

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill in the emergency preamble by striking out all of the 2nd to 5th paragraphs (page 1, lines 3 to 11 in L.D.) and inserting the following:

‘**Whereas**, it is important to address in a timely fashion certain important issues relating to a dark fiber project that was recently awarded a grant by the United States Department of Commerce, National Telecommunications and Information Administration pursuant to the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009); and’

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

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

**4-A. Dark fiber provider.** "Dark fiber provider" means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that:

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

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; and

C. Does not transmit communications for compensation inside this State.

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

**4-B. Federally supported dark fiber.** "Federally supported 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, the construction of which is financed in whole or in part with funds provided by a grant awarded before January 1, 2010 by the United States Department of Commerce, National Telecommunications and Information Administration pursuant to the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009).

**Sec. 3. 35-A MRSA §102, sub-§19**, as amended by PL 2003, c. 153, §1, is further amended to read:

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

**Sec. 4. 35-A MRSA §711, sub-§5** is enacted to read:

**5. Dark fiber provider.** This section applies to a dark fiber provider only with respect to the construction and maintenance of federally supported dark fiber.

**Sec. 5. 35-A MRSA §2102, sub-§1**, as amended by PL 2007, c. 638, §1, is further amended to read:

**1. Approval required.** Except as provided in subsection 2 and in section 4507, a public utility may not furnish any of the services set out in section 2101 in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service, and a dark fiber provider may not offer federally supported dark fiber, without the approval of the commission. The commission may condition approval upon the submission of a bond or other financial security if the commission determines that such a requirement is necessary to ensure that a public utility has the financial ability to meet its obligations under this Title.

A. The commission may not grant approval to a telephone utility under this subsection unless the telephone utility submits evidence satisfactory to the commission that the telephone utility has at least \$250,000 in fixed assets in this State or the telephone utility purchases and maintains a surety bond satisfactory to the commission in the amount of \$250,000 to ensure the telephone utility has the financial ability to meet its obligations under this Title. This paragraph does not apply to a telephone utility authorized to provide telephone service in this State on the effective date of this paragraph.

**Sec. 6. 35-A MRSA §2102, sub-§4** is enacted to read:

**4. Dark fiber provider.** The commission shall issue its order approving or denying an application from a dark fiber provider for approval under this section, including its decision on any waivers or exemptions requested by the dark fiber provider in conjunction with its application, within 60 days of receipt of the application, except that if the commission determines that it requires additional time, it may extend its review and issue its order no later than 90 days after receipt of the application.

**Sec. 7. 35-A MRSA §2301**, as amended by PL 1995, c. 225, §8, is further amended to read:

## **§ 2301. Telephone utilities, federally supported 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 for the purposes of constructing and maintaining its federally supported dark fiber, 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. 8. 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 2301A; every dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber; and any other person engaged in telecommunications or the transmission of heat or electricity.

**Sec. 9. 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 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. The authority provided under this section applies to a dark fiber provider for the purposes of constructing and maintaining its federally supported dark fiber.

**Sec. 10. 35-A MRSA §9216** is enacted to read:

**§ 9216. Broadband sustainability fee**

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

A. "First assessment period" means the period:

(1) Commencing on the first day of the month following the date on which a dark fiber provider first sells, leases or otherwise provides one or more strands of federally supported dark fiber to an entity in this State; and

(2) Ending on the last day of the 60th month following the commencement under subparagraph (1).

B. "Incumbent local exchange carrier" means a telephone utility that provided single-party service, voice grade access to the public switched telephone network in a defined service territory in the State on February 8, 1996, or its successor, or that is designated as an incumbent local exchange carrier pursuant to 47 United States Code, Section 251(h)(2).

C. "Second assessment period" means the period:

(1) Commencing on the first day of the month following the end of the first assessment period; and

(2) Ending on December 31, 2017.

**2. Broadband sustainability fee.** An entity that purchases, leases or otherwise obtains federally supported dark fiber from a dark fiber provider is subject to the following broadband sustainability fees:

A. During the first assessment period, a monthly fee equal to \$3 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month; and

B. During the 2nd assessment period, a monthly fee equal to \$2 multiplied by the number of miles of federally supported dark fiber strand purchased, leased or used by the entity during the month.

**3. Collection.** A dark fiber provider shall collect the broadband sustainability fees under subsection 2 and within 15 days after the end of each month remit the amounts collected to the authority. When remitting funds to the authority, the dark fiber provider shall include sufficient information to allow the authority to determine the number of miles of federally supported dark fiber strands sold, leased or used in the service territory of each incumbent local exchange carrier.

**4. Deposit.** The authority shall:

A. Deposit 5% of the funds received under subsection 3 into the ConnectME Fund established under section 9211 and may use these funds to support the activities of the authority under this section and for the purposes of section 9204; and

B. Deposit 95% of the funds received under subsection 3 into the broadband sustainability fund established pursuant to subsection 5.

**5. Broadband sustainability fund.** The authority shall establish a broadband sustainability fund, separate and distinct from any other funds held or maintained by the authority, for use in accordance with subsection 6. The fund is nonlapsing and all interest on funds in the fund remains in the fund for use in accordance with subsection 6. The authority may contract with an appropriate independent fiscal agent

that is not a state entity to serve as the administrator of the fund. All funds deposited in the broadband sustainability fund are deemed to be encumbered for purposes of subsection 6 at the time the funds are deposited in the fund.

