MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library

http://legislature.maine.gov/lawlib

Reproduced from electronic originals

(may include minor formatting differences from printed original)

Final Report

solves 2023, ch. 81,

the Effect of Current
on the Expansion of
adband

nt Standing Committee on
es and Technology

nber 1, 2024

Maine Public Utilities Commission
18 State House Station,
Augusta, ME 04333

I. Introduction

Pursuant to Resolves 2023, ch. 81[1] (the "Resolve") the Maine Public Utilities Commission (the "Commission") is required to submit this final report related the Resolve by December 1, 2024, to the joint standing committee of the Legislature having jurisdiction over utility matters (the "Committee) including findings and any recommendations, including proposed legislation. The Committee is authorized to report out a bill to the 132nd Legislature in 2025.

The Resolve is broadly aimed at facilitating broadband expansion in the state of Maine. This report summarizes the inquiry opened by the Commission to investigate the current pole attachment process and explore ways to improve it to support broadband deployment. Based on input from utility pole owners, broadband providers, pole attachers, and the Interagency Broadband Working Group led by the Maine Connectivity Authority (the "MCA"), this report analyzes the challenges in the pole attachment process and provides recommendations to enhance the efficiency and effectiveness of broadband infrastructure expansion, especially in rural and underserved areas. The findings highlight the need for enhanced coordination between pole owners and pole attachers, clearer timelines to overcome existing barriers and the potential for further regulatory reforms.

Specifically, the Resolve, directed that the Commission, in consultation with the MCA, study current Maine statutes and administrative regulations that pertain to attachments to utility poles, and the effect, if any, of those statutes, rules and regulations on broadband expansion in Maine. The Resolve 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

[1] Resolve, to Study the Effect of Current Laws and Rules on the Expansion of Broadband.

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 Commission's dispute resolution process, including the effectiveness of such resources.

The Resolve required the Commission submit an initial report on this matter to the 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." The Commission submitted the interim report on February 15, 2024. [2]

II. Commission Pole Attachment Proceedings

As detailed below and in the Commission's Interim Report, over the past nine years the Commission has systematically undertaken comprehensive modernization of the state's pole attachment rules to address the evolving telecommunications landscape and facilitate broadband expansion. Initially, Maine's regulations faced challenges due to outdated regulations that did not account for new technologies or the increased need for competitive access to utility poles. Responding to these limitations, the Commission initiated a series of inquiries, rulemakings, and legislative reports to update Chapter 880 of the Commission's rules (65-407 C.M.R. ch. 880), which governs utility pole attachments, to ensure the regulations align with both state and federal telecommunications policy.

In 2015, the Commission launched its first significant examination of Chapter 880 in over two decades. The Office of the Public Advocate (the "OPA") requested this review, citing issues with outdated regulations that hindered broadband deployment. The Commission agreed with the OPA's assessment and began exploring amendments to support broadband providers and other attachers. This effort emphasized collaboration among pole owners, telecommunications companies, and public stakeholders, setting a foundation for future reform efforts. This initial inquiry informed a 2017 rulemaking that introduced amendments to streamline pole attachment terms and conditions, helping reduce the barriers that new attachers faced.

In the 2017 rulemaking, the Commission proposed modifications to Chapter 880 to add provisions for presumptively reasonable terms and conditions for attachments to utility poles, provisions regarding the licensing of new attaching entities, and, based on input from stakeholders, the Commission adopted procedures for expeditiously resolving disputes regarding pole attachments. As part of its Order adopting the amendments to Chapter 880, the Commission clarified that the terms and conditions in Chapter 880 would remain presumptive as the Legislature had previously directed, but that the Commission expected the presumptively

[2] The interim report can be accessed here - https://maine.gov/mpuc/sites/maine.gov.mpuc/files/inline-files/Report-Resolve%202023%20ch.81-Final.pdf

reasonable terms and conditions in the rule would become *de facto* prescriptive in that parties, knowing the rules the Commission would apply in the context of a dispute, would follow the rules as a matter of course.

In a 2019 rulemaking, the Commission adopted the Federal Communications Commission's (the "FCC") Cable Rate pole attachment rate formula to standardize pole attachment rates and stated that the Commission would apply the Cable Rate in any rate dispute brought before it. The Commission also stated, however, that pole owners and attachers remained free to negotiate rate agreements that differed from the Cable Rate. Additionally, the Commission amended the portion of the Rule that contained the so-called "municipal exemption" to bring that section in-line with P.L. 2019 ch. 127, "An Act to Establish Municipal Access to Utility Poles Located in Municipal Rights-of-Way."

Concurrently with the rulemaking, the Commission examined the issue of unused poles in public rights-of-way by conducting an inquiry to aid in the development of a report to the Legislature as required by P.L. 2019, ch. 128, "An Act regarding Utility Poles in Public Rights-of-way." The Commission submitted the report in January of 2020 and indicated it would further examine the issue in any future revision of Chapter 880.

In a 2020 rulemaking, the Commission explored the integration of a more systematic process for pole make-ready work, which prepares poles for new attachments, and amended Chapter 880 to implement One Touch Make Ready ("OTMR"). OTMR is a process that allows a single contractor to perform all necessary adjustments on a pole, minimizing delays caused by multiple attachers each adjusting their own attachments in seriatim. The 2020 rulemaking also established clearer presumptively reasonable timelines for pole replacements and attachment relocation—critical steps for maintaining consistent progress in broadband expansion—by aligning closely with FCC guidelines. Additionally, the Commission instituted specific presumptively reasonable requirements for attachers to move their attachments within a specified timeframe and for pole owners to remove obsolete poles within set timeframes.

In a 2021 rulemaking, the Commission addressed pole administration by exploring the creation of a centralized pole attachment database through Alden One, a pole management system. Recognizing the complexity and scope of managing numerous pole attachments statewide, the Commission required large pole owners and their attachers to participate in this system, with the intention to improve transparency, expedite the approval process, and improve the notification process between parties. The Alden One system aids in tracking attachment requests, make-ready work, and pole replacement schedules, and creates an efficient, centralized point for communication between pole owners and attaching entities.

The Commission's nine-year effort to update and modernize Chapter 880 demonstrates an ongoing commitment to refining Maine's pole attachment framework to meet the demands of the digital age. Through its deliberate and iterative process of inquiries and rulemakings, the

Commission has built a foundation for robust broadband expansion, positioning Maine to address connectivity gaps effectively.

III. Inquiry Regarding the Resolve

A. Summary of Inquiry Process Before the Interim Report

On October 18, 2023, the Commission held an informal meeting with key stakeholders, including Central Maine Power ("CMP"), Versant Power ("Versant"), Consolidated Communications ("Consolidated"), and the MCA. This meeting established the objectives of the Resolve and laid the groundwork for data sharing regarding pole attachment timelines, pole capacity, and regulatory compliance.

On November 9, 2023, the Commission opened an inquiry in Docket No. 2023-00300 in response to the Resolve. The Commission's inquiry involved a series of procedural steps, including stakeholder meetings, data requests, and interim reports aimed at gathering comprehensive input from utility pole owners, broadband providers, pole attachers, the OPA, and the MCA.

Initially, the Commission invited written submissions from interested parties, focusing on current timelines, challenges in make-ready work, and pole availability for new broadband attachments. CMP and Versant confirmed their adherence to Chapter 880 and expressed a commitment to transparency by providing necessary data.

In December of 2023, the Commission requested comprehensive data from large pole owners (*i.e.*, CMP, Versant, and Consolidated). This request initiated a broader public comment period, leading to detailed submissions from the stakeholders. On or before December 22, 2023, CMP, Versant, and Consolidated submitted data, with varying degrees of detail, on make-ready timelines, pole inventory, and attachments.

By February 2024, the Commission had gathered significant preliminary data and submitted an interim report to the Legislature. The interim report outlined early findings and highlighted improvements to Chapter 880, including adopting the FCC's Cable Rate formula and implementing the One Touch Make Ready process to streamline attachment timelines.

B. Summary of Process Since Submitting Interim Report

March 25, 2024, Information Requests

On March 25, 2024, the Commission made a detailed series of additional information requests to pole owners, pole attachers and other stakeholders aimed at further facilitating the Commission's preparation of the final report. The Commission received information from several stakeholders,

including pole owners CMP and Versant,[3] cable television providers (Spectrum Northeast, LLC ("Charter") and Comcast of Maine/New Hampshire, Inc. ("Comcast")), broadband internet providers (CRC Communications LLC, d/b/a GoNetspeed ("GoNetspeed") and Crown Castle Fiber LLC ("Crown Castle")), and the OPA.[4]

CMP

CMP provided extensive responses to the Commission's information requests, particularly with regard to the timeline for various stages of the pole attachment process and the challenges CMP faces in meeting Chapter 880 timeframes. CMP emphasized that the past three years have been atypical due to COVID-19-related workforce shortages and an increased demand for broadband expansion, which placed additional strain on resources.

- **Timeline Details**: CMP offered specific data on the average time to complete each stage of the pole attachment process, differentiating between regular procedures and the OTMR approach. While the data shows that CMP mostly adheres to Chapter 880 timeframes, CMP noted that in the past few years make-ready timelines were impacted by workforce limitations due to COVID-19, supply chain disruptions, a substantial increase in broadband-related pole attachment requests, and additional external factors such as workforce shortages, weather events, and storm restoration.[5]

- **Challenges and Mitigation**:

- **Challenges:** CMP again highlighted issues related to material shortages and logistical constraints and noted that the last few years were impacted by workforce limitations due to COVID-19, supply chain disruptions, and a substantial increase in broadband-related pole attachment requests and additional external factors that frequently impact make-ready timelines, such as workforce shortages, weather events, and storm restoration

[3] After its initial December 22, 2024, filing, CCI declined to submit any further written filings in the Commission's inquiry.

[4] The Commission's information request is attached to this report as Appendix A

[5] CMP outlined the following necessary steps after a pole attachment agreement is executed between itself and an attacher:

1. Application submitted via Alden One from applicant
2. Application data validated
3. Joint Field survey with ILEC scheduled (often in conjunction with attacher representative to be on site)
4. Field Survey completed
5. Make Ready design completed (if no make ready is found to be required, application is licensed)
6. Make Ready cost estimate issued to applicant, if required
7. Make Ready payment received, if required
8. Customer Required Date Set
9. Any required permits secured (Town pole permit, DOT pole permit, easement, etc.)
10. Make Ready work issued to construction crews
11. Work completed
12. License issued

efforts. An additional challenge is the necessary involvement of multiple parties in the attachment process:

1. Pole owners
2. Wireline telephone service providers
3. Electric utilities and municipalities that own streetlights and lines related to municipal and police power functions
4. Permitting authorities (*e.g.*, local municipalities and the Maine Department of Transportation)
5. Private property owners
6. Third-party contractors for construction, flagging, and tree trimming
7. Dig Safe, when poles need to be set

CMP also discussed how delays arise from the unique demands of pole replacements, line sag evaluations, and road elevations which necessitate in-person surveys and require manual inspections.

- **Mitigation:** CMP stated that its adoption of the Alden One system has enhanced coordination and streamlined notification processes, stating it has "proven to be helpful in the pole attachment and administration process." However, CMP noted that while digital tools aid data tracking, they do not eliminate the need for field checks to ensure safety and compliance. CMP also highlighted the availability of self-help (*i.e.*, the ability of an attacher to engage its own contractor to perform work as opposed to waiting for the pole-owner's internal crews or contractors) in the communications space as part of OTMR but notes that it is aware of instances where self-help work was not performed in a safe manner and created unsafe conditions on the pole.

- **Make-Ready Costs and Costs Associated with Broadband:** CMP stated that the costs for make-ready work are recovered directly from the entity requiring the make-ready work, unless the entity is a municipality claiming the municipal exemption (35-A M.R.S § 2524), in which case those costs are recovered from CMP's customers through rates. CMP paid $134,049.20 in 2023 for Alden One subscription and the on-going rate is $.20 per pole per year. CMP stated that it has not quantified the costs (labor hour costs) associated with implementing Alden One but has hired additional staff to meet the needs of the work associated with broadband expansion.

- **Municipal Projects:** CMP provided a list of municipal broadband projects requiring licensing over the past five years and listed which municipalities utilized the municipal exemption. CMP stated it was not in a position to know how municipalities paid for make-ready costs if they did not claim the exemption, in which case the make-ready estimate would be generated in the same fashion as any other entity not eligible for the

exemption. CMP did not know the number of anticipated municipal projects over the next five years.

- **Rapid Response Process; Inquiry or Investigation Proceedings; Other Data and Information:** CMP is aware of the Rapid Response Process and has participated in the program. CMP does not have an opinion regarding which group or agency would be best suited to educate municipalities regarding broadband attachment issues but notes that the Commission has extensive expertise and knowledge regarding the relevant laws, rules and practices related to pole attachments. Since 2021, CMP has received 5088 traditional and OTMR pole attachment applications encompassing over 97,700 poles. CMP states there are 670,759 poles in its service territory.

Versant

Versant Power submitted detailed responses similar in scope to CMP's, covering the challenges and timelines for pole attachment procedures. Key points include:

- **Average Timeframes for Each Stage**

  Versant provided a granular view of the pole attachment timeline, separating durations for simple, complex, and OTMR procedures.

	Application Review and Field Survey	Estimate	Payment	Const.	License (w/Complex MR)	License (all other)
CH. 880 Timeline	55	14	60	90	219	219
VP Maint. Area Timeline	21	38	20	70	188	48
CCI Maint. Area Timeline	21	26	27	145	263	45
Combined	21	34	23	93	212	47

  Additionally, Versant described the steps they take to process an application for new pole attachments. They included:

  - Submission of an Application
  - Application Review and Field Survey - Versant highlighted the importance of the Field Survey involving a ride out to determine simple make-ready and complex make-ready and being critical, when undertaken with qualified personnel, in leading to a more expeditious completion and fewer post-construction compliance issues.
  - Estimate of Make-Ready Costs

Versant also reported on expected improvements to the attachers benefit in the ability to assemble data inside Alden One before initiating the application giving the attacher ability to track their application as well as the visibility to their existing attachments and monitor the progress of transfers withing the system.

- **Additional Context on Process Improvements**

Versant stated that on average, it is meeting the Chapter 880 timelines and any further changes to rules governing the timeframes for pole attachments are "unnecessary and may be counterproductive." Versant believes it simply needs the opportunity to implement and work under Maine's relatively new procedures and timeframes and encouraged the Commission to focus on the quality of the attachment work. Versant noted that with processes such as OTMR and Self Help, it has seen an uptick in post-construction clearance encroachments, insufficient clearance above roads/highways/railroads, improper guying support, shifting of existing attachments into non-code-complaint positions on the poles, and installations occurring before transfers of existing attachers or pole replacement work.

- **Make-Ready Costs and Costs Associated with Broadband**

Versant stated that it recovers the cost of make-ready work generally in accordance with Chapter 880 which usually entails the cost causing entity to cover the make-ready cost. The one exception being if a municipality were to claim the municipal exemption. Versant notes the incremental cost of implementing Alden One has been twofold: 1) Versant has needed to devote personnel to implement, provide training and monitor Alden One; and 2) Versant pays for a subscription that Versant expects to cost approximately $50,000 per year.

- **Municipal Projects**

Versant is not aware of municipal-owned projects requiring pole attachment licensing in their territory over the past five years. Versant is also not aware of any planned municipal projects in its territory over the next five years.

- **Rapid Response Process; Inquiry or Investigation Proceedings; Other Data and Information**

Versant described the Rapid Response Process but stated that it has not needed to engage in the process as it has been successful in working with attachers to resolve issues when and as they arise.

Versant stated it does not have an opinion regarding which entity or agency would be the most effective in providing educational resources and assistance to municipalities or other attachers regarding their rights. Given the level of expertise and experience required to deploy, own, and operate a broadband network, Versant states it has found attachers to be largely aware of their rights. In addition to itself, Versant is aware the Commission, MCA, OPA, and the Maine Municipal Association ("MMA") have each offered services in educating municipalities and attachers regarding broadband expansion.

Consolidated

Consolidated did not submit a response to the Information Requests filed in the March 25, 2024, Procedural Order. CMP and Versant did, however, provide comments regarding Consolidated.

- CMP discussed Consolidated not having implemented Alden One as of the date of CMP's comments.
- Similarly, Versant highlighted that Consolidated had not disclosed a timetable to implement Alden One as of the time of Versant's comments.
- Crown Castle and GoNetspeed comment that has yet to participate in Alden One in a meaningful way because most broadband deployment happens in the communications space, Consolidated's lack of participation negates the usefulness of the system.

Crown Castle and GoNetspeed

- **Timeline Details**:

  In providing responses to the Commission's questions regarding the timeframes of the pole attachment process, GoNetspeed and Crown Castle were able to provide approximate timeframes.[6]

- **Challenges**

  - The need for attachers to file two applications in the instance of jointly owned poles.
  - Not all large pole owners are currently participating in the implementation of Alden One.

- **Mitigation Strategies**

  - Crown Castle and GoNetspeed prefer to address challenges in meeting deadlines informally with pole owners.

[6] By way of example, Crown Castle stated that the average duration from application submission to license issuance for them is 82 days when no make ready is required and 342 days for applications requiring make ready.

- Self-Help – Crown Castle noted that they have exercised their right to self-help about 85% of the time when Consolidated failed to complete work within applicable deadlines.
- OTMR – Crown Castle and GoNetspeed have used OTMR to shortcut or eliminate delays and disputes by retaining control of the work themselves.

- **Concerns Over Prepayment and Cost Transparency**:

  Crown Castle and GoNetspeed raised issues with advance payments for make-ready work and suggested reimbursement for unused funds when projects face delays. They emphasized the need for clear, consistent billing practices.

- **Rapid Response Process; Inquiry or Investigation Proceedings; Other Data and Information**

  Crown Castle and GoNetspeed are aware of the Rapid Response Process and, although they have not utilized it, believe the process to be one of the extraordinarily useful tools the Commission has provided in Chapter 880 to expedite and facilitate broadband expansion.

  Crown Castle and GoNetspeed have no opinion on which entity is best for education and outreach to municipalities. They noted the Commission's experience and expertise through its multiple inquiries and rulemakings but also noted that MCA may have more capability and focus on outreach and education and suggested a partnership between the two entities may blend the best of both.

Charter and Comcast

Charter and Comcast provided responses that focused on consistent cost practices and clear process documentation.

- **Timeline Details**:

  Charter and Comcast provided insight regarding the timeframes of the pole attachment process. In general, Charter and Comcast did not track information to the level of detail that would be directly responsive to the Commission's request.

- **Challenges**

  - Charter and Comcast highlighted their position regarding the equitable allocation of pole replacement costs and requested that the Commission further modify Chapter 880 to more closely align with the FCC's pole attachment rules with regard to pole replacement cost allocation.

- **Mitigation Strategies**

    - Charter and Comcast stated that further aligning Chapter 880 to the FCC pole attachment rules will prevent inappropriate cost-shifting by pole owners to attachers allowing for further use of taxpayer funds dedicated broadband expansion.

- **Comments on Attachment Rights**

  Charter and Comcast stated their view that that municipalities should be treated the same as other attaching entities and indicated that the Commission should remain the lead agency in the application of Chapter 880 Rules. Charter and Comcast further suggested that MMA and MCA provide input to the Commission on issues that affect municipalities but should not adopt different or competing rules.

- **Rapid Response Dispute Resolution Process; Inquiry or Investigation Proceedings; Other Data and Information**

  Charter and Comcast stated that the Commission's Rapid Response Process is straight-forward and unambiguous. They stated the process is streamlined, inexpensive and well-suited for pole access disputes. They further state that neither cable operator has used process yet, there may be a need to do so in the future but that Charter and Comcast prefer to resolve issues with pole owners on pole access, pole attachment rates and other matters on a business to business basis and that the mere existence of a mechanism like Maine's Rapid Response Process serves as an incentive for parties to reach mutual accommodation.

OPA

The OPA's response focused on protecting ratepayers from bearing broadband expansion costs, suggesting specific measures for cost transparency and accountability.

- **Ratepayer Protection and Cost Reallocation**:

  CMP's and Versant's responses to the March 25, 2024, Procedural Order confirmed the OPA's concerns and conviction that electric customers should not be subsidizing broadband attachers. According to the OPA, CMP's ratepayers are not realizing any savings from the implementation of Alden One. The OPA urged the Commission to include in its recommendations that electric customers should not be subsidizing pole attachers and to draft proposed legislation for this position.

Workshops

On July 3, 2024, the Commission scheduled a series of workshops to be hosted by the MCA.[7] The purpose of the workshops was:

- To gain a clearer definition of the issues that pole attachers and pole owners need to address together to support Maine's broadband goals.
- Clarify and articulate the priorities and interests of owners and attachers.
- Confirm the willingness of pole owners and attachers to continue to work with MCA and other parties to address shared issues and priorities.

IV. MCA Report

On August 26, 2024, the MCA filed a draft of its Utility Pole Attachment Study for Broadband (the "MCA Study"). The MCA commissioned the MCA Study to further inform this report to the Legislature by providing a comprehensive review of Maine's pole attachment laws, providing a comparison of those laws to other jurisdictions, highlighting current challenges to the pole attachment process, and providing recommendations for improving broadband deployment in Maine.

On September 13, 2024, MCA filed its finalized the MCA Study and recommendations. In addition, on October 11, 2024, the Commission received comments from CMP, Versant, Comcast, Charter, Crown-Castle GoNetspeed, and the OPA, and reply comments from those same parties (with the exception of Versant) on October 25, 2024.[8]

The MCA Report is a key component of this report to the Legislature and represents the MCA-led cooperative effort to address the concerns raised by the Legislature in the Resolve. A summary of the MCA report, provided by the MCA follows:[9]

- **Purpose**

The Resolve requires the Commission, in consultation with the MCA, to study current pole attachment laws and rules, as described below.

"*....shall 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. The study must incorporate input and analysis from the Interagency Broadband Working Group,*

[7] The workshops took place on July 25, 2024, August 1, 2024, and August 29, 2024, at the Commission's offices in Hallowell.
[8] A summary of those comments is in Section V. below.
[9] As a part of the collaborative nature of this report to the Legislature, the Commission invited the MCA to summarize the MCA Report and includes that summary here, with light non-substantive editing by the Commission and adjustment for format. The full MCA Report is included in this report as Appendix C.

which is a working group led by the Maine Connectivity Authority, and include: 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 new attachments for tax-exempt municipalities and private companies, and ways to decrease or standardize wait times for attachments."

The Resolve contains multiple subsections, but MCA's engagement focused on subsection 1.

- **Issue Overview**

Utility poles play a critical role in efficiently deploying broadband across Maine. Given Maine's diverse geography and rocky terrain, in many places, internet service providers ("ISPs") can only install broadband aerially across utility poles instead of underground through buried conduit. As a result, attaching cables and equipment on utility poles represents a material portion of the overall cost and effort of deploying new broadband. Accessing utility poles safely, efficiently, and affordably will be critical to the success of broadband projects across the state.

Research, stakeholder engagement, and analysis of available data conducted through the MCA Study affirm that Maine's utility pole processes work well, especially compared to many other states. The Commission has proactively revised and updated the utility pole process, regulation, and procedures over the last decade to incorporate changes implemented at the federal level by the FCC balanced with locally derived solutions. As a reverse-preemption state, the Commission has the authority to implement rules different from the FCC's. This flexibility allows the Commission to continue to refine the pole process and optimize it for the entities operating in Maine. This has allowed for iterative adjustments, trial of new policies, and a balance of standardization and flexibility.

Despite the progress and relative strengths, the current pole attachment process remains complex due to the varied processes for each pole owner and the myriad conditions of poles across the state exacerbated by the inherent challenge of joint ownership complications between communication providers and electricity providers. ISPs who need to attach to utility poles, including broadband utility districts,[10] may struggle to identify the actual cost of a project and how long it will take to attach equipment to poles until they are well underway. This lack of clarity can lead to cost overruns, construction delays, and potentially, projects not even happening at all, reducing the efficiency and effectiveness of broadband infrastructure investment.

Since 2021, Maine has received (or will receive) over $430 million in state and federal funding targeted explicitly for broadband infrastructure deployment, representing the connection of an estimated 125,000 homes and businesses. Construction of these projects is very concentrated and

[10] https://legislature.maine.gov/legis/statutes/30-A/title30-Asec2203.html

will primarily occur between 2022 and 2027. Even for a process that works well, this increased scale will stress the system and highlight minor deficiencies.

To maximize the impact of this generational funding, it is imperative to ensure a safe, efficient, and standardized pole attachment process. The MCA has conducted extensive outreach through 11 engagements of 16 collective hours with six pole owners, seven contractors, 17 pole attachers, eight state agencies, and local government units to learn more about all parties' viewpoints. The Commission conducted a series of data inquiries in the case docket and allowed parties to file comments throughout the process. Feedback conveyed a range of perspectives reflecting challenges, sufficient functionality, opportunities for improvement, practical complications, and lack of clarity around the utility pole attachment process, especially for attaching ISPs and local units of government. Comments also included a uniform commitment to safety and regulatory compliance.

In complement to the feedback sessions, the MCA engaged an independent telecommunications consultant to conduct a comprehensive statewide pole attachment report *i.e.*, the MCA Report, and to benchmark national best practices. The MCA Report enhanced the understanding of current pole attachment practices, time frames, and barriers for aerial fiber deployment across Maine.

This thorough review of national pole attachment best practices allowed for enhanced stakeholder engagement and generated new input on current and similar practices in different jurisdictions. Many of those insights helped inform some of the pragmatic solutions included in this study.

The utility pole attachment process is a dynamic and evolving set of rules and interactions. Solutions and strategies must acknowledge that this process is not static and that the entities involved have varying needs and priorities.

For example, after the public engagement process for this study concluded in October 2024, two of the three largest pole owners increased rates for various aspects of the pole process. Rate increases, paid by ISPs attaching to poles, are to be expected periodically. One pole owner increased rates on make-ready costs for the first time in 15 years.[11] Another pole owner increased the cost of attaching to a pole by 52% from the last attachment increase 18 months prior. These rate changes impact projects of all sizes and in all planning stages. Costs were not a primary focus of the study, but further changes could impact the effectiveness of the broadband deployment efforts as this unavoidable expense will constrain budgets.

[11] "Make-ready work" or "make-ready" means the modification or replacement of a joint-use utility pole, or of the lines or equipment on the joint-use utility pole, to accommodate additional facilities on the joint-use utility pole. 65-407 C.M.R. ch. 880.

- **PROCESS + STUDY INPUTS**

April 2023	MCA convenes 4 utility pole owners to discuss Maine pole attachment
April - June 2023	Maine Legislature passes LD 1456
June 2023	MCA convenes 10 pole attaching entities to discuss pole attachment MCA and PUC align on roles and responsibilities for the study process
November 2023	PUC opens docket 2023-00300 and requests comments
January 2024	Parties file comments on Maine's pole processes
March 2024	PUC issues request for additional data from owners and attachers
June 2024	MCA engages a consultant to conduct a review of pole attachment rules, regulations, and best practices nationwide.
June 2024	MCA conducts individual interviews with 5 construction contractors
July - August 2024	MCA hosts three workshops to identify key issues and recommendations with pole owners, attachers, state agencies, and contractors

  - **Process**

The MCA Report contains a comprehensive set of recommendations and implications the MCA drew upon when crafting the final recommendations discussed below. By combining a robust engagement that culminated in collective agreement on key areas to target in conjunction with applied local recommendations in partnership with national best practices, the recommendations provide a solid foundation to ensure that Maine continues to be at the forefront in the utility pole attachment space nationwide.

  - **Independent Benchmarking Report & Analysis**

The MCA Report includes a qualitative benchmarking review of national best-practices as part of MCA's technical assistance to the Commission. The independent pole report and analysis were conducted by a third party to eliminate perceived biases. This report represents perspectives and data obtained through Commission Docket No. 2023-00300, prior Chapter 880 rulemakings, and the MCA-led workshops with pole owners, attachers, and contractors.

The MCA Report is a thorough, independent review of nationwide rules, regulations, and practices. It includes a layered engagement from multiple Maine-based perspectives, including pole owners, pole attachers, subcontractors, and industry advisors.

- **Stakeholder engagement, workshops, data collection**

Throughout 11 engagements with six pole owners, seven contractors, 17 pole attachers, eight state agencies, and numerous units of local government, the MCA and the Commission received consistent feedback that the pole process in Maine is working well. Maine continues to modify and update Chapter 880 of the Commission's Rules to reflect changing needs and technologies available. There is undoubtedly room for further improvement, but those providing feedback cautioned against sweeping reform. Based on the critical issues identified by the parties and agreed upon in subsequent engagements, MCA and the Commission developed an initial targeted list of potential recommendations. These potential recommendations were presented to the participants over a series of workshops and were further refined following additional feedback and input.

- **Broadband Working Group**

Following the final set of recommendations developed through Commission's inquiry to facilitate its report to the Legislature and MCA-led engagement sessions, the Broadband Working Group Infrastructure Subgroup, comprising seven state agencies, convened to review the process, issues, report, and recommendations. The state agencies agreed with the recommendations and further found alignment with their own experiences and work. Much of this is captured in the scope of the proposed utility pole working group, inviting public and private entities to the table together.

- **RECOMMENDATION OVERVIEW**

The MCA framed the solution generation through the type and complexity of intervention needed to achieve results. These categories were programmatic, regulatory, and legislative. The scale of the issues identified, and the willing engagement of the parties showed a strong desire to resolve these issues through programmatic or voluntary means. Each solution below is identified by the type of intervention according to these terms. The following chart shows how the critical issues identified throughout the engagement process are addressed via the recommendations. Each recommendation is discussed in further detail below.

		Recommendations						
		Create a Utility Pole Working Group	Information materials	Standardize pole contracting	Funding for staffing support	Establish a project meeting schedule	OTMR	PUC Inquiry
Key Issues Identified	Communication	x				x		
	Education	x	x		x	x		
	Process visibility	x						
	Construction standards	x	x					
	Education on Ch 880	x	x					
	Payment method standardization	x						x
	Safety		x		x			
	Staffing				x	x		
	Funding				x			
	Contract standardization			x				
	Process for approving OTMR contractors						x	x
	Joint ride out						x	x
	Make ready refund timeline					x		x
	Pole replacement costs							

- **Programmatic Recommendations**

  - **Create a Utility Pole Data and Performance Working Group**
    Convene pole owners and attachers monthly for one hour to discuss federally funded deployment plans, strengthen relationships and information exchange, and solve problems together.

Pole owners, attachers, and contractors identified key issues in the areas of the need for increased communication, more education for safe and efficient attachment processes, increased visibility into the pole process once applications are filed, consistent construction standards, as well as the lack of familiarity with remedies in Chapter 880 of the Commission's Rules, and standardized payment methods.

Convening a collaborative working group with pole owners, attachers, and state agencies will ensure open dialogue and support a data-driven process, ensuring issues are addressed consistently and in a performance-oriented manner.

Additionally, a working group creates a space to explore new ideas to keep Maine at the forefront of the pole attachment space through shared agreements, data, and innovation. This approach may require a contribution of dedicated capacity of professional services to support pole owners in the continual refinement, management, and governance of data sources and systems. The need for data analysis and performance management aligns with identified trends for workforce development in the broadband sector.

The working group would aim to:

- Leverage information sharing to inform MCA or PUC hosted trainings
- Share baseline information on engineering standards
- Provide PUC Chapter 880 learning sessions
- Maintain a list of appropriate points of contact with each pole owner
- Facilitate earlier engagement with pole owners on build plans
- Collectively discuss new Alden One features to bring online in subsequent phases[12]
- Engage public and private entities in regular, productive dialogue

  - **Standardize pole contracting**
    Ensure owners review pole contracts to minimize differences.

Pole attachers and contractors identified the lack of standardization in contracts between joint pole owners as an issue needing review. Contracts vary in many small but significant ways. The review should focus on seeking alignment in the following areas where possible:

[12] Due to initial investments and dedicated investments by CMP, the joint use database Alden One was stood up and operationalized with Versant now ramping up utilization and Consolidated committed to utilization in 2025.

- When liability insurance is needed (before contracting, before attaching, etc.)
- Amount of surety bonds required - price per pole or other amount
- Number of poles per application
- Number of poles in the system at a given time

- **Funding for Staff Support**
  Explore grant funding and programmatic resource collaboration to support pole owners, attachers, and consultants.

Due to the increased deployment of broadband across Maine, the associated information management and professional services ranging from project management to Geographic Information Systems ("GIS") management are central to the success of a collaborative working group. The engagement process highlighted that staffing levels, education needs, a general lack of resources and safety are vital issues concerning all parties.

The MCA is positioned to support certain aspects of these issues through the Maine Broadband Workforce Strategy. The MCA will continue partnering with the Maine Community College System and other colleges, universities, and technical resources to expand a targeted broadband training program in coordination with the Maine Department of Labor to establish broadband apprenticeship and pre-employment incentives. Additionally, parties supported dedicated capacity and resources to allow pole owners, attachers, and/or state agencies to ensure information standardization and advanced professional services. Multi-organizational collaboration requires dedicated time and expertise, and parties expressed innovative suggestions to share resources to maximize impact.

- **Establish a project meeting schedule**
  Encourage utility pole attachers to set monthly project meetings with pole owners to review open applications and status.

Upon review of the pole attachment process, parties named communication, staffing, education, and a lack of timeline for make-ready refunds as barriers to effective deployment. Further conversation highlighted that entities not raising these issues were engaged in structured check-ins with the pole owners to ensure alignment on project status and execution. The MCA recommends that each broadband build project utilize this approach to improve deployment and goodwill between communities, pole attachers, and pole owners. A regular meeting schedule allows the attacher to manage their pole applications, and each pole owner has consistent project meetings with attachers to identify obstacles and the timing of licenses.

- **One Touch Make Ready ("OTMR")**[13]
  Provide greater clarity on the OTMR process and increase transparency into the contractor approval processes.

OTMR is relatively new to Maine, and while many parties were overwhelmingly positive about adding this to the landscape, some confusion and challenges surfaced throughout the process.

All parties recognized the importance of riding the project route with pole owners and the requesting attacher. However, this is not a required step in the process for OTMR. Parties requested that pole owners and attachers continue prioritizing the joint rideout even on OTMR projects.

Additionally, there is some uncertainty surrounding the process for approving OTMR contractors. The pole owners provided evidence that they approve multiple contractors each year to be added to the OTMR-approved work list. That said, there are a few recommendations that would further refine the implementation:

- Develop a process for becoming approved for OTMR work that is available in a public forum for review
- Specifically, develop or model a process to approve firms beyond doing work for pole owner
- Post the lists of OTMR-approved contractors by pole owners in a public forum.

- **Regulatory Recommendations**

  - **Commission Issues a Notice of Inquiry to Examine Revisions to Chapter 880**

As explained above, increased communication and education can significantly improve most of the remaining issues in the pole attachment space. However, there were a few specific issues that the Commission could explore through an Inquiry exploring revisions to Chapter 880. These include:

- Standardizing pole contracts across pole owners
- Examine enforceable timelines related to billing
  - Include methods for proof of payment (evidence submitted through Alden, an image of a check, etc.)
  - Timeline for processing refunds for overpayments
  - Timeline for charging for underpayments
- One Touch Make Ready
  - Update language to encourage joint rideouts even for OTMR projects
  - Consider adopting rules or standards for the approval of OTMR contractors

[13] One-touch make ready (OTMR) is a process that allows a single contractor to perform most or all necessary make ready work on a utility pole during a single visit.

- Pole replacement cost allocation
  - Review FCC's approach and possible alignment with Ch 880

o Legislative Recommendations

The MCA does not have any legislative recommendations at this time.

V. Responses to draft MCA Report

After the filing of the draft MCA Study, stakeholders were provided with an opportunity to comment on the MCA Study. The comments received are summarized below.

CMP

CMP stated that it supports the efforts to expand broadband in Maine and has taken several steps to improve efficiency and be ready for the anticipated influx of federal funding. CMP also outlined some of the steps that it has completed in preparation for the funding, including an audit of all attachments on its poles to ensure its records were accurate, increasing staffing for its joint use and field planning teams to be responsive to pole attachment requests, standardizing its pole attachment agreement to ensure all attachers are subject to the same terms and conditions, advocating for and deploying the Alden One system and providing trainings on Alden One, and serving as a resource for attachers.

CMP described MCA as a quasi-governmental agency charged with achieving universal access to reliable and affordable high-speed internet service but states in furtherance of this mission it wears "many hats" and is a special interest advocacy group engaged in legislative efforts, is the administrator of significant federal funds, and is a major pole attacher developing its MOOSE Net project. As such, CMP stated that the MCA's involvement in the Commission's Inquiry was inherently biased, and the general undertone of the MCA Report blames Maine's regulatory framework for the challenges in the pole attachment process. In addition, CMP stated that the MCA Report's statements and recommendations are disconnected from the overall feedback provided by the pole owners and attachers during the workshops. For example. CMP cited Charter, one of the largest and most experienced attachers in the State, as stating that Charter works well with Maine's pole owners and that Maines pole attachment rules should be the baseline standard for the country.

CMP further stated the current legal and regulatory framework for pole attachments is effective and considers the rights of the pole owners and the existence of pole attachment agreements that pre-date the existence of Chapter 880. Chapter 880 also allows for pole owners to provide for essential contract terms such as indemnity, insurance, and surety clauses to properly allocate responsibilities, risk and liabilities between owners and attachers.

CMP stated that stakeholders are still learning how to implement and work under the rules since the Commission began its process of modernizing Chapter 880. CMP stated the updated rules are improving efficiency and coordination for the completion of pole attachment work. CMP stated that as parties continue to use Alden One the process will continue to improve, but implementing any new sweeping changes would be detrimental to the State's goal of rapidly expanding access to broadband.

CMP also clarified what it considered to be inaccurate statements about Alden One. First, CMP stated that the MCA incorrectly suggests that Alden One was proposed by pole owners in exchange for other issues like pole ownership, pole administration and pole costs. According to CMP, however, CMP implemented Alden One because it was the obvious solution to improving efficiency in the pole attachment process. In addition, CMP stated that the MCA Report implies that the purpose of Alden One is to give pole attachers access to pole data. CMP clarified that this is not correct and that Alden One is a centralized pole management and notification system that is intended to improve the pole attachment process.

Further, CMP stated that its data clearly shows that Alden One is improving the efficiency of the pole attachment process (as the volume of application has gone up, the time it takes to complete the various stages has remained flat or decreased), that, on average, CMP is meeting the timeframes in Chapter 880, and that when pole attachment applications require CMP to perform make ready work, the work is completed significantly faster than when a telephone utility performs the work.

CMP strongly disagreed with the MCA Report's assertion that pole attachment process is opaque or unclear and cites to a section of the MCA Report discussing how part of the pole attachment challenge appears to be a lack of understanding of what Chapter 880 does and does not allow. CMP also disagreed with the MCA Report's claim that there is a lack of transparency with respect to project costs. CMP stated it is not possible to know a projects costs up front because a field survey is necessary to assess any make-ready work, including whether poles would need to be replaced, and new guys and anchors are required.

CMP stated that the MCA Report fails to appreciate that safety is paramount and cites a passage from the MCA Report that concludes pole owners "may be too conservative in what they require from attachers or contractors." In rebuttal, CMP provided three examples of poorly performed work and dangerous practices, including an instance that resulted in a fatality

CMP stated that the challenges pole attachers are experiencing appear to be construction related (*e.g.*, challenges with communication, coordination, materials, and labor resources) and further stated that it is unlikely for those issues can be resolved through changes to regulation or the administration or ownership of joint use poles. CMP emphasized that Alden One has already shown to reduce the challenges posed by communication and coordination and expects that Alden One will continue to improve efficiency of the pole attachment process.

Finally, CMP agreed with the MCA Report's recommendation to establish a working group and pole attachment training and would welcome further collaborative efforts based on their training model to teach stakeholders how to use Alden One. CMP also stated that it supports the MCA Report's recommendations to utilize some of MCA's funding to address labor shortages by working with Maine Community College System and the Department of Labor.

In response to other commenters, CMP noted that there is consensus that the legal and regulatory framework for pole attachments in Maine is strong and that the MCA Report's proposed statutory and regulatory changes are not necessary. Additionally, CMP stated there appears to be consensus that stakeholders in the pole attachment process will benefit from increased communication, coordination and collaboration.

Further, CMP agreed with the OPA that the cost allocation for Alden One should be revisited and welcomes the opportunity to do so. In addition, CMP stated it does not agree with Charter and Comcast that Chapter 880 be updated to conform with the FCC's new rule on allocation of pole replacement costs and suggested that how the allocation of replacement costs is determined is unlikely to improve pole access conditions or expedite the efficiency of broadband deployment.

Versant

In Versant's comments of October 11, 2024, Versant stated that the information supplied by parties to the Commission's Inquiry make clear that further legislative or regulatory changes are not needed at this time because Maine is already at the forefront nationally in pole regulation. Versant stated that the need lies in addressing deployment times with dedicated efforts by all stakeholders to comply with existing rules, meet their respective obligations under existing attachment agreements and for attachers to ensure contractors adhere to well-established nationally recognized industry and safety codes.

Versant requested that the Commission's Final Report to the Legislature reflect Versant's four key takeaways from the Inquiry: 1) a positive message about the work accomplished to date and its successes; 2) no legislation or additional regulatory changes are necessary at this time to address pole attachment administration; 3) in Versant's service territory, pole applications are being processed in a timely manner and reasonably within the timeframes envisioned by Chapter 880; and 4) the data produced in the Commission's Inquiry shows a consistent pattern of electric company pole owners meeting the Chapter 880 timelines and some of the suggestions made by the MCA Report are better addressed to Consolidated. Versant emphasized that when delays do occur this is due to the nature of construction projects and not anything materially related to pole administration.

Versant supported the OPA's position that electric ratepayers should not be subsidizing the pole attachers. Further, Versant praised the MCA's effort to survey state and regulatory backgrounds in the MCA Report, but preferred that the Commission's Final Report should mirror the summary provided by the Commission's Interim Report which showcases how far Maine has

come in recent years in its reform efforts to update and modernize its regulations. So much so that no further regulatory changes are needed.

Like CMP, Versant stated that the MCA Report misinterpreted the information supplied in the Inquiry and that the MCA Report's statement that "the timelines in Chapter 880 are not being met" is erroneous. In contrast, Versant stated that the data provided by the electric utilities showed that the timelines were on average being met

Crown Castle and GoNetspeed

Crown Castle and GoNetspeed stated that of the states in which they operate, the Commission's efforts to facilitate the pole attachment process are among the most commendable and that the Commission's pole attachment process is working well and is a model for other states. Notwithstanding this, however, Crown Castle and GoNetspeed believe that improvements can be made.

The Crown Castle and GoNetspeed stated that they emphasize safety, but cautioned the Commission and the MCA regarding implementing safety proposals that do not enhance safety but do slow or impede deployment.

Crown Castle and GoNetspeed regarded OTMR as an important tool to speed deployment and cautioned the Commission and the MCA against imposing additional requirements that impede the ability of the requesting party to perform OTMR when it elects to do so. Additionally, Crown Castle and GoNetspeed stated that because OTMR inevitably requires the use of third-party contractors, a simple and transparent process for vetting available contractors would facilitate the OTMR option but that such vetting should not add another layer of complexity or bureaucracy.

The Crown Castle and GoNetspeed recommended the adoption of single application for make-ready work on poles jointly owned by an electric utility and a telephone utility because even though the current applications are largely duplicative, they can often lead to different or inconsistent responses.

Crown Castle and GoNetspeed expressed disappointment in delays by Consolidated in implementing Alden One and that Consolidated's slow adoption is hampering attempts to improve the make-ready process. Additionally, the Crown Castle and GoNetspeed suggested that the payment process for make-ready work be reformed. By way of example, they pointed to the ability of the requesting party to elect to self-help if a pole owner is unable to perform make-ready work and that in such cases the requesting party essentially pays for the work twice: once to the pole owner and then again by having to pay its own contactor. This also leads to problems truing-up actual make-ready costs and back-billing. They stated that they have experienced true-up bills that far exceed the original paid estimate that these problems could be solved by the Commission imposing a time period after the work is completed and capping the overage charges at 20% of the original estimate.

In response to other commenters, Crown Castle and GoNetspeed stated there is remarkable consensus that the Commission's pole attachment regulations are working and that all parties should adopt a philosophy of continual improvement and strive to make a good process even better.

Crown Castle and GoNetspeed also stated that the OPA and Versant are incorrect concerning Alden One implementation and operation costs and suggested that pole attachments and make-ready are legal obligations and, as such, are a cost of doing business that should be borne by the entity that must comply with the obligations. Additionally, Crown Castle and GoNetspeed stated that most pole owners across the country have already implemented some form of Alden One (or another vendor's similar system) and stated that these pole owners made the business decision to implement such systems because it made the process more efficient and less burdensome on their employees.

Crown Castle and GoNetspeed stated there is value in adopting the changes to Chapter 880 recommended by the Charter and Comcast to further align Chapter 880 with the FCC's regulations as that would help clarify and facilitate the application process and speed make-ready for large orders.

Crown Castle and GoNetspeed disagreed with the MCA's suggestion on the need to adopt rules and standards to approve OTMR contractors. Crown Castle and GoNetspeed believe the Commission's rules are already specific about the qualification contractors must possess and there would be little gained from the time, money, and effort to develop such rules. Additionally, Crown Castle and GoNetspeed recommended that the Commission decline to adopt a regulatory change to mandate joint ride outs as part of the OTMR process stating that adding this step will add delay.

Crown Castle and GoNetspeed identified two areas for further action: 1) prompt refunds by owners of make-ready overpayments, and 2) time and amount limits on true-up charges asserted by pole owners after make-ready work has been performed

Crown Castle and GoNetspeed agreed with Versant that the attachers participating in the Commission's Inquiry were sophisticated, national players in the provision of broadband services, some of whom themselves are pole owners. Each is familiar enough with industry codes and compliance standards and should, in any event, only engage contractors with the requisite expertise, training and experience in the industry to work on utility poles. Crown Castle and GoNetspeed suggested that other pole owners take Versant's approach.

Responding to comments from CMP and Versant, Crown Castle and GoNetspeed stated that both CMP and Versant process refunds in a timely manner and return any unused payments promptly.

Charter and Comcast

Charter and Comcast stated that as a result of the collective efforts by the Commission and all relevant stakeholders to update and modernize Maine's pole attachment rules, Maine has "developed clear and comprehensive pole attachment access rules and thereby has created the foundation necessary to advance the Legislature's mandate that the Commission promulgate pole attachment rules" that "promote competition [and] further the state broadband policy."

Charter and Comcast believe that the only change necessary to advance the legislature's broadband mandate is for the Commission to update Chapter 880 to further conform with the FCC's regulatory framework for pole attachments. Charter and Comcast stated that although the Commission's rules closely follow the FCC approach, further alignment would benefit Maine's broadband objectives making deployments more economical and providing greater consistency and uniformity of pole access terms and do not believe any need for other pole-related legislation or changes to existing Chapter 880 rules. In particular, Charter and Comcast pointed to the FCC's clarified approach to equitable allocation of pole replacement costs.

Charter and Comcast recognized the benefits associated with the MCA's significant investment of time and resources in developing the MCA Report and its recommendations (such as encouraging electronic billing and payment, promoting early and ongoing engagement and communication among attachers, pole owners, and contractors). Charter and Comcast believe, however, that many of the MCA Report's proposals should be advanced voluntarily. Maine's existing pole-related rules, and the community they govern, have demonstrated they can work collaboratively to implement many of the concepts and recommendations contained in the MCA Report.

Charter and Comcast stated they strongly disagree with the MCA Report's assertion that communications attachers are incentivized to engage in poor construction practices. Charter and Comact stated they care deeply about the quality of their work because poor workmanship and unsafe attachment practices jeopardize worker and public safety as well as the physical integrity and operational performance of their communications networks.

In response to other commenters, agreed with the Crown Castle and GoNetspeed that, in order to ensure smooth and unimpeded OTMR and standard make-ready work, there should be a simple and transparent process for vetting available contractors.

Charter and Comcast disagreed with the OPA as it pertains to Alden One costs, stating that the OPA overlooked the fact that CMP and Versant are already recovering a portion of their administrative expenses through the pole rental rate formula and that any additional surcharge will result in the communications attachers being assessed twice.

OPA

The OPA stated that the significant costs of Alden One are being unreasonably and unjustly recovered from electric ratepayers and that no benefit flows to those ratepayers. Further, part of the $500 million from the federal government to facilitate broadband expansion could be used to pay for Alden One. In addition, the OPA requested that the PUC's finial report to the Legislature contain an express recommendation that Legislature immediately explore ending the practice of passing 100% of Alden One costs to electric ratepayers, and, further, that the Legislature consider whether electric ratepayers could be made whole for costs they have been unfairly charged.

CTIA – The Wireless Association® ("CTIA')

CTIA stated that throughout this proceeding, the Commission and the MCA have met the Legislature's mandate by taking a comprehensive look at current concerns with the pole attachment process and identifying potential improvements to that process. The multiple workshops were not only valuable to generate information for the MCA Report and the Commission's eventual report to the Legislature, but also served to foster increased communication and cooperation between pole owners and attachers and all parties should be commended for their hard work with this pro-active approach.

CTIA stated they support the MCA Report's recommendation to establish a working group on pole attachments and would welcome the opportunity to serve as a member on behalf of the wireless industry.

VI. Specific Examinations Required By The Resolve

In the Resolve, the Legislature directed that the study include four specific examinations: The Commission now addresses the 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;

As mentioned above, the Commission issued a series of information requests aimed at facilitating the Commission's preparation of this report. These information requests were intended to allow the Commission to examine the average time involved for each stage of the pole make-ready work, including the time for joint use pole owners to approve new attachments for tax-exempt municipalities and private companies.

The Commission received detailed public responses from CMP, Versant, Crown Castle and GoNetspeed. Comcast and Charter filed their responses confidentially, and Consolidated Communications did not provide a response to the Commissions requests for information about timelines.[14]

All numbers in the following table are in calendar days.

	Application Review and Field Survey	Estimate	Payment	Const.	License (w/Complex MR)	License (all other)
CH. 880 Timeline	55	14	60	90	219	219
Versant Maint. Area	21	38	20	70	188	48
CCI Maint. Area Timeline	21	26	27	145	263	45
Combined	21	34	23	93	212	47
CMP Data*	35	n/a	33	50	162	75
GoNetspeed*	n/a	94 (from application)	7	n/a	229	383
Crown Castle*	n/a	n/a	97 (from application)	n/a	228	241
*This table harmonizes, to the greatest extent possible, the data provided by various stakeholders to the table format provided by Versant. Average timeframes are given where appropriate.						

The Commission believes that, on average, the Chapter 880 timeframes are being met.[15]

[14] In examining the timeline information provided the Commission became aware that there is confusion with regard to the usage of the term "license." During the preparation of the MCA Report, MCA reported to the Commission that each pole owner utilizes the term differently and deploys the term at different stages of the pole attachment process.

[15] Additionally, because the reported timeframes do not (and cannot) detail all of the scenarios under which a particular project may encounter a delay, some of which could be presumptively reasonable (*e.g.*, weather event, workforce issues, quantity of poles, etc.), the reported timeframes are not necessarily determinative of the need (or lack thereof) to change the current pole attachment program in Maine.

In examining ways to decrease or standardize presumptively reasonable timeframes for attachments, the Commission agrees with Versant that the timelines within Chapter 880 were the product of considerable input from all stakeholders during notice and comment rulemaking and are representative of national best-practice timelines adopted by the FCC.

Notwithstanding the above, both CMP and Versant discussed the potential need for additional third-party permitting approval (*e.g.*, MDOT or a municipality) as a potential area in the process that could impact timelines and that those approvals are beyond the control of the pole owners. The Commission notes that such timelines and approvals are also outside the jurisdiction of the Commission.

Additionally, MCA, Crown Castle and GoNetspeed suggest that further standardization of pole attachment applications among pole owners would increase efficiency.

All stakeholders agreed that more communication is better and stated their willingness to participate in a working group to further communication between the parties.

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)]

All pole owners stated they did not track or retain the information necessary to be determine the number of utility poles statewide that could accommodate municipal facility attachments without the need to replace the pole. CMP stated that Alden One cannot replace the need for field surveys to assess pole conditions, line sag, road elevation, or other conditions that may affect new pole attachments. Additionally, each pole owner stated they do not track municipal attachers separately from other attachers and treat all attachers equally.

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

In order to understand the effectiveness of the Commission's enforcement practices for timely relocation or removal of utility poles that are functionally obsolete it is important to understand that the Chapter 880 rules are presumptive not prescriptive. A presumptive rule simply means that the rule is presumed reasonable and, in the context of a dispute, the Commission will apply the rule language absent a compelling reason to the contrary. The Commission currently has an inexpensive and expedient pole attachment dispute resolution process. Any aggrieved entity, attacher, municipality, or person can file a complaint with the Commission's Rapid Response Process Team and the Commission will promptly begin the dispute resolution process.

The Commission is not the appropriate entity to address issues regarding Americans with Disabilities Act ("ADA") and the location of utility poles. Generally speaking, municipalities and the Maine Department of Transportation ("MDOT") control the siting and permitting of utility poles in rights-of-way within their respective jurisdictions. The Commission does not have enforcement jurisdiction over MDOT or municipalities with regard to rights-of-way.

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 Commission's dispute resolution process, including the effectiveness of such resources

As discussed above, the Commission requested information from stakeholders to provide information regarding their understanding of the Commission's expedited pole attachment dispute resolution process, including whether a stakeholder had participated in the process or had been party to a Commission inquiry or investigation related to the timely relocation or removal of utility poles and, if so, to comment on the effectiveness of the process.

All stakeholders indicated a level of familiarity with the Commission's expedited pole attachment dispute resolution process and, as detailed in the parties' comments summarized above and attached to this report as Appendix B, the consensus was that the process is helpful and user-friendly. This strongly implies that the Commission's process is widely known and well understood. The Commission also provides information regarding pole attachments on its website, [16] including one-touch make ready, the pole rental rate and municipal exemption, and our rapid response program.

VII. Recommendations and Proposed Legislation

The Commission agrees with the MCA Report and with the stakeholders that no additional legislation is needed at this time. As described by the consensus of stakeholders, the Commission's modernization of its pole attachment rules has positioned Maine as a national leader in this area. Maine's current laws enable the Commission to be proactive and maintain modern and effective pole attachment rules and policies. With regard to the Commission's rules, while there are always areas for refinement, the Commission does not see a need to immediately pursue further amendments to its pole attachment rules. As described above, the Commission has undertaken a comprehensive and iterative modernization of its rules over the past nine years. It is the Commission's view that, here at the end of this modernization process, the Commission and the stakeholders take time to adjust to the changes and allow for a proper evaluation of the rules by observing their implementation over time. Having said that, the Commission is always willing to improve its practices and takes the input of the stakeholders seriously is open to future inquiries regarding Maine pole attachment rules.

[16] https://www.maine.gov/mpuc/regulated-utilities/telecom/programs/pole-attachment

Appendix A

Commission's Information Request

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2023-00300

March 25, 2024

PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of LD 1456 Report

PROCEDURAL ORDER

The Commission appreciates the information provided to date by of the participants in this Inquiry. In order to facilitate the Commission's preparation of the final report in this matter that is due to the Legislature on or before December 1, 2024, the Commission requests responses to the following additional requests for information. When appropriate, please submit the information in Microsoft Excel format. Please provide responses on or before **May 3, 2024**.

INFORMATION REQUESTED FROM CMP, VERSANT, AND CONSOLIDATED

1. Please provide the average time to complete each of the following stages of the pole attachment application process for projects completed during the last three years. For each response, please provide separate responses for projects that required simple make-ready, projects that required complex make-ready work, and projects that utilized one-touch make ready or self-help:

    a. Average duration from application received to license issuance.
    b. Average duration from survey complete to make-ready estimate.
    c. Average duration from make-ready estimate to receipt of the make-ready payment.
    d. Average duration from receipt of make-ready payment to completion of make-ready construction.

2. Please explain challenges in meeting the timeframes contained in Chapter 880 and, if appropriate, any mitigation strategies that have helped overcome those challenges (*e.g.*, self-help).

3. Please describe the steps your company takes to process an application for new pole attachments and explain any differences between the process for tax-exempt municipalities and private companies.

4. To the extent not already provided in earlier comments, please identify ways in which the wait times for attachments may be decreased or standardized. Please respond to, or comment on, previously submitted recommendations in this regard.

5. Please provide the following information regarding make-ready costs:

   a. Cost recovery of make-ready work.
   b. The approximate amount of the most recent increase in make-ready costs in percentage terms, or a description of recent trends in make-ready cost increases.
   c. Recent examples of approximate costs of replacement poles to accommodate municipal attachments and how those costs are recovered.
   d. Recent examples of approximate costs to repair poles to accommodate municipal attachments and how those costs are recovered.
   e. Recent examples of approximate costs to relocate or remove poles to accommodate municipal attachments or comply with federal law and how those costs are recovered.
   f. Alden One costs (development, license, maintenance, training, etc.) and how those costs are recovered.
   g. A quantification of any savings realized by the use of Alden One (labor, project time, etc.).
   h. A description of any other make-ready associated costs not described above and how those costs are recovered.

6. Please provide a list of municipal broadband projects requiring pole attachment licensing over the past five years and whether any project utilized the municipal exemption in 35-A M.R.S. § 2524.

7. Please describe how municipalities are paying for make-ready costs when a municipal project is being built and if your company is accounting for those payments differently than other make-ready payments.

8. To the extent known, please provide the number of anticipated municipal projects over the next five years. If available, please indicate whether any municipality has indicated that it will utilize the municipal exemption in 35-A M.R.S. § 2524.

9. Please provide input of your understanding the Rapid Response Dispute Resolution Process in Chapter 880.

10. If you have participated in a Commission Rapid Response Complaint, or commission inquiry or investigation related to the timely relocation or removal of utility poles, please comment regarding the effectiveness of the process. If you have not utilized the Rapid Response process please describe why not (*e.g.*, never had a need, did not think the process would be helpful, etc.).

11. Would the Public Utilities Commission, the Maine Connectivity Authority, the Maine Municipal Authority, or another group or agency be the most effective entity to provide educational resources and assistance regarding the rights of municipalities or other attaching entities?

12. Please provide the total number of pole attachment projects completed in the previous three years by your company or organization, the number of poles involved in those projects, and the number of poles that required replacement to complete the projects. Did any projects involving pole replacements experience significant delays or unexpected expenses?

13. Is there an industry standard for a new pole when a pole needs to be replaced *(e.g.*, size, height, or class)? If so, what is that standard? If not, does your company have standards or guidelines for the size and class of replacement poles? If so, please describe.

14. Approximately how many poles in your service territory do not meet the standard or guideline described above.

15. Please provide any additional information or context you think will be helpful to the Commission in addressing the four specific areas of examination described by the legislature in the resolve.

INFORMATION REQUESTED FROM ATTACHERS AND OTHER INTERESTED PERSONS

1. Please provide the average time to complete each of the following stages of the pole attachment application process for projects completed during the last three years. For each response, please provide separate responses for projects that required simple make-ready, projects that required complex make-ready work, and projects that utilized one-touch make ready or self-help, and if possible please separately identify projects involving existing poles and projects involving new or replaced poles:

    a. Average duration from application received to completion of field survey.
    b. Average duration from survey complete to make-ready estimate.
    c. Average duration from make-ready estimate to receipt of the make-ready payment.
    d. Average duration from receipt of make-ready payment to completion of make-ready construction.
    e. Average duration from application submission to license issuance.

2. For make ready work where you are not the attacher but are required to move your facilities, please provide your average response time and time to complete facility move requests.

3. Please explain challenges in meeting the timeframes contained in Chapter 880 and, if appropriate, any mitigation strategies that have helped overcome those challenges (*e.g.*, self-help).

4. To the extent not already provided in earlier comments, please identify ways in which the wait times for attachments may be decreased or standardized. Please respond to, or comment on, previously submitted recommendations in this regard.

5. Please provide the approximate amount of the most recent increase in make-ready costs in percentage terms, or a description of recent trends in make-ready cost increases.

6. Please describe your understanding of the Rapid Response Dispute Resolution Process in Chapter 880.

7. If you have participated in a Commission Rapid Response Complaint, or commission inquiry or investigation related to the timely relocation or removal of utility poles, please comment regarding the effectiveness of the process. If you have not utilized the Rapid Response process please describe why not (*e.g.*, never had a need, did not think the process would be helpful, etc.).

8. Would the Public Utilities Commission, the Maine Connectivity Authority, the Maine Municipal Authority, or another group or agency be the most effective entity to provide educational resources and assistance regarding the rights of municipalities or other attaching entities?

9. Please provide the total number of pole attachment projects completed in the previous three years by your company or organization, the number of poles involved in those projects, and the number of poles that required replacement to complete the projects. Did any projects involving pole replacements experience significant delays or unexpected expenses?

10. To your knowledge, is there an industry standard for a new pole when a pole needs to be replaced *(e.g.*, size, height, or class)?

11. Please provide any additional information or context you think will be helpful to the Commission in addressing the four specific areas of examination described by the legislature in the Resolve.

Dated at Hallowell, Maine, this Twenty-Fifth Day of March, 2024

/s/ Jody McColman

Presiding Officer

Appendix B

Stakeholder Comments

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

CENTRAL MAINE POWER

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 in 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.

Step	Party
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,

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 Broadband[1] ("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 "<u>any recommendations</u>, 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 authority[2] 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 owners[6] 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

Sheppard, Mullin, Richter & Hampton LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, D.C. 20006-6801
202.747.1900 main
202.747.1901 fax
www.sheppardmullin.com

John Davidson Thomas
Abram Shanedling
202.747.1916 direct
dthomas@sheppardmullin.com
ashanedling@sheppardmullin.com

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).

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

FCC NEWS from the Federal Communications Commission

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

###

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 1:11:45[4]; *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 truing 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

Respectfully Submitted,

/s/ Gregory M. Kennan

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

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

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

Docket No. 2023-00300
Biddeford Internet Corporation
Comments

—----------

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

VP Legal
Biddeford Internet Corporation
43 Landry Street
Biddeford, ME 04005
legal@staff.gwi.net

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2023-00300

February 9, 2024

MAINE PUBLIC UTILITIES COMMISSION Inquiry To Facilitate Preparation of LD 1456 Report	))))	CMP'S AND VERSANT'S 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 Docket[3] 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 Bill*

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 order[1] 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

Respectfully Submitted,

/s/ Gregory M. Kennan

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

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

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2023-00300

May 10, 2024

MAINE PUBLIC UTILITIES COMMISSION Inquiry To Facilitate Preparation of LD 1456 Report	)))))	CMP'S RESPONSE TO INFORMATION REQUESTS IN MARCH 25 PROCEDURAL ORDER

Central Maine Power Company ("CMP" or the "Company") hereby responds to the information requests in the Commission's March 25, 2024 Procedural Order.

I. INFORMATION REQUESTS AND REPONSES

1. **Please provide the average time to complete each of the following stages of the pole attachment application process for projects completed during the last three years. For each response, please provide separate responses for projects that required simple make-ready, projects that required complex make-ready work, and projects that utilized one-touch make ready or self-help:**

    a. **Average duration from application received to license issuance.**
    b. **Average duration from survey complete to make-ready estimate.**
    c. **Average duration from make-ready estimate to receipt of the make-ready payment.**
    d. **Average duration from receipt of make-ready payment to completion of make-ready construction**.

CMP's Response:

CMP submits Exhibit A (attached hereto) in Microsoft Excel format in response to Information Request 1 (a) through 1(d). While on average CMP meets the Chapter 880 timeframes, CMP notes that the last three years have been unusual given that in that time-period stakeholders in the pole attachment process have faced COVID-19 related work restrictions and social distancing requirements, as well as labor shortages and supply chain issues, and this has coincided with the large increase in work related to the expansion of broadband service in CMP's service territory.

CMP also wishes to clarify that it does not distinguish between "simple make-ready" and "complex make-ready" for purposes of tracking the Chapter 880 timeframes. Under the definitions in Chapter 880 the term "Complex Make Ready" applies to all work located above the communications space on the pole, which would include all work on CMP's lines. For purposes of Chapter 880 timeframes CMP separately tracks work for One Touch Make Ready projects and work that follows Chapter 880's traditional timeframes (i.e. work that is not One Touch Make Ready work).

2. Please explain challenges in meeting the timeframes contained in Chapter 880 and, if appropriate, any mitigation strategies that have helped overcome those challenges (e.g., self-help).

CMP's Response:

CMP responds to this information request by first discussing the numerous potential challenges in meeting the Chapter 880 timeframes, and then discussing mitigation strategies.

a. Challenges

As stated in CMP's and Versant Power's (the "T&D Companies") February 9, 2024 Joint Comments in this docket, there are a number of well-known challenges in meeting the timeframes contained in Chapter 880, many of which are beyond the control of the pole owners and attachers. These challenges include, for example: supply chain issues; work force shortages; interruptions due to storms and storm restoration work; the large geographic area for broadband expansion; and challenges in the coordination of work between pole owners and attachers.

The pole attachment and make ready process involves multiple stakeholders, including (a) pole owners – generally transmission and distribution utilities and incumbent local exchange carriers ("ILECs") that solely or jointly own utility poles; (b) pole attachers – including ILECs and Competitive Local Exchange Carriers ("CLECs") that provide telecommunications and broadband

service; electric utilities; and municipalities that own streetlights and lines related to first responders (fire and police departments); (c) permitting authorities (local municipalities and the State of Maine Department of Transportation ("MDOT")); (d) private property owners when poles are located pursuant to private easements or when customer-owned equipment is involved in a project; (e) third-party contractors for construction, flagging, and tree trimming; and (f) underground utilities and Dig Safe when poles need to be set. With this large number of stakeholders there is the potential for numerous challenges that could cause delays in meeting the Chapter 880 timeframes.

With that said, CMP has observed some repeat scenarios that have presented challenges in meeting the Chapter 880 timeframes.

First, pole attachment applications involving a large number of poles (more than 300 poles) in any particular geographic area place a strain on the ability of field planning resources to timely complete required job review and design work. The larger the job the more time is needed to complete the work. CMP has recently observed an increase in the number of pole attachment applications involving a large number of poles, which CMP understands relates to broadband expansion efforts in the State of Maine.

Second, there can be challenges in timely completing surveys related to pole attachment applications. A common reason for these survey delays is when the attacher submits an application to CMP that identifies poles that do not align with the application the attacher submits to the ILEC. This issue is often reconciled during the survey or by having the attacher submit a revised application. There can also be survey delays due to scheduling issues – where the schedules of representatives from different stakeholders do not align and there is a desire for parties to be on site for a joint survey. This is particularly challenging for applications involving a large number

of poles. In addition, some ILECs require mailed paper applications, the processing of which causes delays in scheduling joint surveys.

Third, there can be challenges that cause construction delays. For example, there can be construction delays: (a) in the permit application and issuance process when permits are needed from a municipality or the MDOT; (b) due to "ledge sets" – if a new pole needs to be set in ledge/rock then special equipment is needed, and often it is difficult to know when ledge/rock is present until after work crews are on site and they encounter ledge as they prepare to set the pole; (c) due to weather or road construction; (d) due to tree trimming required for a new pole set; (e) related to challenges accessing poles in areas where street parking is allowed; and (f) due to a project that involves a railroad crossing, as special railroad permits and flaggers are required.

In addition, CMP has observed construction delays when ILECs are required to set poles they own or maintain. CMP is not able to complete any make ready work until poles owned or maintained by ILECs are set. Moreover, additional delays can occur if an ILEC does not notify CMP when their pole sets are complete or an ILEC informs CMP that poles have been set which are found not to have been set once CMP sends crews.

b. Mitigation Strategies

i. Alden One

The numerous potential challenges to meeting the Chapter 880 timeframes underscore the need for coordination and communication between the stakeholders. To help meet these challenges the T&D Companies have led the effort to implement Alden One, a modern and nationally recognized joint use software program, which will help expedite the pole attachment application, transfer, and make ready process. CMP has been using Alden One since May 9, 2023. To date, Alden One has proven to be helpful in the pole attachment application and administration

process. In order for Alden One to be as effective as possible, in its September 12, 2023 Order in Docket No. 2023-00058, the Commission amended Chapter 880 to require all Large Pole Owners to participate and implement Alden One and require all attachers to use the system.

CMP is disappointed to learn that Consolidated Communications, Inc. ("CCI") – a large pole owner that solely owns and jointly owns with CMP a large number of poles in CMP's service territory – informed the Commission during a February 23, 2024 Technical Conference in Docket No. 2023-00327, that it does not have any plans in place to implement the adoption of Alden One, despite the Commission's September 12, 2023 Order. CCI's failure to implement Alden One undermines the effectiveness of the system and the ability of stakeholders to coordinate workflows under Chapter 880. CMP respectfully requests that CCI immediately take steps to implement Alden One.

ii. Self-Help

In general, self-help is utilized in the telecommunications space on the utility pole as part of one-touch make ready. To date, CMP has not seen any reasonable requests to perform self-help work in the electric power space under Chapter 880 or otherwise given the significant risks associated with working on electric utility lines. CMP, however, would like to take this opportunity to express concern about the way work under self-help provisions under Chapter 880 has been performed. CMP is aware of instances where self-help work has not been performed in a safe manner or has created unsafe conditions on the pole. There have been instances where the facilities of existing telecommunications attachers have been moved to a location on the pole that violates required pole attachment clearances, including the placement of telecommunications attachments above CMP's neutral. Expediency and convenience cannot come at the expense of safety.

3. **Please describe the steps your company takes to process an application for new pole attachments and explain any differences between the process for tax- exempt municipalities and private companies.**

CMP's Response:

Under Chapter 880, as a pole owner CMP is required to provide attachers with nondiscriminatory access to any joint-use utility poles owned or controlled by it. Accordingly, CMP's steps to process pole attachment applications for tax-exempt municipalities and private companies are the same. Once an attacher has obtained a Pole Attachment License from the Commission, and a Pole Attachment Agreement is executed between CMP and the attacher, CMP takes the following steps to process an application for new pole attachments:

1. Application submitted via Alden One from applicant
2. Application data validated
3. Joint Field survey with ILEC scheduled (often in conjunction with attacher representative to be on site)
4. Field Survey completed
5. Make Ready design completed (if no make ready is found to be required, application is licensed)
6. Make Ready cost estimate issued to applicant, if required
7. Make Ready payment received, if required
8. Customer Required Date Set
9. Any required permits secured (Town pole permit, DOT pole permit, easement, etc.)
10. Make Ready work issued to construction crews
11. Work completed
12. License issued

4. **To the extent not already provided in earlier comments, please identify ways in which the wait times for attachments may be decreased or standardized. Please respond to, or comment on, previously submitted recommendations in this regard.**

CMP's Response:

As suggested above, if all ILECs owning poles implemented and utilized Alden One, the coordination of pole attachment workflows would be more efficient and decrease the wait times

for attachments. To the extent this has not happened, CMP respectfully suggests that the Commission should enforce compliance with Section 5 of Chapter 880.

