

Maine Public Utilities Commission

Interim Report Pursuant to Resolves 2023, ch. 81, Resolve, to Study the Effect of Current Laws and Rules on the Expansion of Broadband



**Submitted to the Joint Standing Committee on
Energy, Utilities and Technology**

February 15, 2024

I. Summary and Introduction

This interim report is intended to update the Legislature’s Joint Standing Committee on Energy, Utilities, and Technology (the “EUT Committee”) on the Commission’s progress toward gathering pertinent information and data to address the questions contained in Resolves 2023, ch. 81, Resolve, to Study the Effect of Current Laws and Rules on the Expansion of Broadband (the “Resolve”). This interim report explains the history of pole attachments in Maine and describes in detail the efforts of the Maine Public Utilities Commission (the “Commission”) over the past decade to modernize the pole attachment regime in Maine. This interim report also summarizes all of the input received from entities involved in owning and attaching to poles in Maine. Finally, this interim report appends the full versions of all comments filed with the Commission on this issue. The Commission does not have any specific recommendations or suggested legislation at this time.

II. Commission Pole Attachment Proceedings

A. Telecommunications in Maine until 2015

Prior to 1978, the regulation of pole attachments (hereinafter “attachments”)¹ to joint-use utility poles (hereinafter “poles”)² occurred at the state and local level and poles were primarily owned by Incumbent Local Exchange Carriers (“ILECs”) (*i.e.*, the legacy telephone utilities) and electric Transmission and Distribution Utilities (“T&Ds”) (*i.e.*, the legacy electric utilities). As the cable television industry emerged, some pole owners began to charge cable television companies “rent” for attaching to poles, and those rents were at monopoly rates.

In 1978, Congress passed the Pole Attachment Act,³ which added Section 224 ([47 U.S.C. § 224](#)) to the Communications Act of 1934, granting the Federal Communications Commission (the “FCC”) “authority to regulate the rates, terms, and conditions governing pole attachments, requiring that such rates, terms and conditions be just and reasonable.”⁴ In so doing, “Congress sought to constrain the ability of [pole owners] to extract monopoly profits from cable television

¹ A "pole attachment" or "attachment" is the physical connection of a facility that a joint-use entity uses to provide communications or electric service. [65-407 C.M.R. ch 880](#), § 1(S). A “Joint-use entity” is a public utility, voice service provider, wholesale or retail competitive local exchange carrier, cable television system, unlit fiber provider, telecommunications service provider or information service provider. *Id.* § 1(N) ([35-A M.R.S. §711\(7\)\(B\)](#)).

² A "joint-use utility pole" is a utility pole on which there are circuit or electric conductor attachments by an electric utility and attachments by one or more joint-use entities. Joint-use utility poles do not include poles whose sole purpose is supporting electrical transmission conductors as defined by the Federal Energy Regulatory Commission. However, if an electric utility under-builds a transmission line with distribution, those poles are considered joint-use utility poles. [65-407 C.M.R. ch 880](#), § 1(O).

³ An Act to Amend the Communications Act of 1934 to Provide for the Regulation of Utility Pole Attachments, [Pub. L. 95-234, 92 Stat. 33](#) (1978).

⁴ *In the Matter of Amendment of Commission’s Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, [FCC 01-170](#), Consolidated Partial Order on Reconsideration, ¶ 7 (Rel. May, 25, 2001).

system operators in need of . . . space for pole attachments.⁵ The Pole Attachment Act also allowed states the right to opt out of the federal pole attachment regulation process through a “reverse preemption” provision and instead have state public utility commissions regulate pole attachments at the state level.⁶ Twenty-three states and the District of Columbia have opted out of federal regulation.⁷ Maine is one of the reverse pre-emption states regulating pole attachments and the complaint process through its Chapter 880 Rule (65-407 C.M.R. ch. 880).⁸

Over the years, the telecommunications landscape in Maine and across the country changed dramatically.

- The Telecommunications Act of 1996 increased competition in the telecommunications services marketplace.
- Competitive Local Exchange Carriers (“CLECs”) arrived in the marketplace.
- Cable television companies began offering voice and broadband services.
- Legacy telephone companies began offering broadband services.
- The mobile wireless industry began offering voice service throughout Maine.
- Municipalities began offering broadband service to their communities.

As more diverse entities began offering communications and broadband services, it became clear that, by 2015, Maine’s pole attachment rules as written were not equipped to regulate the evolving telecommunications marketplace.⁹ Accordingly, the Commission embarked on what is now a nearly nine-year effort to modernize pole attachment processes in Maine encompassing 10 separate proceedings (six docketed inquiries and four rulemakings) and a report to the Legislature.

B. Pole Attachment Regulation from 2015 Onward

For the first time in 22 years, the Commission undertook significant revisions to Maine pole attachment regime, starting with an inquiry into the Commission’s pole attachment rules.¹⁰ Since 2015, the Commission has worked with pole owners, attachers, and various interested parties to address significant issues concerning pole attachments. The Commission has monitored changes to federal pole attachment rules and, when it made sense for Maine, implemented those changes in a manner that best fits Maine’s utility landscape. The Commission’s partners in this endeavor have included electric utilities, telephone providers, cable companies, wireless companies, the Maine Office of the Public Advocate (the “OPA”), the

⁵ *Id.*

⁶ 47 U.S.C. § 224(c).

⁷ [FCC Public Notice, DA 22-630 \(June 13, 2022\)](#).

⁸ *Id.*

⁹ Prior to the amendment process that began in 2015, the Commission had not updated its pole attachment rules since 1993. *Public Utilities Commission, Re: Proposed Amendments to Chapter 88, Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure (Chapter 880)*, Docket No. 93-087, Order Adopting Rule; Policy and Basis Statement (Oct. 18, 1993).

¹⁰ *Maine Public Utilities Commission, Inquiry into Amendment of Chapter 880 of the Commission’s Rules*, Docket No. 2015-00295, Notice of Inquiry (Sept. 28, 2015).

ConnectME Authority, the Maine Connectivity Authority, the Maine Municipal Association, and small Maine communities with an interest in offering community-based broadband.

The Commission has initiated multiple inquiries to learn what stakeholders need to advance Maine's broadband deployment and to make the attachment of facilities to utility poles more efficient. To implement these key areas, the Commission has completed four rulemaking proceedings to amend Chapter 880 to address: presumptively reasonable pole attachment terms and conditions, the presumptively reasonable rate for pole attachments, the so-called municipal exemption, one touch make ready ("OTMR"), how to address replaced and abandoned poles, and the implementation of a pole attachment database covering the vast majority of poles in Maine.

1. Chapter 880 Amendments Regarding Prescriptive vs. Presumptive Terms and Conditions and the so-called "Municipal Exemption"

2015 Inquiry (Docket No. [2015-00295](#))

On June 29, 2015, the OPA made a filing requesting that the Commission re-examine Chapter 880 of the Commission's Rules. The stated view of the OPA was that Chapter 880, after more than twenty years without amendment, was an imperfect vehicle for the regulation of pole attachments.

On September 28, 2015, the Commission opened an Inquiry in Docket No. 2015-00295 to examine the issues raised by the OPA. In its Notice of Inquiry, the Commission largely agreed with the OPA's view that the regulatory scheme in Maine regarding utility pole attachments was a subject ripe for reexamination. To that end, the Commission committed to an examination of the issues raised by the OPA and committed to exploring ways to facilitate the use of utility poles by entities that could deploy and expand broadband throughout the state.

The Commission put forward several specific questions about federal and state law regarding utility pole attachments, including the rights of non-utility attachers (*e.g.*, un-lit ("dark") fiber and broadband-only providers) under both Maine and federal law. In addition, the Commission asked interested persons to comment on the specific suggestions made by the OPA to amend Chapter 880. Over the course of the next several months, the Commission received detailed comments from several parties, including utilities and non-utility attachers.

After receiving the comments, the Commission Staff crafted a proposed amended Chapter 880 that incorporated the comments of the parties, while also achieving the goals of the Commission as stated in the Notice of Inquiry regarding the facilitation of broadband expansion via modern, efficient, and flexible pole attachment regulations.

As mentioned above, much of the discussion in the Inquiry centered on the Commission's statutory authority to prescribe terms and conditions for attaching to utility poles; specifically, the breadth of Commission's authority, and limitations thereto, contained in [35-A M.R.S. § 711](#) ("Section 711"). Section 711, as written at the time of the Inquiry, allowed the Commission to order the joint-use of utility poles, and to "prescribe reasonable compensation and reasonable terms and conditions for the joint-use." This authority, however, was granted in the context of

the resolution of disputes regarding a specific utility pole attachments or attachers. Put another way, the authority of the Commission under Section 711 to require pole owners to allow entities to attach to utility poles—and to set the terms and conditions of such attachments—could only arise during a dispute before the Commission. Given the above, a pole owner could have had grounds to challenge the authority of the Commission to promulgate rules of general, first-instance, applicability regarding pole attachments if the Commission based that authority solely on Section 711.¹¹ Given this uncertainty, the Commission's view was that guidance from the Legislature on this point would be helpful.

Further, Section 711, as then written, also specifically defined a limited set of entities that were permitted to bring a utility pole attachment dispute to the Commission: public utilities, voice service providers, one specific dark fiber provider, wholesale competitive local exchange carriers, and cable television systems.¹² Section 711 excluded modern-day utility pole attachers such as all un-lit, or "dark," fiber providers beyond the one defined in Title 35-A, fiber-based broadband-only providers, and fixed wireless providers. Comments submitted in the Inquiry suggested that the entities excluded from Section 711 had been having a difficult time obtaining permission from pole owners to attach to poles, and, when they were able to attach, were often subject to costs that exceed those of the entities then included in Section 711.

It was the Commission's view that these provisions of then-current Maine law raised questions regarding the Commission's authority to amend Chapter 880 to apply to modern communications technology and encourage the expansion of broadband Internet service in Maine. The relatively narrow bounds set by Maine statutory provisions at the time of the Inquiry, on the one hand, and

¹¹ The Commission may also have separate authority to promulgate such rules under its general rulemaking authority in [35-A M.R.S. § 111](#). Section 111 states: "The commission may adopt rules and may employ assistance to carry out its responsibilities under this Title."

¹² The colloquial use of "dark fiber provider" describes an entity that furnishes fiber optic cable through which no light is transmitted and no signal is being carried. However, "dark fiber provider" is not used colloquially in Maine law. Title 35-A defines "dark fiber provider" as follows:

Dark fiber provider" means a person, its lessees, trustees, receivers or trustees appointed by any court, owning, controlling, operating or managing federally supported dark fiber that:

A. Offers its federally supported dark fiber on an open-access basis without unreasonable discrimination as confirmed in a schedule of rates, terms and conditions filed for informational purposes with the commission;

B. Is required to conduct its business subject to restrictions established and enforced by the Federal Government pursuant to Title VI of the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (2009) and to grant security interests to the Federal Government under that Act; and

C. Does not transmit communications for compensation inside this State.

[35-A M.R.S. § 102\(4-A\)](#). This definition limits "Dark Fiber Provider" to one entity in Maine: Maine Fiber Company. Maine Fiber Company operates the so-called "three ring binder" fiber network.

the ongoing Legislative interest in the adequacy of Maine's broadband deployment on the other, suggested to the Commission that the time was ripe for the Legislature to revisit this matter and create a modern, equitable approach to right-of-way access via pole attachment.

Accordingly, the Commission closed the Inquiry and declined, at that time, to commence a rulemaking proceeding to amend Chapter 880. The Commission's decision, however, was without prejudice to any future inquiry or policy actions by the Legislature.

2017 Inquiry (Docket No. [2017-00183](#))

After the closure of the Commission's Inquiry in Docket No. 2015-00295, the Legislature addressed some of the Commission's concerns, and amended 35-A M.R.S. §§ 711, [2301](#), and [2501](#). [P.L. 2017, ch. 199](#), "An Act to Amend the Law Regarding Joint Use of Certain Utility and Telecommunications Infrastructure" (the "Infrastructure Act"). The Infrastructure Act expanded the types of entities that could bring pole attachment disputes to the Commission, thus, in effect, widening the universe of entities who have a "right" to attach to utility poles in Maine. Those "new" entities included all telecommunications service and information service providers as those terms are defined in Federal Law, as well as un-lit or "dark" fiber providers and broadband-only providers.

Given the amendment of the Maine statutes that control pole attachments, the Commission opened a new Inquiry, in Docket No. 2017-00183, to obtain the initial views of interested persons. To aid in the discussion of the issues at hand, the Commission attached a discussion draft, or "strawman" rule to its Notice of Inquiry. The strawman rule was intended to reflect one possible outcome of a future rulemaking proceeding, among a wide range of possible outcomes. The Commission encouraged the parties to not only comment on the strawman rule, but to also provide comment regarding other possible approaches to reforming Maine's pole attachment rule. To further aid in cooperative discussion, the Commission conducted two workshops to discuss changes to the pole attachment scheme in Maine.

2017 Rulemaking (Docket No. [2017-00247](#))

On September 27, 2017, based on a review of Chapter 880, as well as the comments received in the Commission's Inquiries in Docket Nos. 2015-00295 and 2017-00183, the Commission issued a Notice of Rulemaking in Docket No. 2017-00247 that proposed modifications to Chapter 880.

In its proposed Rule, the Commission proposed to add provisions governing the terms and conditions for attachments to joint-use utility poles. These provisions were not then included in Chapter 880. The proposed provisions were based in large measure on then-current FCC rules and the provisions of the "strawman" rule in the Inquiry in Docket No. 2017-00183 and were influenced by the comments received by the Commission in that Inquiry.

Many parties in the Inquiry in Docket No. 2017-00183 expressed a preference for procedures to resolve disputes regarding attachments to joint-use utility poles to be included in Chapter 880. Accordingly, the Commission proposed to add provisions to Chapter 880 that describe the process the Commission will use to resolve such disputes. Additionally, and because of

feedback received in the Inquiry, the Commission proposed provisions regarding the licensing of new attaching entities whereby existing entities would be grandfathered and not require a license.

In addition, throughout Chapter 880, the Commission proposed several non-substantive and editorial changes. These changes were intended to update the Rule to terminology that is currently in use, to correct prior errors in Chapter 880, to clarify certain sections of the Rule, and to import the terms used by the Legislature in the Infrastructure Act.