**6. Use of the broadband sustainability fund.** The authority shall use the broadband sustainability fund established pursuant to subsection 5 in accordance with this subsection.

A. The authority shall allocate funds in the broadband sustainability fund established pursuant to subsection 5 to each incumbent local exchange carrier in accordance with this paragraph. Each month, the authority shall allocate to each incumbent local exchange carrier an amount equal to the total amount deposited that month into the broadband sustainability fund multiplied by a fraction, the denominator of which is the total number of miles of federally supported dark fiber leased, sold or used in this State during the previous month and the numerator of which is the total number of miles of federally supported dark fiber leased, sold or used in that incumbent local exchange carrier's service territory during the previous month. Any accumulated interest in the fund must be allocated proportionally. Only those amounts allocated to an incumbent local exchange carrier under this paragraph are available for disbursement to that carrier pursuant to paragraph B. By December 31st of each calendar year, the authority shall make an accounting of the total funds allocated during that calendar year to each incumbent local exchange carrier under this paragraph, and if by December 31st of the following calendar year some or all of those funds allocated to a carrier are not disbursed to that carrier in accordance with paragraph B, the authority shall transfer those unspent funds to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund under this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section. The authority, at the request of a carrier, may, for good cause shown, maintain funds allocated to that carrier within the broadband sustainability fund for a longer period.

B. To receive a disbursement from the broadband sustainability fund established pursuant to subsection 5, an incumbent local exchange carrier must file with the authority a request for funds together with a certification indicating that the funds requested will be used to deploy broadband infrastructure in unserved areas within the carrier's service territory or, if the authority verifies that there are no unserved areas within the carrier's service territory, that the funds will be used to increase available broadband speeds for customers within the carrier's service territory. The certification must include the projected cost for the project and the scope of work, which must indicate how the funds will be spent. Upon receipt of a request for funds accompanied by the required certification, the authority shall disburse the requested amount to the incumbent local exchange carrier up to an amount not to exceed the total amount allocated under paragraph A to the requesting carrier.

C. An incumbent local exchange carrier may not expend funds received under paragraph B in a manner inconsistent with the certification provided by the carrier under paragraph B. The authority may audit the use by an incumbent local exchange carrier of funds disbursed in accordance with paragraph B.

D. On the last day of the 36th month following the end of the 2nd assessment period, the authority shall transfer all funds remaining in the broadband sustainability fund established pursuant to subsection 5 to the ConnectME Fund established under section 9211 for use in accordance with that section. Funds transferred to the ConnectME Fund pursuant to this paragraph cease to be available to any incumbent local exchange carrier pursuant to the provisions of this section.'

## SUMMARY

This amendment replaces the bill and also modifies the emergency preamble. This amendment:

1. Defines a dark fiber provider as an entity that owns, controls, operates or manages federally supported dark fiber and that meets other qualifications and establishes that a dark fiber provider is a telephone utility under the public utility laws of the Maine Revised Statutes, Title 35-A;

2. Authorizes a dark fiber provider to construct lines and to place facilities along public roads in the same manner as other telephone utilities for the purposes of constructing and maintaining its federally supported dark fiber and authorizes the Public Utilities Commission to resolve pole attachment disputes involving a dark fiber provider with respect to the construction and maintenance of federally supported dark fiber;

3. Requires that a dark fiber provider apply for approval from the Public Utilities Commission to offer federally supported dark fiber and requires that the commission approve or deny the application and make its decision on any waivers or exemptions requested by the dark fiber provider within 60 days of its receipt of the application. The commission may extend its review if it determines that it requires additional time, but must issue its order no later than 90 days after receipt of the application; and

4. Establishes a broadband sustainability fee that a dark fiber provider must collect from entities that obtain federally supported dark fiber from the dark fiber provider. For the first 5 years the fee is \$3 per month multiplied by the number of miles of strand purchased, leased or used; the fee then drops to \$2 per month. The fee ends on December 31, 2017. The funds are administered by the ConnectME Authority. Five percent of the funds is deposited in the ConnectME Fund and is available to support the authority's administrative expenses and for use in accordance with the authority's current statutory purposes. The remaining funds are deposited in a separate broadband sustainability fund administered by the authority. These funds may be disbursed to an incumbent local exchange carrier to fund deployment of broadband infrastructure in unserved areas within the carrier's service territory or, if there are no unserved areas, to increase available broadband speeds for customers within the carrier's service territory. The portion of the funds within the broadband sustainability fund available to each incumbent local exchange carrier is calculated based on that portion of the total miles of leased, sold or used federally supported dark fiber in the State that is leased, sold or used within the carrier's service territory. The funds remain available in the broadband sustainability fund for one year and, if not disbursed to carriers, are transferred to the ConnectME Fund, unless the authority for good cause shown extends this period. To receive funds the carrier must provide a request and a certification relating to the use of the funds for deployment of broadband infrastructure in unserved areas or to increase available broadband speeds. The carrier is required to use the funds in accordance with that certification. All funds remaining in the broadband sustainability fund at the end of the 3rd year after the broadband sustainability fee ceases are transferred to the ConnectME Fund.