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

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;

B. Regulatory burdens should be the minimum necessary to protect the public welfare and, to the maximum extent practicable, the regulatory burdens on different modes of providing telecommunications services should be the same;

C. Regulatory reform may not result in any provider being required to submit to a net increase in regulatory burden. This does not preclude reforms that establish options under which a provider may choose for its own benefit to take on new regulatory obligations, such as provider#of#last#resort obligations, or reforms that replace existing regulatory requirements with more appropriate requirements as long as no provider is required to submit to a net increase in regulatory burden; and

D. Regulatory reform may not relieve any provider from complying with wholesale obligations under either state or federal law, including but not limited to those relating to access to network elements, interconnection, inter-carrier compensation, pole attachments, switched access and any other obligations established under the federal Communications Act of 1934, as amended, and must preserve any related rights of any provider under that Act.

2. In developing the plan, the commission shall consider, at a minimum, the following:

A. The extent of existing and anticipated competition for residential and business services;

B. The characteristics of provider#of#last#resort service and the obligations and support mechanisms, if any, that should accompany provider#of#last#resort service;

- C. The extent to which any telecommunications provider should be able to choose to be subject to particular regulatory provisions;
- D. The implications of federal support mechanisms, preemption of state regulation of certain services and other federal issues;
- E. The degree, if any, to which any services, including provider#of#last#resort services, should be subject to cost#of#service regulation;
- F. The need for a robust telecommunications infrastructure in the State; and
- G. The status of eligible telecommunications carriers.

3. In developing the plan, the commission:

- A. Shall seek input from interested parties but is not required to conduct an adjudicatory proceeding; and
- B. Shall examine the current regulatory structure in accordance with the findings in subsection 1 and may not presume existing laws and rules are appropriately designed for the current competitive environment.

4. The commission shall submit its plan to the Joint Standing Committee on Energy, Utilities and Technology by December 31, 2011. The plan must describe necessary changes to law, rules or procedures and any other necessary actions to implement the plan. To the maximum extent practicable, the commission shall establish target dates for implementation of the elements of the plan that are no later than 90 days after the adjournment of the Second Regular Session of the 125th Legislature. The commission shall include with the plan a draft of any legislation necessary to implement the plan and, consistent with the requirements of the Maine Revised Statutes, Title 5, chapter 375, changes to rules necessary to implement the plan.

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

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

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

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

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

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

- A. In a format different from or that contain a level of detail that is greater than the maps most recently submitted by that utility pursuant to that rule prior to the effective date of this resolve; or
- B. Depicting the infrastructure connecting interoffice facilities to remote terminals and digital loop carriers.

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

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

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

Sec. 4 Rescinded order. Resolved: That, notwithstanding any contrary provision of law in effect on the effective date of this resolve, the commission may not regulate interconnected voice over Internet protocol service as a telephone service under the Maine Revised Statutes, Title 35#A unless otherwise directed by law enacted after the effective date of this resolve and any commission order that is inconsistent with this prohibition is void. It is the intent of the Legislature in establishing this prohibition

that interconnected voice over Internet protocol service be treated and providers of such service conduct themselves in accordance with those requirements and practices that existed prior to the issuance by the commission of its October 27, 2010 order, in docket number 2008-421, including but not limited to requirements or practices relating to the payment of fees, assessments or other charges, the filing of reports and any other regulatory or procedural matters.

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

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