Finally, the Commission did not propose to substantively alter the current provisions in the Rule regarding rates and cost of service. Section 4 of the Infrastructure Act directed the Commission to adopt rules to address the terms and conditions of joint use by January 15, 2018. Importantly, the Infrastructure Act did not require the Commission to address rates by that date. Given the compressed time frame for the adoption of rules governing terms and conditions, and the complexity of changes to the portions of the Rule that govern rates, the Commission proposed deferring its consideration of amendments to the rate provisions of Chapter 880 until after the adoption of this iteration of the Rule.

The Commission held a public hearing on its proposed amendments to the Rule on December 6, 2017, and received comments from interested persons on or before December 18, 2017.

In its January 12, 2018, Order adopting the amendments to Chapter 880, the Commission clarified that, in response to the Infrastructure Act and despite the Commission's preference that its rules in this regard be prescriptive, the terms and conditions expressed in Chapter 880 would remain presumptive and would be applied by the Commission in any dispute regarding pole attachments. The Commission also stated, however, that it expected that the Chapter 880 terms and conditions would become *de facto* prescriptive in that parties, knowing the rules the Commission will apply in any dispute, would follow the rules as a matter of course.

The Commission also addressed attachments to joint-use utility poles by municipalities in its amendments to Chapter 880, and declined to provide municipalities with unfettered, free-of-charge access to joint-use utility poles for any competitive services such as the provision of Internet service or Internet infrastructure.

2. Chapter 880 Amendments Regarding Rates and the so-called “Municipal Exemption”

2018 Inquiry (Docket No. [2018-00010](#))

On January 17, 2018, the Commission commenced an Inquiry regarding pole attachment rates, and sought input from interested persons on all issues related to the establishment of just and reasonable rate for attachments to joint-use utility poles. Over the course of the proceeding the Commission received general comments regarding pole attachment rates, as well as responses to specific questions regarding different rate formulae and approaches.

2019 Rulemaking (Docket No. [2019-00028](#))

In its 2019 rulemaking, the Commission adopted the FCCs "Cable Rate" formula.¹³ As the provisions of Chapter 880 were then as now presumptive and not prescriptive, pole owners and attachers remained free to negotiate rate agreements that differ from the Cable Rate. The Commission stated that it would, however, apply the Cable Rate in any rate dispute brought before it.

In addition, the Commission amended the portion of the Rule that contains the so-called "municipal exemption." On May 16, 2019 the Governor signed [P.L. 2019 ch. 127](#), "An Act to Establish Municipal Access to Utility Poles Located in Municipal Rights-of-way" (the "Municipal Access Act").¹⁴ The Municipal Access Act amended [35-A § M.R.S. 2524](#) to state that current attachers to any joint use utility pole are responsible for the costs of any make-ready work (including replacement of a pole) that is necessary to accommodate a municipal attachment to a pole for police power purposes, or "[f]or the purpose of providing broadband service to an unserved or underserved area." 35-A M.R.S. § 2524(1), (2). Accordingly, the Commission amended the Rule to conform with the Municipal Access Act and the amended 35-A M.R.S. § 2524.

3. Chapter 880 Amendments Regarding Replaced and Abandoned Poles and One-Touch Make Ready

2019 Report to the Legislature (Docket No. [2019-00223](#))

On May 16, 2019, the Governor signed into law [P.L. 2019, ch. 128](#), "An Act Regarding Utility Poles in Public Rights-of-Way." In that legislation, the Legislature directed the Commission to provide a report to the EUT Committee "regarding orders adopted or other actions taken by the commission during calendar year 2019 to address issues related to abandoned utility poles and associated facilities . . . in the public right-of-way."

To aid the Commission in the preparation of the report to the Legislature, on August 28, 2019, the Commission opened an Inquiry to solicit information and comments from interested persons on a variety of issues including pole owners' terms and conditions or policies and procedures regarding the removal or abandonment of utility poles and/or accompanying facilities or debris, including any time periods for removal, and the number of utility poles that may need to be removed in Maine.

On January 31, 2020, the Commission filed its report with the EUT Committee.¹⁵ The report summarized the input of the participants in the Inquiry, and also summarized the practices in other states regarding abandoned joint use utility poles. The Commission also noted that it intended to further examine the issue in any future revision of Chapter 880.

¹³ The Cable Rate is currently codified at [47 C.F.R. § 1.1406\(d\)\(1\)](#).

¹⁴ The Municipal Access Act became effective on September 19, 2019.

¹⁵ The full text of the Commission's Report can be found at:
<http://www.maine.gov/tools/whatsnew/attach.php?id=2084967&an=1>.

2020 Inquiry (Docket No. [2020-00181](#))

As part of its July 13, 2020, Notice of Inquiry, the Commission prepared a draft rule that described possible changes to Chapter 880 related to OTMR and replaced and abandoned poles in public rights-of-way. The Commission stated that, conceptually, OTMR involved a simplified make-ready procedure where one contractor preforms make-ready work on all attachments at the same time rather than having each attacher sequentially perform make-ready work on their respective attachments, thus "touching" the pole once instead of several times. The Commission explained that OTMR was intended to streamline and accelerate the attachment of facilities to poles. The Commission also noted that the FCC had recently adopted OTMR for states where FCC pole attachment rules apply. The Commission further noted that other states, including Vermont, had adopted OTMR.

The Commission also noted its recent report to the Maine Legislature regarding abandoned poles in public rights-of-way. In concordance with that report, the Commission put forward for discussion language that would require attaching entities to move their attachments to a new pole within a specified time and require pole owners to remove abandoned poles from public rights-of-way also within a prescribed time.

2020 Rulemaking (Docket No. [2020-00281](#))

On November 18, 2020, the Commission commenced a rulemaking proceeding to amend Chapter 880 to implement OTMR in Maine and to craft rules regarding replaced and abandoned poles in public rights of way. Ultimately, the Commission's OTMR provisions largely mirrored those of the FCC, with specific provisions, such as those regarding certain timeframes, tailored to the Maine. In addition, the Commission set specific timeframes whereby attachers must move their attachments from a replaced pole to a newly set pole, and timeframes whereby pole owners must remove a pole after all attachments have been moved to a new pole.

4. Chapter 880 Amendments Regarding Pole Administration

2021 Inquiry (Docket No. [2021-00321](#))

Having completed three phases of its modernization of Maine's pole attachment rules (terms and conditions, rates, and one-touch make-ready), the Commission, on October 18, 2021, opened an Inquiry in Docket No. 2021-00321 on the following broad topics: pole ownership, pole administration, a pole administration database, and allocation of costs for replacement poles. After engaging all interested parties, the Commission narrowed the Inquiry to three primary issues: (1) implementation of the database, (2) participation in the database, and (3) funding of the database. The Commission then engaged with the parties in a series of workshops and written filings to explore these three issues.

2023 Rulemaking (Docket No. [2023-00058](#))

On March 29, 2023, the Commission commenced a rulemaking that ultimately amended Chapter 880 to require participation by pole attachers in any pole management database implemented by

the owners of the majority of poles in Maine. The Commission adopted the amended rule on September 12, 2023.

III. Inquiry Regarding the Resolve

A. Background

During the First Special Session of the 131st Legislature, the Legislature enacted [Resolves, ch. 81](#), Resolve, to Study the Effect of Current Laws and Rules on the Expansion of Broadband (the “Resolve”).

In the Resolve, the Legislature directed that the Commission, in consultation with the Maine Connectivity Authority, study current Maine statutes and administrative regulations that pertain to attachments to joint-use utility poles, and the effect, if any, of those statutes, rules and regulations on broadband expansion in Maine. The Legislature further directed that the study include four specific examinations:

1. An examination of the average time involved for each stage of pole make-ready work, as defined in [35-A M.R.S. § 2524(1)(A)] including the time for joint use pole owners to approve new attachments for tax-exempt municipalities and private companies, and ways to decrease or standardize wait times for attachments;
2. Using readily available information to the extent possible, including pole data that may be available in the electronic pole attachment management system, an estimate of the number of utility poles statewide that could accommodate municipal facility attachments without the need to replace the pole and an assessment of compliance with [35-A M.R.S. § 2524(2)];
3. An assessment of the effectiveness of the commission’s enforcement practices for timely relocation or removal of utility poles that are functionally obsolete, that are in violation of requirements of the federal Americans with Disabilities Act of 1990 or that obstruct current or future municipal infrastructure; and
4. A review of the commission’s current educational resources regarding the rights of municipalities and other entities to attach to shared-use poles and the availability of the [C]ommission’s dispute resolution process, including the effectiveness of such resources.¹⁶

The Legislature further directed that the Commission submit an initial report on this matter to the EUT Committee on or before February 15, 2024, that describes the Commission’s “progress toward addressing each of the elements of the study and any recommendations, including proposed legislation, resulting from the study.”¹⁷

¹⁶ Resolve at 1.

¹⁷ *Id.*

In July 2023, the Commission and the Maine Connectivity Authority commenced bi-monthly meetings to align study priorities and define roles.

On October 18, 2023, the Commission met informally with stakeholders to discuss the Resolve. At the informal meeting, the three largest owners of joint-use utility poles in Maine—Central Maine Power Company (“CMP”), Versant Power (“Versant”), and Consolidated Communications of Northern New England Company, LLC (“Consolidated”)—agreed to provide the Commission with a preliminary assessment of the information they could provide to the Commission to help answer the questions posed in the Resolve and information to aid in the preparation of the report. In addition, the Maine Connectivity Authority agreed to support participation in the process by small pole owners and attachers.

On November 9, 2023, the Commission opened an Inquiry to gather input and information to assist the Commission in preparing reports to the Legislature required by the Resolve. In its Notice of Inquiry, the Commission stated that the Inquiry was intended to provide a convenient means for the receipt of information from stakeholders, for requesting additional information from stakeholders, for notifying stakeholders of Commission progress in developing the report, and scheduling future discussions.¹⁸ The Commission provided the Notice of Inquiry to T&D utilities generally as well as the Commission’s notification list from the most recent rulemaking proceeding to amend Chapter 880 (Docket No. 2023-00058).

Versant and CMP provided initial comments on November 9, 2023, and November 10, 2023, respectively. Their comments generally addressed what data and information Versant and CMP could provide to assist the Commission with answering the questions in the Resolve.

On December 1, 2023, the Commission solicited a similar filing from Consolidated. Consolidated responded to the Commission’s request on December 22, 2023.

In the December 1, 2023, procedural order that requested information from Consolidated, the Commission also provided an opportunity for any interested party to provide the Commission with input regarding their experience with the pole attachment process in Maine, or respond to the filings made to date by Versant, CMP, and Consolidated. In response, the Commission received comments from the OPA (on December 26, 2023), a consortium of cable television providers (the “Cable Providers”) (on January 12, 2024),¹⁹ a consortium of broadband providers (the “Broadband Providers”) (on January 12, 2024),²⁰ and Biddeford Internet Corporation d/b/a GWI (“GWI”) (on January 16, 2024).

On February 2, 2024, the Commission provided another opportunity for interested parties to provide input to the Commission. The Commission received joint comments from Versant and CMP as well as from the Broadband Providers.

¹⁸ *Public Utilities Commission, Inquiry to Facilitate Preparation of LD 1456 Report*, Docket No. [2023-00300](#), Notice of Inquiry at 2 (Nov. 9, 2023).

¹⁹ The Cable Providers are Comcast of Maine/New Hampshire, Inc. and Spectrum Northeast, LLC.

²⁰ The Broadband Providers are CRC Communications LLC, d/b/a GoNetspeed and Crown Castle Fiber LLC

In addition, The Maine Connectivity Authority has agreed to engage an outside consultant to lead stakeholder engagement and provide recommendations based on national best practices for review by the Broadband Working Group and in Commission workshops.

B. Summaries of Comments of Interested Parties²¹

Versant

In its November 9, 2023, filing Versant stated: 1) that Versant would be able to provide average timeframes for the period from the submission of attachment applications until the issuance of a license for all attachment requests for the past 3 years; 2) that Versant is prepared to explain how the new pole attachment database (*i.e.*, “Alden One”), once fully implemented, will improve the tracking of timeframes for the period from the submission of attachment applications until the issuance of a license, as well as the response times for attachment transfer notifications, make-ready requests, and construction completion; 3) that Versant does not track application time frames for municipal requests separately from other attachment applications, but that Versant does not anticipate that a municipal-owned project would take longer on average than a privately owned project; 4) that Versant would be able to provide information on what events typically affect timeframes during the pole attachment process, provide information on how and why certain projects take longer than others based on its experience and observations, and offer recommendations to shorten the time between application and completion of construction; 5) that Versant does not have readily available information on which poles in its territory can accept pole attachments without the need for pole replacement because such information is determined on a project-by-project basis through field surveys, but that Versant could provide recent examples of OTMR applications where simple make ready (*e.g.*, projects where no pole replacement was necessary) and complex make ready (*e.g.*, projects where pole replacement was necessary) determinations were made in order to provide an estimate of the percentage of poles that need replacement, and; 6) that Versant has not received any municipal attachment requests where a municipality has invoked the so-called “municipal exemption” in 35-A M.R.S. § 2524(2)(B), and accordingly, is not aware of any non-compliance matters in its service territory concerning attachment requests invoking the municipal exemption.

On February 9, 2024, Versant and CMP filed additional joint comments. Versant and CMP reported that CMP has implemented “Alden One” and that Versant is in the process of implementation. Versant and CMP also stated that they have updated their procedures in accordance with the changes to Chapter 880, including timelines for completion of surveys and make-ready work. Versant and CMP also provided further information regarding the average time for completion of make-ready work and encourage all parties to work together to meet a recommended 219-day time frame from application to payment for make-ready work (including application review, corrections, pole field survey work, and make-ready cost estimation). Versant and CMP also state that they have a process in place to facilitate “OTMR.” Versant and CMP also provided comments in response to those previously filed by the Cable Operators, the Broadband Providers, and GWI.

²¹ The full text of all comments received by the Commission are attached to this report as Appendix A.

CMP

In its November 10, 2023, filing CMP provided a preliminary assessment of the Resolve and stated it could provide information on the time frames involved for each step of the make-ready process as well as provide information regarding common causes for make-ready delays. CMP also stated that it treats tax-exempt municipalities and private companies seeking pole attachments equally. CMP further explained that while it maintains pole data in its electronic pole management system, it is unable to provide an estimate on the number of utility poles in its service territory that could accommodate municipal facility attachments without the need to replace a pole. CMP stated that this is because no electronic pole management system can replace the need for field surveys, which include an in-person evaluation of such things as the condition of the poles, line sag, road elevation and other conditions that may affect potential new pole attachments. CMP also provided a list of questions/data requests that it could answer based on the information and data in its possession.

