

**MAINE PUBLIC UTILITIES
COMMISSION**

**Report to the Legislature Pursuant to An Act
to Reform Telecommunications Regulation,
Public Law 2011, Chapter 623, Section D-7,
Regarding Assessments Paid By Voice
Service Providers**

January 15, 2013

I. BACKGROUND AND ANALYSIS

As required by Section D-7 of An Act to Reform Telecommunications Regulation, Public Law 2011, Chapter 623, the Maine Public Utilities Commission (Commission) submits this report concerning whether it is appropriate to require any voice service providers that are not required to pay assessments under the Maine Revised Statutes, Title 35-A, sections 116, 7104 and 7104-B to pay such assessments, and if so the reasons why they should be included and how they may appropriately and fairly be included. The Act directs the Commission to submit a report of its findings and recommendations to the Energy, Utilities and Technology Committee by January 15, 2013.

The term “voice service provider” is defined as any person (other than a dark fiber provider) that offers for sale in Maine, either directly or indirectly, 2-way voice communications. 35-A M.R.S.A. § 102(21-A). Under existing statute and Commission regulation, all voice service providers are required to contribute to the Maine Universal Service Fund (MUSF) established pursuant to 35-A M.R.S.A. § 7104, and to the Maine Telecommunications Education Access Fund (MTEAF) established pursuant to 35-A M.R.S.A. § 7104-B. There is therefore no need to expand the scope of these contribution obligations.

Under existing statute and Commission regulation, voice service providers that are also classified as public utilities are obligated to pay Commission and Office of the Public Advocate (OPA) assessments as required by 35-A M.R.S.A. § 116. In addition, any provider of Voice over Internet Protocol (VoIP) service that paid assessments prior to March 1, 2012, whether voluntarily, by agreement with the Commission, or otherwise, are classified as “qualified telecommunications providers” and are also obligated to pay assessments as required by 35-A M.R.S.A. § 116.¹ Pursuant to § 116(1)(B), the Commission assessment is based upon a carrier’s “intrastate gross operating revenues.” For telephone utilities, such revenues are those which are derived from “filed rates.” Pursuant to 35-A M.R.S.A. § 7232(1), enacted by the Legislature in 2012, the only rates of a telephone utility that are required to be filed with the Commission are

¹ The VoIP carriers in Maine that meet the definition of a “qualified telecommunications provider” are operated by Comcast, Time Warner, MetroCast, and Bee Line Cable utilizing their cable television networks or those of their affiliates. Although Polaris Cable provides VoIP service over its cable network in the same (or similar fashion) that Comcast, Time Warner, MetroCast, and Bee Line Cable offer VoIP service, Polaris did not pay the Commission assessment prior to March 1, 2012, and thus does not fall within the definition of a “qualified telecommunications provider.” In addition wireless carriers and non-facilities based VoIP carriers such as Vonage and Skype are neither “public utilities” nor “qualified telecommunications providers” under existing law, and are thus not presently obligated to pay the Commission assessment.

those for POLR service. For qualified telecommunications providers, intrastate revenues form the basis of the Commission assessment notwithstanding the fact that the rates of such carriers are not “filed rates.”

A possibly unintended consequence of the enactment of § 7232(1), and the contemporaneous revision of the statutory definition of “intrastate gross operating revenues” set forth in § 116(1)(B) excluding certain revenues for intrastate services that the Commission had exempted from the tariff filing requirement, is that competitive local exchange providers (CLECs) and interexchange carriers (IXCs) that offer intrastate wireline service will, as a practical matter, no longer be obligated to pay a Commission assessment. This is because such carriers have no “filed rates” and thus no “revenues derived from filed rates” upon which an assessment may be based. In the most recent assessment period, CLECs and IXCs were responsible for 24% of the total assessments attributable to the Commission’s activities in the area of telephone regulation.

In addition, the intrastate gross operating revenue base upon which an incumbent local exchange carrier (ILEC)’s assessment will be calculated under the existing statute will be only those revenues derived from the “filed” rates charged for POLR service. As the annual reports of utilities are not due to be filed until April 1, 2013, it is presently not possible to determine how the application of this statutory change to POLR carriers will impact the apportionment of Commission assessments among carriers for the 2012 assessment period.