In addition, CMP has hired additional staff and set up contracts with additional contractors to meet the needs of the work associated with broadband expansion. In November 2021 CMP's broadband team was established. Since then, additional administrative staff and three experienced field planners have been hired to focus solely on pole attachment and pole transfer work. CMP has also hired an additional pole setting contractor and also set up contracts with additional line crews who work primarily on broadband make ready work to decrease the wait times for attachments. CMP will continue to evaluate its staffing needs and hire additional staff and contractors as necessary to meet the Chapter 880 timeframes.

5. **Please provide the following information regarding make-ready costs:**

   a. **Cost recovery of make-ready work.**
   b. **The approximate amount of the most recent increase in make-ready costs in percentage terms, or a description of recent trends in make-ready cost increases.**
   c. **Recent examples of approximate costs of replacement poles to accommodate municipal attachments and how those costs are recovered.**
   d. **Recent examples of approximate costs to repair poles to accommodate municipal attachments and how those costs are recovered.**
   e. **Recent examples of approximate costs to relocate or remove poles to accommodate municipal attachments or comply with federal law and how those costs are recovered.**
   f. **Alden One costs (development, license, maintenance, training, etc.) and how those costs are recovered.**
   g. **A quantification of any savings realized by the use of Alden One (labor, project time, etc.).**
   h. **A description of any other make-ready associated costs not described above and how those costs are recovered.**

CMP's Response:

CMP responds to information requests 5(a) through 5(h) below.

a. The costs for make-ready work are recovered directly from the entity

requiring the make-ready work, unless the entity is a municipality claiming the municipal make ready exemption, in which case those costs are recovered from CMP's customers through rates.[1]

b. Information request 5(b) is not clear to CMP with respect to the request's reference to "cost increases" specific to make ready work, but there may have been some cost increases associated with the recent workforce shortages and supply chain issues. CMP only charges the attacher the costs outlined in the make ready estimate which is based on pricing for time and materials.

c. Information request 5(c) is not clear to CMP with respect to the request's reference to "municipal attachments." To the extent this request refers to projects where a municipality is claiming the municipal make ready exemption, CMP does not create an estimate in its ordinary course of business for what make ready costs would be billed to a municipality but for the municipal make ready exemption because the make ready exemption removes the business need for CMP to make that estimate. Moreover, not all municipalities have claimed the make ready exemption for their projects.

   The cost to replace poles to accommodate attachments are charged on a time and material basis and therefore are subject to periodic changes. The costs associated with replacing a pole depends on a variety of factors, including but not limited to: the configuration of the lines and equipment on the pole, the conditions that exist in the field, the size of the pole required to accommodate the attachment, the location of the pole, and whether the install is done with energized or de-energized lines. In addition, CMP utilizes third party vendors to source poles and third-party contractors to install poles, and the prices from those third-parties can vary.

   The costs associated with replacing poles to accommodate attachments generally include both billable and non-billable make ready work. Billable make ready is work that but for the pole attachment request would not be necessary. Non-billable make ready work is the correction of an existing issue preventing a new pole attachment. If during the survey for a project it is determined in the field that the condition of a pole is such that CMP would have needed to replace it anyway, then the pole replacement would be considered non-billable work, such that CMP covers the costs of the replacement and those costs are ultimately covered through rates.

[1] To clarify, when CMP states that a municipality "claims" the make ready exemption, CMP means that the municipality has notified CMP that the project is qualified for and being executed under the municipal make ready exemption under 35-A M.R.S.A. § 2524.

d. The costs associated with a "repair" to accommodate an attachment vary depending on the nature of the repair required to make space for the attachment. These costs are covered by the entity seeking the additional space on the pole, unless during the survey it is determined in the field that the condition that requires a "repair" is one that is not in compliance with CMP's construction standards, in which case CMP will cover the costs, which are ultimately covered through rates.

e. In general, CMP would not remove or relocate a pole to accommodate an attachment unless it was necessary to increase the height of a pole or replace a pole. See the response to 5(c) above.

f. In 2023 CMP paid $134,049.20 for the Alden One subscription and the ongoing rate for Alden One is $.20 per pole. Alden One does not charge for the implementation of the program. CMP has not quantified the labor hour costs associated with implementing Alden One, but CMP notes it has taken significant work to implement the program by CMP's team. The costs of implementing Alden One are ultimately covered in rates. It should be noted that CMP is currently covering the costs for all poles in its service territory that CMP is attached to, including poles owned or managed by certain ILECs – CMP believes these ILECs should be covering their respective costs for Alden One. In addition, CMP believes there needs to be further discussion regarding the allocation of costs for Alden One between pole owners and attachers.

g. The goal of implementing Alden One is to improve the efficiency of workflows under Chapter 880, which will help reduce project times. In this regard, the largest cost savings with the implementation of Alden One will likely be realized by the attaching entities. Alden One does not result in cost savings for CMP at this time, though it could result in efficiencies in the future, particularly with further integration of Alden One with CMP's billing and invoicing system and its Work Management System. At this time CMP is running both Alden One and its prior pole notification system known as "JUMS" – the Joint Use Management System – as some functions in JUMS are still in the process of being transitioned to Alden One. In the future CMP plans to decommission JUMS.

h. At this time, CMP is not aware of make-ready costs that are not already addressed above.

6. **Please provide a list of municipal broadband projects requiring pole attachment licensing over the past five years and whether any project utilized the municipal exemption in 35-A M.R.S. § 2524.**

CMP's Response:

CMP is aware of the following municipal broadband projects requiring pole attachment licensing over the past five years:

- Town of Vienna-- 2024
- Town of Somerville – 2023
- Town of Chebeague Island – 2023
- Town of Leeds – 2023
- Town of Washington – 2023
- Town of Arrowsic – 2022
- Town of Georgetown – 2022

Of these projects, Somerville, Chebeague Island, Leeds, and Vienna all utilized the municipal exemption under 35-A M.R.S.A. § 2524.

7. **Please describe how municipalities are paying for make-ready costs when a municipal project is being built and if your company is accounting for those payments differently than other make-ready payments.**

CMP's Response:

CMP is not in a position to know how municipalities are paying for make-ready costs. If a municipality does not claim the municipal exemption, the make ready estimates are generated in the same fashion as for those attachers who are not eligible for the exemption. In contrast, if a municipality claims the municipal exemption CMP does not prepare an estimate for the work and does not track actual bills that would have been charged but for the municipal exemption.

8. **To the extent known, please provide the number of anticipated municipal projects over the next five years. If available, please indicate whether any municipality has indicated that it will utilize the municipal exemption in 35-A M.R.S. § 2524.**

CMP's Response:

CMP does not know the number of anticipated municipal projects over the next five years. As discussed above, CMP is aware of a handful of municipal projects utilizing the municipal exemption.

9. **Please provide input of your understanding [of] the Rapid Response Dispute Resolution Process in Chapter 880.**

CMP's Response:

The Rapid Response Dispute Resolution Process is provided for in Section 9 of Chapter 880, and further described on Attachment A to Chapter 880. CMP understands the Process is the Commission's preferred avenue to resolve disputes regarding joint use utility poles.

10. **If you have participated in a Commission Rapid Response Complaint, or commission inquiry or investigation related to the timely relocation or removal of utility poles, please comment regarding the effectiveness of the process. If you have not utilized the Rapid Response process please describe why not (e.g., never had a need, did not think the process would be helpful, etc.).**

CMP's Response:

CMP has been involved in a Commission investigation related to the timely removal of utility poles in Docket No. 2022-00121. CMP also participated in a Commission Rapid Response Complaint in Docket No. 2023-00063, but it was not related to the relocation or removal of utility poles. In CMP's opinion the processes were effective.

11. Would the Public Utilities Commission, the Maine Connectivity Authority, the Maine Municipal Authority, or another group or agency be the most effective entity to provide educational resources and assistance regarding the rights of municipalities or other attaching entities?

CMP's Response:

CMP does not have a view on what group or agency would be the most effective entity to provide educational resources and assistance regarding the rights of municipalities and other attaching entities, but notes that the Commission has considerable expertise and knowledge regarding the relevant laws, rules, and practices related to pole attachments. In addition, CMP notes that it is willing to meet with customers or attaching entities to provide guidance on pole attachment processes.

12. Please provide the total number of pole attachment projects completed in the previous three years by your company or organization, the number of poles involved in those projects, and the number of poles that required replacement to complete the projects. Did any projects involving pole replacements experience significant delays or unexpected expenses?

CMP's Response:

It is not clear from the question how "pole attachment projects" is defined. It is possible that a single "project" could involve several pole attachment applications for pole attachment and make ready work. As shown on Exhibit A (attached hereto), since 2021 CMP has received a total of 5088 traditional and one touch make ready applications, which cover over 97,700 poles. CMP's data is not maintained in a manner that would allow CMP to identify the number of poles that required replacement to complete the projects without undergoing a manual application-by-application review of all work for each project. Moreover, as discussed above, there have on occasion been delays for projects involving pole replacements for a variety of reasons, with the most significant delays involving projects where CMP was not responsible for setting the pole. From CMP's perspective, there have been no projects that have been billed "unexpected expenses"

because CMP only charges the attacher the costs outlined in the make ready estimate provided to the attacher.

13. Is there an industry standard for a new pole when a pole needs to be replaced (e.g., size, height, or class)? If so, what is that standard? If not, does your company have standards or guidelines for the size and class of replacement poles? If so, please describe.

CMP's Response:

For new construction on CMP's distribution system the minimum standard pole used on CMP's system has been a 40 foot – Class 3 pole for single phase line configurations, and a 45 foot – Class 2 poles for three phase line configurations and for all road crossings.[2] In 2022 CMP changed its pole class standard to Class 2 poles on all new distribution construction because Class 2 poles are stronger and more resilient. The company continues to use Class 3 poles on single phase until the current inventory of Class 3 poles is exhausted and the supply of Class 2 poles reaches a sufficient amount. These poles are the starting point for CMP's field designs. Field conditions and various equipment configurations – including terrain, the number of attachments, length of span between poles, conductor size and weight, pole mounted equipment and potential weather conditions – require evaluation of appropriate pole height and class for every pole installation. With the rising number of attachments per pole increasing, it has become increasingly necessary to use 45 foot or taller poles to ensure proper line spacing and ground clearance.

[2] Note that at times CMP may use 35 foot poles on private property for a service line, when CMP's distribution lines cross under a transmission line, and when CMP is using a pole as a "stub pole" for guying (which do not carry energized lines).

14. Approximately how many poles in your service territory do not meet the standard or guideline described above.

CMP's Response:

The pole standard described above is a forward-looking standard. There are thousands of poles in CMP's service territory that, based on CMP's regular distribution line inspection process, are in satisfactory condition and that do not yet need to be replaced that are shorter than the standard new pole described above. CMP does not maintain data in its system in a manner that allows CMP to approximate the number of poles in its service territory that do not meet that new construction standards described above. CMP can determine the approximate number of poles that are shorter than 40 feet tall in its service territory, but the data does not account for pole class, pole condition, or circumstances in the field requiring the use of certain poles. In total, there are 670,759 poles in CMP's service territory, 440,978 of which CMP solely or jointly owns. Excluding stub poles and poles for customer service drops CMP's records show that there are approximately 174,000 CMP-owned or jointly-owned poles in CMP's service territory that are less than 40 feet tall. Note that this number is not an indication or what poles may need to be replaced to accommodate additional attachments – a field inspection is necessary to make that determination. Moreover, CMP is not responsible for the maintenance of all of its jointly owned poles in its service territory.

15. Please provide any additional information or context you think will be helpful to the Commission in addressing the four specific areas of examination described by the legislature in the resolve.

CMP's Response:

CMP does not have any additional information or comments at this time.

II. CONCLUSION

CMP appreciates the opportunity to provide the responses to the Commission's Information requests. Please contact the undersigned if the Commission has any questions.

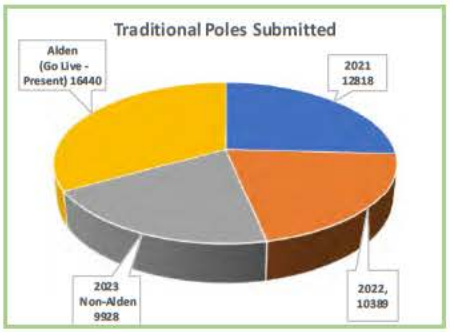
/s/ *Debbie Bill*

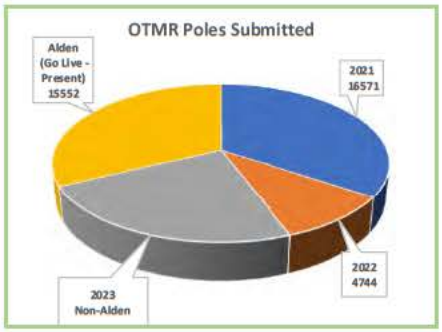
Debbie Brill
Manager – Joint Use
Central Maine Power

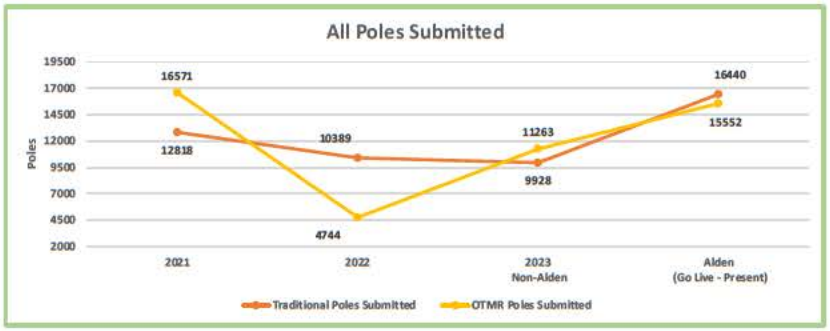
/s/ *Jason Weymouth*

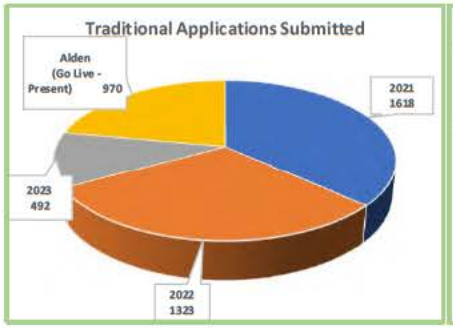
Jason Weymouth
Senior Manager – Programs and Joint Use
Central Maine Power

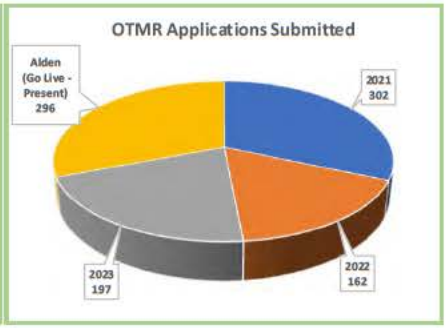
Pie Charts and Graphs below show total numbers of applications submitted and total poles involved in the following charts for applications submitted 2021-April 2024
*** Charts are broken down into data for applications and poles involving One Touch Make Ready (OTMR) and applications and poles involving Traditional timelines**

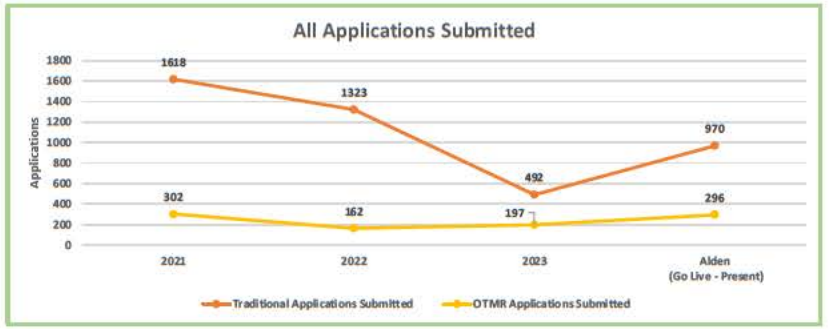








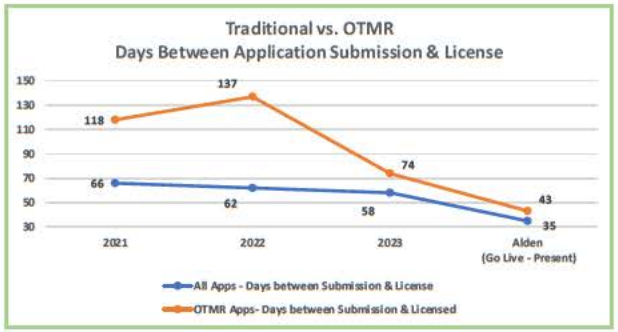




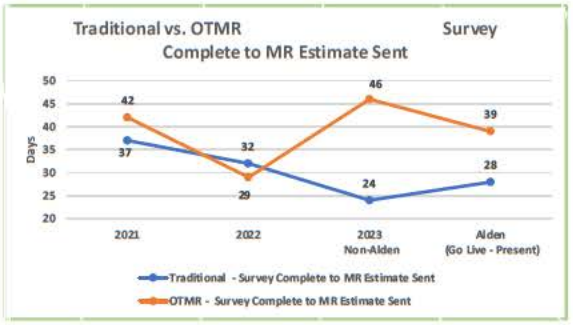
Definitions:

OTMR - One Touch Make Ready as defined by Chapter 880
Traditional - All applications that are submitted outside the OTMR process
Tel Set - Applications that are in a town where CCI is the pole maintainer, or an ILEC is the pole owner
CMP Set - Applications that are in a town where CMP is the pole maintainer or the pole was scheduled for condition replacement prior to application
No-Bill - All work on the application was determined to be non-billable to the Applicant due to condition
Billable - Applications that include at least one billable make ready pole

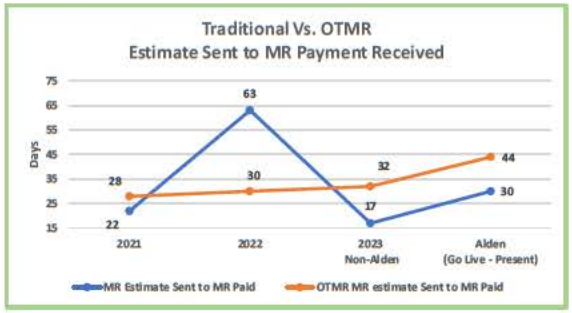
1(a) Average duration from application received to license issuance: For all application types the average is 50 days and the average including OTMR is 75 days



1(b) Average duration from survey complete to make-ready estimate: 35 days

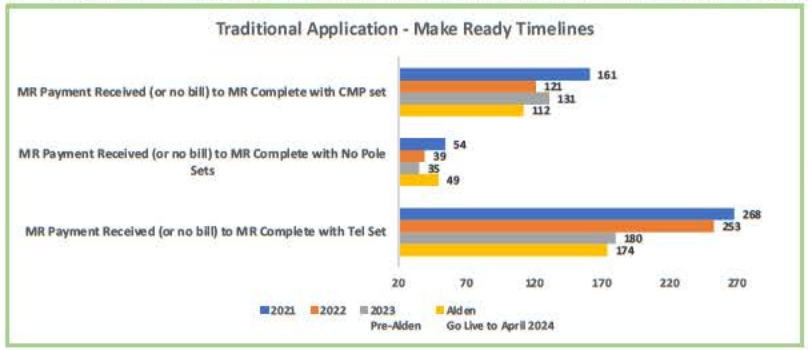


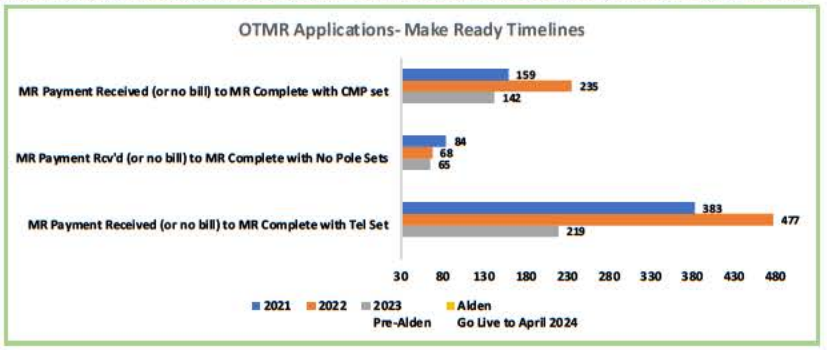
1(c) Average duration from make-ready estimate to receipt of the make-ready payment. 33 days



1(d) Average duration from receipt of make-ready payment to completion of make-ready construction. 162 days

Note- The question as asked does not account for applications where all make ready is non-billable which is a large set of data. These non-billable MR applications have been added below using the date parameters: Survey Complete to Make Ready Complete

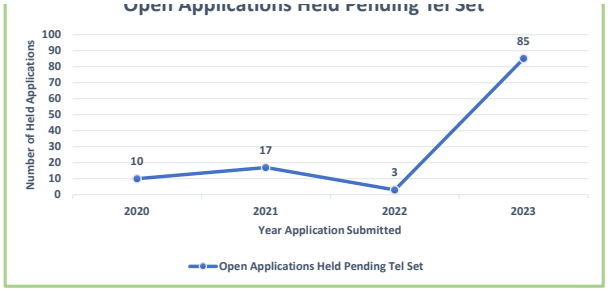




*Not enough Alden data to present for these categories

Number of Open Applications Pending Pole Sets In Tel Maintenance Areas

354 Open CMP Applications Requiring Make Ready - 115 held for tel Set
(All other charts include only closed and licensed applications)


Open Applications Held Pending Tel Set
Number of Held Applications
100
90
80
70
60
50
40
30
20
10
0
10
17
3
85
2020
2021
2022
2023
Year Application Submitted
Open Applications Held Pending Tel Set

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Public Utilities Commission Inquiry to Facilitate Preparation of LD 1456 Report	May 10, 2024 Docket No. 2023-00300

RESPONSE OF CHARTER AND COMCAST TO THE COMMISSION'S REQUESTS FOR INFORMATION NUMBERS 6, 7, 8, 10, & 11

Spectrum Northeast, LLC ("Charter") and Comcast of Maine/New Hampshire, Inc. ("Comcast") (collectively, the "cable operators") hereby respond to March 25, 2024 Procedural Order and the requests for information ("Requests") by the Public Utilities Commission's ("PUC" or "Commission") directed to attachers and other interested persons.

The cable operators respond jointly here to Commission Requests 6, 7, 8, 10, and 11, but Charter and Comcast are each submitting separate, confidential responses to the remaining Requests under seal pursuant to Protective Order No. 1.

COMMISSION REQUEST NO. 6:

Please describe your understanding of the Rapid Response Dispute Resolution Process in Chapter 880.

RESPONSE:

From the cable operators' perspective, the Chapter 880 Rapid Response Dispute Resolution Process is straight-forward and unambiguous. The process is a streamlined, inexpensive, staff-mediated dispute resolution procedure administered by Maine PUC staff that places a premium on prompt and efficient resolution of disputes between and among pole-attachment stakeholders—specifically pole owners and communications attachers. The procedure is particularly well-suited for pole-access disputes because it requires resolution of disputes within seven business days of

the filing of a complaint.[1] Prompt and fair resolution of pole access disputes will be critical to accelerating broadband deployment in the State of Maine.

COMMISSION REQUEST NO. 7:

> **If you have participated in a Commission Rapid Response Complaint, or commission inquiry or investigation related to the timely relocation or removal of utility poles, please comment regarding the effectiveness of the process. If you have not utilized the Rapid Response process please describe why not (*e.g.*, never had a need, did not think the process would be helpful, etc.).**

RESPONSE:

Neither Comcast nor Charter has used the Commission's expedited complaint resolution process for pole attachment disputes, although there might be a need to do so in the future. In the interest of maintaining business relationships, cable operators like Comcast and Charter generally seek to avoid formal disputes when at all possible and prefer to resolve issues with pole owners on pole access, pole attachment rates, and other matters on a business-to-business basis. Indeed, we would contend that the mere existence of a swift and effective enforcement mechanism like Maine's Rapid Response Complaint process itself serves as an effective incentive for parties to reach a mutual accommodation.

COMMISSION REQUEST NO. 8:

> **Would the Public Utilities Commission, the Maine Connectivity Authority, the Maine Municipal Authority, or another group or agency be the most effective entity to provide educational resources and assistance regarding the rights of municipalities or other attaching entities?**

RESPONSE:

Municipalities must be treated the same as other attaching entities, and the Commission must remain the lead agency in the application of its Chapter 880 Rules. Indeed, by law, only the

[1] 65-407 C.M.R. ch. 880, § 10 & Attachment A.

Commission has regulatory authority to prescribe rules governing pole attachment rates, terms, and conditions. 35-A M.R.S. § 711. While the Maine Municipal Authority and Maine Connectivity Authority can offer guidance to municipalities and provide input to the Commission on issues that affect municipalities, they should not adopt different or competing rules.

COMMISSION REQUEST NO. 10:

To your knowledge, is there an industry standard for a new pole when a pole needs to be replaced (*e.g.*, size, height, or class)?

RESPONSE:

The cable operators are not aware of an "industry standard" for pole replacements such as a size, height, and class *per se* for when a pole needs to be replaced (*e.g.*, 40-foot, class 3 pole or similar). Often, joint ownership agreements between pole owners specify a default minimum height for replacement poles.

There are, however, a number of industry standard *practices* that guide the choices relating to replacement poles. Those include compliance with the National Electrical Safety Code ("NESC") when considering immediate and future needs for capacity expansion (both vertical space for additional electric and communications facilities as well as increased loading considerations), especially for replacements associated with permit applications by new communications attachers. For example, if a pole needs to be replaced to accommodate new attachments because the pole is too short, but raising or lowering existing attachments or other techniques such as boxing or stand-off brackets will not solve the clearance issues, the "default" standard would be to replace that pole with one that is five feet taller. Because there are many physical, geographical, and topographic factors – along with NESC and other clearance requirements that must be taken into consideration – establishing or adopting a single "industry standard" pole size is practically infeasible.

Another pressing issue concerning pole replacements is the equitable allocation of their costs. As the cable operators have previously explained, including in this proceeding, pole replacement costs can be a major cost driver for broadband deployment, especially in rural areas where poles are often at the end of their useful lives and too short to accommodate new attachments.[2] While Section 5(C) of the Chapter 880 rules already somewhat limits pole replacement costs chargeable to attachers, the current rule should be amended to prevent inappropriate cost-shifting by pole owners to attachers, particularly at a time when expanding broadband access in Maine, using taxpayer funds, is a top priority.[3]

The FCC and other state regulatory agencies have already addressed these issues.[4] In 2021, the FCC declared that "utilities may not require requesting attachers to pay the entire cost of pole replacements that are not solely caused by the new attacher and, thus, may not avoid

---

[2] Cable Operators' Initial Comments, Dkt. 2020-00181, at 14-19 (Aug. 28, 2020); Hearing Transcript, Dkt. 2020-00281, at 9:21-10:6, 26:1-16 (Jan. 13, 2021), Cable Operators' Final Comments, Dkt. 2020-00281, at 4-5 (Jan. 29, 2021); Cable Operators' Initial Comments, Dkt. 2021-00321, at 3-5 (Nov. 19, 2021); Cable Operators' Reply Comments, Dkt. 2021-00321, at 2-4 (Dec. 17, 2021); Comments of Charter and Comcast, Dkt. 2023-00300, at 2-3 (Jan. 12, 2024).

[3] Section 5(C)(1) of Chapter 880 currently provides: "When an existing or a proposed attaching entity requires additional space which is not available on that joint-use utility pole, and the joint-use utility ***pole must be replaced***, the existing or proposed attaching entity causing the need for replacement must pay for (i) the ***difference*** between the ***cost for the taller joint-use utility pole*** and supporting equipment such as guys and anchors and the ***cost for a new 35-foot joint-use utility pole*** and supporting equipment in the same location, ***plus*** (ii) a reasonable estimate of the ***net book value*** of the joint-use utility pole and supporting equipment, if any, which has been replaced.") 65-407 CMR Ch. 880, § 5(C)(1) (emphasis added); *see also id.* § 5(C)(2) ("When more space for attachments than is available on a 35-foot joint-use utility pole is required by two or more attaching entities, the cost (i) of the additional height of the excess height joint-use utility pole and supporting equipment and (ii) the reasonable estimate of the net book value of replaced joint-use utility pole and supporting equipment, if any, must be shared equally among the users requiring the replacement.").

[4] *See* 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) (stating that updating "our policies to make clear when an attacher does not have to pay the full cost to replace an existing pole . . . can help with new deployment"); *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling, 36 FCC Rcd 776, 777, ¶ 1 (2021) ("*2021 FCC Declaratory Ruling*") (framing pole replacement cost ruling as "part of [the FCC's] efforts to close the digital divide and further broadband deployment").

responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted."[5] The FCC clarified that new attachers should not have "to pay the entire cost of a pole replacement when a pole already requires replacement (e.g. because the pole is out of compliance with current safety and utility construction standards or has been red tagged) at the time a request for a new or modified attachment is made."[6]

In late 2023, the FCC further clarified that "red tagged" poles include "poles that the utility identifies for replacement for any reason other than the pole's lack of capacity to accommodate a new attachment."[7] The FCC made clear that "a utility may not evade application of . . . cost causation and cost replacement policies with respect to a particular pole replacement simply by failing to 'red tag' a pole that has safety violations or is otherwise out of compliance with applicable utility construction standards."[8] The FCC also enumerated several examples of when pole replacements are not "necessitated solely" by an attachment request[9] and provided that a

---

[5] *2021 FCC Declaratory Ruling*, 36 FCC Rcd at 779, ¶ 6; *see also Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7766, ¶ 121 (2018) ("[N]ew attachers are not responsible for the costs associated with bringing poles or third-party equipment into compliance with current safety and pole owner construction standards to the extent such poles or third-party equipment were out of compliance prior to the new attachment.").

[6] *2021 FCC Declaratory Ruling,* ¶¶ 3, 6-10.

[7] *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, ¶ 40-44 (FCC Dec. 13 2023) ("*2023 FCC Pole Attachment Order*"), *available at* https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf.

[8] *Id*. ¶ 44.

[9] 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.

prospective attacher only would be "responsible for the incremental cost of a taller or stronger pole needed to support its facilities, not the cost to replace the defective or deteriorated pole with an equivalent-sized replacement pole."[10]

Attachers in Maine thus should not bear full cost responsibility for replacing poles that are already due to be replaced when pole owners already enjoy operational, capital cost, tax-savings, and revenue-enhancing benefits from such replacements.[11] Therefore, as we previously recommended, the cable operators urge the Commission to promptly open a formal rulemaking proceeding to align the Chapter 880 rules with the FCC's approach to pole replacement cost allocation.[12]

[10] *Id*. ¶ 48. The Kentucky Public Service Commission also has adopted detailed rules governing pole replacement cost allocation. In Kentucky, poles are considered "red-tagged" if they are designated for replacement (1) for "non-compliance with an applicable safety standard," (2) "within two years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment," or (3) that "would have needed to [be] replace[d] at the time of replacement even if the new attachment were not made. 807 KAR 5:015, Section 1(10). If a red-tagged pole is replaced with a pole of a different type or height, new attachers in Kentucky are only responsible "for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment. 807 KAR 5:015, Section 4(6)(3).

[11] *See, e.g.*, *Alabama Cable Telecomm. Ass'n v. Alabama Power*, 16 FCC Rcd 12,209, 12,235 ¶ 58 (2001) ("In instances where attachers pay the costs of a replacement pole, the attacher actually increases the utility's asset value and defers some of the costs of the physical plant the utility would otherwise be required to construct as part of its core service.").

[12] Indeed, the Commission already conducted an inquiry from 2021-2023 into pole replacement cost allocation. Notice of Inquiry, Dkt. 2021-00321, at 1 & 6 (Oct. 18, 2021). While the Commission eventually narrowed the scope of that inquiry to focus only on implementation of the Alden One system, the parties involved in that proceeding already had commented extensively on approaches to amending Section 5(C) of the Chapter 880 rules. *See* MPUC Interim Report to Resolves 2023, ch. 81, at 8 (Feb. 15, 2024).

COMMISSION REQUEST NO. 11:

Please provide any additional information or context you think will be helpful to the Commission in addressing the four specific areas of examination described by the legislature in the Resolve.

RESPONSE:

In addition to opening a rulemaking to amend the Chapter 880 rules regarding allocation of pole replacement costs, the Cable Operators also urge the Commission to seek comments from interested parties on amending the Chapter 880 rules to align with other pole attachment rule changes and clarifications from the FCC. In particular, the FCC has recently clarified that a utility must provide potential attachers with a copy of the utility's easement before it can refuse to let the attacher utilize or share that easement—or before the utility can require the attacher to obtain its own easement.[13] The FCC also clarified that for large pole applications (more than 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.[14] And 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.[15]

[13] *2023 FCC Pole Attachment Order*, ¶¶ 23-31, 49 & Appendix A (adding 47 C.F.R. § 1.1411(c)(4)).

[14] *Id*. ¶ 50-51.

[15] *Id*. ¶¶ 23-31. While pole owners have petitioned for reconsideration or clarification of certain aspects of the FCC's new pole attachment rules, that petition is fully briefed and is due to be addressed soon by the FCC.

Dated: May 10, 2024

Respectfully Submitted,

/s/ J. D. Thomas

J. D. Thomas
Abraham J. Shanedling
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2099 Pennsylvania Avenue NW, Suite 100
Washington, DC 20006-6801
Tel. (202) 747-1916
dthomas@sheppardmullin.com
ashanedling@sheppardmullin.com

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

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2023-00300

PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of LD 1456 Report

RESPONSE OF CROWN CASTLE AND GONETSPEED TO COMMISSION'S INFORMATION REQUESTS

CRC Communications LLC, d/b/a GoNetspeed ("GoNetspeed") and Crown Castle Fiber LLC ("Crown Castle") (collectively, the "Broadband Providers") appreciate the opportunity to work with the Commission, the Maine Connectivity Authority, and the other participants in this effort 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.

The following responses are intended as the consensus view of Crown Castle and GoNetspeed, except where it is necessary to distinguish between them because of differing applicable facts, past experience, or policy perspectives. These will be pointed out when they occur.

1. Please provide the average time to complete each of the following stages of the pole attachment application process for projects completed during the last three years. For each response, please provide separate responses for projects that required simple make-ready, projects that required complex make-ready work, and projects that utilized one-touch make ready or self-help, and if possible please separately identify projects involving existing poles and projects involving new or replaced poles:

a. Average duration from application received to completion of field survey.

GoNetspeed

GoNetspeed does not maintain information in a form that would enable it to answer the question presented.

GoNetspeed is able to provide the average number of days from application to make-ready estimate received, as follows:

For OTMR applications – N/A.

For complex make-ready, Consolidated – 109 days; CMP – 90 days; Versant – 84 days.

Crown Castle

Crown Castle does not maintain information in a form that would enable it to answer the question presented.

b. Average duration from survey complete to make-ready estimate.

GoNetspeed

See GoNetspeed's response to question 1.a above

Crown Castle

Crown Castle does not have maintain information in a form that would enable it to answer the question presented.

c. Average duration from make-ready estimate to receipt of the make-ready payment.

GoNetspeed

For OTMR – N/A.

GoNetspeed typically cuts a check and mails it to the pole owner(s) within 7 days of receipt of the make-ready estimate.

Crown Castle

Crown Castle typically issues payment to the pole owner(s) within 7 days of receipt of the make-ready estimate.

Crown Castle can also share the average number of days from Crown Castle submitting an application to Crown Castle issuing payment for make-ready. For CMP, only a small number (about 7%) of applications during the relevant time period required make-ready. For those, the average duration from application to make-ready payment was approximately 125 days.

For Consolidated, the average duration from application to make-ready payment was approximately 69 days.

d. Average duration from receipt of make-ready payment to completion of make-ready construction.

GoNetspeed

GoNetspeed does not maintain information in a form that would enable it to answer the question presented.

GoNetspeed is able to provide the average number of days from make-ready payment to license issuance.

For OTMR applications —N/A.

For complex make-ready — Consolidated – 290 days; CMP – 190 days; Versant – 207 days.

Crown Castle

Crown Castle does not maintain information in a form that would enable it to answer the question presented.

e. Average duration from application submission to license issuance.

GoNetspeed

For OTMR applications — Consolidated – 490 days; CMP – 30 days; Versant – 631 days.

For complex make-ready — Consolidated – 167 days; CMP – 225 days; Versant – 292 days.

Crown Castle

As noted above, for CMP, only a small number (about 7%) of applications during the relevant time period required make-ready. So, for the bulk of applications, where no make-ready was required, the average duration was 82 days. For applications requiring make-ready, the average duration was 342 days. However, CMP allowed Crown Castle to utilize temporary attachments while the make-ready work was being completed, which was helpful to mitigate the effect of the delays.

For Consolidated, the average duration was approximately 300 days.

2. For make ready work where you are not the attacher but are required to move your facilities, please provide your average response time and time to complete facility move requests.

GoNetspeed

The response time varies depending on various factors such as site conditions and number of other attachers. GoNetspeed endeavors to complete its work within the Chapter 880 deadlines.

Crown Castle

Once Crown Castle receives notification to move its fiber for another attacher, it usually takes between one and two weeks for Crown Castle to complete that move, subject to contractor availability.

3. Please explain challenges in meeting the timeframes contained in Chapter 880 and, if appropriate, any mitigation strategies that have helped overcome those challenges (e.g., self-help).

As the Broadband Providers have noted on multiple occasions, the pole owners' incomplete adoption and utilization of Alden One impedes communication and data accuracy.

Both of the Broadband Providers have faced situations in Maine where make-ready work has not been completed within the timeframes specified in Ch. 880, and have used several mitigation strategies to meet these challenges.

First, as the Massachusetts Department of Telecommunications and Cable recently observed, "Compliance with the pole attachment statute inherently requires some level of cooperation between pole owners and attachers." *CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.,* D.T.C. 22-4, Department Order on Appeal of Hearing Officer's Ruling, Apr. 26, 2024, at 2.[1] Sometimes challenges to meeting deadlines can be worked out informally by operations or field personnel. Obviously, that is the preferred outcome when it can be achieved.

Second, both of the Broadband Providers have exercised their rights to use the self-help remedy in Ch. 880, § 2(A)(9). This does not eliminate delays that already have occurred, but it allows requesting parties to reduce further delays going forward.

During the relevant time period, **Crown Castle** was forced to invoke the self-help remedy for about 85% of make-ready work when Consolidated failed to complete that work within applicable deadlines.

Of course, self-help is not a panacea; it introduces a new set of problems of its own. Among these is the fact that the requesting party essentially pays for the work twice — once in its advance make-ready payment to the pole owner, and again in having to pay its own contractor performing the work. The pole owners typically take months to refund the advance payments for work they did not perform. During this time, the owners have free use of the requesting party's money. At the same time, the requesting party has been deprived of the use of those funds, which funds could be otherwise applied to the goal of deploying broadband networks beneficial to the State and its citizens.

The Broadband Providers discussed this issue in our earlier comments. Initial Comments, Jan. 12, 2024, pp. 7-8, 11-13; Reply Comments, Feb. 9, 2024, pp. 5-6. The Broadband Providers respectfully refer the Commission, Authority, and Legislature to those earlier comments for a fuller discussion.

The third mitigation strategy the Broadband Providers, especially GoNetspeed, have used is one touch make-ready (OTMR) under Ch. 880, § 2(A)(13). OTMR allows a requesting party to short-cut or eliminate delays and disputes by retaining control of the work itself. As the Federal Communications Commission (FCC) observed when it adopted OTMR in August 2018, "OTMR speeds broadband deployment by better aligning incentives than the current multi-party process.

[1] https://www.mass.gov/doc/dtc-22-4-order-of-appeal-of-hearing-officers-ruling/download.

It puts the parties most interested in efficient broadband deployment — new attachers — in a position to control the survey and make-ready processes." *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Dkt. No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, 33 FCC Rcd 7705, ¶ 22 (Aug. 3, 2018) ("FCC OTMR Order").[2] The Commission's OTMR rules are essentially identical to the FCC's, and are designed to accomplish the same salutary objectives: to speed broadband deployment by eliminating delays and disputes before they occur.

4. To the extent not already provided in earlier comments, please identify ways in which the wait times for attachments may be decreased or standardized. Please respond to, or comment on, previously submitted recommendations in this regard.

The Broadband Providers have filed extensive comments in this matter. From the perspective of the Broadband Providers, the Commission's Chapter 880 rules establish a pole attachment process that is as good as any and better than most. That said, there always is room for improvement. We have suggested various ways that the pole attachment process may be improved and/or expedited. We respectfully refer the Commission and other interested parties to those comments:

Initial Comments of Crown Castle and GoNetspeed (Jan. 12, 2024)

Additional Comments of Crown Castle and GoNetspeed (Feb. 9, 2024)

In response to the Commission's invitation to comment on previously-submitted comments, the Broadband Providers note that the T&D Companies (CMP and Versant) stated in their February 9, 2024 Comments:

> 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.

T&D Companies' Feb. 9, 2024 Comments at 6. The T&D Companies said that they would not attempt to speak for Consolidated, but instead "defer[red] to Consolidated Communications to address any deficiencies these other stakeholders have raised regarding Consolidated Communications' compliance with Chapter 880 timelines." *Id*.

Additionally, the T&D Companies point to the implementation of the Alden One system as a means to expedite and facilitate the pole attachment process. They say:

> 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

[2] https://docs.fcc.gov/public/attachments/FCC-18-111A1_Rcd.pdf.

> 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.

Id. at 2.

This carefully-crafted passage is telling for what it does not say: that Consolidated does not appear to be participating in the Alden One implementation in any meaningful way. The T&D Companies thus confirm the Broadband Providers' observations in our prior comments (Initial Comments at 5-7; Additional Comments at 2-4). Yet, Consolidated, like the T&D Companies, is required by law to participate in the joint-use software system. Ch. 880, §§ 1(O), 1(Q), 5(A)(1).

As the Broadband Providers have stated, most broadband deployment work occurs in the communications space. Consolidated's nonparticipation in the Alden One system directly negates the usefulness of that system to requesting parties seeking to attach in that space. This, plus other inefficiencies, such as the requirement to submit separate pole attachment applications to multiple joint owners to attach to the same pole and duplicative attachment review processes, significantly disserves the people of Maine by impeding the efforts of Consolidated's business competitors to bring needed and beneficial broadband services to the State.

5. Please provide the approximate amount of the most recent increase in make-ready costs in percentage terms, or a description of recent trends in make-ready cost increases.

Crown Castle does not have information on current make-ready costs in Maine so it cannot comment on recent cost increases, if any.

GoNetspeed states that make-ready and labor costs have increased across the board.

6. Please describe your understanding of the Rapid Response Dispute Resolution Process in Chapter 880.

The Commission will adjudicate any disputes regarding joint-use utility poles, including disputes pursuant to 35-A M.R.S. § 711, in accordance with the Expedited Complaint Resolution Process of Disputes Regarding Utility Pole Attachments established in *Maine Public Utilities Commission, Investigation into Practices and Acts Regarding Access to Utility Poles,* Docket No. 2010-00371, Order (July 12, 2011). Ch. 880, § 9.

The Rapid Response Process is designed to do exactly what its name suggests — resolve pole attachment disputes quickly and without excessive effort, allowing the parties to resume work as soon as possible. *See* Ch.880, Appendix A, Expedited Pole Attachment Complaint Process. The Commission's Rapid Response Team is heavily involved. Proceedings are conducted largely if not exclusively by remote means. The Team controls any production of information; the parties do not conduct discovery as such. The Team may issue a preliminary decision, attempt to facilitate settlement, conducts discussions with and among the parties, and issues a final decision within

seven business days. Parties have the right to appeal to the Commission a preliminary or final decision.

7. If you have participated in a Commission Rapid Response Complaint, or commission inquiry or investigation related to the timely relocation or removal of utility poles, please comment regarding the effectiveness of the process. If you have not utilized the Rapid Response process please describe why not (e.g., never had a need, did not think the process would be helpful, etc.).

Neither of the Broadband Providers has used the Rapid Response Process to resolve a dispute with a pole owner. The Broadband Providers understand and appreciate that the Rapid Response Process is available, and believe that the Process is one of the extraordinarily useful tools the Commission has provided in Chapter 880 to expedite and facilitate broadband expansion. Neither of the Broadband Providers would hesitate to use the Process in appropriate circumstances.

However, the Commission has also provided other tools to facilitate and expedite pole attachments and broadband expansion, such as OTMR and self-help under Ch. 880. Both Broadband Providers have used these techniques when desired or needed. So far, those tools have enabled the Broadband Providers to proceed with their deployment activities without the need to resort to the Rapid Response Process. Still, the availability of the Rapid Response Process, the Broadband Providers believe, is a useful backstop to ensure that parties abide by the rules and their obligations.

8. Would the Public Utilities Commission, the Maine Connectivity Authority, the Maine Municipal Authority, or another group or agency be the most effective entity to provide educational resources and assistance regarding the rights of municipalities or other attaching entities?

The Broadband Providers do not have an opinion on the best entity for education and outreach to the particular audience of municipalities.

On a general level, the Commission's expertise in the policy and practical aspects of pole attachments cannot be questioned. The Commission has conducted multiple inquiries and rulemakings. In so doing, it has been careful and thorough in seeking and obtaining information from relevant stakeholders. From the Broadband Providers' perspective, the pole attachment regime in Maine is as good or better than most.

As to the Authority, given that it "works to ensure . . . that there be secure, affordable, reliable, competitive, sustainable and forward-looking infrastructure that can meet future needs . . . ," the Authority may have more capability and focus on outreach and education activities.

A partnership between the two agencies may blend the best of both worlds.

9. Please provide the total number of pole attachment projects completed in the previous three years by your company or organization, the number of poles involved in those projects, and the number of poles that required replacement to complete the projects. Did any projects involving pole replacements experience significant delays or unexpected expenses?

For GoNetspeed: 47,914 poles, of which 1,585 required replacement.

Crown Castle does not maintain information in a way that enables it practicably to answer this question.

10. To your knowledge, is there an industry standard for a new pole when a pole needs to be replaced (e.g., size, height, or class)?

GoNetspeed suggests that any pole with primary power should not be less than 40' in height.

Crown Castle suggests that the height and class of a replacement pole will vary based on regional load factors, the number and types of attachments, the utility's internal standards, and other potential local requirements.

11. Please provide any additional information or context you think will be helpful to the Commission in addressing the four specific areas of examination described by the legislature in the Resolve.

The Broadband Providers respectfully refer to our previous comments and those above. We are grateful to the Commission and Authority for their consideration of our comments, and are prepared to continue our participation in the discussion of these important matters.

May 10, 2024

Respectfully Submitted,

/s/ Gregory M. Kennan

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

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2023-00300

May 10, 2024

MAINE PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of LD 1456;
A Resolve to Study the Effect of Current Laws and Rules on the Expansion of Broadband

VERSANT POWER
Response

Versant Power ("Versant") hereby responds to the request for information pursuant to the Commission's March 25, 2024 Procedural Order in the above referenced docket. The Commission previously requested information in this docket in conjunction with its preparation of an *Interim Report Pursuant to Resolve 2023, ch. 81 Resolve to Study the Effect of Current Laws and Rules on the Expansion of Broadband* [LD 1456] submitted to the Legislature on February 15, 2024 (*Interim Report)*. L.D. 1456 requires the Commission, 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. L.D. 1456 requires the Commission to submit its final report by December 1, 2024. The responses below are intended to assist the Commission in developing its final report, and supplement information and comments Versant has previously submitted in this docket.

Request for Information from Utility

1. Please provide the average time to complete each of the following stages of the pole attachment application process for projects completed during the last three years. For each response, please provide separate responses for projects that required simple make-ready, projects that required complex make-ready work, and projects that utilized one-touch make-ready or self-help

The table below summarizes average durations, in total days, for each stage of the attachment application process for projects completed during the three-year period ending on January 31st, 2024. (Versant's application process is discussed below in the response to

question #3.) The table is broken out to show the durations within Versant and Consolidated maintenance areas (each joint owner has responsibility to set poles in their respective maintenance area). The table also shows the time frames set forth in Chapter 880 of the Commissions' Rules for comparison purposes.

	Application Review and Field Survey	*Estimate*	*Payment*	*Const.*	*License (w/Complex MR)*	*License (all other)*
CH 880 Timeline	55	14	60	90	219	219
VP Maint. Area Timeline	21	38	20	70	188	48
CCI Maint. Area Timeline	21	26	27	145	263	45
Combined	21	34	23	93	212	47

a. Average duration from application received to license issuance

On average it takes approximately 47 days from the date of application to completion of the field survey and issuance of a license when no billable make-ready is required to accommodate the attachment, and thus within the 55 day time frame contemplated by Chapter 880. *See e.g.* Chapter 880 § 2 (A). Of note, while not shown in the tables, it often takes only about one to three weeks from the application to the issuance of a license if no make-ready is required. Thus if the field survey reveals no need for pole replacements or attachment transfers, the process is well within the time frames contemplated by Chapter 880. When the applicant's proposed project requires complex make-ready to accommodate the attachment (e.g., pole replacements and transfers of electric utility facilities) it took on average 212 days for project completion (field survey, estimates, permitting, contracting, pole replacements and transfers, post attachment inspections) and for Versant to issue a license, and thus within the 219-day combined timeframe under Chapter 880.

b. Average duration from survey complete to make-ready estimate

The average duration from survey complete to make-ready estimate was 34 days.

c. Average duration from make-ready estimate to receipt of make-ready payment

The average duration from make-ready estimate until receipt of payment from Licensee was 23 days.

d. Average duration from receipt of make-ready payment to completion of make-ready construction

The average duration from receipt of make-ready payment to completion of make ready construction was 93 days.

Versant does not have data to separately average applications involving OTMR or self-help projects.

2. Please explain challenges in meeting the timeframes contained in Chapter 880 and, if appropriate, any mitigation strategies that have helped overcome those challenges (e.g., self-help).

As shown by the above data, on average, applications are being processed within the time frames set forth in Chapter 880. Potentials for delays are typically avoided or resolved by working with the attachers, so that on average the project is completed in a timely manner. Most delays or challenges that do occur are the result of a few identifiable practical factors encountered in any construction project. For example, delays can be caused by the need for third party permitting, the complexity of the project and situations where post-attachment inspections revealed compliance issues (e.g., improper attachment location and clearances, and where OTMR is used occasional inexperience of contractors with electrical clearances). Versant has historically had a good working relationship with existing attachers to resolve matters when brought to Versant's attention. With mutual cooperation, particularly on the front end of projects including during field survey and design, good communication and the use of qualified contractors, the application and licensing process can usually be completed within the Chapter 880 time frames.

Versant offers the following observations when considering these time frames.

a. Make Ready Estimates

Chapter 880 contemplates up to 55 days to complete the application review and field survey, and contemplates longer periods for certain larger projects. Chapter 880 contemplates 14 days after completion of any field survey to complete an estimate of make-ready costs. In practice the time frames are less defined, simply because data collection/field survey work may involve both work "in the field" as part of a physical ride out of the project and work "at the desk" in working through information gathered from the ride out as part of the make ready determination and project design. Tracking time within any particular part of this process does not neatly fall into "field survey" vs "estimate" work and Versant therefore believes looking at the combined time frames for application to development of the estimate is a more useful measure for averaging purposes.

b. Third Party Permitting and Approvals

Although permitting and third-party consent is not separately addressed in the time frames set forth in Chapter 880, most projects require third party consents and permits such as from MDOT, municipalities, railroad operators, the FAA and other entities and agencies. Although Versant or attachers may timely prepare and submit these permits to the governing authority, delays in construction commencement can occur while awaiting the permit approval or private party easements beyond the control of the parties and through no fault of any of the stakeholders.

c. Pole Setting

The data shows that on average Versant has been able to timely set poles and perform complex make-ready within its own maintenance areas, however, if pole replacements occur in a location where Consolidated is responsible for maintenance, Versant awaits Consolidated's installation of the poles before Versant can initiate any of its

own make-ready work. The data presented in response to Question 1 does reflect some lag in CCI Maintenance Area with respect to pole setting by CCI. Versant is working with Consolidated to allow for Versant to set poles when complex make ready is required in the CCI Maintenance Area whenever Versant determines it can arrange to do so more expeditiously.

3. Please describe the steps your company takes to process an application for new pole attachments and explain any differences between the process for tax-exempt municipalities and private companies.

Versant follows a process consistent with Chapter 880 and its standard Pole Attachment Agreement, which incorporates Chapter 880. The process is the same for all licensees, whether new or existing, and whether private or municipal. The process is as follows:

a. Submission of Application

The attaching entity currently submits an application for attachment specifying the name of the licensee, the locations of the poles upon which the party intends to attach (e.g., route, town) and other data. With Versant's implementation of the electronic joint use software program (Alden One) the attacher will electronically apply for attachments within Alden One but the information to be provided by the attacher will be the same. Each attaching entity will have a profile or account within Alden One with the ability to add pre-application material and draft its applications confidentially, and this profile will include information on its existing attachments. Alden One will also contain information regarding Versant's poles, their locations and the identity and location of other attachments on the poles, to assist the attacher prepare the application within Alden One.

b. Review of Application and Field Survey

Following submission of the application to Versant (and any other joint pole owner), Versant promptly reviews the application to determine that it is complete and thereafter

coordinates with the attacher to conduct the field survey. The field survey typically involves a physical ride out of the proposed route to determine the need for any pole replacements, identify electrical clearance matters and other visible information relevant to any possible make ready. A determination may be made as to the extent to which the project involves "simple make-ready" (e.g., communication space attachments and no pole replacements) or "complex make ready" (e.g., requires poles replacements).

The field survey work is a critical part of the attachment process, and when undertaken with qualified personnel results in fewer post-construction compliance issues and a more expeditious completion of the project. Whether or not OTMR is used, Versant's experience to date indicates that having Versant involved in the field survey work provides the most efficient means to identify whether the project involves complex make ready, and to identify potential clearance and compliance issues before the job starts. This avoids situations in which a post attachment inspection reveals the need to replace poles after the attachments have occurred and thereby potentially causing additional make-ready and delay a project's completion.

c. Estimate and Payment of Make-Ready Costs

With the information provided by the field survey, Versant will then gather the labor and equipment costs and prepare an estimate for any complex make-ready. Going forward this estimate will be provided within Alden One. Additionally, Versant identifies the need for any permits and easements and stays in communication with the attacher during this time period. The attaching entity will then pay the estimated cost in order to initiate any make-ready work to be undertaken by Versant. Where the job involves jointly owned poles, Consolidated will prepare the make ready estimate for work in the communications space (e.g. for simple make-ready).

d. The application process in Alden One will largely follow the same steps currently utilized previously

In this regard, Versant's own administration of the process will be largely unaffected by Alden One (other than having some duplicative work to update both Alden One and its internal GIS with respect to pole replacements and attachments). The important improvement and difference to the process affects and benefits the attachers themselves as was the intention in implementing Alden One. Attachers will now be able to assemble data before initiating the application within their individual profile accounts in Alden One, and will be able to track the status of applications within Alden One. Each attacher will have visibility to their existing attachments on the system within the program, and during the make-ready process will be able to monitor the progress of transfers. The one exception is that Alden One does not currently have the ability to process One Touch make-ready applications, however Alden is looking into developing and providing this capability.

As noted above, the application process is the same for all licensees, whether private company or tax-exempt municipalities, with the exception that under the scenarios identified in Section 6 of Chapter 880 the municipality is not charged for make-ready.

4. To the extent not already provided in earlier comments, please identify ways in which the wait times for attachments may be decreased or standardized. Please respond to, or comment on, previously submitted recommendations in this regard.

As indicated by the above referenced data on average the timeframes for completing the application process under Chapter 880 are being met. As the Commission explained in the *Interim Report*, and each of the parties in this docket have observed in prior comments, these timeframes were adopted following considerable input from all stakeholders in several dockets. The timeframes generally coincide with the time frames adopted by the Federal Communications Commission in its efforts to facilitate and expedite the expansion and deployment of broadband.

Maine is now at the forefront of nationwide efforts to enhance and update pole attachment procedures. Further changes to the rules governing the time frame for pole attachments are unnecessary and may be counterproductive. All stakeholders now simply need the opportunity to implement and work under these relatively new procedures and timeframes as broadband expansion efforts are underway. So far, the efforts appear to be on track and consistent with those recommended by the stakeholders to help facilitate broadband expansion in Maine. Nevertheless, above Versant has indicated where delays can occur and has made a few suggestions. Most notably, completion time can be improved by ensuring that contractors engaged by attachers are qualified and work closely with pole owners throughout the process, including coordinating with Versant on the front end to perform joint field survey work, even when OTMR is utilized.

As noted, Versant believes further rule changes are not needed at this time and Versant cautions against action or rule that would accelerate the process any more at the expense of safety and reliability. Versant encourages and agrees with the State's goal to efficiently and expeditiously deploy broadband, and we assume all stakeholders recognize that where electric utility lines are involved any efforts to expedite the attachment process must be balanced at all times with the need for qualified workers, proper oversight and continuation of the safeguards that have proven to work (such as coordinating field survey work and post construction inspections).

The focus must now be on the quality of attachment work to ensure it occurs in a safe and efficient manner within the timeframes contemplated by Chapter 880. In this regard, processes such as One Touch Make-Ready and Self Help, while having the potential to assist attachers, reduce oversight from pole owners and put the obligation on attachers to survey and build within compliance. With these methods now being employed, Versant has already observed an uptick in (post construction) clearance encroachments

and even contact with our plant, insufficient clearance above roads/highways/railroads, omission of proper guying support, shifting of existing attachments into violation, and fiber installations having occurred before required transfers of existing attachers or pole replacement work. This puts the electrical grid system, line workers, other attachers and the public at risk. We have therefore offered suggestions noted above and encouraged those employing OTMR to involve the electric utility at the outset, which itself expedites rather than delays the safe completion of a project.[1]

Accordingly, Versant believes that further rule making is not needed, but rather all joint use entities must be encouraged to work together to ensure the prudent and safe deployment of broadband. Priority should be placed on the use of experienced qualified contractors by attachers, and prudent coordination with pole owners and advance planning will in the long run best ensure that timeframes are met and the work is done in a timely, safe and reliable manner.

5. Please provide the following information regarding make-ready costs:

a. Cost recovery of make-ready work

Versant recovers the cost of make-ready generally in accordance with Chapter 880. In short this usually entails the cost causing entity to cover the make-ready cost, except in the case of municipalities if and when Section 6 of Chapter 880 applies. Thus, when a field survey indicates the need for transfers or pole replacement in order to accommodate the attachment, the party proposing to attach is required to pay the cost of the make-ready (labor and equipment). Attachers pay an upfront estimate to Versant for Versant make-

[1] The Commission through Section 5 of Chapter 880 and stakeholders through comments have recognized that any anticipated benefits to attachers of Alden One will not be fully realized unless and until each of the joint pole owners implements Alden One. While Versant agrees, we are aware that CCI has not indicated a timetable for implementing Alden One in the Versant service territory; we cannot comment on CCI's implementation plans and assume CCI will address their time schedule for implementation in their comments.

ready costs. If the make-ready is actually due to a pre-existing condition such as pole deterioration, Versant does not charge the attacher for the pole replacement.

b. The approximate amount of the most recent increase in make-ready costs in percentage terms, or a description of recent trends in make-ready cost increases.

Versant has not compiled data on the percentage increase in make-ready construction costs. Versant is aware that construction costs, particularly third-party contractor labor costs, have risen in Maine in recent years in part due to demand and market conditions.

c. Recent examples of approximate costs of replacement poles to accommodate municipal attachments and how those costs are recovered.

We assume this question refers to request for attachments by municipalities for municipal owned fiber optic projects, including those that might qualify under Chapter 880, Section 6 to allow for pole replacement and make ready without charge to the municipality. Versant has not had any recent municipal attachment applications within its territory. It appears from our experience with the applications to date, broadband deployment occurring in Versant's service territory is largely being undertaken by privately owned providers working, including those working with municipalities and existing providers overlashing on their own equipment.

d. Recent examples of approximate costs to repair poles to accommodate municipal attachments and how those costs are recovered.

See response to (c) above.

e. Recent examples of approximate costs to relocate or remove poles to accommodate municipal attachments or comply with federal law and how those costs are recovered.

See response to (c) above.

f. Alden One costs (development, license, maintenance, training, etc.) and how those costs are recovered.

Versant continues to maintain that the incremental costs of Alden One should be allocated objectively and fairly among all users of Alden One. Versant has made a fair proposal that such costs be split 80/20 between attachers and the pole owners. *See e.g., Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure2023 Rulemaking,* Docket 2023-00058, Joint Comments of Versant and CMP, May 19, 2023. The incremental cost to implement and administer Alden One is twofold. First, Versant has devoted internal personnel to implement, provide training and monitor Alden One. Because this system is used only for purposes of facilitating the attachment and transfer process it does not affect Versant's primary operating GIS system used to maintain, upgrade and operate its electrical distribution system and pole plant, the costs to administer Alden One is incremental. Second, Versant pays Alden for the Alden One subscription and fees. Alden charges an annual subscription fee, which is calculated by a cost per pole and aggregated for the system. Versant expects this fee to run approximately $50,000 per year and will escalate yearly. Alden will also charge additional fees to establish customizations from their standard offering.

The above-mentioned incremental costs for Alden One costs are not currently being separately charged to the attachers even though the system is implemented in order to serve attachers and the attachment process. Versant will be continuing to evaluate how to prudently charge the users of the system, including allocating the cost fairly among all users.

g. A quantification of any savings realized by the use of Alden One (labor, project time, etc.).

Versant is not able to identify any quantifiable savings to Versant at this time. In

working with Alden's CEO through the implementation process he noted that "when we started working with Versant, we found internal processes already built on top of Versant's GIS system that were more mature than we typically see in the industry. It has taken Alden time to identify the best way to fit into Versant's enterprise without disrupting existing efficiencies." We believe the system will largely benefit users of the system and as a result reduce their own cost to entry and expansion of broadband. Versant expect users of the system may be able to quantify their savings in future years once they have experience using Alden One. [2]

h. A description of any other make-ready associated costs not described above and how those costs are recovered.

Versant is aware of no make-ready costs other than those described in Chapter 880 and referred to above.

6. Please provide a list of municipal broadband projects requiring pole attachment licensing over the past five years and whether any project utilized the municipal exemption in 35-A M.R.S. § 2524h

We are not aware of any municipal owned broadband projects requiring pole attachment licensing over the past five years in Versant's electric service territory.

7. Please describe how municipalities are paying for make-ready costs when a municipal project is being built and if your company is accounting for those payments differently than other make-ready payments

[2] Cable and broadband providers have commented that the electric utility and thus its ratepayers should bear all of the cost of Alden One. *See e.g., Initial Comments of Crown Castle and GoNetspeed,* January 12, 2024 at pp. 15. The broadband providers incorrectly argue that because many tasks are required of pole owners in the application process (e.g., review and approval of applications) Alden One is intended to facilitate the pole owner's role. This is misplaced logic. Those tasks would not be required but for the need to accommodate a request to attach to a pole. While Maine utility law may require electric pole owners to allow licensed attachers to attach to their poles under Chapter 880, Maine utility law is clear that the attacher and not the electric pole owner is required to bear the cost to accommodate an attacher's request. And Alden One, as explained above does not necessarily make the job easier for the utility, but rather makes the entire process easier, more available and more transparent to the attacher. Its primary purpose and the intended reason for implementing the system is to accommodate the anticipated significant increase in attachments to meet their stated expansion goals.

We are not aware of any municipal owned broadband projects requiring make-ready costs.

8. To the extent known, please provide the number of anticipated municipal projects over the next five years. If available, please indicate whether any municipality has indicated that it will utilize the municipal exemption in 35-A M.R.S. § 2524.

We are not aware of any planned municipal owned broadband projects in the next five years in Versant's electric service territory.

9. Please provide input of your understanding the Rapid Response Dispute Resolution Process in Chapter 880.

The Rapid Response Dispute Resolution Process in Chapter 880 is an expedited process for pole owners and attachers to resolve disputes regarding the pole attachment process. It defines the specific steps, timeframes and provides an opportunity for input from all parties affected by the dispute. The Rapid Response Dispute Resolution Process can provide an efficient means to resolve disputes that are not otherwise informally resolved by the parties.

10. If you have participated in a Commission Rapid Response Complaint, or commission inquiry or investigation related to the timely relocation or removal of utility poles, please comment regarding the effectiveness of the process. If you have not utilized the Rapid Response process please describe why not (e.g., never had a need, did not think the process would be helpful, etc.).

Versant has not been the subject of any recent Rapid Response complaints or proceedings concerning pole attachments. Generally, Versant has been successful in working with attachers to resolve issues when and as they arise and thereby allow each party to avoid the need to escalate to a Rapid Response intervention.

11. Would the Public Utilities Commission, the Maine Connectivity Authority, the Maine Municipal Authority, or another group or agency be the most effective entity to provide educational resources and assistance regarding the rights of municipalities or other attaching entities?

Versant does not have an opinion on which entity or agency would be the most effective in providing educational resources and assistance to municipalities or other attachers concerning their rights. Because the ownership, operation and deployment of broadband by its nature requires a level of expertise and experience, Versant has found licensees are largely aware of their statutory rights. Versant also informs any attachers of the process and their rights as questions arise. In addition, the Commission, the Maine Connectivity Authority, the Office of Public Advocate and the Maine Municipal Association each have offered service in educating municipalities and attachers regarding the opportunities for broadband expansion in Maine.

12. Please provide the total number of pole attachment projects completed in the previous three years by your company or organization, the number of poles involved in those projects, and the number of poles that required replacement to complete the projects. Did any projects involving pole replacements experience significant delays or unexpected expenses?

Versant Power has processed over 800 applications for pole attachment since early 2021. These applications have included approximately 28,000 new pole attachments. This does not reflect additional attachment processes involving overlashing by existing attachers.

Versant has not historically tracked the number of pole replacements necessitated by the need to accommodate a pole attachment request. Every project differs, with some requiring more pole replacement than others simply due to the route selected, the size of the poles along that route and the number and type of existing joint use attachments on those poles. Recent make-ready data shows on average 8% of the poles affected by pole attachment requests required some amount of make-ready work (e.g. relocation of electrical equipment or pole replacement). Approximately 3% of the poles applied for required a pole replacement, and of this 3% requiring a pole replacement, only a portion of these replacements would have been due to the need to accommodate a pole attacher's request, and thus paid for by the attacher as a make-ready cost.

As noted above when the field survey work has been completed by Versant, and Versant has been involved in the pole setting, the projects have generally been completed within the combined time frames set forth in Chapter 880. Projects that have experienced more lag time on average have resulted from delayed pole sets in Consolidated maintenance areas as observed above, and which Versant anticipates may be alleviated as Versant works with Consolidated to allow Versant to undertake make-ready pole setting responsibility in both maintenance areas when Versant determines doing so may be expedient and resources are available. Other delays occur when the attaching party makes non-compliant attachments, transfers or attaches without allowing for a necessary pole replacement. For these issues, post construction remediation will be required. To avoid this from occurring Versant has encouraged the attacher's to allow Versant to join them during the field survey process, even when One Touch Make Ready is employed.

13. Is there an industry standard for a new pole when a pole needs to be replaced (e.g., size, height, or class)? If so, what is that standard? If not, does your company have standards or guidelines for the size and class of replacement poles? If so, please describe.

There is no standard for size, height, or class for a new replacement pole. Each one is reviewed on a case-by-case basis to meet NESC and Versant electric clearance requirements. Versant also considers, among other things, the amount of loading associated with wire and equipment attachments to determine adequacy of the pole and height.

Versant requires all parties to follow good utility practices in determining pole replacements. These practices may also include consideration of future needs of electric and broadband. New poles set are typically a minimum of 40 feet, and common heights/classes are stocked for material. Versant does not charge attachers based on pole height and therefore Versant's decision on whether to replace a pole with a 35 foot or 40

foot pole does not ordinarily affect an attacher's cost in paying for any related Versant make ready costs.

14. Approximately how many poles in your service territory do not meet the standard or guideline described above.

As stated previously, there is no standard for pole size, height, and class. All are designed site specific to meet required clearances and provide necessary capacity.

15. Please provide any additional information or context you think will be helpful to the Commission in addressing the four specific areas of examination described by the legislature in the resolve.

Versant is pleased to inform the Commission that effective as of May 7, 2024, Alden One is available within its service territory for use by attachers requesting a license from Versant to attach on Versant owned poles. Versant will be submitting a notice to existing attachers with additional information, and attachers will need to complete their registration process with Alden before utilizing the system. Together with the foregoing suggestions for contractor coordination, agreement on cost allocation, and continued efforts of all stakeholders to use the system and comply with Versant's pole administration procedures, Versant is confident broadband expansion can occur safely and expeditiously, and the pole administration process requires no further rulemaking at this time.

Thank you for the opportunity to provide this information. We look forward to providing additional information during the course of these proceedings.

Sincerely,

/s/ Steve Pasquine
Steve Pasquine
Program Manager, Joint Use Infrastructure

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

PUBLIC UTILITIES COMMISSION	**COMMENTS OF THE OFFICE OF THE PUBLIC ADVOCATE**
RE: Inquiry to Facilitate Preparation of LD 1456 Report	
Docket No. 2023-00300	**May 10, 2024**

The Office of the Public Advocate (OPA) provides the following comments in response to the March 25, 2024 Procedural Order in this docket. The OPA's concern has been that the laws and rules on broadband expansion have an indirect but potentially consequential effect on electric ratepayers. We thank the Public Utilities Commission (PUC) for including questions in the March 25, 2024 Procedural Order to collect data on this issue.

Central Maine Power's (CMP) and Versant Power's (Versant) responses to the March 25, 2024 Procedural Order support the OPA's concerns and conviction that electric customers should not be subsidizing broadband attachers (nor the ILECs).

CMP's ratepayers are not realizing any savings in paying for CMP to serve their broadband attachers. As CMP states in their May 10, 2024 filing, "the largest cost savings with the implementation of Alden One will likely be realized by the attaching entities. Alden One does not result in cost savings for CMP at this time." (emphasis added). While CMP did not quantify the costs, it explains that it has taken "significant work" to implement the [Alden One] program by CMP's team."

CMP also states that they are "currently covering the costs for all poles in its service territory that CMP is attached to, including poles owned or managed by certain ILECs" Indeed, "CMP believes these ILECs should be covering their respective costs for Alden One."

Versant states that "the costs to administer Alden One is incremental" because "this system is used only for purposes of facilitating the attachment and transfer process it does not affect Versant's primary operating GIS system used to maintain, upgrade and operate its electrical distribution system and pole plant." (emphasis added) Versant further states that "incremental costs for Alden One costs are not currently being separately charged to the attachers even though the system is implemented in order to serve attachers and the attachment process."

The OPA respectfully urges the PUC, in its final report to the joint standing committee of the Legislature having jurisdiction over utility matters, to include with its findings a recommendation that electric customers should not be subsidizing pole attachers (or ILECs) and to draft proposed legislation for establishing this position in the law. The attachers should be required to cover all of the costs of the pole attachment process and those costs should not be recovered in CMP or Versant customer rates, and the ILECs should have to pay their fair share of costs to avoid cross-subsidization.