Consolidated

In its December 22, 2023, filing Consolidated provided the Commission with an outline of the information it had available with respect to make-ready process, confirmed that it would be able to provide timelines for make-ready work, and agreed with CMP's suggested inquiries. Additionally, Consolidated noted that, similar to Versant and CMP, it does not separately track information regarding space available on its poles for municipal attachments and does not track municipal make-ready separate from other make-ready work.

OPA

In its December 26, 2023, filing the OPA stated that the laws and rules on broadband expansion have an indirect but potentially consequential effect on electric ratepayers and that where the stated purpose of the Resolve is to study the effect of current laws and rules on the expansion of broadband, that such a review must include the consequences of laws and rules on costs and cost-recovery of broadband expansion. The OPA also provided a short list of questions regarding costs and cost-recovery for pole owners.

Cable Operators

In their January 12, 2024, filing the Cable Operators stated that they have been active in the Commission's previous inquiries, investigations, and rulemakings to modernize the Commission's Chapter 880 pole attachment rules over the years and state that through the various pole-related dockets all the participants have created a strong foundation to advance the Legislature's mandate to the Commission to promulgate pole attachment rules that promote competition and further Maine's broadband policy. The Cable Operators also recommended that the Commission open a proceeding to review how to align Chapter 880 with recent FCC reforms of key parts of the FCC's pole attachment rules and policies, particularly as those pertain to pole replacements and how pole replacement costs are allocated to attachers. The Cable Operators further stated that the Commission should do as it has done in the past and seek comments from

interested parties on changes to the Chapter 880 rules to improve and align them with the latest FCC changes. Finally, the Cable Operators state that municipal entities should not be treated differently than private companies with respect to pole applications and make ready and request that all parties have access to the information that has been supplied or will be supplied by the pole owners regarding the average time required in each step of the pole licensing process.

Broadband Providers

In their January 13, 2024, filing the Broadband Providers stated that, similar to the Cable Providers, the Broadband Providers have also been active participants in the Commission's proceedings related to pole attachments and from their perspective, the Commission's efforts to facilitate pole attachments are commendable and its rules are among the most successful in accomplishing that goal and the Commission should continue to build on its success. The Broadband Providers also stated that the Commission should: 1) explore ways to make the application process more efficient; 2) should enforce the provision in Chapter 880 that all large pole owners participate in the "Alden One" system; 3) improve the methods for payment of make-ready costs; 4) explore solutions for improving wait times for make-ready work; 5) consolidate the currently-required two pole attachment applications into one master application; 6) adopt clear deadlines for large projects; 7) require prompt repayment of unused make-ready work deposits and payments; 8) streamline the make-ready work billing true-up process; 9) require pole owners to accept electronic (as opposed to paper check) payments; and 10) examine the allocation of the costs of the "Alden One" system.

On February 9, 2024, the Broadband Providers submitted additional comments. In their comments, the Broadband Providers highlighted the current "fragmented" nature of the pole attachment application process. According to the Broadband Providers, it is inefficient to have prospective attachers submit one attachment application to the applicable T&D pole owner and another to CCI. The hope expressed by the Broadband Providers is that "Alden One" will consolidate and streamline this process. The Broadband Providers also expressed the hope that "Alden One" would be fully able to handle OTMR. In addition, the Broadband Providers also raised concerns about the allocated costs of pole replacements, and the lack of a method for submitting electronic payment for make-ready work.

GWI

In its January 16, 2024, filing, GWI recognized the Commission's and Legislature's endeavor to improve the regulatory regime around the pole attachment process. GWI also provided recommendations regarding three components that, in its view, prevent Maine from fully reaching its broadband goals: 1) lack of a clear, defined, and documented method for getting new OTMR contactors approved; 2) a need to require "Alden One" be configured to allow one standard pole attachment application and process and that the system automate communication between the parties; and 3) that the Commission mandate a regime that allows legitimate parties reasonable access to any information in "Alden One" while still protecting data.

IV. Conclusion

The Commission appreciates the opportunity provided by the Resolve to examine Maine's broadband regulations, particularly in the context of municipal broadband. The Commission intends to continue its docketed inquiry regarding the Resolve and will shortly be scheduling additional meetings and workshops as well as obtaining additional data and information from the relevant parties in order to provide fulsome answers to the questions in the Resolve in the Commission's final report to the Legislature.

APPENDIX A

Comments Received in Docket No. 2023-00300



November 3, 2023

David Braley and Jordan McColman
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

Re: LD 1456 Response from Versant Power

Dear Sirs,

This letter follows the October 18th informal meeting regarding your efforts to gather information in response to L.D. 1456. Specifically, the legislature requested the Maine Public Utilities Commission ("MPUC") in consultation with the Maine Connectivity Authority ("MCA") to study and report on Maine's statutes and rules pertaining to broadband expansion through public networks, private networks and public-private partnerships. The MPUC is to submit an initial report to the legislature by February 15, 2024, and a final report by December 1, 2024. Among other things, L.D. 1456 requested information on four subject matters pertaining to utility poles.

As part of the MPUC's efforts, you reached out to Versant Power and other pole owners inquiring as to what information may be available to assist you in preparation of the report, specifically questions # 1 and # 2 proposed by the legislature in L.D. 1456 concerning the pole application and licensing process. We understand you may soon open a formal inquiry on the matter.

As a follow-up to our discussion, and at your request, we reviewed the questions and examined our records and believe we can provide information helpful to the MPUC and MCA for the report. Items #1-4 below pertain to question #1 contained in L.D. 1456 regarding the average timeframes for processing applications, make-ready estimates, and licensing. Items #5-6 below pertain to question #2 of L.D. 1456.

1. *Can Versant Power provide information on the aggregate average time it takes to process pole attachment applications, provide make-ready estimates and issue attachment licenses?*

Yes. Versant Power can provide average timeframes for the submission of attachment applications until the issuance of a license in the aggregate for all attachment requests based on the past three years. The MPUC will find this information useful because the information reflects experience following implementation of MPUC's recent rule changes concerning the application and make ready process. This information can be provided in summary tabular form showing the above stages and cumulatively as measured against Chapter 880.

2. ***Will more information be available following implementation of Alden One?***

Yes. Versant Power is prepared to explain how Alden One, once fully implemented, will improve the tracking of the time it takes from the submission of attachment applications, through the licensing for those applications, as well as the response times by attachers following transfer notifications, make-ready requests, and construction completion. To the extent this becomes available prior to the MPUC's December 2024 report to the legislature, the pole owners can provide the data in advance, as long as the information is not deemed confidential under Chapter 880, Section 5 (B). Section 5 (B) now defines all information contained in Alden One as confidential. If the information is confidential, the pole owners will need advice from the MPUC on how to provide the information for legislative report purposes without violating the requirements of Chapter 880 concerning confidentiality of information available through Alden One.

3. ***Does Versant Power track information regarding pole applications and make-ready separately for municipalities and private companies?***

No. Versant Power does not track the application time frames for municipal requests separately. Nevertheless, Versant anticipates that a municipal-owned project would take no longer on average than a privately-owned project, and thus the information it can provide in the aggregate for all projects will be informative. So far, Versant Power has not received any applications from a municipality requesting attachments of municipal-owned broadband facilities following enactment of 35-A M.R.S. § 2524 (2)(B).

4. ***What assistance can Versant Power provide to the MPUC in making recommendations for improvements in the process, including matters affecting the time required between a pole attachment request and completion of the construction by the attaching entity.***

Versant Power can be helpful here. It can provide information on what typically affects the timeframes during the pole attachment process. While Versant Power on average completes its approval and licensing work well in advance of the cumulative time periods set forth in Chapter 880, delays can occur at any stage in the process, including the transfer process by attaching entities and contractor delays. Based upon its experience and observations, Versant Power can provide helpful information on how and why certain projects take longer than others and offer recommendations to improve the time between an application and completion of construction. Most often, time constraints are affected by matters outside Versant Power's control but can be addressed by careful coordination by all parties, and should be improved through attacher participation in Alden One.

5. ***Does Versant Power maintain or otherwise have readily available estimates of the number of utility poles in its service territory that can accommodate municipal attachments without the need for pole replacements?***

No. This information is not retained or readily available. In fact, such information is normally determined by the field survey which is required as part of any attachment application. The need for pole replacements depends on several factors specific to the particular municipality, route, and buildout design (e.g., the route to be taken, the age and height of the poles, and existence of the other attachments). Nevertheless, Versant can provide information that might be helpful based on recent experience with One Touch Make Ready applications where simple and complex make-ready determinations have been made for private projects, and Versant Power is

able to indicate the percentages of those requiring complex (pole replacement) make-ready rather than simple make-ready.

6. ***Title 35-A M.R.S. § 2524 (2) requires that the pole owner and any attacher pay for its own respective costs associated with make-ready caused by a municipalities' qualifying project attachments. The MPUC is required to provide an assessment of compliance with this subsection. Does Versant Power have any information that may be of assistance to the MPUC in making this assessment.***

Versant Power has not received any municipal attachment requests under Section 2524 (2) (B) following its enactment (and the corresponding revisions to Chapter 880). It is not aware of any non-compliance matters in its service territory concerning any attachment requests under Section 2524 (2)(A).

You have not requested Versant Power provide information in response to L.D. 1456 questions #3 and #4. These appear to be directed at the MPUC's enforcement and educational efforts, and ask the MPUC to report on the effectiveness of its enforcement practices regarding functionally obsolete poles and other matters and its educational resources. Nevertheless, Versant Power can report that it is not aware of any disputes or enforcement matters affecting its service territory.

Please reach out to Versant Power with any questions about this material. We look forward to working with you to provide the information required by L.D. 1456.

Sincerely,

/s/ Nathan Cota

Nathan Cota

Director, Program Management

cc: Arielle Silver Karsh

Kiera Reardon



November 10, 2023

Via Email

David Braley L.G.
Director, Telephone and Water
Maine Public Utilities Commission
State House Station 18
Augusta, Maine 04330-0018
david.braley@maine.gov

Jody McColman
Deputy General Counsel
Maine Public Utilities Commission
State House Station 18
Augusta, ME 04333-0018
Jordan.D.McColman@maine.gov

RE: Pole Data re Commission's Study Pursuant to LD 1456

Dear David and Jody:

This letter is in follow up to the informal discussions we had on October 18, 2023, and Commission Staff's request for pole owners to identify the types of information and data that Maine Utility Pole Owners can provide to the Commission as the Commission prepares its report in response to LD 1456. In particular, we discussed information and data that could help the Commission respond to Parts 1 and 2 of LD 1456, as well as more general information applicable to the issues in LD 1456.

As discussed, in response to Part 1 Central Maine Power Company ("CMP") can provide information on the time involved for each step of the make ready process and advise on some of the common causes for delays, and CMP noted that it essentially treats tax-exempt municipalities and private companies seeking pole attachments the same.

With respect to Part 2, CMP explained that the question is mis-directed. While CMP maintains pole data in its electronic pole management system, it is unable to provide an estimate of the number of utility poles in its service territory that could accommodate municipal facility attachments without the need to replace the pole and assessment of compliance with Title 35-A M.R.S. 2524(2). That is because CMP's electronic pole

management system cannot replace the need for field surveys of all poles to assess what work may be required in order to accommodate additional pole attachments. In order to accommodate new attachments it is always necessary to evaluate the conditions in the field, including the condition of the poles, line sag, road elevation, and other conditions that may affect potential new pole attachments.

The Commission has opened an inquiry in Docket 2023-00300 related to the Commission's preparation of the report pursuant to LD 1456. It is CMP's understanding that the Commission may issue data requests to collect information related to its report in response to LD 1456. To further assist in that effort, CMP proposes the following questions/data requests that it could answer based on the information and data in its possession.

1. Provide the average time it takes to complete each stage of the pole attachment application process for the last 3 years, to include all applications with pole quantities and each milestone timeframe from Submitted to Licensed, including the following:
 - a. Average duration from application received to completing field survey
 - b. Average duration from survey complete to Make Ready estimate
 - c. Average duration to receive Make Ready payment
 - d. Average duration from receiving Make Ready payment to completing Make Ready construction
 - e. Average duration from application Submitted to Licensed.
2. Explain the challenges in meeting presumed Chapter 880 timeframes?
3. Describe the steps employed to process an application for new pole attachments and explain differences in procedure for tax-exempt municipalities and private companies, if any.
4. Can pole owners provide an estimate of the number of utility poles in its service territory that could accommodate municipal facility attachments without the need to replace the pole and an assessment of compliance with Title 35-A M.R.S. 2524(2) based on information available in electronic pole attachment management systems? If not, why not?
5. Identify ways in which the wait times for attachments may be decreased or standardized?

CMP appreciates the opportunity to provide this information. Please let CMP know if you have any questions.

Sincerely,

/s/ Jason Weymouth

Jason Weymouth

Senior Manager – Programs and Joint Use
Central Maine Power Company



December 22, 2023

David Braley
Director Telecommunications and Water
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333

Jordan McColman
Deputy General Counsel
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333

Re: 2023-0300; COMMISSION INITIATED INQUIRY TO FACILITATE PREPARATION OF LD 1456 REPORT

Dear Mr. Braley and Attorney McColman:

Consolidated previously provided information via e-mail regarding the information Consolidated had available to it with respect to make-ready tracking. The following are the steps in the make-ready process for which Consolidated is able to provide timelines.

<u>Step</u>	<u>Party</u>
New Application Request Submitted w/ Survey Fee	Attacher
Notification of survey	CCI
Survey Complete	CCI
Notification of Make Ready Requirements - including estimate & check request	CCI
Make Ready Payment Received	Attacher
Notification of Check Receipt and MR information and timelines	CCI
Job Issued	CCI
Construction Complete	CCI
License granted	CCI

Additionally, Consolidated has reviewed the information submitted by CMP and agrees those are the appropriate inquiries to make.

Similar to Versant and CMP, Consolidated does not retain information regarding space available on its poles for municipal attachment. Finally, similar to both Versant and CMP, Consolidated does not track municipal make-ready separate from other pole attachers.

If you have any questions please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah A. Davis". The signature is fluid and cursive, with a large initial "S" and "A".

