

Chapter 220: REMOVAL OF PROVIDER OF LAST RESORT SERVICE OBLIGATION

SUMMARY: This Chapter governs the procedures for the removal of the obligation of a Price Cap ILEC to provide Provider of Last Resort (POLR) service in municipalities within the State.

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§ 1 PURPOSE AND APPLICABILITY

- A. Purpose.** The purpose of this Chapter is to establish the requirements that must be met and the procedures that must be followed before and after a Price Cap ILEC is relieved of the obligation to provide Provider of Last Resort service. This Chapter also establishes the findings the Commission must make to approve a request by a Price Cap ILEC to discontinue, reduce, or impair the service it provides in a municipality where it had previously served as the provider of Provider of Last Resort service.
- B. Applicability.** This Chapter applies to Price Cap ILECs who are providing Provider of Last Resort service in Maine as of the effective date of this Chapter.

§ 2 DEFINITIONS

- A. Designated Municipality.** "Designated Municipality" is any municipality scheduled for removal of Provider of Last Resort Service pursuant to 35-A M.R.S. section 7221(4)(A) and (B), i.e., Portland, Lewiston, Bangor, South Portland, Auburn, Biddeford, Sanford, Scarborough, Gorham, Waterville, Kennebunk, Cape Elizabeth, Old Orchard Beach, Yarmouth, Bath, Westbrook, Freeport, Brewer, Kittery, Windham, Brunswick, and Augusta.
- B. Incumbent Local Exchange Carrier.** "Incumbent Local Exchange Carrier" has the same meaning as in 47 U.S.C. section 251.
- C. Price Cap ILEC.** "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 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 35-A M.R.S. section 7104.
- D. Non-Designated Municipality.** "Non-Designated Municipality" is any municipality not listed in Section 2(A) of this Chapter.
- E. Provider of Last Resort Service.** "Provider of Last Resort Service" or "POLR Service" has the same meaning as in 35-A M.R.S. section 7201(7).
- F. Voice Network Service Provider.** "Voice Network Service Provider" has the same meaning as in 35-A M.R.S. section 7104(3).

§ 3 REMOVAL OF POLR SERVICE OBLIGATION IN DESIGNATED MUNICIPALITIES

A. Procedure for Removal of POLR Service Obligation.

1. **Initial Legislative Removal of POLR Service Obligation.** Effective August 29, 2016, the POLR service obligation in Portland, Lewiston, Bangor, South Portland, Auburn, Biddeford, and Sanford has been removed.
2. **Subsequent Removal of POLR Service Obligation from Designated Municipalities.** Every six months after July 29, 2016, the Commission shall examine the service quality reports for the preceding two consecutive calendar quarters filed by the Price Cap ILECs pursuant to 35-A M.R.S. section 7225-A. If the service quality requirements of section 7225-A have been met, section 7221 requires the Commission to issue a certificate to the relevant Price Cap ILEC removing the obligation to provide POLR service in a group of five municipalities, in the following order:

Group 1: Scarborough, Gorham, Waterville, Kennebunk, Cape Elizabeth.

Group 2: Old Orchard Beach, Yarmouth, Bath, Westbrook, Freeport.

Group 3: Brewer, Kittery, Windham, Brunswick, Augusta.

B. Notice and Public Meeting

1. **Public Meeting.** Prior to the removal of the obligation to provide POLR service in any municipality pursuant to Section 3 of this Chapter, the Commission will hold a public information meeting in the affected municipality to allow customers of the Price Cap ILEC to obtain information about the upcoming changes to their telephone service.
2. **Notice.** The Price Cap ILEC shall provide advance notice of the public meeting in its monthly billing statement to each of its customers in the municipality where relief from the POLR service obligation is about to occur.

The notice shall: a) inform the customers that for one year after the removal of the provider of last resort obligation, any customer receiving provider of last resort service on that date will continue to be provided with telephone service at the same rates, terms and conditions as the Price Cap ILEC provides to its remaining provider of last resort service customers; and b) include the date, time and location of the public information meeting that will be held by the Commission in the municipality.

3. **Publication.** The Price Cap ILEC shall arrange for notice of the meeting to be published in print and/or electronic media that is generally available to residents in the municipality where the public information meeting is scheduled. The print and/or electronic media publication must occur at least two weeks prior to the date set for the public meeting.

