

COPY

**Memorandum of Understanding for
Overhead Utilities/MaineDOT/AGC Maine
February 25, 2009**

The MaineDOT, herein referred to as the DOT, the overhead utility industry, herein referred to as the UTILITIES, and the Associated General Contractors of Maine, herein referred to as AGC Maine, agree to the following facts:

1. DOT and the UTILITIES each have public service responsibilities that involve extensive capital infrastructure and both operate under considerable legislative and regulatory oversight.
2. The UTILITIES are authorized to occupy the public rights of way through the permit process as established under 35A, MSRA.
3. The DOT has the authority to order overhead lines to be relocated within the right of way as needed when they are engaged in a transportation improvement project.
4. When DOT and the UTILITIES establish clear expectations of each other, maintain open channels of communication, thoroughly coordinate their activities and cooperate in carrying out utility relocation, investment outcomes become more predictable, risk is lowered and overall costs to DOT and the UTILITIES are reduced.
5. DOT and the UTILITIES must continually adjust to changes in organization, programs, mission, regulation and personnel.
6. The operating context for the DOT and the UTILITIES, as summarized above, recommends the execution of a joint Memorandum of Understanding (MOU), to be updated as needed, that establishes mutually agreed upon policies and procedures for accomplishing utility relocations required by DOT initiated transportation improvements.

The DOT, the UTILITIES and AGC Maine agree to the following policies and procedures for accomplishing utility relocations required by DOT initiated transportation improvements.

I. General Operating Principles and Policies:

- A. Utility Accommodation Policy -The DOT has adopted a Utility Accommodation Policy, as contained in 17-229 CMR Chapter 210, with an effective date of 2/19/2002, and anything contained herein is subject to those Rules and all other applicable Maine laws. In order to adequately accommodate overhead utility lines when a DOT sponsored transportation improvement project is being undertaken, it is the policy of the DOT to acquire sufficient property rights to allow the UTILITIES to place their poles consistent with the project design and to accomplish adequate trimming for immediate needs as provided herein. The property rights acquired by DOT may be a combination of fee acquisition, permanent easements and temporary easements.
- B. Problem Solving -When the DOT is unable to acquire sufficient property rights to meet the needs of the UTILITIES, including anchoring, they will explore with the UTILITIES, prior to acquiring the right-of-way, alternative transportation and/or overhead utility designs to adopt to mitigate any impasse. In order to enhance coordination and improve communication, right-of-way officials for the DOT and the UTILITIES will conduct joint visits when both are making offers to abutting property owners.

- C. Safety - All signers of this MOU share the goal of accomplishing utility relocations in the safest possible manner for all parties. This includes providing an adequate safe working area for the construction contractor.

II. Coordination, Cooperation and Communication (CCC):

- A. CCC - Throughout the entire project development process, planning through construction, the DOT will share project information, even when it is preliminary and subject to change, to support early coordination. In exchange, the UTILITIES will provide enough information to DOT so the project can be properly designed, including securing the right-of-way needed to accommodate the relocation of overhead utilities. UTILITIES will be provided adequate notification of meetings to allow them to participate in a reliable and meaningful way and the UTILITIES agree to attend these meetings.
- B. Existing and planned right-of-way to meet DOT's and UTILITIES' needs - The information provided by DOT during the preliminary project development phases should include the expected right-of-way for the new highway facility based on both the highway project needs and the UTILITIES' needs for relocated facilities. In addition to providing adequate space for installing the utility lines, an additional 8 feet from the furthest line from the highway centerline will also be provided for trimming. Where present, the electric line owner will be responsible for vegetation management within this 8 foot offset. If the project plans and utility plans fail to satisfy guying requirements, DOT and the UTILITIES will work jointly and collaboratively with abutting owners to resolve these deficiencies or adopt an alternative design (see I-B).
- C. Constructability reviews - Whenever a constructability review of a project is scheduled by the DOT in partnership with the contracting industry, consideration should be given to inviting UTILITIES to participate. This would be appropriate whenever utility relocation work is or could be a critical part of the constructability of the project.

