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ENERGY, UTILITIES AND TECHNOLOGY

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

COMMITTEE AMENDMENT " " 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

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.

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.

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;

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;

