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An Act To Enable the Installation of Broadband Infrastructure

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

Whereas, the development and expansion of broadband telecommunications service is essential to economic development in the State; and

Whereas, federal grants are available under the American Recovery and Reinvestment Act of 2009 to certain organizations for the development and expansion of broadband telecommunications service and infrastructure; and

Whereas, it is important for broadband development and expansion to begin immediately to provide the best opportunities for businesses within the State; and

Whereas, in order to enable rapid broadband development and expansion, statutory changes are needed to facilitate the efforts of dark fiber providers; 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 enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §102, sub-§4-A is enacted to read:

4-A. Dark fiber. "Dark fiber" means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications.

Sec. 2. 35-A MRSA §102, sub-§4-B is enacted to read:

4-B. Dark fiber provider. "Dark fiber provider" means a person, or that person's lessee, trustee, receiver or trustee appointed by any court, owning, controlling, operating or managing dark fiber that:

A. Offers its dark fiber on an open-access basis to all carriers and end users without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission; and

B. Is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act.

Sec. 3. 35-A MRSA §102, sub-§13, as amended by PL 1999, c. 579, §3, is further amended to read:

13. Public utility. "Public utility" includes every gas utility, natural gas pipeline utility, transmission and distribution utility, telephone utility, water utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. "Public utility" does not include a dark fiber provider or the operation of a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area.

Nothing in this subsection precludes:

- A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature;
- B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services;
- C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and
- D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services.

Sec. 4. 35-A MRSA §711, as amended by PL 1991, c. 708, §1, is further amended to read:

§ 711. Joint use of equipment

1. Joint use permitted. The commission may order that joint use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use when, after a hearing had upon its own motion or upon complaint of a public utility, dark fiber provider or cable television system affected, it finds the following:

- A. That public convenience and necessity require the use by one public utility, dark fiber provider or cable television system of the conduits, subways, wires, poles, pipes or other equipment, or any part of them, on, over or under any street or highway and belonging to another public utility, dark fiber provider or cable television system;
- B. That joint use will not result in irreparable injury to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment or in any substantial detriment to the service; and

C. That the public ~~utilities~~ utility, dark fiber provider or cable television system ~~have~~has failed to agree upon the use or the terms and conditions or compensation for the use.

2. Liability of user. If joint use is ordered, the public utility, dark fiber provider or cable television system to whom the use is permitted ~~shall be~~ is liable to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment for damage that may result from its use to the property of the owner or other users.

3. Interests of cable television subscribers. Any actions taken or orders issued by the commission under this section ~~shall~~must take into account the interests of the subscribers of the affected cable television system, as well as the customers of the affected public utilities or the dark fiber providers.

4. Rules. The commission shall adopt a rule governing the resolution of pole attachment rate disputes. The commission shall consider various formulas, including, but not limited to, the formula adopted by the Federal Communications Commission as codified in 47 Code of Federal Regulations, Part 1, Subpart J, as amended.

5. Make-ready work for dark fiber providers. In the case of a dark fiber provider that, as to aerial facilities, seeks to attach its dark fiber solely in the communications space, the dark fiber provider may carry out any required make-ready engineering and perform all required make-ready work at its own expense. In exercising its jurisdiction under this section, the commission shall ensure that make-ready engineering and make-ready work undertaken by or at the request of a dark fiber provider must, to the extent reasonably possible, be completed in a timely fashion taking into account any project completion requirements imposed by the Federal Government in connection with a grant extended to the dark fiber provider.

Sec. 5. 35-A MRSA §2301, as amended by PL 1995, c. 225, §8, is further amended to read:

§ 2301. Telephone utilities, dark fiber providers and television corporations may construct lines

Except as limited, every corporation organized under section 2101 for the purpose of operating telephones, every dark fiber provider and every corporation organized for the purpose of transmitting television signals by wire may construct, maintain and operate its lines upon and along the route or routes and between the points stated in its certificate of incorporation; and may construct its lines and necessary erections and fixtures for them along, over, under and across any of the roads and streets and across or under any of the waters upon and along the route or routes subject to the conditions and under the restrictions provided in this chapter and chapter 25.

Sec. 6. 35-A MRSA §2501, sub-§2, as amended by PL 2007, c. 268, §2, is further amended to read:

2. Applicability of section 2503. Except as otherwise provided, a person may not construct facilities upon and along highways and public roads without applying for and obtaining a written location permit from the applicable licensing authority under section 2503. Included within this requirement is every person operating telephones or transmitting television signals by wire; every person that owns,

controls, operates or manages any pipeline within or through this State for the transportation as a common carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases; every water utility and every person making, generating, selling, distributing and supplying gas or electricity; every water utility or sewer company, district or system privately or municipally owned; every municipally owned or operated fire alarm, police alarm or street lighting circuit or system; every cooperative organized under chapter 35; the University of Maine System, for purposes described in section 2301-A; every dark fiber provider; and any other person engaged in telecommunications or the transmission of heat or electricity.

Sec. 7. 35-A MRSA §7902, as amended by PL 1995, c. 225, §14, is further amended to read:

§ 7902.Lines along highways and across waters

Every telephone utility, dark fiber provider or person transmitting television signals by wire may, except as limited, construct, maintain and operate its lines upon and along the routes and between the points stated in its certificate of incorporation; and may, subject to the conditions and under the restrictions provided in this Title, construct its lines along, over, under and across any of the roads and streets and across or under any of the waters upon and along the routes, with all necessary erections and fixtures.

Sec. 8. 35-A MRSA c. 94 is enacted to read:

CHAPTER 94

DARK FIBER PROVIDERS

§ 9301. Dark fiber provider schedules

For public informational purposes, dark fiber providers shall, prior to either seeking joint use under section 711 or providing dark fiber to carriers or end users, make an informational filing with the commission consisting of a schedule of rates, terms and conditions applicable to the provision of dark fiber. The dark fiber provider shall simultaneously make its schedule available for inspection on its publicly accessible website and shall provide copies for inspection by the public on reasonable request. The schedule is effective upon filing. If a dark fiber provider elects to file changes to its schedule, such changes must be filed for informational purposes with the commission and posted on the dark fiber provider's publicly accessible website and are effective upon filing. Dark fiber providers shall provide dark fiber on terms consistent with their schedules on file with the commission.

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

SUMMARY

This bill establishes a new entity known as a "dark fiber provider." A dark fiber provider is an entity providing fiber-optic cable without equipment for transmitting communications and that provides dark fiber to all carriers and end users on an open-access basis and without unreasonable discrimination and is subject to grant-related requirements, restrictions and conditions imposed by the Federal Government and secured by security interests granted to the Federal Government. Dark fiber providers must file informational rate schedules with the Public Utilities Commission and adhere to those rate schedules and

must post their rates on publicly accessible websites. A dark fiber provider may use the public right-of-way for its facilities and may enter into joint use agreements with respect to the facilities of public utilities and cable television providers and may opt to carry out any required make-ready engineering and make-ready work at its own expense.