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Date: (Filing No. H- )

**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1075, L.D. 1466, Bill, “An Act To Ensure Regulatory Parity among Telecommunications Providers”

Amend the bill by striking out the title and substituting the following:

**'Resolve, To Direct the Public Utilities Commission To Develop a Plan To Reform Telecommunications Regulation'**

Amend the bill by striking out everything after the title and before the summary and inserting the following:

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** in order to ensure the Public Utilities Commission has adequate time to develop a plan for reforming telecommunications regulation for consideration by the Legislature in the second regular session, it is necessary that this resolve take effect immediately; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Regulatory reform plan. Resolved:** That the Public Utilities Commission, referred to in this resolve as "the commission," shall develop a plan to reform telecommunications regulation in the State in accordance with the following.

- 1. The plan must be consistent with the following legislative findings:
  - A. A plan for regulatory reform is needed because of the competition that exists in the telecommunications industry, which continues to grow and which the Legislature seeks to promote;

**COMMITTEE AMENDMENT**

- 1 B. Regulatory burdens should be the minimum necessary to protect the public  
2 welfare and, to the maximum extent practicable, the regulatory burdens on different  
3 modes of providing telecommunications services should be the same;
- 4 C. Regulatory reform may not result in any provider being required to submit to a net  
5 increase in regulatory burden. This does not preclude reforms that establish options  
6 under which a provider may choose for its own benefit to take on new regulatory  
7 obligations, such as provider-of-last-resort obligations, or reforms that replace  
8 existing regulatory requirements with more appropriate requirements as long as no  
9 provider is required to submit to a net increase in regulatory burden; and
- 10 D. Regulatory reform may not relieve any provider from complying with wholesale  
11 obligations under either state or federal law, including but not limited to those  
12 relating to access to network elements, interconnection, inter-carrier compensation,  
13 pole attachments, switched access and any other obligations established under the  
14 federal Communications Act of 1934, as amended, and must preserve any related  
15 rights of any provider under that Act.
- 16 2. In developing the plan, the commission shall consider, at a minimum, the  
17 following:
- 18 A. The extent of existing and anticipated competition for residential and business  
19 services;
- 20 B. The characteristics of provider-of-last-resort service and the obligations and  
21 support mechanisms, if any, that should accompany provider-of-last-resort service;
- 22 C. The extent to which any telecommunications provider should be able to choose to  
23 be subject to particular regulatory provisions;
- 24 D. The implications of federal support mechanisms, preemption of state regulation of  
25 certain services and other federal issues;
- 26 E. The degree, if any, to which any services, including provider-of-last-resort  
27 services, should be subject to cost-of-service regulation;
- 28 F. The need for a robust telecommunications infrastructure in the State; and
- 29 G. The status of eligible telecommunications carriers.
- 30 3. In developing the plan, the commission:
- 31 A. Shall seek input from interested parties but is not required to conduct an  
32 adjudicatory proceeding; and
- 33 B. Shall examine the current regulatory structure in accordance with the findings in  
34 subsection 1 and may not presume existing laws and rules are appropriately designed  
35 for the current competitive environment.
- 36 4. The commission shall submit its plan to the Joint Standing Committee on Energy,  
37 Utilities and Technology by December 31, 2011. The plan must describe necessary  
38 changes to law, rules or procedures and any other necessary actions to implement the  
39 plan. To the maximum extent practicable, the commission shall establish target dates for  
40 implementation of the elements of the plan that are no later than 90 days after the  
41 adjournment of the Second Regular Session of the 125th Legislature. The commission  
42 shall include with the plan a draft of any legislation necessary to implement the plan and,

1 consistent with the requirements of the Maine Revised Statutes, Title 5, chapter 375,  
2 changes to rules necessary to implement the plan.

3 The Joint Standing Committee on Energy, Utilities and Technology may report out a  
4 bill to reform telecommunications regulation to the Second Regular Session of the 125th  
5 Legislature; and be it further

6 **Sec. 2. Action on filings. Resolved:** That, consistent with the purposes of this  
7 resolve and the findings in section 1, the commission shall seek to process any filings  
8 submitted by telephone utilities for exemptions under the Maine Revised Statutes, Title  
9 35-A with as much deliberative speed as possible, within the constraints of existing  
10 resources; and be it further

11 **Sec. 3. Specific regulatory modifications. Resolved:** That the following  
12 modifications to telecommunications regulation are made. Except as otherwise may be  
13 provided by superseding legislation implementing the plan developed under section 1, the  
14 provisions of this section apply between the effective date of this resolve and 90 days  
15 after the adjournment of the Second Regular Session of the 125th Legislature. For  
16 purposes of this section, "incumbent local exchange carrier" has the same meaning as in  
17 the Maine Revised Statutes, Title 35-A, section 9216, subsection 1, paragraph B.

