

MAINE STATE LEGISLATURE

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L.D. 466

Date: 4/8/2016 Minority (Filing No. H-656)

ENERGY, UTILITIES AND TECHNOLOGY

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

COMMITTEE AMENDMENT "B" 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 obligation of a price
 7 cap ILEC to provide provider of last resort service will cease in 5 of the
 8 municipalities listed in this paragraph. The order in which a price cap ILEC is
 9 relieved of the obligation to provide provider of last resort service in a municipality
 10 under this paragraph is as follows:

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

26 C. For 5 years from the date a price cap ILEC is relieved of the obligation to provide
 27 provider of last resort service in a municipality in accordance with this subsection,
 28 the price cap ILEC shall continue to offer to each provider of last resort service
 29 customer in that municipality to whom it was providing the service on the date the
 30 obligation ceased a telephone service with the same rates, terms and conditions as it
 31 provides to provider of last resort service customers to whom it is obligated to
 32 provide provider of last resort service.

33 D. Prior to the removal of the obligation to provide provider of last resort service in
 34 any municipality pursuant to this subsection, the commission shall hold a public

1 meeting in the municipality to allow customers of the price cap ILEC to obtain
2 information about the upcoming changes to service.

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

7 (1) An existing customer will still be provided service for 5 years from the date
8 on which the obligation to provide provider of last resort service is removed at
9 the same rates, terms and conditions as the price cap ILEC provides to provider
10 of last resort service customers to whom the price cap ILEC is obligated to
11 provide provider of last resort service; and

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

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

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

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

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

26 (b) One or more mobile telecommunications services providers offer, on a
27 combined basis, mobile telecommunications services to at least 97% of the
28 households in the municipality.

29 B. The commission shall establish by rule the sources of information and a
30 methodology it will use to reasonably calculate the percentage of households served
31 by wireline-facilities-based voice network service providers and mobile
32 telecommunications services providers for purposes of making a determination under
33 paragraph A. Upon request of the commission, a voice network service provider
34 must provide the commission with such information as the commission determines
35 necessary to evaluate the existence of sufficient competition for the purposes of
36 paragraph A. Competitive information about the extent of service provided by
37 wireline-facilities-based voice network service providers and mobile
38 telecommunications services providers used to make a determination under paragraph
39 A is confidential and is not a public record under Title 1, section 402, subsection 3
40 and may not be disclosed to any person outside the commission. In developing the
41 methodology under this paragraph, the commission may allow for reasonable
42 adjustments to the information it receives if it is aware that actual availability of
43 competitive services differs from what is reflected in the information. If the

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1 application of the commission's methodology results in a finding that the standards in
2 paragraph A, subparagraph (1) have been met, there is a rebuttable presumption of
3 sufficient competition in a municipality to ensure access to affordable telephone
4 service by households in the municipality.

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

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

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

19 E. For 5 years from the date the commission issues an order granting a price cap
20 ILEC relief from the obligation to provide provider of last resort service in a
21 municipality, the price cap ILEC shall continue to offer to each provider of last resort
22 service customer in that municipality to whom it was providing the service on the
23 date of that order a telephone service with the same rates, terms and conditions as it
24 provides to provider of last resort service customers to whom it is obligated to
25 provide provider of last resort service.

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

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

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

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

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

2 §7222-A. Rates

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

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

13 B. Low-income customers of a price cap ILEC must receive a monthly discount of
14 \$3.50 in addition to any applicable federal subsidy for voice service for low-income
15 customers.

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

19 **Sec. 5. 35-A MRSA §7225, sub-§2,** as enacted by PL 2011, c. 623, Pt. A, §18, is
20 amended to read:

21 **2. Commission review of service quality.** The commission by rule shall establish
22 provider of last resort service quality standards. The commission may impose penalties
23 or require a service provider to provide rebates or rate reductions if the commission finds,
24 after investigation, that a service provider has failed to meet service quality standards. If
25 a price cap ILEC fails to meet any service quality standard and the commission concludes
26 after investigation that the failure to meet the service quality standard is due to factors
27 within the control of the price cap ILEC, the commission shall, by order, direct the price
28 cap ILEC to take such steps as the commission determines necessary to improve service
29 to the level needed to meet the standard. If the provider fails to comply with the
30 commission's order, the commission shall impose a penalty in accordance with section
31 1508-A, subsection 1, paragraph A in an amount sufficient to ensure compliance with that
32 order. Nothing in this section limits the commission's authority to direct a price cap
33 ILEC to act to improve service under any other provision of this chapter.

34 **Sec. 6. Rules.** The Public Utilities Commission shall provisionally adopt major
35 substantive rules, as defined in the Maine Revised Statutes, Title 5, chapter 375,
36 subchapter 2-A, to implement Title 35-A, section 7221, subsections 4 to 6 by January 1,
37 2017.