Sarah A. Davis
Vice President Market Development
Consolidated Communications
5 Davis Farm Rd.
Portland, ME 04103
(207) 535-4188

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

**PUBLIC UTILITIES
COMMISSION**

**RE: Inquiry to Facilitate Preparation
of LD 1456 Report**

Docket No. 2023-00300

**COMMENTS OF THE OFFICE
OF THE PUBLIC ADVOCATE**

December 26, 2023

On October 18, 2023, the Maine Public Utilities Commission (the Commission or the PUC) held an informal stakeholder meeting, including the three largest owners of joint-use utility poles in Maine (Central Maine Power (CMP), Versant Power (Versant), and Consolidated Communications (Consolidated)), to discuss LD 1456 Resolve to Study the Effect of Current Laws and Rules on the Expansion of Broadband¹ (“the Resolve”). The Resolve requires the PUC to “study current pole attachment laws and rules and the effects of those laws and rules on broadband expansion through public networks, private networks or public-private partnerships.” Specifically, the Resolve requests for the PUC to collect data on four topics: (1) time involved in make-ready work; (2) number of poles needed to accommodate municipal facility attachments; (3) effectiveness of the PUC’s enforcement practices for poles in violation of rule or law; and (4) educational resources regarding the rights of potential attachers and the availability of the PUC’s dispute resolution process. The PUC must submit the results in an initial report to the Legislature by February 15, 2024. The Resolve also invites “any recommendations, including proposed legislation, resulting from the study.” (emphasis added)

¹ Approved by the Governor on June 26, 2023.

On November 9, 2023, the PUC opened an Inquiry under its summary investigation authority² to receive information from the joint-use pole owners, for requesting additional information from stakeholders, for notifying stakeholders of Commission progress in developing the report, and scheduling future discussions.

On November 10 and 11, 2023, the PUC received filings from Versant and CMP, respectively, explaining their ability to provide data on the four topics described in the Resolve. On December 1, 2023, the PUC issued a Procedural Order asking for similar information from Consolidated on or before December 20, 2023,³ and also invited comments from any interested parties regarding the information provided by CMP and Versant or any other information that would assist the Commission in answering the specific questions posed by the Legislature in LD 1456. The OPA provides the following comments pursuant to the November 9 and December 1, 2023 Procedural Orders.

The laws and rules on broadband expansion have an indirect but potentially consequential effect on electric ratepayers. One example is that, as explained by CMP when there is make-ready work for a municipality that is covered under the municipal make-ready exception,⁴ the costs associated with municipal make-ready work are socialized to all of the transmission and distribution utilities' (T&Ds) customers through rates.⁵ Another example is the recent amendments to Chapter 880 of the PUC's Rules, which now require all large pole owners⁶ and all pole attachers to their poles to make use of the new "joint-use software system."⁷ If other pole owners opt to participate in the joint-use software system, their pole attachers also must use the system.⁸ Some broadband providers have already stated their position that none of the joint-use software system costs should be paid by the system attachers, i.e., all of costs of

² Pursuant to Title 35-A Section 1303(1) and the Resolve.

³ Consolidated made this filing on December 22, 2023.

⁴ 35-A M.R.S. § 2524(2).

⁵ *Town of Somerville*, Rapid Response Complaint Pertaining to Consolidated Communications and the Town of Somerville, No. 2023-00052, Response to CONL-003-001 (Me. P.U.C. Nov. 6, 2023).

⁶ Versant Power, Central Maine Power Company, and Consolidated Communications of Maine Company or their successors. 65-407 C.M.R. ch. 880, § 1(Q).

⁷ 65-407 C.M.R. ch. 880, §§ 1(O), 5(A)(1).

⁸ 65-407 C.M.R. ch. 880, § 5(A)(1).

developing and operating the system should be paid by pole owners (which would, in turn, be recovered from ratepayers or covered by shareholders.)⁹ The T&Ds suggested that 80% of the costs of the system should be allocated to the pole owners that would then be recovered through the companies' rates.^{10,11}

Where the stated purpose of LD 1456 is to study the effect of current laws and rules on the expansion of broadband, that review must include the consequences of laws and rules on costs and cost-recovery of broadband expansion. Indeed, any recommendations and/or proposed legislation included in the PUC's report to the Legislature should include the magnitude of such costs and how costs of the expansion of broadband are collected, with particular attention to the T&Ds' ratepayers. As such, this information would assist the Commission in preparing its reports to the Legislature required by the resolve.¹²

The OPA respectfully requests that PUC also require CMP, Versant, and Consolidated to provide information on:

- 1a. the costs of the pole make-ready work and how those costs are recovered;
- 2a. the cost of the poles (or pole repairs) needed to accommodate the necessary municipal facility attachments, and how those costs are recovered;
- 3a. the cost of pole relocation or removal needed to comply with federal law or municipal infrastructure, and how those costs are recovered;
5. the cost of the joint-use software system (development, maintenance, workshops for pole attachers, etc.), and how those costs are recovered; and,

⁹ *Maine Public Utilities Commission*, Commission Initiated Rulemaking to Amend Chapter 880, No. 2023-00058, Broadband Providers' Initial Comments (Me. P.U. C. Apr. 26, 2023) at 9-10.

¹⁰ *Maine Public Utilities Commission*, Commission Initiated Rulemaking to Amend Chapter 880, No. 2023-00058, Order Amending Rule and Statement of Factual and Policy Basis (Me. P.U. C. Sept. 12, 2023) at 5.

¹¹ The Commission declined to address the issue of system costs in the rulemaking; *Id.* at 11.

¹² Notice of Inquiry (Me. P.U.C. Nov. 9, 2023) at 1.

6. any other costs being socialized to electric ratepayers.

The OPA also requests to be included in any future stakeholder meetings.

Respectfully submitted,

/s/ Kristina R. Winther

Kristina R. Winther
Senior Counsel

/s/ Richard P. Hevey

Richard P. Hevey
Senior Counsel

January 12, 2024

ELECTRONICALLY FILED VIA THE MPUC FILING SYSTEM

Harry A. Lanphear
Administrative Director
Maine Public Utilities Commission
18 State House Station
August, ME 04333-0018

Re: Docket No. 2023-00300, *Public Utilities Commission Inquiry to Facilitate Preparation of LD 1456 Report // Comments of Charter and Comcast*

Dear Mr. Lanphear:

Pursuant to the Commission's December 1 and 29, 2023, Procedural Orders, Spectrum Northeast, LLC ("Charter") and Comcast of Maine/New Hampshire, Inc. ("Comcast") respectfully submit these joint comments regarding the Commission's upcoming February 2024, LD 1456 report to the Legislature.

Both Charter and Comcast appreciate the Commission's and the Legislature's continued efforts to advance the shared goal of facilitating faster and more efficient high-speed broadband deployment in Maine. For years, our two companies have been deeply invested in, and committed to, providing and expanding broadband service to underserved and unserved areas. In Maine, we currently collectively serve 318 communities and 512,000 customers—and plan to expand our services to reach many more Mainers who previously had limited or no access to services.

The principles of just, reasonable, and non-discriminatory pole access all continue to be critical to deploying and enhancing these broadband networks and technologies, particularly in unserved areas of Maine. As FCC Chairwoman Jessica Rosenworcel recently observed, pole attachments "are an essential part of our effort to ensure that high-speed service reaches everyone, everywhere across the country."¹ This is certainly true in Maine.

Just as Charter and Comcast have sought to improve their networks and to expand their Maine deployments, they also have been consistently very actively engaged in the Commission's investigations, inquiries, and rulemakings to develop and adjust the Commission's Chapter 880

¹ FCC, Statement of Chairwoman Jessica Rosenworcel, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC 23-109A2, WC Docket No. 17-84 (Dec. 13, 2023), <https://docs.fcc.gov/public/attachments/FCC-23-109A2.pdf>.

pole attachment rules.² We believe that the Commission has been thoughtful and thorough in modernizing its rules by adopting pole regulations that closely follow the FCC's rules governing the rates, terms, conditions, and timelines for pole access. Our companies' multi-year participation in various pole-related dockets, as well as that of other stakeholders, not to mention the Commission's detailed focus on these issues, all have created a strong foundation to advance the Legislature's mandate to the Commission to promulgate pole attachment rules that "promote competition [and] further the state broadband policy." 35-A M.R.S. § 711(4).

To build upon this success, Charter and Comcast recommend that the Commission promptly open a proceeding to review how to align the Chapter 880 rules with the FCC's just-released Fourth Report and Order and Declaratory Ruling, which reforms key parts of the FCC's pole attachment rules and policies.³ In particular, the FCC has clarified how pole replacement costs are to be equitably allocated between cable attachers and utilities: utilities may not require attachers to pay the entire cost of a pole replacement when a pole already is "red tagged" (*i.e.*, poles that the utility identifies for replacement for any reason other than the pole's lack of capacity to accommodate a new attachment).⁴ The FCC also has clarified situations when pole replacements are not "necessitated solely" by an attachment request.⁵ In addition, the FCC has confirmed that cost causation principles require that when a defective pole needs to be replaced with a taller pole to support a new attachment, the attacher need only pay for the incremental cost of a taller/stronger pole—not the entire cost of an equivalent pole.⁶

² See, e.g., MPUC Docket Nos. 2017-00183 (inquiry on access, make-ready, and cost responsibility), 2017-00247 (rulemaking on access, make-ready, and cost responsibility), 2018-00010 (inquiry regarding rates), 2018-00136 (investigation into Section 7(A) of the Chapter 880 Rules), 2019-00028 (rate formula rulemaking), 2020-00181 (inquiry into one-touch make-ready), 2021-00321 (rulemaking on one-touch make ready), 2023-00052 (regarding municipal make-ready exemption), 2023-00058 (rulemaking on joint use notification system). Indeed, the PUC has adopted many of the cable operators' recommendations in these dockets.

³ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Fourth Report & Order, Declaratory Ruling, & Third Further Notice of Proposed Rulemaking, FCC 23-109, WC Docket No. 17-84 (FCC Dec. 13 2023) ("*2023 FCC Pole Attachment Order*"), available at <https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf>; see also Ex. A (FCC Press Release, Dec. 13, 2023).

⁴ *2023 FCC Pole Attachment Order*, ¶¶ 39-44.

⁵ The FCC's rules currently prevent a pole owner from shifting pole replacement costs onto a communications attacher if the new pole is not "necessitated solely" by an additional attachment. 47 C.F.R. § 1.1408(b). In its 2023 order, the FCC provided examples of when a pole replacement is *not* "necessitated solely" by an attachment request, including (1) when a pole replacement is required by applicable law; (2) the current pole fails engineering standards such as those in the NESC; (3) a pole replacement is necessary due to changes in a utility's internal construction standards; (4) the pole must be replaced due to road expansion or moves, property development, in connection with storm hardening, or similar government-imposed requirements; or (5) the pole already is on a utility's replacement schedule. *2023 FCC Pole Attachment Order*, ¶¶ 45-46.

⁶ *Id.* ¶ 48. The FCC additionally has clarified that utilities must provide potential attachers with a copy of a utility's easement before a utility can refuse to let the attacher share that easement or require the attacher to obtain its own easement. *Id.* ¶ 49. The FCC also clarified that for large pole applications (more than
(footnote continued on next page)

Because pole replacement costs impose a significant barrier to broadband deployment, especially in rural areas, the MPUC should make similar amendments or clarifications to the Chapter 880 Rules. In particular, while the pole replacement cost allocation approach in Section 5(C) of the Chapter 880 rules already limits, in some ways, pole replacement costs charged to attachers, the current rule is unclear and leaves room for uneconomic, inequitable, and inappropriate cost-shifting by pole owners to attachers—which is exactly what the new FCC order is intended to prevent.

The FCC's new pole attachment rules further require a utility to provide attachment applicants, upon request, with information contained in the utility's most recent pole inspection for the poles covered by the attacher's application. The new FCC rules also require the pole owner to provide an applicant with a utility's easement before a utility can refuse to let the attacher utilize or share that easement—or before it can require the attacher to obtain its own easement.⁷ The FCC also has substantially revised its pole attachment complaint rules, establishing expedited pole access dispute procedures.⁸

As the MPUC has done in the past regarding other changes and updates to the FCC's pole attachment rules, the MPUC should seek comments from interested parties on changes to the Chapter 880 rules to improve and align them with the FCC's latest rule changes and clarifications. Charter and Comcast are prepared to actively participate and assist the MPUC in such a process.

Charter and Comcast also note their agreement with comments from Central Maine Power, Versant Power, and Consolidated Communications that municipal entities should not be treated differently than private companies with respect to pole applications and make ready. These companies have indicated they do not track municipal applications separately from those of private companies.⁹

Finally, so that all parties will have access to the information and an opportunity to comment, Charter and Comcast specifically request that all information that has been supplied or will be supplied by Maine's pole owners, such as information regarding the average time required in each step of the pole licensing process, be filed in this docket and be made part of the record in this proceeding. To the extent that such data may be subject to confidentiality, trade secret, and similar concerns, appropriate confidentiality procedures can be implemented.

* * *

As in the past, Charter and Comcast would be pleased to answer any questions that the Commission may have, and we are otherwise available to assist the Commission as it prepares

3,000 poles), the FCC's application review timelines apply to the first 3,000 poles in an application, and that pole owners may only negotiate for extended deadlines for poles beyond that first 3,000. *Id.* ¶ 50-51.

⁷ 2023 FCC Pole Attachment Order, ¶¶ 23-31, 49 & Appendix A (adding 47 C.F.R. § 1.1411(c)(4)).

⁸ *Id.* ¶¶ 8-22 & Appendix A (adding 47 C.F.R. § 1.1415).

⁹ See LD 1456 Response from Versant Power, Dkt. 2023-00300 (Nov. 3, 2023); CMP Pole Data re Commission's Study Pursuant to LD 1456, Dkt. 2023-00300 (Nov. 10, 2023); Letter of Consolidated Communications, Dkt. 2023-00300 (Dec. 22, 2023).

January 12, 2024
Page 4

this initial report to the Legislature and plan to be actively involved in the upcoming exercise to develop a final report this December.¹⁰

Respectfully submitted,

/s/ J. D. Thomas

J. D. Thomas
Abram Shanedling

Counsel for Comcast of Maine/New Hampshire, Inc., and Spectrum Northeast, LLC

Enclosure: Exhibit A

cc: Electronic notice to all registered parties via the MPUC filing system

¹⁰ The cable operators also would like the opportunity to offer input on the questions posed by the Office of the Public Advocate in its Comments dated December 26, 2023 on how the costs of pole make ready, pole replacements, and joint use software are recovered, should the Commission seek such input.