Respectfully submitted,

/s/ Kristina R. Winther
Kristina R. Winther
Senior Counsel

/s/ Richard P. Hevey
Richard P. Hevey
Senior Counsel

Utility Pole Attachers Meeting
August 1, 2024

Public Utilities Commission
26 Katherine Drive, Hallowell, ME 04347
1:00 - 3:00 PM

Meeting Objectives

- Confirm areas that need attention in the attachment process, based on conversations during the past year.
- Discuss alternatives for addressing these areas

Meeting Background

MCA's mission is to ensure all Mainers have access to reliable, high-speed and affordable internet service. MCA has identified the pole attachment process as crucial in supporting the roll-out of new broadband service. The process must be agile and effective enough to meet the expected surge of new investment.

MCA has a vision: that we solve this together – pole owners and attachers – and all parties in the future can point to their contribution to the enormous success of Maine's once-in-generation broadband expansion.

MCA started a conversation in 2023, and with the Public Utilities Commission is studying pole attachment timeframes, along with ways to decrease or standardize wait times, as directed by LD 1456.

Meeting Agenda

1:00 pm	Welcome, introductions, and meeting objectives
1:15 pm	Confirming the areas that need attention o Brief presentation of input to date - MCA o Discussion - confirming input
1:40 pm	Alternatives for addressing the key areas o Initial reflections from MCA o Discussion
2:55 pm	Next steps and wrap-up
3:00 pm	Adjourn

MAINE CONNECTIVITY AUTHORITY

LD 1456 Pole Attachment Workshops

July 24, 2024 and August 1, 2024

Goals for Today

MAINE CONNECTIVITY AUTHORITY

1. Confirm why we are here
2. Recap learnings to date
3. Generative discussion around addressing key learnings

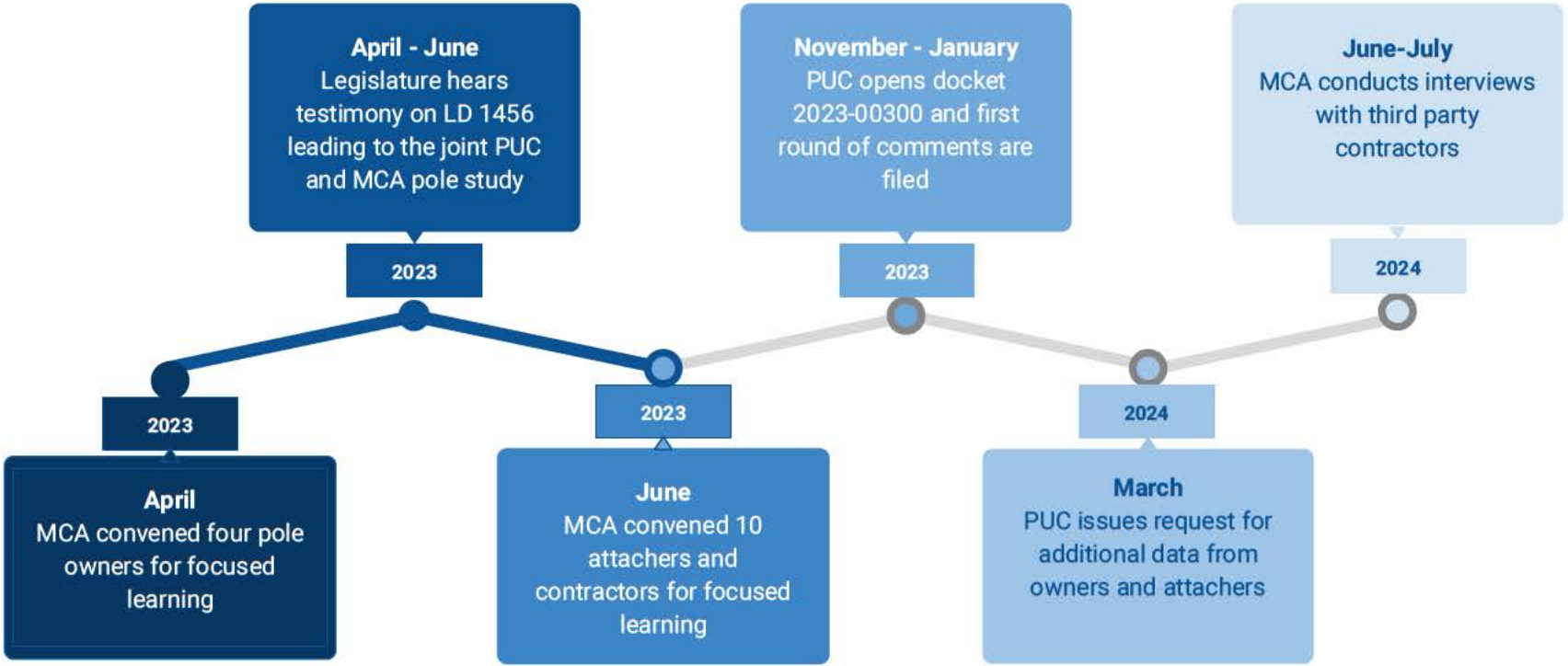
This study is required, but your willing participation is why it will yield important and impactful results.

Goals for Today

MAINE CONNECTIVITY AUTHORITY

1:00 pm	Welcome, introductions, and meeting objectives
1:15 pm	Confirming the areas that need attention o Brief presentation of input to date - MCA o Discussion - confirming input
1:40 pm	Alternatives for addressing the key areas o Initial reflections from MCA o Discussion
2:55 pm	Next steps and wrap-up
3:00 pm	Adjourn

Engagement Timeline



Baseline

Overview

- Engagement has been easy - **Thank you!**
  - There is a shared interest in continuing to refine and improve this process
  - There is a shared level of pride in what has been accomplished in Maine
  - General agreement that the regulatory framework is sufficient
  - Foundation is solid, but speed and scale of BEAD deployment may require something different
- For the purposes of this workshop, keep these points in mind
  - Consider the experience of the other parties when making recommendations
    - Will this work for the attachers?
    - Is this sustainable for the contractors?
    - Can the owners implement this?

Key Learnings

Findings - Inefficiencies in Navigating Process

- Duplicative application process for joint owned poles
  - Attachers file separate applications with both pole owners, resulting in two responses, estimates, advance payments, and make-ready workstreams.
- Physical Payments
  - All three large pole owners require pole attachers to pay with a physical check.
    - CMP and Versant “accept evidence of payment by email or uploading a copy of a check in Alden One.”
    - Consolidated only allows payments via physical checks and will not start the clock on statutory deadlines until it has received and processed a check.

Key Learnings

Findings - Inefficiencies in Navigating Process

- Refunds
  - Currently, a pole attacher must pay the “entire amount of the make-ready estimate . . . up front” to the pole owner for attachments, and the owner “keeps the use of that money until spent on make-ready work. There is no set timeline for issuance of refunds
- Communication
  - Unanswered phone calls and emails lead to delays in construction
  - Technical support is not always available when needed
  - Self-help is used when communication goes unanswered
  - Several interviewees noted that they felt in the “dark” at various points throughout the process and were unable to get information when needed.

Key Learnings

Findings - Inefficiencies in Navigating Process

- Third Party Consent
  - Projects may require pole attachers to seek consents or permits from third parties, including “MDOT, municipalities, railroad owners, the FAA and other entities and agencies.”
  - How can these processes be sped up by attachers, pole owners, or another party?

Key Learnings

Findings - Opacity in Costs, Timing, and Process

- *Key takeaway - a lack of information creates delays and makes it difficult to budget the costs of broadband deployment for grant bidding and capex planning*

- One Touch Make Ready
  - It is important to retain the joint ride out even when using OTMR
  - Lack of clarity regarding adding contractors to the authorized contract list
    - Unknown standards
    - Unknown timeline
    - Difficulty accessing the list to find approved contractors
  - Prevailing belief that pole owners have different guy and anchor standards on OTMR projects compared to traditional

Key Learnings

Findings - Opacity in Costs, Timing, and Process

- Make-Ready Payment True-Ups
  - There is no timeline or financial limit on pole owner requests for additional make ready expenses

- Pole Replacement Costs
  - Is this a barrier to broadband expansion in Maine?

Key Learnings

Findings - Other

- Contracting and licensing
  - Pole owners each have unique contracts requiring separate review and negotiation for any given pole which is a time and energy burden for all parties
  - Timing of insurance and surety bond varies by pole owner
  - Number of poles per license application varies
  - Build plans are difficult to predict and prepare
- Surveys
  - General consensus around the benefits of the joint ride out
  - Limited availability and scheduling can make this challenging
  - Unpredictable turnaround time of Form 3 post-ride out
  - Changes on Form 3 from what was agreed upon in the field

Key Learnings

Pole Owner Workshop - July 25

- Safety is the number one concern and drives decision making
    - Failure to comply with standards causes delays
- Ride out is essential
- (Lack of) resources is perhaps the biggest challenge

Reflection

MAINE CONNECTIVITY AUTHORITY

- We are facing a unique situation that requires creative problem-solving, but first:
  - What friendly amendments would you make to this analysis?
  - Are there other key points that should make this list?

- Consider the experience of the other parties when making recommendations
  - Will this work for the attachers?
  - Is this sustainable for the contractors?
  - Can the owners implement this?

"An efficient and reliable pole attachment process is critical to MCA achieving universal broadband deployment in a timely manner."

Feedback and Ideas

kreardon@maineconnectivity.org

MAINE CONNECTIVITY AUTHORITY

LD 1456 - Addressing the key areas

The make-ready process is expensive, time-consuming, and skill-intensive. There is consistent agreement from all parties that safety is a priority that cannot be sacrificed for speed. As we review the themes that emerged from the key takeaways, consider what would help you or other parties problem-solve these areas that need attention. Creative problem-solving is key, as broadband deployment will continue testing our current system for several years. All ideas are on the table.

Please review these themes and the suggested ideas below. Your feedback on the ideas and suggestion of actionable alternatives is critical. Solutions can be legislative, regulatory, or programmatic, but we are seeking solutions.

Themes

1) Capacity constraints
    - Would a training program facilitated by outside experts be beneficial - this could include Telcordia safety training, Alden One training, etc.
        - Is there an opportunity to use the current MOOSE Net build as a case study or training for new ISPs and contractors?
    - Would offering grant funded dedicated skilled labor to pole owners assist in the various steps of the pole attachment process from application through make-ready billing true-up?

2) Communication and relationships
    - What is needed to improve access?
        - Prioritization?
        - Named Point of Contact?
        - Staffing capacity in pole departments?

    MCA Ideas:
    - Could an MCA-facilitated office hour held periodically assist attachers in speaking to the right PoC at the pole owners? Facilitated to ensure productive dialogue and information exchange.
    - Monthly or quarterly calls between pole owners and MCA to discuss grant award areeas and relay make-ready questions from ISPs collected during our monthly grant check-in calls .

3) Opportunities to standardize processes
    - Areas to explore for a common approach

LD 1456 - Addressing the key areas

- separate applications with both pole owners, resulting in two responses, estimates, advance payments, and make-ready workstreams. - Will Alden One mitigate this?
- Physical payments - Reach agreement on what starts the timeline? Email/Alden evidence or physical receipt
- Timing of insurance and surety bond varies by pole owner
- Number of poles per license application varies as does number of poles total
- Timelines for:
  (1) Make ready true-up
  (2) Refunds
  (3) Form 3 turnaround time

Can we standardize the process across pole owners?

- What would those timeframes look like?
- What does the agreement look like?
- Is there an opportunity for incentives of penalties for meeting/missing timelines?

4) OTMR and contractors
   - How can we add clarity regarding adding contractors to the authorized contract list
   - Can MCA or PUC host the application process information and/or approved list for ease of access?
   - What can be done to improve the OTMR process?
     - What can firms do to position themselves better on the OTMR contractor list?
     - What are your thoughts on providing more information to attachers? Educational / training sessions?
   - Are there resources available to support the verification process for new OTMR contractor approval?

5) Surveys
   - What would help on a BEAD deployment side? Is there an opportunity to stage deployment to assist in survey availability?
   - Is additional staffing capacity needed for pole owners to conduct?
     - <u>One pole owner suggested the idea of MCA hiring a mutually agreed upon third party vendor to conduct ride outs on behalf of the owners with the caveat that this may increase the number of changes on Form 3s once in-house expertise reviews the reports.</u>

- Another pole owner suggestion is to conduct a Ch 880 rulemaking to require joint rideouts prior to attachment

6) Safety
   - How does the pole owner quality check intersect with the MCA Verification & Validation process?
     - How might MCA's grant terms and conditions support safe attachments and line work?
     - The pole owners workshop suggested using the BEAD subgrantee process to build consistent adherence to standards into the MCA grant process – to incentivize compliance.
     - Pole owners - MCA conducts post-construction surveys on our projects as well. One difference is that we allow the attachers to send photos back to the survey team to verify remediation. Could this be a viable way to reduce the expense and time to your team?
   - Pole attachers - what changes can be made to assist you in meeting the 14 day repair clock?

Utility Pole Attachers Meeting
August 1, 2024

Public Utilities Commission
26 Katherine Drive, Hallowell, ME 04347
1:00 - 3:00 PM

SUMMARY NOTES

Meeting Overview

The Maine Connectivity Authority, together with the Public Utilities Commission, convened utility pole attachers to discuss next steps in a year's long conversation about how to make the pole attachment process more agile and effective. The meeting focused on confirming the areas that need attention in the attachment process as well as discussing alternatives to address these areas. The conversation built on a similar meeting with utility pole owners the week before. In the meeting, several participants were pole owners as well as pole attachers.

Summary notes

Confirming the Areas the Need Attention

- Compared to other states, Maine is generally leading in its rules and regs. And generally attachers are working well with owners.
    - To be sure, there are problems going on right now as well
- Pole replacement costs are a major issue for attachers.
    - Unreasonable for attacher to pay when:
        - Pole was already out of spec. Should have been replaced before.
    - Pole is out of spec because the standards changed. Attacher is (unlucky) first person to attach under the new specs.
    - Should make an allowance for partially or fully depreciated poles. But attacher ends up paying the full cost.
- Make-ready and lack of timeline on refunds
    - Times when attachers are in effect paying twice and there is no timeline for a refund. Ought to be a standard on that.
        - Self help is frequent
        - Makes the remedy not effective
- What is the role of attachers when another attacher is doing work and moving things around
    - Other attachers should be notified and have a space to comment after make-ready work is completed. Just like the ride out.
    - Probably not a change to the rule, just best practice. It's in 880 now.

- Cautious about making major changes that would take a lot of process to work out, given the tight timeline with have on broadband.
- The HOW is relevant. The way you address issues matters. Less formal steps can be quicker.

Alternatives

- Workforce - Any money spent on workforce would be well spent. Focus on lack of trained workforce.
    - Let's be clear which capacity we're talking about
- Communication
    - Dreaded instance of **overlapping OTMR –** we don't have insight. Would be **helpful if applicants got an early heads up** when there is another applicant as well.
    - **Alden One is really working**. And being used to a fraction of its abilities. Moving to more usage would make a really significant difference. Appears to be a win-win
    - Yes to the idea of a **standing group that meets periodically** – as a back stop. Even if every other month, quarterly. Informal. A core working group be great.
    - Owners really would like a **greater heads up on build-outs**.
        - Calls are good
        - Also, a data approach?
        - But reality of needing **confidentiality** in a highly competitive environment. More comfortable giving information to power cos, as long as there was the firewall in place.
    - When you escalate to an owner, please make sure that everyone else has already done the work. Attachers need to manage the process. (Comcast person in NH is excellent trainer)

- How to deal with overwhelm?
    - Limit on numbers
    - Heavily encourage OTMR.
- Biggest standardization challenges:
    - Not having unified application process.
    - And a global pole owner database.
    - Digital payment (as a requirement?)
- OTMR
    - **Timeline for getting contractors approved**. Need to put an end date. There should be a timely process to have the applicant qualified as a qualified contractor.

  - **Need to be a set of standards for qualified firms to be contactors**, even if they don't work for the incumbent company. The answer is probably in the codes and regulations. It's a matter of how you make that work in practice.
  - Would be useful to get a **streamlined process** to move existing pole attachment agreements that were done before OTMR to be covered under the new agreements.
- Joint Ride Out
  - A firm requirement that owners be on the joint ride isn't 100% needed when you have contractors who know the owners' standards, and a requirement would slow things down. Chapter 880 has contemplated that.
  - **Other attachers would like a heads up** and the possibility to participate.
  - **OTMR –not required and should happen**. We'd like to have the power company join us on that survey, so that it would be a single ride out. Now we have to accompany them on the complex ride-outs. Current rules aren't conducive to a joint ride out.
    - Always option to do a preliminary survey as well
  - Safety
    - Concerns about using a photo to verify.
    - Quality needs to be check early in the process, not just in the end. Constant quality control.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2023-00300

PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of LD 1456 Report

Comments of Crown Castle and GoNetspeed in Response to MCA's Policy Proposals

---

CRC Communications LLC, d/b/a GoNetspeed ("GoNetspeed") and Crown Castle Fiber LLC ("Crown Castle") (collectively, the "Broadband Providers") appreciate the opportunity to work with the Commission, the Maine Connectivity Authority, and the other participants in this effort 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.

I. Introduction.

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. The Chapter 880 rules are working well and are a model for other states. The Commission should not mess with its success — at least not too much. There are improvements that can be made to the process, whether by operational changes by the parties; targeted, specific rule changes; or interpretive rulings by the Commission. In this filing, the Broadband Providers suggest improvements and also respond to policy proposals by the Authority.

The Broadband Providers address the following topics below:

- Safety (Part III);
- Facilitate and Enhance the OTMR Process (Part IV);
- Large Pole Orders (Part V);
- Eliminate Bureaucratic Obstacles to the Make-Ready Process (Part VI); and
- Reform the Payment Process (Part VII).

II. Format.

The Broadband Providers will not repeat at length their three previous filings in this case, which are attached:

- Initial Comments of Crown Castle and GoNetspeed, January 12, 2024 ("Initial Comments");
- Additional Comments of Crown Castle and GoNetspeed, February 9, 2024 ("Additional Comments"); and

- Response of Crown Castle and GoNetspeed to Commission's Information Requests, May 10, 2024 ("IR Responses").

Instead, we will provide summaries of and citations to our previous filings. In addition, and as appropriate, we will comment on the recommendations made by the Authority in its September 13, 2024 submittals: the LD1456 – MCA Recommendations ("MCA Recommendations") and Utility Pole Attachment Study for Broadband ("Study").

III. Safety.

Safety has been an issue raised at various times during the Authority's workshop process, particularly by the pole owners.

The Broadband Providers wish to emphasize that safety is not the exclusive concern of the pole owners. The Broadband Providers, too, are committed to the safety and integrity of their facilities and practices, just as the pole owners are. We don't want to, nor as a rule do we, conduct shabby practices or place substandard facilities.

But an excessively timid view of safety can serve as a detriment to broadband expansion and deployment efforts. The rules contain provisions governing the safety and reliability of contractors and facilities (e.g., § 2(A)(10)). The Commission and Authority should cast a wary eye on proposals in the guise of safety requirements that do not, or only marginally, enhance safety but slow or impede deployment.

IV. Facilitate and Encourage the OTMR Process.

OTMR is an important tool to speed broadband deployment. As the FCC observed when it adopted OTMR in August 2018, "OTMR speeds broadband deployment by better aligning incentives than the current multi-party process. It puts the parties most interested in efficient broadband deployment — new attachers — in a position to control the survey and make-ready processes." *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Dkt. No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, 33 FCC Rcd 7705, ¶ 22 (Aug. 3, 2018) ("FCC OTMR Order").

For this reason, the OTMR process is *at the election of the requesting party*. Ch. 880, § 2(A)(13). The Commission and Authority are right to scrutinize the OTMR process to ensure its smooth and unimpeded operation. In particular, the Commission and Authority should guard against additional requirements that impede the ability of the requesting party to perform OTMR when it elects to do so.

Since the OTMR process inevitably requires the use of third-party contractors, a simple and transparent process for vetting available contractors would facilitate the OTMR option. Additional Comments, p. 3. However, such vetting should not add another layer of complexity or bureaucracy to the OTMR process. The current rules state that a pole owner "may" make available a list of approved contractors for OTMR work, and must entertain and not unreasonably refuse requesting

parties' proposed additions to that list. CH. 880, §§ 2(A)(10)(a)-(d). The rules do provide that if the owner does not provide such list, or no contractor on the list is available, requesting parties may proceed using contractors of their own choosing without any further approval from the owner. § 2(A)(10)(a)-(d). Therefore, if the owners wish to have a say in which contractors may work on the pole, it is in their interest to maintain as large a list of qualified contractors as possible. Thus, it is not clear that adding further requirements to the rules, as the Authority suggests on p. 18 of its Recommendations, would add significant benefit.

Whenever possible, bureaucratic hurdles, such as duplicative applications and inefficient, manual review of applications, should be eliminated. See below, Part VI; Initial Comments at 8-9; Additional Comments at 2-4.

However, in seeking to improve the OTMR process, the Commission and Authority should guard against imposing additional requirements that slow the process down. Whatever may be the merits of the Authority's joint ride out proposal (MCA Recommendations, p. 12), joint ride outs cannot be used as a means to delay requesting parties' performing make-ready work under an OTMR application. The current rules provide various opportunities for owners to scrutinize and inspect surveys and work (e.g., §§ 2(A)(9)(a), (b)(iii), (b)(v); 2(A)(13)(b)(ii), (c)(i), (d)). Before imposing new requirements, the Commission and Authority should ensure that owners are actually and fully utilizing those opportunities, and further that those opportunities, when fully and properly used, are insufficient or inadequate. A requirement for an additional ride out or any other additional procedural step should not be added unless it adds real value to the requirements that are already in place. If a joint ride out requirement is imposed, such ride out must be conducted within existing make-ready timeframes, and the failure of the owner to participate within such timeframes should constitute a waiver.

V. Large Pole Orders.

Pole attachment applications involving more than 3,000 poles or 5 % of a utility's poles in the state (whichever is less) are not subject to the specific time limitations for smaller orders established in Ch. 880, §§ 2(A)(1)-(5), 7(a)-(c). Instead, the timing of such large applications is subject only to negotiations between the parties. § 2(A)(7)(d).

Such open-endedness is conducive to delay. Even if all parties act in good faith and the unequal bargaining power of owner and attacher does not come into play, the very act of negotiating and agreeing takes time. The Authority recognized this problem in its Study, p. 62.

The Commission can partially address this problem without having to resort to a time-consuming, formal rulemaking process. Instead, it can follow the FCC's lead and interpret its rules as the FCC did with respect to its substantively identical rules (47 C.F.R. § 1.1411(g)(4)). The FCC issued 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). As with the FCC, this approach would not 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.

On this issue, please see Initial Comments at 10-11.

VI. Eliminate Bureaucratic Obstacles to the Make-Ready Process.

A. Require a Single Application.

The Commission and Authority should require that pole owners develop and implement a single application for make-ready work. In our earlier filings, the Broadband Providers noted the inefficiencies associated with the requirement that a requesting party must file separate attachment applications with the power company and Consolidated. These applications are largely duplicative, requiring extra work and expense. Responses by the dual owners require — but do not always receive — coordination, which often leads to different or inconsistent responses. We recommended and continue to recommend that the Commission require that joint owners develop a single, joint application that would eliminate duplication. Initial Comments at 4-5, 9; Additional Comments at 2; IR Responses at 9.

The Authority agreed this is a problem. Its Study recognized the inefficiencies of requiring two largely duplicative applications, one to the power company and one to Consolidated.

> With respect to jointly owned poles, the work to do so is often inefficiently duplicated: Consolidated and one of the electric utilities (CMP or Versant) typically require separate applications, resulting in two responses, estimates, advance payments, and make-ready workstreams to attach to a pole. The separate estimates or responses can sometimes conflict with each other, requiring additional time to resolve.

Study at 56 (footnotes omitted).

Regrettably and puzzlingly, however, the Authority's solution to the two-application problem appears to be requiring that joint pole ownership be converted to single ownership. Study at 71-72. That seems a rather drastic solution to a problem that likely could be solved by the owners cooperating (or being required to cooperate) on a single combined application, either through use of Alden One (but see below) or under the responsibility of a task force.

B. Attempts to Improve the Make-Ready Process Are Hampered by Consolidated's S-L-O-W Adoption of Alden One.

Consolidated's delays in implementing Alden One are disappointing and render the system much less effectual than it can or should be. Study, p. 24 fn. 142; Initial Comments at 5-7; Additional Comments at 3-4; IR Responses at 5-6. Under the stipulation in Dkt. No. 2023-00327,[1] Consolidated

[1] *Consolidated Communications, Inc. Request for Approval of Change of Control,* Dkt. No. 2023-00327, Order Approving Stipulation, at 6 (July 11, 2024).

agreed to implement Alden One by December 31, 2025. Whether it meets that deadline remains to be seen.

The Commission and the Authority know this, of course (see Study, pp. 58-59). But, it bears repeating: Because broadband facilities by definition are placed in the communications space, Consolidated's refusal to adopt this efficiency measure required by regulation for nearly a year now, and already implemented by CMP and Versant, will ensure that delays and additional costs will be forced upon broadband providers for at least another fourteen months.

VII. Reform the Payment Process.

If a pole owner does not perform, or does not timely perform, make-ready work, the requesting party has the right to take over the work itself. Ch. 880, § 2(A)(9). Self-help is a powerful and useful tool to ensure that projects continue in the face of nonperformance by the owner.

Self-help is not a panacea, however; it introduces a new set of problems for the requesting party. Among these, that the requesting party essentially pays for the work twice — once in its advance make-ready payment to the pole owner (§ 2(A)(4)(b)), and again in having to pay its own contractor performing the work. The pole owners typically take months to refund the advance payments for work they did not perform. During this time, the owners have free use of the requesting party's money. At the same time, the requesting party has been deprived of the use of those funds, which funds could be otherwise applied to the goal of deploying broadband networks beneficial to the State and its citizens.

The Commission can somewhat mitigate 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 to some degree would level the competitive playing field. Initial Comments, Jan. 12, 2024, pp. 7-8, 11-13; Reply Comments, Feb. 9, 2024, pp. 5-6; IR Responses, p. 4.

Another payment problem exists at the back end of the process. The process of estimating and later truing up make-ready charges frequently leads to back-billing in 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. Initial Comments, Jan. 12, 2024, pp. 7-8, 12-13; Reply Comments, Feb. 9, 2024, p. 6; IR Responses, p. 4.

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. Initial Comments at 14; Additional Comments at 5-6.

Commendably, the Authority recognizes both problems. Study, pp. 56-57. It purports to offer measures to address them: a "[t]imeline for processing refunds for overpayments" and a "[t]imeline for charging for underpayments." MCA Recommendations, p. 12.

But the Authority's proposed reforms fall woefully short, in that they appear to involve only that the owners develop voluntary timelines. "They can then share these planned timelines with attachers." Study, p. 70. With all due respect to the Authority and pole owners, the owners have very little incentive to do so. The float on requesting parties' money retained by owners is considerable, and a competitive advantage can be gained by withholding new attachers' operating funds. To be effective, such timelines must be obligatory and the Commission should undertake to develop such mandatory requirements.

VIII. Conclusion.

The Broadband Providers hope our comments have been helpful, and look forward to continued participation in the dialog on these important matters.

October 11, 2024

Respectfully Submitted,

/s/ *Gregory M. Kennan*

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

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

Initial Comments of Crown Castle and GoNetspeed

January 12, 2024

("Initial Comments")

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 1:11:45[4]; *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 truing 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

Respectfully Submitted,

/s/ Gregory M. Kennan

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

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

Additional Comments of Crown Castle and GoNetspeed

February 9, 2024

("Additional Comments")

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 order[1] 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

Respectfully Submitted,

/s/ Gregory M. Kennan

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

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

Response of Crown Castle and GoNetspeed

to Commission's Information Requests

May 10, 2024

("IR Responses")

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2023-00300

PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of LD 1456 Report

RESPONSE OF CROWN CASTLE AND GONETSPEED TO COMMISSION'S INFORMATION REQUESTS

CRC Communications LLC, d/b/a GoNetspeed ("GoNetspeed") and Crown Castle Fiber LLC ("Crown Castle") (collectively, the "Broadband Providers") appreciate the opportunity to work with the Commission, the Maine Connectivity Authority, and the other participants in this effort 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.

The following responses are intended as the consensus view of Crown Castle and GoNetspeed, except where it is necessary to distinguish between them because of differing applicable facts, past experience, or policy perspectives. These will be pointed out when they occur.

1. Please provide the average time to complete each of the following stages of the pole attachment application process for projects completed during the last three years. For each response, please provide separate responses for projects that required simple make-ready, projects that required complex make-ready work, and projects that utilized one-touch make ready or self-help, and if possible please separately identify projects involving existing poles and projects involving new or replaced poles:

a. Average duration from application received to completion of field survey.

GoNetspeed

GoNetspeed does not maintain information in a form that would enable it to answer the question presented.

GoNetspeed is able to provide the average number of days from application to make-ready estimate received, as follows:

For OTMR applications – N/A.

For complex make-ready, Consolidated – 109 days; CMP – 90 days; Versant – 84 days.

Crown Castle

Crown Castle does not maintain information in a form that would enable it to answer the question presented.

b. Average duration from survey complete to make-ready estimate.

GoNetspeed

See GoNetspeed's response to question 1.a above

Crown Castle

Crown Castle does not have maintain information in a form that would enable it to answer the question presented.

c. Average duration from make-ready estimate to receipt of the make-ready payment.

GoNetspeed

For OTMR – N/A.

GoNetspeed typically cuts a check and mails it to the pole owner(s) within 7 days of receipt of the make-ready estimate.

Crown Castle

Crown Castle typically issues payment to the pole owner(s) within 7 days of receipt of the make-ready estimate.

Crown Castle can also share the average number of days from Crown Castle submitting an application to Crown Castle issuing payment for make-ready. For CMP, only a small number (about 7%) of applications during the relevant time period required make-ready. For those, the average duration from application to make-ready payment was approximately 125 days.

For Consolidated, the average duration from application to make-ready payment was approximately 69 days.

d. Average duration from receipt of make-ready payment to completion of make-ready construction.

GoNetspeed

GoNetspeed does not maintain information in a form that would enable it to answer the question presented.

GoNetspeed is able to provide the average number of days from make-ready payment to license issuance.

For OTMR applications —N/A.

For complex make-ready — Consolidated – 290 days; CMP – 190 days; Versant – 207 days.

Crown Castle

Crown Castle does not maintain information in a form that would enable it to answer the question presented.

e. Average duration from application submission to license issuance.

GoNetspeed

For OTMR applications — Consolidated – 490 days; CMP – 30 days; Versant – 631 days.

For complex make-ready — Consolidated – 167 days; CMP – 225 days; Versant – 292 days.

Crown Castle

As noted above, for CMP, only a small number (about 7%) of applications during the relevant time period required make-ready. So, for the bulk of applications, where no make-ready was required, the average duration was 82 days. For applications requiring make-ready, the average duration was 342 days. However, CMP allowed Crown Castle to utilize temporary attachments while the make-ready work was being completed, which was helpful to mitigate the effect of the delays.

For Consolidated, the average duration was approximately 300 days.

2. For make ready work where you are not the attacher but are required to move your facilities, please provide your average response time and time to complete facility move requests.

GoNetspeed

The response time varies depending on various factors such as site conditions and number of other attachers. GoNetspeed endeavors to complete its work within the Chapter 880 deadlines.

Crown Castle

Once Crown Castle receives notification to move its fiber for another attacher, it usually takes between one and two weeks for Crown Castle to complete that move, subject to contractor availability.

3. Please explain challenges in meeting the timeframes contained in Chapter 880 and, if appropriate, any mitigation strategies that have helped overcome those challenges (e.g., self-help).

As the Broadband Providers have noted on multiple occasions, the pole owners' incomplete adoption and utilization of Alden One impedes communication and data accuracy.

Both of the Broadband Providers have faced situations in Maine where make-ready work has not been completed within the timeframes specified in Ch. 880, and have used several mitigation strategies to meet these challenges.

First, as the Massachusetts Department of Telecommunications and Cable recently observed, "Compliance with the pole attachment statute inherently requires some level of cooperation between pole owners and attachers." *CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.,* D.T.C. 22-4, Department Order on Appeal of Hearing Officer's Ruling, Apr. 26, 2024, at 2.[1] Sometimes challenges to meeting deadlines can be worked out informally by operations or field personnel. Obviously, that is the preferred outcome when it can be achieved.

Second, both of the Broadband Providers have exercised their rights to use the self-help remedy in Ch. 880, § 2(A)(9). This does not eliminate delays that already have occurred, but it allows requesting parties to reduce further delays going forward.

During the relevant time period, **Crown Castle** was forced to invoke the self-help remedy for about 85% of make-ready work when Consolidated failed to complete that work within applicable deadlines.

Of course, self-help is not a panacea; it introduces a new set of problems of its own. Among these is the fact that the requesting party essentially pays for the work twice — once in its advance make-ready payment to the pole owner, and again in having to pay its own contractor performing the work. The pole owners typically take months to refund the advance payments for work they did not perform. During this time, the owners have free use of the requesting party's money. At the same time, the requesting party has been deprived of the use of those funds, which funds could be otherwise applied to the goal of deploying broadband networks beneficial to the State and its citizens.

The Broadband Providers discussed this issue in our earlier comments. Initial Comments, Jan. 12, 2024, pp. 7-8, 11-13; Reply Comments, Feb. 9, 2024, pp. 5-6. The Broadband Providers respectfully refer the Commission, Authority, and Legislature to those earlier comments for a fuller discussion.

The third mitigation strategy the Broadband Providers, especially GoNetspeed, have used is one touch make-ready (OTMR) under Ch. 880, § 2(A)(13). OTMR allows a requesting party to short-cut or eliminate delays and disputes by retaining control of the work itself. As the Federal Communications Commission (FCC) observed when it adopted OTMR in August 2018, "OTMR speeds broadband deployment by better aligning incentives than the current multi-party process.

[1] https://www.mass.gov/doc/dtc-22-4-order-of-appeal-of-hearing-officers-ruling/download.

It puts the parties most interested in efficient broadband deployment — new attachers — in a position to control the survey and make-ready processes." *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Dkt. No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, 33 FCC Rcd 7705, ¶ 22 (Aug. 3, 2018) ("FCC OTMR Order").[2] The Commission's OTMR rules are essentially identical to the FCC's, and are designed to accomplish the same salutary objectives: to speed broadband deployment by eliminating delays and disputes before they occur.

4. To the extent not already provided in earlier comments, please identify ways in which the wait times for attachments may be decreased or standardized. Please respond to, or comment on, previously submitted recommendations in this regard.

The Broadband Providers have filed extensive comments in this matter. From the perspective of the Broadband Providers, the Commission's Chapter 880 rules establish a pole attachment process that is as good as any and better than most. That said, there always is room for improvement. We have suggested various ways that the pole attachment process may be improved and/or expedited. We respectfully refer the Commission and other interested parties to those comments:

Initial Comments of Crown Castle and GoNetspeed (Jan. 12, 2024)

Additional Comments of Crown Castle and GoNetspeed (Feb. 9, 2024)

In response to the Commission's invitation to comment on previously-submitted comments, the Broadband Providers note that the T&D Companies (CMP and Versant) stated in their February 9, 2024 Comments:

> 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.

T&D Companies' Feb. 9, 2024 Comments at 6. The T&D Companies said that they would not attempt to speak for Consolidated, but instead "defer[red] to Consolidated Communications to address any deficiencies these other stakeholders have raised regarding Consolidated Communications' compliance with Chapter 880 timelines." *Id*.

Additionally, the T&D Companies point to the implementation of the Alden One system as a means to expedite and facilitate the pole attachment process. They say:

> 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

[2] https://docs.fcc.gov/public/attachments/FCC-18-111A1_Rcd.pdf.

> 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.

Id. at 2.

This carefully-crafted passage is telling for what it does not say: that Consolidated does not appear to be participating in the Alden One implementation in any meaningful way. The T&D Companies thus confirm the Broadband Providers' observations in our prior comments (Initial Comments at 5-7; Additional Comments at 2-4). Yet, Consolidated, like the T&D Companies, is required by law to participate in the joint-use software system. Ch. 880, §§ 1(O), 1(Q), 5(A)(1).

As the Broadband Providers have stated, most broadband deployment work occurs in the communications space. Consolidated's nonparticipation in the Alden One system directly negates the usefulness of that system to requesting parties seeking to attach in that space. This, plus other inefficiencies, such as the requirement to submit separate pole attachment applications to multiple joint owners to attach to the same pole and duplicative attachment review processes, significantly disserves the people of Maine by impeding the efforts of Consolidated's business competitors to bring needed and beneficial broadband services to the State.

5. Please provide the approximate amount of the most recent increase in make-ready costs in percentage terms, or a description of recent trends in make-ready cost increases.

Crown Castle does not have information on current make-ready costs in Maine so it cannot comment on recent cost increases, if any.

GoNetspeed states that make-ready and labor costs have increased across the board.

6. Please describe your understanding of the Rapid Response Dispute Resolution Process in Chapter 880.

The Commission will adjudicate any disputes regarding joint-use utility poles, including disputes pursuant to 35-A M.R.S. § 711, in accordance with the Expedited Complaint Resolution Process of Disputes Regarding Utility Pole Attachments established in *Maine Public Utilities Commission, Investigation into Practices and Acts Regarding Access to Utility Poles,* Docket No. 2010-00371, Order (July 12, 2011). Ch. 880, § 9.

The Rapid Response Process is designed to do exactly what its name suggests — resolve pole attachment disputes quickly and without excessive effort, allowing the parties to resume work as soon as possible. *See* Ch.880, Appendix A, Expedited Pole Attachment Complaint Process. The Commission's Rapid Response Team is heavily involved. Proceedings are conducted largely if not exclusively by remote means. The Team controls any production of information; the parties do not conduct discovery as such. The Team may issue a preliminary decision, attempt to facilitate settlement, conducts discussions with and among the parties, and issues a final decision within

seven business days. Parties have the right to appeal to the Commission a preliminary or final decision.

7. If you have participated in a Commission Rapid Response Complaint, or commission inquiry or investigation related to the timely relocation or removal of utility poles, please comment regarding the effectiveness of the process. If you have not utilized the Rapid Response process please describe why not (e.g., never had a need, did not think the process would be helpful, etc.).

Neither of the Broadband Providers has used the Rapid Response Process to resolve a dispute with a pole owner. The Broadband Providers understand and appreciate that the Rapid Response Process is available, and believe that the Process is one of the extraordinarily useful tools the Commission has provided in Chapter 880 to expedite and facilitate broadband expansion. Neither of the Broadband Providers would hesitate to use the Process in appropriate circumstances.

However, the Commission has also provided other tools to facilitate and expedite pole attachments and broadband expansion, such as OTMR and self-help under Ch. 880. Both Broadband Providers have used these techniques when desired or needed. So far, those tools have enabled the Broadband Providers to proceed with their deployment activities without the need to resort to the Rapid Response Process. Still, the availability of the Rapid Response Process, the Broadband Providers believe, is a useful backstop to ensure that parties abide by the rules and their obligations.

8. Would the Public Utilities Commission, the Maine Connectivity Authority, the Maine Municipal Authority, or another group or agency be the most effective entity to provide educational resources and assistance regarding the rights of municipalities or other attaching entities?

The Broadband Providers do not have an opinion on the best entity for education and outreach to the particular audience of municipalities.

On a general level, the Commission's expertise in the policy and practical aspects of pole attachments cannot be questioned. The Commission has conducted multiple inquiries and rulemakings. In so doing, it has been careful and thorough in seeking and obtaining information from relevant stakeholders. From the Broadband Providers' perspective, the pole attachment regime in Maine is as good or better than most.

As to the Authority, given that it "works to ensure . . . that there be secure, affordable, reliable, competitive, sustainable and forward-looking infrastructure that can meet future needs . . . ," the Authority may have more capability and focus on outreach and education activities.

A partnership between the two agencies may blend the best of both worlds.

9. Please provide the total number of pole attachment projects completed in the previous three years by your company or organization, the number of poles involved in those projects, and the number of poles that required replacement to complete the projects. Did any projects involving pole replacements experience significant delays or unexpected expenses?

For GoNetspeed: 47,914 poles, of which 1,585 required replacement.

Crown Castle does not maintain information in a way that enables it practicably to answer this question.

10. To your knowledge, is there an industry standard for a new pole when a pole needs to be replaced (e.g., size, height, or class)?

GoNetspeed suggests that any pole with primary power should not be less than 40' in height.

Crown Castle suggests that the height and class of a replacement pole will vary based on regional load factors, the number and types of attachments, the utility's internal standards, and other potential local requirements.

11. Please provide any additional information or context you think will be helpful to the Commission in addressing the four specific areas of examination described by the legislature in the Resolve.

The Broadband Providers respectfully refer to our previous comments and those above. We are grateful to the Commission and Authority for their consideration of our comments, and are prepared to continue our participation in the discussion of these important matters.

May 10, 2024

Respectfully Submitted,

/s/ Gregory M. Kennan

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

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2023-00300

October 11, 2024

PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of LD 1456 Report

COMMENTS OF CTIA

Pursuant to the September 5, 2024 Procedural Order in the above-captioned proceeding, CTIA[1] submits the following comments.

CTIA greatly appreciates the Maine Public Utilities Commission's ("Commission's") and the Maine Connectivity Authority's ("MCA's") joint efforts in this proceeding. LD 1456 correctly acknowledged the importance of streamlining the pole attachment process to minimize delays that could serve as barriers to the timely deployment of broadband critical to meet the needs of consumers in Maine. It requires the Commission, with the help of the MCA, to study current pole attachment laws and rules and the effects of those laws and rules on broadband expansion, including specific ways to decrease wait times for pole attachments, and submit a report and recommendations to the Legislature.[2] Throughout this proceeding, the Commission and the MCA have met the Legislature's mandate by taking a comprehensive look at current concerns with the pole attachment process and identifying potential improvements to that process. The multiple workshops held in this proceeding were valuable not only to generate

---

[1] CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless providers, device manufacturers, and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

[2] *See* LD 1456, 131st Me. Leg., 1st Spec. Sess. (signed June 26, 2023).

information for the MCA's recommendations and the Commission's eventual report to the Legislature, but also to foster increased communication and cooperation between pole owners and attachers. This pro-active approach to improve the state's pole attachment processes will help drive broadband investment towards Maine, and all parties should be commended for their hard work.

One of the MCA's recommendations is to establish a working group on pole attachments that meets regularly to discuss issues pertinent to owners and attachers. CTIA supports such a group, which is a step taken by a number of other states (among them, Connecticut, New York, Pennsylvania, and West Virginia) to facilitate communication between pole owners and attachers. If the Commission decides to implement such a working group, CTIA would welcome the opportunity to serve as a member on behalf of the wireless industry.

CTIA has no further substantive comments at this time, but reserves the right to offer reply comments pursuant to the Procedural Order.

Respectfully submitted,

By: /s/
Matthew DeTura

Benjamin Aron
Matthew DeTura
CTIA
1400 16th Street NW
Suite 600
Washington, D.C. 20036
(202) 736-3228
BAron@ctia.org
MDeTura@ctia.org

October 11, 2024

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Public Utilities Commission Inquiry to Facilitate Preparation of LD 1456 Report	October 11, 2024 Docket No. 2023-00300

COMMENTS OF CHARTER AND COMCAST

Pursuant to Public Utilities Commission's ("PUC's" or "Commission's") September 5, 2024, Procedural Order, Spectrum Northeast, LLC ("Charter") and Comcast of Maine/New Hampshire, Inc. ("Comcast") (collectively, the "cable operators") respectfully submit these joint comments regarding this Inquiry.

I. Introduction

Both Charter and Comcast appreciate the Commission's longstanding effort to advance the shared goal of facilitating faster and more efficient high-speed broadband deployment in Maine. The cable operators have consistently and actively engaged in all of the Commission's proceedings to develop and improve the Chapter 880 pole attachment rules, and to align them those of the Federal Communications Commission ("FCC") pole attachment rules.[1] As a result of these collective efforts by the Commission and all relevant stakeholders, Maine has developed clear and comprehensive pole attachment access rules and thereby has created the foundation necessary to advance the Legislature's mandate that the Commission promulgate pole attachment rules that "promote competition [and] further the state broadband policy." 35-A M.R.S. § 711(4).

[1] *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.

As set forth in greater detail in these comments, Charter and Comcast believe that, at this time, the only regulatory change necessary to advance the legislature's broadband mandate is for the PUC to further update its Chapter 880 rules to conform with the FCC's regulatory framework for pole attachments.[2] Although the existing Chapter 880 rules closely follow the FCC approach, several new developments over the past year in the federal policy arena have been enacted – such as rules clarifying more equitable allocation of pole replacement costs – that if adopted here would benefit Maine's broadband objectives. These targeted amendments to the Chapter 880 rules, in addition to making broadband deployments more economical, would also provide greater consistency and uniformity of pole access terms, an important pillar in the Maine Connectivity Authority's ("MCA's") policy advocacy.

Aside from the above referenced FCC amendments, Charter and Comcast do not believe there is any need for other pole-related legislation or changes to Maine's existing Chapter 880 rules. That being said, we certainly recognize the benefits associated with the MCA's significant investment of time and resources in developing its September 13, 2024 report recommendations ("Utility Pole Attachment Study for Broadband" (the "Report")).[3] In addition to preparing the Report, MCA along with Commission Staff, created a variety of mechanisms to solicit the input of key stakeholders—most notably organizing a series of collaborative and valuable workshops. The cable operators look forward to ongoing formal and informal engagement with the Commission, MCA, and fellow stakeholders as the work to expand Maine broadband continues.

[2] *See* Comments of Charter and Comcast, Dkt. 2023-00300, at 2-3 (Jan. 12, 2024); Response of Charter and Comcast to the Commission's Requests for Information Numbers 6, 7, 8, 10, & 11, Dkt. 2023-00300, at 3-7 (May 10, 2024).

[3] MCA, Utility Pole Attachment Study for Broadband, Dkt. 2023-00300 (Sept. 13, 2024) ("MCA Report"); MCA, LD 1456 – MCA Recommendations (PowerPoint), Dkt. 2023-00300 (Sept. 13, 2024).

II. The Commission Should Initiate A Proceeding To Align The Chapter 880 Rules With The FCC's Recent Pole Attachment Rule Changes And Clarifications.

As noted above, Charter and Comcast believe that the Commission swiftly should initiate a rulemaking to align the Chapter 880 rules with FCC's December 2023 reforms to its pole attachment rules and policies.[4] If adopted in Maine, these recent FCC improvements would immediately and meaningfully improve access conditions and enhance broadband's economics and deployment efficiencies.

A new Maine pole proceeding should first focus on amending Section 5(C) of the Chapter 880 rules to track the FCC's newly clarified approach to **equitable allocation of pole replacement costs**. Those costs can pose a major financial burden for – and sometimes a barrier to – broadband deployment, especially in rural areas.[5] Under the FCC's rules, utilities may not force a new attacher to bear the full financial burden of replacing a pole if that pole replacement was not "necessitated solely" by the new attacher's attachment.[6] That means utilities may not require new attachers "to pay the entire cost of a pole replacement when a pole already requires replacement (*e.g.* because the pole is out of compliance with current safety and utility construction standards

[4] *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, 2023 WL 8803833 (FCC Dec. 13, 2023) ("*2023 FCC Pole Attachment Order*"), *available at* https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf; 47 C.F.R. 1.1411(c)(4) (2024).

[5] *See* 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) (stating that updating "our policies to make clear when an attacher does not have to pay the full cost to replace an existing pole . . . can help with new deployment"); *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling, 36 FCC Rcd 776, 777, ¶ 1 (2021) ("*2021 FCC Declaratory Ruling*") (framing pole replacement cost ruling as "part of [the FCC's] efforts to close the digital divide and further broadband deployment").

[6] 47 C.F.R. § 1.1408(b); *see also 2021 FCC Declaratory Ruling*, 36 FCC Rcd at 779, ¶ 6 ("[U]tilities may not require requesting attachers to pay the entire cost of pole replacements that are not solely caused by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted.").

or has been red tagged) at the time a request for a new or modified attachment is made."[7] In its 2023 Order, the FCC provided clarification about when a pole replacement would not be "necessitated solely" by a new attacher, including (1) when a pole replacement is required by applicable law; (2) the current pole fails engineering standards such as those in the National Electrical Safety Code ("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.[8] The FCC rule changes provided, furthermore, that a prospective attacher only is "responsible for the incremental cost of a taller or stronger pole needed to support its facilities, not the cost to replace the defective or deteriorated pole with an equivalent-sized replacement pole."[9]

By implementing these important clarifications around pole replacement cost allocation, the state of Maine can ensure that the significant public and private funds being invested in broadband deployment are being appropriate directed towards the communications infrastructure that will ensure more Mainers are online.[10]

---

[7] *2021 FCC Declaratory Ruling,* ¶¶ 3, 6-10.

[8] *2023 FCC Pole Attachment Order*, ¶¶ 45-46. The FCC also further clarified the definition of "red tagged" poles as "poles that the utility identifies for replacement for any reason other than the pole's lack of capacity to accommodate a new attachment" and made clear that "a utility may not evade application of . . . cost causation and cost replacement policies with respect to a particular pole replacement simply by failing to 'red tag' a pole that has safety violations or is otherwise out of compliance with applicable utility construction standards." *Id*. ¶ 40-44, 47.

[9] *Id*. ¶ 48.

[10] The PUC can go straight to a rulemaking on pole replacement cost allocation given that it already conducted an inquiry from 2021-2023 on the issue. Notice of Inquiry, Dkt. 2021-00321, at 1 & 6 (Oct. 18, 2021). While the Commission eventually narrowed the scope of that inquiry to focus only on implementation of the Alden One system, the parties involved in that proceeding already had commented extensively on approaches to amending Section 5(C) of the Chapter 880 rules. *See* MPUC Interim Report to Resolves 2023, ch. 81, at 8 (Feb. 15, 2024).

The cable operators also urge the Commission to align the Chapter 880 rules with the FCC's December 2023 clarification that a utility must provide a potential pole attacher with a copy of the utility's easement before it can refuse to let the attacher utilize or share that easement—or before the utility can require the attacher to obtain its own easement.[11] Additionally, the FCC clarified in December 2023 that for large pole orders (for attachments on more than 3,000 poles submitted in a 30-day period), the make-ready timelines apply to the first 3,000 poles in that order, and that pole owners may only negotiate for extended deadlines for poles beyond that first 3,000.[12] Finally, the FCC's December 2023 Order also created a new rule that requires a pole owner to provide pole applicants with information contained in the utility's most recent pole inspection for the poles covered by the attacher's application when an applicant requests that information.[13] This rule, along with the changes regarding pole replacements and red-tagged poles would ensure appropriate economic cost allocations— and should become incorporated into Chapter 880.

III. Responses To MCA's Final Report And Recommendations.

MCA's Report comprehensively describes the pole attachment regulatory framework in Maine and contains many useful and practical recommendations, including encouraging electronic billing and payment and promoting early and ongoing engagement and communication among attachers, pole owners, and contractors, as well as other concepts for future consideration.[14]

As we noted at the August 28, 2024 workshop, Charter and Comcast believe that many of these proposals should be advanced voluntarily, with regulatory or legislative action deferred until there is more experience with the expected expansion in network deployment in rural, unserved,

[11] *2023 FCC Pole Attachment Order* ¶¶ 23-31, 49.

[12] *Id*. ¶ 50-51.

[13] *Id*. ¶¶ 23-31; 47 C.F.R. 1.1411(c)(4).

[14] MCA Report at 69-70.

and underserved areas and the associated increase in data emerging from the corresponding spike in pole-related administrative activity.

A. MCA's Pole Access Improvements Should Be Advanced Voluntarily.

Charter and Comcast, Maine's largest cable operators, have decades of experience not only with Maine's pole owners and access practices, but also with the practices in virtually every other state — from Maine to Hawaii, and everywhere in between. However, it is not the size of our national footprints that matters here, but the number and diversity of relationships that we have with literally *hundreds* of pole owners of all types (*e.g.*, investor-owned electric utilities, electric cooperatives, telephone cooperatives, and municipal utilities) across the land, not to mention their familiarity with a broad array of legal, regulatory, and operating environments. That is relevant because it provides a strong background from which to evaluate Maine's pole environment and its ability to withstand the stresses and challenges associated with the ongoing push for broadband expansion into rural areas.

Based upon this experience, it is unfortunate that Charter and Comcast did not have a greater opportunity to informally engage with MCA in the kind of meaningful outreach that was apparently extended to some pole owners and other communications providers (outside of the workshops).[15] Nevertheless, we agree with MCA's key conclusion that Maine's hard work in recent years to overhaul pole regulation – and particularly, the multi-year journey of the Commission and its Staff to revamp the Chapter 880 rules – has made Maine a national leader in pole attachment policy.

It is important to note (and not always experienced in other jurisdictions) that the electric pole owners not only have *said* that they want to do their part to advance broadband, but have

[15] *See* MCA Report at 48.

supported those statements with their actions, including efforts to adjust their own processes to fulfill Chapter 880's timelines, by pursuing and implementing Alden One, as well as by applying, as it was intended, the new-to-Maine pole-rate formula.

Thus, Charter and Comcast believe that Maine's existing pole-related rules,[16] and the community they govern, have demonstrated that they can work collaboratively to implement many of concepts and recommendations contained in MCA's Report.

B. Responses to Specific Items in MCA's Report and Recommendations

1. No Legislation Is Required For Unauthorized Attachment Penalties.

MCA's only proposal for "statutory changes" in its final recommendations was to suggest legislation that would authorize utility pole owners to assess penalties for unauthorized attachments.[17] Charter and Comcast do not support this recommendation. To the best of our knowledge, there was no record evidence during this study or in any of the PUC's many inquiries or rulemaking proceedings over the last several years to indicate that unauthorized attachments are a major problem. Similarly, in the context of the thousands of interactions we have had with our pole-owning counterparts in Maine, we are not aware of systemic or widespread problems that would warrant the adoption of such a dramatic recommendation. Pole attachment agreements between pole owners and attachers already provide contractual mechanisms for addressing unauthorized attachments—including a notification process, the opportunity for attachers to

[16] While Charter and Comcast to date have had little experience with the Commission's rapid response complaint procedures, we understand that those procedures have been very successful over the years in quickly and efficiently resolving numerous kinds of pole-related disputes. *See* 65-407 C.M.R. ch. 880, § 8 & Attachment A. Not only does the mere existence and availability of this process itself deter violations, but its overall effectiveness prompted the FCC to adopt new streamlined access complaint procedures of its own, based on and citing Maine's rapid response mechanism. *2023 FCC Pole Attachment Order*, ¶¶ 7-22; 47 C.F.R. 1.1415. Indeed, the ongoing viability of the rapid response complaint is exactly the kind of effective gap-filling oversight and enforcement that ultimately is more effective and efficient than the promulgation of ever-longer and more complex and detailed substantive rules.

[17] MCA Report at 17.

review, challenge and cure unauthorized attachment notifications, and, if all else fails, assessment of penalties.[18] The combination of such contractual provisions and the opportunity to quickly escalate problems to the PUC's rapid response complaint process are a sufficient deterrent and remedy to address this issue.

2. MCA's Other Proposed "Regulatory Changes" Are Unnecessary.

Charter and Comcast believe that Maine's Chapter 880 rules, in many ways, are the gold standard for certified states, and that the Commission should not adopt MCA's other calls for regulatory actions. Pole agreement standardization, for example, is a suitable topic for further deliberation by the newly proposed stakeholder working groups but would require significant time, effort, and expense and should not be a priority. One size may not fit all, and current pole agreements in Maine already contain compliance with law provisions, thereby incorporating the Chapter 880 rules.[19] Stakeholder consideration of this and other issues in the ensuing months will appropriately correspond with expanding pole-related field and administration operations associated with expected large scale broadband deployment.

These various MCA's recommendations, appear to come, at least in part, from MCA's lengthy discussion of the pole-related regulations in New York and other New England states.[20] Specifically, MCA notes that a 2004 order (twenty years ago) by the New York Public Service

[18] The lack of completely accurate recordkeeping can lead to disputes over whether attachments are authorized. Establishing a standard policy regarding penalties for unauthorized attachments would require development of a record in a rulemaking. *See In the Matter of Implementation of Section 224 of the Act A Nat'l Broadband Plan for Our Future*, 26 FCC. Rcd. 5240, 5290, ¶¶ 113-118 (2011) (observing "[c]ommenters continue to disagree about the scope of the problem posed by unauthorized attachments" and that "the record is insufficient for us to make specific findings regarding the scope and severity of non-compliance").

[19] Once a pole agreement is opened up for modification, the entire agreement becomes subject to change leading to protracted negotiations.

[20] MCA Report at 33-45.

Commission requires pole owners to establish standard pole attachment agreements.[21] While it is true that there was an attempt by New York pole owners and attachers to reach an agreement on the terms of such a standard pole attachment agreement, this standardization has never been achieved. Alternatively, we believe it would be more beneficial for MCA to review the recently issued New York Public Service Commission July 2024 order modifying its 2004 order regarding pole attachments and related proceedings with new rules regarding timelines, dispute resolution, and OTMR.[22]

The MCA Report also discusses Vermont's pole regulations. However, Vermont's major pole owners – unlike those in Maine – use pole *tariffs* instead of pole agreements to administer and manage key pole attachment terms and conditions. Although the Vermont PUC performs a review of new pole agreements that vary from the tariffs, there have been very few instances in practice in which the Vermont PUC has been asked to "approve" a new pole agreement. Without exploring the various pros and cons of tariff-based regulation, it is a fundamentally different regulatory regime; and it would require significant changes to the character and structure of Maine's current approach and practice to pole attachment regulation which we do not support.

3. Additional Responses to the MCA Report

Quality of Workmanship. On pages 50-51 of its Report, MCA, without any record support, states that communications attachers are "incentiv[ized] to engage in poor construction practices.[23] Charter and Comcast strongly disagree with that assertion. Not only are communications providers contractually obliged to conform their work with multiple overlapping

[21] *Id*. at 42 & n.310.

[22] *Proceeding to Review Certain Pole Attachment Rules*, Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings, Case 22-M-0101 (N.Y. P.S.C. July 22, 2024).

[23] MCA Report at 50-51

sources and tiers of safety standards, but we deeply care about our quality of work because poor workmanship and unsafe attachment practices jeopardize worker and public safety, and the physical integrity – and operational performance – of our communications networks. While we note that some pole owners make this assertion in certain kinds of disputes, and that no aerial utility or communications work is "violation free," we have seldom (if ever) heard such characterizations from Maine pole owners.

Virtual Rideouts. MCA also proposes that conducting "virtual rideouts" and the use of videoconference software could minimize disputes.[24] While technologies and field practices continue to evolve and virtual inspections may become a useful extra data point, there still is no substitute for in-person field inspections or joint ride-outs—for "standard" make-ready, as well as for OTMR. Poles are, and always will be, open to the elements and to all manner of direct and indirect human contact, vehicle accidents, land-use changes, and even material aging degradation. Accordingly, pole and span profiles do change over time, and they can change in the blink of an eye– and without notice. Unless some party happens to detect and document these changes in whatever system is in place to track poles and attachments and spans, a virtual ride out is simply not a reliable substitute for in-person assessments.

The primary point, however, is that Maine's pole licensing process and its structure are not an impediment— especially for pole owners and attachers who understand and follow the Chapter 880 rules. The pole ecosystem is complex, and the pole access rules developed by the FCC and states over many years generally work well, and any modifications must be carefully made. The cable operators urge pole owners and attachers to focus on making the current rules work rather than attempting significant, resource diverting modifications. And whatever make-ready path is

[24] *Id*.

taken on a particular project – "traditional," self-help, OTMR, or an amalgam of all three – there is no substitute for field visits, clear and consistent communication between the attacher and the pole owner, and strong field-operations relationships.

Grant Conditions. MCA states it could consider adding conditions that recipients for its grant programs must comply with, including (for attachers), requirements for consistent adherence to engineering standards.[25] As MCA correctly acknowledges, however, pole agreements already typically require compliance with existing engineering, safety and other and industry standards, such as the NESC. Charter and Comcast[26] do not believe it makes sense to "interject MCA into the contracting process between these two parties."[27] That said, we believe it would be helpful for MCA to require grant recipients—particularly grant recipients that own poles—to certify their Chapter 880 compliance, which they already are obliged to follow.

Single Pole Administrator. As we did in an earlier Commission inquiry, Charter and Comcast continue to oppose any proposal to establish a single pole administrator.[28] We are very concerned that any perceived efficiency associated with making the electric utility or the ILEC the single pole administrator could actually lead to further delays in pole application processing (and this does not even factor in the potential massive legislative and regulatory undertaking required for establishing such a framework).

---

[25] *Id*. at 68.

[26] MCA's Prospective Application Pre-Qualification Evaluation Supplemental Guidance for BEAD Grants already requires each prospective applicant certify compliance with Federal, State, and Local Law and that it will monitor its contractors' compliance with Federal, State, and local requirements, which presumably includes the Chapter 880 rules. MCA, *BEAD Pre-Qualification Application* at 13, 16, 17, available at https://drive.google.com/file/d/1vhm7UhOatZujyySVm_8Pn4rxjE6tVYTa/view?usp=sharing.

[27] MCA Report at 69. That is especially so given that different pole owners often require adherance to different technical standards. Plus, an MCA grant obviously cannot condition (or control) behavior of entities that are not parties to the grant, which matters in the pole attachment arena where access to poles depends on multiple parties coordinating and working together.

[28] Cable Operators' Initial Comments, Dkt. 2021-00321, at 6 (Nov. 19, 2021).

For example, electric utilities do not necessarily have the relevant experience with communications attachments. This, in turn, could hinder access to the communications space and slow broadband deployment. Even after communications facilities are deployed and become operational, electric utilities' lack of experience with communications facilities can (and does) inhibit the resolution of communications outages caused by downed poles and spans.

Similarly, our experience has been that ILECs do not have the engineering or construction experience, let alone expertise, in a pole's electrical space. Indeed, Maine's and the FCC's make-ready rules recognize the possibility of (additional) plant damage when entities that lack of expertise in communications facilities work on such facilities.[29] A third-party administrator – whether a contractor, a non-profit organization created for this purpose, or a government-run entity – would need expertise in *both* electric *and* communications attachments, duplicating the resources that already abound in electric utilities and ILECs.

Points of Contact and Lists of Approved Contractors. The cable operators agree with MCA that points of contact for all Maine pole owners and attachers should be clear and easy to find.[30] The same is true for lists of approved third-party contractors.[31] Just as the PUC maintains a list of ILECS, it also could maintain up-to-date contact list for pole attachment inquiries and issues as well as approved contractors.

IV. Conclusion

Charter and Comcast appreciate the opportunity to participate in this study with the Commission, MCA, pole owners, and other stakeholders. This thoughtful, collaborative

[29] *See, e.g.*, 65-407 C.M.R. ch. 880, § 2(A)(10) (requiring contractors for survey and make-ready work to be "trained to work with coaxial and fiber optic cable and be reasonably insured or bonded").

[30] *See* MCA Report at 68.

[31] *Id*. at 70.

proceeding represents a review and capstone of the multi-year process that has led to Maine's ongoing leadership in pole-regulation policy. Through its study, MCA has effectively raised a number of potentially useful concepts for improving the state's pole access landscape, however we continue to believe that near-term PUC regulatory action is only necessary to align Chapter 880 more closely with the FCC's recent pole rule amendments and clarifications—most notably its activity to enhance the equitable allocation of pole replacement costs. The cable operators look forward to continuing to work with all the interested parties (both formally and informally)to further improve the rules of the road and pole access practices in Maine.

Dated: October 11, 2024

Respectfully Submitted,

/s/ J. D. Thomas

J. D. Thomas
Abraham J. Shanedling
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2099 Pennsylvania Avenue NW, Suite 100
Washington, DC 20006-6801
Tel. (202) 747-1916
dthomas@sheppardmullin.com
ashanedling@sheppardmullin.com

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

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2023-00300

October 11, 2024

MAINE PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of LD 1456;
A Resolve to Study the Effect of Current Laws
and Rules on the Expansion of Broadband

VERSANT POWER
COMMENTS

Versant Power ("Versant") appreciates the opportunity to provide these comments in response to the Commission's September 5, 2024, Procedural Order. These comments and recommendations supplement information previously provided by Versant in this docket to assist the Commission in its preparation of the final report to the legislature pursuant to LD 1456 *Resolve 2023, ch. 81 Resolve to Study the Effect of Current Laws and Rules on the Expansion of Broadband ("LD 1456")*.[1]

Over the past several years the Commission has updated Chapter 880 of the Commission's rules regarding pole attachments, including instituting by rule processing timeframes that the Commission—along with the Federal Communications Commission ("FCC") and other states in the region—determined to be presumptively reasonable.[2] In LD 1456, the Legislature asked the Commission to report on among other things whether these timelines were being followed and working to support broadband expansion in Maine without further rule changes.[3] The information supplied by the parties in this docket make clear that further legislative or regulatory changes are not needed at this time.[4] Maine is already at the forefront nationally in pole regulation, and the

---

[1] *See also*, Versant Power, *LD 1456 Response* Dkt No. 2023-00300 (Nov. 3, 2023); Central Maine Power Company and Versant Power, *Joint Comments,* Dkt No. 2023-00300 (Feb. 9, 2024); Versant Power *Response to March 25, 2024 Procedural Order* Dkt No. 2023-00300 (May 10, 2024) ("Versant Response").

[2] 65-407 C.M.R. ch. 880 (hereinafter "Chapter 880") including Section 2 therein.

[3] The multi-year effort of the Commission to modernize its rules and the regulatory proceedings in which these rule changes are extensively reported in the Commission's *Interim Report Pursuant to Resolve 2023, ch. 81 Resolve to Study the Effect of Current Laws and Rules on the Expansion of Broadband (LD 1456)* (Feb. 15, 2024).

[4] *See e.g.,* Maine Connectivity Authority Utility Pole Attachment Study for Broadband (Summer 2024) (Sept. 13, 2024) ("MCA Paper") and workshop summaries filed by the MCA in this docket (noting generally stakeholder workshop discussions indicating

data to date shows Maine's pole attachment reforms are being followed in practice by electric pole owners who own the vast majority of utility poles in the State of Maine. As broadband providers have commented:

> "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."[5]

Further, once Alden One is fully implemented and used by all Joint Use Entities[6], all attachers will benefit from automated processes, including automated applications, informational form completion, electronic transfer notifications and electronic data availability regarding their attachments and utility poles. Broadband providers have commended Versant and Central Maine Power ("CMP") for their voluntary decisions to step forward in 2022 to implement Alden One.[7] Chapter 880 now mandates (i) that all Joint Use Entities use Alden One when applying to attach, and (ii) CCI is to join Versant and CMP in implementing Alden One thereby making it available

---

that fine-tuning practices can be made without current legislation or rulemaking). Charter/Comcast and Crown Castle/GNS have recommended the Commission consider changes to pole replacement cost allocations but not the application processing timelines (discussed *infra* at 14).

[5] Crown Castle Fiber LLC ("Crown Castle"), Initial Comments of Crown Castle and GoNetspeed ("GNS") Dkt No. 2023-00300 (Jan. 12, 2024) at 3. This is not to ignore some of the good suggestions for refinements in practices offered by attachers and by pole owners which are discussed later in these comments but do not require rulemaking.

[6] Chapter 880 § 1(N) defines a Joint Use Entity to include providers of voice, telecommunications, cable, and broadband and unlit fiber providers. Pursuant to Chapter 880 § 3 and 35-A M.R.S § 711 a "Joint Use Entity" and only a Joint Use Entity may request access to a Maine utility pole. The Commission is responsible for determining, in the first instance, whether a party is a "Joint Use Entity" and possesses sufficient financial and technical capability. 65-407 C.M.R. ch. 880 § 3. Consistent with the FCC and other states, Maine law recognizes that poles were privately owned. A qualifying Joint Use Entity must still enter into a standard pole attachment license agreement (as a licensee) with the pole owner (as licensor). Standard pole agreements provide specific and typical contractual obligations of the parties. Chapter 880, similar to FCC rules, provide the rules under which a dispute regarding access terms and conditions may be resolved.

[7] Biddeford Internet Corporation d/b/a GWI ("GWI"), Biddeford Internet Corporation Comments, Dkt. No. 2023-00300 (Jan. 16, 2024) at 1 ("Alden One has enormous promise" when fully utilized and offered several suggestions discussed later in these comments). The MCA Paper incorrectly, attributes without proper citation to anything in any record, that Versant and CMP's decision to implement Alden One was a negotiated exchange with the Commission to avoid a third party administrator. MCA Paper at 25. This was not the case, and Versant respectfully asks the MCA to correct this in the MCA Paper. Versant and CMP came forward with the proposal to implement Alden One on their own initiative prior to and independent of any Commission proceeding concerning implementation of Alden One. The initiative indeed was a precursor to a case being opened to address the matter. *See e.g., Inquiry Into Amendments to Chapter 880 of the Commission Rules -Attachments to Joint Use Utility Poles; Determination and Allocation of Costs,* Dkt No. 2023-00321, Proposal of Joint Owners to Supplement Universal Joint Use System (Nov. 19, 2021). The pole owners requested in Docket 2023-00321 to ask the Commission to agree with its proposal and to require all participants to use and pay for the system, which request lead to revisions to the Commission's adoption of Chapter 880 § 5.

for nearly all utility poles and attachments in Maine.[8]

Importantly, the three year average data the Commission asked pole owners to provide (so to inform the Commission on whether Chapter 880 timelines were being followed) showed that the application processing timelines under Chapter 880 are being followed and met in practice by the electric utility pole owners.[9] These timelines as noted above are squarely aligned with existing FCC rules and federal efforts to expand broadband, and align regionally with the pole regulations of neighboring states. With the implementation of Alden One, Maine is at the forefront in pole administration, application and licensures, and with further utilization of its resources will benefit broadband providers.[10] Lastly, over the past few years both Versant and Central Maine Power voluntarily updated their standard pole attachment agreements to reference these timelines.[11]

What is needed now to address deployment times is not more rulemaking proceedings. Rather, what is needed most, as more and more Joint Use Entities (mostly large national for profit broadband providers) seek access to Maine's utility owned poles, is the dedicated efforts of all Joint Use Entities to comply with existing rules, to meet their respective obligations under existing standard pole attachment agreements in an orderly manner, and for attachers to ensure their contractors adhere to well-established nationally recognized industry and safety codes.

This requires attachers to engage only qualified contractors, and to manage and inspect

---

[8] Chapter 880, § 5(A)(1). We understand at the urging of stakeholders, Consolidated Communications Inc. ("CCI") has stated its plans to comply with Chapter 880 and implement Alden One in 2025.

[9] *See e.g.,* Versant Response at 2. *See also* discussion *infra* at 7. GNS is the only party to state that it failed to receive licenses within the timeframes of Chapter 880 in Versant's territory (*see* Crown Castle/GNS *Response* (May 10, 2024) at 3). As addressed at *Infra* at 8 (footnote 20), what that data did not mention was the critical fact that the GNS projects were actually attached and deployed well within the Chapter 880 timelines but the work of the contractor required re-work and corrective measures. Final issuance of licenses are withheld by licensors to address attachment contractor errors and code violations that may be discovered by inspection after the work is done, resulting in re-work, pole replacements and additional transfers occurring after their deployment. The MCA Paper mistakenly attributes the GNS statement of its license issuance time (*See* MCA Paper at 47-48) to imply that Chapter 880 timelines for licensing are not being met (when they were) or that the data is conflicting when it was not .

