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No. 1784

H.P. 1309

House of Representatives, January 19, 2012

An Act To Implement Recommendations To Reform Telecommunications Regulation

Reported by Representative FITTS of Pittsfield for the Joint Standing Committee on Energy, Utilities and Technology pursuant to Resolve 2011, chapter 69, section 1.

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

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

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

4 **§101. Statement of purpose**

5 The purpose of this Title is to ensure that there is a regulatory system for public
6 utilities and voice service providers in the State that is consistent with the public interest
7 and with other requirements of law and to provide for reasonable licensing requirements
8 for competitive electricity providers. The basic purpose of this regulatory system is to
9 ensure safe, reasonable and adequate service and to ensure that the rates of public utilities
10 and providers of provider of last resort service are just and reasonable to customers and
11 public utilities.

12 **Sec. 2. 35-A MRSA §102, sub-§4**, as repealed and replaced by PL 1987, c. 628,
13 §1, is amended to read:

14 **4. Customer.** "Customer" includes any person, government or governmental
15 division ~~which~~ that has applied for, been accepted by and is currently receiving service
16 from a public utility or voice service provider.

17 **Sec. 3. 35-A MRSA §102, sub-§§9-B to 9-D**, are enacted to read:

18 **9-B. Incumbent local exchange carrier.** "Incumbent local exchange carrier"
19 means, with respect to an area, the local exchange carrier that on February 8, 1996
20 provided telephone exchange service in the area and:

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

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

25 **9-C. Interexchange carrier.** "Interexchange carrier" means any person, association,
26 corporation or other entity that provides intrastate interexchange telecommunications
27 services, including a local exchange carrier that provides interexchange service.

28 **9-D. Local exchange carrier.** "Local exchange carrier" means any person that is
29 engaged in the provision of telephone exchange service or exchange access. "Local
30 exchange carrier" does not include a person insofar as that person is engaged in the
31 provision of a commercial mobile service under 47 United States Code, Section 332(c),
32 unless the commission by rule determines that the Federal Communications Commission
33 includes such service in the definition of the term.

34 **Sec. 4. 35-A MRSA §102, sub-§11-A** is enacted to read:

35 **11-A. Provider of last resort service.** "Provider of last resort service" has the same
36 meaning as in section 7201.

1 **Sec. 5. 35-A MRSA §102, sub-§13**, as amended by PL 2009, c. 539, §1, is
2 repealed and the following enacted in its place:

3 **13. Public utility.** "Public utility" includes every gas utility, natural gas pipeline
4 utility, transmission and distribution utility, telephone utility, water utility and ferry, and
5 each of those utilities is declared to be a public utility. "Public utility" includes a smart
6 grid coordinator as defined in section 3143, subsection 1, paragraph B. Nothing in this
7 subsection precludes the jurisdiction, control and regulation by the commission pursuant
8 to private and special act of the Legislature.

9 **Sec. 6. 35-A MRSA §102, sub-§18-B** is enacted to read:

10 **18-B. Telephone exchange service.** "Telephone exchange service" means service
11 within a telephone exchange, or within a connected system of telephone exchanges within
12 the same exchange area operated to furnish to subscribers intercommunicating service of
13 the character ordinarily furnished by a single exchange, and that is covered by an
14 exchange service charge, or comparable service provided through a system of switches,
15 transmission equipment or other facilities, or combination thereof, by which a subscriber
16 can originate and terminate a telecommunications service.

17 **Sec. 7. 35-A MRSA §102, sub-§19**, as amended by PL 2009, c. 612, §3, is
18 further amended to read:

19 **19. Telephone utility.** "Telephone utility" includes every person, its lessees,
20 trustees, receivers or trustees appointed by any court, that provides ~~telephone service~~
21 provider of last resort service for compensation inside this State. "Telephone utility" also
22 includes a dark fiber provider. ~~"Telephone utility" does not include any person or entity~~
23 ~~that is excluded from the definition of "public utility" as defined in subsection 13, subject~~
24 ~~to the provisions of subsection 13, paragraphs A to C.~~

25 **Sec. 8. 35-A MRSA §102, sub-§21-A** is enacted to read:

26 **21-A. Voice service provider.** "Voice service provider" means any person
27 providing, directly or indirectly, 2-way voice communications service for compensation
28 in this State. "Voice service provider" does not include a dark fiber provider.

29 **Sec. 9. 35-A MRSA §116, sub-§1**, as amended by PL 2007, c. 478, §1, is further
30 amended to read:

31 **1. Utilities subject to assessments.** Every transmission and distribution, gas,
32 telephone and water utility and ferry subject to regulation by the commission and every
33 voice service provider is subject to an assessment on its intrastate gross operating
34 revenues to produce sufficient revenue for expenditures allocated by the Legislature for
35 the Public Utilities Commission Regulatory Fund established pursuant to this section.
36 The budget for the Public Utilities Commission Regulatory Fund is subject to legislative
37 review and approval in accordance with subsection 2. The portion of the total assessment
38 applicable to each category of public utility or voice service provider is based on an
39 accounting by the commission of the portion of the commission's resources devoted to
40 matters related to each category. The commission shall develop a reasonable and

1 practicable method of accounting for resources devoted by the commission to matters
2 related to each category of public utility or voice service provider. Assessments on each
3 public utility or voice service provider within each category must be based on the utility's
4 or voice service provider's gross intrastate operating revenues. The commission shall
5 determine the assessments annually prior to May 1st and assess each utility or voice
6 service provider for its pro rata share for expenditure during the fiscal year beginning July
7 1st. Each utility or voice service provider shall pay the assessment charged to the utility
8 or voice service provider on or before July 1st of each year. Any increase in the
9 assessment that becomes effective subsequent to May 1st may be billed on the effective
10 date of the act authorizing the increase.

11 A. The assessments charged to utilities and voice service providers under this section
12 are just and reasonable operating costs for rate-making purposes.

13 B. For the purposes of this section, "intrastate gross operating revenues" means
14 intrastate revenues derived from filed rates and rates ~~that are exempt from filing~~
15 ~~requirements pursuant to rules adopted by the commission under section 307-A~~
16 charged by voice service providers and dark fiber providers, except revenues derived
17 from sales for resale.

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

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

23 E. The commission may exempt utilities or voice service providers with annual
24 intrastate gross operating revenues under \$50,000 from assessments under this
25 section.

26 **Sec. 10. 35-A MRSA §116, sub-§3**, as enacted by PL 1987, c. 141, Pt. A, §6, is
27 amended to read:

28 **3. Deposit of funds.** All revenues derived from assessments levied against utilities
29 or voice service providers described in this section ~~shall~~ must be deposited with the
30 Treasurer of State in a separate account to be known as the Public Utilities Commission
31 Regulatory Fund.

