

DAVID E. BOULTER  
EXECUTIVE DIRECTOR  
OF THE LEGISLATIVE COUNCIL



MAINE STATE LEGISLATURE

OFFICE OF THE EXECUTIVE DIRECTOR  
LEGISLATIVE COUNCIL

TO: Members of the Joint Standing Committee on Utilities and Energy  
FROM: <sup>D.B.</sup> David E. Boulter, Executive Director  
DATE: May 14, 2010  
SUBJECT: Notification of Proposed Rule

Pursuant to 5 MRSA, § 8053-A, I am enclosing a notice that we have received from the Public Utilities Commission, regarding a proposed rule change as follows:

- Chapter 212, Maine Public Utilities Commission, Rulemaking for Exemption of Competitive Telecommunications Carriers from Certain Filing and Approval Requirements

Your questions or comments about this rule should be addressed to:

Paula J. Cyr  
Public Utilities Commission  
18 State House Station  
Augusta, Maine 04333-0018

Telephone: 287-3831

Please call me if you have any questions about the general procedure for reviewing proposed rules.

Enclosure

cc: Patrick T. Norton, Director, Office of Policy and Legal Analysis  
Grant Pennoyer, Director, Office of Fiscal and Program Review





SHARON M. REISHUS  
CHAIRMAN

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

EXECUTIVE DIRECTOR'S  
OFFICE

2010 MAY 14 A 7:48

VENDEAN V. VAFIADES  
JACK CASHMAN  
COMMISSIONERS

**NOTICE OF RULEMAKING**

Maine Public Utilities Commission  
18 State House Station  
Augusta, Maine 04333-0018  
Agency Contact: Paula J Cyr  
207-287-3831

The Public Utilities Commission issued a Notice of Rulemaking on May 12, 2010

Chapter and Title of the Rule: Chapter 212, Maine Public Utilities Commission, Rulemaking for Exemption of Competitive Telecommunications Carriers from Certain Filing and Approval Requirements

Summary: The Commission initiates this rulemaking to amend Chapter 212 to include dark fiber providers to the list of classes of telephone utilities exempt from portions of the requirements of 35-A M.R.S.A. §§ 504(2), 901-904, 907, 908, 910, 911, 1101, and 1103.

Comment deadline: June 28, 2010

Hearing date: No public hearing scheduled. Persons wishing to request a public hearing on this rule must notify the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018 on or before June 2, 2010.

The Notice of Rulemaking and the proposed Rule are available on our Web Page at <http://www.maine.gov/mpuc/legislative/rules/proposed/index.shtml> under Docket Number 2010-151.

**RULE-MAKING FACT SHEET**  
**(5 M.R.S.A. §8057-A)**

AGENCY: Public Utilities Commission

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTRACT PERSON:

Paula J. Cyr  
18 State House Station  
Augusta ME 04333-0018  
Telephone: 287-3831

CHAPTER NUMBER AND RULE TITLE: Chapter 212, Maine Public Utilities Commission, Rulemaking for Exemption of Competitive Telecommunications Carriers from Certain Filing and Approval Requirements

STATUTORY AUTHORITY: 35-A M.R.S.A. §§ 507, 912, 1105

DATE AND PLACE OF PUBLIC HEARING: No public hearing scheduled. Persons wishing to request a public hearing on this rule must notify the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018 on or before June 2, 2010

COMMENT DEADLINE: June 28, 2010

PRINCIPAL REASON OR PURPOSE PROPOSING THIS RULE: The Commission initiates this rulemaking to amend Chapter 212 to include dark fiber providers to the list of classes of telephone utilities exempt from portions of the requirements of 35-A M.R.S.A. §§ 504(2), 901-904, 907, 908, 910, 911, 1101, and 1103.

FISCAL IMPACT OF THE RULE: None

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FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS;

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED;

BENEFITS OF RULE.

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Note: If necessary, additional pages may be used

May 12, 2010

MAINE FIBER COMPANY, INC.  
Amendments to Chapter 212 of the  
Commission's Rules

NOTICE OF RULEMAKING

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners

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**I. SUMMARY**

By this notice we close Docket No. 2010-121 and initiate a rulemaking in Docket No. 2010-151 to amend Chapter 212 of the Commission's Rules (Chapter 212) to include Dark Fiber Providers to the list of classes of telephone utilities exempt from portions of the requirements of 35-A M.R.S.A. §§ 504(2), 901-904, 907, 908, 910, 911, 1101, and 1103.

