

Testimony of the Telecommunications Association of Maine
In Opposition to
L.D. 1223, *An Act to Clarify Cost Allocations and Insurance in the Joint Use of Public Utility Equipment*
Before the Joint Standing Committee on Energy, Utilities and Technology
May 10, 2023

Good morning, Senator Lawrence, Representative Zeigler and Members of the Joint Standing Committee on Energy, Utilities and Technology. I am Steven Hudson, an attorney with the firm of Preti Flaherty and I am here today to provide testimony on behalf of the Telecommunications Association of Maine (“TAM”) in opposition to *L.D. 1223, An Act to Clarify Cost Allocations and Insurance in the Joint Use of Public Utility Equipment*. TAM members serve some of the most rural and smallest communities in Maine and have done so for more than one hundred years. TAM members are solidly part of their local communities and integral parts of the economic development mosaic of these communities.

TAM members are both pole attachers and pole owners. In either case, TAM believes that each party to a pole attachment agreement should be adequately insured to prevent shifting costs to the other party, and to ensure that funds are available to promptly restore service after damage to utility or attacher equipment. In most instances, having adequate insurance can avoid litigation and perhaps most importantly, the existence of adequate insurance prevents situations where inadequate or nonexistent insurance fails to compensate nonparties promptly and fully, such as members of the public, in the event of property damage or personal injury.

Unlike the provision of necessary services for property and personal safety where some degree of municipal immunity is often found, there is simply no need for a grant of immunity to municipalities with regard to pole attachments. Most municipalities engaging in broadband deployment are often typically doing so with either a private partner or a contractor performing the work. There is simply no reason to shield private companies from liability for such work and if municipalities seek to perform such work, they should be held to the same standard as private parties. In other jurisdictions in which TAM members operate, municipalities are treated as any other pole attacher, and insurance requirements for Commercial General Liability, Workers Compensation, Automobile, and excess (or umbrella) coverage are typically required.

To allow one or more parties to a pole attachment agreement to go without adequate insurance coverage skews the playing field for private parties, risks limiting recovery for innocent third parties, increases the risk of interruptions of service for all utilities in the pole space, and invites unnecessary litigation and expansion of liability to pole owners simply because their pole is involved in the acts of an uninsured or mis-insured party.

Thank you for the opportunity to comment on LD 1223. TAM urges the committee to vote Ought Not to Pass on this bill. We are happy to answer any questions now or at the work session.