32 **Sec. 11. 35-A MRSA §116, sub-§8**, as amended by PL 2007, c. 539, Pt. KK,
33 §13, is further amended to read:

34 **8. Public Advocate assessment.** Every utility or voice service provider subject to
35 assessment under this section is subject to an additional annual assessment on its
36 intrastate gross operating revenues to produce sufficient revenue for expenditures
37 allocated by the Legislature for operating the Office of Public Advocate. The portion of
38 this assessment applicable to each category of public utility or voice service provider is
39 based on an accounting by the Public Advocate of resources devoted to matters related to
40 each category. The Public Advocate shall develop a reasonable and practicable method
41 of accounting for resources devoted by the Public Advocate to matters related to each
42 category of public utility or voice service provider. Assessments on each public utility or

1 voice service provider within each category must be based on the utility's or voice service
2 provider's gross intrastate operating revenues. The revenues produced from this
3 assessment are transferred to the Public Advocate Regulatory Fund and may only be used
4 to fulfill the duties specified in chapter 17. The assessments charged to utilities and voice
5 service providers under this subsection are considered just and reasonable operating costs
6 for rate-making purposes. The Public Advocate shall develop a method of accounting for
7 staff time within the Office of Public Advocate. All professional and support staff shall
8 account for their time in such a way as to identify the percentage of time devoted to
9 public utility and voice service provider regulation and the percentage of time devoted to
10 other duties that may be required by law.

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

17 B. The Public Advocate may use the revenues provided in accordance with this
18 section to fund the Public Advocate and 9 employees and to defray the costs incurred
19 by the Public Advocate pursuant to this Title, including administrative expenses,
20 general expenses, consulting fees and all other reasonable costs incurred to
21 administer this Title.

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

25 **Sec. 12. 35-A MRSA §120, sub-§5**, as amended by PL 2009, c. 122, §9, is
26 further amended to read:

27 **5. Voice service provider exemptions.** The commission's activities undertaken
28 pursuant to its authority to grant exemptions to ~~telephone utilities~~ voice service providers
29 from certain portions of this Title;

30 **Sec. 13. 35-A MRSA §304**, as enacted by PL 1987, c. 141, Pt. A, §6, is amended
31 to read:

32 **§304. Filing of schedules of rates, terms and conditions**

33 Every public utility that is not a telephone utility shall file with the commission,
34 within a time to be fixed by the commission, schedules ~~which shall~~ that must be open to
35 public inspection. The schedules ~~shall~~ must show all rates, tolls and charges ~~which that~~
36 the public utility has established and ~~which that~~ that are in force at the time for any service
37 performed by it within the State, or for any service in connection with or performed by
38 any public utility controlled or operated by it or in conjunction with it. Every public
39 utility that is not a telephone utility shall file with and as part of its schedules all terms
40 and conditions that in any manner affect the rates charged or to be charged for any
41 service.

1 A person who provides provider of last resort service shall file with the commission,
2 within a time to be fixed by the commission, schedules relating to provider of last resort
3 service, which must be open to public inspection. The schedules must show all rates,
4 tolls and charges the person has established for provider of last resort service that are in
5 force at the time for any provider of last resort service performed by it within the State, or
6 for any provider of last resort service in connection with or performed by any telephone
7 utility controlled or operated by it or in conjunction with it. The person shall file with
8 and as part of its schedules all terms and conditions that in any manner affect the rates
9 charged or to be charged for provider of last resort service.

10 ~~Public utility schedules which~~ Schedules that were formerly designated as rules shall
11 must be designated as terms and conditions. All such schedules to be filed with the
12 commission shall must be designated as terms and conditions.

13 **Sec. 14. 35-A MRSA §307-A**, as amended by PL 2001, c. 137, §3, is repealed.

14 **Sec. 15. 35-A MRSA §507**, as enacted by PL 2001, c. 137, §4, is repealed.

15 **Sec. 16. 35-A MRSA §703, sub-§3-A**, as repealed and replaced by PL 2009, c.
16 66, §1, is amended to read:

17 **3-A. Special contracts.** A public utility, subject to the commission's approval, may
18 make a contract for a definite term for its product or service, but the published rates for
19 the product or service may not be changed during the term of the contract without the
20 commission's consent. ~~If the commission grants to a telephone utility or a group of~~
21 ~~telephone utilities an exemption pursuant to section 307-A from the requirement to file~~
22 ~~rate schedules or terms and conditions, that telephone utility or group of telephone~~
23 ~~utilities is exempt from the requirements for commission approval and consent under this~~
24 ~~subsection to the same extent as the exemption granted by the commission pursuant to~~
25 ~~section 307-A.~~

26 **Sec. 17. 35-A MRSA §705, last ¶** is enacted to read:

27 The provisions of this section apply to telephone utilities only to the extent they relate
28 to provider of last resort service.

29 **Sec. 18. 35-A MRSA §708, sub-§1, ¶C** is enacted to read:

30 C. "Controlling interest" means:

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

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

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

1 have the voting power specified under this paragraph or who are not considered to
2 have a controlling interest under this paragraph.

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

7 **Sec. 19. 35-A MRSA §708, sub-§5** is enacted to read:

8 **5. Limitation.** The provisions of this section apply to a telephone utility only if the
9 reorganization results in a merger, sale or transfer of a controlling interest of the
10 telephone utility or any entity that owns more than 50% of the telephone utility.

11 **Sec. 20. 35-A MRSA §711, sub-§§1 to 3,** as enacted by PL 1987, c. 141, Pt. A,
12 §6, are amended to read:

13 **1. Joint use permitted.** The commission may order that joint use be permitted and
14 prescribe reasonable compensation and reasonable terms and conditions for the joint use
15 when, after a hearing had upon its own motion or upon complaint of a public utility, an
16 incumbent local exchange carrier or a cable television system affected, it finds the
17 following:

18 A. That public convenience and necessity require the use by one public utility,
19 incumbent local exchange carrier or cable television system of the conduits, subways,
20 wires, poles, pipes or other equipment, or any part of them, on, over or under any
21 street or highway and belonging to another public utility, incumbent local exchange
22 carrier or cable television system;

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

26 C. That the public utilities, incumbent local exchange carrier or cable television
27 system have failed to agree upon the use or the terms and conditions or compensation
28 for the use.

29 **2. Liability of user.** If joint use is ordered, the public utility, incumbent local
30 exchange carrier or cable television system to ~~whom~~ which the use is permitted ~~shall be~~ is
31 liable to the owner or other users of the conduits, subways, wires, poles, pipes or other
32 equipment for damage that may result from its use to the property of the owner or other
33 users.

34 **3. Interests of cable television subscribers.** Any actions taken or orders issued by
35 the commission under this section ~~shall~~ must take into account the interests of the
36 subscribers of the affected cable television system, as well as the customers of the
37 affected public utilities or incumbent local exchange carriers.

38 **Sec. 21. 35-A MRSA c. 8,** as amended, is repealed.

39 **Sec. 22. 35-A MRSA §912,** as amended by PL 2001, c. 137, §5, is repealed.

1 **Sec. 23. 35-A MRSA §1302, sub-§4** is enacted to read:

2 **4. Limitation.** This section applies to telephone utilities only with regard to provider
3 of last resort service.

4 **Sec. 24. 35-A MRSA §1304, sub-§1**, as amended by PL 1995, c. 226, §1, is
5 further amended to read:

6 **1. Notice to utility and parties.** The commission shall notify the public utility or
7 voice service provider, other parties and interested persons it considers proper of the time
8 and place of the formal public hearing as provided in Title 5, section 9052.