The net effect of these statutory changes is that the total amount of the Commission’s expenses related to telecommunications regulation will be shared among fewer carriers -- the ILECs and the qualified telecommunications providers – and that a greater relative share of the increased assessment obligation of these carriers will be placed upon the qualified telecommunications providers. To the extent that this is indeed an unintended consequence of the regulatory reform measures enacted in 2012 the Legislature may wish to consider statutory revisions that spread the assessment obligation more equitably among the various telecommunications carriers that benefit from the activities of the Commission.

II. CONCLUSION

In order to treat all similarly situated facilities-based VoIP providers equally, and thereby include Polaris Cable in the group of VoIP carriers subject to the Commission assessment, 35-A M.R.S.A. § 116 would need to be amended narrowly so as to include within the definition of “qualified telecommunications provider” any VoIP carrier that offers VoIP service over facilities that either it, or an affiliate, owns or leases. If such an amendment were made, the language in the existing statute which applies the

contribution obligation to VoIP carriers that paid the assessment prior to March 1, 2012 would, as a practical matter, become unnecessary. Draft statutory language is attached to the report for the Committee's consideration.

In order to reestablish the historic obligation of CLECs and IXCs to pay the Commission and OPA assessments, and to continue the equitable apportionment of these assessments based upon all carriers' intrastate revenues, 35-A M.R.S.A. § 116 would need to be amended so as to require that the assessment for telephone utilities be based on "intrastate gross operating revenues" regardless of whether those revenues derived from rates that are "filed." The attached draft statutory language would accomplish this revision.

The Commission's activities with respect to matters that involve wireless carriers or non-facilities based VoIP providers to any degree are its routine administration of the MUSF and MTEAF to which such companies are obligated to contribute, numbering resource allocation matters, and the routine certification of wireless carriers seeking to obtain federal universal service support. At present, these activities represent a relatively insignificant expenditure of the Commission resources that are dedicated to telecommunications matters generally. Consequently, the Commission does not recommend at this time that the assessment obligation set forth in 35-A M.R.S.A. § 116 be expanded to include wireless and non-facilities based VoIP providers.

DRAFT STATUTORY LANGUAGE**§116. Funding of the commission**

1. Entities subject to assessments. Every transmission and distribution, gas, telephone and water utility and ferry subject to regulation by the commission and every qualified telecommunications provider is subject to an assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for the Public Utilities Commission Regulatory Fund established pursuant to this section. The budget for the Public Utilities Commission Regulatory Fund is subject to legislative review and approval in accordance with subsection 2. The portion of the total assessment applicable to each category of public utility or qualified telecommunications provider is based on an accounting by the commission of the portion of the commission's resources devoted to matters related to each category. The commission shall develop a reasonable and practicable method of accounting for resources devoted by the commission to matters related to each category of public utility or qualified telecommunications provider. Assessments on each public utility or qualified telecommunications provider within each category must be based on the utility's or qualified telecommunications provider's gross intrastate operating revenues. The commission shall determine the assessments annually prior to May 1st and assess each utility or qualified telecommunications provider for its pro rata share for expenditure during the fiscal year beginning July 1st. Each utility or qualified telecommunications provider shall pay the assessment charged to the utility or qualified telecommunications provider on or before July 1st of each year. Any increase in the assessment that becomes effective subsequent to May 1st may be billed on the effective date of the act authorizing the increase.

A. The assessments charged to utilities and qualified telecommunications providers under this section are just and reasonable operating costs for rate-making purposes.

B. For the purposes of this section, "intrastate gross operating revenues" means intrastate revenues derived from filed rates and in the case of a telephone utility the intrastate revenues derived from rates regardless of whether such rates are required to be filed pursuant to this Title and rates charged by a qualified telecommunications provider, except revenues derived from sales for resale.

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety are not subject to any assessment.

D. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities or qualified telecommunications providers in the current year.

E. The commission may exempt utilities or qualified telecommunications providers with annual intrastate gross operating revenues under \$50,000 from assessments under this section.

For purposes of this section, "qualified telecommunications provider" means a any person that provides ~~of~~ interconnected Voice over Internet Protocol service ~~that paid any assessment~~

~~under this subsection, whether voluntarily, by agreement with the commission or otherwise, prior to March 1, 2012~~ over facilities that it, or an affiliated company, owns or leases.