

NFNA: LD 1223 “An Act to Clarify Cost Allocations and Insurance in the Joint Use of Public Utility Equipment”



May 10, 2023

Senator Lawrence, Representative Zeigler, and distinguished members of the Joint Standing Committee on Energy, Utilities, and Technology, my name is Andrew Butcher, and I am the President of the Maine Connectivity Authority. Today, I testify neither for nor against the amended LD 1223, “An Act to Clarify Cost Allocations and Insurance in the Joint Use of Public Utility Equipment.”

We thank Senator Grohoski and the Maine Municipal Association for bringing this issue forward. Municipally-owned broadband projects face a number of unique challenges that private and private-public projects do not. One such challenge is the cost of liability insurance required by pole owners. Pole owners require projects to secure \$5 million in liability insurance before entering into pole attachment contracts, with one pole owner requiring \$10 million in general liability insurance. It is our understanding that active internet service providers (ISPs) carry this policy. As their portfolio expands with new builds, these ISPs can extend their current coverage at a minimal cost. Municipalities are receiving quotes for \$5 million general liability insurance policies with annual premiums ranging from \$16,000 to \$22,000 per year. This additional cost is a barrier for municipal projects as they are typically 18-24 months from providing service to the customers and have no source of revenue at the time proof of insurance is required.

The Maine Connectivity Authority (MCA) is committed to ensuring the safe and efficient deployment of broadband across Maine. The cost of additional liability insurance can significantly impact the financial viability of municipally-owned projects, limiting MCA's ability to deploy funding through some project types. MCA is also committed to preventing many other barriers to broadband utilization, which involves keeping monthly subscription costs as low as possible. The best way to keep costs down for subscribers of municipal networks is to lower the ongoing expenses associated with the infrastructure.

It is clear that there is a need to standardize the attachment requirements from all pole owners, which will lead to a streamlining of the pole attachment process overall. MCA has devoted a significant amount of time to researching this issue and exploring possible solutions. We examined four possible solutions to the liability insurance barrier this winter:

- 1) A legislative solution, as we see here
- 2) Pole owners accept the \$400,000 limit pursuant to the Maine Tort Claims Act
- 3) Maine Municipal Association (MMA) provides a \$5,000,000 pooled insurance option to members
- 4) Pole owners accept the liability insurance provided by the ISP partner for the project

Each of these solutions presents its own unique set of challenges that need to be addressed. Most notable is the possibility of MMA providing a pooled insurance option to their members. In conversations with MMA, they could only provide a pooled option for the \$5 million policy, not the \$10 million liability policy. There are also several specific contract details regarding immunity and risk priorities that MMA expressed as problematic.

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As we continue to explore solutions to this specific barrier for municipally-owned projects, MCA is proactively identifying expenses to be included in grant funding to minimize unintended issues after the award. While this will not decrease the actual costs, it will ensure that municipalities have accounted for the expense when designing and scoping their project.

This is a complicated issue without a clear solution. As written, we are concerned that limiting the insurance coverage to the Maine Tort Claims Act potentially opens the municipalities up to greater risk if their insurance coverage isn't sufficient in the case of a catastrophic loss situation. The Federal Communications Commission, the Maine Legislature and the Public Utilities Commission all strive for non-discriminatory access to poles. In this case, liability insurance is a unique barrier to municipally owned projects, given their small scale, narrow profit margins, and single-project design. We are eager to find a solution to help ensure the viability of municipally-owned networks, while reducing the upfront costs they face. However, we want to ensure the solution doesn't inadvertently create more risk.

Thank you for your consideration and attention to this critical issue. The Maine Connectivity Authority will be available for the work session.

In Service,

Andrew Butcher
President