**II. BACKGROUND**

On April 6, 2010, Governor John E. Baldacci signed into law Chapter 612 of the Laws of the State of Maine, enacted during the Second Session of the 124th Maine Legislature (Chapter 612).<sup>1</sup> The law created a new class of telephone utility – the “Dark Fiber Provider” – vested with the rights and responsibilities of a telephone utility under Maine law, subject to such waivers of certain requirements as the Commission may determine.<sup>2</sup>

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<sup>1</sup> The Legislature enacted Chapter 612 as emergency legislation; therefore Chapter 612 became effective upon signing by the Governor.

<sup>2</sup> The law amends 35-A § 102(4-A) to add the following definition of Dark Fiber Provider: “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.”

Title 35-A M.R.S.A. §§ 507, 912, and 1105 grant to the Commission “forbearance jurisdiction” to exempt by rule classes of telephone utilities from various statutory requirements otherwise applicable to telephone utilities under Title 35-A. This Commission exercised its forbearance jurisdiction by promulgating Chapter 212 to exempt competitive local exchange carriers (CLECs) and competitive interexchange carriers (CIXCs) from the operation of the statutory sections listed in Part I. The proposed Rule amends the existing Rule to add Dark Fiber Providers to the list of exempt classes under Chapter 212.<sup>3</sup>

### III. DISCUSSION OF PROPOSED RULE AMENDMENTS

The impact of the modifications discussed below in Parts III(A)-(D) will be to place Dark Fiber Providers on the same footing vis-à-vis the suite of exemptions established by Chapter 212, as that occupied by CLECs and CIXCs. Specifically, Dark Fiber Providers will not be required to (a) submit the balance sheet information required under 35-A M.R.S.A. § 504(2), (b) obtain Commission approval for issuances of debt and equity securities under Chapter 9 of Title 35-A, or (c) obtain Commission approval for certain property dispositions and transfers under Chapter 11 of Title 35-A.

Such requirements were generally designed to protect ratepayers of utilities subject to full regulation. Under the provisions of Sections 507, 912, and 1105, in order to exempt a utility from these statutory provisions, the Commission must find that the exemption is in the public interest and will not have a negative impact on competitive markets for telephone service.

We believe that it is reasonable to find that the exemptions previously granted to CLECs and CIXCs should also apply to Dark Fiber Providers. Like CLECs and CIXCs, Dark Fiber Providers will operate in a competitive environment, we will not regulate their rates, and thus, as with CLECs and CIXCs, the provisions related to rate regulation in Chapters 5, 9, and 11 do not need to apply to them.

The proposed amendment to Chapter 212 will reduce the regulatory burden on Dark Fiber Providers, which may help lower their costs and their rates. This does not mean, however, that Dark Fiber Providers will be free from governmental oversight; indeed, Dark Fiber Providers will be subject to a degree of oversight substantially in excess of that under which the typical CLEC or CIXC operates. By definition, Dark Fiber Providers are required to conduct their business subject to restrictions established and enforced by Title V of the federal American Recovery and Reinvestment Act (ARRA). As such, Dark Fiber Providers will be required to account to the federal government for any construction expenditures covered by grants extended pursuant to the ARRA. Further, under the ARRA Dark Fiber Providers will be required to grant a security interest to the federal government. This provides the government with the

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<sup>3</sup> On April 7, 2010, Maine Fiber requested we amend Chapter 212. Maine Fiber’s request was filed with the Commission in Docket No. 2010-121. We grant Maine Fiber’s request and with this rulemaking we close Docket No. 2010-121.

ability to seize control of the assets of Dark Fiber Providers should they default on the terms of their grants. Also, pursuant to Section 5 of Chapter 212, the Commission retains the authority to revoke any exemptions for good cause. A revocation may be in whole or in part and may be specific to a single telephone utility or a single utility service.

A. Section 1: DEFINITIONS

We propose to add a new definition subsection to Section 1 that references the new definition of Dark Fiber Provider in 35-A M.R.S.A. § 102(4-A) and (4-B).

B. Section 2: EXEMPTION FROM SECTION 504(2)

We propose to amend Section 2 of the Rule to add Dark Fiber Providers as a additional class of utility that is exempt from the provisions of 35-A M.R.S.A. § 504(2) that otherwise directs them to take and file balance sheet information when their accounts are closed. As is the case presently for CLECs and CIXCs, this proposed exemption will not apply to the other information required by Section 504(2).

