

# MAINE STATE LEGISLATURE

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5/14/16  
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Majority Report

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L.D. 466

Date: 4/8/2016 Majority

(Filing No. H- 655)

ENERGY, UTILITIES AND TECHNOLOGY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
127TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 305, L.D. 466, Bill, "An Act To Increase Competition and Ensure a Robust Information and Telecommunications Market"

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

Sec. 1. 35-A MRSA §7102, sub-§6-A is enacted to read:

6-A. Price cap incumbent local exchange carrier or price cap ILEC. "Price cap incumbent local exchange carrier" or "price cap ILEC" means an incumbent local exchange carrier that agreed to accept Connect America Fund Phase II support pursuant to the Federal Communications Commission's Report and Order released on December 18, 2014, in In the Matter of Connect America Fund, WC Docket No. 10-90, FCC 14-190, for locations within the State on or before January 1, 2016 and does not receive funding from a state universal service fund under section 7104.

Sec. 2. 35-A MRSA §7104, sub-§2, as amended by PL 2011, c. 623, Pt. B, §13, is further amended to read:

2. **General availability.** The commission shall seek to ensure that provider of last resort service is available at reasonably comparable rates to consumers throughout all areas of the State ~~at reasonably comparable rates~~ in which the service is available pursuant to section 7221.

Sec. 3. 35-A MRSA §7221, sub-§§4 to 7 are enacted to read:

4. Removal of the provider of last resort service obligation in select municipalities. This subsection governs the removal of the obligation of a price cap ILEC to provide provider of last resort service in certain municipalities.

A. Thirty days after the effective date of this subsection a price cap ILEC is not obligated to provide provider of last resort service in the following municipalities:

- (1) Portland;
- (2) Lewiston;

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- 1           (3) Bangor;
- 2           (4) South Portland;
- 3           (5) Auburn;
- 4           (6) Biddeford; and
- 5           (7) Sanford.

6           B. Every 6 months after the effective date of this subsection, the commission shall  
7           examine the service quality reports of a price cap ILEC under section 7225-A for the  
8           immediately preceding 2 consecutive quarters and, if the service quality requirements  
9           of section 7225-A have been met, the commission shall issue a certificate relieving  
10           the price cap ILEC of the obligation to provide provider of last resort service in 5 of  
11           the municipalities listed in this paragraph. The order in which a price cap ILEC may  
12           be relieved of the obligation to provide provider of last resort service in a  
13           municipality under this paragraph is as follows:

- 14           (1) Scarborough;
- 15           (2) Gorham;
- 16           (3) Waterville;
- 17           (4) Kennebunk;
- 18           (5) Cape Elizabeth;
- 19           (6) Old Orchard Beach;
- 20           (7) Yarmouth;
- 21           (8) Bath;
- 22           (9) Westbrook;
- 23           (10) Freeport;
- 24           (11) Brewer;
- 25           (12) Kittery;
- 26           (13) Windham;
- 27           (14) Brunswick; and
- 28           (15) Augusta.

29           C. For one year from the date a price cap ILEC is relieved of the obligation to  
30           provide provider of last resort service in a municipality in accordance with this  
31           subsection, the price cap ILEC shall continue to offer to each provider of last resort  
32           service customer in that municipality to whom it was providing the service on the  
33           date the obligation ceased a telephone service with the same rates, terms and

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1 conditions as it provides to provider of last resort service customers to whom it is  
2 obligated to provide provider of last resort service.

3 D. Prior to the removal of the obligation to provide provider of last resort service in  
4 any municipality pursuant to this subsection, the commission shall hold a public  
5 meeting in the municipality to allow customers of the price cap ILEC to obtain  
6 information about the upcoming changes to service.