18 1. The commission may not enforce provisions of any order establishing an  
19 alternative form of regulation pursuant to Title 35-A, chapter 91 that prohibit an  
20 incumbent local exchange carrier from charging rates for nonresidential service that are  
21 below the long-run incremental cost of providing that service or that establish some other  
22 minimum price requirement for services to nonresidential customers.

23 2. The commission may not enforce provisions of any order establishing an  
24 alternative form of regulation pursuant to Title 35-A, chapter 91 that impose on an  
25 incumbent local exchange carrier multiplier penalties for repeated failures to meet service  
26 quality index performance standards with respect to any actions, inactions or other  
27 performance of that carrier occurring after July 31, 2010. Nothing in this subsection  
28 affects the authority of the commission to impose base penalties for violations of service  
29 quality index performance standards or to require continued payment of penalties that  
30 have been established for violations that occurred prior to August 1, 2010. The  
31 Legislature finds that the provisions of this subsection are appropriate because of  
32 extraordinarily compelling and unique circumstances, including but not limited to  
33 dramatic changes in the telecommunications market in recent years, the bankruptcy and  
34 subsequent emergence from bankruptcy of the largest telecommunications provider in the  
35 State and, as reflected in the findings in section 1, the need for regulatory reform of the  
36 telecommunications industry. The commission shall include with the plan submitted  
37 under section 1, subsection 4 the service quality performance data required to be  
38 submitted to the commission by incumbent local exchange carriers affected by this  
39 subsection, together with any summary or analysis the commission may develop to assist  
40 the Legislature in reviewing whether this subsection has had any effect on service quality  
41 performance.

42 3. The commission may not require any local exchange carrier to prepare or submit  
43 pursuant to section 3 of the commission's rule Chapter 140: Utility Service Area and  
44 Infrastructure Maps, or pursuant to any similar provision of any successor rule,  
45 infrastructure maps:

1 A. In a format different from or that contain a level of detail that is greater than the  
2 maps most recently submitted by that utility pursuant to that rule prior to the effective  
3 date of this resolve; or

4 B. Depicting the infrastructure connecting interoffice facilities to remote terminals  
5 and digital loop carriers.

6 4. The commission may not require any telecommunications carrier, pursuant to the  
7 commission's rule Chapter 200: Telecommunications Carrier Outage Reporting, to submit  
8 notices of unscheduled service outages or notices of restorations of service earlier than 7  
9 calendar days following the restoration of service.

10 5. Notwithstanding Title 35-A, section 708, a reorganization of an incumbent local  
11 exchange carrier is not subject to commission approval unless the reorganization results  
12 in a merger, sale or transfer of a controlling interest of the incumbent local exchange  
13 carrier or any entity that owns more than 50% of the incumbent local exchange carrier.  
14 For purposes of this subsection, "controlling interest" has the same meaning as that term  
15 is used in the commission's rule Chapter 280: Provision of Competitive  
16 Telecommunications Services, Section 12(B).

17 6. The commission may not enforce its rule Chapter 230: Installation, Maintenance  
18 and Ownership of Customer Premises Wire; and be it further

19 **Sec. 4. Rescinded order. Resolved:** That, notwithstanding any contrary  
20 provision of law in effect on the effective date of this resolve, the commission may not  
21 regulate interconnected voice over Internet protocol service as a telephone service under  
22 the Maine Revised Statutes, Title 35-A unless otherwise directed by law enacted after the  
23 effective date of this resolve and any commission order that is inconsistent with this  
24 prohibition is void. It is the intent of the Legislature in establishing this prohibition that  
25 interconnected voice over Internet protocol service be treated and providers of such  
26 service conduct themselves in accordance with those requirements and practices that  
27 existed prior to the issuance by the commission of its October 27, 2010 order, in docket  
28 number 2008-421, including but not limited to requirements or practices relating to the  
29 payment of fees, assessments or other charges, the filing of reports and any other  
30 regulatory or procedural matters.

31 Notwithstanding any limitation that the findings in section 1, subsection 1, paragraph  
32 C might impose on the commission as a result of the regulatory effects of this section, the  
33 commission may, free of any such limitations, examine and develop recommendations  
34 regarding interconnected voice over Internet protocol service when developing its plan  
35 pursuant to section 1.

36 **Emergency clause.** In view of the emergency cited in the preamble, this  
37 legislation takes effect when approved.'

38 **SUMMARY**

39 This amendment replaces the bill with a resolve that directs the Public Utilities  
40 Commission to develop a plan to reform telecommunications regulation and to process  
41 any filings submitted by telephone utilities for exemptions under the Maine Revised  
42 Statutes, Title 35-A with as much deliberative speed as possible, within the constraints of

1 existing resources. It also makes several discrete changes to the regulatory structure  
2 pending the opportunity to implement the plan for regulatory reform.

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**FISCAL NOTE REQUIRED**

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**(See attached)**