9 **Sec. 25. 35-A MRSA §1304, sub-§2**, as amended by PL 1995, c. 226, §2, is
10 further amended to read:

11 **2. Notice to subscribers.** If, after the commission has notified the public utility or
12 voice service provider of the hearing as provided in this section or in section 310, it
13 appears that the time, place and nature of the hearing will not be reasonably publicized by
14 newspaper or otherwise, the following provisions apply.

15 A. The commission may by rule or upon written notice to the public utility or voice
16 service provider require it to:

17 (1) Give reasonable notice of the time and place of the hearing to each subscriber
18 affected or to be affected by the subject of the hearing; or

19 (2) File pertinent information as to the rates or service involved, including
20 schedules of proposed rates, in the office of the clerk of the municipality where
21 the subscribers reside.

22 B. The notice given by the public utility ~~shall~~ or voice service provider must:

23 (1) Be given by first class mail; and

24 (2) Include a statement that pertinent information as to rates or service is on file
25 in the office of the clerk of the municipality where the subscribers reside.

26 C. Nothing in this section relieves the public utility from the provisions of section
27 308.

28 **Sec. 26. 35-A MRSA §1304, sub-§5**, as enacted by PL 1987, c. 141, Pt. A, §6, is
29 amended to read:

30 **5. Commission authorized to act on an expedited basis.** In proceedings pursuant
31 to section 1302, 1303 or 1321, after providing reasonable notice and an opportunity to be
32 heard, the commission may issue a temporary order pending the conclusion of the formal
33 public hearing. In making the order, the commission shall consider the likelihood that it
34 would be issued at the conclusion of the proceeding, the benefit to the public or affected
35 customers compared to the harm to the public utility or voice service provider or other
36 customers of issuing the order and the public interest. Notwithstanding any other
37 provisions of law, upon a written finding that the procedural requirements otherwise
38 required by law will result in unreasonable harm to a public utility, a voice service

1 provider, a customer or the public, the commission may establish accelerated notice
2 periods, schedules and limitations on hearings as may be necessary to expedite
3 consideration of the order.

4 **Sec. 27. 35-A MRSA §1311-B**, as enacted by PL 2001, c. 135, §1, is amended to
5 read:

6 **§1311-B. Security of certain utility and voice service provider information**

7 **1. Designation of information as confidential.** If the commission, on its own
8 motion or on petition of any person or entity, determines that public access to specific
9 information about public utility or voice service provider technical operations in the State
10 could compromise the security of ~~public utility~~ those systems to the detriment of the
11 public interest, the commission shall issue an order designating that information as
12 confidential. Information designated as confidential pursuant to this section may include,
13 but is not limited to, emergency response plans and network diagrams. Information
14 designated as confidential under this section is not a public record under Title 1, section
15 402, subsection 3.

16 **2. Treatment of information by commission; generally.** Except as otherwise
17 provided in this section, the commission may not release information designated as
18 confidential under subsection 1 and shall take appropriate steps to protect such
19 information in its possession.

20 **3. Access to information by parties in proceeding.** Designation of information as
21 confidential under subsection 1 does not limit the right of a party in a proceeding before
22 the commission to obtain discovery of that information. Notwithstanding section
23 1311-A, subsection 1, paragraphs A and C, the commission may issue a protective order
24 limiting discovery of information designated as confidential pursuant to subsection 1 if
25 the commission finds that specific limits are necessary to protect the public interest.

26 **4. Release of information to other state agencies.** The commission may release
27 information designated as confidential pursuant to subsection 1 or require the release of
28 that information by a public utility or voice service provider to another state agency to the
29 extent necessary to support emergency preparedness or response, law enforcement or
30 other public health and safety activities. The commission shall consult with a public
31 utility or voice service provider before releasing or requiring the release of confidential
32 information about that public utility or voice service provider to a state agency unless the
33 commission determines that the public health and welfare require immediate release
34 without such consultation. The commission shall notify a public utility or voice service
35 provider within 2 business days of providing information about that public utility or voice
36 service provider to a state agency pursuant to this subsection. As soon as practicable after
37 receiving notice from a state agency pursuant to subsection 5, paragraph B of the agency's
38 intent to release the information, the commission shall notify the public utility or voice
39 service provider of the agency's intent.

40 **5. Release by other state agencies.** A state agency that receives information about a
41 public utility or voice service provider pursuant to subsection 4:

- 1 A. May not use that information for any purpose other than for the support of
2 emergency preparedness or response, law enforcement or other public health and
3 safety activities;
- 4 B. May not release that information to any other person or entity without prior notice
5 to the commission unless the agency determines that immediate release of the
6 information to one or more persons or entities is necessary for the protection of
7 public health and safety; and
- 8 C. Shall, when finished with the use of any documents received from the
9 commission or from a public utility or voice service provider pursuant to subsection
10 4, return the documents to the commission or the public utility or voice service
11 provider, as appropriate.

12 **Sec. 28. 35-A MRSA §1312, sub-§1**, as enacted by PL 1987, c. 141, Pt. A, §6, is
13 amended to read:

14 **1. Witnesses.** Each witness who is ordered to appear before the commission shall
15 receive for ~~his~~ attendance the fees and mileage provided for witnesses in civil cases in the
16 Superior Court. This provision does not apply to the employees, officers, directors,
17 trustees and holders of more than 10% of the common stock of a public utility ~~which~~ or
18 voice service provider that is the subject of the commission's proceeding.

19 **Sec. 29. 35-A MRSA §1316**, as amended by PL 1999, c. 398, Pt A, §21 and
20 affected by §§104 and 105, is further amended to read:

21 **§1316. Testimony presented by employees of public utilities, voice service providers**
22 **or competitive service providers to legislative committees and to the Public**
23 **Utilities Commission**

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

26 A. "Employee" means a person who performs a service for wages or other
27 remuneration under a contract of hire, expressed or implied, but does not include an
28 independent contractor.

29 B. "Employer" means a public utility, voice service provider or competitive service
30 provider licensed to do business in this State with one or more employees.

31 C. "Legislative committee" means a joint standing committee or a joint select
32 committee of the Legislature, a task force, commission or council or any other
33 committee established by the Legislature and composed wholly or partly of
34 Legislators for the purpose of conducting legislative business.

35 D. "Own time" means an employee's vacation or personal time, earned as a condition
36 of employment.

37 **2. Right to provide testimony.** Employees of a public utility, voice service provider
38 or competitive service provider have the right to represent themselves and to testify
39 before a legislative committee or the commission on their own time. An employee of a
40 public utility, voice service provider or competitive service provider who complies with

1 this section may not be denied the right to testify before a legislative committee or the
2 commission.

3 **3. Discharge of, threats to or discrimination against certain employees for**
4 **testimony presented to legislative committees or the commission.** Unless otherwise
5 provided for, a supervisor may not discharge, threaten or otherwise discriminate against
6 an employee of a public utility, voice service provider or competitive service provider
7 regarding the employee's compensation, terms, conditions, location or privileges of
8 employment because the employee, in compliance with this section, in good faith testifies
9 before or provides information to a legislative committee or to the commission regarding
10 the operation of the business of a public utility, voice service provider or competitive
11 service provider or because the employee brings the subject matter of the testimony or
12 information to the attention of a person having supervisory authority.