§ 4 **REMOVAL OF POLR SERVICE OBLIGATIONS IN NON-DESIGNATED MUNICIPALITIES**

Six months after a Price Cap ILEC has been relieved of the obligation to provide POLR service in all Designated Municipalities, a Price Cap ILEC may petition the Commission to be relieved of its POLR service obligation in Non-Designated Municipalities, pursuant to the provisions of this Section.

- A. **Required Findings.** The Commission will approve a petition filed under this section if it finds the following:
 1. That sufficient competition exists within a municipality to ensure access to affordable telephone service by households in the municipality, pursuant to the following standards:
 - a. That 95% of the households within the municipality are able to obtain service from at least one wireline facilities-based voice network service provider other than a Price Cap ILEC; and
 - b. There are one or more mobile telecommunications services providers that offer, on a combined basis, mobile telecommunications service to at least 97% of the households in the municipality; and
 2. That, prior to filing the petition, the relevant Price Cap ILEC has met the service quality requirements established in Chapter 201 of the Commission's Rules in the immediately preceding two consecutive calendar quarters.
- B. **Filing Requirements.** A Price Cap ILEC that petitions the Commission to be relieved of its obligation to provide POLR service pursuant to Subsection 4(A) of this Chapter must file with its petition sufficient information and empirical evidence that will allow the Commission to make the findings required by Subsections 4(A)(1)(a) and (b). The Price Cap ILEC must demonstrate that the required percentages of households in the municipality for which relief is sought are, in fact, able to receive a satisfactory level of voice telephone service from wireline and wireless providers, pursuant to Section 4(A)(1). In support of its petition, a Price Cap ILEC must include in its filing relevant information from any one of the following sources:

1. Publicly available information from the Federal Communications Commission (FCC);
2. Non-public information from the FCC, with a request for appropriate confidential treatment of such information;
3. Information from other federal, state or local governmental agencies, with a request for confidential treatment if necessary or appropriate;
4. Information from non-governmental entities or sources, with a request for confidential treatment if necessary or appropriate;
5. Information generated by or under the control of the petitioner Price Cap ILEC specifically to support its petition; or
6. Any other information that the Price Cap ILEC believes is relevant to the consideration of its petition and that would assist the Commission in making the findings required pursuant to subsection A(1) of this section.

- C. Notice of Intent.** 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 for relief from a POLR service obligation within a non-designated municipality at least ninety days prior to the filing of such a petition. Upon receipt of the Notice of Intent, the Commission shall open a docket relating to the affected municipality.

In its Notice of Intent, the Price Cap ILEC must inform the Commission of the date that it intends to file the petition for relief. The Price Cap ILEC must file with its Notice of Intent a description of the information and empirical evidence, including the source of the information, that it purports will show the required percentages of households in the municipality for which relief is sought are, in fact, able to receive a level of voice telephone service from wireline and wireless providers in accordance with 35-A M.R.S. section 7221(5) and Section 4(A)(1) of this Chapter. If the Price Cap ILEC intends to use information relating to a competitor as support for the Price Cap ILEC's petition, the Price Cap ILEC must also provide the relevant competitor or competitors with a copy of the Notice of Intent.

- D. Notice of Public Hearing.** Concurrent with its Notice of Intent, the Price Cap ILEC will request the Commission to issue a Notice of Public Hearing containing the following information:

1. The date, time and location of the public hearing in the municipality, pursuant to 35-A M.R.S. section 1221(5), which must be held within two weeks of the date of the projected filing of the petition for relief;
2. The Commission Docket number;

3. The process for objecting to the petition for relief, including a deadline for filing a written objection; and
4. Information from the Price Cap ILEC contained in its Notice of Intent that it purports will support its petition for relief.

The Commission will issue the Notice of Public Hearing within 30 days of the filing of the Notice of Intent. The Price Cap ILEC shall include a copy of the Notice of Hearing in its monthly billing statement to each of its customers in the municipality in which it will be seeking relief from its obligation to provide POLR service. The Notice of Hearing must be on a separate insert and may not appear as a line item on the monthly bill.

