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Date: (Filing No. S-)

ENERGY, UTILITIES AND TECHNOLOGY

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**STATE OF MAINE
SENATE
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 133, L.D. 406, Bill, “An Act To Amend the Law Regarding Joint Use of Certain Utility and Telecommunications Infrastructure”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

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 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~~ joint use entity 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 of the conduits, subways, wires, a joint use entity to provide nondiscriminatory access to any poles, pipes or other 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~~ ducts, conduits or rights-of-way owned or controlled by another joint use entity;

B. That joint use will not result in irreparable injury to the owner or other users of the ~~conduits, subways, wires, poles, pipes~~ poles, ducts, conduits or other equipment rights-of-way 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~~ joint use entities have failed to agree upon the use or the terms and conditions or compensation for the use; and

COMMITTEE AMENDMENT

1 D. That the joint use entity seeking access to the poles, ducts, conduits or rights-of-
2 way owned or controlled by another joint use entity has the technical and financial
3 capabilities to fulfill its obligations related to such joint use.

4 **2. Liability of user.** ~~If joint use is ordered, the public utility, voice service provider,~~
5 ~~dark fiber provider, wholesale competitive local exchange carrier or cable television~~
6 ~~system joint use entity to whom the use is permitted is liable to the owner or other users~~
7 ~~of the conduits, subways, wires, poles, pipes or other equipment poles, ducts, conduits or~~
8 ~~rights-of-way for damage that may result from its use to the property of the owner or~~
9 ~~other users.~~

10 **3. Interests of customers.** Any actions taken or orders issued by the commission
11 under this section ~~shall~~ must take into account the interests of the ~~subscribers~~ customers
12 of the affected ~~cable television system, as well as the customers of the affected public~~
13 ~~utilities joint use entities.~~

14 **4. Rules.** The commission shall adopt ~~a rule~~ rules governing the resolution of pole
15 attachment ~~rate~~ disputes. ~~The and the rates, terms and conditions of joint use. The rules~~
16 ~~must promote competition, further the state broadband policy set forth in section 9202-A~~
17 ~~and ensure safe, nondiscriminatory access on just and reasonable terms. The rules must~~
18 ~~also include a process for ensuring that a new joint use entity seeking access to the poles,~~
19 ~~ducts, conduits or rights-of-way of another joint use entity meets the requirements of~~
20 ~~subsection 1, paragraph D. In establishing rates, the commission shall consider various~~
21 ~~formulas, including, but not limited to, the formula adopted by the Federal~~
22 ~~Communications Commission as codified in 47 Code of Federal Regulations, Part 1,~~
23 ~~Subpart J, as amended. Rules adopted or amended pursuant to this subsection are routine~~
24 ~~technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

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

27 **6. Limited jurisdiction.** A joint use entity not otherwise subject to the jurisdiction
28 of the commission is subject to commission jurisdiction only for the limited purpose of
29 matters relating to the use of the poles, conduits, ducts or rights-of-way in accordance
30 with this section.

31 **7. Definitions.** As used in this section, unless the context otherwise indicates, the
32 following terms have the following meanings.

33 A. "Information service provider" means a provider of information service as that
34 term is defined in 47 United States Code, Section 153(24).

35 B. "Joint use entity" means a public utility, voice service provider, dark fiber
36 provider, wholesale or retail competitive local exchange carrier, cable television
37 system, unlit fiber provider, telecommunications service provider or information
38 service provider.

39 C. "Telecommunications service provider" means a provider of telecommunications
40 service as that term is defined in 47 United States Code, Section 153(53).

41 D. "Unlit fiber" means one or more strands within a bundle of fiber-optic cable
42 through which an associated light signal or light communication transmission must be

1 provided to provide communications service, but excluding the electronic equipment
2 required in order to render the fiber capable of transmitting communications.

3 E. "Unlit fiber provider" means a provider of unlit fiber.

4 **Sec. 2. 35-A MRSA §2301**, as amended by PL 2011, c. 623, Pt. B, §6, is further
5 amended to read:

6 **§2301. Construction, maintenance and operation of lines**

7 Except as limited, every voice service provider, ~~wholesale~~ competitive local
8 exchange carrier ~~and~~ telecommunications service provider as defined in section 711,
9 subsection 7, paragraph C, unlit fiber provider as defined in section 711, subsection 7,
10 paragraph E, information service provider as defined in section 711, subsection 7,
11 paragraph A, dark fiber provider for the purposes of constructing and maintaining its
12 ~~federally supported dark fiber~~ and every corporation organized for the purpose of
13 transmitting television signals by wire may construct, maintain and operate its lines upon
14 and along the route or routes and between the points stated in its certificate of
15 incorporation; and may construct its lines and necessary erections and fixtures for them
16 along, over, under and across any of the roads and streets and across or under any of the
17 waters upon and along the route or routes subject to the conditions and under the
18 restrictions provided in this chapter and chapter 25.

19 **Sec. 3. 35-A MRSA §2501, sub-§2**, as amended by PL 2009, c. 612, §8, is
20 further amended to read:

21 **2. Applicability of section 2503.** Except as otherwise provided, a person may not
22 construct facilities upon and along highways and public roads without applying for and
23 obtaining a written location permit from the applicable licensing authority under section
24 2503. Included within this requirement is every person operating telephones or
25 transmitting television signals by wire; every person that owns, controls, operates or
26 manages any pipeline within or through this State for the transportation as a common
27 carrier for hire of oil, gas, gasoline, petroleum or any other liquids or gases; every water
28 utility and every person making, generating, selling, distributing and supplying gas or
29 electricity; every water utility or sewer company, district or system privately or
30 municipally owned; every municipally owned or operated fire alarm, police alarm or
31 street lighting circuit or system; every cooperative organized under chapter 35; the
32 University of Maine System, for purposes described in section 2301-A; every dark fiber
33 provider ~~for the purposes of constructing and maintaining its federally supported dark~~
34 ~~fiber;~~ every unlit fiber provider as defined in section 711, subsection 7, paragraph E;
35 every telecommunications service provider as defined in section 711, subsection 7,
36 paragraph C; every information service provider as defined in section 711, subsection 7,
37 paragraph A; and any other person engaged in telecommunications or the transmission of
38 heat or electricity.

39 **Sec. 4. Rules.** The Public Utilities Commission shall amend its rules adopted
40 pursuant to the Maine Revised Statutes, Title 35-A, section 711, subsection 4 by January
41 15, 2018 to address the terms and conditions of joint use.'

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SUMMARY

This amendment replaces the bill. Like the bill, it adds unlit fiber providers, telecommunications service providers and information service providers to the list of entities that may be subject to an order for joint use of equipment. It defines the term "joint use entity" and requires that the interests of customers of a joint use entity be considered in any order or actions taken by the Public Utilities Commission. It requires that a joint use entity seeking access to the poles, ducts, conduits or rights-of-way owned or controlled by another joint use entity have the technical and financial capabilities to fulfill its obligations related to such joint use and that the Public Utilities Commission develop a process to ensure this through its rules. It requires that rules adopted by the Public Utilities Commission promote competition, further the state broadband policy and ensure safe, nondiscriminatory access on just and reasonable terms. It requires that the Public Utilities Commission amend its rules by January 15, 2018 to address the terms and conditions of joint use. It provides that the jurisdiction of the Public Utilities Commission over joint use entities not otherwise under its jurisdiction is only for limited purposes, and it makes changes to the Maine Revised Statutes, Title 35-A, sections 2301 and 2501 for consistency with those provisions.

FISCAL NOTE REQUIRED
(See attached)