13 This subsection does not apply to an employee who has testified before or provided
14 information to a legislative committee or to the commission unless the employee has first
15 brought the subject matter of the testimony or information in writing to the attention of a
16 person having supervisory authority with the employer and has allowed the employer a
17 reasonable time to address the subject matter of the testimony or information. If
18 appropriate, the employer shall respond in writing.

19 **4. Exceptions.** The protection created in subsection 3 does not apply to testimony
20 that, upon reasonable inquiry by the employee, would be found to be false, slanderous,
21 libelous or defamatory or to testimony that violates a term or condition of a collectively
22 bargained agreement or to testimony that discloses trade secrets or corporate strategy, the
23 disclosure of which would result in harm to the employer.

24 **5. Civil actions for injunctive relief or other remedies.** An employee of a public
25 utility, voice service provider or competitive service provider who alleges a violation of
26 rights under this section and who has made reasonable efforts to exhaust all grievance
27 procedures, as provided for in the contract of employment or ~~which that~~ otherwise may
28 be available at the employee's place of employment, may bring a civil action, including
29 an action for injunctive relief, within 90 days after the occurrence of that alleged violation
30 or after the grievance procedure or similar process terminates. The action may be
31 brought in the Superior Court for the county where the alleged violation occurred, the
32 county where the complainant resides or the county where the person against whom the
33 civil complaint is filed resides. An employee must establish each and every element of
34 the employee's case by a preponderance of the evidence.

35 **6. Remedies ordered by court.** A court, in rendering a judgment in an action
36 brought pursuant to this section, may order reinstatement of the employee, the payment of
37 back wages, full reinstatement of fringe benefits and seniority rights or any combination
38 of these remedies. A court may also award the prevailing party all or a portion of the
39 costs of litigation, including reasonable attorneys' fees and witness fees, if the court
40 determines that the award is appropriate.

41 **7. Collective bargaining rights.** This section does not diminish or impair the rights
42 of a person under any collective bargaining agreement.

1 **8. Jury trial; common-law rights.** Any action brought under this section may be
2 heard by a jury. Nothing in this section derogates any common-law rights of an
3 employee or employer.

4 **Sec. 30. 35-A MRSA §1322, sub-§1,** as amended by PL 1999, c. 398, Pt. A, §23
5 and affected by §§104 and 105, is further amended to read:

6 **1. Orders temporarily amended.** When the commission finds it necessary to
7 prevent injury to a public utility's or voice service provider's business or to the interest of
8 the people, or if the commission finds there is an emergency, it may temporarily alter,
9 amend or, with the public utility's or voice service provider's consent, suspend existing
10 rates, schedules or orders affecting the public utility or voice service provider. When the
11 commission finds it necessary to prevent injury to a competitive service provider's
12 business or to the interest of the people, or if the commission finds there is an emergency,
13 it may temporarily alter, amend or, with the competitive service provider's consent,
14 suspend existing orders affecting the competitive service provider.

15 **Sec. 31. 35-A MRSA §§1501 and 1502,** as enacted by PL 1987, c. 141, Pt. A,
16 §6, are amended to read:

17 **§1501. Liability for civil damages**

18 If a public utility or voice service provider violates this Title, causes or permits a
19 violation of this Title or omits to do anything that this Title requires it to do, it may be
20 liable in damages to the person injured as a result. Recovery under this section does not
21 affect a recovery by the State of the penalty prescribed for the violation.

22 **§1502. Contempt**

23 Every public utility, voice service provider or person that fails to comply with an
24 order, decision, rule, direction, demand or requirement of the commission or of a
25 commissioner is in contempt of the commission and shall be punished by the commission
26 for contempt in the same manner as contempt is punished by courts of record.
27 Punishment for contempt is not a bar to and does not affect any other remedy prescribed
28 in this Title, but is cumulative and in addition to other remedies.

29 **Sec. 32. 35-A MRSA §1508-A, sub-§1, ¶¶A to C,** as enacted by PL 2003, c.
30 505, §23, are amended to read:

31 A. For willful violations of this Title, a commission rule or a commission order by a
32 public utility, voice service provider or a competitive electricity provider, the
33 commission may impose an administrative penalty for each violation in an amount
34 that does not exceed \$5,000 or .25% of the annual gross revenue that the public
35 utility, voice service provider or ~~the~~ competitive electricity provider received from
36 sales in the State, whichever amount is lower. Each day a violation continues
37 constitutes a separate offense. The maximum administrative penalty for any related
38 series of violations may not exceed \$500,000 or 5% of the annual gross revenue that
39 the public utility, voice service provider or ~~the~~ competitive electricity provider
40 received from sales in the State, whichever amount is lower.

1 B. For a violation in which a public utility, voice service provider or a competitive
2 electricity provider was explicitly notified by the commission that it was not in
3 compliance with the requirements of this Title, a commission rule or a commission
4 order and that failure to comply could result in the imposition of administrative
5 penalties, the commission may impose an administrative penalty that does not exceed
6 \$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 or a
9 competitive electricity provider and that violates this Title, a commission rule or a
10 commission order. Each day a violation continues constitutes a separate offense.
11 The administrative penalty may not exceed \$25,000 for any related series of
12 violations.

13 **Sec. 33. 35-A MRSA §2102, sub-§1, ¶A**, as enacted by PL 2007, c. 638, §1, is
14 repealed.

15 **Sec. 34. 35-A MRSA §2102, sub-§3**, as amended by PL 1997, c. 569, §1 and
16 affected by, §2, is repealed.

17 **Sec. 35. 35-A MRSA §2102, sub-§5** is enacted to read:

18 **5. Registration by voice service providers.** Except as otherwise prohibited by state
19 or federal law:

20 A. A person may not be a voice service provider in this State unless registered with
21 the commission. The commission shall register a person as a voice service provider
22 upon receipt from that person of a notice of intent to provide such service;

23 B. The commission may request information from voice service providers and take
24 other measures necessary to preserve number resources; and

25 C. The commission may, for good cause and after providing an opportunity to be
26 heard, revoke the authority of any person to be a voice service provider in this State.
27 Good cause may include, but is not limited to, failure to pay an assessment pursuant
28 to section 116 and failure to pay contributions pursuant to section 7104 or 7104-B.

29 The commission shall adopt rules to carry out the purposes of this subsection. Rules
30 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
31 chapter 375, subchapter 2-A.

32 **Sec. 36. 35-A MRSA §2301**, as amended by PL 2009, c. 612, §7, is further
33 amended to read:

34 **§2301. Voice service providers, federally supported dark fiber providers and**
35 **television corporations may construct lines**

36 Except as limited, every ~~corporation organized under section 2101 for the purpose of~~
37 ~~operating telephones~~ voice service provider, every dark fiber provider for the purposes of
38 constructing and maintaining its federally supported dark fiber, and every corporation
39 organized for the purpose of transmitting television signals by wire may construct,

1 maintain and operate its lines upon and along the route or routes and between the points
2 stated in its certificate of incorporation; and may construct its lines and necessary
3 erections and fixtures for them along, over, under and across any of the roads and streets
4 and across or under any of the waters upon and along the route or routes subject to the
5 conditions and under the restrictions provided in this chapter and chapter 25.