[10] *See e.g.,* Crown Castle/GNS, *Comments* (Jan.12, 2024) at 5.

[11] The MCA Paper mistakenly provides the impression of multiple negotiated license contracts. This is inaccurate. To ensure non-discriminatory access to its poles, Versant has always utilized a standard pole attachment agreement. All stakeholders are familiar with this standard agreement, which is in all material respects a near mirror image of the standard pole attachment agreements used by CMP and CCI in Maine.

their work as they go. It requires an attacher to insist on such compliance in any contracts between the contractor and the attacher. The Commission has the tools under Chapter 880 Section 3 to insist that new entrants into Maine certify they possess the requisite technical expertise to access Maine utility poles, and the MCA has the ability to require grant recipients to certify their expertise and agreement to comply with existing standards and pole attachment agreements as a condition to funding. Together with cooperative efforts to fully implement and use Alden One (including CCI) allowing electronic access and use of attachment processes, these foregoing efforts will provide the most reasonable, logical and practical pathway to timely expanding broadband in Maine.

Certainly, some refinements around the edges of processes can be made, and there were a number of suggestions by parties worthy of discussion and implementation in practice without rule changes. Maine is fortunate, and perhaps unique when compared to some other states, because historically pole owners and pole attachers have, with few exceptions, communicated well and worked cooperatively to ensure that attachments are completed and maintained in a safe and timely manner. Because of these relationships, Versant is confident the parties can continue to work cooperatively even in a competitive broadband deployment environment where large national players in the broadband business are arriving in Maine to compete for Maine resources, customers and pole access.

Respectfully, therefore, the Commission's final report to the Legislature should reflect four key takeaways from this inquiry.

First, it should reflect a positive message about the work accomplished to date and its successes. The multi-year, extensive efforts to update and modernize pole Chapter 880 in Maine now aligns Maine with existing FCC regulation and the pole attachment regulations of other states

in the region; the changes are universally praised by the stakeholders as improving the pole attachment process.[12] The work done by the Commission and the stakeholders over the past several years to update Maine's pole attachment rules and align them with federal rules has thus achieved its intended purposes. The use of Alden One by all stakeholders, when fully implemented, will further support attachers in their efforts to expand broadband deployment by all three pole owners.[13]

Second, no legislation or additional regulatory changes are necessary at this time to address pole attachment administration, and indeed, as the MCA Paper (referenced below) suggests, any further regulatory could prove counter-productive and even cause deployment delays in the coming few years.[14] What is needed most now to ensure the safe and timely deployment of broadband in Maine, is quality work by attaching entity contractors, cooperation and clear communications between stakeholders, and reasonable adherence to existing obligations under standard contracts, existing regulations, and well-established national electric safety codes.

Third, in Versant's service territory, pole applications are being processed in a timely manner and reasonably within the timeframes envisioned by Chapter 880.

Fourth, Versant recognizes that not all experiences of all stakeholders are the same, and some have offered suggestions best summarized as slightly refining or improving efficiencies in scheduling, many of which are currently underway (e.g., Alden One usage). Some suggestions made by the MCA and/or attachers appear to be addressed to CCI (ILEC) specific practices (e.g.,

[12] These rule changes and regulatory proceedings are extensively reported in the Commission's Interim Report Pursuant to Resolve 2023, ch. 81 Resolve to Study the Effect of Current Laws and Rules on the Expansion of Broadband (LD 1456) (Feb. 15, 2024); *see e.g.,* Spectrum Northeast, LLC and Comcast of Maine/New Hampshire, Comments, Dkt No. 2023-00300 at 1-2 (Jan. 12, 2024); see also Crown Castle/GNS *Comments* Dkt No. 2023-00300 (Jan. 12, 2024) at 1 ("progress is being made, and from the perspective of the Broadband Providers, the pole attachment regime in Maine is better than many").
[13] *See also,* GWI *Comments* (Jan. 12, 2024) at 1 ("pole owners should be commended for their decision to deploy the Alden One joint use management structure" while stating that its promises are yet to be fully utilized).
[14] *See e.g.,* MCA August 1 workshop notes.

make-ready true up process, processing payments), which are more properly addressed by CCI.

Below, Versant further discusses its perspectives on the pole attachment process and experiences to date, and offers its views on the suggestions of some attachers. Versant also offers its remarks on the MCA September 13, 2024 draft recommendations and white paper entitled *Utility Pole Attachment Study for Broadband* ("MCA Paper"). Versant hopes these remarks on the MCA Paper will lead the MCA to consider revisions to the MCA Paper before further public dissemination is made in order to address matters raised in these comments, and ensure the information provided to the public regarding pole administration in Maine is as accurate as possible.

1. Chapter 880 timelines are currently being met within Versant's service territory by Versant with few exceptions

Chapter 880 aligns with the FCC rules in providing that pole attachment applications processed by a pole owner within 64 days (i.e., review of application, conducting field survey, and providing estimate of any make-ready) are presumptively reasonable. The data supplied by Versant showed that on average these times were being achieved, and such work was completed within 55 days.[15]

Chapter 880 provides that when projects involve complex makeready (work in the electric space/pole replacements), all of that work, including the final issuance of the license is presumed timely if completed within 219 days. As the data shows, such work was being completed within 212 days on average over the three-year test period.[16] When no make-ready was required the pole application and licensure occurred on average within 45 days – efficient processing and ultimately

[15] Versant *Response* at 2. While CMP tracks data differently, we note that CMP also appeared to be completing its work within these timeframes on average. *See* CMP *Response to Information Requests In March 25 Procedural Order* Dkt No. 2023-00300 (May 10, 2024) at 2.
[16] Versant *Response* at 2 (*see* table supplied therein).

timely deployment by any reasonable construction measure.

The MCA Paper gives the impression the data on Chapter 880 compliance was conflicting.[17] It is not. The Commission asked for three-year data as an objective measure of average completion times. The information requested was the information provided by the pole owners. Only the pole owners track this data for all attachers and only the electric pole owners provided this data. While Versant has noted that Alden One may produce additional pole time tracking data in the future,[18] the data produced in this record showed a consistent pattern of electric company pole owners meeting the timelines.[19] In short, the data supplied in this docket showed that Chapter 880 timelines were met on average during the three-year test period as evidenced by the data supplied by pole owners at the request of the Commission.[20]

Not all projects will precisely follow this same timeline, and exceptions will occur despite the efforts of all parties. In Versant's experience, when exceptions do occur this has more to do with the nature of the construction project than anything materially relating to the pole administration. That is, an attacher may experience its own construction delays, having nothing to do with the pole owner. These may be caused by the attacher's own contractor failing to comply with scheduling requirements or construction and clearance standards (e.g., NESC). They may

[17] MCA Paper at 47-48.
[18] Versant Response (Nov. 9, 2023) at 2.
[19] The MCA Paper also seems to take issue with this data being provided as averages. *See* MCA Paper at 48. However, this is the data presented in the format requested by the Commission. *See* Procedural Order (Mar. 25, 2024) at 1. Average data provided by the pole owners is the best available data to understand whether from a high level policy perspective the parties are complying with the Chapter 880 timelines, and avoid individual circumstances of pole attachers that may be confidential or involve contractual conflicts. Further, Versant explained the reasons for deviations from the averages during the three-year period. *See e.g.,* Versant Response (May 10, 2024) at 2-3.
[20] As explained elsewhere, the MCA Paper seems to rely upon one broadband provider who acknowledged they didn't keep track of timelines, may not have even been aware of Chapter 880 provisions, and in any case deployed its' fiber within the time lines but was issued a license outside of the timelines due to their own contractor needing to take corrective measures following post attachment inspection. Importantly, the attacher actually attached before the issuance of any license and Versant did what was required under 880 well within the Chapter 880 timelines. Chapter 880 clearly does not impose on obligation on a pole owner to issue a license on a set timeline when the attachments are unauthorized and require correction. It is wrong to use such data to suggest the Chapter 880 timelines were not being met and respectfully this misimpression should be corrected in the MCA Paper. The MCA Paper also noted differences in the presentations of CMP and Versant, but the paper fails to note that both CMP and Versant indicated in advance to the Commission the manner in which they tracked and intended to present the data to arrive at the same place – showing that Chapter 880 times were largely being met during the three-year lookback test period.

experience permitting delays (e.g., MDOT) unrelated to the pole application process, equipment and personnel delays due to supply or contractor shortages, or other factors that can occur in any large project. In Versant's experience very few attachment projects have failed to be completed within the time periods contemplated by Chapter 880, or agreed upon in advance by the attacher's contractor that are due to delays in the application process. When delays do occur, the delay is usually measured in days or weeks, is often caused by occurrences typical of any construction project in any industry. Certainly, Versant's customers come first as its primary role and the primary purpose for the utility poles is to deliver power to its customers, and this will always be the case. However, delays relating to Versant's service to customers such as during an emergency storm outage, are the exception and the Commission and the Legislature have long recognized that this obligation always takes precedent over the requests of private commercial entities seeking access to the poles. Delays have rarely involved a failure of Versant to communicate with an attacher, to process application paperwork, or to assign resources to pole field survey work.[21]

Versant believes it would be helpful for the Commission report to distinguish between attachment construction work and schedules, performed by the contractor, and Chapter 880 application processing work and times under Chapter 880 performed by both the attacher (or its contractor) and the pole owner to process the application. Apart from the narrow and limited cases where a pole may need to be replaced to accommodate a pole attachment, or undertake its own makeready (adjust tension spans or move equipment) the electric pole owner is most often

[21] The MCA Paper includes in its chart at page 47 GoNetspeed's statement that its project took 292 days to license, and at page 48 states that a GoNetspeed OTMR project took 631 days. This information is misleading and might incorrectly be read to suggest that the pole attachment deployment for these projects were delayed during this period, when in fact the attachments actually occurred within the Chapter 880 timeframes. As with all projects, however, a license is not issued unless and until the attacher corrects any deficiencies in the attachment work that are determined on inspection where the attachment is not in compliance with national electric safety code and/or well recognized clearance standards. The Versant respectfully requests the MCA revise the MCA Paper to reflect that the situation referenced was not a delay of attachment deployment or a case involving a failure to meet Chapter 880 timeframes.

not involved in construction work of the attacher, and that work is usually completed under the timelines to meet the attacher's construction schedule, whether or not One Touch Make Ready ("OTMR") is used. In all cases, licenses are not issued, as one would expect, until after the attacher has satisfactorily constructed the project and the fiber has been installed. The application, field surveys and work estimates occur before construction takes place, and these timelines on average were shown to be met during the three-year time horizon of data requested by the Commission in this docket.

2. Versant's suggestions help ensure pole attachers can deploy in a safe and timely manner, in accordance with standard well-known safety codes and attachment standards

As noted, Maine's current application processing timelines are now aligned with the FCC and offer an opportunity for all parties to timely process applications and obtain licenses, as is being done now. Meeting Chapter 880 processing timelines is not the issue, and Versant respectfully asks the MCA to clear this up in the MCA Paper. Nor is there confusion or lack of available information on Maine laws, Chapter 880 or existing safety and clearance standards and codes. As noted below, all Joint Use Entities are expected to know and understand the applicable laws and safety codes applicable to their attachments, and Chapter 880 is not at all complicated or foreign to the stakeholders in this docket who participated in the lengthy rulemaking proceedings over the past several years. Any party or contractor attaching to a utility pole anywhere in the country understands, or should understand, the NESC and other codes common to all attachments. The standards and practices of Maine are not unique.

During the informal workshops conducted by the MCA in this docket, the facilitator asked the parties to consider what practical measures can be taken to improve an attacher's ability to timely and safely attach to Maine utility poles. Versant has offered several practical suggestions

in this docket that it believes would substantively improve an attacher's ability to safely and timely attach. Versant recap's these suggestions.

a. Quality workmanship done in compliance with nationally recognized and well-established electrical safety and clearance codes

No single practice better ensures a timely deployment then quality work, with attachers employing qualified contractors who perform work in compliance with safety codes and advance project engineering designs. For OTMR to succeed as Versant hopes it will, this is imperative. In the few instances where Versant has had to withhold final issuance of a license, or seen projects get delayed, the reasons have almost always entailed non-compliance with well-established and well-known construction standards.[22] These errors usually involve attachments located in violation of NESC clearance requirements, a contractor attaching to a pole that clearly required a pole replacement before attachment, or in the case of a OTMR project, the contractor transferring another attacher's attachment to the wrong location on a pole, thereby causing a code violation. In each case, the project might be delayed for corrective work. Such delays are entirely avoidable with proper application in the first instance with good utility practices and improved communications with the pole owner.

All parties agree that compliance with safety and compliance with the codes is of paramount concern and should stand well above any pressures for deployment schedules. Moreover, as pertains to timely deployment, the other important point the Commission and MCA may wish to highlight in any final report is that such compliance actually assures all parties can

[22] The MCA Paper indicates that there was some confusion by its interviewees over the applicable attachment standards and clearance rules. Versant remains baffled by this. Each of the attachers participating in this proceeding are large national providers of services, and in many cases, owners of poles. They are fully aware of the applicable standards and rules applicable to pole attachments. The applicable rules and codes are spelled out in the standard pole attachment contract, always involve the national electric safety code (NESC) and its clearance standards, construction standards are posted on Versant's website. Further, as a baseline requirement for any party to request to own and maintain pole attachments on an electric utility pole in Maine, they are required by law to possess the requisite knowledge of these standards. *See e.g.,* 65-407 C.M.R. ch. 880 § 3 and § 2(A)(10).

attach in a timely manner. When one attacher fails to comply, this backs up the projects of other attachers, or causes those subsequent projects to run into the problem created by the first attacher. Accordingly, compliance with codes and standards increases the likelihood of timely deployment of broadband rather than being a hindrance to timely deployment. All stakeholders agree this should be the focus of attention, and deserves to be the primary focus of any report to the legislature.

b. Use of OTMR by qualified contractors

Attachment projects fall into easily distinguishable categories. First, the pole is prepared for a proposed attachment. Usually, this simply entails moving existing attachments around on a pole to accommodate the new attachment, but can be time consuming because the new attacher must wait for the other attachers to move their existing attachments to make room for the new attachment. When OTMR is properly employed in the manner laid out by Chapter 880 by a contractor meeting the qualification requirements also laid out by Chapter 880, everyone presumably wins because the new attacher makes all of the transfers when it is performing its own attachment work. This is an efficient use of limited resources and allows for speedy deployment when done correctly. Versant has adopted OTMR provisions in its standard pole attachment agreement. These provisions track the requirements under Chapter 880 to further encourage proper use of OTMR.

The key to OTMR however is in the quality of work. Contractors first and foremost must be qualified to (i) perform the work and (ii) make the proper judgments in the field regarding compliance issues. As reported by Versant, this is not always done. The responsibility for ensuring that the work is performed with qualified contractors lies squarely with the attacher and no one else. The responsibility for ensuring that the contractor is familiar with national electric

safety codes and industry standards regarding attachment procedure and proper safety clearances lies squarely with the attacher and its contractor and no on else. The responsibility for reporting on any existing violations noted by a contractor during construction of OTMR - before they perform an attachment or transfer work - lies squarely with the attaching entity and its contractor and no one else. Indeed, these requirements are spelled out in Chapter 880 Section 2(A)(10) in the standard pole attachment agreements in Maine, and should be required in any contract between an attacher and its contractor.

If this process is followed and the contractor completes the OTMR work in compliance with industry safety standards, attachers should be able to more expeditiously complete pole attachment projects without any post construction delays caused by re-work after inspections and before license issuances.[23] Versant has noted in this docket that from its experience, OTMR works best when the contractor stays in communication with Versant. This helps avoid errors requiring corrective action post construction and prior to the issuance of a license. While there are never guarantees, to date, Versant has experienced little to no material problems or complaints in coordinating and scheduling field inspections with the contractors when called upon to do so, and if they did occur at all, it was a matter of days or weeks and the matter was worked out cooperatively with the party asking for field work.

The success of OTMR is in the practice by the parties. No further regulations are needed at this time for OTMR to offer immediate benefits to those deploying broadband. The prerequisite for this success is having each party perform their work in compliance with existing

[23] The MCA Paper incorrectly states that the issuance of a license occurs before inspection. *See* MCA Paper at 9. As reported by both Versant and CMP the issuance of the license is the last step under any standard pole attachment agreement. Licenses are by necessity and norms of the industry are only issued for a pole attachment project when the applicant has attached in an authorized manner, meaning in compliance with state and federal industry codes and the original attachment design. Versant believes the MCA Paper should be corrected in this regard to ensure the process is properly understood by readers of the MCA Paper. Indeed, as noted elsewhere, this particular misinterpretation of the process seems to have led to conclusions that Chapter 880 timeframes were not being met.

contractual and regulatory requirements (including Chapter 880 rules governing the qualifications and certifications of contractors, for each party performing OTMR to comply with national electric standards) and for contractors to notify any affected attachers and pole owners of work to be done as required by Chapter 880. Further, once Alden One is fully implemented and capable of supporting OTMR, the data notification system should further enhance use of OTMR by attachers.

As noted elsewhere, unfortunately the work of some contractors may not always live up to these objectives. The failure does not appear to be due to lack of experience or apparent lack of knowledge of pole attachment standards, but appears instead to relate to work performed hurriedly—perhaps to meet the contractors own deadlines, attachment projects deployed without notifying attachers and pole owners when work was done, attachments to poles in obvious violation of recognized industry clearing standards, and attaching to poles even though the poles are known to require replacement to accommodate the attachments. Most attachers, as noted, are sophisticated national broadband providers. Thus, we are confident they will take notice and are responsible for taking notice and be on guard to police the work of any OTMR contractor going forward. Most attacher contractors in Maine have historically performed very well. And smaller entities, such as municipalities, often engage qualified contractors and contract managers to oversee their projects. But all attachers and pole owners must demand that the work is done in accordance with well-known and nationally recognized safety standards. When done right, Versant is confident OTMR can prove beneficial to all attachers.

3. Versant's perspectives regarding the suggestions of broadband providers

The stakeholders offered several suggested refinements to practices which warrant discussion.[24]

[24] Some commentators initially suggested these changes could involve rule changes. Versant understands from the Workshop

a. Use of Single Application and Standard Pole Attachment Form for Joint Owned Poles

Versant already uses a standard pole attachment agreement and an application form and has done so for decades. This form was updated to include changes to Chapter 880 and to accommodate the use of OTMR in recent years, and is otherwise nearly identical to the standard pole attachment agreements used by CMP and CCI. This form is signed only once, when an attacher first engages Versant to have a license to attach to its poles so the administrative burden is minimal. The use of a standard pole attachment agreement is common of most pole owners throughout the country, including those broadband providers in Maine who also own poles. Use of a standard form agreement is one important way to ensure that all attachers are subject to the same terms and conditions and thus access is provided in a non-discriminatory manner as required by federal and state law. When an attacher wishes to make a new attachment, rather than negotiating new terms for each attacher or for each new attachment request, the attacher and pole owner simply complete an application (identifying the number of attachments, cable size and the municipality of attachment). The application process is straightforward and familiar to anyone in the business of attaching to utility poles. Going forward this will all be done electronically within Alden One. Accordingly, the paperwork burden to attachers is negligible. It is true that for joint owned poles with CCI, the attacher must also apply to CCI, but presumably CCI's forms are similar and CCI has informational needs that are slightly different than Versant, as any work typically involves work within the communications space.

There are also practical reasons why an applicant needs to apply and provide information to both CCI and Versant on joint owned poles. Versant is by necessity responsible for any of its

discussions over the summer that rule changes should not be necessary at this time, but rather their proposals can be discussed in the context of practical suggestions to changes in practice at this time.

costs occurred to accommodate make-ready occasioned by matters affecting its electrical facilities and, as noted above, CCI is primarily responsible for matters affecting the communications space. No single application or process will, to Versant's knowledge, alleviate the practical need to involve both public utilities in the process. Nevertheless, Versant is open to working with stakeholders and CCI to refine the joint owner application processes, where practical, perhaps within Alden One once CCI implements Alden One.

b. Contractor Qualifications

The responsibility for ensuring that contractors are qualified to work on utility poles rests with the attaching entity. The MCA Paper and some commentators have requested that the pole owner adopt specific approval processes. Versant is not in the position of approving the qualifications of contractors for attachers, and legally should not be expected to take on that obligation or liability whether or not they have the right to do so as an owner. The work is being performed on behalf of the attacher and the contractors are engaged by the attacher. No party disputes that in construction agreements this requirement properly rests between the party contracting for a service and the contractor. Each attacher is normally expected to require the contractor to certify as to their credentials, experiences and technical knowledge, as well as their knowledge of safety laws and codes. Also, what constitutes a qualified contractor in the pole attachment industry is well understood, and certification requirements of the contractor are spelled out in Chapter 880.[25]

Versant does not employ a requirement that an attacher use a set list of contractors. Rather, Versant only requires that the attacher represent in the standard pole attachment that it will only employ contractors with the requisite training and experience in the industry with requisite

[25] *See e.g.,* 65-407 C.M.R. ch. 880 § 10.

knowledge of industry codes, laws and regulations, including Chapter 880 and the NESC. This is the same standard or requirement that any property owner would impose on a licensee or party performing work affecting its property. Each of the broadband providers in this docket are sophisticated, national players in the provision of broadband services, some of whom themselves are pole owners. Each is familiar enough with industry codes and compliance standards and should, in any event, only engage contractors with the requisite expertise, training and experience in the industry to work on utility poles.

Versant respectfully cannot take on the role nor responsibility of an attacher for determining a contractor's qualifications; rather, its standard pole attachment similar to pole attachment agreements across the country, as well as under Chapter 880, properly place this as the responsibility on the attacher. As noted, the parties deploying in Maine—TDS, Crown Castle, GoNetspeed, Charter, GWI and CCI (Fidium)—have years of experience engaging contractors and performing work and are familiar with the industry codes and qualification requirements. To the extent CCI does publish or approve contractors, and broadband provider comments are directed at that process, Versant believes CCI is in the best position to address such comments.

c. Estimates and Payments

Some broadband providers have commented that pole owners should incorporate electronic payments and alter the timing and manner for preparing make-ready estimates, truing up payments and returning unused make-ready payments. Versant notes only that Versant already allows electronic payments so no further action is required to make that happen. In addition, Versant's practice with regard to make-ready payments is to return any unused payment promptly after the work is completed and inspected, and it has received few if any complaints in this regard, so no further change in Versant's practice is necessary or warranted at this time. To the extent their

comments are addressed to the ILEC/CCI practices, Versant is not in a position to address their practices and defers to CCI to address as it considers appropriate.

d. Changes Under Consideration by FCC

Charter/Comcast and Crown Castle/GNS each separately suggest that Maine may wish in the future to consider revising Maine rules regarding pole replacements. Each mentions the FCC's recent 2023 Fourth Report and Order and Declaratory Ruling.[26] Versant does not agree this is necessary in Maine at this time. The FCC declined to substantively revise its own rules, noting that its rules already properly provide that when an attachment request necessitates the transfer of other attachments or the replacement of a utility to accommodate the new attachment, the party requesting the new attachment should bear the cost.[27] The FCC did offer further guidance on when a pole replacement may be necessitated to accommodate the attachment or for some other reason, such as the pole has already been designated by the utility to be replaced or was otherwise at the end of its useful life.[28] The FCC's rule follows the general rule that the party causing the attachment should bear the cost or a proportionate share of the cost is already the practice in Maine. Versant is mindful that the issues raised by Charter/Comcast and Crown Castle/GNS may concern issues they face nationally, but each should agree that there are currently no substantial disagreements in Maine regarding when a pole attachment is the reason for a pole replacement. As reported by Versant, during the period from 2021 to early 2024, there had been 800

[26] 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")(Dec. 13, 2023).
[27] *Id*. a ¶¶ 39-44; 47 C.F.R. §1.1408(b).
[28] *Id.* ¶¶ *para 39-44.* The FCC provided examples of situations where the pole attacher might not bear responsibility but left it to the parties to work out the matter in practice rather than trying to prescribe in advance by rule the result for every conservable scenario and factual circumstance. Examples may include where the replacement already necessitates replacement under applicable state law; the pole currently fails applicable engineering standards and is not otherwise grandfathered; replacement is due to road expansion, property development, or storm damage; or the current pole already is on the utility's internal replacement schedule. *Id.* These situations are currently addressed in the field now and follow similar approaches in practice. Precise rulemaking will only replace the judgment and expertise of field personnel with an advance regulatory dictate that is devoid of necessary information pertaining to the situation at hand. Versant cautions against attempting to mandate by rule decisions that properly require eyes on the pole and vary by circumstances, and as noted are commonly resolved by the parties.

applications for 28,000 new pole attachments. Recent data shows that only 8% of the projects have required make-ready (e.g., transfers) and only 3% involved any pole replacement. Of these, only a fraction required payment from the attacher. [29]

5. The Commission should include in its report a statement that the costs of broadband deployment – while important to the state and supported by Versant – should not be borne by electric ratepayers but rather by those competing to provide broadband service

Versant has made clear its support of broadband expansion in Maine. The Commission however should resist any efforts to shift the costs of broadband deployment onto the backs of electric utilities and their customers. As the Public Advocate cautions in its comments in this docket, the "laws and rules on broadband expansion have an indirect but potentially consequential effect on electric ratepayers." [30] Versant joins the Public Advocate in urging the Commission, in its final report to the Legislature, "to include with its findings a recommendation that electric customers should not be subsidizing pole attachers (or ILECs)".[31] Indeed, as evidenced by the cable and broadband stakeholders in this proceeding, including Comcast, Charter, TDS, Crown Castle, GoNetspeed, and CCI (Fidium), each is a large national provider of services engaged in commercial operations for profit. While their efforts to compete in Maine are welcome to further broadband expansion, their competitive efforts for broadband customers should be borne by them and not the electric pole owners and their electricity customers. Current laws and rules in Maine governing pole attachment, as well as federal pole attachment rules, properly allocate the costs of accommodating attachments to the competitive providers seeking the attachment. While pole

[29] *Versant Response* (May 10, 2024) at 14.
[30] Maine Office of Public Advocate, *Comments* Dkt No. 2023-00300 (Dec. 26, 2023) at 2; *see also* Office of Public Advocate, *Comments* (May 10, 2024) at 2.
[31] *Id.* at 2.

owners are to provide non-discriminatory access to their poles, the costs of doing so is properly to be borne by the attacher requesting and being permitted access to Maine's electric utility poles.

6. MCA Report and Recommendations.

Versant has reviewed the independent paper filed on September 13, 2024, in this docket entitled "Utility Pole Attachment Study for Broadband" prepared by Benjemin Dinovelli on behalf of the Maine Connectivity Authority" ("MCA Paper "). This is Versant's first opportunity to comment on the MCA Paper.[32]

Versant wishes first to compliment the MCA in its efforts to pull together the survey of state and federal regulatory background, much of which is also laid out in Section I (pages 7 through 46) of the MCA Paper. While the MCA adds some additional information on laws in other jurisdictions, the Commission's final report should mirror the summary provided by the Commission in its *Interim Report*. Similar to the Commission's *Initial Report*, the MCA Paper highlights how far Maine has come in recent years to reform, update and modernize its regulations, such that Maine is now, in all material respects, aligned with or with the implementation of Alden One is at the forefront of existing FCC regulation of pole attachments, and that occurring in other states, including Connecticut, New Hampshire, New York and Vermont.[33] Indeed, this overview underscores that no further regulatory changes are needed to bring Maine in line with other states in New England, and underscores the reasons why some stakeholders in this proceeding have commended these past cooperative efforts of the Legislature,

[32] The MCA initiated three stakeholder workshops in this docket on July 25, 2024, August 1, 2024 and August 28, 2024. During these workshops, the stakeholders were asked to provide feedback on practical improvements that could be made in Maine, including commenting on suggestions of the MCA. The participants were provided an initial draft of the MCA Paper just prior to the final workshop but were not asked to comment on its contents until now.

[33] Versant acknowledges that the FCC is currently reviewing matters such as the allocation pole replacement costs and the handling of large pole applications, the topic of which is discussed previously in these comments.

the Commission, pole owners and attachers to modernize Maine's regulation of pole attachments.[34]

We believe the MCA's efforts can be helpful to improve the information available to stakeholders in Maine. But for the MCA Paper to have acceptance and usefulness for future progress, Versant encourages certain changes or improvements to the report in order to more accurately reflect the record in this proceeding and any remaining challenges requiring attention existing in pole administration.

To this end, Versant has made several suggestions in these comments, and respectfully offers the following additional comments:

1. <u>Data regarding the Chapter 880 timelines</u>

The MCA Paper states at page 49 "First and foremost the timelines in Chapter 880 are not being met."[35] It then goes on to state that as a result, pole attachers cannot predict how long the process will take or cost.[36] This misinterprets the data and comments supplied by providers in this docket as explained in these comments and during the workshops held in this docket. In fact, the data shows that the timelines were on average being met. This section also suggests the data was inconsistent, when in fact the data provided by the electric pole owners was provided in a manner consistent with the Commission's request in its March 5, 2024, procedural order requesting this data from pole owners.[37] CCI did not provide any data, but the information from Versant and CMP addressed the request data as to all poles owned solely and jointly. The MCA Paper seems

[34] These rule changes and regulatory proceedings are extensively reported in the Commission's Interim Report Pursuant to Resolve 2023, ch. 81 Resolve to Study the Effect of Current Laws and Rules on the Expansion of Broadband (LD 1456) (Feb. 15, 2024); *see also* MCA Paper at 18-25. *See e.g.,* Crown Castle/GoNetspeed, Dkt No. 2023-00300, *Initial Comments (*Jan. 12, 2024) at 1 ("progress is being made, and from the perspective of the Broadband Providers, the pole attachment regime in Maine is better than many.")
[35] MCA Paper at 49.
[36] *Id.*
[37] Procedural Order (Mar. 25, 2024) at 1.

to draw inconsistencies of its own making by referring to scant references made by one set of the broadband providers, Crown Castle/GNS, but by their own account they indicated that they did not "maintain information" that would enable a response.[38] The only information provided by either had to do with specific projects which were as explained previously in these comments completed within the Chapter 880 timelines but involved re-do work by the contractor to address construction concerns before a license could be issued.

2. Navigating the application process

Under Section II(C) of the MCA Paper entitled "Inefficiencies in Navigating the Process," the MCA Paper identifies a few items that Versant addresses below.

a. MPUC approval of Joint Use Entities under Chapter 880 Section 3

The MCA Paper states that at least one interviewee complained to the MCA that the Commission's review under Section 3 of Chapter 880 is unnecessary, burdensome, and duplicative of the application process with pole owners, and the MCA Paper suggests this may need to be revisited.[39] This is a misunderstanding of the rule and its purpose. Under Maine law only certain entities are permitted to attach to Maine utility poles. 35-A M.R.S. § 711(1). These entities are defined as "Joint Use Entities" under Chapter 880 § 1(N). Whether a party in the first instance is a "Joint Use Entity" entitled to attach to Maine poles is a legal question to be determined in the first instance by the Commission. In addition, to avoid concerns that new entrants in Maine must at a minimum possess the requisite technical and financial capabilities to meet obligations as a Joint Use Entity, the Commission requires the party to apply to the Commission for this determination. 65-407 C.M.R. ch. 880 § 3. These are not roles played by the joint pole owners.

[38] Crown Castle/GNS *Response* (May 10, 2024) at 1-2.
[39] MCA Paper at 55.

In adopting this rule the Commission stated: The process of requiring new attaching entities to first seek a determination from the Commission that they qualify as a Joint Use Entity is "reasonable to all new entities, and is not overly burdensome and captures the intent of the statutory requirements in 35-A M.R.S. § 711(1) that a joint-use entity has the technical and financial and financial capabilities to fulfill its obligations related to such joint-use." [40]

Accordingly, the application process is anything other than duplicative but rather is the single place that the determination is made. Indeed, Versant requires that each attacher either be an existing attacher or, if new to Maine, have received this determination from the Commission. Versant does not independently make the same determination. Versant respectfully asks that the MCA Paper be revised to remove this as an impediment to the application process as there is no clear evidence to the contrary presented in this docket.

b. **Standardize Pole Agreements**

The MCA Paper states that there should be a standardized pole attachment agreement used by pole owners. To clarify, Versant and CCI each have a standard pole attachment agreement in place so there is no need for separate negotiations. As noted above, pole attachers sign a standard pole attachment agreement with Versant. Versant uses a standard agreement to not only insure the interests of Versant and its customers are protected from use of Versant poles, but that all attachers follow the same rules, including safety rules and standards and make ready obligations, pay the same rates under Chapter 880, are charged the same amount for make ready work, and that access to Versant poles is provided in a non-discriminatory manner.

3. Policy Initiatives

[40] Maine Public Utilities Commission, Amendment to Chapter 880 – Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure, Dkt No. 2017-00247, Order Amending Rule (Jan. 12, 2018) at 27-28.

As noted above, Versant agrees with the MCA that time is better spent elsewhere than further revising Maines laws and regulations. Compliance by all stakeholders with existing Chapter 880 changes when combined with full implementation and use of Alden One should prove an appropriate regulatory framework and improved automation of the process over the coming years to support upcoming broadband deployment. The MCA Paper does offer some "down the road" policy concepts at pages 72-76 that Versant has addressed elsewhere in these comments and in prior dockets, and further addresses here.

a. **Pole Administrator**

No party in this proceeding called for a third party pole administrator during any of the workshops in this docket, yet the MCA Paper alludes to this as possible future policy initiative. Versant would clearly be opposed to any effort by any entity to take over its ability to manage and administer its own poles, as should anyone concerned about the safe and reliable electric delivery service in Maine. Versant as a public utility is obligated to operate and manage its utility poles in compliance with Maine law, and to ensure the safe and reliable delivery of electricity to its customers, no third party should have any ability to manage the poles other than the electric pole utility. Versant hopes that this notion of a single third party pole administrator or manager will give way to more serious considerations such as placing policy efforts on ensuring that Joint Use Entities construct and maintain attachments to utility pole in a responsible and safe manner, and comply with existing regulations, standard contracts and safety standards.

b. Increasing the Authority of the Commission

The MCA Paper suggests in the future the legislature may wish to increase the authority of the Commission to enforce Chapter 880. It is unclear from what source this suggestion comes, but the suggestion is unnecessary and misguided. First, no stakeholder in these proceedings has

questioned the authority of the Commission to adopt Chapter 880 and or enforce its rules, which include resolving disputes through an existing rapid response dispute process. Second, all attachments are subject to standard pole attachment contracts and contract enforcement. Adding new prescriptive obligations and specific financial penalty in Chapter 880, as was one suggestion of the MCA, would not only alter the entire framework of pole attachment administration and existing contracts Maine, such draconian measures would conflict with existing contracts, and notably would place Maine at odds with the FCC pole attachment regulatory scheme.

Chapter 880 follows from years of cooperative rulemaking efforts and offers a balanced and responsible approach to pole administration in Maine. These rules allow the pole owner and attacher to use reasonable efforts to meet known time periods, while being able to work through project schedules as circumstances on the ground or unique to a project demand. Further changes are not needed.

Versant respectfully submits these comments and asks the Commission to consider these comments together with previous comments made by it in this docket.

Respectfully submitted, ,

James L. Costello
Attorney for Versant Power

/s/ Steve Pasquine
Steve Pasquine
Program Manager, Joint Use Infrastructure
Versant Power

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2023-00300

October 11, 2024

MAINE PUBLIC UTILITIES COMMISSION Inquiry To Facilitate Preparation of LD 1456 Report	))))	CMP'S COMMENTS IN RESPONSE TO PROCEDURAL ORDER

Central Maine Power Company ("CMP" or the "Company") provides the following comments in response to the Maine Public Utilities Commission's ("MPUC" or the "Commission") September 5, 2024 Procedural Order. While the Procedural Order invites comments on all filings, topics, and subjects raised in the Inquiry to date, CMP's comments herein are largely in response to the Maine Connectivity Authority's ("MCA") report titled "Utility Pole Attachment Study for Broadband" (hereinafter the "Report") submitted in this docket on September 13, 2024.

CMP supports efforts to expand access to reliable high-speed internet service throughout the State of Maine and is committed to providing safe, nondiscriminatory access to its joint use poles on just and reasonable terms. 35-A M.R.S.A. § 711(4). In anticipation of the influx of federal funding and the rapid expansion of broadband in Maine, CMP has taken several steps to improve efficiency and meet the moment – CMP conducted an audit of all attachments on its poles to ensure records were accurate; CMP has staffed up its joint use and field planning teams to be responsive to pole attachment requests; CMP has standardized its pole attachment agreements to help ensure pole attachers operate on the same terms and conditions; CMP strongly advocated for and deployed Alden Systems' Alden One joint use pole attachment and notification system to improve the efficiency and ease of the pole attachment process in its service territory; and CMP has provided trainings and held itself out as a resource for attaching entities. In many respects,

CMP views itself as a partner in meeting Maine's broadband goals.

CMP is disappointed by the MCA's report. While CMP agrees with recommendations for more training, more communication between stakeholders, and efforts to improve the labor force, the Report conveys bias against pole owners, makes inaccurate statements, and recommends solutions in search of a problem. This is troubling given that during this Inquiry pole owners and attachers have expressed agreement that Maine has a very strong legal and regulatory framework for pole attachments; that the pole attachment process works; and that it is improving.

II. PROCEDURAL BACKGROUND

The Commission commenced this Inquiry to gather information to assist in preparing reports to the Legislature 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"). Before the Inquiry commenced, Commission Staff hosted an informal meeting on October 18, 2023 with the pole owners and the MCA. During the meeting pole owners discussed information and data that could be provided in response to the four topic areas identified in the Resolve. After the informal meeting, on November 10, 2023, CMP sent a letter to Commission Staff to summarize the types of data CMP can provide to help the Commission respond to the questions in the Resolve.

In December 2023, the Commission invited other interested parties to submit comments on their experiences with the pole attachment process in Maine. In response pole attaching entities submitted comments in the docket. Then, on February 9, 2024, CMP and Versant Power ("Versant") submitted Joint Comments to assist the Commission in its preparation of its Interim Report to the Legislature as required by the Resolve, and to clarify some of the matters raised by the pole attaching entities in their comments. On February 15, 2024, the Commission submitted its Interim Report to the Legislature's Joint Standing Committee on Energy, Utilities, and

Technology ("EUT Committee") as required by the Resolve. Appendix A of the Interim Report included the comments that parties had submitted in the docket.

On March 25, 2024, the Commission issued information requests to pole owners and attachers. On May 10, 2024, CMP provided detailed responses to the information requests, including Exhibit A, which provides in-depth data on the average times it takes CMP to complete certain stages of the pole attachment application process, as well as times to complete certain stages of the process when work is required on a pole managed by an Incumbent Local Exchange Carrier ("ILEC" or telephone company).

On July 3, 2024, the Commission issued a Procedural Order advising that the MCA will be conducting three workshops to further discuss issues related to pole attachments – a pole owner workshop that took place on July 25th; a pole attacher workshop that took place on August 1st; and a combined pole owner and attacher workshop that took place on August 28th. On August 26th the MCA shared a 79 page draft of its Report in advance of the August 28th workshop. On September 13th the MCA submitted the final draft of its Report, which was essentially unchanged from the draft the MCA had previously shared.

III. CMP'S RESPONSE TO THE MCA'S REPORT

a. The MCA's Report is inherently biased

The MCA is a quasi-governmental agency charged with achieving universal access to reliable and affordable high-speed internet service statewide. In furtherance of its mission the MCA wears many hats: It is a special interest advocacy group engaged in legislative efforts; it is the administrator of significant federal funds; and it is a major pole attacher given its interest in developing its MOOSE Net project. Given the MCA's self-interest, the MCA's involvement in this Inquiry is inherently biased.

The MCA's report reflects the MCA's inherent bias. There is a general undertone throughout the report that pole owners and Maine's regulatory framework are to blame for the challenges in the pole attachment process. For example, the MCA: (a) claims the process is complex and opaque; (b) asserts that the requirement of pole attachment agreements (which include necessary terms to address liability risks like indemnification and insurance requirements) are an inefficiency in the process; (c) recommends "expanding the powers of the Commission (or other state entities)" to further regulate the pole attachment space; and (d) recommends possible structural changes in the future like establishing a single pole administrator or pole owner. Moreover, the Report takes liberties with citations, ascribing statements and conclusions to parties' filings that are not actually supported by the citations.[1]

The Report's statements and recommendations, however, are disconnected from the overall feedback provided by pole owners and attachers during the workshops. Notably, the recommendations to seek legislation to expand the powers of the Maine PUC and implement structural changes were not discussed during the MCA's workshops. In fact, during the pole attacher workshop, Charter -- one of the largest and most experienced attachers in the State – stated that they are working well with pole owners in Maine and Maine's pole attachment rules should be the baseline standard for the country.

[1] For example, page 73 the Report states, "CMP, as previously mentioned, noted that it has various standards it must meet, including the National Electric Safety Code, *which it did not trust a third party to handle*," and the Report cited to CMP's November 19, 2021 Initial Comments in Docket No. 2021-0032. But nowhere in those comments does it say CMP does not trust a third party to handle NESC compliance. Rather, the comments state that CMP is best equipped to ensure compliance with the safety of infrastructure supporting the use of utility lines and the lines of attachers.

In addition, page 63 of the Report states, "However, despite the existence of this provision, not all municipalities have claimed this make ready exemption *due to ambiguity around its usage*," citing to CMP's May 10, 2024 Response to Information Requests. But at no time did CMP state there was ambiguity around municipal make ready exemption. Rather, CMP merely stated that not all municipalities have claimed the exemption.

b. The Legal and Regulatory Framework for Pole Attachments Works and the Process is Improving

The current legal and regulatory framework for pole attachments works. The Legislature delegated authority to the Commission to promulgate rules and the regulatory framework for pole attachments in Maine. 35-A M.R.S.A. § 711. Pursuant to its statutory authority the Commission has established terms and conditions under Chapter 880 of the Commission's rules that are presumed to be "reasonable" for the joint use of utility poles. Those rules are presumptive and not prescriptive. Chapter 880 expressly recognizes the rights of pole owners and attachers to enter into negotiated pole attachment agreements with terms and conditions that may differ from Chapter 880. Chapter 880, § 7. The existence of pole attachment agreements pre-dates Chapter 880, and the terms of those agreements include essential terms that are not included in Chapter 880 – including indemnity, insurance, and surety clauses to properly allocate responsibilities, risk, and liabilities between pole owners and attachers. In general, CMP has adopted the terms and conditions in Chapter 880 and CMP's more recent pole attachment agreements refer to Chapter 880. Underlying this legal and regulatory framework is the recognition that pole owners have constitutionally protected rights as owners – including the right to contract – that could be violated if prescriptive rules were imposed.

As detailed in the Commission's Interim Report, over the past six years the Commission has conducted several inquiries and rulemakings designed to improve the pole attachment process. Those rulemakings include the adoption of the FCC's "Cable Rate" formula, the so-called municipal make ready exemption, the rules regarding One Touch Make Ready ("OTMR"), and the requirement for all pole attachers to participate in the use of Alden One. These rules were adopted with substantial input from all stakeholders.

While stakeholders are still learning how to implement and work under these rules, these

rules are improving the efficiency, coordination, and timeframe for the completion of pole attachment work, and as parties continue to use Alden One the timeframes will improve. Accordingly, while two of recommendations in the MCA's report suggest legislative actions to expand the power of the Commission and/or implement structural changes to pole administration and ownership, there is no need for doing so. And as recognized by parties in this Inquiry, efforts to implement sweeping changes would be detrimental to achieving the State's goal of rapidly expanding access to broadband.

c. The MCA's Report Improperly Characterizes Alden One

CMP and Versant led the efforts to implement Alden One. CMP has been using Alden One since May 9, 2023. Alden One may ultimately have the greatest impact of any of the recent rule changes on improving the timeframes for completion of different stages of the pole attachment process. The data CMP submitted in this Inquiry shows that Alden One is improving the efficiency of the pole attachment process.

It is worth noting, however, that the MCA's report makes some erroneous statements about Alden One. First, the MCA's report incorrectly suggests that Alden One was proposed by pole owners "in exchange" for other issues like pole ownership, pole administration, and pole replacement costs not being pursued.[2] The report's citation for this statement is not correct. Alden One was never proposed by pole owners as a quid pro quo or a tradeoff. Rather, the pole owners proposed Alden One because it was an obvious solution to improving the efficiency of the pole attachment process, and the pole attachers and the Commission agreed.[3] Second, the MCA's report implies that the purpose of Alden One is to give pole attachers access to data about poles.[4]

[2] MCA Report, p. 25.
[3] CMP has been outspoken about the need for a centralized pole management and notification system for years. *See e.g. CMP's December 11, 2019 Comments*, Docket No. 2019-00223.
[4] MCA Report, pp. 6 and 58.

That is not correct either – Alden One is a centralized pole management and notification system that improves the efficiency and ease of the pole attachment process. The purpose of Alden One was not simply to provide pole attachers access to data about poles. In addition, Alden One is not a design and engineering tool, it does not replace the need for field surveys related to pole attachment work, and it is not an appropriate place to list contractors who are qualified to work on utility poles.

d. The MCA's Report's Information on Timelines for Pole Attachment Work is Incorrect

The MCA Report fails to accurately report information on the number of days it takes to complete different stages of the Chapter 880 process. Page 47 of the Report includes a chart that purports to state the number of days it takes to perform different stages of the pole attachment process between 2021 and 2023, even though the Report states that it is unclear whether the data reported by pole owners and attachers is comparable.[5] Notably, the chart does not even accurately characterize the data – the Commission sought information on the "average duration from application received to license issuance," but the chart seems to report on the average duration from "application reviewed to survey." In addition, the chart reports on the time until issuance of a "License (w/ Complex [make ready])," but it does not appear that data was requested in this proceeding, and it is not clear how the data in the Report aligns with the data that CMP provided. Given the inaccuracies the chart on page 47 should be struck from the record.

In contrast, on May 10, 2024, in response to the Commission's Information Requests, CMP provided Exhibit A (attached hereto), which fully responds to the Commission's Information Requests with a granular breakdown of data between 2021 and the present (as of May 2024).[6]

[5] MCA Report, p. 48.
[6] CMP continues to provide updates on the volume of applications received as part of its quarterly reporting on Alden One in MPUC Docket 2021-00321.

CMP's data in Exhibit A clearly shows the following. First, that Alden One is improving the efficiency of the pole attachment process. At the same time that the volume of work associated with pole attachment applications increased, the amount of time it has taken CMP to complete various stages of the pole attachment process has remained flat or decreased. Second, the data shows on average that CMP meets the Chapter 880 timeframes, even though the 2021-2023 timeframe included significant challenges, including COVID-19 work restrictions, labor shortages, and supply chain issues. Third, the data shows that when a pole attachment application requires CMP to complete the make ready work, the timeline for completion of work is significantly faster compared to when an application requires a telephone company (like CCI or TDS) to perform the make ready work. Moreover, the data shows that the number of open applications that are held up pending pole sets in the maintenance area of a telephone company has substantially increased. It is surprising that these observations and conclusions are absent from the MCA's Report.

e. The Pole Attachment Process is Not Opaque

CMP disagrees with the MCA's assertion that the pole attachment process is opaque with respect to costs, data, and timelines. This is not a new conclusion in the report – rather it is the MCA's long-standing thesis statement that the MCA seems intent on promoting. Since at least spring 2023, the MCA has publicly argued on its website that the pole attachment process is "daunting and opaque."[7]

In the Report the MCA makes the assertion that "the process can be more transparent in ways that make it easier for parties to apply for pole attachments or pole owners to facilitate requests," but the Report does not provide any context for this statement. MCA Report, at p. 49.

[7] https://web.archive.org/web/20230505202441/https:/www.maineconnectivity.org/utility-poles (showing the content of the MCA's webpage on May 5, 2023.

The Report also claims there is a "lack of clarity on how either the OTMR or self help remedy processes work and on how to onboard new contractors to do such work." MCA Report, at p. 6. As explained below, CMP does not believe these statements are accurate or applicable to CMP.

i. The Rules Are Clear

CMP strongly disagrees with the MCA's assertion that the process is opaque or unclear. Rather, as the Report notes, the issue is that some stakeholders simply don't know the rules for pole attachments, or they don't like the rules and refuse to accept them. As the Report states:

> "[P]art of the challenge seems to be a lack of understanding of what Chapter 880 does or does not allow. In several instances, stakeholders and interviewees have wished that Chapter 880 include certain features that appear to already exist in Chapter 880. Stakeholders may not be fully informed about what their rights or responsibilities are under Chapter 880, and thus may benefit from a better reading of what the current regulations permit or prohibit."

Id. This statement hits the nail on the head.

The rules governing the pole attachment process are clear and can be learned using a handful of publicly available resources, including Chapter 880, a standard pole attachment agreement, the T&D utilities' distribution line standards, the National Electric Safety Code (NESC), and the Telcordia Standards. Entities seeking to attach facilities to joint use poles should be familiar with these resources. In addition, CMP's Joint Use team has a webpage dedicated to Pole Attachment Services, and has an email address where any questions about the process may be directed.[8] While the Report states "some attachers have claimed that they have had difficulty reaching staff of the pole owners or did not receive answers to calls or emails for several days from the pole owners," CMP is not aware of any instances where this statement could be attributed to CMP. To the contrary, as CMP stated above and during this Inquiry, CMP has added staff; offers itself as a resource to pole attachers; and has hosted several training sessions on Alden One for

[8] https://www.cmpco.com/w/pole-attachment-services

attaching entities and their employees and has provided providing personalized one-on-one support when they have questions.

ii. Costs And Billing Processes Are as Clear as Possible

CMP also disagrees with the Report's claim that there is a lack of transparency with respect to project costs. There appear to be three main issues argued in the Report on this issue: (1) pole attachers would like to know what their project will cost up front, before a field survey is completed; (2) pole attachers question the processes for billing payments and refunds; and (3) pole attachers question their responsibility for new poles required by their projects.

With respect to project costs and billing practices, as has been stated during this Inquiry, it is not possible to know what a pole attacher's project will cost at the beginning of its project because a field survey is required to assess any make-ready work needed to make space for a new attachment, including whether poles need to be replaced due to condition and/or pole height, whether new guys and anchors are required, and the extent to which other facilities attached to a pole need to be moved to accommodate the new attachment.

As soon as the field survey and field planning design work is complete an estimate is provided to the applicant for the new pole attachment. Any required make-ready work commences once payment is received based on that estimate. It is rare for a circumstance to arise in which CMP owes a refund for overpayment made by an applicant for a new pole attachment. In general, CMP's estimated cost is the final project bill for make ready. When a refund is due CMP works to timely process it. The criticism on these issues in the MCA's Report does not appear to be directed at CMP.

With respect to pole replacement costs, CMP provided a detailed explanation of how pole replacement costs are determined in CMP's May 10, 2024 response to the Commission's

Information Requests. Pole replacement costs are allocated based on cost causation principles. During a field survey it is determined which work is billable make ready work, and which work is non-billable make ready work. Billable make ready work is work that but for the pole attachment request would not be necessary. Non-billable make ready work is work related to the correction of an existing issue – so if it is determined in the field that a pole would have needed to be replaced based on its condition regardless of the new attachment, then the pole replacement is considered non-billable work and costs are not passed to pole attachers. CMP charges pole attachers the costs outlined in the make ready estimate based on pricing for time and materials.

iii. OTMR, Self Help, and Contractors

The suggestion that there is a lack of clarity regarding OTMR, self-help, and which contractors are authorized to perform work is not a criticism that should be directed towards CMP. The rules regarding OTMR and self help are included in Chapter 880. When there is OTMR or self help proposed in the communications space on a pole, CMP defers to the attaching entities or the ILEC on which contractors they deem qualified to work in the communications space. That said, there have been instances where CMP has observed work performed by those contractors that has not complied with safety standards and CMP has had to address those issues. In contrast, the issue of self help in the electric space on a pole has only been raised with CMP by one attacher, and CMP worked with that attacher to identify their contractor options given the high safety risks and specialized skills associated with the work in the electric space. The reality is that there are not many contractors qualified or willing to do work in the electric space on a pole.

f. The MCA's Report Fails to Appreciate that Safety Is Paramount

The statements on page 50 of the MCA's Report are surprising and dangerous. On page 50 the MCA's Report states the following:

> Pole attachments can become complex because of the competing goals of the pole owners (safety) and attachers (efficiency)….Attachers, who are trying to attach as quickly and as cheaply as possible … may underweight these risks, since they are not fully internalizing those risks and costs. In contrast, pole owners *want* to maintain a high level of safety standards. If they *allow* an attacher to perform pole work poorly, it will result in additional work for everyone else involved with the pole later on. Even worse, the poor work can cause damage to third parties that they may be liable for. As a result, *they may be too conservative in what they require from attachers or contractors.*

MCA Report, at p. 50 (emphasis added). There should be no doubt – pole owners must maintain a high level of safety standards; pole owners do not allow attachers to perform work poorly; and pole owners cannot be too conservative when it comes to safety. The risks associated with poorly performed work on utility poles are far broader than simply liability for property damage or additional work for other attachers. Poorly performed work on utility poles is a public safety risk that may result in personal injury or death to utility workers and/or members of the public.

CMP has seen the consequences of poorly performed work and dangerous practices by contractors for attaching entities. For example: (1) in January 2023 a contractor was riding in a raised bucket as the truck traveled down the road and died when the bucket struck a utility wire; (2) in 2023 CMP had to issue a safety stand-down to a fiber contractor when it installed fiber in an unsafe manner such that it was located above CMP's neutral when that contractor should have worked with CMP before it installed its fiber; and (3) CMP has seen instances where contractors for attaching entities have damaged CMP's equipment and placed the public at risk of harm. CMP's distribution line standards, the NESC, the Telcordia standards, and provisions in Chapter 880 exist to ensure safety. To suggest that pole owners may be too conservative or should deviate from those standards is troubling, especially after the July 25th pole owners workshop organized by the MCA.

During that workshop the MCA presented the concerns and suggestions of pole attachers

about the process. The pole owners addressed those concerns and suggestions and explained that many of the proposals came at the expense of safety. The pole owners also shared their concerns about poorly performed work observed in the field. For example, field surveys are essential to ensure proposed attachments can be performed safely – this step cannot be replaced with virtual rideouts or a review of data in Alden One. CMP welcomes opportunities to improve efficiency, but CMP is unwilling to compromise safety. Safety is paramount.

g. The Primary Issues Causing Delays are Construction-Based Issues

Aside from the challenges that pole attachers may be experiencing with poles owned or managed by ILECs, this Inquiry has made clear that the primary issues causing delays for pole attachers appear to be construction-based issues – i.e. challenges with communication, coordination, materials, and labor resources. It is unlikely that these construction-based issues can be resolved through changes to regulation or the administration or ownership of joint use poles. The use of Alden One has already shown to reduce the challenges posed by communication and coordination, and CMP expects that Alden One will continue to improve the efficiency of the pole attachment process. Notably, when CMP becomes aware of a project delay, CMP adds a note in Alden One to clearly communicate the reason for the project delay. But more work can be done on these construction-based issues.

CMP agrees with the recommendation in the MCA's Report to establish a working group and pole attachment training sessions. Both would help facilitate communication between stakeholders and relieve some of the actual or perceived issues that may be slowing down the pole attachment process. CMP already established a model for the working group and training session through the trainings CMP organized to teach stakeholders how to use Alden One. CMP would welcome further efforts for such collaboration.

Most critically, efforts need to be made to increase the labor force. There is a shortage of workers trained with skills to work on the communications and electric spaces on joint use utility poles. For this reason, CMP has and continues to support programs like the Electrical Lineworker Technology program at the Kennebec Valley Community College. CMP supports the recommendation in the MCA's Report to dedicate some of the MCA's funding to working with the Maine Community College System and the Department of Labor to help address the labor shortage.

IV. CONCLUSION

CMP appreciates the opportunity to provide these comments. Please contact the undersigned if the Commission has any questions.

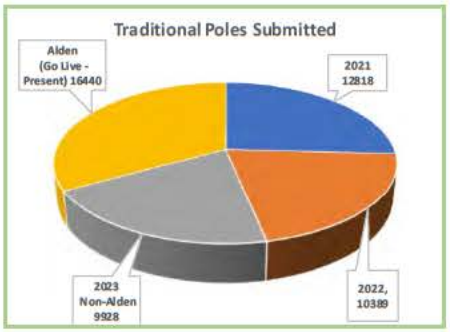
/s/ *Debbie Brill Poulin*

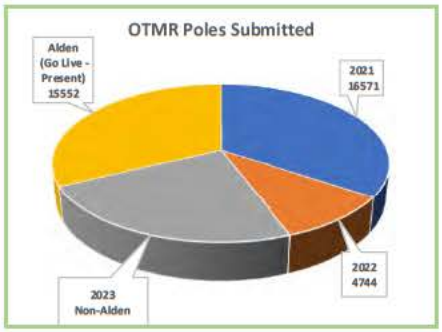
Debbie Brill Poulin
Manager – Joint Use
Central Maine Power Company

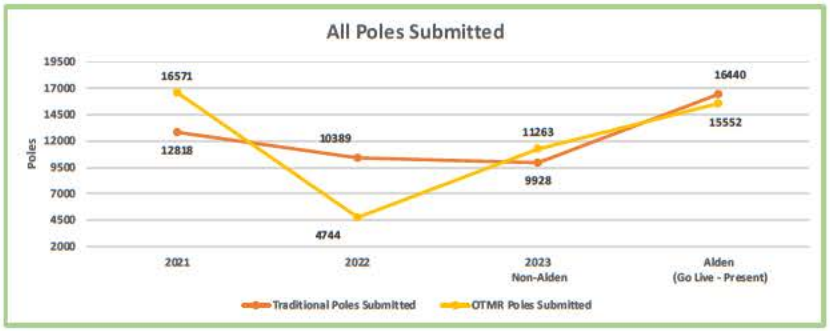
/s/ *Timothy D. Connolly*

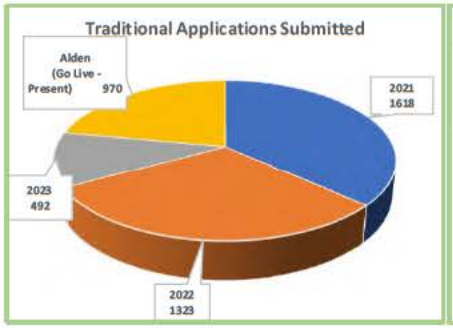
Timothy D. Connolly
Counsel
Central Maine Power Company

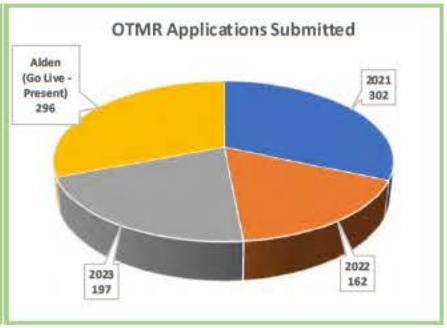
Pie Charts and Graphs below show total numbers of applications submitted and total poles involved in the following charts for applications submitted 2021-April 2024
*** Charts are broken down into data for applications and poles involving One Touch Make Ready (OTMR) and applications and poles involving Traditional timelines**

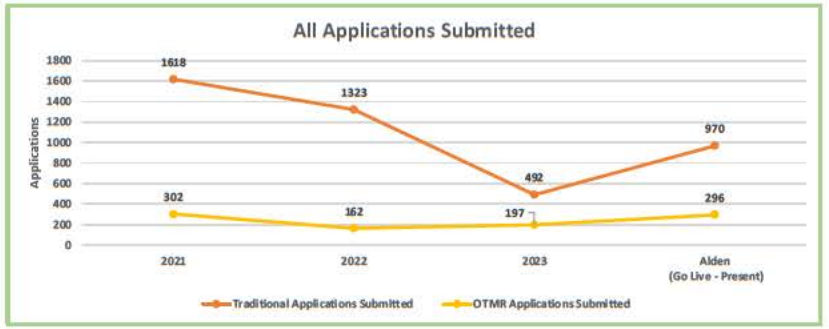








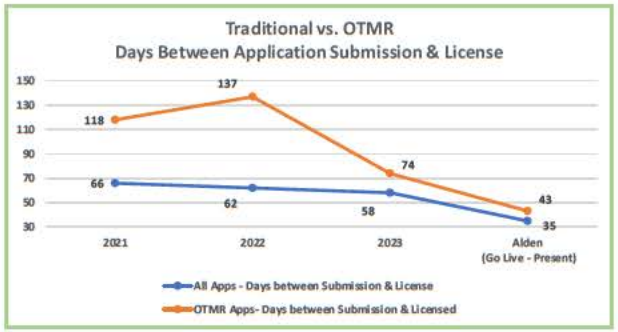




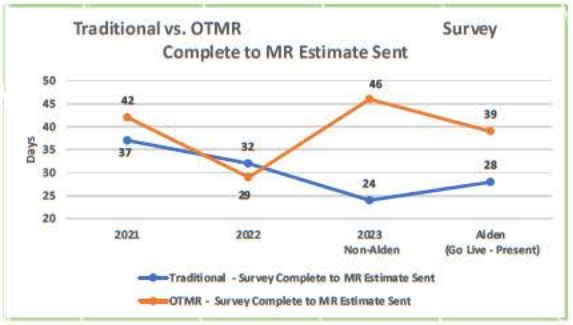
Definitions:

OTMR - One Touch Make Ready as defined by Chapter 880
Traditional - All applications that are submitted outside the OTMR process
Tel Set - Applications that are in a town where CCI is the pole maintainer, or an ILEC is the pole owner
CMP Set - Applications that are in a town where CMP is the pole maintainer or the pole was scheduled for condition replacement prior to application
No-Bill - All work on the application was determined to be non-billable to the Applicant due to condition
Billable - Applications that include at least one billable make ready pole

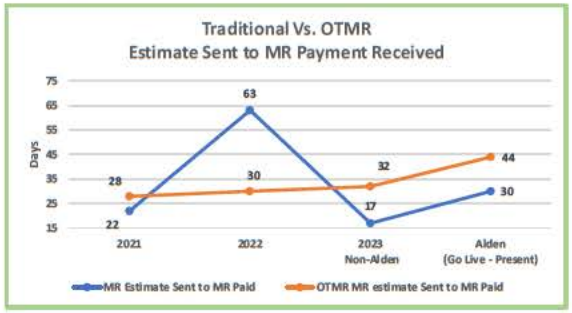
1(a) Average duration from application received to license issuance: For all application types the average is 50 days and the average including OTMR is 75 days



1(b) Average duration from survey complete to make-ready estimate: 35 days

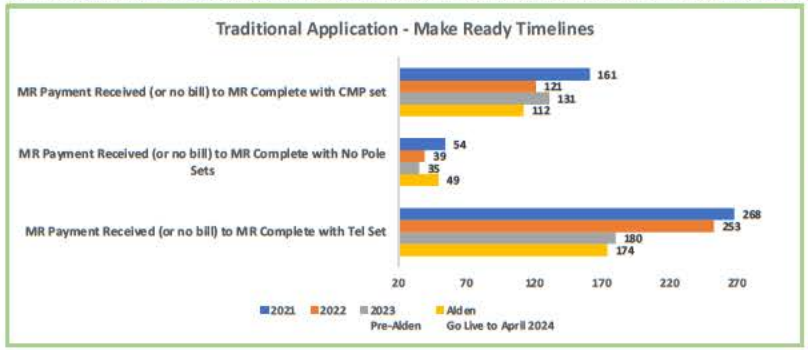


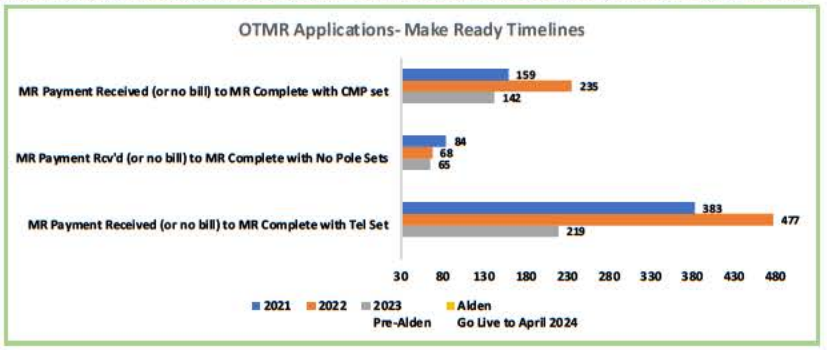
1(c) Average duration from make-ready estimate to receipt of the make-ready payment. 33 days



1(d) Average duration from receipt of make-ready payment to completion of make-ready construction. 162 days

Note- The question as asked does not account for applications where all make ready is non-billable which is a large set of data. These non-billable MR applications have been added below using the date parameters: Survey Complete to Make Ready Complete

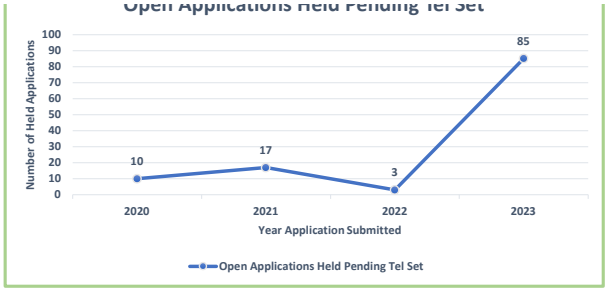




*Not enough Alden data to present for these categories

Number of Open Applications Pending Pole Sets In Tel Maintenance Areas

354 Open CMP Applications Requiring Make Ready - 115 held for tel Set
(All other charts include only closed and licensed applications)


Open Applications Held Pending Tel Set
Number of Held Applications
100
90
80
70
60
50
40
30
20
10
0
10
17
3
85
2020
2021
2022
2023
Year Application Submitted
Open Applications Held Pending Tel Set

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** **October 11, 2024**

SUMMARY

The Office of the Public Advocate (OPA) respectfully provides the following comments in this Inquiry.

The significant costs[1] of the joint-use software system (Alden One)[2] are being unreasonably and unjustly recovered from electric ratepayers. The information collected in this Inquiry, and in other recent proceedings,[3] demonstrates that the transmission and distribution utilities' (T&Ds') electric customers should not be paying for Alden One as they are currently doing, where no benefit flows to them.[4] Additionally, the State of Maine is receiving and deploying over $500 million of funding from the federal government to facilitate broadband expansion.[5] A part of those funds could replace the costs borne by electric ratepayers, and even arguably provide refunds to electric customers.

[1] For example, CMP reported that in 2023 it had paid $134,049.20 for the Alden One subscription, in addition to labor costs associated with the "significant work to implement the program by CMP's team." No. 2023-00300, CMP Response to Information Request (Me. P.U.C. May 10, 2024) at 9, paragraph "f".

[2] 65-407 C.M.R. ch 880, Sect. 1(O)

[3] No. 2023-00058.

[4] *See*, No. 2023-00300, MCA Utility Pole Attachment Study (Me. P.U.C. Sept. 13, 2024) at 52, n. 366 ("Alden One does not currently provide 'any quantifiable savings to Versant' and that the majority of the benefit will likely go to 'users' of Alden One)."

[5] No. 2023-00300, MCA Utility Pole Attachment Study (Me. P.U.C. Sept. 13, 2024) at 2.

The OPA requests for the PUC's report to contain an express recommendation that the Legislature immediately explore ending the current practice of T&Ds passing 100% of their Alden One costs to electric ratepayers.[6]

The OPA suggests a recommendation that the financial incentives/funds being received by the State of Maine be considered to replace the costs currently being recovered from electric ratepayers for any and all pole ownership-related expenses, including but not limited to the implementation and operation of Alden One.

Further, the OPA asks for a recommendation that the Legislature consider whether electric ratepayers could be made whole for the costs they have been unfairly charged.

Finally, as the MCA Broadband Study (page 78, Recommendation 3.a) notes, any legal reforms intended to promote broadband expansion are going to require the telecommunications stakeholders to change their internal processes. The OPA suggests for the PUC to recommend that electric ratepayers should not be on the hook for any of this. That policy change should be made right now, when plans are being crafted to spend the large amounts of funding earmarked for broadband.

COMMENTS

As described in the OPA's previous comments,[7] there are several ways that Maine's laws and rules on broadband expansion have consequential, costly effects on electric ratepayers. At present, the most significant is the substantial cost of Alden One,[8] which Chapter 880 of the PUC's Rules requires all large pole owners[9] and all pole attachers to use.

---

[6] This issue has been raised in No. 2023-00058 (the most recent Chapter 880 rulemaking) and in this Inquiry by the OPA and others, *e.g.,* "In addition, CMP believes there needs to be further discussion regarding the allocation of costs for Alden One between pole owners and attachers." No. 2023-00300, CMP Response to Information Request (Me. P.U.C. May 10, 2024) at 9, paragraph "f", and "Versant continues to maintain that the incremental costs of Alden One should be allocated objectively and fairly among all users of Alden One." ." No. 2023-00300, Versant Power Response (Me. P.U.C. May 10, 2024) at 11.

[7] *See*, No. 2023-00300, OPA Comments re LD 1456 (Me. P.U.C. Dec. 26, 2023) at 2.

[8] 65-407 C.M.R. ch. 880, §§ 1(O), 5(A)(1).

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

Currently, CMP and Versant are recovering 100% of their Alden One costs from electric ratepayers. Not only is CMP recovering Alden One costs for its own poles in its service territory, CMP is also recovering costs from its electric customers for other poles in its service territory that CMP is attached to, "including poles owned or managed by certain ILECs," (emphasis added) which CMP believes "should be covering their respective costs for Alden One."[10]

Alden One was intended to reduce the time frames for pole attachments and improvement in the pole attachment process.[11,12,13] Indeed, CRC Communications LLC, d/b/a GoNetspeed and Crown Castle Fiber LLC (collectively, the "Broadband Providers") have urged the Commission in this Inquiry to enforce the rule that all large pole owners participate in the joint-use software system.[14]

But, how the Alden One system costs should be recovered has never been formally decided. The Broadband Providers state that it is the pole owners who benefit from the Alden One systems such that the pole owners should bear all of the costs.[15,16] CMP and Versant "disagree with the arguments advanced by" the Broadband Providers, and have recently proposed that pole attachers pay 80% and pole owners pay 20% of the system costs.[17] "Versant continues to

---

[10] No. 2023-00300, CMP Response to Information Request (Me. P.U.C. May 10, 2024) at 9, paragraph "f".

[11] *See*, No. 2023-00300, Broadband Providers' Initial Comments (Me. P.U.C. Jan. 12, 2024) at 4.

[12] The Broadband Providers' ask the Commission to "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." No. 2023-00300, Broadband Providers' Initial Comments (Me. P.U.C. Jan. 12, 2024) at 9.

[13] "The important improvement and difference to the process affects and benefits the attachers themselves as was the intention in implementing Alden One." No. 2023-00300, Versant Power Response (Me. P.U.C. May 10, 2024) at 7.

[14] *See*, No. 2023-00300, Broadband Providers' Initial Comments (Me. P.U.C. Jan. 12, 2024) at 4.

[15] No. 2023-00300, Broadband Providers' Initial Comments (Me. P.U.C. Jan. 12, 2024) at 4, 16-19.