38 **Sec. 7. Commission review of effect of relief of provider of last resort**
39 **service obligation.** By January 15, 2020 and again by January 15, 2022, the Public
40 Utilities Commission shall submit to the joint standing committee of the Legislature
41 having jurisdiction over utilities and energy matters a report related to the removal of the
42 provider of last resort service obligation for a price cap ILEC under the Maine Revised
43 Statutes, Title 35-A, section 7221, subsections 4 and 5. A report under this section must

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1 list municipalities in which the obligation to provide provider of last resort service has
2 ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B or in which the
3 commission has approved in accordance with Title 35-A, section 7221, subsection 5 the
4 removal of a price cap ILEC's obligation to provide provider of last resort service. A
5 report under this section must also include the effect of the removal on former provider of
6 last resort service customers, the price cap ILEC's workforce, the maintenance and status
7 of the copper line network, public safety and the cost, features and availability of
8 telephone service, including service to the hearing impaired, and broadband service.
9 Each report may include recommendations for related legislation. The joint standing
10 committee of the Legislature having jurisdiction over utilities and energy matters may
11 report out a bill relating to provider of last resort service to the Second Regular Session of
12 the 129th Legislature and may also report out a bill relating to provider of last resort
13 service to the Second Regular Session of the 130th Legislature. At least 30 days before
14 submitting a report to the committee, the commission shall post the report on its publicly
15 accessible website and allow persons to submit to the commission written comments on
16 the report. The commission shall submit to the committee with each report all comments
17 that it received on the respective report. If the commission in either report makes a
18 recommendation to repeal or modify Title 35-A, section 7221, subsection 5, it may not,
19 notwithstanding that subsection, accept a petition submitted in accordance with that
20 subsection until 90 days after the adjournment of the session to which the report is
21 submitted.

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

32 **Sec. 9. Commission's annual report.** Through 2024, the Public Utilities
33 Commission shall include in its annual report pursuant to the Maine Revised Statutes,
34 Title 35-A, section 120, subsection 7 information on provider of last resort service,
35 including in which municipalities the obligation to provide provider of last resort service
36 has ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B; the
37 municipalities in which the commission granted approval of a petition in accordance with
38 Title 35-A, section 7221, subsection 5; the municipalities, if any, in which the
39 commission approved the discontinuance, reduction or impairment of service under Title
40 35-A, section 7221, subsection 6; and any complaints the commission may have received
41 regarding the costs of or a lack of access to reliable basic telephone service in
42 municipalities from which the provider of last resort service obligation has been
43 removed.'

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SUMMARY

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

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

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

3. It provides that, every 6 months from the date the applicable provision becomes effective, the obligation of a price cap ILEC to provide provider of last resort service will cease in 5 of the additional 15 municipalities listed in the amendment, in order;

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

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

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

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

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

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

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

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

7 12. It prohibits a price cap ILEC from discontinuing, reducing or impairing the
8 service that it provides in a municipality, or part of a municipality, where it has
9 previously served as the provider of provider of last resort service, unless the Public
10 Utilities Commission approves the discontinuance, reduction or impairment;

11 13. It allows the Public Utilities Commission, if it approves a discontinuance,
12 reduction or impairment of service, to impose terms, conditions or requirements to protect
13 the public interest;

14 14. It requires the Public Utilities Commission to adopt major substantive rules to
15 implement the provisions related to the removal of provider of last resort service
16 obligations and the abandonment process;

17 15. It specifies the rate a price cap ILEC may charge a provider of last resort service
18 customer, which is not to exceed \$20 for a residential customer, except that, after one
19 year after the applicable provision becomes effective, the price cap ILEC may raise the
20 rate by no more than 5% annually;

21 16. It requires that low-income customers, which are those who qualify for assistance
22 under the Federal Communications Commission's Lifeline program, receive a monthly
23 \$3.50 discount;

24 17. It requires the Public Utilities Commission to issue an order directing that service
25 quality be addressed if a service quality standard is not met;

26 18. It requires the Public Utilities Commission to impose a penalty if a price cap
27 ILEC fails to comply with an order directing that service quality be addressed;

28 19. It requires the Public Utilities Commission to submit to the joint standing
29 committee of the Legislature having jurisdiction over energy and utilities matters a report
30 in 2020 and again in 2022 that includes a list of the municipalities in which the provider
31 of last resort service obligation has been removed, as well as the effects of the removal on
32 former provider of last resort service customers, the price cap ILEC's workforce, the
33 maintenance and status of the copper line network, public safety and the cost, features
34 and availability of telephone service, including service to the hearing impaired, and
35 broadband service. Each report may include recommended legislation, and the
36 committee may report out a bill for each report to the Legislature;

37 20. It prohibits the Public Utilities Commission from accepting a petition to remove
38 a provider of last resort service obligation, until 90 days after the adjournment of the
39 legislative session in which a provider of last resort service report due in 2020 or 2022
40 was submitted, if in its report it makes any recommendations to modify or remove the
41 petition process;

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COMMITTEE AMENDMENT "B" to H.P. 305, L.D. 466

1 21. It requires the Public Utilities Commission to examine all laws and rules of the
2 State relating to provider of last resort service as they apply to a price cap ILEC and
3 determine whether any changes may be needed to address the changes created by this
4 amendment. It requires the Public Utilities Commission to submit a report of its findings
5 on this process, together with any necessary draft legislation to implement its
6 recommendations, to the joint standing committee of the Legislature having jurisdiction
7 over utilities and energy matters by December 15, 2016. The committee may report out a
8 bill related to provider of last resort service to the First Regular Session of the 128th
9 Legislature; and

10 22. It requires that as part of its annual report, until 2024, the Public Utilities
11 Commission include information related to the changes in provider of last resort service.

12 **FISCAL NOTE REQUIRED**

13 **(See attached)**

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Approved: 03/29/16 *mac*



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

B(H-656)

Committee: Energy, Utilities and Technology

Fiscal Note Required: Yes

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.