Exhibit A

Media Contact:

Will Wiquist
will.wiquist@fcc.gov

For Immediate Release

**FCC SEEKS TO MAKE POLE ATTACHMENT PROCESS FASTER,
MORE TRANSPARENT, AND MORE COST-EFFECTIVE**

***Adopts a Fourth Report and Order, Declaratory Ruling, and Third Further Notice of
Proposed Rulemaking***

WASHINGTON, December 13, 2023—The Federal Communications Commission today voted to further reform its pole attachment rules and policies to promote faster and more cost-effective broadband deployment. These new rules will allow for faster resolution of pole attachment disputes and provide pole attachers with more detailed information about the poles they plan to use as part of their broadband buildouts. Utility poles are key to the Commission’s efforts to support the deployment of broadband infrastructure as those poles support the wires and equipment that carry broadband to American homes and businesses.

The new rules will speed the pole attachment dispute resolution process by establishing a new intra-agency rapid response team and providing the team with specific criteria to apply when considering complaints. The Commission’s rules also will increase transparency for new broadband buildouts by allowing attachers to obtain pole inspection reports from utilities. In addition, the Declaratory Ruling provides important clarifications regarding:

1. What constitutes “red tagging” and when pole replacements are not “necessitated solely” by a new attachment.
2. The obligation to share easement information.
3. The applicable timelines for the processing of attachment requests for 3,000 or more poles.

In addition to the new rules, the Commission proposes to set defined timelines for large pole attachment applications and seeks additional comment on ways to further facilitate the approval process for pole attachment applications and make ready to enable quicker broadband deployment.

Action by the Commission December 13, 2023 by Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking (FCC 23-109). Chairwoman Rosenworcel, Commissioners Carr, Starks, Simington, and Gomez approving. Chairwoman Rosenworcel, Commissioners Carr and Gomez issuing separate statements.

WC Docket No. 17-84

###

Media Relations: (202) 418-0500 / ASL: (844) 432-2275 / Twitter: @FCC / www.fcc.gov

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

Docket No. 2023-00300

**PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of
LD 1456 Report**

**INITIAL COMMENTS OF
CROWN CASTLE AND
GONETSPEED**

CRC Communications LLC, d/b/a GoNetspeed (“GoNetspeed”) and Crown Castle Fiber LLC (“Crown Castle”) (collectively, the “Broadband Providers”) appreciate the Commission’s ongoing efforts to facilitate deployment of broadband networks to address and improve the social, educational, medical, and economic well-being of Maine’s citizens by modernizing and improving the pole attachment regime in the State.

In its Resolve, the Legislature has provided a potentially fruitful opportunity to assess how the Commission’s reforms, particularly those enacted in April 2021, are working in practice, and to design and implement appropriate further improvements. As described below, progress is being made, and from the perspective of the Broadband Providers, the pole attachment regime in Maine is better than many. But, some further improvements are necessary and the Commission must be vigilant to avoid or prevent erosion of the gains enabled by its prior efforts.

I. Background on the Broadband Providers.

A. Experience and Expertise.

Each of the Broadband Providers deploys and operates broadband networks in Maine and other states and has extensive experience with and expertise in the pole attachment process both here and elsewhere.

Crown Castle has more than twenty-five years of experience building and operating network infrastructure. With more than 40,000 towers, 115,000 small wireless facilities constructed or under contract, and 80,000 route miles of fiber, Crown Castle is the country's largest independent owner and operator of shared infrastructure. In the Northeast alone, it operates over 32,000 route miles of fiber (including 121 route miles in Maine) and has over 23,000 on-net buildings. In its efforts to site small wireless facilities and fiber optic lines across the country, Crown Castle regularly engages with investor-owned utilities and other pole owners in Maine and other states to gain access to existing utility poles, streetlights, and other infrastructure for the deployment of telecommunications facilities.

GoNetspeed is a high-speed fiber internet provider serving residential and business customers in Maine, Alabama, Connecticut, Massachusetts, Missouri, New York, Pennsylvania, Vermont, and West Virginia. Adding thousands of new service areas every year, GoNetspeed is one of the largest independent internet providers in the east. In Maine, GoNetspeed currently is in the process of or has completed deploying fiber infrastructure in the communities of Portland, Lisbon, Kennebunk, Camden, Rockland, Waterville, Winslow, and other Maine locations.

In the process of these deployments, the Broadband Providers have implemented or expect to implement thousands of pole attachments, using the full range of pole attachment methodologies — conventional make-ready by the pole owner, self-help, and one touch make-ready (OTMR).

B. Participation in Prior Commission Pole Attachment Proceedings.

Both of the Broadband providers have fully and actively participated in most if not all of the Commission's proceedings related to pole attachments over the past several years. These have included the inquiry and rulemaking that led to the Commission's 2021 amendments to Chapter 880, Docket Nos. 2020-00181 and 2020-00281, and the inquiry and rulemaking related to the 2023

amendments regarding the joint-use software system, Docket Nos. 2021-00321 and 2023-00058. In the course of those proceedings, the Broadband Providers submitted numerous sets of comments and other filings, including proposed rule language, and participated in various workshops and public hearings. More than a few provisions in the Commission's recent rule reforms are the direct result of the Broadband Providers' suggestions.

Some of the issues in the instant proceeding are continuations of themes in those prior proceedings on which the Broadband Providers commented. We respectfully refer the Commission to our prior submissions to the extent relevant, and in these comments will cite to those filings as appropriate.

The Broadband Providers believe and hope that their experience and expertise will be helpful to the Commission in its efforts to comply with the LD1456 mandates.

II. Summary.

Topic #1 of the Resolve states that the Commission's report must include "ways to decrease or standardize wait times for attachments." That has been a focus of the Commission's pole attachment reforms over the past few years. Progress has been made. But the language of the Resolve suggests that the Legislature believes that more work remains to be done.

From the Broadband Providers' perspective, in the states in which they operate, the Commission's efforts to facilitate the pole attachment process are among the most commendable, and its rules are among the most successful in accomplishing that goal. But there always is room for improvement. The Commission's efforts should continue and it should continue to build on its success. Of critical importance are facilitating the application process and making it more efficient; ensuring the ready availability of one touch make-ready (OTMR) and the self-help

remedy under which requesting parties perform the work themselves; enforcing deadlines when work is conducted by the pole owner; and reforming make-ready payment obligations.

The Commission can act to reduce the time frames for pole attachments and otherwise improve the pole attachment process by enforcing the rule that all large pole owners participate in the joint-use software system and ensuring that OTMR, self-help, and other attacher-performed work is fully available both in the field and in the system and is not impeded by the actions or inaction of the pole owners or defects in the application and make-ready processes. The Commission should mandate adoption of a unitary pole attachment application to be submitted to both the power company and Consolidated, so as to eliminate or reduce the duplicative effort involved in submitting separate applications to both owners. The Commission should establish specific deadlines for large pole attachment orders. The Commission also should reform the make-ready prepayment requirements at least by imposing deadlines for refund of overpayments of estimated charges; requiring prompt true-ups and capping surcharges; and mandating that owners accept electronic payments to reduce delays associated with processing of paper checks.

Finally, although it is not clear that general cost issues are germane to this inquiry, the Broadband Providers feel compelled to respond to the Public Advocate's continuing misinformed efforts to impose upon attaching entities the costs of system improvements that overwhelmingly benefit the pole owners.

III. The Pole Attachment Process Today.

A. The Application Process.

A requesting party today must submit two separate applications, one to the power company and one to Consolidated. Each of the power company and Consolidated independently reviews the application submitted to it, sends its own response, provides its own estimates, collects advance

payments related to the work, and conducts the remainder of the make-ready process with respect to the application submitted to it. Neither joint owner reviews or approves the application sent to the other owner. Obviously, this is a duplicative and therefore inefficient process.

The nascent implementation of the joint-use software system has not alleviated this problem. Even when and to the extent the system is operational, an electronic application is submitted to CMP or Versant and a separate paper application is submitted to Consolidated.

B. Joint-Use Software System.

The Broadband Providers appreciate the efforts of CMP and Versant to implement the Alden One joint-use software system. The power companies' work began prior to the September 2023 effective date of the adoption of amended Section 5 and related provisions.

But the system remains a work in progress. One particular and serious shortcoming of the joint-use software system is that it currently does not process applications for make-ready in the communications space, which applications are processed by Consolidated and any related make-ready work is performed by Consolidated. Given that most broadband deployment work is performed in the communications space, that the system cannot process applications for work in this space makes it only fractionally useful at best.

The system's shortcomings with respect to work in the communications space are particularly acute in the area of one touch make-ready. OTMR, at the election of the requesting party, has been mandatory since April 2021. By definition, however, OTMR is available only for simple make-ready in the communications space. (Ch. 880, §§ 1(Z), 2(A)(13)). Currently, the system's ability to process OTMR applications is rudimentary at best. OTMR is a process substantially utilized by the Broadband Providers. The absence of OTMR capabilities makes the benefits of the system to the Broadband Providers largely illusory, at least at present.

These shortcomings are directly traceable to Consolidated’s nonparticipation to date in the design, implementation, and operation of the joint-use software system. The Broadband Providers noted in May 2023 that Consolidated was “conspicuous by its absence” from the joint-use software effort. Docket 2023-00058, Broadband Providers’ Reply Comments, May 19, 2023, at 3. Not much has changed since, so far as the Broadband Providers can tell. Consolidated does not use the Alden One system at this time, despite that its participation in the system is mandatory under the Commission’s rules.

Consolidated views itself as a competitor in the broadband market — the very market where OTMR might be used. Trade publication *Fierce Telecom* recently reported that Consolidated’s board of directors sent a letter to shareholders warning that if its pending proposal to be fully acquired by private equity investors were not approved, “it will be unable to fund its future fiber builds at ‘the pace necessary to remain competitive and continue to grow.’” Consolidated Says Fiber Build Will Slow Without Private Equity Backing, *Fierce Telecom*, December 18, 2023.¹

Consolidated’s competitive pronouncements are not new. For example, in May 2023, touting its first-quarter 2023 record-setting net broadband subscriber additions and predicting even

¹ https://www.fiercetelecom.com/broadband/consolidated-says-fiber-build-will-slow-without-private-equity-backing?utm_medium=email&utm_source=nl&utm_campaign=FT-NL-FierceTelecom&oly_enc_id=0662E0082934A0U.

The article continued:

Specifically, Consolidated “will be forced to significantly slow the pace of [its] upgrade to roughly 45,000-75,000 passings per year,” compared to its average of more than 300,000 annual passings from 2021 to 2023.

The operator has previously stated plans to cover 70% of its footprint with fiber [by mid-2026](#). Consolidated in its letter said it currently reaches around 45% of its base with fiber.

But without private equity backing, Consolidated expects to complete its fiber build by 2029 – three years after its original target.

“Given this delay in our plan, competitors will have additional time to build fiber in certain of our markets ahead of the Company, creating a clear competitive disadvantage for us and an impediment to future growth,” Consolidated wrote.

better results in the second and third quarters, “[Consolidated’s CEO, Bob] Udell said Consolidated’s progress has been helped by its incumbent position in the markets it serves as well as its existing conduit capacity and pole access.” Consolidated Sets Fiber Net Add Record in Q1, Expects Strong Q2, *Fierce Telecom*, May 2, 2023.²

Policymakers must constantly keep in mind that every broadband deployment in Consolidated’s service territory is a competitive threat, and view Consolidated’s actions as responses to those actual or perceived threats. Impeding competitors’ deployments, or making them more difficult or expensive, are potential ways Consolidated can gain an unfair advantage for its own broadband services and drive up costs for consumers by reducing competition.

C. Make-Ready Payments.

Make-ready payments today suffer from a variety of issues. As noted above, separate payments are made to the power company and Consolidated. Consolidated, in particular, requires payment by paper check and does not start the make-ready clock until the check is deposited. Delays in mailing and depositing the check directly lead to delays in the make-ready process. In another jurisdiction, one of the Broadband Providers experienced a significant delay when a check was “lost” within the pole owner’s offices for several weeks. Even though delivery of the check was documented by the overnight courier service, the pole owner failed to acknowledge the payment until the check was found and deposited, delaying the start of make-ready by that amount of time.³

Further, the entire amount of the make-ready estimate must be paid up front. The pole owner keeps the use of that money until spent on make-ready work. In addition, while the pole

² <https://www.fiercetelecom.com/broadband/consolidated-sets-fiber-net-add-record-q1-expects-strong-q2>.

³ To be clear, this example did not involve Consolidated. But it is illustrative of the type of problem that refusal to accept electronic payments may cause.

owner is required under applicable agreements to refund overpayments (i.e., where the actual cost is less than the estimate the attacher paid), there is no deadline for return of the money. Conversely, when the estimate turns out to be less than the actual cost of the work, the pole owner's supplemental billing (sometimes called a "true-up" bill) can be vague and/or rendered months later, and there is no cap on the amount billed over the estimate. In other jurisdictions, the Broadband Providers have received instances of unreasonable and unjustified true-up bills for make-ready work that are multiples of the originally estimated amount. These kinds of delays and inaccuracies in the back-billing make it impossible for requesting parties accurately or rationally to budget for make-ready work.

IV. Ways to Reduce Wait Times and Improve the Make-Ready Process.

A. Ensure Full and Robust Implementation of the Joint-Use Software System.

The Broadband Providers have consistently stressed that to be truly beneficial, and not just a bureaucratic overlay, the joint-use software system must be designed, implemented, and operated with the interests of all parties taken into account. The designers of the Alden One system have stated that the system works best when the perspectives of all stakeholders, including the attachers, are taken into account. Alden's President, John Sciarabba, who best knows the system, its operation, and its capabilities, advised that in implementing Alden One, "The trick, obviously, is to get everyone to agree on what the criteria is." Docket No. 2021-00321, August 2022 Workshop at timestamp 1:11:45⁴; *see* Docket No. 2023-00058, Broadband Providers' Initial Comments, April 26, 2023, at 4.

⁴ <https://boxcast.tv/view/alden-one-qijjp8dbutekbej9nfy5>. Timestamp citations throughout this filing may be approximate.

In particular, the Commission should ensure that the system's capabilities related to OTMR, self-help in the communications space, and use of contractors by requesting parties are brought up to speed as soon as practicable. That necessarily means that the system must be populated with all relevant data and that it is programmed to accommodate all processes relevant to work in the communications space. In particular, Consolidated must participate fully, as the rules require.

In addition, as discussed below, the system should be able to interface with electronic payment systems and effectuate electronic payments so as to reduce delays from paper checks being lost in the mail or on someone's desk.

B. One Application.

Currently, requesting parties are required to submit two pole attachment applications — one to the power company and one to Consolidated. That is a duplicative and inefficient process. It requires extra paperwork that is at least in part redundant. Applicants must interact with two reviewing entities. The power company and Consolidated do not always coordinate well together.