[16] This is contradicted by Biddeford Internet Corporation which states "pole owners, pole attachers, prospective attachers and public officials" all stand to benefit from Alden One. No. 2023-00300, Biddeford Internet Corporation's Comments (Me. P.U.C. Jan. 16, 2024) at 2.

[17] Noting that "While GoNetSpeed/Crown Castle do not want to pay for the system, notably they have strong opinions about how they want it designed." No. 2023-00300, CMP & Versant Joint Comments (Me. P.U.C. Feb. 9, 2024) at 7, n. 4.

maintain that the incremental costs of Alden One should be allocated objectively and fairly among all users of Alden One."[18]

The OPA maintains its position that none of the Alden One costs should be borne by electric customers. First, this Inquiry has shown that the notion that Alden One generates benefits that somehow accrue to electric ratepayers is entirely false. To the contrary, the anticipated "increased efficiency"[19] from Alden One has not been realized. CMP stated that "Alden One does not result in cost savings for CMP at this time . . ."[20] (emphasis added) The Broadband Providers describe Alden One as a "work in progress" with "acute" shortcomings that makes "it only fractionally useful at best", and "not even close" to serving the interests of the attachers, requesting parties, and owner/operators.[21,22,23] Biddeford Internet Corporation stated that the features of Alden One which would allow the rapid coordination between pole owners, current attachers and new attachers are "not being used" and "[c]oordination in the Make Ready process is still ad hoc and based on human intervention via email and telephone calls."[24] Also, with inefficiencies that exist in the current attachment application system for jointly owned poles, there is duplicative processing meaning in some circumstances electric ratepayers are paying for work that is also being performed by Consolidated.[25,26]

[18] No. 2023-00300, Versant Power Response (Me. P.U.C. May 10, 2024) at 11.

[19] No. 2023-00300, Broadband Providers' Initial Comments (Me. P.U.C. Jan. 12, 2024) at 19.

[20] No. 2023-00300, CMP Response to Information Request (Me. P.U.C. May 10, 2024) at 9, paragraph "g".

[21] No. 2023-00300, Broadband Providers' Initial Comments (Me. P.U.C. Jan. 12, 2024) at 5.

[22] The Broadband Providers blame Consolidated for this. See, No. 2023-00300, Broadband Providers' Initial Comments (Me. P.U.C. Jan. 12, 2024) at 6.

[23] No. 2023-00300, Broadband Providers' Additional Comments (Me. P.U.C. Feb. 9, 2024) at 4.

[24] No. 2023-00300, Biddeford Internet Corporation's Comments (Me. P.U.C. Jan. 16, 2024) at 2.

[25] No. 2023-00300, Broadband Providers' Initial Comments (Me. P.U.C. Jan. 12, 2024) at 4-5. Attachers must submit two separate applications, one to the power company and one to Consolidated, which then "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."

[26] No. 2023-00300, CMP & Versant Joint Comments (Me. P.U.C. Feb. 9, 2024) at 5.

CONCLUSION

The OPA fully supports the ongoing efforts of the Commission, the participants in this Inquiry, and the Legislature to facilitate deployment of broadband networks to address and improve the social, educational, medical, and economic well-being of Maine's citizens. But, for the reasons described above, the OPA requests for the final PUC's report to contain an express recommendations that: (1) the Legislature immediately explore ending the current practice of T&Ds passing 100% of their Alden One costs to electric ratepayers; (2) the financial incentives/funds being received by the State of Maine be considered to replace the costs currently being recovered from electric ratepayers for any and all pole ownership-related expenses, including but not limited to the implementation and operation of Alden One; (3) the Legislature consider whether electric ratepayers could be made whole for the costs they have been unfairly charged; and, (4) in any legal reforms intended to promote broadband expansion that is going to require the telecommunications stakeholders to change their internal processes, the policy going forward is that costs should not be recovered from electric ratepayers.

Respectfully submitted,

/s/ Kristina R. Winther

Kristina R. Winther
Senior Counsel

/s/Richard P. Hevey

Richard P. Hevey
Senior Counsel

MAINE CONNECTIVITY AUTHORITY

LD 1456 - MCA Recommendations

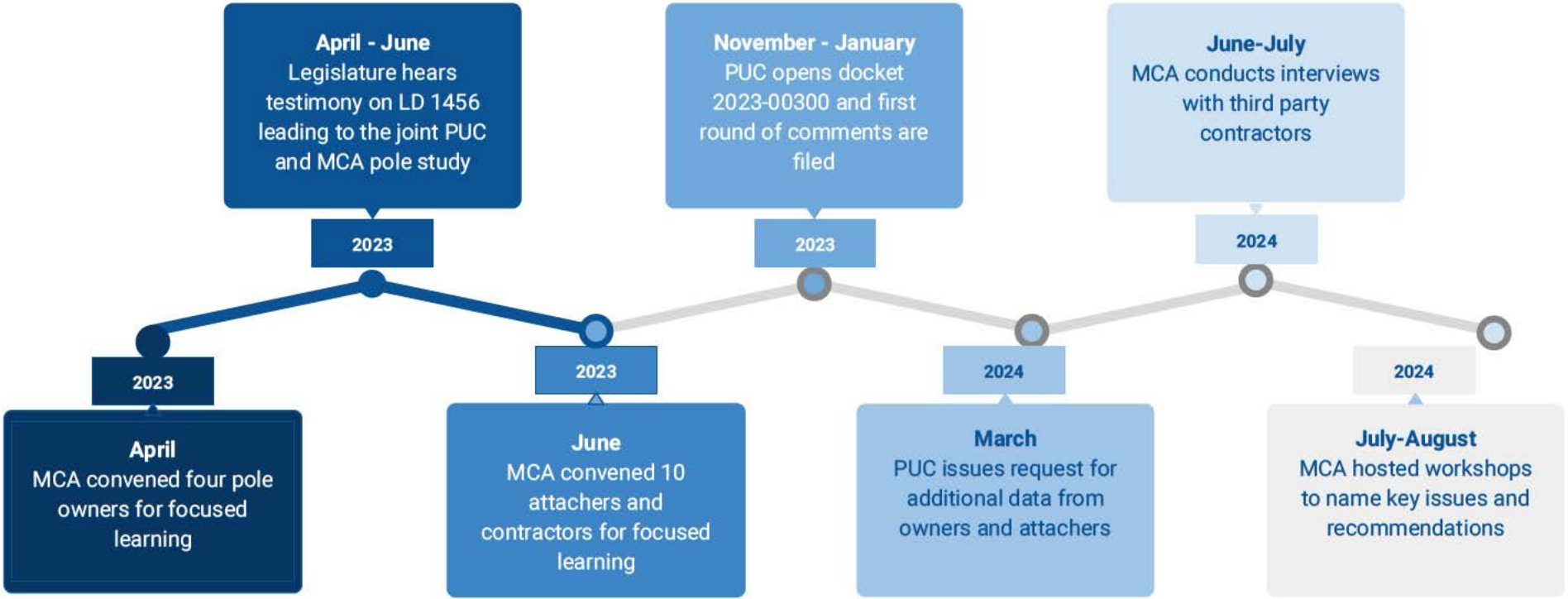
September 13, 2024

Baseline

Overview

- Statutory mandate:
  - To study current pole attachment laws and rules and the effects of those laws and rules on broadband expansion
  - Examine the average time involved for each stage of pole make-ready work including:
    - time for joint use pole owners to approve new attachments for tax-exempt municipalities and private companies
    - ways to decrease or standardize wait times for attachments
  - Submit a final report including findings and any recommendations, including proposed legislation, resulting from the study

Engagement Timeline



Recommendation Development

- How did was the following list generated?
  - Thorough review of nationwide rules, regulations and practices
  - Layered engagement from multiple perspectives
    - Pole owners
    - Pole attachers
    - Subcontractors
    - Industry advisors
  - Collective agreement on key areas to target
  - Applied local recommendations in partnership with national best practices to develop MCA's recommendations

Reflection

MAINE CONNECTIVITY AUTHORITY

- Will this help Maine achieve our broadband deployment goals?
- Are the recommendations proposed at the correct level of intervention?
  - Programmatic vs Regulatory vs Statutory
- Have we adequately addressed the items identified in the Resolve?

MCA believes that the recommendations herein will help Maine achieve our broadband goals and meet the intention of the Resolve.

"An efficient and reliable pole attachment process is critical to MCA achieving universal broadband deployment in a timely manner."

Recommendations

Voluntary / Programmatic Changes

P.1. Create a Utility Pole Working Group - Convene pole owners and attachers monthly for one hour to discuss federally funded deployment plans, strengthen relationships and information exchange, problem solve situations together

- Leverage information to inform MCA or PUC hosted trainings
- Maintains list of appropriate points of contact with each pole owner
- Facilitates earlier engagement with pole owners on build plans
- Collectively discuss new Alden One features to bring online in subsequent phases
- Engage public and private entities in regular, productive dialogue

Recommendations

Voluntary / Programmatic Changes

P.1.a. Informational Materials

- Pole owners and MCA or PUC create a standard list of information available for attachers, similar to: https://www.nyseg.com/w/pole-attachment-services
- Share baseline information on engineering standards
- Chapter 880 learning sessions

Recommendations

Voluntary / Programmatic Changes

P.2. Standardize pole contracting - Voluntary or Regulatory

- Pole contracts reviewed by owners to minimize differences
- Agree on when liability insurance is needed (before contracting, before attaching, etc)
- Amount of surety bonds required - price per pole or other amount
- Number of poles per application
- Number of poles in the system at a given time

Recommendations

Voluntary / Programmatic Changes

P.3. Funding for Staff Support

- create grant programs that allow pole owners, attachers, and/or consultants to take on additional staffing and resources and/or
- create grant programs downstream that facilitate education and training to increase the size of the labor pool

Recommendations

Voluntary / Programmatic Changes

P.4. Establish project meeting schedule

- Attachers responsible to set monthly project meetings with pole owners to review open applications and status.
  - Allows attacher to manage their pole applications and each pole owner to have consistent project meetings with attachers to identify obstacles and timing of licenses

Recommendations

Voluntary / Programmatic Changes

P.5. OTMR

- Process for becoming approved for OTMR work
  - Develop or model a process to approve firms beyond doing work for pole owner
  - Could an approved training expedite approval?
- Publicly available lists of OTMR approved contractors by pole owner

Recommendations

Regulatory Changes

R.1. Conduct a PUC Inquiry to Explore

- **Billing Practices**
  - Update Ch 880 to include enforceable timelines related to billing
  - Include methods for proof of payment (evidence submitted through Alden, image of check, etc)
  - Timeline for processing refunds for overpayments
  - Timeline for charging for underpayments
- **OTMR**
  - Update language to encourage joint rideouts even for OTMR projects
  - Consider adopting rules or standards for approval of OTMR contractors

Feedback

kreardon@maineconnectivity.org

MAINE CONNECTIVITY AUTHORITY

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

PUBLIC UTILITIES COMMISSION **RE: Inquiry to Facilitate Preparation of LD 1456 Report** **Docket No. 2023-00300**	**FINAL COMMENTS OF THE OFFICE OF THE PUBLIC ADVOCATE** **October 25, 2024**

The Office of the Public Advocate (OPA) hereby adopts its Comments filed on October 11, 2024, and respectfully provides the following additional, final comments in this Inquiry.

As we have stated throughout this proceeding, there is no justification or data to support why electric ratepayers are funding 100% of costs[1] of the joint-use software system (Alden One).[2] Thousands of Mainers are struggling to pay their electric bills. During 2023, Central Maine Power Company (CMP) and Versant Power (Versant) had on average approximately 127,000 residential accounts with overdue amounts.[3]

To that end, the OPA fully endorses Versant's recommendation that:

> "The Commission should include in its report a statement that the costs of broadband deployment – while important to the state and supported by Versant – should not be borne by electric ratepayers but rather by those competing to provide broadband service"[4]

[1] For example, CMP reported that in 2023 it had paid $134,049.20 for the Alden One subscription, in addition to labor costs associated with the "significant work to implement the program by CMP's team." No. 2023-00300, CMP Response to Information Request (Me. P.U.C. May 10, 2024) at 9, paragraph "f".

[2] 65-407 C.M.R. ch 880, Sect. 1(O).

[3] CADA-2024-00152, CMP Annual Report of Credit and Collection Activity 2023 (Me. P.U.C. Feb. 15, 2024); CADA-2024-00148, Versant Power Credit and Collections Report (Me. P.U.C. Feb. 15, 2024).

[4] No. 2023-00300, Versant Comments (Me. P.U.C. Oct. 11, 2024) at 18.

It is not surprising that as the T&Ds spend more on Alden-related staffing, IT, and training, the timeframes for pole attachment will improve.[5] But while this benefits the pole attachers and their customers, it does nothing for electric customers except cost them extra money on their electric bills. As the T&Ds have stated, Alden One does not result in cost savings for the T&Ds.[6,7] During the public hearing on the rulemaking to amend Chapter 880 (Docket No. 2023-00058), CMP explained that "but for the . . . large amount of activity being required from broadband attachers and the expansion of broadband, we probably could go without updating our system and foregoing the need for the system with Alden One in the first instance."[8]

The T&Ds have repeatedly proposed that attaching entities should be paying most of the costs of Alden One.[9,10] In Docket No. 2023-00058, the T&Ds stated that having all of the cost of Alden One borne by the electric utilities and their ratepayers "is unfair, unreasonable, and inconsistent with the general approach in pole attachments that the cost causer should bear the costs associated with attachments on utility poles."[11] CRC Communications LLC, d/b/a GoNetspeed and Crown Castle Fiber LLC present long arguments why Alden One should be paid for by "pole owners" but fail to acknowledge that it is electric customers who are paying the bill.[12]

---

[5] No. 2023-00300, CMP Comments (Me. P.U.C. Oct. 11, 2024) at 6.

[6] No. 2023-00300, CMP Response to Information Request (Me. P.U.C. May 10, 2024) at 9, paragraph "g" (" . . . Alden One does not result in cost savings for CMP at this time . . ."). (emphasis added)

[7] No. 2023-00300, MCA Utility Pole Attachment Study (Me. P.U.C. Sept. 13, 2024) at 52, n. 366 ("Alden One does not currently provide 'any quantifiable savings to Versant and that the majority of the benefit will likely go to 'users' of Alden One)." (emphasis added)

[8] *Maine Public Utilities Commission*, Amendments to Chapter 880 of the Commission's Rules, No. 2023-00058, Tr. 19:17-21 (May 2, 2023), (Me. P.U.C. May 4, 2023).

[9] *Maine Public Utilities Commission*, Amendments to Chapter 880 of the Commission's Rules, No. 2023-00058, Versant Power's and CMP's Joint Final Comments (Me. P.U.C. May 19, 2023) at 1, 7.

[10] *See*, No. 2023-00300, Versant Comments (Me. P.U.C. Oct. 11, 2024) at 2, n. 7.

[11] Maine Public Utilities Commission, Amendments to Chapter 880 of the Commission's Rules, No. 2023-00058 Versant Power's and CMP's Joint Final Comments (Me. P.U.C. May 19, 2023) at 7.

[12] No. 2023-00300, Broadband Providers' Comments (Me. P.U.C. Oct. 11, 2024) at 15-19.

The State of Maine is receiving and deploying over $500 million of funding from the federal government to facilitate broadband expansion.[13] A part of those funds could replace the costs borne by electric ratepayers, and even arguably provide refunds to electric customers.

CONCLUSION

The OPA supports the ongoing efforts of the Commission, the participants in this Inquiry, and the Legislature to facilitate deployment of broadband networks to address and improve the social, educational, medical, and economic well-being of Maine's citizens. But, for the reasons described above and in Comments filed on October 11, 2023, the OPA requests for the final PUC's report to contain express recommendations that:

(1) The Legislature immediately explore ending the current practice of T&Ds passing 100% of their Alden One costs to electric ratepayers;

(2) The financial incentives/funds being received by the State of Maine be considered to replace the costs currently being recovered from electric ratepayers for any and all pole ownership-related expenses, including but not limited to the implementation and operation of Alden One;

(3) The Legislature consider whether electric ratepayers could be made whole for the costs they have been unfairly charged; and,

(4) In any legal reforms intended to promote broadband expansion that are going to require the telecommunications stakeholders to change their internal processes, the policy going forward is that costs should not be recovered from electric ratepayers.

Respectfully submitted,

/s/ Kristina R. Winther

Kristina R. Winther
Senior Counsel

/s/Richard P. Hevey

Richard P. Hevey
Senior Counsel

[13] No. 2023-00300, MCA Utility Pole Attachment Study (Me. P.U.C. Sept. 13, 2024) at 2.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2023-00300

PUBLIC UTILITIES COMMISSION
Inquiry to Facilitate Preparation of
LD 1456 Report

Reply Comments of Crown Castle and GoNetspeed in Response to MCA's Policy Proposals

---

There is remarkable consensus that the Commission's pole attachment regulations are working, and working well. First the Commission, and now the Authority, have conducted a series of inquiries, workshops, and, in the Commission's case, rulemakings, designed to improve the pole attachment process and thereby facilitate the deployment of broadband networks so important to improve the social, educational, medical, and economic well-being of Maine's citizens. CRC Communications LLC, d/b/a GoNetspeed ("GoNetspeed") and Crown Castle Fiber LLC ("Crown Castle") (collectively, the "Broadband Providers") agree with Versant Power that "the Commission's final report to the Legislature should . . . reflect a positive message about the work accomplished to date and its successes." Versant October 11 Comments ("Versant Comments") at 4.

But that does not mean that the Commission should declare victory and go home. Instead, as with almost any process, all parties should adopt a philosophy of continual improvement, striving to make a good process even better.

In these Reply Comments, the Broadband Providers address comments by other parties. In certain cases, we refer back to our comments submitted earlier in this docket[1] or in the multiple previous Commission dockets regarding pole attachment issues. We respectfully request that the Commission reread those earlier comments and we incorporate them by reference into our comments here.

I. Summary.

As the Broadband Providers and most if not all commenters have said, the Commission's Chapter 880 rules are generally working and working well. There is no need for major changes. However, some changes would be desirable, in particular, incorporating the substance of recent FCC pronouncements on pole replacement costs, information sharing, and large orders. See Part II below.

OPA and Versant are very wrong in their proposals concerning Alden One implementation and operation costs. Pole attachments and make-ready are legal obligations. CMP and Versant have implemented a labor-saving, efficiency-producing system to automate formerly manual tasks. The

[1] In the afternoon of October 23rd, the Authority filed a corrected version of its document entitled, "LD1456 – MCA Recommendations," originally filed on September 13th. The MCA's October 23rd document will be cited as "MCA Corrected Recommendations" in this filing. Please note that references in our October 11th comments remain to the earlier version of the MCA's Recommendations.

improved efficiency and, presumably, cost savings, substantially benefit the pole owners. All three large pole owners appropriately should bear the system's costs. See Part III below.

Safety is critical but it should not lead to paranoia. Unduly sensitive concerns with safety must not be allowed to impede work or make it more expensive. Versant is entirely correct that attachers are responsible and knowledgeable, and that vetting their choices of contractors is unnecessary. If any vetting of contractors occurs, it should be prompt and criteria should be transparent. See Part IV below.

OTMR should be encouraged, as it is the most efficient way to conduct surveys and make-ready. However, adding steps to the make-ready process, such as contractor approval or additional ride outs, is fraught with possibilities for delay. Any additional steps should only be employed within existing timeframes. See Part V below.

Bureaucratic obstacles should be eliminated. A unitary pole attachment application should be developed. See Part VI below.

The responses to issues of prompt refund of make-ready overpayments and timely back-billing or true-up charges have generally been that it is not a problem and both processes occur in reasonable timeframes. If so, there should be no objection to mandatory deadlines applicable to all owners, whether by contract or rule. See Part VII below.

II. Additional Changes to the Law.

Comcast and Charter (the "Cable Operators"), while generally agreeing that the Maine pole attachment regulatory scheme is working well, suggest certain minor changes to conform the Maine rules with recent changes to the FCC regulations. In particular, they say, the Commission should adopt the revisions contained in the FCC's December 2023 declaratory ruling,[2] specifically: (1) allowing attachers to designate the first 3,000 poles in a large order, thereby making the deadlines for 3,000-pole orders applicable to those poles, rather than the more general, negotiated timeframes for those orders; (2) requiring owners to provide potential attachers with copies of easements and the owner's most recent pole inspection reports; and (3) clarifying what constitutes a "red-tagged" pole, that is, one designated for replacement irrespective of any new pole attachment request for purposes of allocating pole replacement costs. Comments of Charter and Comcast, Oct. 11, 2024 ("Comcast/Charter Comments"), at 3-5.

There is value to adopting these changes. They would help clarify and facilitate the application process by requiring owners to disclose relevant information in their possession, and speed make-ready for large orders by applying specific timeframes to at least part of the project. They should not be controversial, as they already are applicable in the majority of states (those

[2] *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, ¶¶ 39-51 (released Dec. 15, 2023) (https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf).

subject to the FCC rules). And, if the Commission is reluctant to engage in another rulemaking at this time, it could, like the FCC, adopt a declaratory policy that it will apply to any dispute that it adjudicates, for example, via the Rapid Response process.

Contrary to the Authority's suggestion, MCA Corrected Recommendations, p. 12, there is no need to adopt rules and standards for approval of OTMR (and, by extension, self-help) contractors. The rules already specify the qualifications that contractors must possess. There is little to be gained from the time, effort, and money spent developing such rules. See Part IV below.

The Commission also should decline the MCA's invitation to adopt a regulatory change mandating joint ride outs as part of the OTMR process. MCA Corrected Recommendations, p. 12. There is too much danger that adding this additional step will also add delay. Joint ride outs should only be conducted if done within existing make-ready timelines. See Part V below.

There are, however, two related problems that cry out for resolution, whether by regulatory action or other, perhaps voluntary means. These are (1) prompt refunds by owners of make-ready overpayments and (2) time and amount limits on true-up charges asserted by pole owners after make-ready work has been performed. This issue is described in further detail in Part VI below. The Authority recommends that these changes be effected through rules amendment. MCA Corrected Recommendations, p. 12. It may be that the parties voluntarily could agree to such requirements. Failing that, rules amendments may be necessary. See Part VI below.[3]

III. Costs of the Alden One System.

The Office of the Public Advocate again asserts that attachers should pay for the entire cost of implementing the Alden One system mandated by Ch. 880, section 5. The OPA's position is based on the mistaken premise that "no benefit flows" to the T&D utilities from implementation of Alden One. OPA Comments at 1.

This is just plain wrong.

---

[3] The MCA's September 13th Recommendations included a recommendation for statutory changes to authorize imposition of penalties for unauthorized attachments. Sept. 13th MCA Recommendations, p. 17. This no longer appears in the MCA Corrected Recommendations and may be inoperative. If it is still on the table, however, the Broadband Providers agree with Comcast/Charter that there is no need to seek legislation to authorize such penalties. Comcast/Charter Comments at 7-8. Like Comcast/Charter, the Broadband Providers are unaware of problems of a magnitude that would warrant legislative intervention.

Besides, such a suggestion would not be even-handed. Why single out unauthorized attachments for penalties? Why not impose penalties on an owner's failure to perform make-ready activities within the deadlines specified in Ch. 880? Other rules violations might appropriately carry penalties. If any transgressions are to be made subject to penalties, a comprehensive assessment and prioritization should be done so the Legislature has a complete picture of all violative acts.

First and foremost, the pole owners, including T&D utilities CMP and Versant, are not providing pole access and performing make-ready for fun, or out of the goodness of their hearts. They are legally required to do so under federal and Maine law and the Commission's regulations. 47 U.S.C. § 224(f)(1), 35-A M.R.S.A. § 711(1); Ch. 880, § 2(A)(1). The costs of compliance with these obligations, as with any other legal requirement, are costs of doing business and appropriately should be borne by the person who must comply with them.

Second, the OPA's assertion that the owners derive no benefit is contrary to the facts. Substantial efficiencies benefitting the owners will result from implementation of the system. In its October 11 CMP's Comments in Response to Procedural Order ("CMP Comments"), CMP repeatedly extols the efficiency gains that Alden One will bring:

> CMP strongly advocated for and deployed Alden Systems' Alden One joint use pole attachment and notification system to improve the efficiency and ease of the pole attachment process in its service territory . . . . [P. 1]
>
> Alden One may ultimately have the greatest impact of any of the recent rule changes on improving the timeframes for completion of different stages of the pole attachment process. The data CMP submitted in this Inquiry shows that Alden One is improving the efficiency of the pole attachment process. [P. 6.]
>
> Alden One was never proposed by pole owners as a quid pro quo or a tradeoff. Rather, the pole owners proposed Alden One because it was an obvious solution to improving the efficiency of the pole attachment process, and the pole attachers and the Commission agreed. [P. 6; footnote omitted]
>
> Second, the MCA's report implies that the purpose of Alden One is to give pole attachers access to data about poles. That is not correct either – Alden One is a centralized pole management and notification system that improves the efficiency and ease of the pole attachment process. [Pp. 6-7; footnote omitted]
>
> The use of Alden One has already shown to reduce the challenges posed by communication and coordination, and CMP expects that Alden One will continue to improve the efficiency of the pole attachment process. [P. 13]

The Broadband Providers have repeatedly pointed out the benefits the pole owners will enjoy for operation of Alden One — in detail, and based on ***facts*** presented in the various prior proceedings on the issue. In particular, in our March 22, 2022 comments in Docket No. 2021-00321, we explained that CMP and Versant had described eleven activities in the pole attachment process that they asserted Alden One will facilitate. We presented an extensive analysis showing that of those eleven activities, at least eight are performed by owners, not attachers.

In addition, the pole attachment process requires multiple notifications to other parties involved in the process. Alden One will automate those notifications, replacing time consuming manual notifications. Seven of the eleven notifications must be given by owners, not attachers.[4]

These facts have never been refuted. There is no evidence in any of the Commission's proceedings related to Alden One indicating that the owners are anything other than the overwhelming beneficiaries of the system. Automating manual processes, facilitating activities that owners must perform, eliminating paper, and increasing the owners' operating efficiency simply cannot be described as "no benefit." Respectfully, the OPA is simply wrong.[5]

The OPA's argument assumes that electric ratepayers are the sole source of the T&D pole owners' revenues. That, of course, is not the case. The Commission and Authority should be aware that at least one pole owner, CMP, has announced sharp increases — more than 50% — in pole attachment rates for 2025.[6] Needless to say, increased revenue from attaching entities reduces the revenues needed from other sources, such as ratepayers. So, it cannot be said that electric ratepayers are bearing the entire cost of Alden One.

The Commission and Authority should be aware that most pole owners across the country have already implemented some form of Alden One (or another vendor's system) for application processing. These owners adopted such systems not under compulsion of commission orders, but simply as a rational business decision because it made the process more efficient for the company and less burdensome on their employees. Implementing such systems is just a routine cost of doing business for the pole owners, who are required to provide access to their poles. Some sort of additional charge or special assessment on attachers so that Maine's pole owners can catch up to the digital era would put it at odds with other states.

It also is true that to date, only CMP and Versant have borne the cost of Alden One. This is only one of the many problems resulting from Consolidated's disregard of its obligations under Ch. 880. However, that CCI is not sharing in the costs of developing and implementing Alden One is not a problem for the attachers to solve; it is a matter properly addressed to CCI.

---

[4] *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure,* Docket No. 2021-00321, Response of GWI, Crown Castle, and Otelco to Pole Owners' Funding Proposal, March 25, 2022, at 3-5 (copy attached as Attachment 1 and available here).

[5] While Versant concurs that "electric customers should not be subsidizing pole attachers (or ILECs)," Versant Comments at 18, it does ***not*** suggest that owners derive no benefit from Alden One. Presumably, as one of the companies that has deployed Alden One, it knows from firsthand experience the efficiencies and benefits that Alden One provides.

[6] See Attachment 2, CMP's letters dated December 4, 2023 and October 15, 2024, announcing rates for 2024 and 2025, respectively. The increases are just under 52%:

	2024 Rate	2025 Rate	% increase
Solely owned	$13.45	$20.44	51.97%
Jointly owned	$6.73	$10.22	51.86%

IV. Safety.

Safety is not the exclusive concern of the pole owners. The Broadband Providers reiterate that we, like all parties, are concerned with safety. Comcast/Charter aptly stated, "[W]e deeply care about our quality of work because poor workmanship and unsafe attachment practices jeopardize worker and public safety, and the physical integrity – and operational performance – of our communications networks." Comcast/Charter Comments at 10. The Broadband Providers wholeheartedly agree.

And, statements such as CMP's that poor workmanship and accidents occur only as "the consequences of poorly performed work and dangerous practices by contractors for attaching entities" (CMP Comments at 12) are just not true. CMP cites the tragic example of a contractor fatality *Id*. The contractor, however, was not working for an attaching entity; he was engaged by and was performing work on behalf of Consolidated. Attaching entities certainly do not have a monopoly on dangerous practices.

At least one pole owner recognizes this and does not attempt to substitute its judgment for those of the requesting parties. Versant notes that it does not certify contractors or maintain a list of acceptable contractors.

> Each of the broadband providers in this docket are sophisticated, national players in the provision of broadband services, some of whom themselves are pole owners. Each is familiar enough with industry codes and compliance standards and should, in any event, only engage contractors with the requisite expertise, training and experience in the industry to work on utility poles.

Versant Comments at 16. Contractor qualifications are laid out in the Chapter 880 rules at sections 2(A)(10)(a), (b), and (f). The Broadband Providers agree that we are absolutely capable of following these rules and obtaining qualified contractors without the need for supervision by the pole owners.

Other owners should take a similar approach. The process of owners' maintaining lists of approved contractors, attachers' obtaining access to such lists, seeking approval from owners to add contractors to the list, and other procedural steps, is fraught with delay.

Maine's rules do not require owners to maintain such lists. The practice is permitted, however. Ch. 880, § 2(A)(10). If owners maintain such lists, the process for vetting contractors for the list should be transparent, and attachers' requests for additions to the list should be processed without delay.

V. Encourage and Facilitate OTMR But Without Introducing Delay.

In our October 11 Comments, the Broadband Providers quoted the FCC's observation that OTMR speeds broadband deployment by putting the parties most interested in efficiency, new attachers, in control of the survey and make-ready processes. Comments, p. 2.

Pole owner Versant Power agrees.

> When OTMR is properly employed in the manner laid out by Chapter 880 by a contractor meeting the qualification requirements also laid out by Chapter 880, everyone presumably wins because the new attacher makes all of the transfers when it is performing its own attachment work. This is an efficient use of limited resources and allows for speedy deployment when done correctly.

Versant Comments, p.11.

The Authority recommends adding joint ride outs to the OTMR process. MCA Corrected Recommendations, p. 12; *see* Comcast/Charter Comments at 10. A joint ride out is not part of the FCC's OTMR process or its rules.[7] The Broadband Providers reiterate that the Commission and Authority should guard against imposing additional requirements that slow the process down. The current rules provide various opportunities for owners to scrutinize and inspect surveys and work (e.g., §§ 2(A)(9)(a), (b)(iii), (b)(v); 2(A)(13)(b)(ii), (c)(i), (d)). Before imposing new ride-out or other requirements, the Commission and Authority should ensure that owners are actually and fully utilizing existing opportunities, and further that those opportunities, when fully and properly used, are insufficient or inadequate. A requirement for an additional ride out or any other additional procedural step should not be added unless it adds real value to the requirements that are already in place.

Every step added to the process introduces the prospect of delay. What if the owner's representative has a two-week vacation scheduled when a ride out should take place? There is nothing nefarious about that in and of itself — except a delay nevertheless results.

Therefore, any additional procedural steps must be conducted within existing make-ready timeframes. No lengthening of overall make-ready timelines should be accepted.

VI. Eliminate Bureaucratic Obstacles

In our October 11 comments, the Broadband Providers suggested removing bureaucratic obstacles to the pole attachment process, and in particular, eliminating duplicative applications to the electric company and Consolidated. Comments at 4. The Authority's Utility Pole Attachment Study for Broadband ("Study") concurred, noting the inefficient duplication of effort involved in separate applications and the resulting two responses, which sometimes conflict with one another, requiring extra effort to resolve. Study at 56.

Versant took issue with this suggestion, commenting, "There are also practical reasons why an applicant needs to apply and provide information to both CCI and Versant on joint owned poles." Versant Comments at 14.

Respectfully, Versant may have misunderstood the Broadband Providers' point. We do not suggest that an applicant provide information to only one of the joint owners. Rather, we suggested,

[7] The Broadband Providers of course are aware that the FCC rules do not govern in Maine. However, the Chapter 880 rules track the FCC process and rules to a substantial extent. In that light, this observation may be helpful to the Commission and Authority.

and the Authority concurred, that separate applications to the T&D utility and the ILEC, which involve the same poles and routes, are largely duplicative. Versant itself observed that "presumably, CCI's forms are similar" to those of the T&D utilities. Versant Comments at 14. There is no need to make requesting parties incur the effort and expense of providing the same information twice. Accordingly, the Broadband Providers advocate combining the two applications into a single, unitary application, which then would be submitted to both owners for their review.

The Broadband Providers do note, and appreciate, Versant's expression of openness to working toward a refined joint owner application process. Versant Comments at 15.

VII. Reform the Payment Process.

In our October 11 Comments, as well as earlier comments therein cited, the Broadband Providers advocated a mandatory time limit for pole owners to refund overpayments of advance make-ready payments. This particularly occurs in the case of self-help, where the requesting party has paid the entire cost of make-ready up front, then must pay an equivalent amount to a contractor to do the work the advance payment to the owner was supposed to cover. Comments at 5-6. The Authority recognized that this is a problem warranting attention. MCA Corrected Recommendations, p. 12; Study, pp. 56-57.

We suggested that the Commission require 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. Comments at 5.

Versant's Comments stated that its practice "is to return any unused payment promptly after the work is completed and inspected." Versant Comments at 16. CMP states that the circumstances in which a refund is required are rare, and "when a refund is due CMP works to timely process it." CMP Comments at 10. However, no specific timeframes were provided by either. Consolidated did not file comments.

Just because problems have not occurred in the past does not guarantee they will not arise in the future. Versant's and CMP's systems appear capable of timely refund processing. Therefore, these owners should have no problem setting reasonable, uniform deadlines for all owners — both themselves and others — to comply with. Such deadlines also would establish an industry standard within the state, with the result that disputes are less likely to arise.

The Commission, therefore, should require 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.

The Broadband Providers also recommended that true-up charges for make-ready work that owners perform must be billed within a reasonably short timeframe, and capped at a specified percentage, *e.g.,* 20%, of overall charges. Comments at 5-6. Here, too, the Authority recognized the problem (MCA Corrected Recommendations, p. 12; Study, pp. 56-57). No party commented on the

Broadband Providers' suggestion. As with refund deadlines, requiring such a deadline will provide a degree of certainty to attachers and owners alike, and establish an industry standard for all parties to observe.

VIII. Conclusion.

The Broadband Providers have been honored to have participated in the Commission's proceedings related to pole attachments since 2021 or earlier and believe our participation has been helpful. We continue to appreciate the opportunity to participate in the discussion of these important issues.

October 25, 2024

Respectfully Submitted,

Gregory M. Kennan

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

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

ATTACHMENT 1

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2021-00321

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure

RESPONSE OF GWI, CROWN CASTLE, AND OTELCO TO POLE OWNERS' FUNDING PROPOSAL

Biddeford Internet Corp. d/b/a Great Works Internet ("GWI"), Crown Castle Fiber LLC ("Crown Castle"), and Otelco, Inc. ("Otelco") (collectively, the "Broadband Providers") appreciate CMP and Versant's efforts to modernize pole attachment administration. The transmission and distribution ("T&D") companies appear to be engaged in a good-faith effort to improve the process for everyone. However, notwithstanding and not disrespecting these good intentions, the owners' funding proposal is the exact opposite of what it should be. The pole owners, not third-party attachers like the Broadband Providers, should bear the costs of the system.

I. Pole Attachment Administration is Part and Parcel of Pole Ownership.

One issue that has to be addressed head-on, however, is the notion promulgated by the owners that the attachment management database is wholly or essentially for the benefit of attachers, and attachers should solely be responsible for paying for the system. That has it exactly backward. Providing for and administering attachments is an inescapable, legally required aspect of pole ownership. Further, by their own description, most of the activities the system will facilitate are those that owners must perform. Therefore, the pole owners, not the attachers, should bear the costs of the system.

A. Providing and Administering Attachments is a Legally Required Component of Pole Ownership.

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.

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).

Costs associated with performing that legally-required duty are costs of doing business. Thus, those costs are appropriately borne by the entities conducting that line of business, namely, the pole owners.

B. It Is the Pole Owners Who Overwhelmingly Will Benefit from the System.

It is not true that attachers are the primary beneficiaries of the pole attachment database and management system. By their own words, the owners have shown that they, not the attachers, are the predominant beneficiaries.

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.

Regarding the specific system the pole owners propose to implement, Alden One, the owners will realize numerous other benefits beyond the narrow question of efficiencies in the pole attachment process. The Alden One website[1] lists these as follows:

- Asset Management
- Activity Management
- Business Intelligence
- Contract Management
- Invoice & Billing
- Regulatory Compliance

[1] https://www.aldensys.com/aldenone.

Based on the owners' own statements and Alden's description, it is the *owners* who predominantly benefit from the efficiencies and streamlining the pole attachment database is supposed to attain. Therefore, it should be the responsibility of the owners to pay for those process improvements.

C. Sellers Themselves, Not Their Customers, Typically Pay for Process Improvements.

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 owners are suggesting 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.

D. Data Will be Augmented and Its Quality Will Be Enhanced by Application Data Supplied (and Paid For) by Attachers.

While the database initially will be populated by data supplied by the owners, over time, the data will be continually augmented with crowdsourced information supplied with attachment applications. As noted at the February 7, 2022 workshop, information is uploaded in real time during the application process, which both increases the amount of data in the system and allows for correction of errors. The information in those applications come from surveys conducted and paid for by attachment applicants. *See* 2/7/22 Tr., pp. 11-12 (remarks of Ms. King).

Those are real costs borne by the attachers, which contribute to the usefulness of the system to whoever is allowed to use it. The owners' funding proposal, however, does not consider the

hidden costs of this information. The significant and ongoing costs of this crowdsourcing should be taken into account in any analysis of who is to pay for the system.

E. The Information in the Database Is Valuable to Owners and Attachers, but the Owners have Not Committed to Access by Attachers.

In addition to not acknowledging the costs to attachers of updating and enhancing the database's information, the pole owners also have not committed to providing attachers with the benefit of that valuable information.

Pole data is used throughout the process of developing, building, and operating networks: from project inception to maintenance. The promise of a single pole attachment database is to lower costs to pole owners and pole attachers by having one accurate database shared by all parties. There are two major advantages to this system. Under the current regime which lacks a single shared database, every attacher and pole owner has to populate and maintain separate databases. The burden of populating multiple, separate databases is significant, particularly because the different parties are attaching to and modifying poles in real time, rendering the data stale after relatively short periods. Each party must do periodic resurveys to maintain accurate data. This duplicative and repetitive process is inefficient and expensive.

Access to a single shared database would benefit both owners and attachers, particularly in an era of one-touch make-ready. Yet, so far, the pole owners have not stated whether attachers will have access to the information in the system. There was discussion at the February 7, 2022 workshop regarding the potential ability of attachers or prospective attachers to access data from the system and shortcut surveys or other process steps. CMP and Versant agreed in general that access to the system by attachers was possible, with the caveat that the precise contours of what were technically feasible uses and what were appropriate uses would have to be developed. 2/7/22 Tr., pp. 19-21, 25. (Consolidated, on the other hand, did not acknowledge any such potential use

of the system by prospective attachers. Pp. 21-22, 29-30. "It's a joint notification system." P. 21.) While CMP and Versant acknowledge the possibility of attacher access to the data, at this stage they have not specifically committed to making this potential benefit of the system available to attachers. See Tr. 25-27.

To deny attachers access to the information in the database would deprive them of a major potential benefit of the system. Particularly given that the crowdsourced information uploaded to the system by the effort and expense of attachers will form a substantial and increasing amount of the database's information over time, it ill-behooves the pole owners to require only the attachers to pay for it.

II. As a Pole Owner and Attacher, Consolidated Should Participate in Improving the Attachment Administration Process.

Consolidated was a nominal signatory to the March 4, 2022 letter, as well as the November 2021 Joint Proposal, but it has indicated it will not participate in the database implementation. *See* March 4 Letter, fn. 1.[2] The company's substantive participation or any real commitment to improving the pole attachment process is glaringly nonexistent. Consolidated likely has the greatest number of attachments on poles in the CMP and Versant service territories. So, if attachers really are the primary beneficiaries of the database system, Consolidated has the most attachments of any other party, has the most to gain, and should pay at least as much as any other attacher.

But, Consolidated is also a pole owner. As described above, the efficiency gains from the system, as those gains have been described by the owners (including Consolidated), predominantly benefit the owners. Consequently, owners should predominantly pay to implement the system.

[2] Consolidated's refusal has a miniscule qualification: it will participate in the Alden One system with respect to "those few instances where it has a sole owned pole where a T&D utility is not located on the pole." *Id.*. But it apparently has not agreed to pay for the benefits it will receive from that participation.

Because Consolidated occupies the unique position as both a pole owner and a competitive attacher, the Commission should carefully consider the potential for anticompetitive practices. As broadband service is expanded across the state, many attachments in the communications space will be placed by the Broadband Providers and others who compete directly with Consolidated and its Fidium Fiber and other offerings. Consolidated has every incentive to slow or impede (even if unconsciously) the progress of deployment by its competitors. Consolidated has not argued that the database will not achieve efficiencies; it simply refuses to participate in development or implementation of the database. Consolidated should be required to pay its fair share of the cost of the system from which it will benefit both as owner and as attacher.

III. Conclusion.

In sum, the pole owners, including Consolidated, should pay for the system. Pole attachment administration is one of the duties that attend pole ownership, and the costs of performing those duties is a cost of doing business. And, establishing and maintaining the database is not a gift from owners to attachers. It is the owners who overwhelmingly benefit from the system. It is the owners who should bear the costs.

March 25, 2022

Respectfully Submitted,

/s/ Gregory M. Kennan

Gregory M. Kennan, *Of Counsel*
Fagelbaum & Heller LLP
20 North Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

Counsel for Biddeford Internet Corp.,
d/b/a Great Works Internet,
Crown Castle Fiber LLC, and Otelco, Inc.

ATTACHMENT 2

CENTRAL MAINE POWER

12/04/2023

CRC Communications DBA Pine Tree Networks
56 Campus Drive
New Gloucester, ME 04260-5109

Attention: Accounts Payable

This letter provides the required notice of a pole attachment rate change. For the Annual 2024 pole attachment billing, CMP has updated our pole attachment rates to the following:

Solely Owned CMP poles: $13.45/pole

Jointly Owned poles: $6.73/pole

If you have any questions, please contact us at **jointuseofplant@cmpco.com**.

Sincerely,

Debbie Brill
Manager, Joint Use of Plant

Internal Use

CENTRAL MAINE POWER

October 15, 2024

CRC Communications d/b/a Pine Tree Networks
56 Campus Drive
New Gloucester, ME 04260-5109

Attention: Accounts Payable

This letter provides the required notice of a pole attachment rate change. For the Annual 2025 pole attachment billing, Central Maine Power (CMP) has updated our pole attachment rates to the following:

Solely Owned CMP poles: $20.44/pole

Jointly Owned poles: $10.22/pole

If you have any questions, please contact us at **jointuseofplant@cmpco.com**.

Sincerely,

Debbie Brill
Manager, Joint Use of Plant

Internal Use

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Public Utilities Commission Inquiry to Facilitate Preparation of LD 1456 Report	October 25, 2024 Docket No. 2023-00300

REPLY COMMENTS OF CHARTER AND COMCAST

Pursuant to the Public Utilities Commission's ("PUC's" or "Commission's") September 5, 2024, Procedural Order, and in response to the comments filed in this proceeding on October 11, 2024, Spectrum Northeast, LLC ("Charter") and Comcast of Maine/New Hampshire, Inc. ("Comcast") (collectively, the "cable operators") respectfully submit these joint reply comments.

I. Equitable Pole Replacement Cost Allocation Is Ripe For Commission Rulemaking.

As noted in our prior comments,[1] the only regulatory change that we believe is necessary at this time is a rulemaking proceeding to align the Chapter 880 rules with the FCC's December 2023 reforms to its pole attachment rules and policies.[2] Specifically, Charter and Comcast believe that the Commission should focus on amending Section 5(C) of the Chapter 880 rules to track the FCC's clarification on how pole replacement costs should be equitably allocated between attachers and utilities. By applying basic cost-causation principles, Maine's utility pole owners would more accurately and equitably align the financial burdens of pole replacements "necessitated solely" by

[1] Comments of Charter and Comcast, Dkt. 2023-00300, at 3-5 (Oct. 11, 2024); Response of Charter and Comcast to the Commission's Requests for Information Numbers 6, 7, 8, 10, & 11, Dkt. 2023-00300, at 3-7 (May 10, 2024); Comments of Charter and Comcast, Dkt. 2023-00300, at 2-3 (Jan. 12, 2024).

[2] *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, 2023 WL 8803833 (FCC Dec. 13, 2023) ("*2023 FCC Pole Attachment Order*"), *available at* https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf.

new attachers' attachments.[3] While the pole replacement cost allocation approach in Section 5(C) of the Chapter 880 rules somewhat limits pole replacement costs that can be charged to attachers, the current rule is unclear and leaves room for imprecise and uneconomic cost-shifting.[4]

Attachers and pole owners alike *agree* that the Commission's previous actions to align the Chapter 880 rules with the FCC's pole attachment regulations have benefitted all stakeholders. For example, Versant Power states in its comments that the "work done by the Commission and the stakeholders over the past several years to update Maine's pole attachment rules and *align them with federal rules* has achieved its intended purposes" and has been "universally praised by the stakeholders as improving the pole attachment process."[5] Further aligning the Chapter 880 rules

[3] 47 C.F.R. § 1.1408(b); *see In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, 36 FCC Rcd. 776, 779, ¶ 6 (2021) ("[U]tilities may not require requesting attachers to pay the entire cost of pole replacements that are not solely caused by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted."). 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.

[4] Section 5(C)(1) of Chapter 880 currently provides: "When an existing or a proposed attaching entity requires additional space which is not available on that joint-use utility pole, and the joint-use utility ***pole*** *must be replaced*, the existing or proposed attaching entity causing the need for replacement must pay for (i) the *difference* between the *cost for the taller joint-use utility pole* and supporting equipment such as guys and anchors and the *cost for a new 35-foot joint-use utility pole* and supporting equipment in the same location, *plus* (ii) a reasonable estimate of the *net book value* of the joint-use utility pole and supporting equipment, if any, which has been replaced." 65-407 CMR Ch. 880, § 5(C)(1) (emphasis added); *see also id.* § 5(C)(2) ("When more space for attachments than is available on a 35-foot joint-use utility pole is required by two or more attaching entities, the cost (i) of the additional height of the excess height joint-use utility pole and supporting equipment and (ii) the reasonable estimate of the net book value of replaced joint-use utility pole and supporting equipment, if any, must be shared equally among the users requiring the replacement.").

[5] Versant Power Comments, Dkt. 2023-00300, at 4-5 (Oct. 11, 2024) (emphasis added); *see also* CMP's Comments in Response to Procedural Order, Dkt. 2023-00300, at 5 (Oct. 11, 2024) (describing the Commission's prior rulemakings to align the Chapter 880 rules with the FCC rules as "designed to improve the pole attachment process"); Additional Comments of Crown Castle and GoNetspeed, Dkt. 2023-00300, at 4-5 (Feb. 9, 2024).

with the FCC's most recent updates and clarifications to its pole attachment rules – including allocation of pole replacement costs – is an obvious continuation of these beneficial efforts to facilitate broadband deployment.

Versant, nevertheless, does not agree that it is necessary "at this time" to revise the Chapter 880 rules to better address equitable allocation of pole replacement costs in line with the FCC approach outlined in the December 2023 Fourth Report and Order and Declaratory Ruling.[6] But while Versant argues that there have not recently been "substantial disagreements" over pole replacement costs (and that there have been relatively few pole replacements in any case),[7] past experience may not accurately capture potential pole replacement activity going forward given the impending, significant influx of BEAD funding for broadband deployment($272 million allocated for Maine allocation).[8] This is particularly true in Maine's rural areas where poles are old, fully depreciated, and otherwise often at the end (or near the end) of their useful lives—and too short to accommodate new communications attachments. The point here is simply that the Commission should follow its past practice after the FCC has updated its pole attachment rules (*e.g.*, with make-ready timelines and one-touch make-ready), by initiating a rulemaking proceeding to better align the Chapter 880 rules with the FCC's now-updated approach to pole replacement costs as well as incorporating the FCC's other recent pole rule amendments.[9]

---

[6] Versant Power Comments, Dkt. 2023-00300, at 17 (Oct. 11, 2024)

[7] *Id.* at 17-18.

[8] *See* Press Release, Office of Governor Janet T. Mills, *Governor Mills Announces Federal Approval of Maine's Plan to Invest Historic Broadband Infrastructure Funding* (June 17, 2024), https://www.maine.gov/governor/mills/news/governor-mills-announces-federal-approval-maines-plan-invest-historic-broadband-infrastructure.

[9] Indeed, the Commission already held an inquiry from 2021-2023 on amending Section 5(C) of the Chapter 880 rules, and therefore can go straight to a rulemaking. Notice of Inquiry, Dkt. 2021-00321, at 1 & 6 (Oct. 18, 2021).

II. The Cable Operators Agree With Crown Castle and GoNetspeed That There Should Be A 'Simple And Transparent Process For Vetting Available Contractors.'

Charter and Comcast agree with Crown Castle and GoNetspeed that the Commission should ensure that the one-touch make-ready ("OTMR") and standard make-ready processes in general are "smooth and unimpeded."[10] That includes, as Crown Castle and GoNetspeed note, ensuring "a simple and transparent process for vetting available contractors that would facilitate the OTMR option."[11] MCA's proposal that pole owners should have to make publicly available their list of approved contractors and/or have the Commission maintain such lists would be a good start.[12] Moreover, the Commission should ensure that pole owners do not unreasonably prevent or hinder attachers' ability to engage qualified contractors to perform OTMR, or self-help surveys and make-ready work if the pole owners do not complete the requested work within the Chapter 880 time periods.[13] After all, the cable operators and other communications attachers rely on the pole owners' adherance to the Chapter 880 pole access timelines for efficient construction and operation of high-speed broadband networks.

III. OPA's Concerns About Alden One Costs Are Misplaced.

The Office of the Public Advocate's ("OPA's") comments express concern that Maine's electric ratepayers are somehow subsidizing "100%" of the costs of Alden One, the permitting notification system that CMP and Versant are implementing (along with Consolidated Communications) to facilitate pole access and management of their aerial poles and plant.[14]

---

[10] Comments of Crown Castle and GoNetspeed, Dkt. 2023-00300, at 2-3 (Oct. 11, 2024).

[11] *Id.* at 2.

[12] MCA, Utility Pole Attachment Study for Broadband, Dkt. 2023-00300, at 70 (Sept. 13, 2024).

[13] *See* 65-407 C.M.R. ch. 880, §§ 2(A)(9) & 2(A)(10).

[14] Comments of the Office of Public Advocate, Dkt. 2023-00300 (Oct. 11, 2024); Final Comments of the Office of Public Advocate, Dkt. 2023-00300 (Oct. 25, 2024).

Respectfully, OPA is mistaken. The Commission has recognized that CMP and Versant are more than able to recover their own the "relatively small cost" of implementing Alden One, and that such a system imposes a "very small burden . . . on those companies' ratepayers."[15]

OPA also claims "there is no justification or data to support why electric ratepayers are funding . . . costs of [Alden One]."[16] But OPA overlooks that CMP and Versant *already* are recovering the administrative costs of purchasing, integrating, and implementing the Alden One system not from electric ratepayers, but through annual pole attachment rent and related application fees *from communications pole attachers*.[17] Indeed, Maine's Chapter 880 pole-attachment rental rate formula (which employes the FCC's Cable Rate Formula) already enables recovery of a portion of the pole owners' administrative expenses associated with communications providers' use of utility poles.[18] The administrative "carrying charge" is one of five separate, recoverable expense categories in this pole rental rate formula.[19] The pole-rent formula permits regulated utilities, like CMP and Versant, to recover costs connected with administration and

[15] Notice of Proposed Rulemaking, Dkt. 2023-00058, at 7 (Mar. 29, 2023).

[16] Final Comments of the Office of Public Advocate, Dkt. 2023-00300, at 1 (Oct. 25, 2024).

[17] Charter and Comcast have previously explained this in their comments in Commission Dockets 2021-00321 and 2023-00058. *See* Cable Operators' Initial Comments, Dkt. 2023-00058 (Apr. 26, 2023); Cable Operators' Comments on Staff's September 2, 2022 Procedural Order, Dkt. 2021-00321 (Sept. 23, 2022); Cable Operators' Reply Comments on 'Joint Use Software' Rule Language, Dkt. 2021-00321 (Aug. 12, 2022); Cable Operators' Response, Dkt. 2021-00321 (Mar. 25, 2022).

[18] *See* 65-407 C.M.R. ch. 880, § 4 ("In determining a just and reasonable rate for attachments to joint-use utility poles, the Commission will employ the FCC Cable Rate Formula, presuming an average joint-use utility pole with a space factor of 7.4% per foot used by an attachment."); 47 C.F.R. § 1.1406(d)(1).

[19] The others are maintenance, return (or cost of capital), depreciation and taxes. *In Re Amend. of Commission's Rules & Pol'ys Governing Pole Attachments*, 16 FCC Rcd. 12103, 12121, ¶ 8 (2001); *Cable Television Ass'n of Georgia*, 18 FCC Rcd. 16333, 16349, ¶ 18 & n. 63 (2003) ("Through the annual rate derived by the Commission's [cable rate] formula, an attacher pays a portion of the total plant administrative costs incurred by the utility. . Included in the total plant administrative expenses is a panoply of accounts that covers a broad spectrum of expenses. A utility would doubly recover if it were allowed to receive a proportionate share of these expenses based on the fully-allocated costs formula and additional amounts for administrative expenses" since "[t]he allocated portion of administrative expenses covers any routine administrative costs associated with pole attachments. . . .").

maintenance of poles (including staffing) by booking them to eleven different administrative accounts in the FERC chart of accounts (and for Consolidated to do so in its ARMIS report)— a number of which could, and should, include Alden One costs.[20] Any separate surcharge on top of pole rent for Alden One costs necessarily will result in communications attachers being assessed these costs twice and the pole owners unreasonably over-recovering.

OPA's requested "recommendations" by the PUC regarding Alden One costs therefore are unfounded.

IV. Conclusion

Charter and Comcast appreciate the Commission's continued efforts to enhance the Chapter 880 rules. Consistent with our earlier comments, we believe the only regulatory change necessary at this time is for the Commission to further update the Chapter 880 rules to align with the FCC's recent reforms to its own pole attachment rules and policies.

[20] Those costs include, but are not limited to, administrative and general staff salaries; office supplies and expenses; fees of professional consultants and other outside services; regulatory expenses; and general functions of labor, materials used and expenses incurred in the maintenance of property. 18 C.F.R. Part 101, Accounts 920-931 & 935 (which are used to calculate the FCC formula's administrative carrying charge).

Dated: October 25, 2024

Respectfully Submitted,

/s/ J. D. Thomas

J. D. Thomas
Abraham J. Shanedling
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2099 Pennsylvania Avenue NW, Suite 100
Washington, DC 20006-6801
Tel. (202) 747-1916
dthomas@sheppardmullin.com
ashanedling@sheppardmullin.com

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

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2023-00300

October 25, 2024

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

In accordance with the Maine Public Utilities Commission's ("MPUC" or the "Commission") September 5, 2024 Procedural Order, Central Maine Power Company ("CMP" or the "Company") hereby files these brief reply comments.

First, based on the comments submitted by parties there is consensus that the legal and regulatory framework for pole attachments in Maine is strong, and that the proposed statutory and regulatory changes are not necessary. Additionally, there appears to be consensus that stakeholders in the pole attachment process will benefit from increased communication, coordination, and collaboration. CMP welcomes this – it will improve the efficiency of pole attachment work.

Second, the Office of Public Advocate's ("OPA") argues that electric ratepayers should not cover the costs associated with Alden One. CMP agrees that the cost allocation for Alden One should be revisited. In the Commission's March 15, 2023 Order in Docket No. 2021-00321, the Commission directed pole owners to work with pole attachers to implement Alden One and to provide periodic reports on the status of that effort, noting that CMP and Versant have the ability to seek recovery of those costs in rates. In accordance with that directive CMP moved forward with Alden One. Notably, despite the requests of CMP and Versant in Docket 2021-00321, and in the subsequent Chapter 880 Rulemaking (Docket No. 2023-00058), the Commission has declined to implement a rule on the cost allocation between pole owners and attachers for Alden One. The Commission indicated that it may revisit the issue. CMP welcomes the opportunity to revisit the issue.

Third, CMP notes that the Cable Operators (Comcast and Charter) have requested that Chapter

880 be updated to confirm with the FCC's new rule on allocation of pole replacement costs. CMP does not agree with this suggestion. How the allocation of pole replacement costs are determined is unlikely to improve pole access conditions or expedite the efficiency of broadband deployment. As CMP indicated in its comments, CMP determines whether the replacement of a pole is billable or non-billable through field surveys. Poles that have been identified for replacement or upon inspection are found to be in deficient condition are not billed to pole attachers. Pole attachers are billed for new poles when the existing poles do not have enough space to accommodate the new attachment. CMP's process for determining cost allocation for pole replacement costs is simple and efficient.

Fourth, without providing any specifics, Crown Castle and GoNetSpeed state that "an excessively timid view of safety can serve as a detriment to broadband expansion and deployment efforts," and further state that the Commission and the MCA "should cast a wary eye on proposals in the guise of safety requirements that do not, or only marginally, enhance safety but slow or impeded deployment." It is not clear what these comments refer to, but CMP is reluctant to bend safety standards in the name of expediency.

CMP appreciates the opportunity to provide these comments. Please contact the undersigned if the Commission has any questions.

/s/ *Debbie Brill Poulin*

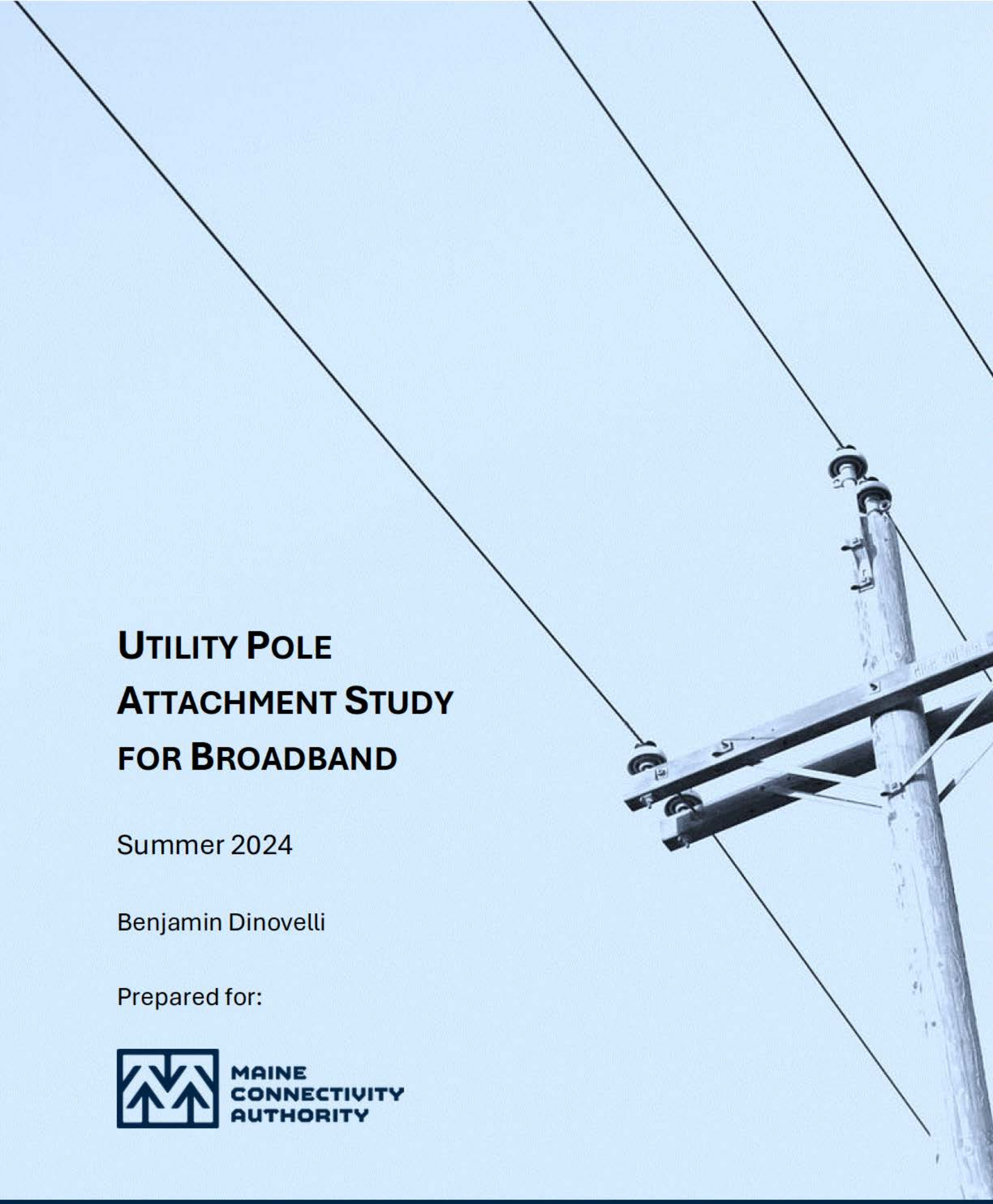
Debbie Brill Poulin
Manager – Joint Use
Central Maine Power Company

/s/ *Timothy D. Connolly*

Timothy D. Connolly
Counsel
Central Maine Power Company

Appendix C

MCA's Utility Pole Attachment Study
for Broadband



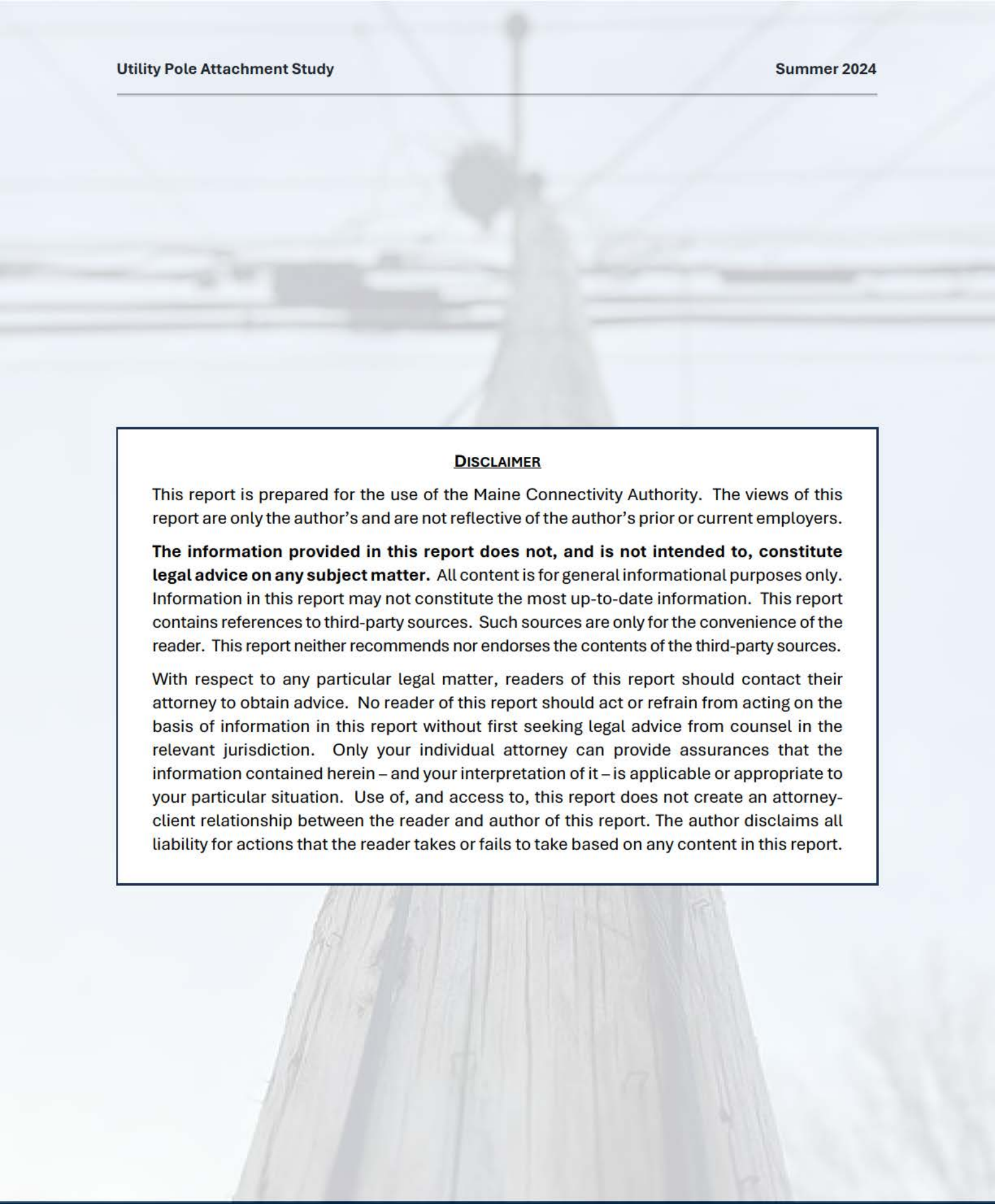
UTILITY POLE ATTACHMENT STUDY FOR BROADBAND

Summer 2024

Benjamin Dinovelli

Prepared for:

MAINE CONNECTIVITY AUTHORITY



DISCLAIMER

This report is prepared for the use of the Maine Connectivity Authority. The views of this report are only the author's and are not reflective of the author's prior or current employers.

The information provided in this report does not, and is not intended to, constitute legal advice on any subject matter. All content is for general informational purposes only. Information in this report may not constitute the most up-to-date information. This report contains references to third-party sources. Such sources are only for the convenience of the reader. This report neither recommends nor endorses the contents of the third-party sources.

With respect to any particular legal matter, readers of this report should contact their attorney to obtain advice. No reader of this report should act or refrain from acting on the basis of information in this report without first seeking legal advice from counsel in the relevant jurisdiction. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Use of, and access to, this report does not create an attorney-client relationship between the reader and author of this report. The author disclaims all liability for actions that the reader takes or fails to take based on any content in this report.

INTRODUCTION

As of February 2024, approximately 5.6% of locations in Maine have no access to modern internet and another 6.3% have only slow and unreliable connections (in total, representing over 70,000 locations).[1] To facilitate new broadband to help close this gap, the State of Maine is receiving and deploying over $500 million of funding from the federal government.[2] While this funding is sizeable, it is also limited. The internet providers of Maine, who will be recipients of this funding, must spend it efficiently to achieve the State's connectivity goals.

Utility poles will play a critical role in the efficient deployment of those funds. Given Maine's diverse geography and rocky terrain, in many places, providers can only install broadband aerially across utility poles, instead of underground through buried conduit. As a result, the cost to attach cables and equipment on utility poles can represent a material portion of the overall cost to deploy new broadband.[3] Accessing utility poles affordably, efficiently, and safely will be critical to the success of broadband projects across the state.

The challenge is that the current pole attachment process can be complex and opaque. Providers, including broadband utility districts,[4] may struggle to identify how much projects will cost and how long it will take to attach equipment to poles. This lack of clarity can lead to cost overruns, construction delays, and potentially projects not even happening at all, reducing the effectiveness of this federal broadband funding.

The State of Maine has been proactive in addressing this problem. For more than a decade, the Maine Public Utilities Commission ("PUC") has issued several rulemakings to improve the process. And, in 2023, Maine passed Public Law 2023, Ch. 81 ("LD 1456"), requiring the PUC and Maine Connectivity Authority ("MCA") 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."[5] In particular, the Maine PUC and MCA have been asked to examine:

> [T]he 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 new attachments for tax-exempt municipalities and private companies, and ways to decrease or standardize wait times for attachments.

Based on this research, the Maine PUC will submit a final report to the Maine State Legislature on its findings and recommendations by December 1, 2024. To inform this final report for the State Legislature, the MCA has solicited this supporting document, which conducts qualitative research from several data sources, including multi-agency input from multiple workshops, input from the broadband working group, and a subset of the State of Maine's efforts to ensure optimal deployment of infrastructure funds. Specifically, this report:

1. **Reviews various pole attachment regulatory frameworks**, including:
   a. Summarizing Maine's existing laws and rules on pole attachments;
   b. Reviewing best practices for pole attachment processes in other jurisdictions;
2. **Conducts research and engages stakeholders for feedback on the status quo**, including:
   a. Identifying gaps / inefficiencies in Maine's laws and rules based on public data; and
3. **Recommends options to facilitate pole access affordably, efficiently, and safely.**

[1] *See* Andrew Butcher, *The State of Connectivity in Maine*, MAINE CONNECTIVITY AUTH. (Feb. 2024), https://docs.google.com/presentation/d/1VA3oD-GPd3Q7_GY4dc-TC84X3jddiPzXjjeNYGsLpks.
[2] *See id.*
[3] *See, e.g.*, NCTA, *Petition for Expedited Declaratory Ruling*, WC Docket No. 17-84 (July 16, 2020), https://www.fcc.gov/ecfs/filing/10716155252766.
[4] Broadband utility districts ("BUDs") are community-based organizations formed to build and operate broadband networks to increase access to high-speed internet.
[5] *Resolve, to Study the Effect of Current Laws and Rules on the Expansion of Broadband*, 2023 Me. Laws 1054 [also known as LD 1456 of the 131st Legislative Session].

