

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 579

S.P. 249

In Senate, March 6, 1989

Reference to the Committee on Utilities suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President PRAY of Penobscot.

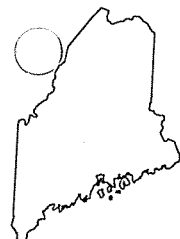
Cosponsored by Senator HOBBS of York, Representative PARADIS of Old Town and Representative CLARK of Millinocket.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Promote the Access of Cable Television to Maine Citizens.

(EMERGENCY)



1 **Emergency preamble.** Whereas, Acts of the Legislature do not
2 become effective until 90 days after adjournment unless enacted
3 as emergencies; and

4 **Whereas,** this legislation is necessary to provide a standard
5 by which the Public Utilities Commission determines reasonable
6 pole attachment rates paid by cable television systems to
7 utilities in instances where the commission exercises
8 jurisdiction in order to resolve rate disputes; and

9 **Whereas,** in the judgment of the Legislature, these facts
10 create an emergency within the meaning of the Constitution of
11 Maine and require the following legislation as immediately
12 necessary for the preservation of the public peace, health and
13 safety; now, therefore,

14 **Be it enacted by the People of the State of Maine as follows:**

15 **35-A MRSA §711, sub-§§4 to 6 are enacted to read:**

16 4. Reasonable compensation for joint use of equipment. For
17 purposes of subsection 1, a pole attachment rate provides
18 reasonable compensation if it assures a utility the recovery of
19 not less than the additional costs of providing pole attachments
20 nor more than an amount determined by multiplying the percentage
21 of the total usable space or the percentage of the total duct of
22 conduit capacity which is occupied by the pole attachment by the
23 sum of the operating expenses and actual capital costs of the
24 utility attributable to the entire pole, duct, conduit or
25 right-of-way. This space which separates communications and
26 power lines shall not be considered as occupied by the pole
27 attachment.

28 5. Definitions. As used in this section, unless the
29 context otherwise indicates, the following terms have the
30 following meanings.

31 A. "Average pole height," for purposes of this section, is
32 rebuttably presumed to be 37.5 feet. This presumption may
33 be overcome by evidence of actual average pole height, as
34 determined by a statistically accurate pole survey, the
35 format and execution of which shall be agreed to by the
36 parties and approved by the Public Utilities Commission.
37 The cost of this survey shall be shared equally by the
38 parties. Subject to the approval of the commission, the
39 parties may agree to be bound by the results of existing
40 surveys, data or other evidence of average pole height.

41 B. "Minimum grade level" means the lowest point of
42 attachment of wires, cables and related equipment in
43 accordance with the most recent edition of the National
44 Electric Safety Code. For the purposes of computing usable
45

1. space, the lowest point of attachment is rebuttably presumed
3 to be 18 feet. This presumption shall be overcome by
5 evidence of the weighted average height of the actual lowest
7 points of attachment on all utility poles in the State as
9 determined by a statistically accurate pole survey. The
11 format and execution of the survey shall be approved by the
13 Public Utilities Commission and the costs associated with
the survey shall be borne by the party challenging the
presumption. The parties may agree that the lowest point of
attachment is 18 feet or, subject to the approval of the
commission, may agree to be bound by the results of existing
surveys, data or other evidence useful in determining the
lowest point of attachment.

15 C. "Occupied space" means that part of the pole to which
17 lines, wires or cables of cable television systems are
19 attached. The attachment of cable television systems shall
21 be rebuttably presumed to occupy one foot of usable space on
each pole to which they are attached. This presumption
shall be overcome by evidence of actual space occupied by
the attachment.

23 D. "Pole attachment" means any attachment for cable
25 television transmission or reception on a pole, duct,
27 conduit or other right-of-way owned or controlled by a
public utility operating within the State.

29 E. "Public utility" means any person or entity which owns
31 or controls poles, ducts, conduits or other rights-of-way
used or useful, in whole or in part, for wire communications.

33 F. "Usable space" means the space on a utility pole above
35 the minimum grade level, including the space which separates
communications and power lines.

37 6. Rental calculation. The annual rental rate per pole
shall be calculated using the following formula:

39 Annual Pole Occupied Space Net Investment Carrying
41 Rental = Usable Space x Per Pole x Charges

43 A. Investment per pole shall be calculated using the
45 formula set forth in the Federal Communications Commission
47 Rules and Policies Governing Attachment of Cable Television
Hardware to Utility Poles, found at 47 Code of Federal
Regulations, Sections 1.1401 to 1.1415.

49 B. Carrying charges shall be calculated using the formula
51 set forth in the Federal Communications Commission Rules and
Policies Governing Attachment of Cable Television Hardware
to Utility Poles, 47 Code of Federal Regulations, Sections
1.1401 to 1.1415.

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Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1, 1989.

STATEMENT OF FACT

This bill provides the standard by which the Public Utilities Commission shall determine reasonable pole attachment rates paid by cable television systems to utilities in instances where the commission exercises jurisdiction in order to resolve a rate dispute.