6 **Sec. 37. 35-A MRSA §2306**, as amended by PL 1999, c. 398, Pt. A, §36 and
7 affected by §§104 and 105, is further amended to read:

8 **§2306. No taking property without consent**

9 A public utility organized under section 2101 and former section 2109 or a voice
10 service provider may not take, appropriate or use the location, pipes, lines, land or other
11 property of any other person doing or authorized to do a similar business; without consent
12 of the other person, except by Private and Special Act of the Legislature.

13 **Sec. 38. 35-A MRSA §§2307 and 2308**, as enacted by PL 1987, c. 141, Pt. A,
14 §6, are amended to read:

15 **§2307. Public utilities and voice service providers may lay wires, pipes and cables**
16 **under streets subject to municipal permit**

17 Public utilities and voice service providers may, in any municipality, place their pipes
18 and appurtenances, wires and cables and all conduits and other structures for conducting
19 and maintaining the pipes, wires and cables under the surface of those streets and
20 highways in which the utilities are authorized to obtain locations for their pipes and
21 appurtenances, poles and wires, subject to the written permit of the licensing authority, as
22 defined in section 2502 and subject to such rules as to location and construction as the
23 municipal officers or the Department of Transportation may designate in ~~their~~ the permit.
24 A permit must be obtained under sections 2501 to 2508. Permits to open streets and
25 highways for the purpose of relaying or repairing the pipes and appurtenances, wires,
26 cables, conduits and other structures may be granted without notice.

27 **§2308. Protection of utility and voice service provider facilities upon discontinuance**
28 **of public ways**

29 In proceedings for the discontinuance of public ways, public ways may be
30 discontinued in whole or in part. The discontinuance of a town way ~~shall be pursuant to~~
31 subject to Title 23, section 3026. Unless an order discontinuing a public way specifically
32 provides otherwise, the public easement provided for in Title 23, section 3026; includes
33 an easement for public utility or voice service provider facilities. A public utility or voice
34 service provider may continue to maintain, repair and replace its installations within the
35 limits of the way or may construct and maintain new facilities within the limits of the
36 discontinued way, if it is used for travel by motor vehicles, in order to provide public
37 utility or voice service provider service, upon compliance with the provisions of sections
38 2503, 2505, 2506, 2507 and 2508.

39 **Sec. 39. 35-A MRSA §2310, sub-§1**, as enacted by PL 1987, c. 141, Pt. A, §6, is
40 amended to read:

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

4 **Sec. 40. 35-A MRSA §2522**, as amended by PL 1999, c. 398, Pt. A, §39 and
5 affected by §§104 and 105, is further amended to read:

6 **§2522. Maintenance of facilities**

7 Notwithstanding any other provision of law, a transmission and distribution utility,
8 dark fiber provider or telephone utility local exchange carrier may trim, cut or remove by
9 cutting trees located within the public right-of-way of a public way and may trim or cut
10 portions of trees encroaching upon the public right-of-way when necessary to ensure safe
11 and reliable service if:

12 **1. Notice to applicable licensing authority.** Notice is provided by the utility, dark
13 fiber provider or local exchange carrier to the applicable licensing authority, as defined in
14 section 2502, at least 30 days before the trimming, cutting or removal of trees;

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

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

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

1 **5. Shade and ornamental trees.** Before removing a shade or ornamental tree, the
2 utility, dark fiber provider or local exchange carrier consults with the owner of the land
3 upon which the tree is located. For purposes of this subsection, "owner" includes a
4 person who owns the underlying fee interest in land encumbered with a public easement.

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

7 **Sec. 41. 35-A MRSA §7101, sub-§1**, as enacted by PL 1993, c. 410, Pt. OOO,
8 §1, is amended to read:

9 **1. Universal service.** The Legislature declares and finds that the 50-year effort to
10 bring affordable, universally available telephone service to the public has served the State
11 well; universal telephone service has contributed to the State's economic, social and
12 political integration and development; the public benefits from universal telephone
13 service because each telephone subscriber receives a more valuable service when
14 virtually anyone else in the State can be called; and a significant rate increase may
15 threaten universal service by forcing some Maine people to discontinue their telephone
16 service. It is the policy of the State that telephone service must continue to be universally
17 available in the form of provider of last resort service, especially to the poor, at affordable
18 rates.

19 **Sec. 42. 35-A MRSA §7101-A**, as enacted by PL 1991, c. 654, §1 and affected by
20 §5, is amended to read:

21 **§7101-A. Telecommunications privacy; policy**

22 The Legislature declares and finds customers the following.

23 **1. Privacy right.** ~~Telephone subscribers~~ Customers of voice service providers have
24 a right to privacy and the protection of this right to privacy is of paramount concern to the
25 State.

26 **2. Exercise of right.** To exercise their right to privacy, ~~telephone subscribers~~
27 customers of voice service providers must be able to limit the dissemination of their
28 telephone numbers to persons of their choosing.

29 **Sec. 43. 35-A MRSA §7101-B, sub-§1**, as enacted by PL 1997, c. 259, §1, is
30 amended to read:

31 **1. Definitions.** As used in this section, the term "intrastate access rates" means rates
32 that a ~~telecommunications~~ voice service provider pays for access to a local exchange
33 carrier's facilities and services in order to provide intrastate interexchange service.

34 **Sec. 44. 35-A MRSA §7102, sub-§1-A, ¶B**, as enacted by PL 1991, c. 654, §2
35 and affected by §5, is amended to read:

36 B. An identification service provided in connection with ~~audiotext services, as~~
37 ~~defined in section 801~~, toll-free, or "800" access code, telephone service or a similar
38 telephone service;

1 **Sec. 45. 35-A MRSA §7102, sub-§1-A, ¶C**, as enacted by PL 1991, c. 654, §2
2 and affected by §5, is amended to read:

3 C. An identification service that provides billing information to another ~~telephone~~
4 ~~utility~~ voice service provider or to others providing service to a customer;

5 **Sec. 46. 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. 47. 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 service providers and
14 providers of radio paging service to contribute to a state universal service fund to support
15 programs consistent with the goals of applicable provisions of this Title and the federal
16 Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56. Prior to requiring
17 that ~~providers of intrastate telecommunications services~~ voice service providers and
18 providers of radio paging service contribute to a state universal service fund, the
19 commission shall assess the telecommunications needs of the State's consumers and
20 establish the level of support required to meet those needs. If the commission establishes
21 a state universal service fund pursuant to this section, the commission shall contract with
22 an appropriate independent fiscal agent that is not a state entity to serve as administrator
23 of the state universal service fund. Funds contributed to a state universal service fund are
24 not state funds. Rules and any state universal service fund requirements established by
25 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 service provider elects to recover 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.

1 For purposes of this subsection, "~~providers of intrastate telecommunications services~~"
2 includes providers of radio paging service and mobile telecommunications services.
3 Rules adopted under this subsection are routine technical rules as defined in Title 5,
4 chapter 375, subchapter ~~H-A~~ 2-A.