7 E. The price cap ILEC shall give advance notice in its monthly billing statement to  
8 each customer in a municipality listed in this subsection in which the obligation to  
9 provide provider of last resort service will be removed. That notice must include the  
10 following information:

11 (1) An existing customer will still be provided service for one year from the date  
12 on which the obligation to provide provider of last resort service is removed at  
13 the same rates, terms and conditions as the price cap ILEC provides to provider  
14 of last resort service customers to whom the price cap ILEC is obligated to  
15 provide provider of last resort service; and

16 (2) The date, time and location of the public meeting required under paragraph  
17 D, which will be hosted by the commission in the municipality.

18 **5. Relief of provider of last resort service obligation.** After a price cap ILEC has  
19 been relieved of the obligation to provide provider of last resort service in all the  
20 municipalities listed in subsection 4, the price cap ILEC may petition the commission  
21 under this subsection to be relieved of its provider of last resort service obligation in one  
22 or more additional municipalities.

23 A. The commission shall approve the petition if the commission finds:

24 (1) With respect to a municipality, that, pursuant to the following standards,  
25 there is sufficient competition in that municipality to ensure access to affordable  
26 telephone service by households in the municipality:

27 (a) In addition to the price cap ILEC, there is at least one wireline-facilities-  
28 based voice network service provider that offers service to at least 95% of the  
29 households in the municipality; and

30 (b) One or more mobile telecommunications services providers offer, on a  
31 combined basis, mobile telecommunications services to at least 97% of the  
32 households in the municipality; and

33 (2) The price cap ILEC prior to filing the petition has met service quality  
34 requirements under section 7225-A in the immediately preceding 2 consecutive  
35 quarters.

36 B. The commission shall establish by rule the sources of information and a  
37 methodology it will use to reasonably calculate the percentage of households served  
38 by wireline-facilities-based voice network service providers and mobile  
39 telecommunications services providers for purposes of making a determination under  
40 paragraph A. The commission may not require wireline-facilities-based voice  
41 network service providers and mobile telecommunications services providers to

1 provide competitive information to the commission but may rely on other available  
2 sources for this information, including information available from the Federal  
3 Communications Commission. Competitive information about the extent of service  
4 provided by wireline-facilities-based voice network service providers and mobile  
5 telecommunications services providers used to make this determination is  
6 confidential and is not a public record under Title 1, section 402, subsection 3 and  
7 may not be disclosed to any person outside the commission. In developing the  
8 methodology under this paragraph, the commission may allow for reasonable  
9 adjustments to the information it receives if it is aware that actual availability of  
10 competitive services differs from what is reflected in the information. If the  
11 application of the commission's methodology results in a finding that the standards in  
12 paragraph A, subparagraph (1) have been met, there is a rebuttable presumption of  
13 sufficient competition in a municipality to ensure access to affordable telephone  
14 service by households in the municipality.

15 C. Ninety days prior to filing a petition under this subsection, a price cap ILEC shall  
16 notify the commission and the Office of the Public Advocate of the price cap ILEC's  
17 intent to file a petition. The price cap ILEC shall also give advance notice of its  
18 intent to file a petition in its monthly billing statement to each customer in the  
19 municipality in which it will be seeking relief from the obligation to provide provider  
20 of last resort service.

21 The commission shall hold a public hearing in each affected municipality to allow  
22 customers of the price cap ILEC as well as other residents of the affected  
23 municipality to testify. The price cap ILEC shall give advance notice of the hearing  
24 to each customer in the municipality in its monthly billing statement and publish this  
25 notice in a newspaper of general circulation in that municipality.

26 D. The commission shall issue an order granting or denying a petition within 180  
27 days of receiving a petition under this subsection, except that the commission, at its  
28 discretion, may extend this period for up to an additional 30 days.

29 E. For one year from the date the commission issues an order granting a price cap  
30 ILEC relief from the obligation to provide provider of last resort service in a  
31 municipality, the price cap ILEC shall continue to offer to each provider of last resort  
32 service customer in that municipality to whom it was providing the service on the  
33 date of that order a telephone service with the same rates, terms and conditions as it  
34 provides to provider of last resort service customers to whom it is obligated to  
35 provide provider of last resort service.

