
TELECOMMUNICATIONS ASSOCIATION OF MAINE

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Senator David Woodsome, Senate Chair
Representative Seth Berry, House Chair
Members of the Energy, Utilities and Technology Committee
128th Maine Legislature
100 State House Station
Augusta, ME 04333

Re: LD 406, An Act To Amend the Law Regarding Joint Use of Certain Utility and Telecommunications Infrastructure

The Telecommunications Association of Maine (TAM) offers the following testimony neither for nor against LD 406, “An Act To Amend the Law Regarding Joint Use of Certain Utility and Telecommunications Infrastructure”.

Currently, the Commission has authority to resolve any disputes regarding companies seeking to attach to utility poles in the right of way. Within the telecommunications field, there have been two times in recent memory that companies have availed themselves of this opportunity. The first time, Oxford Networks challenged the terms of the agreement proposed by Verizon and the Commission sided with Oxford Networks and required Verizon to amend their agreement with Oxford Networks to address Oxford Networks’ concerns. The second time, Biddeford Internet Company, d/b/a Great Works Internet (GWI) requested a more expansive ruling from the Commission that the provisions set forth in the agreement between Oxford Networks and Verizon be broadly applied to all Competitive Local Exchange Carriers (CLECs). The Commission rejected this request, but expressly indicated that if there was a specific controversy regarding an agreement they would be able to review such an agreement in the same manner that they reviewed the Oxford Networks agreement.

The one issue beyond what would normally be covered in an attachment agreement is who is authorized to attach to a pole. Under the bill as drafted, access to poles would be opened up to any “unlit fiber” provider. This means anyone could attach fibers to poles as long as they were not lit, regardless of whether the entity knew what they were doing or not. And a poorly attached line could easily adjust the overall tension on a pole resulting in a downed pole line and disruptions not just in communications but in power as well for anyone on that pole line. Currently to become a CLEC in Maine all it takes is a demonstration that you have the financial capability and the technical capability to be a provider. As drafted, this bill would allow entities without either financial or technical capabilities to endanger the services of all of the other legitimate attachers to the pole. And the question is, to what end?

The FCC entered into an exhaustive rulemaking at the Federal level for their own set of pole attachment rules expressly designed to promote broadband expansion. If the Committee wishes to move forward with this legislation, it would be prudent to give some direction to the Commission to ensure that the provisions they come up with for regulating access to the right of way are generally consistent with the provisions developed by the FCC.

If the Committee does not decide to move forward with the provisions of this legislation, TAM would suggest at the very least directing the Commission to establish by Rule a “Safe Harbor” set of standards for attaching to poles that would set what reasonable terms and conditions would be. Parties would be free to negotiate mutually acceptable agreements that differed with the Safe Harbor, but if a company was offered an agreement with provisions that did not meet the safe harbor provisions, or if a company offered an agreement to a pole owner with Safe Harbor provisions that was not acted upon by the pole owner in a timely fashion, the party seeking to attach to a company’s poles would be authorized to commence a Rapid Response proceeding at the Commission. The Commission could then quickly resolve the specific agreement in question and, where appropriate, require the parties to enter into an agreement at a date certain that met the conditions of the Safe Harbor or some other just and reasonable terms depending upon the information provided during the Rapid Response proceeding. In this way, the Commission could use its existing authority to ensure that no one party unjustly inhibits the ability of competitors to access poles in a timely and manner with rates that are not unreasonable.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Sanborn", with a long horizontal flourish extending to the right.

Benjamin M. Sanborn, Esq.
Telecommunications Association of Maine