The Commission should require implementation, by a date certain, of a unitary application used by both the power company and Consolidated. That would eliminate or at least reduce inefficiencies from duplicative information, paperwork, and effort.

It may be that full implementation of Alden One would achieve this objective. However, the time frame for such implementation is uncertain. Further, given the importance to broadband deployment of OTMR, self-help, and make-ready in the communications space in general, Consolidated's absence to date from the Alden One implementation effort (discussed above) casts doubt over the possibility and timing that the process will be streamlined in that manner.

C. Expedite Large Orders by Adopting Clear Deadlines.

One immediate and simple way to speed up the pole attachment process is to expedite large pole attachment orders by adopting the FCC's December 15, 2023 interpretation of its rules, which in this regard are identical to the Commission's.

The FCC rules and Maine rules are substantively identical in that for orders for attachment to over 3,000 poles or 5 percent of the utility's poles in a state (whichever is less), make-ready deadlines are not specified but are left to the pole owner and the prospective attacher to negotiate. 47 C.F.R. § 1.1411(g)(4); Ch. 880, § 2(A)(7)(d). Last month, however, the FCC released a declaratory ruling clarifying that an applicant may designate the first 3,000 (or 5%) poles of a larger order for processing under the timelines applicable to 3,000 (or 5%) pole orders, instead of the more general negotiated timelines. *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, FCC 23-109, ¶ 50 (released Dec. 15, 2023).⁵ The FCC found this interpretation of its rules to be reasonable and consistent with its goal of promoting broadband deployment. Pole applications of this size will likely become more common as additional federal funding becomes available to connect folks in areas unserved or underserved by broadband, so it is important to address this issue now to avoid delays in the future.

Given that Maine's rules are identical, it likewise would be consistent with the goal of promoting broadband deployment to adopt the same interpretation in the case of a large order for more than 3,000 poles or 5% of the utility's poles in the state. As with the FCC, this would not

⁵ <https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf>.

require a formal rulemaking. Instead, the Commission could adopt that interpretation should a dispute be brought before it, which then would constitute precedent going forward.

In addition, in its Third Further Notice of Proposed Rulemaking within the December 15th order, the FCC tentatively concluded that it should adopt a defined period of extra time, an additional 90 days, for large orders over 3,000 poles or 5%, instead of the open ended, to-be-negotiated timeframe. *Id.* ¶ 53. Regardless of whether the FCC adopts this defined time frame, the Commission should consider a similar defined period for orders of over 3,000 (or 5% of) poles.

D. Reform the Make-Ready Payment System.

1. Require Prompt Repayment of Unused Make-Ready Prepayments.

The current system, which requires prepayment of the entire make-ready estimate and does not impose any time frame for owners to refund unused overpayments, is unnecessary, one-sided, and gets in the way of needed broadband deployments. Particularly in the not-uncommon situation where a requesting party prepays for make-ready and then has to take over the work when the pole owner fails to perform, the prepayment requirement unjustly and unnecessarily deprives the requesting party of needed capital and unjustly enriches the pole owner (which could well be a competitor of the requesting attacher).

The Commission's rules require that the pole owner provide an estimate of make-ready charges. If the requesting party accepts the estimate, it must pay the entire estimated amount to the pole owner before the owner is required to send notifications and otherwise commence any make-ready work. Ch. 880, §§ 2(A)(4), 2(A)(4)(b), and 2(A)(5). Such prepayments can amount to tens or hundreds of thousands of dollars.

Prepayments are required even though the pole owners are amply protected against nonpayment by attachers by substantial financial security provisions in the owners' standard pole

attachment agreements, including the requirement for a bond in the amount of \$20 per attachment (up to \$300,000) “to guarantee the payment of any sums which may become due to the Licensor for Attachment Fees due hereunder and *any other charges for work performed for Licensee by the Licensor.*” Verizon (now Consolidated) / CMP (now Versant) / CRC (now GoNetspeed) Pole Attachment Agreement, August 3, 2001, ¶¶ 12.1, 12.2 (emphasis added).⁶

Further, in the event that the pole owner fails to perform or perform on time and the requesting attacher invokes its right to the self-help remedy under section 2(A)(9), the pole owner has forced the requesting attacher to pay twice — once to the owner for uncompleted work and then again to get the work done. This financial double hit further impedes the requesting attacher’s ability to bring needed broadband to the citizens of Maine.

To make matters worse, there is no time limit within which the pole owner must refund prepayments it has not used to perform the make-ready contemplated by the estimate. But, when the shoe is on the other foot and owners bill attachers for costs and fees, they impose due dates for payments and late fees if the due date is missed.⁷

⁶ Indeed, the existence of these substantial financial protections calls into question the need for the prepayment requirement at all.

⁷ For example, in the three-way agreement among Central Maine Power, Consolidated, and GoNetspeed, section 3.3.2, provides:

Except as provided in Appendix VI, Licensee shall make an advance payment of the applicable Charge to Licensor prior to any performance by Licensor of any pre-construction Survey, Make-ready Work, Post-construction Inspection or Subsequent Inspection. Where the work to be performed by Licensor is covered by a Unit Cost as described in subpart 3.3.4, the Licensor shall use the Unit Cost for the Charge. Where the work to be performed by Licensor is not covered by a Unit Cost, in whole or in part, the Charge will be based on an estimate of charges. For any charges based on an estimate, the Licensee shall be credited for any amount paid in excess of the Licensor’s estimated charges, or shall be billed for any amount in addition to Licensor’s estimated charges, as compared to the actual charges as finally computed.

Beyond the bare requirement that overpayments must be refunded, the agreement contains no deadline, late charges, or other requirements for the refund of overpayments. In contrast, the provisions related to payments by GoNetspeed to the owners (except for required advance payments) require payment within thirty days of the bill and impose carries late charges of 1.5% per month from the date the payment was due. Section 3.4.1.

This is not an abstract fear. In a recent situation in Maine, GoNetspeed made a six-figure advance make-ready payment to Consolidated. Consolidated did not perform and GoNetspeed invoked the self-help remedy and took over the work. GoNetspeed therefore paid for the work twice — once to Consolidated, then again to its contractor to perform the work Consolidated was supposed to. GoNetspeed invoiced Consolidated for refund of the prepayment on August 25, 2023, and is still waiting for its refund nearly five months later. Also in Maine, Crown Castle had a similar experience when it took over Consolidated's make-ready work under the self-help provision: it started the refund process in June of 2022 and received Consolidated's check in March of 2023, nine months later.

The deleterious effect upon broadband deployment and competition is obvious. The requesting party is deprived of capital that could be used to build out networks to serve Maine citizens, and Consolidated the competitor has the use of the requesting party's money until refunded. Unlike in the consumer situation, the pole owner is not required to pay interest on such deposits.⁸

The Commission can somewhat alleviate this financial disparity by requiring pole owners to promptly refund overpayments of estimated charges for make-ready work (including pre- and post-attachment surveys) within the same time periods, and under the same terms (such as late charges and interest) as the owners impose upon attachers' payment obligations. Making these terms reciprocal at least would somewhat level the competitive playing field.

⁸ The Commission recently set the calendar year 2024 interest rate on consumer deposits at 5.08%. Letter from Administrative Director Harry Lanphear, November 14, 2023.

2. Limit the Time for and Magnitude of Make-Ready True-up Back-Billing.

The process of estimating and later trueing up make-ready charges also can lead to the opposite problem: back-billing amounts greatly in excess of the estimate, sometimes billed many months after the work is done. In other jurisdictions, the Broadband Providers have received true up bills for make-ready work that far exceed the original paid estimate (at times more than twice the estimate) that were sent in a different fiscal year than the year the estimated charges were paid and the work completed. This wreaks havoc with requesting parties' budgeting, forecasting, and accounting processes. It also does not provide requesting parties with accurate price signals to enable them to decide whether to pursue the project or not.

To alleviate these problems, the Commission should require that any true-up bills for make-ready work be sent to the attacher within a specified and short period of time, such as 60 days after the make-ready work is completed. Further, overage charges should be capped at 20% of the original estimate. This will force owners to do a better job of estimating costs, reduce sloppy and inaccurate estimating practices, allow prospective attachers to make informed decisions about projects, and generally increase the transparency of the process.

4. Require that Pole Owners Accept Electronic Payments

As noted above, owners' insistence on payments by paper checks directly translates to delays in the make-ready process. There is a simple solution: owners should be required to accept electronic payments, at the option of the requesting (paying) party. These nearly instantaneous payment systems will eliminate mailing delays and the possibility that checks will be lost.

It should be noted that Alden One has the capability to process electronic payments using recognize payment processing systems such as Forte and Stripe. Docket No. 2021-00321, August 23, 2022 Workshop Recording at timestamp 1:49:30. As the Alden system designers recognized,

implementing e-payments will eliminate paper checks and the delays associated with mailing and processing them. (26:00; 1:49:30) The implementation of Alden One should be required to include electronic payment processing capabilities and interfaces as described. Regardless of its implementation in Alden One, however, electronic processing of make-ready payments should be mandatory for pole owners.

V. Joint-Use Software System Costs are Rightfully Borne by the Pole Owners.

In its December 26, 2023 Comments, the Office of the Public Advocate has raised the issue of costs, specifically in the context of the joint-use pole management software system but also more generally.⁹

The OPA's views continue to be informed by the false notions that the T&D utilities have no responsibility for costs related to pole attachments and derive no benefit from the joint-use software system.

The OPA fails to acknowledge that the duty to provide access to poles is an essential part of the business of owning poles. Providing access is a legal requirement with which all pole owners must comply. Further, the records in the proceedings related to the joint-use system contain overwhelming, never-refuted evidence that the pole owners are the primary beneficiaries of the system.

⁹ It is not clear that issues related to general operating costs, as opposed to specific costs of pole attachment, are germane to this proceeding. The Resolve speaks in terms of operational and process issues. *E.g.*, Topic No. 1 refers to time frames for attachments and ways to decrease or standardize them; No. 2 relates to numbers of poles meeting certain criteria; No. 3 relates to enforcement practices and policies; and No. 4 relates to educational resources. In addition, at various times in its recent pole attachment proceedings, the Commission has been presented with cost issues and has declined to address them.

However, in light of the OPA's comments, the Broadband Providers feel compelled to respond to the issues surrounding the joint-use database system. In addition, in the event that the Commission determines that its report should include cost issues, the Broadband Providers respectfully submit the comments below, which relate to issues many of which have been discussed at various earlier times during the Commission's proceedings.

A. Providing Access is a Legally Required Obligation of Pole Ownership.

Federal law requires owners to provide access to their poles: “A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” 47 U.S.C. § 224(f)(1).

Maine state law is to the same effect.

The commission may order that joint use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use when, after a hearing had upon its own motion or upon complaint of a joint use entity affected, it finds the following:

A. That public convenience and necessity require a joint use entity to provide nondiscriminatory access to any poles, ducts, conduits or rights-of-way owned or controlled by another joint use entity

35-A M.R.S.A. § 711(1).

The Commission’s rules, promulgated pursuant to 35-A M.R.S.A. § 711(4), are straightforward and direct: “A pole owner must provide a requesting party with nondiscriminatory access to any joint-use utility pole owned or controlled by it for the attachment of conductors, circuitry, antennas, or other facilities.” Ch. 880, § 2(A)(1).

Access is not an optional frill that owners provide to attachers. Costs associated with performing the legally-required duty to provide access are costs of doing business. Thus, those costs are appropriately borne by the entities conducting that line of business, namely, the pole owners.

B. Owners Realize Substantial Efficiencies and Savings from the Joint-Use System.

Further, information submitted in the proceedings related to the joint-use system shows that the pole owners are the predominant beneficiaries of the efficiencies and savings that the

system will bring.¹⁰ Consequently, it is perfectly appropriate for the owners to pay the costs of the system.

¹⁰ See, e.g., the following filings in Dkt. No. 2021-00321: Response of GWI, Crown Castle, and Otelco to Pole Owners' Funding Proposal, March 25, 2022, at 1-6; Comments of GWI, Crown Castle, and GoNetspeed Re: Proposed Database Regulations, July 22, 2022, at 6-8; and Reply Comments of GWI, Crown Castle, and GoNetspeed Re: Proposed Database Regulations, August 12, 2022, at 3-4.

Among other things, the Broadband Providers explained in their March 2022 comments (pp. 3-4):

By their own words, the owners have shown that they, not the attachers, are the predominant beneficiaries [of the joint-use system].

In their November 19, 2021 Joint Filing, the pole owners state that the system "will facilitate the following activities" (unnumbered pp. 3-4):

1. "Submission of pole attachment requests and applications by joint use entities." **An attacher activity.**
2. "Routing of pole attachment requests through the appropriate workflow." **Owner activity.**
3. "Chapter 880 required make-ready notifications." **Both, but more owner than attacher; see below.**
4. "Transfer notifications for new attachment make-ready." **Owner activity.**
5. "Transfer notifications for damage, capital improvement, and road construction pole replacements." **Owner activity.**
6. "Transfer notifications in connection with abandoned pole transfer process." **Owner activity.**
7. "OTMR notifications." **Attacher activity.**
8. "Post attachment inspection notifications . . . from the pole owner." **Owner activity.**
9. "Billing notifications." **Owner activity.**
10. "Process monitoring and tracking." **Owner activity.**
11. "Management of existing attachments by pole owners." **Owner activity.**

Thus, more than eight of the eleven activities the owners claim the database system will facilitate are performed by owners, not attachers.

Regarding the Chapter 880 notifications the owners say the database will facilitate, these include:

1. Owner notifies applicant that the application is or is not complete. § 2(A)(1). **Owner.**
2. Owner notifies applicant that the survey is complete. § 2(A)(2). **Owner.**
3. Owner denies application. § 2(A)(3). **Owner.**
4. Owner presents estimate. § 2(A)(4). **Owner.**
5. Owner notifies attachers of work to be performed. § 2(A)(5). **Owner.**
6. Owner's 15-day notice to take over make-ready. § 2(A)(5)(b)(iv). **Owner.**
7. Applicant notifies of self-help for survey. § 2(A)(9)(a). **Applicant.**
8. Applicant notifies of self-help for work. § 2(A)(9)(b). **Applicant.**
9. Applicant notifies of damage during self-help work. § 2(A)(9)(b)(iv). **Applicant.**
10. Applicant notifies of completion of self-help work. § 2(A)(9)(b)(v). **Applicant.**
11. Owner notifies of changes in rates or modifications of facilities. **Owner.**

Here again, seven of the eleven Chapter 880 notifications are the responsibility of the owners.