36 For purposes of this subsection, "voice network service provider" has the same meaning  
37 as in section 7104.

38 6. Abandonment. A price cap ILEC may not discontinue, reduce or impair the  
39 service that it provides in a municipality, or part of a municipality, where it has  
40 previously served as the provider of provider of last resort service unless the commission  
41 approves the discontinuance, reduction or impairment. The commission may approve the  
42 discontinuance, reduction or impairment only if it finds that neither the present nor future  
43 public convenience and necessity will be adversely affected by such discontinuance,  
44 reduction or impairment of service.

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1 In granting its approval under this subsection, the commission may impose such terms,  
2 conditions or requirements as in its judgment are necessary to protect the public interest.  
3 A price cap ILEC abandoning all or part of its plant, property or system or discontinuing  
4 service pursuant to authority granted by the commission under this subsection is deemed  
5 to have waived all objections to the terms, conditions or requirements imposed by the  
6 commission in its approval. A discontinuance approved under this subsection is not  
7 subject to further approval under section 1104.

8 7. Rules. Rules adopted pursuant to this section are major substantive rules as  
9 defined in Title 5, chapter 375, subchapter 2-A.

10 Sec. 4. 35-A MRSA §7222-A is enacted to read:

11 §7222-A. Rates

12 1. Price cap ILEC rate requirements. The provisions of sections 304 and 307 do  
13 not apply to a price cap ILEC with respect to the rates for provider of last resort service.  
14 A price cap ILEC shall post on its publicly accessible website the rates, terms and  
15 conditions for provider of last resort service. Rates for provider of last resort service  
16 provided by the price cap ILEC are governed by the following:

17 A. On the effective date of this paragraph, the monthly charge for provider of last  
18 resort service offered by a price cap ILEC may not exceed \$20 for any residential  
19 customer. A price cap ILEC may, beginning one year after the effective date of this  
20 paragraph, increase rates for its provider of last resort service by up to 5% annually;  
21 and

22 B. Low-income customers of a price cap ILEC must receive a monthly discount of  
23 \$3.50 in addition to any applicable federal subsidy for voice service for low-income  
24 customers.

25 For the purposes of this subsection, "low-income customer" means a customer who  
26 qualifies for assistance under the Federal Communications Commission's Lifeline  
27 program, as defined in 47 Code of Federal Regulations, Section 54.401.

28 Sec. 5. 35-A MRSA §7225-A is enacted to read:

29 §7225-A. Price cap ILEC service quality requirements

30 1. Service quality metrics reporting. A price cap ILEC shall report to the  
31 commission quarterly on service quality using the following metrics, using rolling one-  
32 year averages, in areas where provider of last resort service is available:

- 33 A. Network trouble rates;
- 34 B. The percentage of network troubles not cleared in 48 hours;
- 35 C. The percentage of installation appointments not met; and
- 36 D. The average delay, in days, for missed installation appointments.

37 A report submitted under this subsection is confidential and not a public record under  
38 Title 1, section 402, subsection 3 and may not be disclosed to any person outside the  
39 commission, except as provided in subsection 3.

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1        **2. Minimum requirements.** A price cap ILEC shall provide service that meets the  
 2 following minimum requirements, based on rolling one-year averages, in the areas in  
 3 which it serves as provider of provider of last resort service:

