

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

—  
H.P. 305 - L.D. 466

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

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

**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;

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

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

- (1) Scarborough;
- (2) Gorham;
- (3) Waterville;
- (4) Kennebunk;
- (5) Cape Elizabeth;
- (6) Old Orchard Beach;
- (7) Yarmouth;
- (8) Bath;
- (9) Westbrook;
- (10) Freeport;
- (11) Brewer;
- (12) Kittery;
- (13) Windham;
- (14) Brunswick; and
- (15) Augusta.

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

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

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

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

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

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

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

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

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

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

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

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

B. The commission shall establish by rule the sources of information and a methodology it will use to reasonably calculate the percentage of households served by wireline-facilities-based voice network service providers and mobile telecommunications services providers for purposes of making a determination under paragraph A. The commission may not require wireline-facilities-based voice network service providers and mobile telecommunications services providers to provide competitive information to the commission but may rely on other available sources for this information, including information available from the Federal Communications Commission. Competitive information about the extent of service provided by wireline-facilities-based voice network service providers and mobile telecommunications services providers used to make this determination is confidential and is not a public record under Title 1, section 402, subsection 3 and

may not be disclosed to any person outside the commission. In developing the methodology under this paragraph, the commission may allow for reasonable adjustments to the information it receives if it is aware that actual availability of competitive services differs from what is reflected in the information. If the application of the commission's methodology results in a finding that the standards in paragraph A, subparagraph (1) have been met, there is a rebuttable presumption of sufficient competition in a municipality to ensure access to affordable telephone service by households in the municipality.

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

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

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

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

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

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

In granting its approval under this subsection, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. A price cap ILEC abandoning all or part of its plant, property or system or discontinuing service pursuant to authority granted by the commission under this subsection is deemed to have waived all objections to the terms, conditions or requirements imposed by the

commission in its approval. A discontinuance approved under this subsection is not subject to further approval under section 1104.

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

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

**§7222-A. Rates**

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

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

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

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

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

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

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

A. Network trouble rates;

B. The percentage of network troubles not cleared in 48 hours;

C. The percentage of installation appointments not met; and

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

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

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

- A. Less than 3 network troubles per 100 customers;
- B. Less than 20% of network troubles not cleared within 48 hours;
- C. Less than 12% of all installation appointments not met; and
- D. Less than a 9-day average delay for missed installation appointments.

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

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

**Sec. 7. Commission review of effect of relief of provider of last resort service obligation.** By January 15, 2018 and again by January 15, 2020, the Public Utilities Commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters a report related to the removal of the provider of last resort service obligation for a price cap ILEC under the Maine Revised Statutes, Title 35-A, section 7221, subsections 4 and 5. A report under this section must list municipalities in which the obligation to provide provider of last resort service has ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B or in which the commission has approved in accordance with Title 35-A, section 7221, subsection 5 the removal of a price cap ILEC's obligation to provide provider of last resort service. A report under this section must also include the effect of the removal on former provider of last resort service customers, the price cap ILEC's workforce, the maintenance and status of the copper line network, public safety and the cost, features and availability of telephone service, including service to the hearing impaired, and broadband service. Each report may include recommendations for related legislation. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out a bill relating to provider of last resort service to the Second Regular Session of the 128th Legislature and may also report out a bill relating to provider of last resort service to the Second Regular Session of the 129th Legislature. At least 30 days before submitting a report to the committee, the commission shall post the report on its publicly

accessible website and allow persons to submit to the commission written comments on the report. The commission shall submit to the committee with each report all comments that it received on the respective report. If the commission in either report makes a recommendation to repeal or modify Title 35-A, section 7221, subsection 5, it may not, notwithstanding that subsection, accept a petition submitted in accordance with that subsection until 90 days after the adjournment of the session to which the report is submitted.

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

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