TABLE OF CONTENTS

EXECUTIVE SUMMARY **5**

BACKGROUND **7**

I. REGULATORY FRAMEWORKS **17**

A. Maine 18

1. Statute (Section 711 of Title 35-A) 18
2. Regulations (Maine PUC, Chapter 880) 20
3. Key Regulatory Developments 22

B. Preemption States 25

1. Statute (Pole Attachment Act) 26
2. Regulations (FCC, Chapter 47, subpart J) 26
3. Key Regulatory Developments 30

C. Other Reverse Preemption States 33

1. Connecticut 34
2. New Hampshire 37
3. New York 39
4. Vermont 43

D. Notable Differences from Other Jurisdictions 46

II. CURRENT CHALLENGES **47**

A. General Thoughts 49

B. Structural Market Features 50

1. Primary Goals 50
2. Incentives 51
3. Capacity Constraints 52

C. Inefficiencies in Navigating the Process 54

1. PUC Pole Attachment License 54
2. Negotiated Agreements 55
3. Applications to Pole Owners 56
4. Billing and Payments 56
5. Third-Party Consents 57

D. Opacity in Costs, Data, and Timelines 58

1. Pole Database (Alden One) 58
2. One Touch Make Ready (OTMR) and Self Help 59
3. Large Pole Orders 62

4. Disagreements Over Costs 62
5. Treatment of Municipalities 63
E. Dispute Resolution 64
1. Bilateral Resolution 64
2. Informal PUC Adjudication 64
3. Formal PUC Adjudication 65
III. Potential Policy Options 66
A. Voluntary / Programmatic Change 67
1. Structural Market Impediments 67
2. Inefficiencies in Navigating the Process 68
3. Opacity in Costs, Data, and Timing 70
4. Dispute Resolution 71
B. Regulatory or Statutory Change 71
1. Structural Market Impediments 72
2. Inefficiencies in Navigating the Process 74
3. Opacity in Costs, Data, and Timing 74
4. Dispute Resolution 76
Recommendations 77
Appendix A: Timeline for a Pole Attachment (Federal vs. Maine Regime) 80

EXECUTIVE SUMMARY

Establishing an affordable, efficient, and safe pole attachment process for aerial fiber deployment in Maine is critical for achieving the State of Maine's connectivity goals and objectives. In recognition of this fact, in 2023, the State Legislature tasked both the Maine Public Utilities Commission ("PUC") and the MCA to study Maine's "current pole attachment laws and rules and the effect of those laws and rules on broadband expansion through public networks, private networks, or public-private partnerships."[6] Based on its research, the Maine PUC, working with the MCA, will submit a report on its findings and recommendations by December 1, 2024 to the State Legislature's Joint Standing Committee on Energy, Utilities and Technology. To inform this report for this standing committee, in May 2024, MCA engaged Benjamin Dinovelli as a third-party consultant to:

- Enhance its understanding of current pole attachment practices, time frames, and barriers for aerial fiber deployment across Maine based on a review of:
    - Current laws and regulations in the State of Maine;[7]
    - Rulemaking processes and comments made in the PUC docket from the Maine PUC and other stakeholders, including pole owners, attachers, consultants, and other interested parties, on the perceived strengths and weaknesses of these practices, timeframes, and barriers;[8]
    - Earlier work performed by the MCA and its partners (e.g., takeaways and notes from its prior stakeholder outreach); and
    - Feedback from two public workshops hosted by the MCA on July 25 and August 1, 2024.[9]
- Review best practices in pole attachment processes in other jurisdictions based on a review of:
    - Current laws and regulations in other states;[10]
    - Rulemaking processes and comments made publicly from the Federal Communications Commission ("FCC"), state utility commissions, and other related stakeholders;[11]
    - Interviews with third-party contractors that have worked in Maine and other states; and
    - A public roundtable hosted by Pew Trusts and a symposium hosted by Schools, Health & Libraries Broadband Coalition ("SHLB") on state policies on pole attachments in June 2024.[12]

Based on this analysis, this consultant identified potential gaps in Maine's pole attachment processes, such as aerial fiber deployment technologies, as well as opportunities for upgrades. The MCA and Maine PUC can

[6] *See LD 1456 of the 131st Legislative Session*.
[7] *See, e.g.*, 35-A M.R.S. § 711 (Maine statute); 65-407 C.M.R. ch. 880 (Maine regulations on pole attachments).
[8] *See, e.g.*, *Investigation into Practices and Acts Regarding Access to Utility Poles*, No. 2010-00371, Order (July 12, 2011) (Maine PUC rulemaking); *Amendment to Chapter 880 – Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2017-00247, Order Amending Rule (Jan. 12, 2018); *Amendments to Chapter 880 of the Commission's Rules - Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2019-00028, Order Amending Rule, at 8 (Nov. 9, 2019).
[9] *See, e.g.*, Kiera Reardon, *Meeting Agenda*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, (Aug. 1, 2024) (referring to one of two public meetings held on August 1, 2024 about the pole attachment process).
[10] *See, e.g.*, 47 U.S.C. § 224 (federal statute); 47 C.F.R. § 1.1401 et al. (federal regulations on pole attachments); 2023 NH REV. STAT. § 374:34 et al. (New Hampshire statute); 30 V.S.A. § 209 et al. (Vermont statute); Rules and Orders of the Vermont Utility Commission, Pole Attachments at § 3.700 (Vermont regulations on pole attachments).
[11] *See, e.g.*, *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 (Dec. 15, 2023 (latest FCC rulemaking); *PURA Investigation of Developments in the Third-Party Pole Attachment Process*, No. 19-01-52RE01, Decision (May 11, 2022) (Connecticut rulemaking); *Proceeding to Review Certain Pole Attachment Rules*, No. 22-M-0101, Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings (July 18, 2024) (New York rulemaking).
[12] *See, SHLB Poles Symposium*, SHLB (June 13, 2024), https://www.shlb.org/shlb-poles-symposium; *Pew Experts Roundtable: State Policies on Pole Attachment*s, PEW TRUSTS (June 13, 2024), https://web.cvent.com/event/288dd018-17fe-4220-a2c9-be7c97ce74f2.

use these findings to ensure that all pole attachers in Maine have affordable, efficient pole access that does not jeopardize the safety of the infrastructure supporting Maine's electricity, telephone, and internet services.

The findings from this engagement are contained in this report. In particular, this engagement identified three domains for further consideration:

1) Regulatory Framework. The State of Maine has a very strong regulatory framework for pole attachments. The Maine PUC has been proactive and engaged in trying to improve the process over the last decade. For example, the implementation of the pole database (Alden One)[13] places Maine ahead of many other states, where broadband providers still lack access to critical data about poles. Consequently, the current framework has worked reasonably well to date. That said, there is also always room for improvement. Over the past few years, the FCC and other states have done several rulemakings to improve their own processes, including:

- exploring new regulatory timelines to complete large pole orders;[14]
- improving the one touch make-ready process and self-help remedies (e.g., the use of contractors);
- clarifying the allocation of pole replacement costs between pole attachers and owners;
- mandating information reporting requirements for pole owners about attachments and requests; and
- establishing informal working groups and/or formal dispute resolution processes.

These efforts may be instructive to the State of Maine in its current study of pole attachment laws and rules. The relevant decisionmakers in Maine should consider whether these or similar proposals may be appropriate to apply in Maine too.

2) Current Challenges. Further changes to the pole attachment process seem to be appropriate as regulatory timelines[15] for pole attachment work are not always being met.[16] Delays appear to be the result of:

- structural market features (e.g., multiple actors with varying goals, incentives, and/or constraints);
- inefficiencies in navigating the process (e.g., dual applications for jointly owned poles; payments);
- opacity in costs, data, and timelines (e.g., lack of clarity on how either the OTMR or self-help remedy processes work and on how to onboard new contractors to do said work); and
- weaknesses in dispute resolution mechanisms (e.g., not being used by most stakeholders).

These delays are influenced by the following factors and considerations:

- **Safety is critical and cannot be sacrificed for efficiency.** Safety practices are a known constant and factor into all activities and timeline factoring in all projects. As a result, some delays will naturally be tied to safety standards, which are important for all parties to enforce and maintain. However, if pole owners fail to provide supporting data, context, and/or explanations, attachers may not understand how to best address such concerns in the moment or on a go-forward basis, creating disruptions to parties' expected timelines and opportunities for disagreement.

[13] Under Chapter 880, Maine's three largest pole owners are required to use a program called Alden One. 65-407 C.M.R. ch. 880 § 5; *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2023-00058, Order Amending Rule and Statement of Factual and Policy Basis, at 9-10 (Sep. 12, 2023).
[14] A large pole order is a pole order that is the lesser of either (1) 3,000 poles or (2) 5% of a pole owner's total poles. 65-407 C.M.R. ch. 880 § 1(Q).
[15] *See* 65-407 C.M.R. ch. 880 (outlining regulatory timeframes for pole attachment process in Maine).
[16] *See, e.g.*, Crown Castle & GoNetSpeed, *Response of Crown Castle and GoNetSpeed to Commission's Information Requests*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 1–3 (May 10, 2024) [Response] (reporting that pole attachment requests have not always been finished within Chapter 880 timelines, for traditional make-ready or OTMR).

- **Trust and relationship building between parties are key.** Pole attachments rely on a significant level of trust from pole owners, especially given valid safety concerns (e.g., in OTMR or self-help remedies, pole owners and existing attachers trust a third-party contractor with their poles and equipment).
- **Communication is very valuable.** Information is sometimes assumed by parties, when in reality it is not common knowledge. Pole owners can better set attachers up for success and vice versa by being clear about their goals, needs, expectations, and constraints from the get-go.

3) Potential Policy Options. As millions of dollars of federal broadband funding are going to be deployed soon in Maine, identifying ways to improve the pole attachment process will be essential for achieving the State of Maine's connectivity goals. Many options exist that the MCA, Maine PUC, and State Legislature could pursue, as listed in this report. Ultimately, policy recommendations should be developed by the MCA and Maine PUC respectively, reflecting outcomes from this analysis and from current and future stakeholder engagement.

BACKGROUND

What Is a Pole Attachment?

A broadband internet service provider has two ways to build a broadband network: (1) underground by running cables through installed conduit or (2) aerially by attaching cables to utility poles along a right-of-way. Utility poles are vertical columns (often made of wood) that aerially support the lines, cables, and wires used to offer phone, electricity, cable, and internet service. No universal "standard" for utility poles exists with respect to size, height, and class – so the characteristics of any particular pole will vary based on provider and location.

The supply space is the area on a utility pole reserved for electrical supply.

The transmission wires carry electricity from one point to another in an electric power system. A pole will have 2-3 transmission wires.

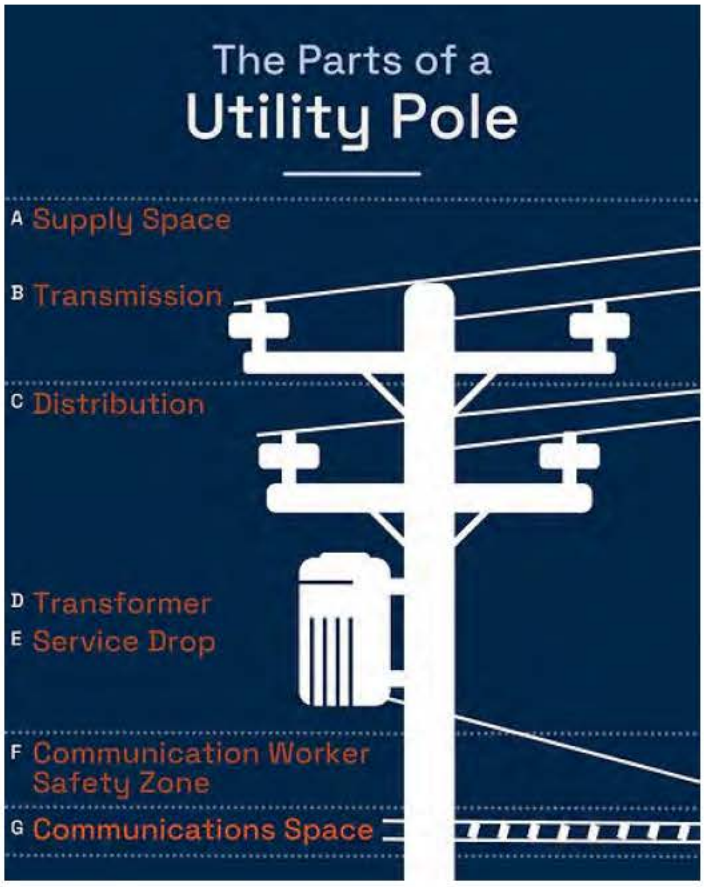
The distribution wires carry electricity from a local station to a home or business (through the Transformer)

The transformer converts high voltage electricity from power lines to a lower voltage that can be used by homes and businesses.

The service drop is the wire that actually carries the electricity from the distribution lines, through the Transformer, to the home or business.

The Communication Worker Safety Zone is 40 in. of space from the neutral lowest supply conductor

The communications space is the area on a utility pole reserved for all communications-related wires



Who Attaches to a Utility Pole?

Pole attachers are entities who want to attach to a pole to build infrastructure, including for telephone, cable television, and internet service. There has been significant evolution in communication providers since the commercial viability of fiber optic internet service. Different communication providers may have different needs, capacity, and limitations that are not explored in detail in this report. As a result, this study only focuses on the implications of the pole attachment process for **broadband internet service providers**, including both private providers and broadband utility districts, and not legacy communication service providers.

Broadband internet service providers in Maine, include, but are not limited to: Axiom, Comcast, Crown Castle, Fidium (the broadband division of CCI), FirstLight Fiber, Georgetown Broadband, GoNetSpeed, GWI, Pioneer, Premium Choice Broadband, TDS, Trailrunner LLC, among others.

While these broadband internet service provdiers, who want to attach to poles, can theoretically build their own networks underground instead, as mentioned above, given Maine's rocky terrain, they can often build much more cheaply aerially. As a result, obtaining pole access is a critical step to projects in Maine, and any issues in obtaining such access can cause affect the cost and timing of a broadband project.

Who Owns the Utility Poles?

In Maine, three companies own the majority of utility poles: Central Maine Power ("CMP"), Consolidated Communications ("Consolidated" or "CCI"), and Versant Power ("Versant," and formerly known as Emera Maine).[17] TDS Telecom ("TDS") and Lincolnville Telephone Company ("LCI"), two other telecommunications companies, also own poles by virtue of providing telephone services. In some cases, municipalities may also own their own poles as well.

In some states, an individual pole is owned by one firm. However, in Maine, many poles are owned jointly by two firms: a telecommunications provider (often CCI) and a power company (either CMP or Versant). Maine is not unique in this regard. In several other states, including California,[18] Connecticut,[19] and West Virginia,[20] a majority of utility poles are also jointly owned (often by an electricity and a telecommunications company). In other states, the telecommunications provider never owned the poles. And, in others, poles were initially owned jointly but now belong to the power company, including in Hawaii,[21] New Hampshire,[22] and Vermont.[23]

How Many Pole Attachments Are Sought?

Building out broadband is a spatially expansive effort. A network can traverse tens, if not hundreds of miles, connecting to hundreds, if not thousands, of poles. While the number of total pole attachments in Maine is

[17] *Re Commission Investigation into Fairpoint's Practices and Acts Regarding Access to Utility Poles Related to Biddeford Internet Corporation*, No. 2010-00206, Note of Investigation at 1 (Me. P.U.C. June 30, 2010). To duplicate the existing utility pole infrastructure "would be beyond the ability of all but the largest companies." *Id*.
[18] *See* APRIL MULQUEEN & MARZIA ZAFAR, A BRIEF INTRODUCTION TO UTILITY POLES, CAL. PUBLIC UTIL. COMM'N POL'Y & PLANNING DIVISION 12 (2014).
[19] *See* Luther Turmelle, *Connecticut Utility Regulators Change Rules Regarding Utility Pole Replacement Process*, CT INSIDER (July 11, 2022), https://www.ctinsider.com/news/article/Connecticut-utility-regulators-change-rules-17293705.php (noting that Frontier Communications, a telecommunications provider, jointly owns over 750,000 poles with electricity utilities in the state).
[20] *See* Jeff Jenkins, *Mon Power, Frontier Amend Pole Attachment Agreement*, METRONEWS (Aug. 18, 2023), https://wvmetronews.com/2023/08/18/mon-power-frontier-amend-pole-attachment-agreement.
[21] *See* Press Release, *PUC Approves Transfer of Jointly Owned Utility Poles from Hawaiian Telecom to Hawaiian Electric Companies*, HAWAIIAN ELECTRIC, MAUI ELECTRIC, HAWAI'I ELECTRIC LIGHT & HAWAIIAN TELECOM (Nov. 2, 2018), https://www.hawaiianelectric.com/documents/about_us/news/2018/20181102_utility_poles_transferred_to_hawaiian_electric.pdf.
[22] *See Eversource Completes Acquisition of Consolidated Communications' Utility Poles in NH*, BUSINESSNH (May 4, 2023), https://www.businessnhmagazine.com/article/eversource-completes-acquisition-of-consolidated-communicationsrsquo-utility-poles-in-nh (discussing sale of 175,393 utility poles from Consolidated Communications, a telecommunications provider, to Eversource, an electricity utility).
[23] *See Official Notice to Pole Attachers*, CONSOLIDATED COMMUNICATIONS (June 12, 2019), https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-020/TRANSCRIPTS-OFFICIAL%20EXHIBITS-CLERKS%20REPORT/21-020_2022-03-15_EXH-38.PDF (discussing sale of utility from Consolidated Communications, a telecommunications provider, to Green Mountain Power Corporation, an electricity utility).

not public knowledge, it is clear that the scale is large. As two reference points, CMP, one of the three largest pole owners in Maine, has received over 5,000 applications to attach to poles since 2021, representing over 97,700 pole attachments.[24] Similarly, Versant, another large pole owner, has processed over 800 applications since 2021, representing over 28,000 attachments.[25]

How Do Pole Attachments Work?

Before diving into the regulatory process, it is helpful to better understand how a pole attacher participates in the pole attachment process. Once an attacher has identified a desired route that requires pole attachments, it can pursue the pole attachment process in one of two ways: (1) Traditional Make Ready or (2) One Touch Make Ready ("OTMR"). Below is a simplified table of who is responsible for what (including associated costs) and how long each step normally takes (with orange denoting the key differences in the process).

Table 1. Simplified Summary of Pole Attachment Process (# of days to complete)[26]

Steps in the Process		A. Traditional / Complex Application[27]	B. OTMR Application
1.	PUC License.	Attacher (varies)	Attacher (varies)
2.	Contract with Pole Owner(s).	Both (varies)	Both (varies)
3.	Initial Feasibility Work.	Attacher (varies)	Attacher (varies)
4.	Application to Pole Owners.	Attacher submits (varies) Owner reviews (10 biz days)	Attacher submits (varies) Owner reviews (10 biz days)
5.	Survey.	Owner (45-60 cal days)	Attacher (15 days)
6.	Make-Ready Estimate.	Owner (14 cal days)	N/A
7.	Payment of Make-Ready Estimate.	Attacher (60 cal days)	N/A
8.	Permits and Third-Party Approvals.	Owner (varies)	Attacher (varies)
9.	Make-Ready Work.	Owner (30-135 cal. days)	Attacher[28] (varies)
10.	License Issued.	Owner (varies)	N/A
11.	Attachment by Applicant.	Attacher (varies)	Attacher (varies)
12.	Post-Installation Inspection.	Owner (90 cal. days)	Owner (90 cal. days)
13.	License Issued.	N/A	Owner (90 cal. days)

[24] *See* Debbie Brill & Jason Weymouth, *CMP's Response to Informational Requests in March 25 Procedural Order*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at tbl. 1 (May 10, 2024).
[25] *See* Steve Pasquine, *Versant Power Response*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 14 (May 10, 2024).
[26] Table and the additional detail below were updated in November 2024 following clarification from the pole owners on their processes. Note, for simplicity, days in this table are shown as a range but will vary based on the number of pole attachments sought.
[27] Assuming no self-help remedy is invoked per 65-407 C.M.R. ch. 880 § 2(A)(9).
[28] The attacher must give 15 calendar days notice in advance to the pole owner and any affected attaching entity. *Id.* § 2(A)(13)(c)(i).

The steps for both processes – as laid out in Chapter 880 – are also listed in more detail below.

A. Traditional Make Ready.

1. **PUC License.** Seek a Pole Attachment License from the Maine PUC, if it does not already have one.[29]
    a. A license is legally required to attach to any joint-use utility pole in Maine (except for firms that are grandfathered in).
    b. The Maine PUC will review for financial capacity, technical capacity, authorization to conduct business in Maine, and provision of all the requested information.[30]
    c. The Maine PUC has delegated the authority to approve pole attachment licenses to the Director of Telephone and Water Utility Industries.[31]
2. **Contract with Pole Owner(s).** Negotiate a contract with the pole owners who own poles in the area(s) where the attacher wants to build its network.[32]
    a. Generally, a master agreement will be signed that can be utilized by the attacher for all potential projects involving that same pole owner, including future projects.
    b. When a pole is jointly owned, that attacher will need to enter into separate pole attachment contracts with both owners.
3. **Initial Feasibility Work.** Prepare a high-level design and conduct (or hire a third-party contractor to conduct, see more details below in ***"Which Third-Party Contractors Can Perform Pole Attachment Work?"***) an initial survey of the proposed route to understand the required pole attachment work.
    a. The attacher (or the contractor) will traverse the proposed route and locate every pole that the attacher wants to attach to, identifying what is already attached, where new poles must be installed, where existing ones must be replaced (e.g., due to age or the inability of the pole to support more equipment).
    b. Poles have a number of characteristics that must be considered including class (strength of a pole), height, timber species, fiberglass, preservative treatment, years of treatment, and pole line classification (what type of services the pole supports).
    c. The attacher (or the contractor) will identify, on a pole-by-pole basis, whether a proposed attachment is either "simple" or "complex," which determines both the work involved and which parts of the Chapter 880 process are applicable to the pole attachment work:
        i. Simple make-ready is the most basic transfer. Chapter 880 defines it as "make-ready work where existing attachments in the communications space of a joint-use utility pole can be transferred without any reasonable expectation of a service outage or facility damage and where the transfer does not require splicing of any existing communication attachment or relocation of an existing wireless attachment" and "does not apply to attachments above the communications space or pole replacements."[33] With simple make-ready, parties can often transfer equipment in a minimal amount of time with a basic line crew and truck.

[29] Any prospective attaching entity that is not attached to any joint-use utility poles in Maine prior to the effective date of Chapter 880 as of January 24, 2018 is required to perform this step. *See* 65-407 C.M.R. ch. 880 § 3(A).
[30] *Id.*
[31] *Public Utilities Commission, Delegation of Authority to Director of Telephone and Water Utility Industries to Approve Pole Attachment Licenses*, No. 2019-00327, Order (Dec. 18, 2019).
[32] 65-407 C.M.R. ch. 880 § 10.
[33] *Id.* § 1(Z).

ii. Complex make-ready, as its name implies, requires more work. Chapter 880 defines it as "any make ready work above the communications space; transfers and work within the communications space that would be reasonably likely to cause a service outage or facility damage, including the splicing of any communication attachment or relocation of an existing wireless attachment; and the replacement of a joint-use utility pole. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex."[34] With complex make-ready, parties will need to use heavy machinery and specialized knowledge.

4. **Application to Pole Owners.** Submit an application with pole owners to attach on their poles (which can now be done electronically via Alden One, a new online utility pole database program).
    a. The application will specify the name of the licensee, the location of the poles where the attacher would like to attach, and other relevant data.[35]
    b. When a pole is jointly owned, the attacher must submit separate applications to each owner.
    c. In Maine, a pole owner must determine within 10 business days after receipt of this request whether the application is complete and notify the attacher of its decision.[36]
        i. The pole owner will review the application for completeness.
        ii. If the pole owner fails to respond within 10 business days (or the pole owner rejects the application without "specify[ing] any reasons" for doing so), the application will be "deemed complete."[37]
5. **Survey.** For traditional make-ready, the pole owner then conducts a "ride out" or "field survey" along the route (often with the attacher) to understand what work must be completed before the attacher can attach its equipment to the relevant pole.
    a. Firms already on the pole may have to re-adjust their equipment to make room for the attacher; work will depend on what is already there (e.g., power, telephone/cable, internet).
    b. The pole owner will provide a second opinion on the need for pole maintenance, installations, and/or replacements (e.g., based on pole decay, the need for the pole to be straightened, shatters or splits, splintered tops, insect damage, or vehicle damage) and whether a pole will involve either "simple make-ready" or "complex make-ready" work.[38]
        i. The owner can only deny access for "insufficient capacity" or "for reasons of safety, reliability and generally applicable engineering purposes" – and in doing so, it must offer "all relevant evidence and information supporting its denial, and must explain how such evidence and information relate to" a permissible reason for a denial.[39]
    c. In Maine, a pole owner must complete this survey within 45 calendar days of the receipt of an attacher's application (or 60 calendar days for orders greater than 3,000 poles or 5 percent of the pole owner's poles in Maine).[40]

[34] *Id.* § 1(H).
[35] *See* Pasquine, *supra* note 25, at 5.
[36] 65-407 C.M.R. ch. 880 §§ 2(A)(1).
[37] *Id.* § 2(A)(1).
[38] *See* Pasquine, *supra* note 25, at 6.
[39] 65-407 C.M.R. ch. 880 § 2(A)(3).
[40] *Id.* § 2(A)(2).

i. If a pole owner fails to do so, an attacher can hire a contractor to do self-help "so long as it provides the pole owner 10 calendar days' written notice of its intent to do so" (also known as a "self-help remedy").[41]

6. **Make-Ready Estimate.** Based on the ride out, the pole owner will then establish a make-ready work schedule and an estimate of cost, which it will provide to the attacher for review.
    a. In Maine, the pole owner must present the estimate of charges within 14 calendar days of completing the survey (and it cannot withdraw that estimate for 60 calendar days).[42]
    b. The cost estimate is charged on a "time and material basis," varying based on "the configuration of the lines and equipment on the pole, the conditions that exist in the field, the size of the pole required to accommodate the attachment, the location of the pole, and whether the install is done with energized or deenergized lines."[43]
        i. In addition, a pole owner may use its own third-party contractor for this work, which will may charge its own additional mark-up.[44]
7. **Payment of Make-Ready Estimate.** Approve the schedule and pay the pole owner the required make-ready cost estimate.
8. **Permits and Third-Party Approvals.** Acquire any required permits (e.g., DOT, easement owners, etc).
9. **Make-Ready Work.** Upon receipt of payment by the attacher, the pole owner and existing attachers (with equipment already on the pole) conduct make-ready work on their respective equipment in order to make room for the new attacher.
    a. This preparation work can include moving existing attachments either higher or lower on the pole in order to make room for the attacher's new cables.
        i. In Maine, pole owners must perform this work within a certain amount of time based on whether attachments are either in or above the communications space and how many poles attachments are sought for.[45]
    b. This work is either done by a single firm or multiple firms depending on whether the project is simple or complex.
    c. It can take between 30-135 days depending on the attachment.[46]
    d. Similar to the survey portion, if make-ready work is not done within the time period provided in Chapter 880, "a requesting party may hire a contractor to complete the make-ready" (either immediately, if the pole owner has failed to assert its right to do the work, or after 15 calendar days, if the pole owner asserts its right to do the work but then fails to completely do so).[47]
10. **License Issued.** Receive a license from the pole owner to attach its requested equipment.
11. **Attachment by Applicant.** Attach equipment on the pole and notify the pole owner upon completion.
12. **Post-Installation Inspection.** The pole owner then reviews the attacher's work and signs off on the installation to ensure that it does not interfere with existing equipment or violate any safety codes.

[41] *Id.* § 2(A)(9)(a).
[42] *Id.* § 2(A)(4).
[43] *See* Brill & Weymouth, *supra* note 24, at 8.
[44] *Id.*
[45] 65-407 C.M.R. ch. 880 § 2(A)(5).
[46] *Id.* § 2(A)(5)(a)(ii)-(b)(ii).
[47] *Id.* § 2(A)(9)(b).

B. One Touch Make Ready ("OTMR").

1. **PUC License.** Same as above.
2. **Contract with Pole Owner(s).** Same as above.
3. **Initial Feasibility Work.** Same as above.
    a. The attacher (or the contractor) will identify, on a pole-by-pole basis, whether a proposed attachment is either "simple" or "complex," which determines both the work involved and which parts of the Chapter 880 process are applicable to the pole attachment work.
4. **Application to Pole Owners.** Submit an application in writing with the pole owners to attach.
    a. In addition to specifying the name of the licensee, the location of the poles where the attacher would like to attach, and other relevant data,[48] the attacher will indicate that it is pursuing OTMR in its application (but it can only do so for "simple" make-ready work).[49]
    b. The pole owner will review as follows:
        i. First, it will review the application for completeness before doing so on its merits.[50] It is complete "if it provides the pole owner with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application."[51]
            1. A pole owner must determine completeness within 10 business days after receipt of this request and notify the attacher of its decision.[52]
            2. If a pole owner finds that an application is not complete, it must specify "all reasons for finding it incomplete."[53] Any resubmitted application only has to address the issues that the pole owner had identified.
        ii. Then, the pole owner has 15 days" to review the application "on the merits" (or 30 days for larger orders).[54]
            1. The pole owner will agree or disagree with the attacher's classification of make-ready work for a particular pole as either "simple" or "complex."[55]
            2. If the pole owner denies the application, it shall provide "all relevant evidence and information supporting its decision" and explaining "how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards." [56]
        iii. If the pole owner fails to respond within 10 business days (or the pole owner rejects the application without "specify[ing] any reasons" for doing so), the application will be "deemed complete."[57]

[48] *See* Pasquine, *supra* note 25, at 5.
[49] 65-407 C.M.R. ch. 880 § 2(A)(12)(a)(ii).
[50] *Id.* § 2(A)(12)(a)(iii).
[51] *Id.*
[52] *Id.* § 2(A)(12)(a)(iv).
[53] *Id.* § 2(A)(12)(a)(v).
[54] *Id.* § 2(A)(12)(a)(vii).
[55] *Id.* § 2(A)(12)(a)(viii). Any determination by the pole owner that work is "simple" or "complex" is considered to be "final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple." *Id.*
[56] *Id.* § 2(A)(12)(a)(vi).
[57] *Id.* § 2(A)(12)(a)(iv).

5. **Survey.** For OMTR, the pole attacher (and/or the third-party contractor that it has hired) then conducts a "ride out" or "field survey" along the route to understand what work must be completed before the attacher can attach its equipment to the relevant pole. [58]
    a. In some cases, the pole owner will participate in the field survey to "identify potential clearance and compliance issues" and avoid "situations in which a post attachment inspection reveals the need to replace poles after the attachments have occurred."[59] The attacher must permit the pole owner and any affected attaching entity to be present if they want to participate.
6. **Make-Ready Estimate.** Since the attacher is doing the make ready work (and incurring all the related costs of make-ready work), it does not need to pay an "estimate" to the pole owner.
7. **Permits and Third-Party Approvals.** The attacher must acquire the required permits.
8. **Make-Ready Work.** The attacher (and/or the third-party contractor that it has hired) will conduct make-ready work on their respective equipment in order to make room for its equipment.[60]
    a. The attacher must give written notice to the "pole owner and affected attaching entities" of "the date and time" of the work, "a description of the work involved," and "the name of the contractor being used" at least 15 calendar days in advance.[61]
    b. If the pole owner or an affected attaching entity determines that work is "complex," rather than "simple," then the make-ready work must be halted and the attacher must follow the traditional make-ready process instead.[62]
    c. The attacher must notify the "pole owner and any affected attaching entities with notice of the completion of the make-ready work within 15 calendar days of completion" and give such entities "90 calendar days from receipt of the notice to inspect the make-ready work." [63]
    d. The pole owner and the attaching entities then have "14 calendar days from the completion of their inspection to notify the requesting party of any damage or code violation resulting from the make ready work."[64]
        i. In such event, the pole owner or affected attaching entity can do the remedial work itself and then bill the attacher for reasonable associated costs. Alternatively, they can require the attacher to do so at their expense within 14 calendar days. [65]
9. **Simple Make-Ready Work and Attachment by Applicant.** The attacher will attach their equipment at the same time that they are performing make ready.
10. **Post-Installation Inspection.** Same as above.
11. **Licensed Issued.** Receive a license from the pole owner post-inspection.

Which Third-Party Contractors Can Perform Pole Attachment Work?

In a traditional make-ready process, the pole owner (if it does not perform the survey or make-ready work in-house) must hire a third-party contractor to do said make-ready or survey work.

[58] *Id.* § 2(A)(12)(b).
[59] *See* Pasquine, *supra* note 25, at 6.
[60] 65-407 C.M.R. ch. 880 § 2(A)(13)(c).
[61] *Id.* § 2(A)(13)(c)(i).
[62] *Id.* § 2(A)(13)(c)(iii).
[63] *Id.* § 2(A)(13)(d).
[64] *Id.*
[65] *Id.*

When an attacher uses the OTMR process or invokes self-help as a remedy, they are responsible for bringing in a third-party contractor to perform the relevant survey or make-ready work. Two types of firms can be hired:

- An attacher can always hire a third-party contractor that a pole owner has publicly listed as authorized to do such work on its poles.[66]
- An attacher can request to hire an **unauthorized** third-party contractor, as provided in Chapter 880.[67]
    - However, the contractor must meet the following minimum qualifications, including it:
        - (1) "has agreed to . . . published safety and operational guidelines of the pole owner,"
        - (2) "has acknowledged that it knows how to read and follow licensed-engineered pole designs for make ready, if required by the pole owner,"
        - (3) "has agreed to follow all local, state, and federal laws and regulations," and
        - (4) "has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the pole owner, if made available."[68]
    - And, the attacher must certify that the contractor meets the above qualifications.[69]
    - Even if a contractor meets these requirements, the pole owner still "may disqualify any contractor chosen . . . but such disqualification must be based on reasonable safety or reliability concerns."[70]
    - The attacher must allow the pole owner and any affected attaching entity to be present for: (1) survey work for self-help[71] or OTMR[72] and/or (2) make-ready work for self-help[73] or OTMR.[74]

There are a finite number of contractors in Maine. Pole attachment requires a skilled workforce that is capable of meeting applicable local, state, and federal laws and regulations, as well as meeting the requirements of the specific pole owner. If no firms are available that meet the above requirements, pole attachers will not have access to either the OTMR process or self-help remedy.

What Happens When There Is a Disagreement Between Parties?

The Maine PUC has statutory authority under section 711(1) of Title 35-A to adjudicate any disputes that arise between pole owners and attachers.[75]

- **Bilateral Resolution.** Parties are free to bilaterally resolve disputes that arise between themselves, rather than bringing them before the PUC in either an informal or a formal capacity.
- **Informal PUC Adjudication.** Parties can also informally resolve situations but with the aid of the PUC through the "Rapid Response Process,"[76] which outlines a specific procedure for parties:

[66] *Id.* § 2(A)(10)(a).
[67] *Id.* § 2(A)(10)(c).
[68] *Id.* § 2(A)(10)(f).
[69] *Id.* § 2(A)(10)(d).
[70] *Id.* § 2(A)(10)(e).
[71] *Id.* § 2(A)(9)(a).
[72] *Id.* § 2(A)(12)(b)(ii).
[73] *Id.* § 2(A)(9)(b)(iii).
[74] *Id.* § 2(A)(12)(c)(i).
[75] 35-A M.R.S. § 711(1) ("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 [certain criteria are met]." (emphasis added).
[76] *Investigation into Practices and Acts Regarding Access to Utility Poles*, No. 2010-00371, Order (July 12, 2011); *see also Rapid Response Process*, MAINE PUBLIC UTILITIES COMM'N, https://www.maine.gov/mpuc/regulated-utilities/telecom/approved-companies/rapid-response (last accessed on July 31, 2024).

- First, a complainant electronically emails a complaint to the PUC, which the other party then acknowledges.
- The PUC, through a Rapid Response Process Team ("RRPT"), then organizes a preliminary conference call within 2 business days of the complaint filing, where the PUC may request more information, schedule a follow-up call, issue a preliminary finding, or dismiss the complaint. The PUC may hold follow-up calls to provide updates or discuss in more detail.
- Within 7 business days of the filing, the PUC must issue a final written decision, which is in effect pending appeal. At which point, a party may appeal the final order or request a stay of the final order by the PUC pending appeal.

- **Formal PUC Adjudication.** Parties can seek a formal, binding adjudication from the PUC.[77] Under section 711 of Title 35-A, a party entitled to attach to a pole "can request, or the [PUC] can take up on its own motion," the resolution of any dispute "regarding the rates, terms and conditions of pole attachments."[78] Any complaint outside of the RRPT process will "trigger an adjudicatory proceeding for the purpose of resolving the disputes," which will involve a finding by the PUC that "will be binding on those two parties."[79]

Why Does This Process Matter?

Electricity and telecommunications (primarily telephone and formerly telegraph) companies own most of the poles in the United States as they built most of the current utility pole infrastructure in the early and mid-twentieth century.[80] Prior to the late 1800s and early 1900s, poles did not exist in the country. Since neither company initially had access, they either individually built out their own poles or cooperated through joint use agreements and joint ownership to build out new poles and share space on them (either by splitting the cost between themselves or agreeing to provide access to each other's poles). At the time, both had aligned incentives to deploy as quickly as possible and share resources given the lack of existing infrastructure.

However, the broadband attachers of the 21st century are separate entities. Since poles already exist in most parts of the country, it does not make sense for these broadband attachers to build a new, duplicative pole infrastructure – like the legacy electricity and telephone companies had done. Instead, broadband attachers seek to rent space on existing utility poles owned by the electricity and telecommunications companies.

Because pole owners own a scarce asset that attachers need, it creates an asymmetry in the relative bargaining power of the two parties. The issue is not unique to broadband attachers; it applies to any non-pole-owning entity that wants to attach to the pole. For instance, in the 1970s, when the cable industry first grew in the United States, cable providers similarly sought to rent spare pole capacity on electricity and telecommunications poles. Pole owners, owning a limited and essential asset for cable operators, were incentivized to charge cable providers high prices to obtain access.[81] Absent any regulation, very high prices for access resulted in high construction costs (or delays, as attachers take more time to negotiate and bargain with owners), inhibiting the growth of a nascent and growing industry.[82] As a result, the federal government and state governments (like Maine) have, through legislation and regulation (as detailed below), implemented a legal regime on pole owners to specifically counteract this issue.

---

[77] 35-A M.R.S. § 711(4).
[78] *Investigation into Practices and Acts Regarding Access to Utility Poles*, No. 2010-00371, Order, at 6 (July 12, 2011).
[79] *Id.*
[80] *See* A NATURAL HISTORY OF THE WOODEN UTILITY POLE, CAL. PUBLIC UTIL. COMM'N (2017).
[81] *See* Alabama Power Co. v. FCC, 311 F.3d 1357, 1361–62 (11th Cir. 2002) ("In the view of Congress, the costs of erecting an entirely new set of poles would have created an insurmountable burden on cable companies. As the owner of these 'essential' facilities, the power companies had superior bargaining power, which spurred Congress to intervene in 1978.").
[82] *See* Nat'l Cable & Telecomms. Assn. v. Gulf Power Co. 534 U.S. 327, 330 (2002) ("[Cable providers] have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.").

I. Regulatory Frameworks

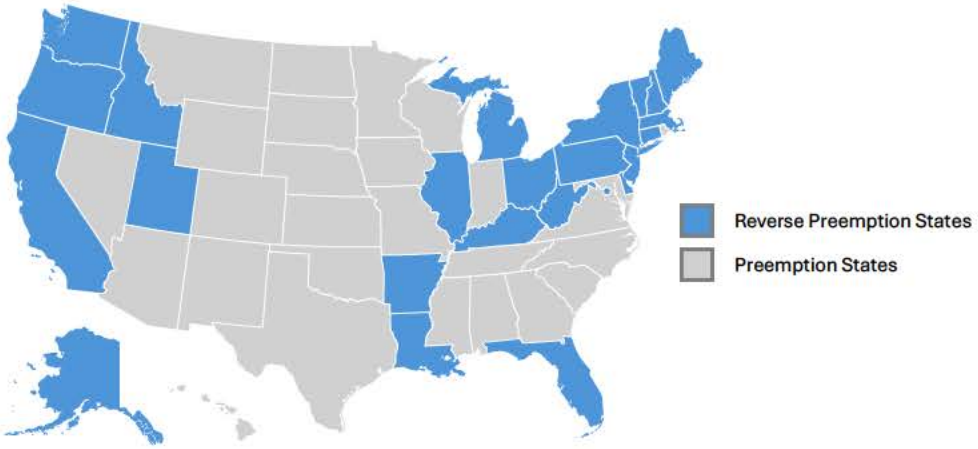
Before considering which changes are appropriate, it is important to understand where we currently sit today. The first task of this Report is to provide detail on Maine's existing regulatory framework for pole attachments and to compare it against the regulatory frameworks of other states in the United States.

In the United States, most pole owners[83] are subject to at least some statutes and regulations that impact their ability to contract with prospective pole attachers, including who they can contract with, how much they can charge, and how quickly they must accommodate prospective attachers' requests to attach to their poles.

In 1978, Congress passed the Pole Attachment Act, which is the foundational statute for regulating poles in the United States.[84] Typically, a federal law (or related regulation) will preempt any conflicting state or local law (or regulation) that directly addresses the same issue. However, section 244(c) of the Act allows states to preempt federal laws and regulations if they have set up their own regulatory regime. As a result, in the United States, poles can be regulated either at the federal- or state-level based on whether a specific state has decided – through legislation – to preempt the Pole Attachment Act.

To date, the majority of states (twenty-seven) have not preempted the Pole Attachment Act; thus, pole owners in those states ("Preemption States") must follow the federal pole attachments laws and rules (and therefore do not have their own unique pole attachment laws or regulations). However, twenty-three states, **including Maine**,[85] and the District of Columbia have elected to regulate pole attachments on their own ("Reverse Preemption States").[86] **Figure 1** shows which states are Preemption States and Reverse Preemption States.

Figure 1. Map of Preemption States and Reverse Preemption States



Regardless of whether a state is a Preemption State or a Reverse Preemption State, a governmental entity has created legally binding requirements on pole owners in one of two ways:

- **Statutes.** Legislatures – the government bodies legally authorized to pass binding laws – can write and pass new statutes. For example, at the federal level, Congress passed the Pole Attachment Act. At

[83] The Pole Attachment Act explicitly excludes state and local government entities and cooperatives. 47 U.S.C. § 224(a)(1). Thus, in any state that is subject only to the FCC's jurisdiction and has not promulgated any additional laws, municipalities and cooperatives are not subject to any pole-related regulations. Some states have passed legislation to extend pole regulation to these entities. *See, e.g., Broadband Internet Service Providers*, 2023 Fl. Laws 199. However, others have not passed any applicable legislation to date.
[84] Pub. L. No. 95–234, 92 Stat. 33 (1978) (codified as 47 U.S.C. § 224).
[85] *Investigation into Practices and Acts Regarding Access to Utility Poles*, No. 2010-00371, Order at 4 (July 12, 2011).
[86] *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 37 FCC Rcd. 6724 (June 13, 2022).

the state level, the Maine State Legislature passed specific provisions in Title 35-A, which contains the relevant legal authorizations and provisions for pole attachments in Maine.

- **Regulations.** Agencies – that are created by the legislature – can also issue regulations that either add detail to or clarify laws previously passed by the legislature. In the United States, statutes relating to pole attachments have typically provided a general framework or guiding principles and then delegate specific rulemaking authority to a government agency. For example, at the federal level, the Federal Communications Commission (FCC) has issued several rules on pole attachments, and, at the state level, the Maine PUC has similarly issued several rules on pole attachments. If these rules are properly promulgated, pole owners must follow them as if they were laws passed by the applicable legislature.

  Notably, a government agency has limited regulatory authority. An agency cannot pass a rule unless a law from the legislature authorizes them to create that rule in the first place. At the federal level, the Pole Attachment Act authorizes the FCC to regulate "the rates, terms, and conditions of pole attachments" of pole owners to ensure they are "just and reasonable."[87] In Maine, section 711 of Title 35-A authorize the PUC to "adopt rules governing the resolution of pole attachment disputes."[88] Given the broad wording of both of these provisions, both the FCC and the Maine PUC have been able to regulate extensively in this area, but not limitlessly.

  In addition, because agencies can only act based on statutory authorization, any subsequent laws passed by a legislature that conflict with an existing regulation will override that regulation.

To identify the strengths and weaknesses of Maine's current legal framework, below, this report examines the laws and rules for pole attachments in Maine, as well as the laws and rules in Preemption States and several Reverse Preemption States to compare and contrast regulatory approaches. In addition, in some instances, Reverse Preemption States have modified their frameworks in light of changes either made or explored by the FCC for Preemption States, such as setting pole attachment rates[89] and creating OTMR.[90]

A. Maine

Since 1984, Maine has been a Reverse Preemption State, providing its own set of legal requirements for pole owners, rather than relying on the legal requirements set by the FCC.[91]

The statutory basis for Maine's pole attachment framework comes from Title 35-A, which is the utility portion of Maine's laws. Title 35-A exists to "ensure that there is a regulatory system" for all entities subject to this title, including broadband internet access providers and utility pole owners.[92] Title 35-A does not provide granular details for the rules for pole owners. Instead, it delegates authority to the Maine PUC to promulgate rules based on several broad principles laid out in section 711, as described further below. Acting under this statutory authority, the Maine PUC has been the primary entity that has created legal requirements for pole owners in Maine through several rulemakings that it has promulgated over the last decade.

1. Statute (Section 711 of Title 35-A)

As mentioned, Title 35-A does not lay out specific rules for pole owners to abide by. Rather, section 711 grants the Maine PUC general rulemaking authority with respect to pole attachments, stating that the Maine PUC

[87] Covered entities include cable systems, CLECs, wireless and broadband internet access service. It originally included only cable providers but the Telecommunications Act of 1996 expanded the term's scope.
[88] 35-A M.R.S. § 711(4).
[89] *See, e.g.*, *id.* (citing Federal Rules as a source of consideration for Maine PUC when developing its own rules).
[90] *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination an Allocation of Costs; Procedure*, No. 2020-00281, Order Amending Rule and Statement of Factual and Policy Basis, at 13 (Apr. 8, 2021) (citing *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, 33 FCC Rcd. 7705 (Aug. 3, 2018) ("FCC's 2018 OMTR Order")).
[91] *Investigation into Practices and Acts Regarding Access to Utility Poles*, No. 2010-00371, Order at 4 (July 12, 2011).
[92] 35-A M.R.S. § 101.

"shall adopt rules governing the resolution of pole attachment disputes and the rates, terms and conditions of joint use."[93] In exercising its rulemaking authority, the PUC must do the following:

- "promote competition, further the state broadband policy";
- "ensure safe, nondiscriminatory access on just and reasonable terms";
- "include a process for ensuring that a new joint use entity seeking access to the poles, ducts, conduits or rights-of-way of another joint use entity [has the technical and financial capabilities to fulfill its obligation related to such joint use]"; and
- "take into account the interests of the customers of the affected joint use entities."[94]

Section 711 also provides the PUC with adjudicative authority to hear any "dispute" between a pole owner and attacher through a formal adjudication, [95] as briefly discussed above.[96]

In addition, the Maine PUC has asserted that it has additional statutory authority under section 111 of Title 35-A ("Rules; assistance') to "adopt rules and [to] employ assistance to carry out its responsibilities under [Title 35-A]."[97] In theory, this broad grant of authority could be read expansively to allow the Maine PUC to adopt almost any conceivable rule that it views as necessary to "carry out its responsibilities." Although one may also argue that this provision is limited by the fact that other parts of Title 35-A prescribe specific rulemaking power with respect to poles. For example, section 711 specifies that the Maine PUC has authority to "adopt rules governing the resolution of pole attachment disputes and the rates, terms, and conditions of joint use," which might imply that the Maine PUC lacks the authority to adopt rules outside of the context of a specific pole attachment dispute.[98] To date, the Maine PUC has not acted solely under section 111 (and in 2016, the Maine PUC explicitly opted **not** to promulgate a rule solely based on this statutory authority[99]).

The Maine PUC has also cited sections 301, 2524, 7903, and 8302 of Title 35-A as the relevant sources of statutory authority to implement specific aspects of prior pole-attachment-related rulemakings as well (e.g., setting pole attachment rates, implementing the municipal make-ready exception, and extending who can access the Maine PUC adjudication process).[100]

Currently, the PUC has found section 711 offers sufficient authority to regulate pole attachments in Maine. In the past, one heavily debated question has been the scope of legal authority granted to the PUC under Title 35-A. When the PUC first considered adopting a rule related to pole attachments in 2015-16, it noted that the original language of section 711 "may [have] only [been triggered] if there [were] a dispute before the Commission."[101] In other words, the PUC argued that section 711 could be read to only allow the PUC to

[93] *Id.* § 711(4).
[94] *Id.* § 711(3).
[95] *Id.* § 711(4).
[96] *See supra* text accompanying notes 78–79.
[97] 35-A M.R.S. § 111.
[98] *See infra* text accompanying notes 111–115 for further discussion on how the Maine PUC's authority under section 711 of Title 35-A is interpreted to be *presumptive*, and not *prescriptive*.
[99] *Inquiry into Amendment of Chapter 880 of the Commission's Rules*, No. 2015-00295, Order at 5 (Dec. 20, 2016).
[100] 65-407 C.M.R. ch. 880. Section 301 states that any "rate, toll, or charge, or any joint rate made, extracted, demanded, or collected by any public utility . . . for communications service . . . shall be just and reasonable." 35-A M.R.S. § 301. Section 2524 allocates pole owners and other attaching entities to assume any make ready costs of a "municipality's attaching its facilities to that shared use pole . . . [f]or the purpose of providing broadband service to an unserved or underserved area." *Id.* § 2524(2)(B). This provision was added in May 2019. *An Act to Establish Municipal Access to Utility Poles Located in Municipal Rights-of-way*. Section 7903 allows every telephone utility to "[c]onnect its lines with those of any other utility;" "[s]ell or lease its lines and property, in whole or in part, to any other like utility;" and "[p]urchase or lease the lines and property, in whole or in part of any like utility." 35-A M.R.S. § 7903. Section 8302 applies section 711 to disputes between a "cable television system" and a "voice service provider, dark fiber provider, wholesale competitive local exchange carrier or public utility." *Id.* § 8302.
[101] *Inquiry into Amendment of Chapter 880 of the Commission's Rules*, No. 2015-00295, Order at 2 (Dec. 20, 2016).

promulgate rules related to formal adjudications between disputing parties before the PUC, rather than to allow the PUC to proactively "promulgate rules of general, first-instance."[102] At the time, instead of interpreting section 711 more expansively or solely relying on its potential authority under section 111 or another statutory provision, the Maine PUC waited for the State legislature to amend section 711. In 2017, the legislature revised section 711, including a new rulemaking provision that reads as follows:[103]

> The commission shall adopt rules governing the resolution of pole attachment disputes and the rates, terms and conditions of joint use. The rules must promote competition, further the state broadband policy set forth in section 9202-A and ensure safe, nondiscriminatory access on just and reasonable terms. The rules must also include a process for ensuring that a new joint use entity seeking access to the poles, ducts, conduits or rights-of-way of another joint use entity meets the requirements of subsection 1, paragraph D. In establishing rates, the commission shall consider various formulas, including, but not limited to, the formula adopted by the Federal Communications Commission as codified in 47 Code of Federal Regulations, Part 1, Subpart J, as amended. Rules adopted or amended pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The Maine PUC seems to have found this grant of authority to be sufficiently broad. Since the 2017 statutory revisions, the PUC has promulgated several rulemakings to regulate pole attachments in Maine and has not cited the scope of its statutory authority as an obstacle in issuing any of those new rules.

2. Regulations (Maine PUC, Chapter 880)

The Maine PUC, acting under its statutory authority granted by section 711 and other parts of Title 35-A, has regulated pole attachments through several rulemakings, encapsulated in a document titled Chapter 880 ("Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure"). Chapter 880:

> [E]stablishes the amounts which pole owners may include in their cost of service for attachments to joint-use utility poles; the allocation of those costs among joint users; the procedure for establishing cost responsibility and rates, the terms and conditions of attachment to joint-use utility poles, and the procedure for resolving pole attachment disputes.[104]

The Maine PUC has amended Chapter 880 several times. Chapter 880 outlines terms and conditions for pole attachments in Maine, including attachments related to broadband internet access. It is organized as follows:

> **1. Definitions.** Defines key terms relevant for the Chapter.
>
> **2. Terms and Conditions.** Outlines the terms and conditions presumed to be "reasonable" for joint use of utility poles, including: the process to attach to a pole; the timeline that a pole owner must follow to consider an application; cost estimates; responsibility for make-ready work; self-help; one-touch make-ready; and replaced and abandoned joint use-utility poles. The specific processes and timelines are included above in ***"How Do Pole Attachments Work?"***
>
> **3. Approval of Attaching Entities.** Requires attaching entities (not grandfathered in before the effective date of the Chapter) to obtain a Pole Attachment License from the Commission before attaching to any joint-use utility pole. It then lays out the application requirements for such entities (e.g., evidence of financial and technical capability; etc.).

[102] *Id.*; 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 3–4 (2024). The PUC also had concerns that broadband providers could not bring a dispute before the PUC given the definition of "dark fiber provider" under Title 35-A. *See id.* at 4.
[103] 35-A M.R.S. § 711(4).
[104] 65-407 C.M.R. ch. 880.

4. Calculation of Rates Joint-Use Utility Policies. Adopts the FCC's Cable Rate Formula to determine what constitutes a "just and reasonable rate" for a pole attachment (see below in ***subsection I.B.2*** for more details).

5. Joint-Use Software System. Requires all large pole owners in the state to participate in a "joint-use software system" to apply for pole attachments (see more details below).

6. Separate Charges. Specifies that pole owners must charge attaching entities for (1) make-ready work; (2) tree trimming and brush control; and (3) excess height separately.

7. Joint Responsibility Agreements. Allows entities to enter into joint responsibility agreements, such as "the joint ownership of joint-use poles, sole ownership of joint-use utility poles in an agreed proportion, compensation or any combination thereof."

8. Revenue-Neutral Rate Adjustments for Utilities. Accounts for treatment of increases in joint-use utility pole attachment revenues.

9. Resolution of Disputes. Outlines a PUC-led dispute resolution mechanism, including a rapid response process team ("RRPT"). Attachers have found the process to be "straight-forward and unambiguous."[105] This process is similar to the FCC's new "Rapid Broadband Assessment Team."[106]

10. Negotiated Agreements. Allows pole owners and attaching entities to enter into negotiated agreements that differ from the terms and conditions laid out in Chapter 880.

11. Waiver. Allows the PUC, the Director of Electric and Gas Utility Industries, the Director of Consumer Assistance and Safety, or officer assigned to a proceeding to allow waivers.

However, Chapter 880 has two important limitations that potentially limit its applicability in Maine.

- **First, Chapter 880 is presumptive, and not prescriptive.** When the Maine PUC amended Chapter 880 to reflect broadband in 2018, the PUC clarified that its rules were "presumptive," meaning that the PUC would only apply the terms as a remedy "in the context of a dispute," not "prescriptive," meaning that they would apply automatically "to all pole attachers in the first instance."[107]

  While the PUC, as a policy matter, stated that it preferred that the terms were prescriptive, it thought that the legislative text, even after it had been amended in 2017, did not give it the flexibility to do so.[108] While the text itself is arguably ambiguous, as the PUC noted, during the drafting of the bill, the State Legislature had revised language in a prior draft that appeared to be more presumptive, adding back language that specifically referred to "disputes."[109] That said, the PUC has also noted that it had expected the rules to become "*de facto* prescriptive," assuming that parties ex ante would recognize that the Maine PUC would apply the revised Chapter 880 terms in any future disputes, and thus would proactively comply with them (instead of violating them and having to get brought before the PUC).[110]

---

[105] *See* Comcast of Maine/New Hampshire, Inc. & Spectrum Northeast, LLC, *Response of Charter and Comcast to the Commission's Requests for Information Numbers 6, 7, 8, 10, & 11*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 1 (May 10, 2024).

[106] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (Dec. 15, 2023).

[107] *Amendment to Chapter 880 – Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2017-00247, Order Amending Rule, at 6 (Jan. 12, 2018).

[108] *See id.* at 6–10 ("The language of the Act is plain and unambiguous; the reinsertion of the requirement that the Commission hold a hearing or receive a complaint before ordering joint use of utility infrastructure, the reinsertion of the condition that parties fail to agree before the Commission may order joint use of utility infrastructure, and the reinsertion of the requirement that the Commission adopt rules governing pole attachment disputes, prevents the Commission from promulgating prescriptive rules.").

[109] This is the case, even though both the Maine State President and House Co-Chair of the Energy, Utilities, and Technology Committee claimed that it was "the intent of the Legislature" for the PUC's rulemaking power to be prescriptive in this instance. *See id.* at 6 & 6 n.8.

[110] *Id.* at 10.

- **Second, pole owners and attachers can also voluntarily enter into contracts that supersede the Chapter 880 requirements.** When attachers request to attach, pole owners will often require them to sign a negotiated agreement before allowing them to attach.[111] Section 10 of Chapter 880 states that terms in these agreements do not have to comply with Chapter 880.[112] While such agreements do not always conflict, sometimes they supplement new terms for issues like insurance, indemnification, liability, which are not discussed in Chapter 880, pole owners apparently sometimes use terms that differ from those in Chapter 880.[113] It is worth noting that prices in negotiated agreements do not appear to deviate from rates calculated under the Chapter 880 methodology.[114]

  In addition, from 1993 to 2015, Maine PUC had not updated its pole attachment rules.[115] But over the past decade, the PUC has repeatedly amended Chapter 880 (in 2018, 2019, 2020, and 2023, as shown below in ***subsection I.A.3***) to address various, evolving concerns with pole attachments. Therefore, current contracts that were written before 2023 may contain terms that are consistent with prior versions of Chapter 880 but have not been updated since to reflect subsequent regulatory changes.

3. Key Regulatory Developments

The Maine PUC has issued several rules to amend Chapter 880 over the past several years. In some cases, these changes have occurred due to issues or sectoral developments in Maine. In other cases, the Maine PUC has conducted inquiries or issued rules based on changes or proposals made at the federal level.[116] Note, in such cases, the Maine PUC has done so voluntarily as it is not legally required to follow the federal laws and rules or address similar issues in its rulemakings.

a. Terms and Conditions and Pole Licensing (Docket No. 2017-00247)

In June 2015, the Maine Office of Public Advocate ("OPA") requested the Maine PUC to reexamine Chapter 880.[117] The OPA attributed Maine's "lack of broadband infrastructure" to "antiquated rules governing the rights of third parties to attach to utility poles" that resulted in "unnecessary costs and delays."[118] In response, in September 2015, the PUC initiated an inquiry to amend Chapter 880 to "facilitat[e] the use of facilities by carriers able to offer and expand broadband throughout the state."[119]

While the Maine PUC agreed that the then-current regulatory framework was not adequate for new broadband projects, the PUC declined to commence a rulemaking at the time due to uncertainty over whether it had statutory authority to amend Chapter 880 for broadband projects, as discussed above.[120] After the PUC closed the inquiry, the Maine Legislature then amended Title 35-A to expand the Maine PUC's statutory authority.

In 2016, the PUC initiated a second inquiry to amend Chapter 880 in light of these statutory changes. This process resulted in a new rulemaking in January 2018.[121] This rule updated the terms and conditions for pole attachments that are considered "reasonable" for broadband. In addition, any prospective attaching entity

[111] *See supra* text accompanying note 32.
[112] 65-407 C.M.R. ch. 880 § 10 ("Notwithstanding anything to the contrary in this Chapter, pole owners and attaching entities may enter into negotiated agreements for attachment to joint-use utility poles that contain rates, terms, or conditions that differ from those described in this Chapter.").
[113] For example, some agreements may allow a pole owner to deviate from specified time limits in Chapter 880 for "cause," which can be difficult for pole attachers to assess and/or enforce.
[114] Central Maine Power Company, *Inquiry into Amendment of Chapter 880 of the Commission's Rules Regarding Rates*, No. 2018-00010 (Feb 9, 2018).
[115] *See* MAINE PUBLIC UTILITIES COMMISSION, *supra* note 102, at 2.
[116] *See, e.g.*, 35-A M.R.S. § 711(4) (citing Federal Rules as a source of consideration for Maine PUC when developing its own rules).
[117] *Inquiry into Amendment of Chapter 880 of the Commission's Rules*, No. 2015-00295, Notice of Inquiry (Sep. 28, 2015).
[118] Timothy R. Schneider & Robert A. Creamer, *Consideration of a Rulemaking Procedure to Repeal and Replace Chapter 314 of the Commission's Rules*, No. 2015-00295 (June 29, 2015).
[119] *Inquiry into Amendment of Chapter 880 of the Commission's Rules*, No. 2015-00295, Notice of Inquiry (Sep. 28, 2015).
[120] *Inquiry into Amendment of Chapter 880 of the Commission's Rules*, No. 2015-00295, Order at 5 (Dec. 20, 2016).
[121] *Amendment to Chapter 880 – Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2017-00247, Order Amending Rule (Jan. 12, 2018).

that was not already attached to joint-use utility poles in Maine now has to obtain a Pole Attachment License from the PUC. However, the PUC did not amend the provisions regarding rates and cost of service. And, this rule was solely presumptive – applied by the PUC in disputes – rather than prescriptive. [122]

b. Rates for Joint Use Utility Poles and Municipal Exemption (Docket No. 2019-00028)

The regulations in Chapter 880 dictate the costs that pole owners can charge attachers.[123] In November 2019, the Maine PUC adopted the FCC's "Cable Rate" formula[124] due to its "wide[] use[] across the country" and "comparative[] eas[e] [of] use."[125] The FCC's Cable Rate formula allocates the costs charged to the pole attacher based on the usable space on a pole and the amount of that usable space that an attacher occupies.

The Cable Rate formula sets the maximum "just and reasonable" rate[126] that a pole owner can charge as "space factor" multiplied by cost. The PUC assumes that an attachment on "an average joint-use utility pole" has a space factor of "7.4% per foot," implying that the total usable space is approximately 13.5 feet.[127]

In the same rulemaking, the Maine PUC updated section 5 of Chapter 880 so that a pole owner is responsible for any make-ready work that it has conducted to "accommodate a municipality's attaching its facilities to that joint-use utility pole" for (1) projects "consistent with the police power of the municipality" or (2) providing broadband in unserved or underserved areas.[128]

c. Abandoned Pole and Tagging (Docket No. 2019-00028)

In May 2019, the Governor signed into law LD 1206, An Act Regarding Utility Poles in Public Rights-of-Way.[129] Maine PUC opened an inquiry[130] and prepared a report, which it shared with the legislature in January 2020. [131] In November 2020, the Maine PUC issued a rulemaking creating established timelines for the removal of replaced and abandoned utility poles.[132]

In the same rulemaking, the Maine PUC proposed a new rule requiring attachers to identify their attachments with physical tags.[133] In April 2021, the PUC amended its rules to add the requirement that every attachment in the communications space have an identification tag.[134] As a result, future attachers or engineering firms doing work on the poles can clearly identify which piece of equipment belongs to which respective firm.

d. One Touch Make Ready (Docket No. 2020-00281)

In August 2018, the FCC issued its "One Touch Make Ready" ("OTMR") Order.[135] The FCC's OMTR Order allows

---

[122] *See supra* text accompanying notes 111–115.
[123] 65-407 C.M.R. ch. 880 § 4.
[124] *See id.* § 1(L) (defining "FCC Cable Rate Formula" based on 47 C.F.R. § 1.1406(d)(1)).
[125] *Amendments to Chapter 880 of the Commission's Rules - Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2019-00028, Order Amending Rule, at 8 (Nov. 9, 2019).
[126] Under 47 U.S.C. § 224(b), the FCC must set "rates" for pole attachments that are "just and reasonable." This term is defined as a rate that "assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of total useable space . . . , which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole . . . ." 47 U.S.C. § 224(d)(1). "Useable space" is defined as the "space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment." *Id.* § 224(d)(2).
[127] 65-407 C.M.R. ch. 880 § 4.
[128] *Id.* § 5(A)(1)(b).
[129] *An Act Regarding Utility Poles in Public Rights-of-Way*, 2019 ME. LAWS 1987.
[130] *Notice of Inquiry Related to Abandoned Utility Poles and Associated Facilities*, No. 2019-00223, Notice of Inquiry (Aug. 28, 2019).
[131] Maine Public Utility Commission, *Report Related to Abandoned Utility Poles and Associated Facilities*, No. 2019-00223 (Jan. 31, 2020).
[132] *Amendments to Chapter 880 of the Commission's Rules - Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2020-00281, Notice of Rulemaking, at 1 (Nov. 18, 2020).
[133] *Id.* at 4.
[134] *See Amendments to Chapter 880 of the Commission's Rules - Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2020-00281, Order Amending Rule and Statement of Factual and Policy Basis, at 11–12 (Apr. 8, 2021).
[135] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, 33 FCC Rcd. 7705 (Aug. 3, 2018) ("OMTR Order").

an attacher to use an engineer from a pre-approved list (by the pole owner) to do all of the make ready work, rather than have the pole owner and each current attacher to the pole hire their own respective firms to do the make ready work. This rule was expected to reduce the time and cost of deployment. In April 2021, in the same rulemaking that updated the rules for tagging, as discussed above, the Maine PUC issued a rulemaking adopting OTMR for simple work.[136]

e. Pole Management Database (Docket No. 2023-00058)

In October 2021, the Maine PUC commenced a new inquiry on "pole ownership and administration," which it had "anticipate[d] [would] be the final phase" of its efforts to modernize Maine's pole attachment rules.[137] At the time, the PUC suggested several ideas, including single pole ownership, single pole administrator, and/or single pole database. The Maine PUC also asked for thoughts on creating an "alternative framework for assessing the cost of pole replacement."[138]

In response, in November 2021, Versant, CMP, and Consolidated, the largest pole owners in Maine, proposed implementing a "centralized pole management and notification system."[139] Under this model, existing pole owners would still maintain their ownership and administration of their poles. However, pole owners would be required to upload their pole data to a "comprehensive pole administration database," creating a single source of information on "the precise location of every pole in Maine, the ownership status of each pole, the entity response for maintenance of each pole, as well as detailed information about each attachment on the pole (owner, type of attachment, etc.)."[140] In particular, Versant, CMP, and Consolidated indicated that the database could better facilitate the following activities:

1. submission of pole attachment requests and applications to one source;
2. facilitating workflow and notifications and communications on an online platform;
3. providing chapter 880 required make ready notifications;
4. providing transfer notifications for new attachment make-ready; transfer notifications for damage, capital improvement, and road construction pole replacements;
5. providing transfer notifications in connection with abandoned pole transfer process;
6. providing OTMR notifications;
7. providing post attachment inspection notifications;
8. providing billing notifications;
9. monitoring and tracking process; and
10. managing existing pole attachments (including addition or deletion of attachments).[141]

These entities claimed that such a system could be "fully operational" by January 1, 2023.[142]

---

[136] *Amendments to Chapter 880 of the Commission's Rules - Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2020-00281, Order Amending Rule and Statement of Factual and Policy Basis, at 13 (Apr. 8, 2021).
[137] *Inquiry into Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2021-00321, Notice of Inquiry (Oct. 21, 2021).
[138] *Id.* at 6.
[139] *See* Arielle Silver Karsh, Sarah Davis & Nathan Cota, *Pole Ownership Proposal to Implement Universal Joint Use System*, No. 2021-00321 (Nov. 19, 2021).
[140] *Id.* at 6.
[141] *See id.* at 3–4.
[142] *Id.* at 7. It is worth noting that Alden One did not go online immediately, and initially only CMP was using the system. Versant did not begin to use the system until July 2024. Consolidated, as of the date of this report, is not using the system. Consolidated has agreed to use it by December 2025. *See Consolidated Communications, Inc. Request for Approval of Change of Control*, No. 2023-00327, Order Approving Stipulation, at 6 (July 11, 2024).

Versant, CMP, and Consolidated, acknowledging that "the system must be universally used by pole owners and joint use entities," proposed that the PUC update Chapter 880 to require "[e]ach Joint-Use Entity" to "participate in and follow the requirements of the Universal Joint Use System as a condition to attaching to any Joint-Use Pole."[143] In exchange, they argued that further rulemaking on the other issues (pole ownership; pole administration; and pole replacement costs) should not be pursued at this time.[144]

Industry participants generally supported the creation of a single repository of data and attachment requests, arguing that it would streamline the process.[145] Although some expressed concerns that a database may be hard to implement, would raise confidentiality and competition issues, and would not "cure the coordination and incentive issues" that broadband providers had historically faced.[146]

In February 2022, Versant, CMP, and Consolidated informed the PUC and the public of its intent to buy Alden One, as a joint use software system for pole owner information, from Alden Systems.[147] In July 2022, the PUC requested comments on proposed language to update Chapter 880 to reflect a joint use system.[148] After considering the various options, public comments, and feedback from several workshops, the PUC decided to focus on using this rulemaking to create a single pole database. In March 2023, it closed its initial inquiry, noting that the biggest issues were "(1) implementation of the database; (2) participation in the database; and (3) funding of the database."[149]

In March 2023, the Maine PUC then commenced a new rulemaking to "require participation by pole attachers in any pole management database implemented by owners of joint-use utility poles,"[150] prioritizing this proposal over the pole ownership and administration concepts. In September 2023, the Maine PUC amended Chapter 880 to formalize the rulemaking that it initiated in March. As a result of this new rule, all "Large Pole Owners"[151] must "participate in a joint-use software system once implemented and "attachers in the service areas of the Large Pole Owners" are also required to utilize the system.[152] The PUC expects that the database will "facilitate make-ready work, placement and removal of pole attachments, and pole transfers and removals."[153] However, the Maine PUC did not mandate "specific features," like requiring the software to "accommodate one touch make ready."[154]

B. Preemption States

The Pole Attachment Act is the statutory basis of the Federal Government's pole attachment framework. The Act grants the FCC with the authority to regulate pole attachments in the United States. While the law exempts states that have elected to regulate pole attachments directly themselves, including Maine, as of the date of this report, twenty-seven states have not (including, but not limited to, Colorado, Georgia, Indiana, Maryland,

[143] *See id.* at 5–6.
[144] *Id.* at 7.
[145] *See, e.g.*, Atlantic Broadband (NH-ME), LLC, Bee Line Cable, Comcast of Maine / New Hampshire, Inc. & Spectrum Northeast, LLC, *Cable Operators' Reply Comments*, No. 2021-00321 (Dec. 17, 2021).
[146] *See* GWI, Crown Castle & OTELCO, *Reply Comments of GWI, Crown Castle, and OTELCO*, No. 2021-00321, at 3–6 (Dec. 17, 2021).
[147] *See* Arielle Silver Karsh, Sarah Davis & Nathan Cota, *Pole Ownership Information Regarding Universal Joint Use System*, No. 2021-00321 (Feb. 4, 2022).
[148] *Inquiry into Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2021-00321, Order (July 7, 2022).
[149] *Inquiry into Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2021-00321, Order Closing Inquiry, at 11 (Mar. 15, 2023).
[150] *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2023-00058, Notice of Rulemaking (Mar. 29, 2023).
[151] Defined as "Versant Power, Central Maine Power Company, and Consolidated Communications of Maine Company or their successors." 65-407 C.M.R. ch. 880 § 5.
[152] *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2023-00058, Order Amending Rule, at 8 (Sep. 12, 2023).
[153] 65-407 C.M.R. ch. 880 § 5(A)(1).
[154] *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2023-00058, Order Amending Rule and Statement of Factual and Policy Basis, at 9-10 (Sep. 12, 2023).

Minnesota, North Carolina, Rhode Island, Texas, and Virginia).[155] Notably, the Act historically did not apply to broadband-only internet service providers;[156] however, the Act now does, following the FCC's reclassification of broadband internet access service as also being a telecommunications service.[157] The Act also does not apply to municipalities or cooperatives.[158]

Similar to Title 35-A, the Act does not provide granular detail on what rules pole owners and attachers must follow. Instead, it delegates authority to the FCC to promulgate rules based on several broad principles laid out in the Act, as described further below. Acting under this statutory authority, the FCC has been the primary entity that has created legal requirements for pole owners in Preemption States through several rulemakings.

