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STATE OF MAINE
EXECUTIVE DEPARTMENT
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112 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0112

Richard Davies
PUBLIC ADVOCATE

November 8, 2011

Honorable Michael Thibodeau, Senate Chair
Honorable Stacey Fitts, House Chair
Energy, Utilities and Technology Committee
115 State House Station
Augusta, Maine 04333

Re: Report of the Office of Public Advocate on the allocation of resources to matters related to providers of communications services that are not subject to assessment under Title 35-A §116, for the period of July 1, 2010 through June 30, 2011

Dear Senator Thibodeau and Representative Fitts:

In the Second Regular Session of the 124th Legislature, Resolves Chapter 190 was passed (“Resolve, to Direct the Public Utilities Commission and the Public Advocate to Account for Certain Resource Expenditures”) requiring the Commission and the Public Advocate to *“separately account and track resources for matters related to providers of communications services that are not subject to assessments pursuant to 35-A M.R.S.A. § 116.”* We are directed to report on our accounting in this area by January 15, 2012 *“together with any recommendations regarding the practicality of subjecting any of these providers to assessments”*. While the Resolve does not designate a specific time period to be covered by these reports, we have reported for the period of the Fiscal Year beginning July 1, 2010 and ending June 30, 2011.

The Office of Public Advocate utilized 346 hours of staff time and 20 hours of consultant time on such matters during the recently completed Fiscal Year. Th346 hours of staff time represents 14.52% of the 2382.5 hours reported by OPA staff on telecommunications matters, or 3.937% of the 8788.5 hours reported by staff for all utility categories. The “all in” value of this staff and consultant time is \$29,437.00. The details of the expenditure of resources in these matters are included in the attached Report.

These hours were recorded for work on two sets of matters: the first set being the Commission’s investigation into whether providers of Time Warner Digital Phone service and Comcast Digital Voice service must obtain a Certificate of Public Convenience Necessity to offer telephone service (**PUC Docket No. 2008-241**) and the appeal by Comcast Phone of Maine, LLC of the PUC decision in this docket to the Maine Supreme Judicial Court (sitting as the Law Court) in **Law Court Docket No. PUC-11-1**; and the second set being the so-called Rural Exemption cases (**PUC Docket Nos. 2009-40 through 2009-44**) and the appeal by Time Warner Cable, Inc. and CRC Communications of ME., Inc. of the PUC decision in this docket in **FCC Docket No. WC 10-143**. Because the PUC dockets and the resulting appeals of decisions by the PUC in those dockets are so closely connected, we have accounted for the utilization of resources as if the PUC docket and the resulting appeal are a single matter.



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We will continue to track resource expenditures during the current (FY '11-'12) fiscal year that may be utilized in matters related to providers of communications services that are not subject to assessment by the

Public Advocate under the provisions of Title 35-A, §116, and will report such expenditures to the Joint Standing Committee on Energy, Utilities and Technology by January 15, 2013. The only current issue in which we are involved that is likely to be included in that 2013 report is in regards to the Public Utilities Commission's "Inquiry into Telecommunications Regulatory Reform Plan" (PUC Docket No. 2011-224), being undertaken as directed in Resolves of 2011, Chapter 69 (the enacted version of LD 1466, "Resolve, to Direct the Public Utilities Commission to Develop a Plan to Reform Telecommunications Regulation").

At the present time, we have not determined whether to make any recommendations on the practicality of subjecting any communications providers, which are not currently subject to assessment by the PUC or the OPA under 35-A, §116, to pay a pro rata share of the resource expenditures of either agency, which expenditure is directly related to matters involving those non-assessed communications providers. If we make such a determination, we will report it to your committee by January 15, 2012.

After reviewing our Report (attached), if you have any questions please don't hesitate to contact our office.

Sincerely,

Richard Davies
Public Advocate

Cc: Members, Joint Standing Committee on Energy, Utilities and Technology
Jon Clark, Esq., Deputy Director, Legislature's Office of Policy and Legal Analysis
Jean Guzzetti, Legislative Analyst, Legislature's Office of Policy and Legal Analysis
Thomas L. Welch, Chairman, Maine Public Utilities Commission



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REPORT

Accounting by the Office of Public Advocate of the allocation of resources to matters related to providers of communications services that are not subject to assessment under Title 35-A §116, for the period of July 1, 2010 – June 30, 2011

Pursuant to Resolve (2010) Chapter 190 (*Resolve, to Direct the Public Utilities Commission and the Public Advocate to Account for Certain Resource Expenditures*), the Office of Public Advocate hereby reports its accounting of its allocation of staff and consultant resources to matters related to providers of communications services that are not subject to assessment by the Public Advocate under the provisions of Title 35-A §116. This report covers the period of July 1, 2010 through June 30, 2011.

