



State of Maine
Office of the Public Advocate
112 State House Station, Augusta, Maine 04333-0112
(207) 624-3687 (voice) 711 (TTY) www.Maine.gov/meopa

Paul R. LePage
GOVERNOR

Timothy R. Schneider
PUBLIC ADVOCATE

March 7, 2017

Chairman Woodsome, Chairman Berry and Members of the Energy, Utilities and
Technology Committee,

The Office of the Public Advocate testifies in support of L.D. 406, An Act to Amend
the Law Regarding Joint Use of Certain Utility and Telecommunications Infrastructure.
This bill includes common sense changes to bring Maine’s pole attachment regulations into
the 21st century, and should address concerns that have hindered efforts to expand
broadband access in Maine.

Key Points:

- Affordable, predictable access to poles is essential to making sure broadband providers can compete to expand broadband access.
- The bill gives the PUC clear authority to set rules governing all aspects of pole attachment, rather than resolving disputes on a case-by-case basis.
- The bill clarifies that broadband and dark fiber providers have the right to attach to poles, catching Maine up to changes in federal law.

Pole attachment may sound boring, but the ability of broadband providers to have affordable, timely and predictable access utility poles is critical to deploying broadband. While we have deregulated much of the telecommunications space to expand competition, utility poles remain a natural monopoly: duplicating the existing utility pole infrastructure would be economically inefficient and very expensive. As a result, broadband providers who

want to expand broadband service in Maine will need to attach to utility poles owned or controlled by other entities—in some cases, their competitor. We regulate pole attachment to make sure that utility poles can't be used to control access to customers and therefore the marketplace.

While there are many factors that contribute to Maine's broadband challenges, the state's antiquated pole attachment rules are clearly part of the problem. Maine's existing statute and rule governing pole attachment are more than 20 years old, so they don't explicitly allow attachment by broadband and dark fiber providers. The statute also only gives the Commission explicit authority to set rules on the rates that may be charged for attachment, and not on the terms and conditions of such attachment. The rule doesn't provide a framework for entering into agreements, timelines for obtaining an agreement, or assessing reasonable costs for the right to attach to the pole. Experience has shown that without clear Commission rules governing reasonable pole attachment terms, conditions and practices, companies that want to provide broadband service face unnecessary and unpredictable costs and delays resulting from pole attachment disputes that hinder the expansion of broadband networks.

We've known this is a problem in Maine for a while. The ConnectME Authority first identified pole attachment as a barrier to broadband deployment in its 2012 Annual Report, noting that "the cost and time of make-ready work . . . cause unnecessary delay and higher cost for the expansion of infrastructure to serve the most unserved areas of the state."¹ The Broadband Infrastructure Deployment Working Group, in its 2014 report to this committee, recommended reforms to the pole attachment rules, noting that "the potential for obstacles or unexpected costs and delays figures into the business plans of new broadband providers, and it discourages new investment."² And in 2015 testimony to this Committee in the 127th

¹ ConnectME Authority, *Annual Report on the Activities of the ConnectME Authority*, at 16 (Jan. 1, 2014); see also ConnectME Authority, *Annual Report on the Activities of the ConnectME Authority*, at 19 (Jan. 1, 2013); both available at: <http://www.maine.gov/connectme/about/reports.shtml>.

² Broadband Infrastructure Deployment Working Group, Report to the Joint Standing Committee on Energy, Utilities and Technology, and the Joint Standing Committee on Transportation, at 12-13 (Feb. 2014), available at: <http://www.maine.gov/connectme/digonce/docs/Dig%20Once%20Workgroup%20Report%201-31-14%20Final.pdf>.

Legislature, the Commission observed that it was time for a fresh look at its pole attachment rule.³

In June 2015, our office accepted the Commission's invitation, and filed a request with the Commission to open a rulemaking to update the pole attachment rules. A copy of this request, which provides a (relatively) succinct background on pole attachment regulation in Maine, is attached to this testimony. The Commission declined our request to open a rulemaking, and instead opened a Notice of Inquiry inviting parties affected by our rulemaking request to offer their experience with pole attachment. The filings submitted by a wide array of telecommunications providers in that docket further confirmed the need for reform to Maine's pole attachment rules.

We understand that the Commission submitted this bill in part to provide certainty regarding the extent of its statutory authority over pole attachment. With this authority, the Commission could then draft rules to address the concerns identified in its Notice of Inquiry. The bill gives the Commission clear authority to craft general rules regarding pole attachment, taking it outside the context of particular disputes. While we believe the Commission has authority to craft such rules now, this bill would eliminate any legal uncertainty and save everyone time and money. It may be helpful for the Legislature to provide additional guidance to the Commission in drafting any pole attachment rules, for example, to ensure that the rules further the state's broadband policy set forth in 35-A M.R.S. § 9202-A.

The bill also explicitly allows attachment by all the entities that have pole attachment rights under federal law. This long overdue update catches Maine up to the last twenty years of telecommunications innovation, allowing access to broadband and dark fiber providers, among other entities. It would also eliminate any legal uncertainty around the Commission's assertion of jurisdiction over pole attachment in light of recent FCC rulings. There is a strong argument that existing law and rules fall short of the state certification required by the FCC to engage in regulation of pole attachments. Federal law requires the state to certify

³ Maine Public Utilities Commission, Testimony on LD 1185, An Act to Establish the Municipal Gigabit Broadband Network Access Fund (Apr. 21, 2015).

that it has issued and made effective regulations implementing the state's regulatory authority over pole attachments. Not explicitly allowing attachments by wireless, dark fiber and broadband-only providers may nullify the state's certification.

This bill would clarify and solidify the Commission's authority to regulate pole attachments, allowing for its certification of jurisdiction to the FCC to remain valid. The members of this Committee understand the urgent need to support the expansion of broadband throughout the state. Passing this legislation is a simple step that will address a significant obstacle to such expansion, increase competition by allowing for a more streamlined, fair and transparent process for telecommunications providers who seek attachment rights to Maine's utility poles.

Thank you for your attention and consideration of this testimony. The Office of the Public Advocate looks forward to working with the Committee on LD 532, and will be present at the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,



Timothy R. Schneider
Public Advocate