Since Maine regulates poles directly, none of the below applies to Maine directly. Nonetheless, this subsection is included (1) to compare and contrast frameworks and (2) because changes at the federal level have historically shaped developments in Reverse Preemption States, including Maine, in the past.

1. Statute (Pole Attachment Act)

As mentioned above, most states fall under the FCC's jurisdiction. The Act specifically:[159]

- Directs the FCC to regulate "the rates, terms, and conditions of pole attachments" for covered entities to make sure they are "just and reasonable."[160] The term "just and reasonable" is based on the cost of attachments and a percentage of the operating expenses and capital costs of the pole, duct, conduit, or right-of-way based on "useable space."[161]
- Requires pole owners to provide non-discriminatory access to "poles, ducts, conduit, or rights-of-way owned or controlled by it."[162] Access can only be denied due to "insufficient capacity" or "safety, reliability and generally applicable engineering reasons."[163]

2. Regulations (FCC, Chapter 47, subpart J)

The FCC, acting under its statutory authority granted by section 224 and other relevant statutes, has regulated pole attachments through several rulemakings, which are encapsulated in subpart J of Chapter 47 of the Code of Federal Register ("CFR").[164] The provisions in this subpart of the Chapter:

- "provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms, and conditions that are just and reasonable"; and

---

[155] *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 37 FCC Rcd. 6724 (June 13, 2022).
[156] *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, at 2 n.4 (Dec. 15, 2023) [2023 FCC Order].
[157] *See Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC 23-83 (Apr. 4, 2024).
[158] 47 U.S.C. § 224(a)(1).
[159] *Id.* § 224(b). Power utilities and rural electric cooperatives are exempted from the federal regulations laid out in the Pole Attachment Act. This exception is less relevant to Maine as (1) Maine has reverse preempted the federal rules with Chapter 880, *supra* note 91, and (2) 96% of the poles are owned by private utilities or telephone companies.
[160] Covered entities include cable systems, CLECs, wireless and broadband internet access service. It originally included only cable providers but the Telecommunications Act of 1996 expanded the term's scope.
[161] "Useable space" is defined as "the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment. 47 U.S.C. § 224(b).
[162] *Id.* § 224(f)(1).
[163] *Id.* § 224(f)(2). The pricing and access requirements of 47 U.S.C. § 224 do not apply to public power utilities and rural electric cooperatives "because the pole attachment rates charged by municipally owned and cooperative utilities [were] already subject to a decision-making process based upon constituent needs and interests." This exception is not as relevant in Maine where the majority of poles are owned by private firms.
[164] 47 C.F.R. § et al.

- "provide complaint and enforcement procedures for incumbent local exchange carriers (as defined in 47 U.S.C. 251(h)) to ensure that the rates, terms, and conditions of their access to pole attachments are just and reasonable."[165]

The FCC has amended Chapter 47 several times, mostly since 2011. Chapter 47 outlines terms and conditions for all pole attachments for telecommunications carriers (including broadband internet access providers) and cable system operators in Preempted States. It is organized as follows:

1.1402. Definitions. Defines key terms relevant for the subpart of this Chapter.[166]

1.1403. Duty to Provide Access; Modifications; Notice of Removal, Increase or Modification; Petition for Temporary Stay; and Cable Operator Notice. States that a utility has a duty to 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."[167] However, a utility may decline access due to "insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. A request for access, made in writing, must be granted or denied by the pole owner within 45 days of request.

In addition, a utility must give written notice prior to either (1) removing facilities or terminating service to such facilities; (2) increasing pole attachment rates; or (3) modifying the facilities for purposes unrelated to make-ready.[168]

1.1404. Pole Attachment Complaint Proceedings. Describes the requirements to file a complaint with the FCC.[169] The complaint process itself follows FCC's general formal complaint rules for disputes involving applications, tariffs, and reports (under 47 C.F.R. §§ 1.720–1.740).

1.1405. Dismissal of Pole Attachment Complaints for Lack of Jurisdiction. States that a complaint will be dismissed by the FCC "for lack of jurisdiction" when it relates to conduct in a Reverse Preemption State where that state is regulating instead.[170]

1.1406. Commission Consideration of Complaints. States that the burden of proof rests on the complainant to establish a "prima facie case that the rate, term, or condition is not just and reasonable or that the denial of access violates 47 U.S.C. 224(f)."[171]

For the purposes of adjudicating a dispute, it also defines a rate as "just and reasonable" when "it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of total useable space . . . by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole."[172] It also provides a formula for the "maximum just and reasonable rate" for an attacher that is providing telecommunications services, which is the higher of:[173]

- (1) Space factor x cost; or
  - $\text{Where Space Factor} = \left[\frac{\left(\frac{\text{Space}}{\text{Occupied}}\right) + \left(\frac{1}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$

[165] *Id.* § 1.1401 (Purpose).
[166] *Id.* § 1.1402.
[167] *Id.* §§ 1.1403(a)-(b).
[168] *Id.* § 1.1403(c).
[169] *Id.* § 1.1404.
[170] *Id.* § 1.1405.
[171] *Id.* § 1.1406(a).
[172] *Id.* § 1.1406(b).
[173] *Id.* § 1.1406(d)(2).

- Where cost = Net Cost of a Bare Pole x Carrying Charge Rate x a factor between 0.31 and 0.66 (based on the number of attaching entities)

- (2) Space factor x Net Cost of a Bare Pole x Maintenance and Administrative Carrying Charge Rate

- $\text{Where Space Factor} = \left[\frac{\left(\frac{\text{Space Occupied}}{1}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$

1.1407. Remedies. Offers permissible remedies if the FCC finds for the complainant:

- Unjust and/or unreasonable rate, term of condition: The FCC can choose to either (1) terminate the relevant term; (2) substitute the term for one that is "just and reasonable"; and/or (3) order a refund, or payment, if appropriate.[174]

- Unlawfully denied or delayed: The FCC can "order that access be permitted within a specified time frame and in accordance with specified rates, terms, and conditions."[175]

1.1408. Imputation of Rates; Modification Costs. Provides a cost adjustment when a utility is using its own poles to also provide telecommunications services.[176]

1.1409. Allocation of Unusable Space Costs. States how to allocate costs related to unusable space on a pole.[177]

1.1410. Use of Presumptions in Calculating the Space Factor. Assumes that, for the purpose of the rate formulas in 47 C.F.R. § 1.1406:[178]

- an attachment occupies one foot;
- the amount of usable space is 13.5 feet;
- the amount of unusable space is 24 feet; and
- the pole height is 37.5 feet

Although either party can rebut the above presumptions in a dispute before the FCC.

1.1411. Timeline for Access to Utility Poles. Provides specific timelines, by which, a pole owner must review a pole attachment application, conduct a survey, give estimates for make-ready work, and perform said make-ready work.[179] This provision also contains the self-help remedy and OTMR procedures. A comparison of the timelines in the FCC's pole regulations and the Maine PUC's pole regulations is provided in **Appendix A**.

This provision also allows an attacher to request that the pole owner to provide it with "information regarding [the requested] poles contained in the utility's most recent cyclical pole inspection report," which is a report that a utility creates "in the normal course of business that sets forth the results of a routine inspection" of said poles.[180]

[174] *Id.* § 1.1407(a).
[175] *Id.* § 1.1407(b).
[176] *Id.* § 1.1408.
[177] *Id.* § 1.1409.
[178] *Id.* § 1.1410.
[179] *Id.* § 1.1411.
[180] *Id.* § 1.1411(4).

1.1412. Contractors for Survey and Make-Ready. Provides requirements for pole owners to let third-party contractors do self-help surveys and/or make-ready work:[181]

- **Complex.** Pole owners must "make available and keep up-to-date a reasonably sufficient list of contractors" that it authorizes to do such work.
- **Simple.** Pole owners may "keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready."

The only key difference from Maine is that Maine PUC does not consider attachments above the communications space or pole replacements as "simple make-ready."

In the event a particular third-party contractor is not on a pole owner list (or the pole owner does not provide such a list), an attacher can then request the addition to the list or to use a contractor not on the list based on a set of criteria (e.g., agreement to follow safety and quality guidelines, has read and follows licensed-engineered pole designs, agreement to follow all applicable local, state, and federal laws, and regulations, etc.). A pole owner, nonetheless, has the right to reject a proposed third-party contractor based on reasonable concerns related to safety or reliability.

1.1413. Complaints by Incumbent Local Exchange Carriers. Creates specific presumptions that apply in a dispute involving incumbent local exchange carriers.[182]

1.1414. Review Period for Pole Attachment Complaints. The FCC rules establish a "shot clock" for final action on pole access complaints.[183] For pole attachment complaints related to denial of access, the FCC must respond within 180 days.[184] For all other pole attachment complaints, the FCC must respond within 270 days.

1.1415. Rapid Broadband Assessment Team. Creates a team ("RBAT") to "prioritize and expedite the resolution of pole attachment disputes" by offering an alternative dispute resolution mechanism to the formal complaint process that can be completed in 60 days (versus the 180 or 270 day period for traditional complaints).[185] Under the RBAT process, the FCC will meet with the conflicting parties and "provide guidance and advice to the parties on the most effective means of resolving their dispute, including RBAT-supervised mediation . . . and/or any other appropriate action."[186]

1.1416. Overlashing. States that a pole owner cannot require "prior approval" for an existing attacher that overlashes its existing wires on a pole, although a pole owner can require advance notice and notice upon completion.[187]

Similar to Maine's rules, pole owners and attachers can voluntarily enter into contracts that supersede the FCC's requirements.[188] The FCC framed its rules as "processes that apply in the absence of a negotiated agreement," encouraging parties to instead seek "voluntary privately-negotiated solutions."[189]

[181] *Id.* § 1.1412.
[182] *Id.* § 1.1413.
[183] *Id.* § 1.1414.
[184] *Id.* Although, the FCC has "the discretion to pause the 180-day review period in situations where actions outside the [FCC's] control are responsible for delaying review of a pole access complaint." *Id.*
[185] *Id.* § 1.1415.
[186] *Id.* § 1.1415(d).
[187] *Id.* § 1.1416.
[188] *2018 FCC Wireline Infrastructure Order*, 33 FCC Rcd. at 711 (noting "parties [can] reach bargained solutions that differ from our rules").
[189] *Id.*

3. Key Regulatory Developments

Prior to 2011, the FCC "historically relied primarily on private negotiations among pole owners and attachers and, when necessary, case-specific adjudication by the [FCC], to ensure just and reasonable rates, terms, and conditions, rather than adopting comprehensive access rules."[190] However, the FCC realized the benefit of standardized rates, terms, and conditions to avoid negotiated processes that were "prolonged, unpredictable, and costly," imposing "unreasonable costs on attachers" and "deterring market entry."[191] Since 2011, the FCC has made several major updates to modernize its pole attachment rules, as detailed below.

a. Pole Attachment Order (26 FCC Rcd. 5240) (2011)

The FCC comprehensively revised its pole attachment process,[192] making four large changes:

- **Timeline.** The FCC adopted a four-stage timeline for pole attachment requests: application review and engineer survey (45 days), cost estimate (14 days), attacher acceptance (14 days), and make-ready review (60-75 days),[193] totaling 148 days (approximately 5 months) to complete in its entirety. The timeline also included an additional 15 days for survey and 45 days for make-ready for larger pole requests, which represented 208 days in total (approximately 7 months).
- **Attachments.** The FCC required pole owners to explain why it rejected a request for attachment, tying it explicitly to "capacity, safety, reliability, or engineering concerns."
- **Rates.** The FCC adopted a definition of "just and reasonable" to recover the same portion of pole costs as it had for cable rates.
- **Enforcement.** The FCC adopted measures to encourage negotiated resolution.

However, the FCC declined at the time to set any standards or requirements for "the collection and availability of information about the location and availability of poles" or "a schedule of charges, phased payment for make-ready work, [or] the designation of a single managing utility for jointly owned poles."[194]

b. One Touch Make Ready (33 FCC Rcd. 7705) (2018)

The FCC established a OTMR process for pole attachers in Reverse Preemption States, separate from the traditional make-ready process.[195] The rule set up specific timelines and criteria for selecting contractors to do OTMR. This framework is nearly identical to Maine's.

c. Declaratory Ruling (35 FCC Rcd. 7936) (2020)

In response to a petition by CTIA, a trade association, to clarify the 2018 OTMR order,[196] the FCC stated that "the imposition of a 'blanket ban' by a utility on attachments to any portion of a utility pole is inconsistent with the federal requirement that a 'denial of access . . . be specific to a particular request."[197] The FCC found that "many pole owners continue[d] to deny access summarily to all or part of poles, without giving reasons for denying access that [were] specific to the pole or attachment."[198]

---

[190] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, 5242 (2011) [2011 Pole Attachment Order].
[191] *Id.* at 5243.
[192] *Id.* at 5244-45.
[193] *Id.* at 5252.
[194] *Id.* at 5280.
[195] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705 (2018) [2018 FCC OTMR Order].
[196] CTIA, *Petition for Declaratory Ruling*, WC Docket No. 17-84 (filed Sep. 6, 2019), https://ecfsapi.fcc.gov/file/10906760521179/190906%20CTIA%20Infrastructure%20PDR%20Final.pdf [2019 CTIA Petition].
[197] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 35 FCC Rcd. 7936, 7936 [2020 FCC Declaratory Ruling].
[198] *Id.* at 7938.

The FCC also held that "while utilities and attachers have the flexibility to negotiate terms in their pole attachment agreements that differ from the requirements in the [FCC's] rules, a utility cannot use its significant negotiating leverage to require an attacher to give up its rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit."[199] The FCC refused, however, to prohibit any contract terms that conflicted with the FCC's rules, primarily on the basis that it would be a "significant departure" from "long-standing [FCC] policy and precedent."[200] The FCC assumed that deviations "worse" than the rules were okay if the attacher received a "significant benefit" for them.[201]

d. Pole Replacement Declaratory Ruling (36 FCC Rcd. 776) (2021)

In response to a petition by the NCTA - The Internet & Television Association, a different trade association, to clarify how parties should allocate pole replacement costs,[202] the FCC stated that it is "unreasonable and inconsistent" with section 224 and applicable FCC rules for pole owners to shift the entire cost of replacing a pole onto a pole attacher when that attacher is not the sole cause of a pole replacement.[203] But, at the time, the FCC declined to go further, finding that it would be more effective to resolve these questions through an informal rulemaking, rather than in response to a petition.[204]

e. Rapid Dispute Resolution, Information Requests, and Initial Large Pole Orders (FCC 23-109) (2023)

Despite these efforts, stakeholders recognize that the pole attachment process, at the federal level, still faces significant delays.[205] Just recently, in December 2023, the FCC adopted a new rule to "promote faster and more cost-effective broadband deployment,"[206] which became effective on July 25, 2024.[207]

First, the rule establishes the Rapid Broadband Assessment Team (RBAT), a new dispute resolution process using a "new intra-agency rapid response team." The RBAT places certain complaints on the FCC's Accelerated Docket, which allows the Commission to resolve disputes within 60 days.[208] This process could be used instead of the current complaint process, which requires resolution within either 180 or 270 days, depending on the type of dispute.[209] Coincidentally, RBAT appears to be modeled after the "Rapid Response Process" used by the PUC in Maine.[210]

Second, the rule requires pole owners to provide communications providers, upon request, "information about the status of the utility poles they plan to use as they map out their broadband builds."[211] Notably, the FCC declined to require each utility to create an "accessible database with an array of data on all its poles" nor to establish a "single pole-information database for all utilities."[212] Under the Commission's view, "the large burden outweigh[s] [the] potential benefits" given "the number of poles many utilities own or jointly own and the scope of pole data attachers seek."[213]

---

[199] *Id.* at 7937.
[200] *Id.* at 7946.
[201] *Id.*
[202] NCTA, *Petition for Expedited Declaratory Ruling*, WC Docket No. 17-84 (filed July 16, 2020), https://www.fcc.gov/ecfs/filing/107161552527661 [2020 NCTA Petition].
[203] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd. 776, 777 [2021 FCC Pole Replacement Declaratory Ruling].
[204] *Id.* at 783.
[205] *Comments of ACA Connects*, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, at 2 (Feb. 13, 2024) [2024 ACA Connects Comments].
[206] *See 2023 FCC Order*.
[207] 89 Fed. Reg. 60317 (July 25, 2024) (citing 47 C.F.R. §§ 1.1411(c)(4) and 1.1415).
[208] *2023 FCC Order*, at 6.
[209] *Id.* at 6–7 (citing 47 C.F.R. §§ 1.1414(a)–(b)).
[210] *Id.* at 8 n.45 (citing *ACA Connects Comments*, at 8, 52).
[211] *Id.* at 2-24, paras. 2-36.
[212] *Id.* at 20.
[213] *Id.*

Third, the rule issued a declaratory ruling, clarifying that when an attacher submits its first large pole order (an application to attach to more than either 3,000 poles or 5 percent of the utility's total poles in the state), that application is subject to the same make-ready timeline that applies to an application to attach for fewer than 3,000 poles or 5 percent of the utility's total poles in the state.[214] This change means that pole owners and attachers would have to complete the pole attachment process within a fixed amount of time (45 additional days longer than the standard make-ready timeline), instead of negotiating a schedule in "good faith." However, it deferred at the time to establish general timelines for all large orders.[215]

In addition to the three changes above, the declaratory ruling also clarified:

- **"Red tagging".** The term red tagging refers to when a pole owner identifies a pole as needing to be replaced for any reason other than the pole's lack of capacity to accommodate a new attachment.[216] The FCC declined to "formally codify a definition of 'red tagged.'"
- **"Necessitated Solely".** The term "necessitated solely" related to whether a replacement is solely due to a new attachment.[217] As mentioned, in the Pole Replacement Declaratory Ruling, in 2021, the FCC stated that a pole attacher should not have to pay the entire cost of a pole replacement if the pole already needed to be replaced (e.g., because the pole no longer met relevant safety standards or the pole owner had red tagged the pole). Similarly, the FCC declined to "codify" a definition. Rather, the FCC clarified situations in which a pole replacement is not "necessitated solely" by an attachment. Examples included:
    - when a "pole replacement is required pursuant to applicable law";
    - when "the current pole fails applicable engineering standards";
    - when "a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole";
    - when "the pole is required to be replaced due to road expansion or moves, property development, in connection with storm hardening, or similar government-imposed requirements"; or
    - "when the current pole already is on the utility's internal replacement schedule, regardless of when the replacement is scheduled to take place."[218]
- **Easements.** The FCC clarified attachers' right to access documentation on utility easements.[219]

f. Large Pole Orders, Self-Help Remedies, and Pole Replacement Costs Inquiry (2024)

In the 2023 rule, the FCC also initiated a new and separate notice of proposed rulemaking.[220] The rulemaking is still ongoing, but it plans to address the following issues:

- **Large Pole Orders.** The FCC is considering new timelines for processing attachment requests for 3,000 or more poles.[221] Specifically, pole owners would have "an additional 90 days for make-ready requests exceeding 3,000 poles or 5 percent of the [pole owner]'s poles in a state."[222] Recognizing the increase in federal funding for broadband deployment, the FCC acknowledged that it is more likely

[214] *Id.* at 31–32.
[215] *Id.* at 30.
[216] *Id.* at 25.
[217] *Id.* at 27-30.
[218] *Id.* at 28.
[219] *Id.* at 24.
[220] *Id.* at 30-31.
[221] *Id.* at 32.
[222] *Id.*

now than in the past that attachers will seek large pole orders (see "Potential Policy Options" section for discussion of the relative benefits and downsides of this proposal).

- **Limits on Pole Applications.** The FCC is considering whether it should prohibit pole owners from limiting "the size of an application or the number of poles included in an application so as to avoid the timelines."[223]
- **Self-Help Remedies.** The FCC is considering whether it should modify its rules to enable pole attachers to access poles more quickly using "self help" remedies when pole owners do not complete surveys, estimates, or make-ready work within the relevant time periods in the FCC's rules. For example, one proposal is to require the pole owner to notify an attacher "15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period so that the attacher can elect self-help for the survey sooner."[224]
- **Use of Contractors.** The FCC is also considering the impact of contractor availability for conducting self help or OTMR work. The FCC has expressed concern that there may not be "adequate relief to attachers to timely identify and use qualified contractors,"[225] potentially because owners are using "their discretion" to "disqualify otherwise-qualified contractors whom attachers may seek to bring in from outside of an area."

C. Other Reverse Preemption States

Twenty-three states and the District of Columbia regulate pole attachments directly, instead of following the FCC's rules. There is wide variation in how Reverse Preemption States regulate pole attachments.

Some states have not updated their pole attachment regulations materially in many years. For example, Alaska's regulations include only five sections: application and purpose, joint use compensation, elements used in developing annual joint use rates, procedures, and definitions. However, it does not set timelines or any cost sharing principles. It also does not involve the commission unless there is a conflict.[226]

Some states, more or less, adopt the FCC's rules. For example, in Pennsylvania, their commission adopted the "rates, terms and conditions of access to and use of utility poles, ducts, conduits and rights of way to the full extent provided for in 47 U.S.C. 224 and [the] C.F.R. Chapter . . . (relating to pole attachment complaint procedures), inclusive of future changes as those regulations may be amended."[227]

Several states have historically updated their own regulations based on changes adopted by the FCC (often adopting similar changes with slight adjustments reflecting the unique needs of their own state). For example, after the FCC introduced OTMR, many states, including Maine, introduced OTMR. Since the FCC just finalized its new rule on rapid dispute resolution, information sharing, and initial large pole owners (and is currently pursuing an inquiry on several other topics), it is expected that several Reverse Preemption States may take up these issues in the next 1-2 years as well, to the extent they have not done so already. In addition, other states, such as Connecticut and Vermont have (or had) implemented their own unique pole attachment frameworks.

This report focuses on four nearby states – Connecticut, New Hampshire, New York, and Vermont – which have all undergone material revisions to their pole attachment frameworks in the past few years. For each of these states, this report discusses how they handle (1) timelines; (2) OTMR and self-help remedies; (3) third-party pole administration; (4) information reporting requirements or the use of a database or software system (e.g., Alden One), (5) dispute resolution, as well as other relevant issues.

[223] *Id.* at 33.
[224] *Id.* at 34.
[225] *Id.* at 35.
[226] 3 ALA. ADMIN. CODE § 52.930.
[227] 52 PA. CODE §§ 77.4(a); 77.2(b).

1. Connecticut

In Connecticut, Title 16 of the Connecticut General Statutes authorizes the Connecticut Public Utilities Regulatory Authority (CPURA) to regulate pole attachments.[228] CPURA has discretion to set relevant rates, terms, and conditions subject to any limitations in Chapter 16.

Utility poles and aerial deployments are critical in Connecticut. 85% of telecommunications and broadband infrastructure in the state is estimated to be aerial. This infrastructure is supported by approximately 900,000 poles, of which, most are jointly owned by either Eversource or United Illuminating Company (electricity utilities) and either Frontier or Verizon (telecommunications utilities).[229]

- Eversource (solely or jointly) owns approximately 738,000 poles;
- United Illuminating Company (solely or jointly) owns approximately 142,000 poles;
- Frontier (solely or jointly) owns approximately 806,000 poles; and
- Verizon (solely or jointly) owns approximately 14,000 poles.[230]

Like other states, CPURA noted an "increase in the volume of pole attachment applications" since 2018, motivating some of its recent changes to its pole attachment processes.[231]

a. Timelines

Connecticut follows the FCC's timelines per 47 C.F.R. § 1.411. But this was not always the case. Historically, CPURA established its own 90-day timeline for pole owners to prepare utility poles for new attachments.[232] This timeframe was divided into two parts:

- **Engineering Phase.** The time required to review an application, conduct survey and engineering work, and provide a make-ready plan and cost estimate. The pole owner is responsible for this stage of the process.
- **Make-Ready Phase.** The time required to do construction work to prepare the utility pole for new attachments (e.g., shifting existing electrical and communication attachments).

The timeline was extended to 125 days when a pole replacement is required (pole owners have an additional 35 days for the make-ready phase). However, the PURA timelines did not make any adjustments based on the number of poles in an application.

These timelines were materially shorter than the FCC's timelines. For example, the engineering phase had to be completed in 45 days (versus 59-74 days based on equivalent steps in the FCC's timelines) and the make-ready phase had to be completed in 45 days (versus 105 or more days based on equivalent steps in the FCC's timelines).[233] But it was leading to large delays in the process.[234] Consequently, in 2022, CPURA amended its timelines to those specified in the FCC's rules.[235] While acknowledging that "at first blush," extending

[228] CT. GEN. STAT. §§ 16-2(a); 16-9; 16-11; 16-18; 16-19; 16-41; 16-243; 16-447h.
[229] Verizon, another telecommunications utility, also owns poles, but its territory is limited to "portions of Greenwich."
[230] *See PURA Investigation of Developments in the Third-Party Pole Attachment Process*, No. 19-01-52RE01, Decision, at 15 (May 11, 2022) [2022 CPURA Decision].
[231] *Id.* at 18 (noting that one electricity utility issued approximately 4% of licenses within the required timeframes and another issued approximately 1% of licenses within the required timeframes).
[232] *DPUC Review of the State's Public Service Company Utility Pole Make-Ready Procedures*, No. 07-02-13, Decision (Apr. 30, 2008).
[233] *2022 CPURA Decision*, at 20.
[234] *Id.* at 22 ("Ultimately, the extent of the existing backlog necessitates a modification to the current timelines. Unfortunately, the reality is that attachments of the magnitude requested in recent years have resulted in substantial delays; future attachment requests are not expected to decrease.").
[235] *Id.* at 23; 28.

timelines may seem "detrimental," "large batches of applications [had] place[d] an inordinate burden on pole owners" and created an "unrealistic or cost-prohibitive" process.[236]

b. OTMR and Self-Help Remedies

In 2019, CPURA first approved a third-party attachment process, whereby an attacher could utilize a pre-approved contractor to perform all of the work associated with the Engineering Phase. In 2021, CPURA supplemented this process to allow attachers to use pre-approved contractors (based on fixed fee structures and contractor training requirements) to perform all "Engineering Phase" work and to submit information for the review of one of the pole owners.[237]

CPURA allows pole attachers to use OTMR or self-help remedies:

- **OTMR.** In 2022, CPURA approved a OTMR process.[238] CPURA adopted the FCC's OTMR – including the FCC's OTMR timelines[239] – but with several changes "to protect the safety of employees and the public, to protect the facilities and equipment of existing attachers, and to ensure the framework is used properly and efficiently."[240] These modifications include:
    - Giving attachers a "reasonable opportunity" to perform their own make-ready work;
    - Including insurance and indemnification provisions to protect new and existing attachers during OTMR;
    - Requiring OTMR contractors to be trained to work on coaxial cable;
    - Requiring disputes between attachers to be resolved between affected entities (and not by the pole owners or SPAs);
    - Modifying the definition of complex make-ready work so that all make-ready work conducted on poles with wireless facilities is not automatically deemed complex;
    - Explicitly permitting municipal and governmental attachers to perform OTMR; and
    - Requiring photographs of OTMR work to be submitted for each pole when a work completion notice is sent by the attacher.[241]
- **Self-Help Remedies.** PURA also established a self-help make-ready remedy based on 47 C.F.R.§ 1.411(i)(2) and (i)(3) in the communications space.[242]

Note, Connecticut's OTMR rule is currently subject to litigation on the basis that it violates existing collective bargaining agreements between labor unions and Frontier.[243]

c. Pole Administration

In 2014, CPURA designated the two electricity utilities - Eversource and United Illuminating Company - to serve as the Single Pole Administrator (SPA) for all poles in their respective areas, including jointly owned poles.[244]

---

[236] *Id.*
[237] *PURA Investigation of Developments in the Third-Party Pole Attachment Process*, No. 19-01-52, Decision (May 19, 2021) [2021 CPURA Decision].
[238] *Id.*
[239] *Id.* at 17.
[240] *Id.* at 11.
[241] *Id.* at 12.
[242] *Id.* at 28-33.
[243] David E. Weidlich, Jr. et al., Local 1298, Communications Workers of America, AFL-CIO, *Petition for Declaratory Judgment to Determine the Legality of Docket No. 19-01-52RE01, Docket No. 21-07-29, and the Policy Working Group Actions Taken Pursuant to Them*, Petition (Apr. 23, 2024).
[244] *PURA Investigation into the Appointment of a Third Party Statewide Utility Pole Administrator*, No. 11-03-07, Decision (Oct. 8, 2014) [2014 CPURA Decision].

As the Single Point Administrator, these utilities act as the single point of contact for all pole attachers, including receiving applications, overseeing the engineering phase work, and coordinating make-ready work.

While the SPA model has been cited favorably, it was not sufficient for improving the process, as the CPURA noted itself in establishing a OTMR process several years later. While simplifying the initial application process, the SPA model in Connecticut still requires review and approval by the communications utility, as they are ultimately liable for the utility pole, which still creates opportunities for delay and inefficiencies.

d. Information Reporting Requirements or Databases

Single Pole Administrators currently use Alden One, which is the same program that the Maine PUC requires the three large pole owners to use.[245] In Connecticut, improved costs associated with Alden One (or its successor) must be "shared by all pole owners and attachers who benefit therefrom."[246]

SPAs must "track and keep records of the performance of all applicable pole owners and pole attachers in meeting" various timelines (including OTMR) for the entire pole attachment process, including application processing, engineering, survey, make-ready design, and make-ready itself.[247] This data "shall be retained for 10 years and made available to [CPURA] upon request" and submitted via a compliance filing annually.[248]

e. Dispute Resolution

In 2022, CPURA created an accelerated dispute resolution process. For all disputes, parties must first "undertake a good faith effort to resolve disputes informally . . . prior to seeking remedy through" a CPURA process.[249] Under the accelerated process, a decision must be reached within 60 days of the notice of dispute.

CPURA also created a working group to focus on monitoring the rollout of OTMR; monitoring and considering revisions to existing traditional make-ready timelines; and identifying changes to Alden One.[250] In its 2022 rulemaking, CPURA tasked the group with addressing several policy matters, including:

- **Existing Attachers.** To address the issue of existing attachers not accommodating new attachers, CPURA would create a "Default Option" that would go into all pole attachment license agreements that would allow the SPA to relocate attachments "to accommodate a new attacher" or to remove double poles.[251] Under this proposal, the SPA would also "assess a fine [against the existing attacher]" and "charge the attacher for the work."[252]
- **Compliance Filings.** To review all "pole attachment-related compliance filings" in order to determine whether any are "now obsolete or duplicative."[253]
- **Third-Party Contractor Availability and Retention.** To review and report on (1) the "[n]umber of [contractors] operating in Connecticut"; (2) "the number and level of individual contractor resources performing the different [phases of the pole attachment process]"; (3) "[h]ow that number has changed over time"; (4) "[s]ummary of efforts made by pole owners and attachers to retain and train contractor resources"; and (5) "recommended policy changes to encourage the retention of contractor resources."[254]

[245] 65-407 C.M.R. ch. 880 § 5.
[246] *2022 CPURA Decision*, at 62.
[247] *Id.* at 63-65.
[248] *Id.* at 63-64.
[249] *Id.* at app'x C.
[250] *Id.* at 58.
[251] *Id.*
[252] *Id.*
[253] *Id.*
[254] *Id.* at 59.

- **Standard Filing Requirements and Discovery for Accelerated Disputes.** To identify a process for "more initial discovery" during accelerated dispute resolution processes, as well as the "standard filing requirements."[255]
- **Compiling Pole Attachment Policies.** To consolidate the "large number" of pole "rules, policies, and procedures" in "one place for the benefit of third parties."[256]

The working group has specified representation from (1) state agencies (including the Office of Consumer Counsel, Department of Energy and Environmental Protection); (2) pole owners (including all four large pole owners in the state); (3) third-party attachers; and (4) a union that represents contractors doing the actual pole attachment work (Communications Workers of America).[257] The regulations also specify voting power amongst these representatives to make decisions on behalf of the working group.

2. New Hampshire

Section 374:34-a of the New Hampshire Revised Statutes authorizes the New Hampshire Department of Energy (NHDOE) to "adopt rules . . . to carry out the provisions of [the pole attachment] section [of the relevant New Hampshire Statutes].[258] NHDOE has wide discretion to regulate insofar that it "consider[s] the interests of the subscribers and users of the services offered via such attachments, as well as the interests of the consumers of any pole owner providing such attachments."[259]

Separately, the New Hampshire Public Utilities Commission (NHPUC) is responsible for "regulat[ing] and enforc[ing] rates, charges, terms, and conditions for such pole attachments, with regard to the types of attachments regulated under 47 U.S.C. section 224, to provide that such rates, charges, terms, and conditions are just and reasonable."[260] Relatedly, it can "hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments."[261]

While the statutes explicitly state that parties may enter "into pole attachment agreements voluntarily, without department approval," it also states that such agreements must "abide by the timelines established by the department."[262] In general, this process does not deviate much from the FCC's.

a. Timelines

The New Hampshire's regulations offer a similar timeline as Maine's regulation that applies to pole attachers and owners so long as parties have "entered into an agreement . . . specifying the rates, terms, and conditions of attachment" beforehand.[263]

However, the thresholds for what constitutes a large pole order subject to "good faith" for the timing is lower than it is in Maine. If a pole order involves more than "2,000 poles or 4 percent of the pole owner's poles in a state," a pole owner is only required to "negotiate in good faith the timing of all requests," rather than follow the timelines specified below.[264] For the purposes of determining the size of a pole order, a pole owner "may treat multiple requests from a single attaching entity as one request when the requests are filed within 30 days of one another."[265]

[255] *Id.*
[256] *Id.*
[257] *Id.* at app'x D.
[258] 2023 NH REV. STAT. § 374:34-a(III).
[259] *Id.* § 374:34-a(IV).
[260] *Id.* § 374:34-a(II).
[261] *Id.* § 374:34-a(II).
[262] *Id.* § 374:34-a(VI).
[263] NH CODE OF ADMIN. RULES § 1303.12(f).
[264] *Id.* § 1303.12(e)(4).
[265] *Id.* § 1303.12(e)(5).

- **Survey**. "Absent circumstances beyond the pole owner's control," a pole owner is required to finish the survey and communicate the results to the attacher within 45 days (or 60 days for pole orders involving pole orders greater than 300 poles or 0.5 percent of the pole owner's poles in a state but fewer than 2,000 poles or 4 percent of the pole owner's poles in the state);[266]
    - At which point, the pole owner must "grant or deny access in writing" and, in the event of a denial, the owner must provide" specific" reasons for the denial, including "all relevant evidence and information supporting its denial" and explanation of "how such evidence and information represent[s] grounds for denial" as specified in the regulations.[267]
- **Estimate of Make-Ready Charges.** The pole owner must then present "an estimate of charges" to perform all necessary make-ready work within 14 days of finishing the survey.[268]
- **Acceptance of Estimate.** The pole attacher has the right to accept "any time after receipt of an estimate but before the estimate is withdrawn." The pole owner may "withdraw an outstanding estimate beginning 14 days after the estimate is presented" to the attacher.[269]
- **Completion of Make-Ready Work:** The pole owner must complete make-ready work no more than 60 days later (or 105 days for large pole orders).[270] In addition, the pole owner has an additional 30 days for "an application involving more than 100 poles where 30% or more of the affected poles are required to be replaced."[271]

b. OTMR and Self-Help Remedies

In 2021, the NH State Legislature passed a bill requiring the NHPUC to "adopt rules . . . [to] implement[] the provisions of One Touch Make Ready (OTMR) as adopted by the Federal Communications Commission in 47 CFR 1.411(j)."[272] New Hampshire has since updated its pole attachment regulations to provide both a self-help and a OTMR option to attachers.

- **OTMR.** A pole attacher can elect to conduct OTMR, in line with the FCC's OTMR rule.[273]
- **Self-Help Remedy.** A pole owner must notify, in writing, an attacher if it thinks that it is "infeasible for the pole owner to complete the make-ready work within the prescribed time frame."[274] Failure to do so will allow "an attaching entity requesting attachment in the communication space" to "hire a contractor to complete a survey," subject to the conditions in the regulations.[275] In such an event, a pole owner has "a reasonable opportunity for its representative to accompany and consult" with the contractor and the attacher.[276]

Pole owners must "make available, and keep up-to-date, a list of not less than 3 contractors that such pole owner. . . [has] authorize[d] to perform surveys and make-ready work in the communications space and on its poles where the pole owner or an existing attaching entity has failed to meet the deadlines."[277]

[266] *Id*. § 1303.04(b).
[267] *Id*. § 1303.04(c).
[268] *Id*. § 1303.12(a).
[269] *Id*. § 1303.12(b).
[270] *Id*. § 1303.12(c)(1)(c).
[271] *Id*. § 1303.12(c)(1)(d).
[272] 2023 NH REV. STAT.§ 374:34-a(III).
[273] NH CODE OF ADMIN. RULES § 1303.13.
[274] *Id*. § 1303.12(f).
[275] *Id*. § 1303.12(g).
[276] *Id*. § 1303.12(k).
[277] *Id*. § 1303.12(i).

c. Pole Administration

New Hampshire's regulations have no provision on single or third-party pole administration. However, in 2023, Consolidated sold its poles to Eversource, an energy company, removing most jointly owned poles.[278]

d. Information Reporting Requirements or Databases

New Hampshire's regulations have no provision on information reporting or the use of a pole database.

e. Dispute Resolution

An attacher may petition the NHPUC for an order "establishing the rates, charges, terms, and conditions for the pole attachment or attachments" – if it fails to reach agreement with a pole owner through "good faith negotiation."[279] In July 2024, the Governor signed a new law, effective as of July 1, 2024, for rates. The new provision requires the NHPUC to use a pole attachment formula "developed by the department in a non-adjudicative proceeding within 18 months of [July 1, 2024]." In addition, an owner may petition the NHPUC for an order to direct the removal of unauthorized facilities or attachments on its poles.[280] Any party may petition the NHPUC based on a pole attachment agreement or a prior NHPUC order.[281]

f. Other

Attaching entities are required to "clearly label their attachments with owner identification."[282]

3. New York

Like other states, a New York statute authorizes the New York Public Service Commission (NYPSC) to prescribe "just and reasonable rates, terms and conditions: for pole attachments.[283] The NYPSC has wide discretion to set these rates, terms, and conditions. For broadband internet access providers, the statute specifies that:

- "A just and reasonable rate shall assure the [pole owner] of the recovery of not less than the additional cost of providing a pole attachment . . . nor more than the actual operating expenses and return on capital of the utility attributed to that portion of the pole. . . used";[284]
- For a new pole attachment, "in no instance shall a pole owner avoid responsibility for pole replacement costs by unreasonably postponing replacement until receiving a new attachment request, nor may a pole owner require a requesting attacher to pay the entire cost of such pole replacement or for bringing a pole or third-party equipment into compliance with current safety and construction standards when replacement or compliance upgrades are not necessitated solely by the new attacher";[285] and
- "Where a pole owner performs a pole replacement to accommodate an attachment request, the pole owner may not require the attacher, or any existing attacher, to pay any portion of the cost of such replacement, except where there is insufficient capacity, clearance or loading to accommodate the request."[286]

[278] *See Eversource Completes Acquisition of Consolidated Communications' Utility Poles in NH*, BUSINESSNH (May 4, 2023), https://www.businessnhmagazine.com/article/eversource-completes-acquisition-of-consolidated-communicationsrsquo-utility-poles-in-nh (discussing sale of 175,393 utility poles from Consolidated Communications, a telecommunications provider, to Eversource, an electricity utility).
[279] *Id.* § 1303.02.
[280] *Id.* § 1303.04.
[281] *Id.* § 1303.03.
[282] *Id.* § 1303.08.
[283] *Id.* § 119-a(3).
[284] *Id.* § 119-a(1).
[285] *Id.* § 119-a(2).
[286] *Id.* § 119-a(3).

In addition, the NYPSC cannot issue a rule that would "interfere in any manner with provisions of collective bargaining agreements relating to pole attachment work between a utility corporation, telephone corporation, cable television corporation or [other applicable entities]."[287]

Until July 2024, the NYPSC had not materially updated its pole attachment rules since 2004.[288] The 2004 rulemaking established a framework and timelines for prospective attachers to attach onto a pole owner's pole. However, in February 2022, the New York State Assembly enacted a law that required the PSC to initiate a proceeding to modify its existing pole attachment rules on the following topics:[289]

- dispute resolution models;
- cost sharing models;
- "impacts on the expansion of broadband into unserved and underserved areas";
- alternative, less expensive pole attachment methods; and
- modifying existing rules regarding the cost obligations associated with pole attachments.

On July 22, 2024, the NYPSC issued a new rule in response.[290] This report explores New York's pole attachment framework since this rule represents the most recent rulemaking by a Reverse Preemption State. The current framework, including these newest changes is reflected below:

a. Timelines

The timelines for the traditional make-ready process are somewhat similar to Maine's timelines:

- **Survey.** Survey work must be completed by the pole owner within 45 days;
- **Estimate of Make-Ready Charges.** Estimate must be sent by the pole owner within 14 days.
- **Acceptance of Estimate.** Acceptance and payment by the attacher must be made within 14 days.
- **Completion of Make-Ready Work.** Work must be performed by the pole owner within 45 days.[291]

Notably, the NYPSC's rules do not spell out separate timelines based on pole order size. But, the NYPSC does "encourage[]" attachers and owners "to work out shorter time frames for a smaller number of attachments."[292]

b. OTMR and Self-Help Remedies

The NYPSC has created a number of options for pole attachers to better facilitate the process:

- **OTMR.** In 2024, the NYPSC approved OTMR as an alternative to traditional make-ready work for simple make-ready[293] (although it appears that several pole owners and attachers had been using a OTMR process prior to the most recent NYPSC rule that mostly followed the pole owner's "internal process for planning and conducting electrical make ready work"[294]). The new OTMR process is similar to the

[287] *Id.* § 119-a(5).
[288] *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Case 03-M-0432, Order Adopting Policy Statement on Pole Attachments (Aug. 6, 2004) [2004 NYPSC Order]. Except for a 2019 order that extended the existing pole attachment rules, in part, to include wireless attachments. *Petition of CTIA - The Wireless Association to Update and Clarify Wireless Pole Attachment Protections*, Case 16-M-0330, Order Approving Petition in Part and Continuing Proceeding (Mar. 14, 2019).
[289] PSL § 119-a (4); L. 2021, ch. 723., L. 2022, C.68.
[290] *Proceeding to Review Certain Pole Attachment Rules*, No. 22-M-0101, Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings (July 18, 2024) [2024 NYPSC Order].
[291] *2024 NYPSC Order*, at 3.
[292] *2004 NYPSC Order*, at app'x A.
[293] *2024 NYPSC Order*, at 40.
[294] *2022 CPURA Decision*, at 31.

federal rules, but it is not available if it conflicts with an existing collective bargaining agreement.[295] NYPSC also declined to extend OTMR to complex make-ready (e.g., more complicated or above the communications space) due to "[s]afety and reliability concerns" given the electric space.[296]

Relatedly, pole owners must provide an initial list of approved contractors within 60 days of the 2024 order (in September 2024). NYPSC did so because it recognized that a pole owner may be incentivized to "delay OTMR or available options by failing to compile or maintain a list of approved contractors."[297]

Similar to Maine, when OTMR work is done, the pole attacher must provide notice and then allow "representatives of existing attachers and the pole owner a reasonable opportunity to be present when surveys and OTMR work are performed."[298]

- **Self-Help Remedy.** The NYPSC rejected the use of self-help as a "remedy for missed deadlines or any other circumstances."[299]
- **Temporary Attachments.** However, the NYPSC allows temporary attachments "if they meet all safety requirements" and if a pole owner is "unable to meet the make-ready work timeline."[300] Attachers must pay all make-ready costs and replace the temporary attachments within 30 days of completion of the make-ready work.

c. Pole Administration

Pole attachment requests are administered by the specific pole owner. New York also has jointly owned poles. If an attacher wants to attach to one, it must "apply to both Owners for licenses."[301] New York does not have a single pole administrator or third-party pole administrator model. This approach was not considered in the NYPSC's most recent rulemaking.

d. Information Reporting Requirements or Databases

New York does not mandate a database for pole attachments. Although New York does use NJUNS software to track the process. NYPSC rejected proposals in its most recent rulemaking to create a pole database, citing the fact that it "would require data sharing and resources to implement and is not readily available."[302]

However, in New York, all pole owners and attachers must "either stipulate as to what attachments are on the poles or conduct an audit to determine what is on the poles."[303] If an unlicensed attachment is found, an unauthorized attacher will be penalized for "three times the pole rental per attachment back to the date of the stipulation or the audit completion date" to discourage unauthorized attachments.

Pole owners must also annually share information with respect to their pole attachments to "provide transparency into the pole replacement and attachment process,"[304] including:

- the number of pole attachment requests;
- the processing time for each request and whether make-ready was required;

[295] This decision was made on the basis that a "CBA is a legal agreement that binds the pole owner." *2024 NYPSC Order*, at 42.
[296] *Id.* at 44.
[297] *Id.* at 44-45.
[298] *Id.* at 45.
[299] *Id.* at 14; 35 ("[T]he Commission agrees that self-help could potentially undermine system safety and reliability and jeopardize the safety of workers on the utility poles."); 45.
[300] *Id.* at 6.
[301] *2004 NYPSC Order*, at app'x A.
[302] *2024 NYPSC Order*, at 43.
[303] *Id.* at 7.
[304] *Id.* at 26.

- the number of pole attachment requests completed (and data on the number of poles sought, the number of new attachments licensed resulting from the request, the number of poles replaced, and the payment source for pole replacements);
- the time to complete make-ready; and
- the make-ready charges to third-party attachers.[305]

But pole owners are not required to give the "names of contractors," due to potential competitive harm.

e. Dispute Resolution

The NYPSC allows a party to file "a formal complaint" with the Secretary of the Commission. But before doing so, parties must participate in a 10-day company-to-company review process, where parties must informally attempt to resolve their dispute "to avoid a potential backlog of cases that could cause additional delay."[306] Once a formal complaint is filed, the NYPSC must resolve the dispute within 90 days.

The NYPSC does require disputed work – in some cases – to "continue to the extent possible during a dispute."[307] If the dispute is over cost, the attacher must pay "50% of the total amount of the disputed invoice(s)." However, if the dispute is "over the form or location of the attachment or the use of a temporary attachment, it is not expected that the disputed work will continue."

In addition, the 2024 NYPSC order created a new collaborative working group.[308] The working group "is expected to provide pole owners and pole attachers with a regular convenient venue to address and resolve issues and to coordinate with each other in a timely manner." But the 2024 NYPSC did not provide "strict parameters" for the group, except for the fact that it included a wide range of stakeholders (e.g., telephone companies, cable companies, pole owners, and pole attachers) and that it be held on a "regular (e.g., monthly, quarterly, etc.) basis unless otherwise determined by Department Staff."[309] In addition, this working group is not meant to serve as the dispute resolution process for pending formal complaints.

f. Other

In addition, the NYPSC has spoken on the following issues:

- **Pole Attachment Agreements.** The NYPSC requires pole owners to establish "standard agreement and operating procedures" of a pole owner that provides "all general terms, conditions and procedures that apply to pole attachments." This standard agreement and operating procedure must be approved by the NYPSC (including all future substantive amendments) and "must be consistent with the Policy Statement on Pole Attachments."[310]
- **Pole Replacements.** An attacher must pay for any subsequent rearrangement or pole replacement. In 2024, the NYPSC elected to not modify its rules on this matter, but it did note that its rules were consistent with the FCC's 2023 order (e.g., specifying the meaning of "necessitated solely").[311]
- **Alternative Pole Attachment Methods.** The 2024 NYPSC order also specified permissible alternative pole attachment methods (e.g., pole-top attachments, strand-mounted attachments, overlashing, boxing and bracketing, extension arms, and temporary attachments). The NYPSC also clarified that

[305] *Id.* at 28.
[306] *2024 NYPSC Order*, at 13.
[307] *2004 NYPSC Order*, at app'x A.
[308] *2024 NYPSC Order*, at 16.
[309] *Id.* at 17.
[310] *2004 NYPSC Order*, at 9.
[311] *2024 NYPSC Order*, at 23.

pole owners cannot implement "blanket bans" on certain methods of pole attachments. Instead, owners must provide detailed reasoning for their denial of a request.

- **Post-construction Inspections.** As of 2024, such inspections are now required for all attachments.

4. Vermont

In Title 30, chapter 005, subchapter 001, section 209(i), the Vermont Public Utility Commission (VTPUC) has been given the authority to "adopt rules" to further broadband services within the State.[312] In implementing rules, the VTPUC is given several mandates with respect to jointly owned utility poles:

- "The applicable make-ready completion period shall not be extended solely because a utility pole is jointly owned";
- "At the time of an initial pole make-ready survey application, when a pole is jointly owned, the joint owners shall inform the [applying attacher] which owner is responsible for all subsequent stages and timely completion of the make-ready process"; and
- "If the make-ready work is not completed within the applicable make-ready completion period, the pole owner, within 30 days of the expiration of the make-ready completion period, shall refund the portion of the payment received for make-ready work that is not yet completed, and the attaching entity may hire a qualified contractor to complete the make-ready work. All pole owners and attaching entities shall submit to the Commission a list of contractors whom they allow to perform make-ready surveys, make-ready installation or maintenance, or other specified tasks upon their equipment. The Commission shall provide the appropriate list to an attaching entity, upon request."[313]

In 2020, Vermont updated its rules, as reflected below. Vermont has the most distinct framework, relative to its peer states. In particular, it involves a lot more ex-ante review by the VTPUC. For example, all pole owners must share their "pole-attachment tariff," "contracts concerning the cost, maintenance, and use of the poles," and joint cost, maintenance, and use sharing contracts to the VTPUC for its review.[314]

a. Timelines

The timelines for the traditional make-ready process differ from Maine's timelines:

- **Application.** Applications must be approved or rejected within 10 days.[315]
- **Survey.** Survey work must be completed by the pole owner within 45 days (or 60 days for pole orders involving pole orders greater than 300 poles or 0.5 percent of the pole owner's poles in a state but fewer than 3,000 poles or 5 percent of the pole owner's poles in the state).[316]
- **Estimate of Costs.** Make-ready work estimate must be sent by the pole owner within 60 days (or 75 days for pole orders greater than 300 poles or 0.5 percent of the pole owner's poles in a state but fewer than 3,000 poles or 5 percent of the pole owner's poles in the state) (or 21 days "where a new Attaching Entity has performed a survey" instead of the pole owner).[317] Upon request, the pole owner must provide an estimate that "itemize[s] the work on a pole-by-pole basis" and "identif[ies] the necessary Make-Ready work as Simple or Complex."[318] This timeline is longer than Maine's.

[312] 30 V.S.A. § 209(i).
[313] *Id.* § 209(i)(2).
[314] Rules and Orders of the Vermont Utility Commission, Pole Attachments at § 3.700: Pole Attachments, at §§ 3.703(A); 3.704(A)(1); 3.705(A).
[315] *Id.* § 3.708(A)(1).
[316] *Id.* § 3.708(B)(1).
[317] *Id.* § 3.708(C)(1).
[318] *Id.*

- **Acceptance of Estimate.** The pole attacher has the right to accept "any time after receipt of an estimate but before the estimate is withdrawn." The pole owner may "withdraw an outstanding estimate beginning 14 days after the estimate is presented" to the attacher.[319]
- **Completion of Make-Ready Work.** The pole owner must complete make-ready work no more than 60 days later (or up to 105 days for pole orders greater than 300 poles or 0.5 percent of the pole owner's poles in a state but fewer than 3,000 poles or 5 percent of their poles in the state).[320]

But, similar to Maine, if a pole order involves more than "3,000 poles or 5 percent of the [pole owner's] poles in Vermont," a pole owner is only required to negotiate in "good faith" on the timing.[321] For the purposes of determining the size of a pole order, a pole owner "may treat multiple requests from a single new Attaching Entity as one request when the requests are filed within 30 days of one another."[322] But all timelines can be "modified by agreement" between the pole owner and attacher.[323]

A pole owner may "deviate from the time limits specified in this section during performance of Make-Ready for good and sufficient cause that renders it infeasible for the utility to complete Make-Ready."[324] In such an event, the pole owner has a notification requirement to the attacher.

In the event of a pole replacement, the pole owner has 90 days to remove the "obsolete pole."[325]

b. OTMR and Self-Help Remedies

All pole owners and attachers are required to "maintain and keep up-to-date a reasonably sufficient list of contractors they authorize to perform Make-Ready surveys and work, or other specified tasks upon their equipment," including complex Make-Ready work.[326]

VTPUC defines "simple" make-ready as any make-ready work "where existing attachments in the Communications Space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment."[327] "Complex" make-ready work, in contrast, refers to "any work in the electrical space" and any transfers or work within the Communications Space that "would be reasonably likely to cause a service outage(s) or facility damage."[328]

If a pole owner fails to provide a list of authorized contractors or no contractor on that list is available "within a reasonable time period," an attacher may "choose its own qualified contractor" that meets certain requirements,[329] including:

- Contractor follows National Electrical Safety Code (NESC) guidelines;
- Contractor has acknowledged that it "knows how to read and follow licensed-engineered pole designs for Make-Ready, as required";

[319] *Id.* § 3.708(C)(1)(a)-(b).
[320] *Id.* § 3.708(D)(1).
[321] *Id.* § 3.708(E)(4).
[322] *Id.* § 3.708(E)(5).
[323] *Id.* § 3.708(E)(6).
[324] *Id.* § 3.708(G)(1).
[325] *Id.* § 3.708(F)(1).
[326] *Id.* § 3.708(K)(1).
[327] *Id.* § 3.702(I)(1).
[328] *Id.* § 3.702(I)(2).
[329] *Id.* § 3.708(K)(3).

- Contractor follows "all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the Requirements of the Occupational and Safety Health Administration (OSHA) rules";
- Contractor follows "any procedures, standards, codes, and regulations that the [pole owner] requires of its own contractors";
- Contractor "must meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the [pole owner]"; and
- Contractor "is adequately insured or will establish an adequate performance bond for the Make-Ready it will perform, including work it will perform on facilities owned by existing [attachers]."[330]

The attacher must also certify that the third-party contractor satisfies the above requirements. Based on this list, an attacher can use a contractor to conduct a self-help remedy or OTMR:

- **OTMR.** For attachments involving simple make-ready, attachers can elect to do OTMR instead.[331]
- **Self-Help Remedies.** A pole attacher can hire a contractor that meets the requirements above when a pole owner does not complete survey or make-ready work in time.[332]

c. Pole Administration

Vermont's regulations have no provision on single or third-party pole administration. In 2019, Consolidated sold its poles to Green Mountain Power, an energy company, removing most jointly owned poles.[333]

d. Information Reporting Requirements or Databases

There is no formal reporting requirement in Vermont or requirement to use a pole attachment database. However, Vermont does have a GIS database that contains relevant information on poles in the state.[334] It seems that Vermont has achieved a database voluntarily without the use of a VTPUC regulation.

e. Dispute Resolution

Any party "aggrieved by a violation of these rules may file a complaint or petition with the [VTPUC]," which will "take final action within 30 days after the filing."[335] The only requirement is that the complainant give notice to the other party prior to VTPUC filing. There is no rapid response dispute process in Vermont.

f. Other

Vermont's regulations set up a specific process for paying underpayments and refunds.[336]

[330] *Id.* § 3.708(K)(5).
[331] *Id.* § 3.708(M).
[332] *Id.* § 3.708(L).
[333] *See Official Notice to Pole Attachers*, CONSOLIDATED COMMUNICATIONS (June 12, 2019), https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-020/TRANSCRIPTS-OFFICIAL%20EXHIBITS-CLERKS%20REPORT/21-020_2022-03-15_EXH-38.PDF (discussing sale of utility from Consolidated Communications, a telecommunications provider, to Green Mountain Power Corporation, an electricity utility).
[334] *Vermont Open Geodata Portal*, STATE OF VERMONT, https://geodata.vermont.gov/search?q=pole (last accessed on July 31, 2024).
[335] *Id.* § 3.710.
[336] *Id.* § 3.708(I).

D. Notable Differences from Other Jurisdictions

In comparing pole attachment regulations across states, it is important to caveat that each state has unique characteristics that may make broad generalizations or comparisons difficult.

- **Geography.** Some states have terrain and population densities more favorable to underground deployment. Providers in Maine mostly use aerial deployment due to the size and terrain of the state. Some states are also concerned about climate risks to their infrastructure, especially those that are located near coastlines. For instance, Florida, Louisiana, and South Carolina have all explicitly targeted underground installations for future deployments to avoid the impact of hurricanes on the resiliency of in-state broadband networks.

- **Types of pole owners.** Pole owners consist of electricity, telephone and cable companies, and broadband internet service providers. Different types of entities will have different incentives and are subject to different laws, regulations, and requirements. For example, in Arkansas, electric utilities own the majority of the poles.[337] In Nebraska, for example, small, public utilities own most of the poles. Pole ownership varies as well. In some states, public entities or local cooperatives are the owners. The Pole Attachment Act excludes such entities from regulation. As a result, in Preemption States, unless the state has a separate law that extends pole regulation to such groups,[338] they are not regulated. Since the majority of poles are owned by private firms, this is not an issue in Maine, but it has been a bigger legislative focus in other states.[339]

  The number of owners varies as well, creating coordination problems. While in some states, like Maine, only a few pole owners exist, other states have many (as many as thirty-five in Kansas[340]).

- **Quality of poles.** Some states need to replace a significant portion of their existing poles. Therefore, their state broadband offices have dedicated a lot of focus on establishing pole attachment funds, as cost becomes a gating item in future attachments. At least based on interviews and research to date, that does not appear to be a big focus in Maine.

[337] *See* David Smith, *Fair Use of Poles at Issue for PSC*, Arkansas Democrat Gazette (Oct. 28, 2015, 2:11 AM), https://www.arkansasonline.com/news/2015/oct/28/fair-use-of-poles-at-issue-for-psc-2015.
[338] *See* 2024 FLA. STAT. § 364.391(extending pole attachment regulations to rural electric cooperatives engaged in the provisioning of broadband).
[339] *See, e.g.*, MICHELLE CONNOLLY, THE ECONOMIC IMPACT OF SECTION 224 EXEMPTION OF MUNICIPAL AND COOPERATIVE POLES 3 (2019) (finding that municipal and electric cooperative pole owners serve 28% of the U.S. population).
[340] KANSAS OFFICE OF BROADBAND DEPLOYMENT, 2023 BROADBAND EQUITY ACCESS AND DEPLOYMENT 5 YEAR ACTION PLAN 7 (2024), https://www.kansascommerce.gov/wp-content/uploads/2023/08/5-Year-Action-Plan.pdf.

II. Current Challenges

While pole owners, attachers, and third-party consultants have all indicated that Maine's pole attachment process generally works and has even improved over the last several years,[341] many also note that the process still has room for improvement.[342] In particular, **pole attachment work has not always been completed within the timeframes specified in Chapter 880**. As broadband providers begin to deploy millions of dollars of BEAD funding, resulting in an elevated level of pole attachment activity, many fear that the pole attachment process – even if currently adequate – will become strained over the next 2-3 years, negatively impacting the state's ability to achieve its connectivity goals.

As a reference point, the table below shows the average number of days to complete each stage of the Chapter 880 process for projects involving complex make-ready based on data from a three-year period (2021-23).

Length of the Pole Attachment Process Involving Make-Ready (based on calendar days)[343]						
	Application Review & Field Survey	Estimate	Payment	Construction	License (w/ Complex MR)	License (all other)
Ch 880 Timeline	55	14	60	90	219	219
Pole Owners						
Consolidated	No data provided as of this report					
Central Maine[344,*]	35	n/a	33	50	162	75
Versant Maintained[345]	21	38	20	70	188	48
CCI- Maintained	21	26	27	145	263	45
Versant Total[346]	21	34	23	93	212	47
Pole Attachers						
Comcast	Subject to Confidential Protective Order					
GoNetSpeed[347,*]	94 (from application to estimate)		7	n/a	229	383
Crown Castle[348,*]	97 (from application to payment)			n/a	228	241
* This table harmonizes, to the greatest extent possible, the data provided by various stakeholders to the table format provided by Versant. Average timeframes are given where appropriate.						

[341] *See* Crown Castle & GoNetSpeed, *Initial Comments of Crown Castle and GoNetSpeed*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 3 (Jan. 12, 2024) ("[T]he 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."); Pasquine, *supra* note 25, at 8 ("Maine is now at the forefront of nationwide efforts . . . .").
[342] *See* Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 3 ("But there always is room for improvement.").
[343] Note, this table has been updated to reflect and be consistent with the figures that will be presented in Maine PUC's report to the legislature in December 2024.
[344] *See* Brill & Weymouth, *supra* note 24, at tbl. 1. Note, CMP provided data for both traditional and OTMR, as well as the "average including OTMR."
[345] *See* Pasquine, *supra* note 25, at 2. Versant broke out its data for its poles based on areas where Versant maintained them and where Consolidated (its joint owner) maintained them. *Id.*
[346] *See id.* Versant did not separate data related to OTMR or self-help, which are reflected in the averages above.
[347] *Id.*
[348] Crown Castle & GoNetSpeed, *Response*, *supra* note 16, at 1–3.

However, it is also worth noting that it is hard to draw too many conclusions from this data:

- First, the data is self-reported. It is unclear whether pole owners and pole attachers used the same terminology when reporting this data[349] and whether they provided data across the same time periods. These inconsistencies make it harder to compare the data apples-to-apples. Versant, for example, did not give separate data for "applications involving OMTR or self-help projects."[350] In contrast, CMP did give separate data for certain stages of the pole attachment process.[351]
    - In addition, as CMP noted, "the last three years have been unusual" due to "COVID-19 related work restrictions and social distancing requirements, as well as labor shortages, and supply chain issues."[352] It is not entirely clear whether any trends observed in this period will continue to apply on a go-forward basis or not.
- Second, the length of the attachment process that an attacher or owner experiences will be impacted by several factors, including the number of poles that an attacher requests, the type of routes that an attacher pursues (e.g., whether poles are replaced; whether poles are jointly owned and thus require separate applications); and the license that an attacher pursues (e.g., complex make ready or OTMR).

  For any project, these inputs will vary.[353] So, the reported data will likely not be too consistent across various pole owners or attachers (e.g., some pole attachers may use OTMR more than traditional make ready work, or some pole owners may need to replace more poles based on a proposed route than they typically need to replace). Averages may also obscure the wide variance within these numbers. For instance, GoNetSpeed reported that the average duration from OTMR application submission to license issuance varied widely: it took on average 490 days with Consolidated, 631 days with Versant, but only 30 days with CMP.[354]
- Third, only three attachers provided data (Comcast, Crown Castle, and GoNetSpeed), one of which (Comcast) sought a confidential protective order because the information contained "highly sensitive, confidential, and proprietary information about the cable operators' respective commercial operations."[355] It is not clear to what degree the data from these three firms are truly representative of all attachers in Maine.

Nonetheless, while there may be valid reasons for delays and the data above is not entirely clean, it seems that opportunities to improve the current pole attachment process do still exist. To understand what those potential opportunities for improvement may be, this report pulls from a larger universe of data, including:

- First, the Maine PUC has conducted several inquiries and rulemakings over the past several years, resulting in dozens of comments outlining the views of various stakeholders in the PUC docket.[356]
- Second, the MCA has conducted extensive outreach with both pole attachers and owners, including two public workshops hosted by the MCA on July 25 and August 1, 2024.[357]

[349] For example, CMP reported data differentiating between applications submitted using the OTMR process, as defined by Chapter 880, and not using the OTMR process. *See* Brill & Weymouth, *supra* note 24, at tbl. 1. In contrast, Versant reported the data comparing "complex make-ready" from all other applications and did not "separately average applications involving OTMR or self-help projects." *See* Pasquine, *supra* note 25, at 3.
[350] *See* Pasquine, *supra* note 25, at 3.
[351] *See* Brill & Weymouth, *supra* note 24, at tbl. 1.
[352] *Id.* at 1.
[353] *See, e.g.*, Pasquine, *supra* note 25, at 14 ("Every project differs.").
[354] Crown Castle & GoNetSpeed, *Response*, *supra* note 16, at 1–3.
[355] *See* J.D. Thomas & Abram Shanedling, *Cable Operators' Motion for Protective Order*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 1 (May 8, 2024).
[356] *See supra* section I.A.3 (describing recent Maine PUC inquiries and rulemakings).
[357] *See, e.g.*, Kiera Reardon, *Meeting Agenda*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, (Aug. 1, 2024) (referring to one of two public meetings held on August 1, 2024 about the pole attachment process).

- Third, the MCA has engaged with various contractors and construction firms hired by pole attachers and pole owners to facilitate the make-ready process and physically perform the pole attachments in order to get their unique perspective on the process.

Based on these sources, this report finds several observations, provided in detail below.

A. General Thoughts

Stakeholders, based on public comments in the PUC record and interviews with the MCA, seem to think that the statutory Chapter 880 timelines are sufficient on paper, even if they are not necessarily always being met in reality. In prior Maine PUC rulemakings and discussions, commenters have not asked the Maine PUC to change or amend the Chapter 880 timelines.[358] And pole attachers and contractors have indicated that if all the relevant stakeholders can achieve the timelines laid out in Chapter 880, they believe that they will be able to deploy any BEAD or related government funding generally within the anticipated timelines.

Rather, the specific complaints with pole attachments are mostly focused mostly on implementation. **First and foremost, the timelines in Chapter 880 are not always being met.** As a result, pole attachers cannot accurately predict how long the process will take and relatedly how much things will cost, creating uncertainty that makes it difficult for attachers to develop reliable business plans. **The inability to develop reliable business plans affects attachers' ability to attract private funding and/or bid for federal or state grants.** To try to mitigate this risk, attachers have had to dedicate more time and money trying to build in contingencies into their projects (by either reducing the amount of grant money that the federal government or MCA can give or making certain projects noncompetitive) or reduce the risks of delay through excessive documentation that delays construction. Consequently, some would actually prefer "realistic" timelines that they can expect to achieve repeatedly for multiple projects, even if that meant that timelines would be longer than those currently laid out by regulation in Chapter 880.

Challenges in the implementation of the pole attachment process can be categorized into several buckets:

1. **Structural Market Features.** The process involves multiple stakeholders, who all have different goals, incentives, and capacity constraints.
2. **Inefficiencies in Navigating the Process.** The process has inefficiencies that can be fixed with better communication, modernization/digitization, and standardization.
3. **Opacity in Costs, Data, and Timelines.** The process can be more transparent in ways that make it easier for parties to apply for pole attachments or pole owners to facilitate requests.
4. **Dispute Resolution.** The process lacks an easy and efficient way to resolve disputes among pole attachers and pole owners.

The remainder of this section discusses each of these buckets in more detail.

However, as noted in more detail below, **part of the challenge seems to be a lack of understanding of what Chapter 880 does or does not allow.** In several instances, stakeholders and interviewees have wished that Chapter 880 include certain features that appear to **already exist in Chapter 880**. Stakeholders may not be fully informed about what their rights or responsibilities are under Chapter 880, and thus may benefit from a better reading of what the current regulations permit or prohibit.

In addition, several interviewees have warned that, no matter what the MCA or Maine PUC does or does not do, the pole attachment process will never be perfect; a certain level of dissatisfaction with the process by at

[358] *See, e.g.*, Pasquine, *supra* note 25, at 8 ("Further changes to the rules governing the time frame for pole attachments are unnecessary and may be counterproductive. All stakeholders now simply need the opportunity to implement and work under these relatively new procedures and timeframes as broadband expansion efforts are underway.").

least some parties will always exist given certain structural market features, as outlined in **subsection II.B below**. There is no magic policy solution that will solve all of the identified problems.

B. Structural Market Features

Unlike the buildout of the original telephone infrastructure, where one provider designed, built, owned, funded, and managed it all, including the utility pole itself, the buildout of new broadband infrastructure relies on a diverse set of actors (including new attachers, existing attachers on the pole, pole owners, contractors, etc.). In other words, many actors have control over different steps in the process.

Pole attachment regulation exists to protect attachers against potential abuse by pole owners, who may have different goals, incentives, and capacity constraints than them.[359] Without fully understanding what these different goals, incentives, and capacity constraints are, delays in the process may occur or accountability for completing certain tasks may be diffused.

1. Primary Goals

The several actors involved in the pole attachment process all have varying primary goals.[360]

- **Pole attachers** (including broadband internet access providers) want to obtain access to a pole to build out their network and provide broadband services. Ideally, they would like to do so as quickly and as cheaply as possible.
- **Pole owners** (including electric utilities and telecommunications companies) want to help attachers that want to attach to their poles, but they will not do so at the risk of imperiling their ability to provide electricity (for CMP and Versant) or telephone service (for CCI, TDS, etc.) to their customers. Pole owners, through their ownership of the pole, also bear potential legal liability for any damages that result from poor installation or maintenance of either the equipment on the pole or the pole itself.
- **Third-party contractors** want to be profitable by performing attachment services either on behalf of the pole attachers or owners. Some contractors may serve a wide customer base; whereas others may have a few core customers that they repeatedly perform business for. For the latter group, they may not want to do something that upsets those key clients.
- In addition, the above parties may have to engage with permitting authorities, such as local towns, police departments, and the Maine Department of Transportation, as well as with owners of private easements. Each of these entities also have their own respective goals that may limit their ability to be responsive to attachers, owners, or contractors in a timely fashion.

Pole attachments can become complex because of the competing goals of the pole owners (safety) and attachers (efficiency). For example, a pole attachment, if done poorly, can damage other equipment or even create safety risks.[361] Attachers, who are trying to attach as quickly and as cheaply as possible (or the third-party contractors hired to do so on behalf of attachers) may underweight these risks – since they are not fully internalizing those risks and costs. In contrast, pole owners want to maintain a high level of safety standards. If they allow an attacher to perform pole attachment work poorly, it will result in additional work for everyone else involved with that pole later on. Even worse, the poor work can cause damage to third parties that they may be liable for. As a result, they may be too conservative in what they require from attachers or contractors.

[359] *See supra* text accompanying notes 80–82.
[360] *See* Brill & Weymouth, *supra* note 24, at 2–3.
[361] *See, e.g.*, Nell Geiser, *Comments from Communications Workers of America*, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Feb. 13, 2024) ("Faulty pole attachments can cause facility damage, service interruption, and dangerous conditions for workers and the public. Unskilled attachment work can leave heavy terminals and wires hanging without proper support. Ungrounded wires can create electrocution risks. Incorrect placement or overloading equipment on damaged or decaying poles can lead to poles falling into private property or the public right-of-way.").

This is not to say that pole attachers do not care about safety, nor is it to say that pole owners do not care about the efficient and speedy deployment of broadband. Rather, it is important to note that stakeholders have different primary goals, which can, at times, conflict and may also be a source of miscommunication. Any proposal to improve the pole attachment process must bear these differing goals in mind.

2. Incentives

Relatedly, each actor in the pole attachment process may be incentivized differently.

- **Prioritization.** First and foremost, pole asset management is not the primary business of pole owners. Pole owners in Maine are typically private entities that owe a fiduciary duty to their shareholders, unless that duty is restricted or modified by statute. Absent a legal mandate to act differently, work related to their core business will likely take priority over work related to broadband pole attachments.

