

An Act To Amend the Law Regarding Joint Use of Certain Utility and Telecommunications Infrastructure

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §711, as amended by PL 2011, c. 623, Pt. B, §4, is further amended to read:

§ 711. Joint use of utility facilities equipment

1. Joint use permitted. The commission may order that joint use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use when, ~~after a hearing had upon its own motion or upon complaint of a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system affected,~~ it finds the following:

A. That public convenience and necessity require the use by one public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier ~~or~~, cable television system, unlit fiber provider, telecommunications service provider or information service provider of the conduits, subways, wires, poles, pipes or other related attachment facilities equipment, or any part of them, on, over or under any street or highway and belonging to another public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier ~~or~~, cable television system, unlit fiber provider, telecommunications service provider or information service provider; and

B. That joint use will not result in irreparable injury to the owner or other users of the conduits, subways, wires, poles, pipes or other related attachment facilities equipment or in any substantial detriment to the service; and,

C. ~~That the public utilities, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system have failed to agree upon the use or the terms and conditions or compensation for the use.~~ That the public utilities, voice service provider, dark fiber provider, wholesale competitive local exchange carrier, or cable television system, unlit fiber provider, telecommunications service provider, or information service provider have failed to agree upon the use or the terms and conditions or compensation for the use.

2. Liability of user. If joint use is ordered, the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier, cable television system, unlit fiber provider, telecommunications service provider or information service provider to whom the use is permitted is liable to the owner or other users of the conduits, subways, wires, poles, pipes or other related attachment facilities equipment for damage that may result from its use to the property of the owner or other users.

3. Interests of subscribers. Any actions taken or orders issued by the commission under this section ~~shall~~ must take into account the interests of the subscribers of the affected voice service provider, dark fiber provider, wholesale competitive local exchange carrier, cable television system, unlit fiber provider, telecommunications service provider or information service provider, as well as the customers of the affected public utilities. Furthermore, joint use of facilities that promotes greater deployment of commercial mobile service under 47 United States Code, Section 332(c), is presumed to be in the interest of both current and potential subscribers of such service.

4. Rules. The commission shall adopt a ~~rule~~ rules governing the compensation, terms and conditions of the resolution of pole attachment rate disputes joint use when parties have failed to agree as set forth in subsection 1, paragraph C. ~~The~~ In establishing such compensation or rates, terms, and conditions of joint use, the commission shall consider various formulas, including, but not limited to, the formula adopted by the Federal Communications Commission as codified in 47 Code of Federal Regulations, Part 1, Subpart J, as amended.

5. ~~Dark fiber provider.~~ ~~This section applies to a dark fiber provider only with respect to the construction and maintenance of federally supported dark fiber.~~

6. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Information service" has the same meaning as in 47 United States Code, Section 153(24).

B. "Telecommunications service" has the same meaning as in 47 United States Code, Section 153(53).

C. "Unlit fiber" means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications.

D. "Necessity" means the ability of a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier, cable television system, unlit fiber provider, telecommunications service provider, or information service provider to provide services to current and potential subscribers, as determined by that provider's analysis, consistent with all federal and state statutes and regulations.