5 **Sec. 48. 35-A MRSA §7104, sub-§4**, as enacted by PL 1997, c. 692, §1, is
6 repealed.

7 **Sec. 49. 35-A MRSA §7104, sub-§7, ¶A**, as enacted by PL 2005, c. 305, §2, is
8 amended to read:

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

23 **Sec. 50. 35-A MRSA §7104, sub-§8** is enacted to read:

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

27 **Sec. 51. 35-A MRSA §7104-B, sub-§1, ¶C**, as enacted by PL 1999, c. 409, §2,
28 is repealed.

29 **Sec. 52. 35-A MRSA §7104-B, sub-§2**, as amended by PL 2001, c. 522, §1, is
30 further amended to read:

31 **2. Authority.** Pursuant to the authority granted in section 7104 and in order to carry
32 out the policy goals established by section 7101, subsections 1, 2 and 4, the commission
33 shall establish a telecommunications education access fund, referred to in this section as
34 the "fund," and require all ~~telecommunications carriers offering telecommunications~~
35 services voice service providers providing service in the State and any other entities
36 identified by the commission ~~pursuant to subsection 8~~ to contribute to the fund. The fund
37 must be available, with any accumulated interest, to qualified libraries, qualified schools
38 and the Raymond H. Fogler Library at the University of Maine to assist in paying the
39 costs of acquiring and using advanced telecommunications technologies.

1 **Sec. 53. 35-A MRSA §7104-B, sub-§3, ¶A**, as amended by PL 2005, c. 251, §1,
2 is further amended to read:

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

6 **Sec. 54. 35-A MRSA §7104-B, sub-§3, ¶¶C and D**, as enacted by PL 1999, c.
7 409, §2, are amended to read:

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

10 D. Require, if a voice service provider elects to recover its contributions under this
11 section by means of a charge placed on a bill issued to a customer, explicit
12 identification on customer bills of any charge imposed under this section; ~~and~~.

13 **Sec. 55. 35-A MRSA §7104-B, sub-§3, ¶E**, as enacted by PL 1999, c. 409, §2,
14 is repealed.

15 **Sec. 56. 35-A MRSA §7104-B, sub-§4, ¶A**, as enacted by PL 1999, c. 409, §2,
16 is amended to read:

17 A. ~~Telecommunications~~ Two-way voice communications services;

18 **Sec. 57. 35-A MRSA §7104-B, sub-§8**, as enacted by PL 1999, c. 409, §2, is
19 repealed.

20 **Sec. 58. 35-A MRSA §7105, sub-§§1 and 2**, as enacted by PL 1991, c. 654, §4
21 and affected by §5, is amended to read:

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

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

37 **Sec. 59. 35-A MRSA §7106**, as amended by PL 2007, c. 638, §§2 and 3, is
38 further amended to read:

1 **§7106. Unauthorized change of voice service provider**

2 **1. Unauthorized change of voice service provider.** This subsection governs the
3 initiation of a change in a customer's ~~local or intrastate interexchange carrier~~ voice
4 service provider that is not authorized by that consumer.

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

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

15 B. When a customer's ~~service~~ voice service provider is changed to a new ~~local or~~
16 ~~intrastate interexchange carrier~~ voice service provider, the new ~~local or intrastate~~
17 ~~interexchange carrier~~ voice service provider shall maintain for 24 months a record of
18 nonpublic customer-specific information that establishes that the customer authorized
19 the change.

20 D. A ~~local or intrastate interexchange carrier~~ voice service provider that has initiated
21 an unauthorized customer change shall:

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

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

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

1 If the unauthorized carrier has not returned to the customer the amount paid by the
2 customer to the unauthorized carrier in accordance with paragraph D, subparagraph
3 (2), the unauthorized carrier shall pay to the authorized carrier the charges of the
4 authorized carrier for the customer's usage during the period the customer was served
5 by the unauthorized carrier.

6 **2. Penalty.** A ~~local or intrastate interexchange carrier~~ voice service provider that
7 violates this section is subject to penalty in accordance with this subsection.

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

- 15 (1) The severity of the violation, including the intent of the violator, the nature,
16 circumstances, extent and gravity of any prohibited acts;
- 17 (2) The history of previous violations;
- 18 (3) The amount necessary to deter future violations;
- 19 (4) Good faith attempts to comply after notification of a violation; and
- 20 (5) Such other matters as justice requires.

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

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

1 imposed or customer refunds will be ordered that are equal to or greater than the
2 amount ordered withheld.

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

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

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

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

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

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

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

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

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

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

1 **6. Customer education.** The Public Advocate shall periodically inform ~~telephone~~
2 voice service provider customers in the State of the protections and rights provided by
3 this section.

4 **Sec. 60. 35-A MRSA §7107, sub-§1, ¶A,** as enacted by PL 1999, c. 59, §1 and
5 affected by §3, is amended to read:

6 A. "Billing agent" means a ~~telephone utility~~ voice service provider that includes in a
7 bill it sends to a customer a charge for a product or service offered by a service
8 provider.

9 **Sec. 61. 35-A MRSA §7107, sub-§2,** as enacted by PL 1999, c. 59, §1 and
10 affected by §3, is amended to read:

11 **2. Registration requirements.** The following acts are prohibited.

12 A. A service provider may not offer a product or service to a customer, the charge
13 for which appears on the bill of a billing agent, unless the service provider is properly
14 registered with the commission.

15 B. A billing aggregator may not forward to a billing agent charges for a service or
16 product offered by a service provider unless the billing aggregator is properly
17 registered with the commission.

18 C. A billing aggregator may not forward charges to a billing agent from a service
19 provider who is required to be registered under this subsection and who is not
20 properly registered under this subsection.

21 D. A billing agent may not knowingly bill on behalf of a service provider who is
22 required to be registered under this subsection and who is not properly registered
23 under this subsection.

24 A ~~telephone utility that is authorized by the commission or by law to provide telephone~~
25 ~~services in this State~~ voice service provider is not required to be registered under this
26 subsection.

27 The commission by rule may establish the manner and form of the registration. A
28 registration properly filed with the commission takes effect 14 days after the filing date
29 unless the commission objects to the registration and provides notice of its objection to
30 the registrant within the 14 days. If the commission objects to the registration, the
31 registration does not become effective unless expressly approved by the commission.
32 The commission shall offer a person whose registration has been rejected an opportunity
33 for a hearing. A registration, once effective, remains effective until revoked by the
34 commission or surrendered by the service provider or billing aggregator.

35 **Sec. 62. 35-A MRSA §7107, sub-§6,** as corrected by RR 2003, c. 2, §113, is
36 repealed and the following enacted in its place:

37 **6. Rulemaking.** The commission shall adopt rules to implement this section. Rules
38 adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375,
39 subchapter 2-A.

1 **§7201. Definitions**

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

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

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

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

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

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

22 **6. Local usage.** "Local usage" means an amount of minutes of use of exchange
23 service within a certain area, prescribed by the commission, provided free of charge to
24 end users.

