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

The Office of the Public Advocate (“OPA”) testifies neither for nor against LD 1192 “An Act To Establish Municipal Access to Utility Poles Located in Municipal Rights-of-way” which bill amends the utilities laws to provide access by municipalities to facilities located in the municipal right-of-way in the interest of public health, safety and welfare. The bill also establishes the preservation of space for municipal attachments to shared-use poles by exempting municipalities from expenses assessed by joint use entities when the attachment is made for any purpose.

LD 1192 would enact legislation that would make it possible for municipalities to avoid paying the make-ready costs associated with attaching to utility poles “for any purpose.” This would be a significant change in how the process currently works. Under Chapter 880 of the Public Utilities Commission’s (“PUC”) rules, a municipality is exempt from paying make ready costs when it is attaching to utility poles. But under the Commission rule, this exemption only applies to the extent that the municipality intends to attach to the poles for public safety purposes, such as emergency communications. On March 22, the Commission issued a Notice of Rulemaking to continue the effort to clarify pole attachment processes, including the definition of make-ready costs and the extent of the municipal exemption for attachment costs.

Pursuant to the current statutory and regulatory scheme, a municipality that intends to attach to the poles to run fiber to provide broadband services for its residents would have to pay the associated make ready costs to attach to the poles.

The OPA has been supportive of the municipal exemption for public safety purposes. This is a narrow exemption and supports municipalities in their police power role. Even while supporting this exemption, however, the OPA has urged caution to avoid unfair cost shifting to consumers and ratepayers.

It is quite a different matter to support municipalities that want to hang fiber to support expansion of broadband. Generally, municipal broadband projects have required payment to the pole owners for the attachment costs. Make ready costs are indeed quite expensive. If the municipalities are able to avoid those costs, it would, essentially, be a subsidy for broadband expansion that will be paid for by consumers and ratepayers because the utilities that own the poles are going to pass those costs along to their customers.

It is the opinion of the OPA that you should proceed with caution on this bill.

Thank you for your time, attention and consideration of this testimony. The Office of the Public Advocate looks forward to working with the Committee on LD 1192, and will be present at the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,



Barry J. Hobbins
Public Advocate