III. Project Utility Agreements:

- A. Definition - For each DOT project that requires utility facilities to be relocated, a Project Utility Agreement (PUA) will be developed, in a form substantially the same as the PUA attached as Appendix A, between the DOT and the UTILITIES (the Pole Owner and all Attaching Entities are the "UTILITIES" that will execute the PUA) that identifies facilities to be relocated. This agreement will state the work to be done, who will do the work, when it will begin, how long it will take to be completed and what, if any, remedies exist in the event of non-performance of a signatory to the PUA. This information will be included in the PUA for all UTILITIES. Each UTILITY will execute the PUA and will specify the person in upper management responsible for resolving disputes should they occur. To support the development of the PUA, Preliminary Design Report plans, accompanied by a schedule to assure timely completion of the PUA, will be made available to the UTILITIES as early as possible, with the goal being plan delivery at least 6 months prior to the advertising date. In the event of extenuating circumstances different

lead times will be established as mutually agreed to by all the parties to the PUA. DOT will rely on the executed PUA as a source of schedule information to be used in their construction bid documents. The PUA is the final product of an effective utility coordination process and it will be executed no less than 60 days before advertising the project unless otherwise mutually agreed to by all of the parties to the PUA.

- B. Coordination with Attaching Entities - In the event that the identified Attaching Entities are not responsive to DOT in meeting the project schedule the Pole Owner will facilitate the development and signing of the PUA by the Attaching Entities or will take responsibility for the performance of the Attaching Entities.

IV. Construction:

- A. Advance utility relocation - Consistent with the PUA, utility relocation work will be completed to the extent possible and practicable before the advertisement and award of the construction contract. This will maximize the work efficiency of both the utility company(ies) and the construction contractor. If utility relocation work, completed consistent with a PUA, needs to be revised due to a request by DOT, the utility company will be reimbursed for the cost associated with those revisions.
- B. Coordination, cooperation and communication during the construction phase - The UTILITIES, DOT and the construction contractor must openly communicate in order to assure that the utility relocation and any related transportation improvement work are carried out as scheduled and agreed to. Tools that may be used to promote open communication include preconstruction conferences and periodic progress meetings. Additionally, all parties should be informed as to the chain of command to be used in seeking the resolution of any disputes that may arise.

V. Process for protecting new utility facilities:

A clear line of communication will be established to assure that any new or expanded utility facilities are not required to be relocated shortly after being constructed by a utility company. Planned utility improvements will be reviewed and commented on by the DOT to assure that DOT does not have current and viable plans for highway reconstruction work that would cause the new facilities to be relocated again for at least five years.

VI. Continuing Coordination:

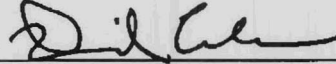
- A. Policy level coordination - This MOU is intended to address normal project development and delivery. There will be occasions, like the proposed 2009 Stimulus Bill, that would require the signers of this MOU to mutually agree to accelerate the timelines stipulated herein in order to meet externally imposed project delivery deadlines. The MOU will be continuously reviewed by the project managers that utilize it. By the 11 month anniversary of the execution of this MOU, requested revisions to the

MOU shall be provided to senior management. Annually, the senior management of DOT and the UTILITIES will meet to discuss requested revisions and adopt those revisions to the MOU deemed mutually acceptable. This MOU remains in force until replaced or amended.

VII. **Approval:**

This MOU has been approved and signed by the parties below and becomes effective on the day first written.

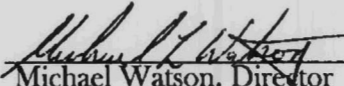
DATE:



David Cole, Commissioner
Maine Department of Transportation

DATE:

2/25/09



Michael Watson, Director
Maintenance Engineering
Central Maine Power Company

DATE:

Gerard Chasse, Vice President,
T&D Operations
Bangor Hydro-Electric Company

DATE:

TDS Telecom

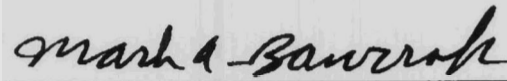
DATE:

Tim Brown, Vice President of
Engineering & Operations
Maine Public Service Company

DATE:

Charles Barrow, VP - Engineering & Operations
Fairpoint Communication

DATE:



John O'Dea, Executive Director
Associated General Contractors of Maine

DATE:

Time Warner Cable


DATE:

Lincolntonville Communications, Inc.
Shirley P. Manning, Pres./Gen. Manager

VII. Approval:

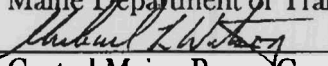
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DATE: 1/25/09



David Cole, Commissioner
Maine Department of Transportation

DATE: 2/25/09



Central Maine Power Company

DATE:


Bangor Hydro-Electric Company

DATE:

TDS Telecom

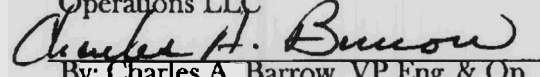
DATE:

DATE: 1/27/09

Maine Public Service Company


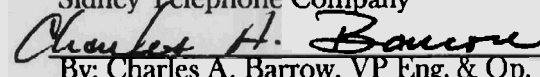
By: Charles A. Barrow, VP Eng. & Op.
Northern New England Telephone
Operations LLC

DATE: 1/27/09



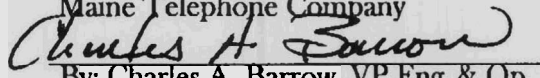
By: Charles A. Barrow, VP Eng. & Op.
Sidney Telephone Company

DATE: 1/27/09



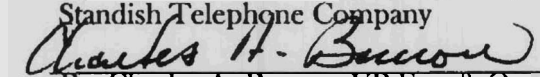
By: Charles A. Barrow, VP Eng. & Op.
Maine Telephone Company

DATE: 1/27/09



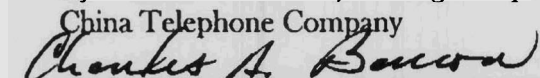
By: Charles A. Barrow, VP Eng. & Op.
Standish Telephone Company

DATE: 1/27/09



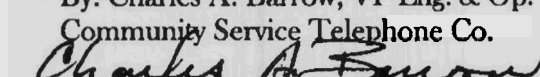
By: Charles A. Barrow, VP Eng. & Op.
China Telephone Company

DATE: 2/27/09



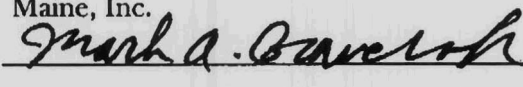
By: Charles A. Barrow, VP Eng. & Op.
Community Service Telephone Co.

DATE: 1/27/09



By: Charles A. Barrow, VP Eng. & Op.
Northland Telephone Company of
Maine, Inc.

DATE:



Associated General Contractors of Maine

DATE:

Time Warner Cable

DATE

Oxford Networks

VII. Approval:

This MOU has been approved and signed by the parties below and becomes effective on the day first written.

DATE:

David Cole, Commissioner
Maine Department of Transportation

DATE:

Central Maine Power Company

DATE:

Bangor Hydro-Electric Company

DATE:

TDS Telecom

DATE:

Maine Public Service Company

DATE:

Fairpoint Communication

DATE:

Associated General Contractors of Maine

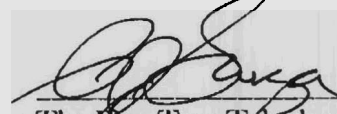
DATE:

Time Warner Cable

DATE

Oxford Networks

DATE: February 20, 2009

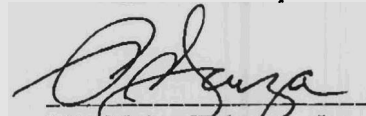


The Pine Tree Telephone & Telegraph Co.

DATE: February 20, 2009

aph & Telephone Co.

DATE: February 20, 2009



Mid-Maine Telecom, Inc.

MOU shall be provided to senior management. Annually, the senior management of DOT and the UTILITIES will meet to discuss requested revisions and adopt those revisions to the MOU deemed mutually acceptable. This MOU remains in force until replaced or amended.

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TDS Telecom

DATE:

Maine Public Service Company

DATE: 2/25/09

Shirley Manning
Lincolnton Networks, Inc.

DATE: 2/25/09

Shirley Manning
Lincolnton Communications, Inc.

DATE: 2/25/09

Shirley Manning
Tidewater Telecom, Inc.

DATE:

Fairpoint Communication

DATE:

Associated General Contractors of Maine

DATE:

Time Warner Cable

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DATE:

TDS Telecom

DATE:


Maine Public Service Company
Tim Brown - Vice President of Engineering and Operations

DATE:

Fairpoint Communication

DATE:

Associated General Contractors of Maine

DATE:

Time Warner Cable

DATE

Oxford Networks

APPENDIX A

**Draft Project Utility Agreement
Prepared Pursuant to the Terms of the
February 25, 2009
Memorandum of Understanding for Overhead Utilities**

Project Name/Description:

Project Identification Number:

Location (municipality/county):

Scheduled Advertise Date:

The purpose of this Project utility Agreement (PUA) is to state the work to be done, who will do the work, when it will begin, how long it will take to be completed and what, if any, remedies exist in the event of non-performance of a signatory to the PUA. This information will be included in the PUA for the pole Owner, herein referred to as the OWNER(S), each entity attaching to the poles, herein referred to as the ATTACHING ENTITIES. The OWNER and each ATTACHING ENTITY will execute the PUA and will specify the project manager and the person in upper management responsible for resolving disputes should they occur.