4            A. Less than 3 network troubles per 100 customers;

5            B. Less than 20% of network troubles not cleared within 48 hours;

6            C. Less than 12% of all installation appointments not met; and

7            D. Less than a 9-day average delay for missed installation appointments.

8        **3. Failure to meet service quality requirements.** If a price cap ILEC fails to meet  
 9 any service quality requirement in this section for any 2 consecutive quarters, the results  
 10 for these service quality requirements for these quarters are no longer confidential and  
 11 become public records. The commission shall investigate a failure to meet a service  
 12 quality requirement. If the commission concludes after investigation that the failure to  
 13 meet a service quality requirement is due to factors within the control of the price cap  
 14 ILEC, the commission shall, by order, direct the price cap ILEC to take such steps as the  
 15 commission determines necessary to meet the requirement. If the provider fails to comply  
 16 with the commission's order, the commission shall impose a penalty in accordance with  
 17 section 1508-A, subsection 1, paragraph A in an amount sufficient to ensure compliance  
 18 with that order. Nothing in this subsection limits the commission's authority to direct a  
 19 price cap ILEC to act to improve service under any other provision of this chapter.

20        **Sec. 6. Rules.** The Public Utilities Commission shall provisionally adopt major  
 21 substantive rules, as defined in the Maine Revised Statutes, Title 5, chapter 375,  
 22 subchapter 2-A, to implement Title 35-A, section 7221, subsections 4 to 6 by January 1,  
 23 2017. By January 1, 2017, the commission shall also review its rules adopted pursuant to  
 24 Title 35-A, section 7225 and make any necessary amendments to account for changes as  
 25 a result of the enactment of Title 35-A, section 7225-A. Notwithstanding Title 35-A,  
 26 section 7225, subsection 3, rules adopted pursuant to the commission's review under this  
 27 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

28        **Sec. 7. Commission review of effect of relief of provider of last resort**  
 29 **service obligation.** By January 15, 2018 and again by January 15, 2020, the Public  
 30 Utilities Commission shall submit to the joint standing committee of the Legislature  
 31 having jurisdiction over utilities and energy matters a report related to the removal of the  
 32 provider of last resort service obligation for a price cap ILEC under the Maine Revised  
 33 Statutes, Title 35-A, section 7221, subsections 4 and 5. A report under this section must  
 34 list municipalities in which the obligation to provide provider of last resort service has  
 35 ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B or in which the  
 36 commission has approved in accordance with Title 35-A, section 7221, subsection 5 the  
 37 removal of a price cap ILEC's obligation to provide provider of last resort service. A  
 38 report under this section must also include the effect of the removal on former provider of  
 39 last resort service customers, the price cap ILEC's workforce, the maintenance and status  
 40 of the copper line network, public safety and the cost, features and availability of  
 41 telephone service, including service to the hearing impaired, and broadband service.  
 42 Each report may include recommendations for related legislation. The joint standing  
 43 committee of the Legislature having jurisdiction over utilities and energy matters may  
 44 report out a bill relating to provider of last resort service to the Second Regular Session of

1 the 128th Legislature and may also report out a bill relating to provider of last resort  
 2 service to the Second Regular Session of the 129th Legislature. At least 30 days before  
 3 submitting a report to the committee, the commission shall post the report on its publicly  
 4 accessible website and allow persons to submit to the commission written comments on  
 5 the report. The commission shall submit to the committee with each report all comments  
 6 that it received on the respective report. If the commission in either report makes a  
 7 recommendation to repeal or modify Title 35-A, section 7221, subsection 5, it may not,  
 8 notwithstanding that subsection, accept a petition submitted in accordance with that  
 9 subsection until 90 days after the adjournment of the session to which the report is  
 10 submitted.

11 **Sec. 8. Commission legal review; report.** The Public Utilities Commission  
 12 shall examine all laws and rules of this State relating to provider of last resort service as  
 13 they apply to a price cap ILEC, as defined in the Maine Revised Statutes, Title 35-A,  
 14 section 7102, subsection 6-A, and determine whether any changes may be needed to  
 15 conform those laws and rules to the provisions of this Act. The commission shall submit  
 16 a report of its findings, together with any necessary draft legislation to implement its  
 17 recommendations, to the joint standing committee of the Legislature having jurisdiction  
 18 over utilities and energy matters by December 15, 2016. The committee may report out a  
 19 bill relating to provider of last resort service to the First Regular Session of the 128th  
 20 Legislature.