- E. Petition for Relief.** The Price Cap ILEC must file its Petition for Relief on the date stated in its Notice of Intent. If the Price Cap ILEC has changed its intent and no longer seeks to file a petition for relief, it must notify the Commission, the Office of the Public Advocate, and its customers in the affected municipality that it will not be proceeding with the petition and that the hearing will be canceled. The Price Cap ILEC may file a new Notice of Intent with respect to the municipality without prejudice and in accordance with 35-A M.R.S. section 7221(5) and this Chapter.
- F. Public Hearing.** Within two weeks of the filing of a petition by a Price Cap ILEC under this Section and in accordance with the date set forth on the Notice of Hearing issued in accordance with subsection 4(D) above, the Commission shall conduct a public hearing in each municipality for which the Price Cap ILEC has requested relief from its obligation to provide POLR service. At the public hearing, the Price Cap ILEC will present the information and empirical evidence that it included in its Notice of Intent that it purports will support its petition for relief.
- In addition to the Notice of Hearing previously provided to each of its customers as set forth in subsection 4(D), the Price Cap ILEC shall publish notice of the public hearing in a newspaper of general circulation in the municipality. Notice of the public hearing shall also be sent to the city hall or town office of the municipality and shall be posted on the Price Cap ILEC's website and the Commission's website.
- G. Objections to the Petition.** Residents of the affected municipality will have the opportunity to object to the petition for relief by showing that the Price Cap ILEC has not met the standard for relief from POLR service obligations set forth in section 7221(5)(A) and subsection 4(A) of this Chapter such that they are not able to receive a satisfactory level of voice telephone service from wireline and wireless providers. Residents may file objections with the Commission as follows:

1. A resident of the municipality who objects to the Price Cap ILEC's petition for relief from POLR service obligations may attend the public hearing and provide sworn testimony stating their objection. The resident's name, address, and testimony will be recorded so as to serve as an objection and a request for investigation and adjudicatory proceeding.
2. A resident of the municipality who objects to the Price Cap ILEC's petition for relief from POLR service obligations who does not attend the public hearing may file an objection with the Commission by placing a written comment in the relevant Commission docket, so long as the comment states the resident's name, address, and basis for the objection. Any such objection filed with the Commission shall be treated as a request for investigation and adjudicatory proceeding.
3. Residents of the municipality may collectively file objections to the Price Cap ILEC's petition for relief from POLR service obligations so long as the filing states the names and addresses for each of the residents and the basis for their objections. Such filings will be treated as a request for investigation and adjudicatory proceeding.
4. Objections must be filed with the Commission within fourteen days from the date of the public hearing to be treated as a request for investigation and adjudicatory proceeding.

H. Adjudicatory Proceeding. If the Commission receives objections in an amount that is equal to one percent of the households of the municipality, the Commission shall initiate an adjudicatory proceeding. The Commission also may initiate an adjudicatory proceeding if it becomes aware of information that would rebut the information and empirical evidence filed by the Price Cap ILEC in support of its petition for relief either on its own initiative or through the request of an interested party, such as the affected municipality or the Office of the Public Advocate.

The purpose of the adjudicatory proceeding will be to allow the Price Cap ILEC to produce evidence to show that it has met the statutory standard to be granted relief from its POLR service obligations, and allow any opposing parties, including residents in the affected municipality and the Office of the Public Advocate, to dispute the evidence and show that the Price Cap ILEC has not met the standards and must be denied relief.

The Price Cap ILEC has the burden of proof to demonstrate that the standards contained in Section 4(A)(1) are met. In cases in which an adjudicatory proceeding has been opened, the Commission will conduct, or will require the relevant Price Cap ILEC to conduct, surveys or field checks, by any appropriate means, to verify that satisfactory competitive service is provided by wireline and/or wireless providers.

- I. Timing of Commission Action.** The Commission shall issue an order granting or denying a petition filed under this section within 180 days of receiving the petition, except that the Commission may extend this period by an additional thirty days if the Commission determines that such extension is warranted. In the event the Commission fails to act within 210 days of receiving a petition, the petition will be deemed granted.

To ensure the orderly and timely processing of petitions, the Commission may decline to accept petitions for more than one municipality if they are filed simultaneously or within a compressed time period. In the event the Commission declines to accept a petition for filing, it will issue an order directing the Price Cap ILEC to resubmit the petition at a later date. To control its caseload, the Commission reserves the right to set a schedule for the filing of petitions.