This Project Utility Agreement (PUA) for the relocation of facilities as described herein is by and between the Maine Department of Transportation, herein referred to as DOT, and the following pole owner(s) and attaching entities herein referred to as the OWNER(S) and ATTACHING ENTITIES listed in the sequence that they need to relocate to the designated new facilities.

Pole OWNER(S) :

1. Description of relocation work to be done by the OWNER (This could be a simple pole list, plans showing relocated lines or any other appropriate description of the work the OWNER is responsible for.)
2. Work Schedule for OWNER (This would include when the work will begin, perhaps tied to a construction contractor milestone such as completion of fills and cuts, and the duration for the OWNER's work to be completed.)

ATTACHING ENTITY #1:

1. Description of relocation work to be done by the ATTACHING ENTITY #1 (This could be a simple pole list, plans showing relocated lines or any other appropriate description of the work the OWNER is responsible for.)
2. Work Schedule for ATTACHING ENTITY #1 (This schedule will likely be tied to the completion of pole installation by the OWNER and will include how long it will take for the work to be completed.)

ATTACHING ENTITY #2 and any additional ATTACHING ENTITIES in sequence
(provide the same kind of information as is shown for ATTACHING ENTITY #1).

The OWNER(S) and ATTACHING ENTITIES listed above have installed and are operating and/or maintaining facilities by permit or license which in connection with said project will be displaced, relocated and/or altered to the extent described herein or shown on attached/referenced plans. These displacements, relocations and/or alterations are integral to this project and are to be accomplished according to the schedule set forth herein or as attached which specifies the phases of the project contractor's work and the sequence and timing of work to be accomplished by OWNER(S) and ATTACHING ENTITIES contingent upon contractor schedule performance. If there are any changes to the agreed to schedules contained herein all parties should be notified as soon as possible and appropriate revisions to this PUA developed and agreed to in writing.

It is agreed that the existing facilities of the OWNER(S) and ATTACHING ENTITIES shall be maintained in service until the replacement facilities are completed and operational.

Any other special conditions or considerations affecting this agreement between the DOT and the OWNER(S) and ATTACHING ENTITIES are attached.

In witness whereof, the DOT, the OWNER(S) and ATTACHING ENTITIES have caused this AGREEMENT to be executed by their duly authorized officials as of the — day of —, 20—.

Approved by MaineDOT:

Approved by OWNER(S):

Approved by ATTACHING ENTITIES individually: (Note - need as many approvals and agreements as there are attaching entities on the poles. Each signatory must designate their respective member of upper management responsible for dispute resolution)

Attachment #1

COMMUNICATION ESCALATION

In the event of a Communications Issue, defined as disagreements, matters in question, and differences of opinion between the DOT and the OWNERS or ATTACHING ENTITIES, including failure of a party to keep any written agreement, the following procedures will be followed:

1. When a party to a PUA becomes aware of a Communication Issue, a written "Notice of Issue for Consideration" shall be sent by the aggrieved party to the DOT Project Manager and the utility representative assigned to the project.
2. The parties receiving the "Notice of Issue for Consideration" shall negotiate in good faith to attempt to resolve the issue within 10 business days of receiving the Notice.
3. Should negotiations fail, the Communication Issue will be transmitted to the Program Manager and the senior utility manager within five (5) business days.
4. The Program Manager and the senior utility manager will meet within five (5) business days and resolve the Communication Issue. The Program Manager's decision is final and binding on utilities and represents the DOT position on the issue.
5. If the utility desires additional consideration, a written request for a meeting will be sent to the Director of Project Development within five (5) business days after the Program Manager's written decision. The Director will meet within five (5) days of receiving the request and will render a final DOT position. All deadlines may be extended by mutual written consent signed by both parties.

Attachment #2

REIMBURSEMENT

Should either DOT or the OWNER(S) and ATTACHING ENTITIES incur extra costs due to actions or lack of action by the other parties to this agreement due consideration will be given to cost reimbursement.