25 **7. Provider of last resort service.** "Provider of last resort service" means a flat-rate
26 service with voice grade access to the public switched telephone network; local usage
27 within a certain calling area as determined by the commission; dual-tone multifrequency
28 signaling or its functional equivalent; single-party service or its functional equivalent;
29 access to emergency services; access to operator services; access to interexchange
30 service; access to directory assistance; toll limitation for qualifying low-income
31 customers; and the capacity to maintain uninterrupted voice service during a power
32 failure, either through the incorporation into the network and network interface devices of
33 suitable battery backup, or through electric current.

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

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

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

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

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

7 With respect to a service provider that has the capacity to allow customers both options
8 described in paragraphs A and B, "toll limitation for qualifying low-income customers"
9 means a service that offers both options to those customers. With respect to a service
10 provider that does not have the capacity to allow customers both options, "toll limitation
11 for qualifying low-income customers" means a service that offers one of the options to
12 those customers.

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

18 **§7202. Designation of service providers**

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

22 **2. Relief from service provider obligation.** A service provider may petition the
23 commission for authorization to discontinue offering provider of last resort service in a
24 given geographic area. In considering such a petition, the commission may consider the
25 following factors:

26 A. The number of customers in the given geographic area who purchase only
27 provider of last resort service rather than purchasing provider of last resort service as
28 a component of a package of other services such as Internet service and video
29 programming;

30 B. The physical locations of all provider of last resort service customers in the given
31 geographic area;

32 C. The physical locations of all customers in the given geographic area who take
33 service other than provider of last resort service from the service provider and the
34 particular service offers that these customers take from the service provider;

35 D. The physical locations in the given geographic area where provider of last resort
36 service customers have the ability to take basic local exchange service or its
37 equivalent from 2 or more alternate voice service providers;

38 E. The price of basic local exchange service or its equivalent offered by alternate
39 voice service providers in the given geographic area; and

40 F. The public interest.

1 **3. Reassignment of service provider obligation.** A service provider may petition
2 the commission for authorization to assign its provider of last resort service obligation for
3 a given geographic area to another voice service provider. The commission shall by rule
4 develop a process for identifying and approving replacement service providers, but in no
5 event may a voice service provider be designated as a replacement service provider
6 without the express consent of the voice service provider. Before authorizing the
7 reassignment of the provider of last resort service obligation to another voice service
8 provider, the commission shall ensure that the voice service provider possesses the
9 financial and technical capability to meet all provider of last resort service standards set
10 by the commission.

11 **§7203. Revenue requirements of service providers**

12 **1. Provider of last resort service rates.** The rates for provider of last resort service
13 are those rates in effect for basic local exchange service for each incumbent local
14 exchange carrier in the service area of that carrier as of January 1, 2012. After January 1,
15 2012, the commission may establish rates for provider of last resort service within any
16 geographic area by rule in accordance with the provisions of this section.

17 **2. Provider of last resort service rate adjustment.** A service provider may petition
18 the commission for an increase in its provider of last resort service rate in a geographic
19 area. In evaluating whether such an increase is necessary, the commission shall establish
20 the minimum revenue required to offer provider of last resort service for the geographic
21 area. In adjusting provider of last resort service rates, the commission shall consider the
22 prospective network costs of the service provider in the geographic area and the revenues,
23 from all sources and services, generated by the service provider through its operation of
24 its network in that area.

25 **3. Provider of last resort service revenue support from the state universal**
26 **service fund.** If the commission determines, after considering a petition pursuant to
27 subsection 2, that the revenues generated by provider of last resort service rates are
28 insufficient to meet the revenue requirements of a service provider in a geographic area
29 and if the provider of last resort service rate has been raised to a level equal to 2 standard
30 deviations above the national average basic local exchange service rate in urban areas as
31 determined by the Federal Communications Commission, the commission may designate
32 a support amount to be provided to the service provider from the state universal service
33 fund established pursuant to section 7104.

34 **4. Other rates.** In adopting rules under section 7205, the commission shall establish
35 a methodology for determining the rates for provider of last resort service offered by a
36 replacement service provider designated under section 7202.

37 **§7204. Provider of last resort service consumer protection**

38 A service provider in accordance with rules adopted by the commission pursuant to
39 section 7205:

40 **1. Information.** Shall provide customers adequate and timely information about
41 provider of last resort service;

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

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

6 **§7205. Rules**

7 The commission shall adopt rules to establish provider of last resort service standards
8 and implement this chapter. Rules adopted pursuant to this subsection are routine
9 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

10 **Sec. 65. 35-A MRSA §7301**, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

11 **Sec. 66. 35-A MRSA §7303**, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

12 **Sec. 67. 35-A MRSA §7303-A**, as enacted by PL 2001, c. 106, §1, is repealed.

13 **Sec. 68. 35-A MRSA §7304**, as repealed and replaced by PL 1991, c. 54, §1 and
14 affected by §2, is repealed.

15 **Sec. 69. 35-A MRSA §7305**, as enacted by PL 1989, c. 651, §2, is repealed.

16 **Sec. 70. 35-A MRSA §7306**, as enacted by PL 1991, c. 318, §1, is repealed.

17 **Sec. 71. 35-A MRSA §7307**, as amended by PL 2007, c. 478, §2, is further
18 amended to read:

19 **§7307. Notice of rate changes**

20 **1. Notice required.** ~~A telephone utility offering intrastate toll service~~ voice service
21 provider may not increase the price for such voice service or change its terms or
22 conditions for such service in a manner that results in an increase in costs for any
23 customer without first providing prior adequate notice to each customer identifying the
24 change in terms or conditions or price increase and the effective date of the change or
25 increase. The notice, which may take the form of a bill insert or notice by electronic
26 means, must be provided no less than 25 days prior to the effective date of the increase in
27 price or change in terms or conditions. The commission by rule may define what
28 constitutes adequate notice.

29 ~~A.— Filing a tariff revision with the commission identifying the new price or the~~
30 ~~change in the terms or conditions of service unless the utility is exempt from filing~~
31 ~~tariffs pursuant to rules adopted by the commission under section 307-A; and~~

32 ~~B.— Providing prior adequate written notice to each retail subscriber receiving~~
33 ~~intrastate toll service from the utility identifying the change in terms or conditions or~~
34 ~~price increase and the effective date of the change or increase. The notice, which~~
35 ~~may take the form of a bill insert, must be provided no less than 25 days prior to the~~
36 ~~effective date of the increase in price or change in terms or conditions. The~~

1 ~~commission by rule shall define what constitutes adequate written notice and shall~~
2 ~~specify whether notice by electronic means is adequate written notice.~~

3 **2. Failure to notify.** An increase in price or a change in the terms or conditions of
4 service that results in an increase in costs for a customer receiving ~~intrastate toll service~~
5 ~~from a telephone utility~~ voice service may not take effect until the customer has been
6 supplied with adequate ~~written~~ notice in conformity with subsection 1. A customer that
7 has not been supplied with adequate ~~written~~ notice under subsection 1 is not obligated to
8 make payment for any increase in the customer's bill attributable to an increase in price or
9 change in the terms or conditions. A ~~telephone utility~~ voice service provider shall refund
10 to a customer any increase in the customer's payments attributable to an increase in price
11 or change in terms or conditions if the ~~telephone utility~~ voice service provider fails to
12 provide adequate ~~written~~ notice in accordance with subsection 1.