During this reporting period the Office of Public Advocate allocated staff and consultant resources on four proceedings - two before the Maine Public Utilities Commission, one before the Maine Supreme Judicial Court (sitting as the Law Court), and one before the Federal Communications Commission (FCC). The proceedings were as follows:

- 1. PUC Docket No. 2008-421 (MAINE PUBLIC UTILITIES COMMISSION INVESTIGATION INTO WHETHER FACILITIES-BASED VOIP PROVIDERS MUST OBTAIN A CERTIFICATE IN ORDER TO OFFER SERVICE)**
The individual “providers of services that are not subject to assessments pursuant to Title 35-A, section 116” in this case were **TWC Digital Phone LLC, and Comcast IP Phone, LLC.**
- 2. Law Court Docket No. PUC-11-1 (APPEAL BY COMCAST OF PUC DECISION IN DOCKET NO. 2008-421)**
The individual “providers of services that are not subject to assessments pursuant to Title 35-A, section 116” in this case was **Comcast Phone of Maine, LLC.**



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3. **PUC Docket Nos. 2009-40 through 2009-44** (collectively known as the “Rural Exemption Cases”)

The individual “provider of services that are not subject to assessments pursuant to Title 35-A, section 116” in this case was **Time Warner Cable, Inc.**

4. **FCC Docket No. WC 10-143** (APPEAL BY TIME WARNER CABLE, INC. and CRC COMMUNICATIONS OF ME., INC. FOR PRE-EMPTION OF MAINE PUC ORDER IN “RURAL EXEMPTION” CASES)

The individual “provider of services that are not subject to assessments pursuant to Title 35-A, section 116” in this case was **Time Warner Cable, Inc.**

NOTE: Because item #2 was an appeal of the decision in item #1; and item #4 was an appeal of the decision in item #3, we treat the accounting of our allocation of staff and consultant time for item #1 and item #2 as a single matter, and likewise treat item #3 and item #4 as a single matter.

The Office of Public Advocate’s accounting of allocations of resources to

1. **PUC Docket No. 2008-421** (MAINE PUBLIC UTILITIES COMMISSION INVESTIGATION INTO WHETHER FACILITIES-BASED VOIP PROVIDERS MUST OBTAIN A CERTIFICATE IN ORDER TO OFFER SERVICE), and
2. **Law Court Docket No. PUC-11-1** (APPEAL BY COMCAST OF PUC DECISION IN DOCKET NO. 2008-421)

are as follows:

<u>OPA resources used</u>	<u>Hours expended</u>	<u>“All In” cost to OPA</u>
William Black (OPA attorney)	120.5 hours	\$ 9519.50
Wayne Jortner (OPA attorney)	129.5 hours	\$ 9324.00
Richard Davies (Public Advocate)	25.5 hours	\$ 1912.50
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Sub-total (Items #1 and #2)	275.5 hours	\$20,756.00

The Office of Public Advocate's accounting of allocations of resources to

3. **PUC Docket Nos. 2009-40 through 2009-44** (collectively known as the "Rural Exemption Cases"), and
4. **FCC Docket No. WC 10-143** (APPEAL BY TIME WARNER CABLE, INC. and CRC COMMUNICATIONS OF ME., INC. FOR PRE-EMPTION OF MAINE PUC ORDER IN "RURAL EXEMPTION" CASES)

are as follows:

<u>OPA resources used</u>	<u>Hours expended</u>	<u>"All In" cost to OPA</u>
William Black (OPA attorney)	35.5 hours	\$ 2804.50
Wayne Jortner (OPA attorney)	24.5 hours	\$ 1764.00
Richard Davies (Public Advocate)	9.5 hours	\$ 712.50
Robert Loube (expert witness/consultant)	20.0 hours	\$ 3400.00
Sub-total (Items #3 and #4)	89.5 hours	\$ 8681.00
TOTAL (Items #1-#4)	366.0 hours	\$29,437.00

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

Resolve, To Direct the Public Utilities Commission and the Public Advocate To Account for Certain Resource Expenditures

Sec. 1 Accounting by Public Utilities Commission and Public Advocate of allocation of certain resources. Resolved: That the Public Utilities Commission and the Public Advocate shall, beginning no later than July 1, 2010, separately account for and track resources devoted to matters related to providers of communications services that are not subject to assessments pursuant to the Maine Revised Statutes, Title 35A, section 116. The Public Utilities Commission and the Public Advocate shall establish reasonable and practical categories of such providers and shall account for resources devoted to each identified category. To the extent practical, the Public Utilities Commission and the Public Advocate shall identify in the accounting each individual provider to which resources were devoted, the type of proceeding or action to which the resources were devoted and the role of the provider in that proceeding or action. For purposes of this resolve, "providers of communications services" includes, but is not limited to, a wireline voice, satellite, data, fixed wireless data or video retail service provider; a facilities-based provider of wireless voice or data retail service; or any other provider of communications services; and be it further

Sec. 2 Report. Resolved: That the Public Utilities Commission and the Public Advocate shall report their accounting under section 1 to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by January 15, 2012 together with any recommendations regarding the practicality of subjecting any providers of communications services to assessments pursuant to the Maine Revised Statutes, Title 35A, section 116.