C. Section 3: EXEMPTION FROM REQUIREMENTS IN CHAPTER 9

We propose to amend Section 3 of the Rule to add Dark Fiber Providers as a additional class of utility exempt from the requirements of 35-A M.R.S.A. §§ 901-904, 907, 908, 910, and 911 relating to the issuance of securities and changes in capital structure.

D. SECTION 4: EXEMPTIONS FROM REQUIREMENTS IN CHAPTER 11

We propose to amend Section 4 of the Rule to add Dark Fiber Providers as a additional class of utility exempt from the requirements of 35-A M.R.S.A. §§ 1101 and 1103 relating to the disposition of property and transfers of capital stock.

E. SECTION 5: REVOCATION OF EXEMPTIONS

We propose to amend Section 5 of the Rule to allow for the revocation of any of the above detailed exemptions for good cause. Considerations for determining whether good cause exists would include, but not be limited to, the Dark Fiber Providers' market share and the stability of current dark fiber markets, the same considerations presently applicable to CLECs and CIXCs.

#### IV. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058.





**Chapter 212:** ~~MAINE PUBLIC UTILITIES COMMISSION, RULEMAKING FOR EXEMPTION OF COMPETITIVE TELECOMMUNICATIONS CARRIERS AND DARK FIBER PROVIDERS FROM CERTAIN FILING AND APPROVAL REQUIREMENTS (CHAPTER 212)~~

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SUMMARY: This rule exempts Competitive LECs, Dark Fiber Providers, and Competitive IXC's from Title 35-A M.R.S.A. §§ 504(2), 901-904, 907, 908, 910, 911, 1101, and 1103.

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**§1. DEFINITIONS**

As used in this Chapter, the following words and phrases shall have the following meanings:

- A. **Competitive Interexchange Carrier (CIXC).** A competitive interexchange carrier" or "CIXC" is an interexchange carrier that is not also an Incumbent Local Exchange Carrier (ILEC).
- B. **Competitive Local Exchange Carrier (CLEC).** A "competitive local exchange carrier" or "CLEC" is any local exchange carrier (LEC) that is not an incumbent local exchange carrier (ILEC).
- C. **Incumbent Local Exchange Carrier (ILEC).** "Incumbent local exchange carrier" or "ILEC" means a local exchange carrier or its successor that provided local exchange service in a defined service territory in Maine on February 8, 1996 or that is designated as an ILEC pursuant to 47 U.S.C. § 251(h)(2).
- D. **Interexchange carrier (IXC).** An "interexchange carrier" or "IXC" is any person, association, corporation, or other entity that provides intrastate interexchange telecommunications services, including a local exchange carrier that provides interexchange service.
- E. **Dark Fiber Provider (DFP).** A Dark Fiber Provider is any person, association, corporation or other entity that meets the definition of "Dark Fiber Provider" as set forth in 35-A M.R.S.A. §§ 102(4-A) and 102(4-B).

**§2. EXEMPTION FROM SECTION 504(2)**

CLECs that do not receive state universal service funding under Chapter 288, DFPs, and all CIXCs shall be exempt from those requirements of Title 35-A § 504(2) that direct them to take and file balance sheet information when their accounts are closed. This exemption does not apply to the other information required by Section 504(2).

**§3. EXEMPTION FROM REQUIREMENTS IN CHAPTER 9**

CLECs that do not receive state universal service funding under Chapter 288, DFPs and all CIXCs shall be exempt from the requirements of Title 35-A M.S.R.A. §§ 901-904, 907, 908, 910, and 911.

**§4. EXEMPTIONS FROM REQUIREMENTS IN CHAPTER 11**

CLECs that do not receive state universal service funding under Chapter 288, DFPs, and all CIXCs shall be exempt from the requirements of Title 35-A M.S.R.A. §§ 1101 and 1103.

**§5. REVOCATION OF EXEMPTIONS**

For good cause, the Commission may revoke any exemption granted pursuant to this Chapter. In determining whether good cause exists, the Commission may consider, but is not limited to considering, the following:

- A. The CLEC, DFP, or CIXC's market share; and
- B. The stability of the current telephone markets.

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**STATUTORY AUTHORITY:** 35-A M.R.S.A. §§ 507, 912, 1105.

**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 \_\_\_\_\_ .