13 ~~**3. Notice of rights.** A telephone utility offering intrastate toll service shall provide~~
14 ~~notice to customers of the requirements of subsection 1, paragraph B and of customer~~
15 ~~rights pursuant to subsection 2. The commission by rule shall specify the form and~~
16 ~~frequency of the notice.~~

17 **4. Rules.** ~~The commission shall adopt rules to implement this section. Rules~~
18 ~~adopted pursuant to this section are routine technical rules as defined in Title 5, chapter~~
19 ~~375, subchapter H-A 2-A.~~

20 **Sec. 72. 35-A MRSA §7308**, as enacted by PL 2007, c. 511, §1, is repealed.

21 **Sec. 73. 35-A MRSA §7504**, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

22 **Sec. 74. 35-A MRSA §7507, sub-§§2 and 3**, as enacted by PL 1993, c. 31, §1,
23 are amended to read:

24 **2. Order.** The commanding law enforcement officer at a critical incident may order
25 a previously designated ~~telephone utility~~ voice service provider security employee to
26 arrange to cut, reroute or divert telephone lines for the purpose of preventing telephone
27 communication by a suspected person with a person other than a law enforcement officer
28 or a person authorized by a law enforcement officer.

29 **3. Security employee designation.** A ~~telephone utility~~ voice service provider shall
30 designate a security employee and an alternate security employee to provide required
31 assistance to law enforcement officers involved in a critical incident.

32 **Sec. 75. 35-A MRSA c. 77**, as amended, is repealed.

33 **Sec. 76. 35-A MRSA §7901**, as amended by PL 1995, c. 225, §14, is further
34 amended to read:

35 **§7901. Telephone lines**

36 **1. Connection between the lines of 2 or more providers.** When the commission,
37 after a hearing, finds that a physical connection can reasonably be made between the lines
38 of 2 or more ~~telephone utilities~~ voice service providers whose lines can be made to form a

1 continuous line of communication by the construction and maintenance of suitable
2 connections for the transfer of messages or conversations and that public convenience and
3 necessity will be served by the connection, or finds that 2 or more ~~telephone utilities~~
4 voice service providers have failed to establish joint rates, tolls or charges for service by
5 or over their lines, and that joint rates, tolls or charges ought to be established, the
6 commission may, by its order:

7 A. Require that the connection be made, except where the purpose of the connection
8 is primarily to secure the transmission of local messages or conversations between
9 points within the same city or town;

10 B. Require that conversations be transmitted and messages transferred over the
11 connection under such rules as the commission may establish; and

12 C. Prescribe through lines and joint rates, tolls and charges to be made and to be
13 used, observed and enforced in the future.

14 **2. Division of costs between providers.** If the ~~telephone utilities~~ voice service
15 providers under subsection 1 do not agree upon the division between them of the cost of
16 the physical connection or connections or the division of the joint rates, tolls or charges
17 established by the commission over the through lines, the commission may, after further
18 hearing, establish the division by supplemental order.

19 **Sec. 77. 35-A MRSA §7902**, as amended by PL 2009, c. 612, §9, is further
20 amended to read:

21 **§7902. Lines along highways and across waters**

22 ~~Every telephone utility~~ A voice service provider or person transmitting television
23 signals by wire may, except as limited, construct, maintain and operate its lines upon and
24 along the routes and between the points stated in its certificate of incorporation; and may,
25 subject to the conditions and under the restrictions provided in this Title, construct its
26 lines along, over, under and across any of the roads and streets and across or under any of
27 the waters upon and along the routes, with all necessary erections and fixtures. The
28 authority provided under this section applies to a dark fiber provider for the purposes of
29 constructing and maintaining its federally supported dark fiber.

30 **Sec. 78. 35-A MRSA §7903**, as amended by PL 1995, c. 225, §14, is further
31 amended to read:

32 **§7903. Connection with other telephone lines**

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

35 **1. Connect lines.** Connect its lines with those of any other like ~~utility~~ voice service
36 provider;

37 **2. Sell or lease lines.** Sell or lease its lines and property, in whole or in part, to any
38 other like ~~utility~~ voice service provider; and

1 **3. Purchase or lease lines.** Purchase or lease the lines and property, in whole or in
2 part, of any like ~~utility~~ voice service provider.

3 **Sec. 79. 35-A MRSA §8301**, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

4 **Sec. 80. 35-A MRSA §8302**, as enacted by PL 1987, c. 141, Pt. A, §6, is amended
5 to read:

6 **§8302. Pole attachments**

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

11 **Sec. 81. 35-A MRSA c. 85**, as amended, is repealed.

12 **Sec. 82. 35-A MRSA §8901**, as enacted by PL 1991, c. 342, §5, is repealed.

13 **Sec. 83. 35-A MRSA §9106** is enacted to read:

14 **§9106. Application of chapter; repeal**

15 Notwithstanding anything to the contrary in this chapter, the provisions of this
16 chapter apply only to an alternative form of regulation approved by the commission prior
17 to January 1, 2012. This chapter is repealed August 1, 2013.

18 **Sec. 84. 35-A MRSA §9207, sub-§1**, as enacted by PL 2005, c. 665, §3, is
19 amended to read:

20 **1. Confidential information.** If the authority, on its own or upon request of any
21 person or entity, determines that public access to specific information about
22 communications service providers in the State could compromise the security of public
23 utility systems or communications infrastructure to the detriment of the public interest or
24 that specific information is of a competitive or proprietary nature, the authority shall issue
25 an order designating that information as confidential. Information that may be designated
26 as confidential pursuant to this subsection includes, but is not limited to, network
27 diagrams. The authority may designate information as confidential under this subsection
28 only to the minimum extent necessary to protect the public interest or the legitimate
29 competitive or proprietary interests of a communications service provider. The authority
30 shall adopt rules pursuant to section 9205, subsection 3 defining the criteria it will use to
31 satisfy the requirements of this ~~paragraph~~ subsection and the types of information that
32 would satisfy the criteria. The authority may not designate any information as
33 confidential under this subsection until those rules are finally adopted.

34 Information designated as confidential under this subsection is not a public record under
35 Title 1, section 402, subsection 3.

1 **SUMMARY**

2 This bill is reported out by the Joint Standing Committee on Energy, Utilities and
3 Technology pursuant to Resolve 2011, chapter 69, section 1. As required by the resolve,
4 the Public Utilities Commission submitted to the committee its plan to reform
5 telecommunications regulation on December 30, 2011, including the necessary changes
6 to law to implement its plan. This bill incorporates all the changes to law that the
7 commission has indicated are necessary to implement its plan.

8 The committee has not taken a position on the substance of the plan or this bill and by
9 reporting this bill out, the committee is not suggesting and does not intend to suggest that
10 it agrees or disagrees with any aspect of the commission's plan or this bill. The
11 committee is reporting out the bill for the sole purpose of turning the commission's
12 proposal into a printed bill that can be referred to the committee for an appropriate public
13 hearing and subsequent processing in the normal course. The committee is taking this
14 action to ensure clarity and transparency in the legislative review of the commission's
15 proposal.