receiving
20 directory information electronically or as a printout of the electronic database.

21 6. It limits the commission's power to obtain certain information, prohibiting it from
22 requiring:

23 A. Network maps more detailed than those that have been submitted in the past; and

24 B. Outage reporting earlier than 7 days after the outage is restored.

25 7. It provides that the rates for provider of last resort service are initially the current
26 local rates. The commission is directed to establish a stakeholder group to develop the
27 regulatory structure for setting rates going forward, including appropriate cost
28 considerations and standards for the availability and amount of support from the universal
29 service fund established in Title 35-A, section 7104. The commission is directed to
30 report to the joint standing committee of the Legislature having jurisdiction over energy,
31 utilities and technology matters by January 15, 2013, and the committee is authorized to
32 report out a bill on this subject to the First Regular Session of the 126th Legislature.

33 8. The current alternative form of regulation that applies to the largest incumbent
34 local exchange carrier in the State is altered so that most of its provisions, other than
35 those relating to provider of last resort service, are phased out. The commission is
36 directed to establish in an adjudicatory proceeding a limited set of service quality
37 standards that will apply from August 1, 2012 through July 31, 2013. The commission is
38 also directed to establish by major substantive rule service quality standards going
39 forward, including appropriate incentive penalties for failures to meet the standards. The
40 commission may impose penalties for failures to meet service quality standards only after
41 investigation.

1 9. It preserves commission jurisdiction over local exchange carriers to the extent
2 their federal interconnection rights and obligations are regulated or overseen by the
3 commission.

4 10. It provides that providers of interconnected voice over Internet protocol service
5 and dark fiber providers are not subject to regulation by the commission unless otherwise
6 expressly provided in law. Certain discrete provisions do apply to such providers; Part B
7 of the amendment addresses such discrete provisions.

8 Part B of the amendment, which includes provisions of law that affect a broader array
9 of telephone entities than providers of provider of last resort service and local exchange
10 carriers, does the following.

11 1. It requires any provider of interconnected voice over Internet protocol service that
12 paid any commission or Office of the Public Advocate assessment under Title 35-A,
13 section 116, whether voluntarily, by agreement with the commission or otherwise, prior
14 to March 1, 2012, to continue to pay those assessments.

15 2. It modifies the commission's authority to obtain information so that with respect to
16 any entity, other than a service provider with respect to provider of last resort service, the
17 commission may only request or order information relating to laws to which the entity is
18 subject and over which the commission has jurisdiction.

19 3. It provides that all voice service providers that use the public switched network
20 must pay into a state universal service fund and the telecommunications education access
21 fund. It also directs the commission to pursue all activities necessary to maximize the
22 amount of federal support received by voice service providers offering voice and
23 broadband service in the State.

24 4. It expands the universe of entities that are given the right to construct lines and
25 facilities, including along public roadways, subject to permitting, to include all voice
26 service providers, dark fiber providers and wholesale competitive local exchange carriers.
27 It subjects these entities to the safety codes that apply to public utilities as well as the
28 laws governing tree trimming. It also expands the jurisdiction of the commission to order
29 joint use of equipment and prescribe reasonable compensation and reasonable terms and
30 conditions for the joint use upon complaint to include voice service providers, dark fiber
31 providers and wholesale competitive local exchange carriers.

32 5. It preserves a number of consumer protection laws, including laws governing
33 customer privacy, caller-ID blocking, unauthorized billing and practices known as
34 "slamming" and "cramming." The amendment streamlines the caller-ID blocking law
35 and the "slamming" law in the same manner as proposed in the bill and prohibits the
36 commission from requiring 3rd-party verification of customer authorization of charges
37 billed by an affiliate of a telephone utility.

38 Part C of the amendment repeals the following:

39 1. The law regulating audiotext services;

40 2. Laws authorizing the commission to grant by rule exemptions for certain
41 telephone utilities from certain provisions of law. These are obsolete provisions, given
42 the modifications to laws made by the amendment;

COMMITTEE AMENDMENT "H" to H.P. 1309, L.D. 1784



Approved: 03/15/12 *mac*

125th MAINE LEGISLATURE

LD 1784

LR 2707(02)

An Act To Implement Recommendations To Reform Telecommunications Regulation

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-869)

Committee: Energy, Utilities and Technology

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

The bill provides a new regulatory structure for the telephone industry. It establishes a regulated basic local flat-rate dial-tone service called the provider of last resort. Such providers will continue to be regulated as public utilities, with some modifications relative to present law. Local exchange carriers also remain subject to Commission jurisdiction to the extent that their federal interconnection rights and obligations are regulated or overseen by the Commission. All other telephone service providers remain unregulated or are largely deregulated. Certain provisions are intended to apply to some of these entities, including provisions relating to certain assessment, granting certain rights to build lines in public roadways and across waters and provisions relating to joint use of facilities. A number of obsolete provisions of law are repealed entirely, as are provisions not in conformity with the regulatory structure established by this bill. The bill will lead to a minor increase in costs to the Public Utilities Commission that can be absorbed within existing budgeted resources.