21 **Sec. 9. Commission's annual report.** Through 2022, the Public Utilities  
 22 Commission shall include in its annual report pursuant to the Maine Revised Statutes,  
 23 Title 35-A, section 120, subsection 7 information on provider of last resort service,  
 24 including in which municipalities the obligation to provide provider of last resort service  
 25 has ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B; the  
 26 municipalities in which the commission granted approval of a petition in accordance with  
 27 Title 35-A, section 7221, subsection 5; the municipalities, if any, in which the  
 28 commission approved the discontinuance, reduction or impairment of service under Title  
 29 35-A, section 7221, subsection 6; and any complaints the commission may have received  
 30 regarding the costs of or a lack of access to reliable basic telephone service in  
 31 municipalities from which the provider of last resort service obligation has been  
 32 removed.'

### 33 SUMMARY

34 This amendment is the majority report of the committee. It replaces the bill, which is  
 35 a concept draft. The amendment does the following:

36 1. It defines the term "price cap incumbent local exchange carrier," or "price cap  
 37 ILEC";

38 2. It provides that, 30 days after the applicable provision becomes effective, the price  
 39 cap ILEC's provider of last resort service obligation will cease in Portland, Lewiston,  
 40 Bangor, South Portland, Auburn, Biddeford and Sanford;

41 3. It provides that, every 6 months from the date the applicable provision becomes  
 42 effective, the obligation of a price cap ILEC to provide provider of last resort service will  
 43 be removed by issuance of a certificate by the Public Utilities Commission, in 5 of the



1 additional 15 municipalities listed in the amendment, in order, as long as the price cap  
2 ILEC has met service quality requirements in the preceding 2 consecutive quarters;

3 4. It requires the price cap ILEC to continue to offer to each provider of last resort  
4 service customer to whom it was providing the service on the date the obligation to  
5 provide the service was removed a telephone service with the same rates, terms and  
6 conditions as it provides to provider of last resort service customers to whom it is  
7 obligated to provide provider of last resort service, for one year from the date the  
8 obligation was removed;

9 5. It requires the Public Utilities Commission to host a public meeting in each  
10 municipality affected by a proposed change in provider of last resort service to allow  
11 customers of a price cap ILEC to obtain information about the upcoming changes to  
12 service;

13 6. It requires that affected provider of last resort service customers be given advance  
14 notice of a change in provider of last resort service in the price cap ILEC's monthly  
15 billing statement, along with the date, time and location of a public meeting to be hosted  
16 by the Public Utilities Commission;

17 7. It allows, after a price cap ILEC has been relieved of its obligation to provide  
18 provider of last resort service in all the municipalities listed in the amendment, the price  
19 cap ILEC to petition the Public Utilities Commission to be relieved of its obligation in  
20 one or more additional municipalities upon a finding that, in addition to the incumbent  
21 local exchange carrier, there is at least one wireline-facilities-based voice network service  
22 provider that offers service to at least 95% of the households in the municipality and one  
23 or more mobile telecommunications services providers that on a combined basis offer  
24 mobile telecommunications services to at least 97% of the households in the  
25 municipality, and that the price cap ILEC has met service quality requirements in the  
26 preceding 2 consecutive quarters;

27 8. It requires the Public Utilities Commission to establish by rule the sources of  
28 information it will use, as well as the methodology it will employ, to make determinations  
29 on petitions;

30 9. It prohibits the Public Utilities Commission from requiring wireline-facilities-  
31 based voice network service providers and mobile telecommunications services providers  
32 to provide competitive information;

33 10. It requires a price cap ILEC to provide 90 days' advance notice of its intent to file  
34 a petition; the notice must be provided to the Public Utilities Commission, the Office of  
35 the Public Advocate and each customer in the municipality in which the price cap ILEC  
36 will be seeking relief from the provider of last resort service obligation;