- J. Confidentiality.** Pursuant to 35-A M.R.S. section 7221(5)(B), 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 1 M.R.S. section 402(3), and may not be disclosed to any person outside the Commission.

§ 5 PROVISION OF SERVICE AFTER REMOVAL OF POLR SERVICE OBLIGATION

For one year from the date on which a Price Cap ILEC is relieved of the obligation to provide POLR service in any municipality, the Price Cap ILEC shall continue to offer to each customer who was receiving POLR service on the date the obligation ceased a telephone service with the same rates, terms and conditions as it provides to POLR service customers to whom it maintains its obligation to provide POLR service in other municipalities.

§ 6 DISCONTINUANCE, REDUCTION, OR IMPAIRMENT OF SERVICE

- A. Commission Approval.** A Price Cap ILEC may not discontinue, reduce or impair the service that it provides in any municipality, or part of a municipality, in which it has been relieved of its obligation to provide POLR service unless the Commission approves the discontinuance, reduction, or impairment.
- B. Form of Request.** In filing a request under this Section, a Price Cap ILEC must describe with specificity the service discontinuance, reduction, or impairment for which it is seeking authority.
- C. Required Showing.** A Price Cap ILEC must provide a showing that its request is not adverse to the public interest nor will it harm or impede the present or future public convenience and necessity. Among other things, a Price Cap ILEC must

specifically demonstrate that the discontinuance, reduction, or impairment will not preclude any customer from having the ability to access emergency communications services.

- D. Commission Process.** Upon the filing of a request by a Price Cap ILEC to discontinue, reduce, or impair service, the Commission shall commence an adjudicatory proceeding to consider the request.
- E. Imposition of Terms, Conditions, or Other Requirements.** In granting approval under this section, the Commission may impose such terms, conditions, or other requirements as it finds, in its judgment, are necessary to protect the public interest and the public convenience and necessity. Pursuant to 35-A M.R.S. section 7221(6), a Price Cap ILEC that abandons any or all of its plant, property, or system, or that discontinues, reduces, or impairs its service pursuant to authority granted by the Commission under this Chapter, is deemed to have waived its right to object to the terms, conditions, or requirements imposed by the Commission in granting its approval. A Price Cap ILEC need not seek further approval under 35-A M.R.S. section 1104 for any discontinuance approved under this Chapter.
- F. Abandonment Without Approval.** A discontinuance, reduction, or impairment of service by a Price Cap ILEC constitutes an abandonment of service for the purposes of this Chapter. Upon a request from the Office of the Public Advocate or through a ten-person complaint filed by customers pursuant to 35-A M.R.S. section 1302(1) within any municipality in which a Price Cap ILEC formerly served as the POLR service provider, or upon its own motion, the Commission may commence an investigation into whether a Price Cap ILEC has undertaken an abandonment of service without approval by the Commission. If the request is made through a ten-person complaint, the Price Cap ILEC shall have twenty days from the filing of the request to file a response in the form of a desire to satisfy the complaint as set forth in section 12(a)(2) of Chapter 110 of the Commission's Rules of Practice and Procedure. The Commission may accept or reject the Price Cap ILEC's offer of satisfaction within ninety days of the filing of the ten-person complaint. If the Commission does not accept the Price Cap ILEC's offer of satisfaction, it may conduct an investigation in accordance with Chapter 110 of the Commission's Rules.

Upon a finding after investigation that a Price Cap ILEC has abandoned service without approval of the Commission, the Commission may order the Price Cap ILEC to take appropriate action to correct the abandonment and restore service to its pre-abandonment level. The Commission may also order rebates or credits as compensation to customers. If the Price Cap ILEC fails to comply with a Commission Order to correct an abandonment of service, the Commission may order penalties pursuant to 35-A M.R.S. section 1508.

§ 7 WAIVER OR EXEMPTION

Upon request of any person subject to the provisions of this Chapter, or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Telephone and Water Utilities, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

BASIS STATEMENT: The factual and policy basis for this rule is set forth in the Commission's Order Provisionally Adopting Rule and Factual and Policy Basis, Docket No. 2016-00235, issued on December 14, 2016. Copies of the Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

STATUTORY AUTHORITY: 35-A M.R.S. §§ 101, 111, 7221.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on _____. It was filed with the Secretary of State on _____ and became effective on _____.