Representatives from Alden One made an extensive presentation at the August 23, 2022 workshop in Docket No. 2021-00321. In it, they forcefully underscored the many savings and efficiencies that the pole owners will realize by implementing the system. Slide number 5 in Alden's presentation pronounced that the system's business model was that "Business Process Automation = Saves Time." The system allows pole owners to "do more with current staff," "avoid hiring," "free up experts to do expert stuff," and "turn hours into minutes."

The system offers over 140 different time-saving processes. (Workshop Recording at timestamp 14:00) It centralizes and digitizes communications that otherwise would be by email, by paper forms that have to be scanned and sent back, by spreadsheets that have to be filled out and returned, and other laborious means, and makes them all actionable items that may be acted upon directly and quickly within the system. (1:06:00)

Alden's Jacob Harrison explained that the system will save owners fractional FTEs (full-time personnel equivalents) all across the board. "Joint use is not a straight line. It more or less snakes its way across the finish line." (2:25:40) Clerical, engineering, legal, and other functions may be involved. (2:27:00) One of the pole owners' representatives stated, "We have limited resources to do this work. So it's really about getting the work done faster with the resources we have. That's the fractional savings we see. Especially as broadband comes to Maine, we are trying to respond accordingly." (2:27:35)

It is beyond question that the benefits of the system overwhelmingly flow to the pole owners. They should pay the costs. Senator "Trey" Stewart agreed in his September 21, 2022, letter filed in Docket No. 2021-00321. "[P]ole owners gain efficiencies with a new system and, therefore, they should finance most of the cost of this upgrade."

It is a strange idea to suggest that customers should pay to upgrade the systems of their providers. Analogize to a store that operates with a cash drawer and cash receipts handwritten on triplicate carbon paper. That store decides to convert to a modern point-of-sale system with a price scanner, inventory control, and a payment terminal that accepts a contactless credit card tap or Apple Pay. It would be laughable if that store imposed a surcharge on its customers to defray the cost of the new sales system, but that is essentially what the OPA envisions here. Adopting modern systems to promote efficiency and reduce the costs of operation should be, and as a rule are, borne by the business, not the customers. And one would think that increased efficiency is a goal that the OPA would want the T&D utilities to achieve on behalf of their ratepayers.

VI. Conclusion.

The Broadband Providers thank the Commission for the opportunity to file comments and look forward to participating further in the ongoing discussion of these important issues.

January 12, 2024

Attorney for CRC Communications LLC, d/b/a
GoNetspeed and Crown Castle Fiber LLC

Respectfully Submitted,

/s/ *Gregory M. Kennan*

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1. To the Maine PUC,

Biddeford Internet Corporation d/b/a "GWI" respectfully submits these comments regarding this proceeding.

Properly implemented, One Touch Make Ready (OTMR) could significantly speed up and lower the cost of building new broadband infrastructure in Maine. Recognizing that, the Maine PUC and Legislature have endeavored to create a OTMR regulatory regime which works for both pole owners and pole attachers, lowers the cost of OTMR, brings certainty to Make Ready intervals and reduces friction between parties. While progress has been made, there are three missing components which prevent Maine from fully reaching those goals.

The first missing piece is the lack of a well defined regime for qualifying new OTMR approved contractors. Labor is a key bottleneck in the construction of new infrastructure. It is in the interest of pole owners, new attachers and the public that in Maine the skilled labor pool be as deep as possible. The current ad hoc OTMR contractor approval regime artificially constrain that labor pool.

The contractor approval process should have:

1. A published, detailed and complete checklist of qualifications and requirements for contractor approval;
2. A published, well-defined process for contractor approval;
3. Published and defined intervals for the steps in the approval process with the intervals set as to reasonably incent the expeditious approval of new contractors.

The current process is unnecessarily ad hoc and ill defined. OTMR has been around in one form or another for a number of years. The time has come to standardize and document the contractor approval process; the cost of doing so is de minimis. We hope the PUC and Legislature will take the necessary steps to ensure this happens.

Second, the pole owners should be commended for their decision to deploy the Alden One joint use infrastructure management platform. Alden One has enormous promise as a tool for pole owners, attachers, engineering, construction and service firms to work together to create a "single source of truth" and automate all clerical processes around pole ownership and attachment. The automation promise is particularly strong in the OTMR arena which requires the pole owners, current attachers and new attachers to closely coordinate in the Make Ready process.

Unfortunately, in Maine only a small fraction of Alden One's potential is being utilized. As far as we can tell, not all large pole owners are utilizing Alden One, which requires multiple different pole attachment procedures depending on pole owner. Via automation, Alden One is designed to allow

the rapid coordination between pole owners, current attachers and new attachers. These features are not being used. Coordination in the Make Ready process is still ad hoc and based on human intervention via email and telephone calls.

The PUC and Legislature should require that the shared Maine instance of Alden One be configured so as to allow one standard pole attachment process and to automate the communication between the parties.

Over time, Alden One will become the accurate repository for the pole infrastructure in the state. This information is of high value and could be used to reduce both the cost and time for new infrastructure construction. There are a number of parties with a legitimate interest in this database of information: pole owners, pole attachers, prospective attachers and public officials. This information is of enormous value in creating good public policy in our new rapidly evolving, technical world. The non-confidential information in the Alden One database should be available to those with a legitimate interest under reasonable terms to protect the information. Any information that can be determined by the inspection of existing physical plant in the public rights of way is by definition not confidential. Examples of confidential information in Alden One would be any information about plant not yet built (applications, etc). Access to this confidential information should be restricted not only to third parties, but also within the organization of pole owners, made only available to those on a "need to know" basis. One interesting point is that a significant portion of the data in Alden One is essentially "crowd sourced" from these legitimate parties who apply for or attach to poles.

The PUC and Legislature should mandate a regime that while protecting this data allows legitimate parties reasonable access. As Maine's Alden One dataset becomes more complete and accurate over time, the PUC and Legislature should take advantage of it when formulating public policy.

Thank you again for an opportunity to comment and we look forward to reading your report.

Fletcher Kittredge

A handwritten signature in black ink that reads "Fletcher Kittredge". The signature is written in a cursive, slightly slanted style.

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February 9, 2024

MAINE PUBLIC UTILITIES COMMISSION)
Inquiry To Facilitate Preparation of) CMP'S AND VERSANT'S
LD 1456 Report) JOINT COMMENTS
)

Central Maine Power Company (“CMP”) and Versant Power (“Versant”) (collectively referred to as the “T&D Companies”), in response to the Presiding Officer’s February 2, 2024 Procedural Order, hereby provide additional information and comments to assist the Commission in its preparation of the preliminary report to the Legislature as required by Resolves 2023, Ch 81, Resolve, to Study the Effect of Current Laws and Rules on Expansion of Broadband (“LD 1456” or the “Resolve”). The Resolve directs the Maine Public Utilities Commission (“MPUC” or the “Commission”) to conduct a study and prepare reports to the Legislature that includes an assessment of four discrete issues.¹

To assist the Commission, these comments aim to (a) help further inform the Legislature regarding the progress made by the T&D Companies in managing their poles and attachment processes in an efficient manner to allow for the expansion of broadband service in Maine and (b)

¹ According to the Resolve, the Commission, in consultation with the Maine Connectivity Authority, shall study and issue reports to the Legislature that include the following:

1. An examination of the average time involved for each stage of pole make-ready work, as defined in Title 35-A, section 2524, subsection 1, paragraph A, including the time for joint use pole owners to approve attachments for tax-exempt municipalities and private companies, and ways to decrease or standardize wait times for attachments;
2. Using readily available information to the extent possible, including pole data that may be available in the electronic pole attachment management system, an estimate of the number of utility poles statewide that could accommodate municipal facility attachments without the need to replace the pole and an assessment of compliance with Title 35-A, section 2524, subsection 2;
3. An assessment of the commission’s enforcement practices for timely relocation or removal of utility poles that are functionally obsolete, that are in violation of requirements of the federal Americans with Disabilities Act of 1990 or that obstruct current or future municipal infrastructure; and
4. A review of the commission’s current educational resources regarding the rights of municipalities or other entities to attach to shared-use poles and the availability of the commission’s dispute resolution process, including the effectiveness of such resources.

clarify some of the matters raised by Charter/Comcast, GoNetSpeed/Crown Castle, and GWI.

The T&D Companies are pleased to report the successful efforts being undertaken to improve processes to meet the demands of broadband expansion in Maine. The challenges faced by all stakeholders in this area are well-known, including supply chain issues, work force shortages, and challenges in the coordination of work between pole owners and attachers. To help meet these challenges the T&D Companies have led the effort to meet the timelines required by Chapter 880 of the Commission's Rules, and to implement Alden One, a state of the art, nationally recognized joint use software program which will help expedite the pole attachment application, transfer, and make ready processes. CMP has already implemented Alden One, and Versant is in the process of implementing Alden One. The T&D Companies are confident that the use of Alden One will help all stakeholders in the joint use area meet timelines for pole transfers and make ready work.

After years of work to update pole attachment rules the Commission has adopted a revised Chapter 880 governing the pole attachment process.² These rules were developed with extensive input from all stakeholders, and not only adopt recent federal rules applicable to other states but are seen by many in the industry as leading the way for broadband expansion nationally. In furtherance of these efforts the T&D Companies have updated attachment procedures with the goal that all pole users may endeavor to achieve the time periods set out in Chapter 880, including the time required for pole attachers and pole owners to process applications, complete field studies and inspections, undertake attachment and transfer work, and permit the timely replacement of poles and other make ready work.

² The Commission ordered amendments to Chapter 880 in 2021 following an inquiry and a rulemaking, Docket Nos. 2020-00181 and 2020-00281, and in 2023 the Commission ordered additional amendments to Chapter 880 following an additional inquiry and rulemaking in Docket Nos. 2021-00321 and 2023-00058.

I. Procedural Background

The focus of this Inquiry is to assist the Commission in its response to the 4 discrete issues raised in LD 1456 for the Commission to address in its reports to the Legislature. Consistent with that focus, the utility pole owners in Maine, including the T&D Companies and Consolidated Communications, informally met with Commission Staff on October 18, 2023 regarding the Resolve, and discussed the types of data and information that they could readily provide to the Commission in this Docket over the coming year and that may be responsive to the questions raised by the Legislature and included in the Commission’s final report to the Legislature.

During the meeting both CMP and Versant expressed that (1) in general the T&D Companies are meeting the timelines under Chapter 880; (2) the T&D Companies treatment of municipalities and private companies in the pole attachment process is essentially the same and that the T&D Companies are not aware of any non-compliance with 35-A M.R.S. § 2524(2); (3) that the electronic pole management system is not designed to replace the need for field work that may be required to accommodate additional pole attachments; and (4) that the T&D Companies believe the Commission’s enforcement practices regarding utility poles are effective.

Following the informal meeting, on November 9, 2023, the Commission opened this docket to “gather input and information to assist the Commission in preparing reports to the Legislature required by the Resolve.” Thereafter, the T&D Companies each filed letters in the Docket³ that (a) reiterated what they stated during the informal meeting, and (b) identified the types of data and information that the T&D Companies could readily provide to the Commission with the understanding that the Commission would be issuing data requests or otherwise requesting the information as part of its Inquiry. To date the Commission has not issued data requests. The T&D

³ Versant filed a letter on November 9, 2023, and CMP filed a letter on November 10, 2023.

Companies await the Commission’s guidance regarding how it wishes for data to be presented in this Docket over the coming year.

Subsequently, other stakeholders in this Docket filed comments, including (a) Consolidated Communications, (b) the Office of Public Advocate (the “OPA”), (c) Spectrum Northeast, LLC (“Charter”) and Comcast Maine/New Hampshire, Inc. (“Comcast”), (d) CRC Communications, LLC, d/b/a GoNetSpeed (“GoNetSpeed”) and Crown Castle Fiber, LLC (“Crown Castle”), and (e) Biddeford Internet Corporation, d/b/a GWI (“GWI”).

Below the T&D Companies provide a high-level overview of the successful efforts of the T&D Companies to meet Chapter 880 time requirements and where necessary to work with attachers to improve pole attachment processes. The T&D Companies also offer observations as electric T&D pole owners to several comments filed by other stakeholders in this docket.

II. Examination of the Average Time Involved in the Attachment Process

The Legislature has asked the Commission to report on the average time involved in the pole attachment and make-ready process. As noted above, the T&D Companies have, at the request of the Commission staff, indicated what information is available to be provided to the Commission should the Commission request such information in this Docket (see November 2023 filings of each T&D Company).

Chapter 880 imposes various time periods within the pole attachment and make-ready process to encourage that both the attachers and the pole owners to ultimately complete the attachment license process cumulatively within 219 days from the submission of the application to the issuance of the license (following application review, corrections, pole field survey work, make-ready cost estimation, and attacher payments). This timeline is challenging for all parties involved. Another part of the process that has often delayed and complicated pole make ready work is the need for each attaching entity on a pole to properly transfer their attachments in a timely manner. Chapter 880 sets

forth the preferred time period for each attacher to move their attachments to a new location to accommodate a new attacher and/or pole replacement.

Chapter 880 also allows for One Touch Make Ready (“OTMR”) when no pole replacement is required. OTMR is designed to allow qualified contractors and responsible attaching entities to expedite the process by undertaking pole attachments and transfers with one visit to the pole. OTMR is a relatively new practice in the industry and its success will depend on proper implementation. In order for OTMR to be successful there needs to be skilled and qualified contractors and responsible attaching entities to (a) perform the initial field work determination that OTMR is proper, (b) undertake the work in accordance with strict adherence to safety protocols, and (c) timely permit inspections in accordance with Chapter 880.

There are some factors affecting the Chapter 880 timelines that are beyond the control of all stakeholders, including a limited number of qualified contractors with the skill to safely install broadband in Maine; the large geographic area for broadband expansion; interruptions due to storms and storm restoration work; and the timing and amount of any attaching entity’s project funding. On the other hand, the T&D Companies have observed some areas within the control of stakeholders where the process and timing can be improved. For example, the coordination between the multiple attaching entities can cause delays. In addition, the fact that some poles are jointly owned with Consolidated Communications can cause some delays relating to the need for attachers to file two forms of applications, and as is apparent from the comments of some broadband providers in this Docket, the T&D Companies’ ability and time to respond may differ from that of the other joint owner in a particular region or service area. The T&D Companies defer to Consolidated Communications to address any deficiencies these other stakeholders have raised regarding Consolidated Communication’s compliance with Chapter 880 timelines.