37 11. It requires the Public Utilities Commission to hold a public hearing in each  
38 affected municipality to allow customers and residents to testify and requires that notice  
39 of the hearing be published by the price cap ILEC in a newspaper of general circulation;

40 12. It requires the Public Utilities Commission to make a determination on a petition  
41 within 180 days, except that the commission may at its discretion extend this period for  
42 up to an additional 30 days;

ROFS

- 1           13. It prohibits a price cap ILEC from discontinuing, reducing or impairing the  
2 service that it provides in a municipality, or part of a municipality, where it has  
3 previously served as the provider of provider of last resort service, unless the Public  
4 Utilities Commission approves the discontinuance, reduction or impairment;
- 5           14. It allows the Public Utilities Commission, if it approves a discontinuance,  
6 reduction or impairment of service, to impose terms, conditions or requirements to protect  
7 the public interest;
- 8           15. It requires the Public Utilities Commission to adopt major substantive rules to  
9 implement the provisions related to the removal of provider of last resort service  
10 obligations and the abandonment process;
- 11           16. It specifies the rate a price cap ILEC may charge a provider of last resort service  
12 customer, which is not to exceed \$20 for a residential customer, except that, after one  
13 year after the applicable provision becomes effective, the price cap ILEC may raise the  
14 rate by no more than 5% annually;
- 15           17. It requires that low-income customers, which are those who qualify for assistance  
16 under the Federal Communications Commission's Lifeline program, receive a monthly  
17 \$3.50 discount;
- 18           18. It establishes service quality requirements that must be met by a price cap ILEC  
19 providing provider of last resort service;
- 20           19. It requires a price cap ILEC to report quarterly to the Public Utilities  
21 Commission on service quality metrics based on rolling one-year averages. The reports  
22 are confidential unless the price cap ILEC fails to meet service quality requirements for 2  
23 consecutive quarters;
- 24           20. It requires the Public Utilities Commission to issue an order directing that service  
25 quality be addressed if the service quality requirements are not met for any 2 consecutive  
26 quarters and the failure was within the price cap ILEC's control;
- 27           21. It requires the Public Utilities Commission to impose a penalty if a price cap  
28 ILEC fails to comply with an order directing that service quality be addressed;
- 29           22. It requires the Public Utilities Commission to review its rules regarding service  
30 quality for providers of provider of last resort service and make any changes needed as a  
31 result of the enactment of the Maine Revised Statutes, Title 35-A, section 7225-A. The  
32 rule amendments are routine technical rules; such rules if adopted pursuant to statute  
33 would be major substantive rules;
- 34           23. It requires the Public Utilities Commission to submit to the joint standing  
35 committee of the Legislature having jurisdiction over energy and utilities matters a report  
36 in 2018 and again in 2020 that includes a list of the municipalities in which the provider  
37 of last resort service obligation has been removed, as well as the effects of the removal on  
38 former provider of last resort service customers, the price cap ILEC's workforce, the  
39 maintenance and status of the copper line network, public safety and the cost, features  
40 and availability of telephone service, including service to the hearing impaired, and  
41 broadband service. Each report may include recommended legislation, and the  
42 committee may report out a bill for each report to the Legislature;

## COMMITTEE AMENDMENT





# 127th MAINE LEGISLATURE

LD 466

LR 1389(02)

**An Act To Increase Competition and Ensure a Robust Information and Telecommunications Market**

**Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-655)**

**Committee: Energy, Utilities and Technology**

**Fiscal Note Required: Yes**

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## Fiscal Note

Potential current biennium revenue increase - Other Special Revenue Funds

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Any additional costs to the Public Utilities Commission (PUC) to conduct public meetings, examine service quality reports of a price cap incumbent local exchange carrier (ILEC) and conduct rulemaking are expected to be minor and can be absorbed within existing budgeted resources. The bill requires the PUC to impose a penalty on a price cap ILEC if it fails to comply with a PUC order concerning service quality requirements. There is no estimate at this time on the amount of revenue to the PUC that would be generated by these penalties.