In general, on average the T&D Companies are currently meeting the Chapter 880 timelines,

including in particular for work on poles that are maintained by the T&D Companies. Further, the T&D Companies are implementing Alden One with the input of stakeholders to assist with the expansion of broadband in Maine and to allow the T&D Companies to improve their administration of the pole attachment process as pole owners. In order for Alden One to work each stakeholder needs to implement and/or utilize it. When fully implemented, Alden One will improve the tracking of the time it takes from the submission of attachment applications, through the licensing for those applications, transfers and make-ready processes. This will help hold pole owners and attachers accountable to each other in the process.

As the T&D Companies and other stakeholders have more experience with Alden One the T&D Companies anticipate being able to offer further information for the final report to the Legislature under 1456. Overall, the T&D Companies have had positive experiences to date in working with entities wishing to attach to T&D utility poles.

III. Responses to Charter/Comcast, GoNetSpeed/Crown Castle, and GWI

Charter/Comcast, GoNetSpeed/Crown Castle, and GWI filed comments raising a few matters that have been previously raised and addressed in prior dockets. The comments, in large part, do not appear to be directed at the T&D Companies. Rather the comments appear to be directed at Consolidated Communications, which is both a pole owner and a broadband competitor. The T&D Companies therefor defer to Consolidated Communications to respond if and as it considers appropriate. A few comments do concern the T&D Companies as to which we offer the following observations.

Charter/Comcast have requested that a proceeding be opened to address pole replacement costs based on recent changes to the FCC rules regarding pole replacement costs. Respectfully, we understand LD 1456 and the Commission's efforts to report out to the Legislature concern the attachment and make-ready process and availability of poles space, not the cost of replacing poles or

pole attachments. These matters have been addressed and resolved by the Commission following comments of parties in prior recent proceedings concerning Chapter 880. Should the Commission later desire to revisit how parties are to share the cost of pole replacements, this would necessitate an entirely separate docket affecting ratepayers. Further, we do not believe the formula of pole replacement cost sharing is an impediment to timeliness of the expansion of broadband in Maine. In practice, T&D pole owners and representatives from pole attachers have worked out the sharing of costs in the field fairly and equitably, and in a timely manner. The T&D Companies have had few if any substantial complaints in this regard over the decades of pole administration. If a pole is in poor condition then the T&D Companies have been replacing the pole regardless of a pole attacher's need for additional space/capacity on a pole. In contrast, if a pole is in good condition and is being replaced to accommodate a pole attacher's need for additional space, then the pole attacher covers costs associated with that new pole.

GoNetSpeed/Crown Castle and GWI have raised concerns about reducing the timeframes for pole attachments and improving the OTMR process. The T&D Companies agree that there is room for improvement on these issues and that all stakeholders can improve their processes to meet this shared goal. As the T&D Companies have advocated, and as the Commission has agreed, the implementation and utilization of Alden One will improve the time it takes to complete projects. The use of Alden One will also promote a single-application process as advocated by some.

GoNetSpeed/Crown Castle raised concerns that Alden One lacks necessary capabilities for one-touch make ready and has shortcomings for work in the communications space on poles.⁴ The

⁴ GoNetSpeed/Crown Castle again argue that joint-use software system costs should be borne by the pole owners. The T&D Companies disagree with the arguments advanced by GoNetSpeed/Crown Castle. While GoNetSpeed/Crown Castle do not want to pay for the system, notably they have strong opinions about how they want it designed. In Docket No. 2023-00058, the T&D Companies proposed that pole attachers pay 80% of the system costs and pole owners pay 20% of the system costs. The OPA suggested that pole attachers pay 100% of the system costs. In its Order Amending Rule, the Commission determined that Docket No. 2023-00058 was not the appropriate proceeding to address the issue of system costs, and stated that the Commission may revisit the

T&D Companies have not heard any complaints from attachers that suggest a project was delayed or impeded due to an issue with the configuration of Alden One. Alden One is new to Maine and the T&D Companies are committed to working with all stakeholders on its implementation.

GoNetSpeed/Crown Castle raised concerns about billing/payment processes and billing true-ups and refunds. We assume this matter is not directed at the T&D Companies. While CMP and Versant each require payment by check, the T&D Companies also accept evidence of payment by email or uploading a copy of a check in AldenOne. The T&D Companies are not aware of any instance where this process has delayed work. The T&D Companies also have not encountered any issues related to billing true-ups or refunds with attachers.

GoNetSpeed/Crown Castle suggested that to expedite large pole attachment orders the Commission should adopt timelines consistent with the FCC's recent rule interpretation, instead of using negotiated deadlines under Chapter 880. The T&D Companies have applauded the Commission in setting well-defined timelines under Chapter 880, and all stakeholders are in the process of adopting practices and improving processes to comply with those timelines, including the practice of negotiating deadlines for large pole attachment orders in excess of 3,000 poles. The implementation of Alden One will further assist all stakeholders in meeting these timelines. Respectfully, the T&D Companies do not believe now is the appropriate time for the Commission to consider further changes to the Chapter 880 timelines.

Finally, though outside the scope of LD 1456, GWI's comments appear to agree with the T&D Companies regarding the extent to which information in Alden One should be considered confidential. The T&D Companies recognize the need for confidentiality of certain information, at

issue at later date. In the meantime, the T&D Companies have moved forward with implementing Alden One with the understanding that its costs will be recoverable in rates.

certain stages in the process to address competitive concerns, and the need for disclosure of certain information to facilitate the attachment and transfer process. As the T&D Companies have argued, the recent amendments to Section 5(B) of Chapter 880 regarding confidentiality of data are overbroad and undermine the effectiveness of Alden One. *See T&D Companies' Joint Request for Reconsideration* Oct. 2, 2023, Docket No. 2023-00058. The T&D Companies welcome an opportunity to work with all stakeholders to revise this rule, or otherwise address these concerns without impeding the design and purpose of Alden One to expedite the attachment and transfer process.

IV. Conclusion

The T&D Companies appreciate the opportunity to provide these responsive comments and looks forward to continued progress in the area of joint use of utility poles.

/s/ Steven Pasquine

Steven Pasquine
Program Manager – Joint Use
Versant Power

/s/ Debbie Brill

Debbie Brill
Manager – Joint Use
Central Maine Power

**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

Docket No. 2023-00300

**PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of
LD 1456 Report**

**ADDITIONAL COMMENTS OF
CROWN CASTLE AND
GONETSPEED**

The Public Utilities Commission (“Commission”) has been tasked, in consultation with the Maine Connectivity Authority (“Authority”), with “study[ing] current pole attachment laws and rules and the effects of those laws and rules on broadband expansion through public networks, private networks or public-private partnerships.” Within this broad topic, the Legislature listed a number of topics of particular interest, including, “ways to decrease or standardize wait times for attachments.” LD 1456.

In carrying out this mission, the Commission and the Authority would be well advised to heed the suggestions of CRC Communications LLC, d/b/a GoNetspeed (“GoNetspeed”) and Crown Castle Fiber LLC (“Crown Castle”) (collectively, the “Broadband Providers”); Biddeford Internet Corporation d/b/a GWI; and Spectrum Northeast, LLC (“Charter”) and Comcast of Maine/New Hampshire, Inc. (“Comcast”) (collectively, the “Cable Operators”). These are the providers out in the field — right now — deploying, operating, and seeking to build modern, state-of-the-art broadband networks to serve the citizens of Maine. Their experience is first-hand, real, and immediate. They are the providers in the best position to know what has worked in the pole attachment process and where improvements can and should still be made.

The Broadband Providers note that while the commenters listed above have focused on different aspects of the pole attachment process based on their own operations and ways of constructing networks, there is broad consistency in their comments. The Broadband Providers

suggest that the comments show that the Commission's rules provide a process better than many. That has been the result of the Commission's interest and leadership in the field. Further, the efforts of CMP and Versant in proposing and developing the Alden One system, if implemented properly taking the interests of all affected parties into account, will be helpful to the pole attachment process. However, there are numerous implementation issues still to be worked out before the Alden system, and the Commission's pole attachment process in general, will achieve their intended results. These include:

The Application Process

The application process is fragmented. Each owner has its own process and procedure. In the typical case of poles jointly owned by the electric company and Consolidated, dual applications have to be submitted for every project. Creating a more uniform application process, and in particular requiring only a single application to both joint pole owners, would streamline the process, reduce coordination difficulties, and lessen the cost and effort of filing applications. It may be that full and robust implementation of Alden One, including the participation of all large pole owners as required by law, will accomplish this. However, implementation of Alden One is not yet at the stage to assess the prospects of success on this issue (see below). *See* GWI Comments at 1-2; Broadband Providers Comments at 4-5, 9.

As the Cable Operators note, the FCC's December 2023 order¹ required pole owners to maintain and make available to attachment applicants the results of the most recent pole attachment

¹ *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Fourth Report & Order, Declaratory Ruling, & Third Further Notice of Proposed Rulemaking, FCC 23-109, WC Docket No. 17-84 (Dec. 13, 2023), available at <https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf>.

surveys. *See* Cable Operators' Comments at 3. The Commission should consider similar transparency-promoting reforms.

Another aspect of the FCC's December 2023 order which would facilitate broadband deployment and which the Commission therefore should adopt is the declaratory ruling allowing a requesting party to designate a portion of a large order that otherwise would be subject only to negotiated make-ready timelines, to be assessed under the timelines applicable to applications of up to 3,000 poles or 5% of the owners' pole in the state. This the Commission could do, as the FCC did, by interpretation of its existing rules rather than amendment. In addition, the Commission also should consider specific time limits for applications of greater than 3,000 or 5%. *See* Broadband Providers' Comments at 10-11.

One Touch Make-Ready

OTMR is a technique in significant use by those deploying networks in the state. Requesting parties are entitled under the law to utilize this make-ready technique *at their option*. Ch. 880, § 2(A)(13). Ensuring that the application process is fully equipped to handle OTMR requests in an efficient manner is crucial to requesting parties' ability to use this technique.

Further, since OTMR by its nature involves the use of third-party contractors, a simple and transparent process for vetting available contractors would facilitate the use of OTMR as well. *See* GWI Comments at 1.

Alden One

Under law, all large pole owners (CMP, Versant, and Consolidated) are required to participate in the joint-use software system. Ch. 880, §§ 1(Q), 5(A)(1). In so doing, "The owner or owners of the joint-use software system must design, implement, and operate the joint use

software system in a non-discriminatory manner.” § 5(A)(4). This means that in designing, implementing, and operating the system, the interests of attachers and requesting parties must be taken into account along with the interests of the owner/operators.

CMP and Versant have devoted effort and made strides toward meeting these objectives, but the system is not there yet — not even close. Consolidated’s participation has been invisible to date, and its data do not appear in the system so far as the Broadband providers can tell. Further, the system does not accept applications to Consolidated. Since OTMR by definition occurs in the communications space, at this time Alden One does not accommodate OTMR applications except very rudimentarily. So, despite Versant’s and CMP’s efforts to date, the promise of the Alden One system seems far from being realized. *See* Broadband Providers’ Comments at 5-6, 9.

The implementation schedule for Alden One at this point is unclear to the Broadband Providers. Although Alden One implementation may eventually solve various of the application and process problems described in the filed comments, solving these problems should not await that development. To the extent it can, the Commission should look to other means, such as interpretive or declaratory rulings, to effect the reforms suggested in the various comments.

Pole Replacement Costs

The FCC, in its December 2023 order, clarified the parameters for the allocation of pole replacement costs as between pole owners and requesting parties. In particular, pole owners may not impose upon requesting parties the entire cost of replacing poles that have been “red tagged,” that is, designated for replacement other than for inability to accommodate a new attachment. The FCC also clarified when replacing a pole is not “necessitated solely” by a new attachment and chargeable to the requesting party. In addition, the FCC stated that when a pole needs to be replaced with a taller or stronger pole to accommodate a new attachment, the requesting party need

pay only the incremental cost of the taller or stronger pole, not the entire cost of an equivalent-sized replacement pole. FCC December 13, 2023 Order, ¶¶ 39-44.

Excessive pole replacement costs are a detriment to broadband expansion. They drain capital that could be used elsewhere in the new network, and could have anticompetitive effects when the pole owner charging the excessive cost also is a competitor. The Commission should reexamine its pole replacement cost rules, Ch. 880, § 6(C), with the objective of improving its existing formula by incorporating the salutary changes recently adopted by the FCC. *See* Cable Operators' Comments at 2-3.

Make-Ready Payments

The Commission can take a simple step to speed the make-ready process by requiring owners to accept electronic payments, and the corollary that payment is deemed made when the electronic payment is deposited into the pole owner's account. Requesting parties who choose to use electronic payments will avoid delays and expense associated with mailing and processing paper checks, or resulting from the times when the employee who takes checks to the bank is on vacation or when checks are lost on someone's desk for a while. This is the year 2024. Electronic payments are prevalent and accepted throughout commerce, even down to the individual level such as Venmo. There is no legitimate reason for owners to refuse e-payments today. Further, the Alden One system is capable of interfacing with e-payment platforms; it should be required that Alden One be configured to recognize the receipt of e-payments and start relevant clocks running automatically and immediately upon deposit of the funds. *See* Broadband Providers' Comments at 7, 14-15.

In addition, requesting parties have the right to invoke self-help when the owner does not conduct or require make-ready within applicable deadlines. But in such instances the requesting

party already has made an advance payment to the pole owner of the entire amount of the make-ready estimate. This ties up the requesting party's capital in that the pole owner has the money but is not doing the work, and over and above that, the requesting party must also pay the contractor doing the self-help make-ready. The Commission should require that pole owners refund the unused advance payment promptly on the same terms and conditions (such as time limits and late fees) as the owner imposes on costs or fees charged to attachers — in other words, on a non-discriminatory basis. *See* Broadband Providers' Comments at 7-8, 11-13.

The Commission also should reform the other end of the make-ready payment process by limiting in time (e.g., 60 days) and magnitude (e.g., 20%) owners' assessment of make-ready true up charges to requesting parties. Hitting requesting parties with large true-up charges long after make-ready is complete disrupts requesting parties' budgeting and cash-flow processes. Allowing the practice to continue inappropriately rewards sloppy and inaccurate estimating and receivables practices. *See* Broadband Providers' Comments at 8, 14.

Conclusion

Make no mistake — the Broadband Providers appreciate the efforts of the Commission in creating a pole attachment regime that is better than many and of CMP and Versant for their work on Alden One. But, experience with any product or system shows where improvements can be made. The Broadband Providers are optimistic that the Commission, the Authority, and all other parties will continue their collaborative effort to take a good system and make it even better. We look forward to continuing our assistance in that effort.

February 9, 2024

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