  Relatedly, since broadband is not the main priority of the pole owners, some interviewees noted that work performed by electricity utilities for their own electricity attachments has sometimes made the attachments of broadband providers noncompliant (e.g., drift loops coming down too low in the communications space or too much sag in the conductors), creating work for future pole attachers or areas of dispute.

  Inversely, pole attachers are often private entities (except for broadband utility districts and municipal networks) that also owe a fiduciary duty to their shareholders. Since they only account for the profits and losses that they incur directly, they may be incentivized to build at all costs, including performing poor attachment work or even performing attachments in the absence of authorization to do so.

  Contractors want to be hired repeatedly, so they may prioritize the work of their larger clients over their smaller or less experienced clients, resulting in inequitable service.

- **Investment in Internal Resources.** Pole owners do not generate significant economic profit from facilitating pole attachments, especially since rates are explicitly regulated to avoid excessive profits. While owners must legally provide any requesting party "with nondiscriminatory access,"[362] and thus must ensure the existence of a process that can facilitate access, they are not required to gratuitously dedicate extensive time or internal resources to make the process as efficient as humanly possible. Consequently, the internal departments of pole owners tasked with filing and handling attachment requests often may be at full capacity, making it difficult to handle additional attachment requests.

  Relatedly, pole applications are not the primary business of pole attachers. As a result, they may not hire enough people for quality control to ensure that work is done properly. While many attachers do perform their work safely, owners have found that some attachers have performed work improperly or in an unauthorized manner.

- **Cost Allocation.** Pole owners must provide their core services at a reasonable cost, and thus are concerned about providing extraneous services that have the effect of (1) imposing costs unfairly on their ratepayers and (2) subsidizing non-ratepayers (e.g., broadband providers).[363] Attachers similarly do not want to pay more costs than they need to.

  While the cost of a pole attachment is more straightforward when an attacher attaches to an existing pole that requires no additional maintenance or work, it can result in disagreement when the entire

[362] 65-407 C.M.R. ch. 880 § 2(A)(1)(a).
[363] *See* Kristina R. Winther & Richard P. Hevey, *Comments of the Office of the Public Advocate*, Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300 (Dec. 26, 2023); Brill & Weymouth, *supra* note 24, at 9 ("[T]he largest cost savings with the implementation of Alden One will likely be realized by the attaching entities. Alden One does not result in cost savings for CMP at this time."); *see also* Kristina R. Winther & Richard P. Hevey, *Comments of the Office of the Public Advocate*, Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300 (May 10, 2024).

pole needs to be replaced. Pole owners may argue that the pole only needs to be replaced due to the new attacher; in contrast, the attacher may argue that the pole needs to be replaced regardless or was already out of specification because the standards had changed, and thus the attacher should not have to pay for work that the pole owner would have had to incur regardless. Ultimately, the pole is the property of the pole owner; while an attacher will undoubtedly benefit from a new pole (since they could not build their project otherwise), the majority of the economic benefit may ultimately go to the pole owner, who will be able to re-lease excess capacity to subsequent attachers, avoid future maintenance capital expenditures, and derive economic benefit in the event of a sale of the pole itself.

An interviewee also noted that non-electricity utility owners face unequal administrative and financial burdens because of deregulation. Telecommunications utilities who own poles, according to this interviewee, have no way to fully recover all of the costs of owning its utility poles, unlike the electricity owners, which can charge its ratepayers (even if one may argue that this burden unfairly falls upon those ratepayers). This interviewee theorized that this dynamic may have motivated Consolidated to sell all its utility poles in New Hampshire and Vermont to the electricity utilities in those states.

- **Competition.** Pole owners can provide their own broadband internet access services that directly compete with prospective attachers. In theory, either a telephone or an electricity utility can offer broadband internet access (and in some states, electricity companies are also internet providers[364]). In Maine, only telephone companies provide this service, such as Consolidated, Lincolnville, and TDS. Owning the pole and providing internet service creates two risks:
    - First, a pole attacher-owner may be less incentivized to facilitate a quicker pole attachment process, as "improvements may primarily benefit its competitors and cost it money that will not be recouped later through pole attachment fees."[365]
    - Second, since a pole owner will get access to information about a proposed route from the attacher, prospective pole attachers may be reluctant to share this information when the pole owner is a direct competitor. As a result, prospective attachers may be less responsive and cooperative in the attachment process, creating delays.

That is not to say that pole owners will always act contrary to their interests. In many instances, they have commendably acted in the broader public interest. As just one example, pole owners have already spent significant time and resources implementing Alden One, and, to date, CMP has covered all the costs of Alden One "for all poles in its service territory."[366] Rather, it is worth recognizing that policymakers may have a harder time reaching an intended outcome when they ask (or hope for) a party to act contrary to its natural incentives.

3. Capacity Constraints

Each actor also only has a finite capacity to act. This capacity manifests itself in several ways:

- **Limited Workforce for Installation.** The work involved with the actual installation can be complex, especially when dealing with electricity attachments, rearranging existing telecommunications attachments, or replacing aging poles. These tasks require a certain level of technical expertise that cannot be done by anyone, requiring a skilled workforce.[367]

[364] *See Fi-Speed Internet*, ELECTRIC POWER BOARD, https://epb.com/fi-speed-internet (last accessed on July 31, 2024).
[365] Tilson Technology Management, Inc., *Comments*, Inquiry into Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs, No. 2021-00321 (Nov. 18, 2021).
[366] Brill & Weymouth, *supra* note 24, at 9; Pasquine, *supra* note 25, at 11–12 (noting that Alden One does not currently provide "any quantifiable savings to Versant" and that the majority of the benefit will likely go to "users" of Alden One).
[367] Tragically, utility pole workers can be significantly injured or even killed when pole attachment work is not done properly or safely. *See, e.g.*, Stephen Singer, *Worker Injured by Electric Shock From Power Line in Biddeford*, PRESS HERALD (April 1, 2024) https://www.pressherald.com/2024/04/01/worker-injured-by-electric-shock-from-power-line-in-biddeford.

All parties involved, including pole owners, attachers, and contractors, must identify and hire staff that are properly trained and skilled to do such work. Acquiring this talent may be difficult given Maine's low population density. The scarcity of talent may be exacerbated by the fact that Maine is trying to expand its broadband access at the same time as many other neighboring states (thanks, in part, to significant federal broadband funding), creating even higher levels of labor competition for a finite pool of talent.

Absent the use of sufficiently skilled labor, pole attachment work can result in compliance violations, and even unsafe pole attachments. For example, pole owners have found that some contractors have not been sufficiently prepared, resulting in "(post construction clearance encroachments and even contract with [the utility's] plant, insufficient clearance above roads/highways/railroads, omission of proper guying support, shifting of existing attachments into violation, and fiber installations having occurred before required transfers of existing attachers or pole replacement work."[368] This problem is not unique to Maine but rather is expressed by many pole owners nationally.[369]

It is also worth noting that pole attachment work can ebb and flow. Even if the workforce appears to be sufficient at a particular moment, future needs – such as due to millions of dollars of new projects facilitated through BEAD funding – can increase the need for a larger workforce.

Consequently, stakeholders generally thought that the industry would benefit if the State of Maine invested more money into growing this workforce (e.g., through training or formal education).

- **Limited In-House Labor for Project Management.** Both pole attachers and owners may have limited staff in-house to facilitate the pole attachment process in a timely manner. The process requires a constant back-and-forth between the attacher and the owner, especially since a project can involve thousands of poles, each with its own set of potential problems or disputes that must be resolved. If either party lacks sufficient in-house staff to respond to the other, that can create its own set of delays.

  With respect to the pole owners, they may not have enough staff or resources to respond to questions and inquiries from attachers in a timely manner. This is not necessarily due to the fault of the pole owners themselves, as some have "hired additional and set up contracts with additional contractors" in anticipation of expanded broadband needs, but rather due to the particularly elevated level of attachment work associated with broadband expansion.[370] Rather, as CMP has noted, the number of applications involving large pole orders (more than 300 poles or 0.5% of a pole owner's total poles) has increased recently.[371]

  Regardless of the reasons for limited capacity, as a result, some attachers have claimed that they have had difficulty reaching staff of the pole owners or did not receive answers to calls or emails for several days from the pole owners. Similarly, pole owners may lack staff for the survey.[372] Specifically, rideouts are a critical part of the survey process, as they represent one of the few moments where the owner and attacher can resolve an issue in real time. Some pole owners may offer to do ride outs only during certain time periods (e.g., only on certain days of the week). Since a rideout can only cover so many poles during a particular day (e.g., 150 poles), limited scheduling availability for rideouts can extend the make ready timeline by many weeks (or even months).

  Part of the lack of capacity may be a function of a lack of guidance offered by attachers. If a pole owner does not know that applications will be filed until they are actually filed, it will be hard for it to quickly

[368] *See* Pasquine, *supra* note 25, at 8.
[369] Thomas B. Magee, *Letter from Coalition of Concerned Utilities to Marlene H. Dortch*, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Aug. 9, 2024).
[370] *See* Brill & Weymouth, *supra* note 24, at 7.
[371] *Id.* at 3.
[372] *Id.*

ramp up its in-house capacity to accommodate such requests. In contrast, if an attacher conveys its intentions several months in advance, such as at the design or engineering stage, the pole owner can then better rearrange or expand its internal resources and capacity to address those future heightened needs. Note, while the MCA can provide some clarity to pole owners on where it hopes to award grant money related to its BEAD program, it will not have data for projects that do not receive MCA funding.

With respect to the attachers, they may lack adequate in-house capacity to navigate the process. For example, CMP found that a "common reason for . . . survey delays" is that the prospective attacher "submits an application to CMP that identifies poles that do not align with the application the attacher submits to [Consolidated]."[373] To resolve this issue, the attacher must resubmit an application.

Existing attachers on the pole can also be a source of delay too. When a pole attacher must do work on other attachers' existing attachments, they may need to seek their approval prior to doing so. This appears to be an issue in the event of pole replacements, where all the attachers to a pole must move their attachments from an old pole to a new one. Additional steps of review can also cause delays if existing pole attachers do not respond or do their work in a timely manner.

- **Limited Capital.** The pole attachment process can be costly, requiring millions of dollars to facilitate. For smaller firms with limited capital, the requirement that certain costs be funded upfront can slow down their ability to file sufficient quantities of applications at any time.

In addition to these actor-specific constraints, all stakeholders involved are subject to larger macro-trends, such as "supply chain issues", "interruptions due to storms and storm restoration work," weather, and "the large geographic area for broadband expansion," which are entirely outside of the control of pole owners, pole attachers, and policymakers.[374]

C. Inefficiencies in Navigating the Process

The current pole attachment process has unnecessary inefficiencies that create delays. These are all steps that can be done differently.[375]

1. PUC Pole Attachment License

Before a new, prospective pole attacher can attach to any joint-use utility pole in Maine, they must first obtain a "pole attachment license" from the Maine PUC.[376] The PUC reviews and approves each application after receiving (1) evidence of financial capacity, (2) evidence of technical capacity, (3) evidence that demonstrates that the entity is authorized to conduct business in Maine, and (4) other requested information (e.g., legal name(s), addresses, contact information, etc.).

This license process can create delays because many new entities are unfamiliar with the PUC process and may encounter delays while navigating the online docketing system for the first time. This initial step is crucial because delays in receiving Maine PUC approval can have a cascading effect that slows down the entire pole attachment process. In some cases, pole owners will not engage with new pole attachers (e.g., drafting a pole attachment negotiated agreement) until that prospective attacher has first obtained a license from the PUC.

[373] *Id.*
[374] *Id.* at 2.
[375] That said, these inefficiencies can be mitigated or exacerbated based on the individual capacity of the attacher itself. Pole attachers cannot show up to this process unprepared: confusion about what they must do and when they must act can create delays and extra work for all parties involved (e.g., pole owners will be waiting on the attacher to complete some preceding step or pole owners will have to correct or fix prior work that was done poorly). That is not to say that the responsibility falls solely on the attacher: pole owners can do their part to provide clear and detailed information on what they need and what their expectations are, enabling attachers to be as prepared as possible.
[376] 65-407 C.M.R. ch. 880 § 3.

Some interviewees thought the license application process was unnecessary in some instances (or should at least be shortened) given the fact that pole owners conduct their own separate review when negotiating the attachment contract. Another interviewee noted that they thought that municipalities should be granted a license automatically by the PUC to attach to joint utility poles, noting that municipalities already have physical access to the municipal space on each pole.[377]

However, some stakeholders cautioned against making too many changes here. While they noted that the process could be improved, they believed that most new market entrants that wanted to seek a PUC license likely had already done so over the last 2-3 years. Since any changes will not benefit those who are already licensed, these stakeholders recommended that the Maine PUC and MCA focus their efforts elsewhere.

2. Negotiated Agreements

Each pole owner, before allowing new pole attachers to attach to any of its poles, also requires new attachers to enter into a negotiated contract, which specifies the relevant terms and conditions. As it is a private bilateral contract between the pole attacher and the pole owner, it does not necessarily follow any template or default terms. While Chapter 880 offers suggested terms for these contracts, firms can deviate from them.

As a result, the process to negotiate a pole attachment contract was described by one interviewee as "painful." In particular, newer pole attachers (e.g., small ISPs, cooperatives, municipalities) may have less experience entering into these types of contracts, resulting in a lot of back-and-forth over contract terms. Different attachers may also have different needs or concerns, which can also make it hard for the pole owner to offer one standardized form contract. For example, pole owners often want attachers to obtain insurance and a surety bond in the event of tort liability. Municipalities may not have clear preexisting processes for obtaining said insurance because they are not used to acting as broadband providers, which at the very least creates delays and may preclude municipalities from pursuing these projects all together.

In addition, Chapter 880 has evolved over time. So even if prior contracts among certain pole owners and attachers were reflective of Chapter 880 at the time, they may have since become outdated, not reflecting subsequent changes made by the PUC. Redoing these contracts may take significant time and energy.

A potential impediment in resolving this issue may be legal: any changes to existing contracts may have to be consensual, as the State could be constitutionally barred from modifying contracts ex post, either through legislation or regulation. Under Article I, section 10 of the Constitution, "[n]o State shall enter into any . . . [l]aw impairing the [o]bligation of [c]ontracts."[378] This constitutional clause (or an equivalent state constitutional clause) may prevent a state legislature or agency from abridging explicit conditions in contracts, even those between two private parties (depending on what change is being made or what requirement is being added). Notably, when Vermont issued its Chapter 880 equivalent, it made a distinction of applying its changes only to newly formed contracts, leaving existing ones intact (although it did not say that the constitutional provision was the explicit reason for doing so).[379] Any change may potentially be limited to forward-looking ones.

While there is likely room for improvement here, like the PUC pole attachment licenses above, one interviewee cautioned against making too many changes. That interviewee noted that most new pole attachers may likely already have entered into established agreements with the pole owners. If the Maine PUC and MCA believe this to be the case, then they may want to focus their finite efforts elsewhere.

[377] Note, this proposal would likely require a statutory change (from the State legislature), as the current requirement to obtain a license is statutorily based.
[378] U.S. CONST., art. I, § X.
[379] Rules and Orders of the Vermont Utility Commission, Pole Attachments at § 3.700: Pole Attachments, at § 3.704(A)(2) ("Unexpired contracts on the effective date of this Rule between Attaching Entities and Pole-Owning Utilities shall remain in effect until they expire according to their terms.").

3. Applications to Pole Owners

When a pole owner has identified all of the relevant poles where they would like to attach to, they must then submit applications for each pole to the relevant pole owner to get their permission to attach to them. These applications take time and effort to prepare.

With respect to jointly owned poles, the work to do so is often inefficiently duplicated: Consolidated and one of the electric utilities (CMP or Versant) typically require separate applications, resulting in two responses, estimates, advance payments, and make-ready workstreams to attach to a pole.[380] The separate estimates or responses can sometimes conflict with each other, requiring additional time to resolve.[381]

In addition, the negotiated contract between the pole owner and attacher may specify a maximum limit on the number of pole applications that can be submitted at once (e.g., 2,000 poles at a time). One interviewee noted that this maximum limit has been a source of delay on their ability to build out a new network. Although, as CMP has noted, large pole orders do naturally "place a strain on the ability of field planning resources."[382]

4. Billing and Payments

Billing and payments can be a source of inefficiency as pole owners will not begin make-ready work until they receive payment or may be slow to refund overpayments or charge underpayments for make-ready work:

- **Initial Payments.** All three large pole owners require receipt of payment from pole attachers before they will initiate work on their end for the make-ready process, which is consistent with the process as laid out in Chapter 880.[383] Chapter 880 does not specify how this payment must be made: currently, pole owners require attachers to pay them with a check. While CMP and Versant "accept evidence of [such] payment by email or uploading a copy of a check in Alden One,"[384] Consolidated will only start to fulfill its statutory duties once it has received and processed a physical check.[385]

  Nothing in the process seems to indicate that payments as a practical matter must be made physical, especially with Alden One as an online repository/database for the pole attachment process that can accept payments that are made via Stripe or Forte.[386] To the extent it is feasible, pole owners should consider accepting electronic payments from attachers instead.[387]

- **Refunds for Overpayments.** Currently, a pole attacher must pay the "entire amount of the make-ready estimate . . . up front" to the pole owner for attachments, and the owner "keeps the use of that money until spent on make-ready work."[388] However, the full amount may not ultimately be used by the pole owner. For example:

  - Pole attachers may decide to invoke self-help in the event that a pole owner fails to comply with the specified timeframes in Chapter 880. In such an event, the pole owner would not actually incur any make-ready costs itself.

[380] *See* Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 4–5; Crown Castle & GoNetSpeed, *Additional Comments of Crown Castle and GoNetSpeed*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 2 (Feb. 9, 2024) [Additional Comments].
[381] *See* Brill & Weymouth, *supra* note 24, at 4.
[382] *Id.* at 3.
[383] *See* 65-407 C.M.R. ch. 880 § 5 (specifying that a pole owner will act "[u]pon receipt of payment specified in Section 2(A)(4)(b) of this Chapter").
[384] Pasquine & Brill, *supra* note 24, at 8.
[385] *See, e.g.*, Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 7 ("Consolidated . . . requires payment by paper check and does not start the make-ready clock until the check is deposited."); Crown Castle & GoNetSpeed, *Additional Comments of Crown Castle and GoNetSpeed*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 6-7 (Feb. 9, 2024).
[386] *See* Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 14.
[387] Crown Castle & GoNetSpeed, *Additional Comments*, *supra* note 380, at 5.
[388] Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 7–8.

- Pole owners may spend less on the make-ready work than they had initially estimated to the pole attacher because the actual incurred costs are lower.[389]

While there is no dispute that pole owners must refund any overbilled amounts to attachers, Chapter 880 does not offer set time limits on **when** owners must give refunds. Pole owners have allegedly been slow to refund these amounts. As a result, attachers use more cash than they would other otherwise, even if they eventually receive the extra amounts paid back as a refund (and if they invoke the self-help remedy, they may use roughly twice the amount of make-ready costs since the attacher must initially pay the full amount to the pole owner and then pay the full amount again to do the make-ready work by itself).

For broadband providers without a lot of liquidity, tying up this much cash can put a material strain on their finances. Inversely, the need to pay "twice" specifically for make-ready self-help may discourage attachers from invoking the self-help remedy at all, as they may not have the cash to "pay twice," even if it is just on a temporary basis.

- **Charges for Underpayments.** Alternatively, "the [make-ready] estimate [paid to the pole owner] turns out to be less than the actual cost of the work."[390] Cost increases may be more frequent in recent years due to "recent workforce shortages and supply chain issues."[391] In such a case, the pole owner will bill the attacher after the fact for the final difference in cost. Chapter 880 similarly provides no timeline for when a pole owner must send the bill for the true-ups to the attacher, nor does Chapter 880 limit how much a pole owner can charge for the true-ups. As a result, a pole owner may bill for a true-up many months later, disrupting a provider's cash flow and planning. GoNetSpeed and Crown Castle have both suggested that the PUC limit the time (e.g., 60 days) and magnitude (e.g., 20%) that pole owners can true up charges.[392]

Both CMP and Versant claim that refunds and billing have not been a material issue with any of their attachers to date.[393] However, creating a system to process payments in a timely fashion also does not appear to be administratively burdensome and could provide real benefit, especially to newer and smaller scale attachers, who have less access to liquidity.

5. Third-Party Consents

Some projects may require pole attachers to seek consents or permits from third parties, including "[Maine DOT], municipalities, railroad owners, the FAA and other entities and agencies."[394] There may be ways to speed up these processes, which are often out of the control of pole owners and attachers. Specific examples include:

- Permits from a municipality or Maine DOT to do make-ready or installation work;[395]
- Special railroad permits and flaggers for railroad tracks;[396] and
- FAA approvals near airports.

In addition, some existing attachers have voiced a desire to be notified of new attachments so that they have sufficient opportunity to review the new attacher's work and make sure that their own equipment has not been

[389] *Id.* at 6.
[390] *Id.* at 8.
[391] Pasquine, *supra* note 25, at 4.
[392] Crown Castle & GoNetSpeed, *Additional Comments*, *supra* note 380, at 6.
[393] Pasquine & Brill, supra note 24, at 8.
[394] Pasquine, *supra* note 25, at 4.
[395] *See* Brill & Weymouth, *supra* note 24, at 4.
[396] *Id.*

disrupted or damaged, especially with respect to OTMR. While section 2 of Chapter 880 appears to mandate this notification requirement,[397] some attachers do not appear to be currently following this protocol.

D. Opacity in Costs, Data, and Timelines

Commentators have noted that a lack of information creates delays and makes it difficult to budget the costs of broadband deployment for grant bidding and capex planning.

1. Pole Database (Alden One)

A historic concern has been the lack of available data about existing poles (e.g., the precise location of all the poles in Maine, who owns these poles, who is responsible for maintenance, etc.). In several prior proceedings, stakeholders suggested that Maine have a "comprehensive pole database" as a solution to this problem.[398] In 2023, the Maine PUC began a rulemaking process that identified this as a sought-after solution. And as a result of this 2023 rulemaking, the three largest pole owners are now implementing a new software program, Alden One, to provide this service.

While it is too early to tell how impactful Alden One will ultimately be, in general, interviewees and commenters have been very optimistic about the program, seeing it as a significant improvement over the prior status quo, where no single source had all of this information.

That said, a pole database will only be as good as the data that is inputted into it. It will take time to (1) onboard all prospective attachers onto Alden One and educate them on how to use the system to its full potential; and (2) upload all relevant information from the current pole owners (and ensure that such information remains updated on an ongoing basis). To date, attachers are not fully clear on when everything will be implemented.[399] Consequently, one interviewee emphasized that the MCA and Maine PUC should not "expect [Alden One] to solve everything."

In addition, even once parties are educated, commentators have noted two potential concerns:

- **Participation by Pole Owners.** Chapter 880 currently requires all "large pole owners" to use the new joint-use software system, Alden One.[400] Chapter 880 defines "Large Pole Owners" as just the three largest pole owners: "Versant Power, Central Maine Power Company, and Consolidated Communications . . . or their successors."[401]

  To date, only two large pole owners (CMP and Versant) have fully adopted Alden One.[402] CMP and Versant claim that they "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."[403] But according to several stakeholders, Consolidated has not adopted the system yet.[404] Since a sizable number of poles are jointly owned by both one of the two electric utilities and Consolidated, Alden One is currently less effective than it could be since pole attachers still need to file two separate applications: one through Alden One and one to Consolidated directly. On July 11, 2024, Consolidated affirmed that it planned to "implement and activate the Alden One joint-use software system . . . by December 2025."[405]

[397] *See* 65-407 C.M.R. ch. 880 §§ 2(A)(9); 2(A)(13).
[398] *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2023-00058, Notice of Rulemaking, at 6 (Mar. 29, 2023).
[399] Crown Castle & GoNetSpeed, *Additional Comments*, *supra* note 380, at 4.
[400] 65-407 C.M.R. ch. 880 § 1(Q).
[401] *Id.* Note, it is not entirely clear whether the PUC can actually require all three large pole owners to use the Alden One system. Since Chapter 880 is prescriptive, not presumptive, any rule might only be applicable in a formal PUC dispute.
[402] *See* Pasquine & Brill, *supra* note 24, at 2.
[403] Pasquine & Brill, supra note 24, at 8; Brill & Weymouth, *supra* note 24, at 5.
[404] Crown Castle & GoNetSpeed, *Additional Comments*, *supra* note 380, at 4 ("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.").
[405] *Consolidated Communications, Inc. Request for Approval of Change of Control*, No. 2023-00327, Order Approving Stipulation, at 6 (July 11, 2024).

However, several interviewers worried that, given the anticipated timing of BEAD funding, the system would need to be adopted by Consolidated sooner than December 2025 for Alden One to be the most helpful with attachers' deployments related to BEAD funding.

In addition, one interviewee suggested that Alden One should not be a requirement for only the three largest pole owners: instead, all pole owners and attachers should be required to participate in Alden One to ensure that it is as effective as it can be.

- **Scope.** Separately, some commenters have expressed concerns about Alden One's scope. In the original proposal to use Alden One, the three largest pole owners noted that Alden One could perform a wide variety of features, including "facilitating workflow and notifications and communications on an online platform," "OTMR notifications," and "managing existing pole attachments (including addition or deletion of attachments)," among other functions.[406]

  To date, pole owners do not appear to be utilizing all of these potential features. For example, Crown Castle and GoNetSpeed allege that Alden One "does not process applications for make-ready" and its "ability to process OTMR applications is rudimentary at best."[407] GWI found the "[c]oordination in the Make Ready Process [to] still [be] ad hoc and based on human intervention via email and telephone calls."[408]

  There is a balance to how much data can realistically be provided. While some pole attachers ideally would want a global pole database, there are legitimate concerns around disclosing competitive, confidential data. In addition, the more detailed the database is, the harder it will be to update it and keep the data fresh over time.

  However, several contractors stated that they do not need too much information from Alden One to derive significant benefits from the program. In particular, they mostly need to know the pole location, pole number, and how many attachers are on the pole. A GIS system would be particularly helpful to understand where poles are and where current applications have been filed, including the ability to export data as a shape file, JSON file, or some equivalent file format. However, other pieces of information can be anonymized. For instance, pole attachers and contractors do not need to know who is specifically attached to the pole, what current attachers' size count is, or what technology attachers are attaching to the pole (e.g., copper or fiber).

Ultimately, some of these questions may answer themselves over time as pole owners and attachers become more familiar with the system and realize what they actually do or do not need. That said, the scope of the system was a point of dispute during the 2023 rulemaking and continues to still be a concern of attachers now.

2. One Touch Make Ready (OTMR) and Self Help

Typically, a pole owner is responsible for doing make-ready work, either on its own or through a third-party contractor that it has hired. However, Chapter 880 allows pole attachers (or their hired third-party contractors) to do so instead in two circumstances:

[406] *See id.* at 3–4.
[407] Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 5.
[408] Fletcher Kittredge, *Biddeford Internet Corporation Comments*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 2 (Jan. 16, 2024).

- **OTMR.** First, a pole attacher can conduct survey or make-ready work for "simple" projects through one touch make-ready.[409]
- **Self-Help.** Second, a pole attacher can do survey or make-ready work if a pole owner fails to perform certain survey and make ready work through the "self-help" remedy.[410]

Despite the fact that Chapter 880 explicitly allows both methods, in practice, several pole attachers claim that they do not know how to actually use these processes in Maine. The inability of attachers to use OTMR can exacerbate the process because it requires attachers to only use the traditional make-ready process, which requires more staff and/or resources from the pole owners to do. Since the pole owners are already resource constrained, funneling activity into traditional make-ready, instead of one-touch or the self-help remedy will clog an already strained system.

- **Availability of Contractors.** Both the OTMR and the self-help processes allow an attacher to hire a third-party contractor to conduct the relevant survey or make ready work in certain cases. While Chapter 880 also lays out a process for identifying and selecting third-party contractors, it seems that this process is not followed in reality.
    - First, attachers do not seem to know which firms are actually authorized or not to do OTMR or self-help work. While section 2(A)(10) of Chapter 880 anticipates that a pole owner will "make available a list of contractors it authorizes to perform surveys and make-ready," it is not a requirement to do so.[411] According to attachers, pole owners have not made this list available publicly. As a result, attachers do not know which firms can do OTMR or self-help work.
    - Second, owners only allow a finite number of contractors to do this work, according to other attachers. While Chapter 880 allows an attacher to request an unapproved firm to be allowed to do OMTR or self-help work in the event that an attacher's preferred firm is not included on the owner's approved list,[412] Chapter 880 still gives the pole owner wide discretion to reject that firm. According to attachers, pole owners have been very reticent about letting new third-party contractors do work on their poles.

      Granted, such concerns by pole owners are not entirely unfounded: third-party contractors may not always be familiar with the relevant pole attachment processes in Maine or may not be fully staffed to do massive make-ready work. Poor work can create complications for the pole owners and other attachers down the road.[413] To properly perform this work, a contractor must also be compliant from a workforce standpoint (e.g., proper I-9s), insurance standpoint, and employee background check standpoint. It requires a lot of coordination and sufficient back-office support, especially when dealing with thousands of poles that may be suffering from a whole array of problems.

      That being said, it is still not clear how to overcome such concerns and allow a third-party contractor to build the requisite trust with pole owners: attachers do not know how to get a contractor to be approved by the pole owners to serve as self-help or OTMR contractors.[414] Crown Castle and GoNetSpeed asked for this process to be further clarified.[415] Some pole owners may only approve contractors who have done past work for them. Such requirements

[409] 65-407 C.M.R. ch. 880 § 2(A)(13).
[410] *Id.* § 2(A)(9).
[411] *Id.* § 2(A)(10)(a).
[412] *Id.* § 2(A)(10). Such proposed contractors must also meet the minimum qualifications outlined in Section 2(A)(10)(f) of Chapter 880. *Id.*
[413] *See supra* text accompanying note 361.
[414] Fletcher Kittredge, *Biddeford Internet Corporation Comments*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 1 (Jan. 16, 2024).
[415] Crown Castle & GoNetSpeed, *Additional Comments*, *supra* note 380, at 3.

may be less impactful to the extent that pole owner has full discretion over who to hire, and the pole owner may naturally prefer firms that it has prior, extensive experience working with, rather than newer or out-of-state contractors.

One suggestion to overcome pole owners' reticence was to allow unauthorized contractors to perform make-ready work only if the attachers themselves would certify that they meet the requisite minimum qualifications. Although, this suggestion likely will not alleviate pole owners' concerns to the extent that attachers or prime contractors have been the ones subcontracting work to unqualified vendors in the first place. While this is not meant to imply that most attachers or contractors would do so, it unfortunately only requires a few instances of unqualified or poor work to make pole owners reticent to allow outside contractors to do this work. Another suggestion was to create some certification or education program to onboard new contractors, but that opens questions about who will create and pay for such a program.

- **Survey.** Since OTMR involves a party not selected or supervised by the pole owner, it can result in multiple parties duplicating survey work. Specifically, the OMTR contractor may go out alone to do the survey (e.g., whether the work is simple or complex) and then the pole owner must independently go out to validate the work, leading to a double visit to submit the proposed work to the pole owner.[416]

  Stakeholders generally thought that it was much better to have everyone go out at the same time. One interviewee thought that a OTMR joint ride out is impossible under Chapter 880 – as Chapter 880 does not anticipate a concurrent ride out process. According to some interviewees, the inability to do joint rideouts for OMTR has become an issue in other states.

  That said, nothing seems to explicitly prohibit a joint ride out in Chapter 880. In fact, not only does Chapter 880 specifically "permit[s] the pole owner and any affecting attaching entity to be present for any field inspection conducted," but it also requires the attacher to "use commercially reasonable efforts to notify the pole owner and any affected attaching entities three business days before a field inspection as part of any survey."[417]

- **Cost Estimates.** A different interviewee thought that pole owners had required them to do more work on OTMR projects compared to projects with traditional make-ready. However, it is hard to validate this claim, as each project is unique.

  One interviewee said that their solution to this estimate problem was to have the pole owner initially do the survey work under the traditional model. That way, the pole owner reviewed and signed off on the specific work that would have to be done. Then, once that engineering was signed-off, the attacher could then shift to hiring its own contractor to perform the make-ready work. However, the same interviewee was also unsure whether this model could be expanded and replicated by all attachers. It is possible that if everyone did this, it would overwhelm the pole owners, given their current staffing and resource levels. Doing a joint ride out for OMTR would seem to reach a similar result; however, this solution does not really help relieve the capacity constraints on the pole owners.

There may be general value to providing general education. While these processes seem difficult, it is not the case that no one in Maine uses them. For instance, according to Crown Castle, it has invoked the self-help remedy under Chapter 880 "for about 85% of make-ready work."[418] While this is not ideal, as self-help is only invoked when the traditional process has failed, it shows the remedy is being used as an alternative by some.

[416] 65-407 C.M.R. ch. 880 § 2(A)(13).
[417] *Id.* § 13(B).
[418] Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 4.

3. Large Pole Orders

A pole attacher will submit applications to a pole owner for each pole that it wants to attach to. If a build covers a vast geographic area, the attacher may be filing applications for thousands of poles. In some cases, the magnitude of the applications may overwhelm the pole owner, who has a finite staff to process applications and do rideouts. Currently, Chapter 880 provides no timelines for when a pole owner must complete pole attachments when a pole attacher requests attachments on more than 3,000 poles or 5 percent of the owners' poles in the state.[419] Pole owners must only make a good faith effort to conduct surveys, provide estimates of make-ready work costs, and then do said make ready work. Given the lack of statutory timeline, pole attachers struggle with predicting when such projects will be completed.

Several commenters noted the FCC's rulemaking (listed above) that set specific time limits for the first large pole order and proposed rulemaking that would set specific time limits for all large pole orders. However, CMP and Versant have both cautioned against promulgating a formal rulemaking on this issue at this time, arguing that Alden One will improve large pole orders.[420] Instead, the PUC should wait-and-see how impactful Alden One is before attempting to regulate further in this area.

In addition, some pole owners set specific limits on the number of poles that an attacher can file with them at once (e.g., up to only 2,000 poles according to some attachers), rendering these timelines moot and limiting the rate and scale at which attachers can pursue pole attachments.

It is worth noting that practical limitations do exist: it is a lot to process thousands of poles at once, especially within a single geographic area. The issue is not just one of statutory timelines. Relatedly, attachers should be prudent about how many poles they request at any given time within a particular geographic area, to the extent they have the flexibility and ability to space pole applications across a longer period of time.

4. Disagreements Over Costs

After the ride out, the pole attacher then receives a Form 3, which details the anticipated make ready costs work and associated costs, from the pole owner. A pole attacher must then sign off on this document before the pole owner proceeds with the make ready work.

- **Timing.** The provisions of estimates can be delayed, despite the Chapter 880 timelines. One interviewee noted it can sometimes take 6-12 months for them to get this form back from the pole owner and that they had no visibility into when they would get it back or not, making it very hard to schedule their future work or to order sufficient materials.
- **Changes.** Another interviewee noted that the pole owners sometimes make changes on the Form 3, relative to what was initially agreed upon in the field. The inconsistency may require both parties to physically reinspect the relevant poles, which creates delays and a source for dispute.
- **Pole Replacements.** Similarly, a pole may need to be entirely replaced either because it is outdated or it fails to meet relevant specifications. Attachers claim that pole owners are charging them for an unfair amount of the replacement costs.[421] This occurs because either (1) a pole owner may, in its cost estimate, find that a pole needs to be replaced because it is out of spec, but the pole was already out of spec (not due to any fault of the attacher), or (2) the standards have changed (rendering the pole

[419] Crown Castle & GoNetSpeed, *Additional Comments*, *supra* note 380, at 3; Comcast of Maine/New Hampshire, Inc. & Spectrum Northeast, LLC, *supra* note 105, at 7.
[420] Pasquine & Brill, supra note 24, at 8.
[421] Charter & Comcast, *Comments of Charter and Comcast*, Commission Initiated Inquiry to Facilitate Preparation of LD 1456 Report, No. 2023-00300, at 2 (Jan. 12, 2024); Crown Castle & GoNetSpeed, Additional Comments, *supra* note 380, at 4-5.

out of spec) and the pole owner now expects the pole attacher to pay for that upgrade. And Chapter 880, according to these attachers, does not offer enough clarity to resolve such disagreements.

That said, Versant and CMP do not think that pole replacement costs are a major "impediment to timeliness of the expansion of broadband in Maine," noting that they have had "few if any substantial complaints in this regard over the decades of pole administration."[422] Relatedly, Versant has noted that only "3% of the poles applied for required a pole replacement" and that "only a portion of these replacements would have been due to the need to accommodate a pole attacher's request."[423] While it may represent a small amount of aggregate pole attachment requests, if these replacements are all physically concentrated near each other, it can create significant problems for an individual project / attacher.

5. Treatment of Municipalities

Under section 2524 of Title 35-A, municipalities seeking to provide broadband to unserved and underserved areas are not required to pay certain make ready costs.[424] This provision could reduce the costs for municipalities to build their own broadband infrastructure. While many in the industry have historically been opposed to treating municipalities differently from other attaching entities,[425] municipalities have a legal right to claim the exemption under Title 35-A.

However, despite the existence of this provision, not all municipalities have claimed this make ready exemption due to ambiguity around its usage.[426] In theory, all eligible municipalities should use it as it reduces the costs of a project. Yet, there have been at least seven municipal broadband projects in the last five years, of which only four have utilized the section 2524 exemption.[427]

Many municipalities may have been hesitant to use the provision because of the provision's legal uncertainty. In August 2022, the Town of Somerville tried to use section 2524. Consolidated ignored it and charged Somerville for make-ready work.[428] In February 2023, Somerville filed a complaint to the PUC through the rapid response process. On June 13, 2024, the PUC agreed that Somerville met the definition of section 2524 and, thus, that Consolidated should pay for the make-ready work.[429] Consolidated has appealed this decision to the Maine Supreme Judicial Court on the grounds that (1) the Commission's interpretation of section 2524 is "erroneous," (2) section 2524 violates the "Takings Clause of the United States and Maine Constitutions," (3) the section violates the "Equal Protection Clause of the United States and Maine Constitutions," (4) the section is preempted by the Pole Attachment Act, (5) the section is unconstitutionally vague and an "excessive delegation of legislative authority," and (6) the PUC's order is not based on "sufficient factual findings related to Consolidated's constitutional claims."[430]

Because of the legal uncertainty, some municipal providers still pay the make ready costs, even though they believe that they do not have to do so but do so "under protest." Any legal dispute can create months or years of delay, which is often not worth it for a provider that wants to provide broadband services quickly.[431] And to

---

[422] *See* Pasquine & Brill, *supra* note 24, at 7.
[423] *See* Pasquine, *supra* note 25, at 14.
[424] 35-A M.R.S. § 2524.
[425] Comcast of Maine/New Hampshire, Inc. & Spectrum Northeast, LLC, *supra* note 105, at 2.
[426] *See* Brill & Weymouth, *supra* note 24, at 8.
[427] *Id.* at 10.
[428] *See* Molly Rains, *Somerville Wins, Again, In Dispute with Internet Utility*, THE LINCOLN CNTY. NEWS (June 15, 2024, 8:00 AM), https://lcnme.com/currentnews/somerville-wins-again-in-dispute-with-internet-utility.
[429] *See Public Utilities Commission Investigation Into Rapid Response Decision Pertaining to Town of Somerville and Consolidated Communications*, No. 2023-00052, Order, at 1 (June 13, 2024). In the decision, the PUC elected not to "address the propriety or constitutionality of 35-A M.R.S. § 2524." *Id.*
[430] *See Public Utilities Commission Investigation Into Rapid Response Decision Pertaining to Town of Somerville and Consolidated Communications*, No. 2023-00052, Notice of Appeal, at 4–10 (July 3, 2024).
[431] *Id.*

the extent that the answer to these uncertainties is statutory or constitutional, it can only be resolved through litigation or a constitutional amendment (in the case of a constitutional uncertainty).

E. Dispute Resolution

During the process, a pole owner and attacher may disagree over the respective parties' obligations or terms. The inability to resolve a dispute can negatively impact a project, as a pole owner may refuse to do the relevant work until said dispute is resolved. In the absence of regulation, the pole owner has significant leverage in such a situation as it can wait, whereas the attacher, who can only profit on its investment by completing the network, will want to complete the network and turn it online as soon as it can. As a result, the State legislature and PUC have created processes to resolve disputes, but despite such mechanisms, they may not have been as effective as proponents would have initially hoped.

1. Bilateral Resolution

Stakeholders have found that the most effective way to resolve disputes is direct, bilateral communication, rather than a PUC-driven process. For example, one attacher had set up a recurring biweekly call to discuss ongoing projects, which led to a speedy resolution if any issues were to come up.

While bilateral communication is useful, this option is not equally available to all attachers.[432] In some cases, this level of familiarity and comfort seems to have been developed between two parties naturally over time. And, in other cases, it seems to have come from close interpersonal relationships among key employees at the pole attacher and pole owner through prior work or personal relationships.

While it is great that disputes can sometimes be resolved amicably and efficiently through bilateral resolution, such rapports are not equally available to all attachers. It is critical for policymakers to not create a situation where the pole attachment process is only accessible to those who are already well connected or plugged in. In reducing such inefficiencies, the MCA and Maine PUC should focus on lowering barriers that have the consequence of creating an unlevel playing field.

A solution that has received some positive reception is the creation of a working group, as discussed further below. That said, there is no clear consensus on the frequency of such a group or how it should be run (e.g., monthly or quarterly). That said, it is worth noting that in New York's newest rulemaking in July 2024, New York explicitly created a "collaborative working group" to "encourage consistency in pole attachment methods and identify areas that may require additional resources and timelines, especially for large, complex projects," which stakeholders in the state were very receptive to.[433]

2. Informal PUC Adjudication

In the event that bilateral resolution is not feasible, the PUC has also created an informal process to resolve disputes. Both pole owners and attachers have noted that, on paper, the rapid response dispute resolution process is "straight-forward and unambiguous."[434] Yet, while all stakeholders are aware that this process exists, almost none of them have used it.[435] In particular, attachers do not appear comfortable escalating disputes to the PUC, even in a more informal capacity than a formal adjudication (see below), as doing so runs the risk of impairing their business relationships with the pole owners, who they likely will have to work with again in the future.[436] It also is not seen as either a quick or binding process. As a result, for example, "neither

[432] Given the ad hoc nature of the data, it is not easy to determine the precise severity of each issue, but the issues listed in this section are ones that were cited repeatedly by at least several parties.
[433] *Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings*, Case 2-M-0101, Order at 14–17 (July 22, 2024).
[434] Comcast of Maine/New Hampshire, Inc. & Spectrum Northeast, LLC, *supra* note 105, at 2.
[435] *See* Brill & Weymouth, *supra* note 24, at 11 (noting only two commission inquiries or investigations, one of which was "not related to the relocation or removal of utility poles").
[436] Comcast of Maine/New Hampshire, Inc. & Spectrum Northeast, LLC, *supra* note 105, at 2.

Comcast nor Charter has used" the process to date;[437] the same goes for GoNetSpeed and Crown Castle.[438] Similarly, several pole owners have noted that they have not been subject to this process yet either.[439] While there may be some value of having the process as a backstop, it does not appear to be heavily used.[440]

There appear to be only a few publicly available cases where a pole attacher has used the Maine PUC's rapid response dispute resolution process (also known as "RRPT process") in a dispute with a pole owner. As mentioned above, in one case, the Town of Somerville (the attacher) challenged a decision by Consolidated (the pole owner) to charge for make-ready costs in relation to section 2524 of Title 34-A.[441] While "[t]he Public Utilities Commission originally sided with the town in a Rapid Response Ruling," Consolidated appealed that decision, requiring the PUC to conduct a "more in-depth review."[442] And after the PUC issued a final formal decision, Consolidated then appealed that decision to the Maine Supreme Judicial Court.[443] In effect, this mechanism just postponed a more formal process.

In addition, even if attachers do use this process more frequently, because the process is fundamentally an informal one, the result of any particular dispute is not publicly recorded on the PUC's website. As a result, attachers do not have a clear sense of how effective this process is and what the PUC considers permissible or impermissible. Therefore, one of its benefits – a lack of formality – is also a weakness – as it is not clear to parties how useful it is or is not in fixing parties' problems.

3. Formal PUC Adjudication

To a similar degree, parties, according to interviewees, seem to disfavor using the formal PUC adjudication process as it also creates an adversarial relationship between the attacher and the owner. Attachers are likely repeat players. As there are a finite number of pole owners in the state, attachers likely will see the same pole owner across multiple projects. Creating an adversarial process due to a dispute in one project may risk the success of other pole applications. Regardless of whether such claims are actually true, this stigma has the impact of deterring parties from using this process. In order for this process to be used more frequently, if that is the desire of policymakers, this stigma will need to be addressed in some way, shape, or form. Given the underlying incentives of all the parties, however, there does not seem to be an easy solution to do so.

[437] *Id.*
[438] Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 7.
[439] Pasquine, *supra* note 25, at 13 ("Versant has not been subject of any recent Rapid Response complaints or proceedings concerning pole attachments.").
[440] Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 7.
[441] *See* Molly Rains, *Somerville Wins, Again, In Dispute with Internet Utility*, THE LINCOLN CNTY. NEWS (June 15, 2024, 8:00 AM), https://lcnme.com/currentnews/somerville-wins-again-in-dispute-with-internet-utility.
[442] *See Public Utilities Commission Investigation Into Rapid Response Decision Pertaining to Town of Somerville and Consolidated Communications*, No. 2023-00052, Notice of Appeal (July 3, 2024).
[443] *Id.*

III. Potential Policy Options

Below are a range of potential policy options that the Maine PUC and MCA could consider in light of the above. These options are based on initiatives taken by other jurisdictions, suggestions provided by interviewees, and insights developed from research for this report. Each proposal contains an explanation of what it would entail as well as the relative strengths and downsides.

Note, this section is merely meant to be generative for policymakers, offering a wide range of potential options, rather than offering specific recommendations on which course of action either the Maine PUC, MCA, or state legislature should ultimately pursue. Ultimately, policy recommendations should be developed by the MCA and Maine PUC respectively, reflecting outcomes from this analysis and from direct stakeholder engagement.

In addition, three high-level considerations to keep in mind are:

- **The level of decisionmaking actor.** There are relative strengths and trade-offs between pursuing a voluntary approach versus an involuntary approach (e.g., regulatory or statutory).

  The former is inherently more consensus-driven and avoids a lengthier, formalistic process (and thus can be done more quickly). The latter creates binding obligations on the relevant parties, and thus is more likely to correct for targeted behavior that runs contrary to a stakeholder's goals or incentives.

  Implementing a rulemaking through the PUC requires a significant amount of time, both for the PUC to prepare the inquiry, for stakeholders to formulate comments, for the PUC to then offer a proposed rule, and then for stakeholders to respond to said rule. In a similar manner, a new statute requires a significant amount of time and attention from all relevant stakeholders. That is not to say that neither of these paths is worth pursuing. But doing so does have a high opportunity cost. It may not be worth pursuing a new rulemaking or statute in order to make a minor or cosmetic change.

- **The type of incentive that the decisionmaking actor uses.** While some changes can be performed with relatively little effort – and therefore the relevant stakeholder may change its behavior without an external incentive – some proposals will take significant time, attention, and resources to implement. In order to motivate parties to act, the relevant decisionmaker (MCA, PUC, state legislature, etc.) may need to use an external incentive, such as penalties or rewards.

  A "penalty" approach would penalize a party for not performing a certain act. For example, a pole attacher could be penalized for an improper attachment or a pole owner could be penalized for failing to meet a timeline within Chapter 880. Some states have implemented such an approach. As a prerequisite, a "stick" approach would require either future regulatory or statutory change as the current rules do not seem to anticipate the PUC imposing any financial penalties.

  In contrast, a "reward" approach would give a party a benefit for performing a certain act. For example, either a pole attacher or a pole owner could be given money to hire additional staff focused on make-ready. A pole owner could also be given a financial incentive to perform certain steps of the make-ready process in a shorter period of time than the time periods laid out in Chapter 880.

- **The timing of the policy.** Finally, it is worth keeping in mind what the goals of policymakers are both in the short-term and in the long-term. Some policy options may be long-term structural changes that are worth pursuing regardless of the current short-term needs of the industry. In contrast, some policy options may have much more value if they are implemented before the MCA deploys BEAD funding. Given the anticipated timeline to deploy BEAD funds, some of the options listed below, even if pursued immediately as of the date of this report, may not be fully implemented until after all the BEAD funds have been awarded. It is important to keep the timing of the various options in mind as policymakers consider what to do or not.

A. Voluntary / Programmatic Change

The following changes can be pursued voluntarily by stakeholders without new laws or rules.

1. Structural Market Impediments

As discussed, the relevant actors (e.g., pole attachers, pole owners, third-party contractors) all have different goals, incentives, and capacity constraints.[444] There are no obvious policy options here to change these goals, incentives, or capacity constraints absent legal authority or funding. However, two ideas to keep in mind are:

- **Pole Sale.** One potential area of inefficiency is the joint pole application process. In theory, either the electricity or communications utilities could sell their poles to the other entity, subject to Maine PUC approval. Simplifying the ownership of all the poles in Maine would reduce the need for attachers to file two applications for a jointly owned pole. Notably, Consolidated has previously sold its poles to electric utilities in two neighboring states: New Hampshire,[445] and Vermont.[446] Voluntary sales have occurred with telecommunications companies in other jurisdictions too, such as Hawaii.[447] However, it is unclear whether any major pole owner in Maine would be interested in pursuing such a sale on a voluntary basis. For instance, in 2021, CMP publicly expressed that it had no interest in selling its ownership interest in poles.[448]

  In addition, it is less likely for an electricity utility to sell its stake in its poles. As CMP noted, electricity utilities have many customers who only receive electric services (and not broadband internet access services). Electricity utilities also must "comply with the National Electric Safety Code ("NESC") and stringent construction standards, which ensures their poles and related infrastructure safely support the utility's lines and the lines of the attachers,"[449] and are less likely to trust a third party to ensure this compliance on their behalf.

  At a minimum, any sale proposal would take time and effort to come to an agreement on terms, obtain requisite approvals (e.g., Maine PUC), and facilitate the administrative transfer of these assets. It is, therefore, not a short-term solution, and should only be explored if it can bring long-term efficiencies.

- **Virtual Rideouts.** To minimize the potential for disputes or disagreements over what work needs to be done at the make-ready stage, and to the extent that pole owners are resource constrained in such a manner that they cannot easily conduct many rideouts in a finite time period, the pole owner could conduct a "virtual rideout" instead, using a videoconference software to review potential disputes. Additionally, pole owners could utilize virtual evidence for any issues that are identified in the post-construction quality check. Attachers could also submit photographic evidence of remediation to the pole owner, eliminating the need to conduct another rideout to verify the remediation work.

In addition, the MCA does have existing funding that it could use:

---

[444] *See supra* text accompanying notes 362–363.
[445] *See Eversource Completes Acquisition of Consolidated Communications' Utility Poles in NH*, BUSINESSNH (May 4, 2023), https://www.businessnhmagazine.com/article/eversource-completes-acquisition-of-consolidated-communicationsrsquo-utility-poles-in-nh (discussing sale of 175,393 utility poles from Consolidated Communications, a telecommunications provider, to Eversource, an electricity utility).
[446] *See Official Notice to Pole Attachers*, CONSOLIDATED COMMUNICATIONS (June 12, 2019), https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-020/TRANSCRIPTS-OFFICIAL%20EXHIBITS-CLERKS%20REPORT/21-020_2022-03-15_EXH-38.PDF (discussing sale of utility from Consolidated Communications, a telecommunications provider, to Green Mountain Power Corporation, an electricity utility).
[447] *See* Press Release, *PUC Approves Transfer of Jointly Owned Utility Poles from Hawaiian Telecom to Hawaiian Electric Companies*, HAWAIIAN ELECTRIC, MAUI ELECTRIC, HAWAI'I ELECTRIC LIGHT & HAWAIIAN TELECOM (Nov. 2, 2018), https://www.hawaiianelectric.com/documents/about_us/news/2018/20181102_utility_poles_transferred_to_hawaiian_electric.pdf.
[448] Tim Connolly, *CMP's Initial Comments in Response to Notice of Inquiry*, Inquiry Into Amendments to Chapter 880 of the Commission's Rules, No. 2021-00321, at 2 (Nov. 19, 2021).
[449] *Id.*

- **Funding for Dedicated Skill Labor.** One challenge has been the lack of sufficient labor supply to meet all of the needs of pole owners, attachers, and contractors to perform various parts of the pole attachment process (e.g., application processing, licensing, billing, pole ride outs, etc.). The MCA has already dedicated significant time and attention within its organization toward better understanding the state's broadband labor gap and identified ways to address it. Such efforts have included working alongside the Maine Community College System to develop a targeted broadband training program; coordinating with the Maine Department of Labor to establish apprenticeship and pre-employment incentives; and engaging with industry partners to identify needs and craft programs to address identified gaps.[450]

  The MCA can apply this model specifically toward the pole attachment process. It can use existing funding sources to (1) create grant programs that allow pole owners, attachers, and/or consultants to take on additional staffing and resources and/or (2) create grant programs downstream that facilitate education and training to increase the size of the labor pool.

  However, it is unclear how such a program could be structured. For instance, one would need to identify the future employer of these additional staff. It could be burdensome for a pole owner to hire new staff only on a temporary basis, as the heightened need for the pole attachment process may be related primarily to BEAD funding, which is temporary. It would also require the MCA to structure a new grant program with proper incentives, conditions, and structure, which would take time and effort to properly design and implement.

- **Grant Conditions.** In general, the MCA can consider adding conditions that recipients for its grant programs must ultimately comply with. A party may find it beneficial to modify its behavior – contrary to its current goals, incentives, or capacity constraints – because any adjustment is outweighed by the financial benefit of receiving a grant. However, the MCA should review the conditions on its various funding sources (e.g., from NTIA or Treasury Department) to make sure adding certain conditions is permissible.

In addition, there may be external sources of federal funding that pole owners can apply for, with respect to grid modernization efforts, that they can potentially use to fund pole replacements, improvements, or other workstreams to overcome existing capacity constraints.

2. Inefficiencies in Navigating the Process

- **Points of Contact.** Some pole attachers and contractors expressed confusion about who to contact at the pole owner, if an issue arose. Even if an attacher successfully identifies a person within that organization, that person may eventually leave, requiring that attacher to then identify a new contact in the future.

  Pole owners, if they have not done so already, should create an email address specifically for pole attachment inquiries and issues. The MCA, PUC, or both should then share these contacts online to make it easy for relevant parties to find. In addition, Alden One should host this capacity as well, to the extent that it is not already doing so.

  Providing such information should be relatively burdenless on the parties and can avoid a source of delay from attachers.

- **Informational Materials.** Some pole attachers and contractors expressed confusion about what the pole owner wanted, especially within the context of self-help and OTMR. Pole owners could provide more details on their website about what type of engineering work they will or will not find acceptable.

[450] *See Workforce Development*, MAINE CONNECTIVITY AUTH. (last accessed on July 31, 2024), https://www.maineconnectivity.org/workforce.

Although each pole is unique, so work that might be satisfactory for one pole may not be for another, helping to establish a baseline may go a long way in clearing up confusion or avoiding attachers from proposing work that would not be acceptable to the pole owner. Clarifying inconsistencies in advance will avoid additional work on the back end when pole owners do their inspection of the work (if it is not cleared up before then, it then requires both parties to restart significant portions of the process).

However, providing such information may require significant time and effort. It may also be difficult to create "standard" informational materials that truly are applicable across the board and may create a false sense of standardization that does not actually exist in reality.

- **Grant Conditions for Attachment Standards.** MCA can also explore using the grant process to facilitate consistent adherence to standards by pole attachers. MCA's grants currently require that a network "be built to Telcordia, NESC, industry standard best practices." However, similar to the informational material option above, in consultation with pole owners, MCA could require all grant recipients to follow additional attachment standards, which can standardize work and avoid work that would not be acceptable to the pole owner from the get-go.

  However, there are two downsides to this approach. First, identifying new standards to add to MCA's grant awards may consume significant time and effort. Creating conditions that are too onerous may also have a deterrent effect, deterring parties from pursuing certain grants, or create confusion, leading to a more inefficient grant award process. To the extent that it is discovered later on that conditions cannot be met, the MCA and the grant recipient will have to take time and effort to figure out what to do. Second, doing so would interject MCA into the contracting process between two parties. MCA may not be, institutionally, best positioned to make such judgment calls and may put MCA in an adversarial position relative to pole attachers and owners.

- **Promote Earlier Engagement.** Pole owners expressed a difficulty in responding to changes in demand for pole attachments because they did not receive information about planned applications or projects until the attacher had actually filed the applications themselves. To help pole owners better anticipate the needs of attachers farther out in advance, the MCA could encourage earlier direct engagement between the two parties.

  The MCA, specifically, can also inform pole owners of where it plans to deploy grants. While the MCA does not need to share confidential information, the MCA can share which regions it plans to prioritize and when, across its various grant programs. While a lot of this data may already be publicly available on its website, there may be value in having the MCA conduct direct outreach with the pole owners to disseminate this information and to ensure awareness. However, to the extent that a project were funded without any MCA grants, the MCA may not have any visibility into that project.

  A potential concern, here, is the sharing of confidential information. Pole attachers may be hesitant, especially when the pole owner is a competing broadband internet access provider, to share information about its future deployment plans. Even though pole owners likely have existing firewalls to prevent the dissemination of such information, the perception that such information may be shared may be enough of a deterrent to prevent earlier engagement.

- **Timely Applications.** Pole attachers can be more proactive about layering applications, rather than filing them all at once. Both pole owners and attachers appear to be dissatisfied with large pole orders. Due to existing capacity constraints, pole owners seem to struggle to respond to large pole orders in a timely fashion. Relatedly, pole attachers do not like that large pole orders must be done in "good faith," rather than within a more clearly defined timeline. While it may be impossible to avoid large orders entirely, if pole attachers can break up their pole orders, it will (1) make the process more

manageable for pole owners and (2) allow attachers to hold pole owners accountable to a specific timeline.

- **Billing Practices.** Pole owners can work to allow electronic payments, such as through Stripe or Forte,[451] instead of only accepting physical payments via check. It seems that CMP's and Versant's approach of allowing attachers to submit electronic proof is a sufficient middle ground solution that does not require building in new functionalities within Alden One. Consolidated could explore doing the same thing, especially once it is onboarded to Alden One.
- **Refunds for Overpayments and Charges for Underpayments.** Pole owners can create an internal process for when they plan to either refund or charge for underpayments. They then can share these planned timelines with attachers. Even if the timelines are only voluntary and not always met, by disclosing a rough time estimate, pole attachers can better plan around anticipated costs.
- **Bridge Facility for Make Ready Costs.** Alternatively, the MCA could provide a funding facility that bridges funding gaps while cash is tied up with the pole owner during the make-ready process.

  However, this proposal may carry several downsides. First, it creates perverse incentives (attachers would feel less pressured to repay charges since the MCA has fronted the amount). Second, it would require the MCA to take on the credit risk of the various attachers, even if only for de minimis amounts. Making the MCA a creditor of the attachers would add administrative costs and burdens on the MCA, and also might create the opportunity for disputes between the MCA and attachers that could disrupt other workstreams between the two parties.

3. Opacity in Costs, Data, and Timing

- **OTMR Surveys.** Pole owners and attachers could agree to do joint ride outs for OTMR work, even if Chapter 880 does not require it. Doing so would allow issues to be discovered prior to the completion of any work and allow for quicker resolution. It appears that several pole owners do this already, as a matter of practice. Others in the industry should also consider adopting this practice as well.

  While it requires more time and effort on the part of the pole owner, as they have to then send someone out to actually do the rideout, the extra time on the front-end may be much less than the time required on the backend if issues are not discovered until later.
- **List of Approved Third-Party Contractors.** Some pole attachers and contractors expressed confusion about how to identify approved third-party contractors for self-help or OTMR work in relation to the survey and make-ready workstreams.

  Pole owners, if they have not done so already, should publicly share the list of contractors on their websites. The MCA, PUC, or both should then share a link to this list online to make it easy for relevant parties to find. Alden One should also host this capacity as well, to the extent that it is not already doing so. Providing such information should not be too burdensome for the parties.
- **Certification Process for Third-Party Contractors.** Relatedly, pole attachers expressed confusion about onboarding new third-party contractors to perform self-help or OTMR work, in the event that such contractors are not already authorized by the pole owners to do so.

  Pole owners have expressed a concern about letting unknown entities perform work, both for valid safety and quality reasons. Realistically, it is impossible for pole owners to work with every prospective third-party contractor (especially as pole owners may prefer to work with parties that they have prior experience with, rather than experimenting with new third-party contractors solely for the benefit of attachers). Narrowing the field of available third-party contractors solely to those that pole

[451] *See* Crown Castle & GoNetSpeed, *Initial Comments*, *supra* note 341, at 14.

owners have worked with before may narrow the field of potential contractors, making the market for contractors less competitive and giving currently approved contractors unfair pricing power.

An alternative may be to create a certification process that allows potential third-party contractors to perform survey or make-ready work in the future. If a contractor completes this process, whether that be through training or through performing supervised work (by the pole owner) over a limited amount of time, then the contractor will automatically be approved to do future work. Based on stakeholder input, Consolidated appears to be currently using this approach for new third-party contractors, even though stakeholders have also noted that it is not easily accessible, nor always easily understood.

Setting up this process will, naturally, require time and resources. In addition, pole owners may still be hesitant to let unknown entities perform extensive work on their poles. It would be important, in such a process, to identify the best ways for new contractors to establish the requisite trust with the pole owners, whether through more engagement, educational requirements, and/or certification.

- **Educational Sessions / Workshop for Pole Attachers.** Several attachers and consultants found value in the previous Alden One trainings. It may be helpful for the MCA, PUC, or pole owners to facilitate more trainings around the pole attachment process with outside experts. However, these engagement sessions would require extra time and attention from all parties; the MCA and PUC should be cognizant about not creating unnecessary administrative burdens on parties. That said, if it raises the quality of work and avoids future disputes, the investment upfront may be worth it.

4. Dispute Resolution

- **Working Group or Office Hours.** Both pole owners and attachers acknowledged that the process worked best when there were clear, open, and frequent lines of communication. The PUC or MCA can host a working group or office hours, which will provide stakeholders with an opportunity to discuss any recurring issues and resolve any disputes in real time. As noted, other states have also pursued this approach, including, most recently, New York. It has also been proposed favorably by national groups, like the Schools, Health & Libraries Broadband (SHLB) Coalition.[452]

- **Enforcement.** The Maine PUC can be more proactive in facilitating and settling disputes, including through the RRPT process. The State and/or third-party groups should compare dispute response mechanisms between Reverse Preemption States (as well as Preemption States once the FCC rolls out its own RBAT process) to understand how to increase adoption of this mechanism.

B. Regulatory or Statutory Change

The following changes could be pursued by the Maine PUC or the State Legislature. Both entities have similar, but slightly different authorities.

- **Maine PUC.** Generally, the Maine PUC has authority to act within the bounds of its authorizing statute. Here, the Maine PUC appears to have significant authority to act under section 711 of Title 35-A: it can adopt rules governing "the resolution of pole attachment disputes and the rates, terms and conditions of joint use."[453] While section 711 lays out certain guiding principles – like (1) promoting competition and furthering the state's broadband policy, (2) ensuring safe, nondiscriminatory access on just and reasonable terms, (3) ensuring sufficient technical and financial capability of attachers, and (4) accounting for the customers of affected joint use entities – these still give the PUC wide discretion to act in relation to pole attachments. The PUC lacks also funding authority. To the extent that it wanted to provide grants or perform an act that constituted a taking, it may need a statutory grant to do so.

[452] Kristen Corra, *Letter from the Schools, Health & Libraries Broadband (SHLB) Coalition to Marlene H. Dortch*, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Aug. 9, 2024).
[453] 35-A M.R.S. § 711.

- **State Legislature.** Any change done by the PUC could also be pursued by the Maine State Legislature instead. The only binding limitation on the legislature is the State Constitution and the U.S. Constitution. Absent those limitations, the State Legislature has wide discretion to act with respect to pole attachments. The Legislature, unlike the PUC, has appropriations authority.

In addition, there are several potential concerns with pursuing a regulatory or statutory path:

- **Timing.** As briefly mentioned above, either process is slow and deliberative. While this timing facilitates a well thought out outcome and permits the opportunity for input from a wide range of parties, this timing comes at the expense of implementing change in the short-term.
- **Attention.** Either process, due to its wide latitude, naturally attracts a lot of attention from relevant stakeholders, who will be impacted by the outcome of any rulemaking. As a result, it can be great for focusing attention on a specific issue. However, in doing so, it may also detract attention from other efforts. All the relevant stakeholders have finite capacity to focus on different areas for improvement.
- **Presumptive versus Prescriptive.** As mentioned above, section 711 of Title 35-A is understood to be presumptive, rather than prescriptive. To the extent that the PUC (rather than the State Legislature) contemplates imposing new requirements or fines on stakeholders, the PUC may only be able to do so in relation to a "dispute." This limitation may impact the effectiveness of a rulemaking based on what the rule prescribes.

  That said, the State Legislature can modify the PUC's authority to make it explicitly prescriptive. To the extent that the PUC wanted to pursue a rule that was clearly binding on all parties – without the need to exercise the formal adjudication process – making this change would make sense and may be good generally on a go forward basis.

  However, to the extent that the PUC wanted to do something quickly, this solution may not be as helpful. It would not only require the PUC to engage in a lengthy rulemaking process to implement whatever rule it desired to implement, but it may take additional time and resources to get a new bill through the State Legislature. This double-nested process may be too lengthy for a solution that one desires to implement in the near-term.

1. Structural Market Impediments

- **Pole Management.** As noted, most utility poles in Maine are jointly owned by one of two large electricity utilities (CMP or Versant) and one of the large communications utilities (Consolidated).

  In a 2021 inquiry, the Maine PUC suggested the possibility of having a single entity own all the poles (either a single entity would own all poles in Maine, or a single entity would own all the poles in one geographic area of Maine, and another entity would own all the poles in another area of Maine).[454] This entity could be an existing pole owner, or a new third-party non-profit or state-run entity. The idea has also been explored in other jurisdictions; although, no state has appeared to require it as of yet.[455]

  The assumption is that it would be easier for attachers to interface with one entity, rather than multiple ones. One issue highlighted in the report is that attachers have to file separate applications, creating additional administrative burdens, costs, and opportunities for dispute/disagreement.

[454] *Inquiry into Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2021-00321, Notice of Inquiry, at 5 (Oct. 21, 2021).
[455] *See, e.g.*, Alexander Soule, *CT Regulator Probing Frontier Pole Transfer*, NORWALK HOUR (Sep. 11, 2019), https://www.thehour.com/business/article/CT-regulator-probing-Frontier-pole-transfer-14429652.php; Mara Hoplamazian, *State Regulators Weigh Who Should Own Utility Poles in New Hampshire*, NH BUSINESS REV. (May 12, 2022), https://www.nhbr.com/state-regulators-weigh-who-should-own-utility-poles-in-new-hampshire.

When the PUC originally proposed this idea in 2021, several industry participants strongly argued against this proposal on several fronts: at a minimum, transferring ownership would take a long time to set up and thus be less effective in addressing any near-term issues with the pole attachment process. They also expressed concern over the implementation of this idea, arguing that it would require legislation as "the Commission lacks the authority to simply take utility property" and would, at a minimum, require some form of "compensation mechanism."[456]

A big concern was also who would ultimately own the poles under such a proposal. All existing pole owners, in 2021, expressed concern with having a non-profit or state-run third-party assuming ownership. CMP, as previously mentioned, noted that it has various standards that it must meet, including the National Electric Safety Code, which it did not trust a third party to handle.[457] While Versant saw some value in having "some form of single point of contact," it argued that transferring "operational, management functions . . . to a third party" would "fundamentally impact on, and could negatively impede, [its] core responsibilities and legal right to operate and manage its electric facilities."[458] Consolidated questioned whether such an entity would "have the resources to ensure that the poles [impacted in emergency situations] are repaired in a timely fashion."[459]

- **Pole Administration.** Alternatively, instead of requiring existing pole owners to sell their ownership stakes in poles, the Maine PUC also considered in 2021 whether "it may be more efficient to have the entire pole administered by a single entity."[460] Under this approach, a pole could be administered by one of the pole owners. Alternatively, a neutral third-party could be responsible for administering the poles, such as a "non-profit organization created for this purpose" or a "State-run entity."[461]

  Similar to the pole ownership proposal, at the time, pole owners opposed having a non-pole-owning third-party assume administrative tasks.[462] Some pole owners also questioned whether a single pole administrator would actually increase the efficiency of the pole attachment process.[463] Although others acknowledged that it might have efficiencies and were "open to keeping this concept on the front burner for future consideration."[464] It also would raise an issue of cost, as one pole owner would be assuming the responsibility that previously another owner had.[465]

  However, all parties cautioned at the time that the PUC should not act until they saw how the Alden One system ultimately functioned.[466] It is worth noting that today, Alden One has not been fully implemented yet. So, it still remains to be seen whether Alden One, in and of itself, will be sufficient or whether more structural change would be materially useful.

- **Explicit Limits on Self-Preferencing.** The PUC could update Chapter 880 to clarify that pole owners cannot favor themselves over other attachers. In Vermont, a "Pole-Owning Utility may not favor itself over any [attacher] nor deny access based on a reservation of space for its own use."[467]

---

[456] Sarah Davis, *Comments of Consolidated Communications*, Inquiry Into Amendments to Chapter 880 of the Commission's Rules, No. 2021-00321, at 3 (Nov. 19, 2021).
[457] Connolly, *supra* note 448, at 2.
[458] James Costello, *Comments of Versant Power*, Inquiry Into Amendments to Chapter 880 of the Commission's Rules, No. 2021-00321, at 4-5 (Nov. 19, 2021).
[459] Davis, *supra* note 456, at 2.
[460] *Inquiry into Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, No. 2021-00321, Notice of Inquiry, at 5 (Oct. 21, 2021).
[461] *Id.*
[462] Connolly, *supra* note 448 at 5; Costello, *supra* note 458, at 6; Davis, *supra* note 456, at 4.
[463] Connolly, *supra* note 448, at 5.
[464] Costello, *supra* note 458, at 6.
[465] Connolly, *supra* note 448, at 6.
[466] *Id.*; Costello, *supra* note 458, at 4; Davis, *supra* note 456, at 4.
[467] *See* Rules and Orders of the Vermont Utility Commission, Pole Attachments at 3.700: Pole Attachments, at 3.707(A)(3).

2. Inefficiencies in Navigating the Process

- **Require Earlier Engagement by Attachers.** As noted above, pole owners expressed difficulty in responding to changes in demand for pole attachments because they did not receive information about planned applications or projects from attachers until those attachers actually filed applications to attach. To help pole owners anticipate the needs of attachers farther out in advance, the PUC could require attachers to provide pole owners with prior written notice when they have received federal or state funds to pursue a project.

  At the federal level, Dominion Excel, a utility and pole owner, has proposed that, when an order of any size is supposed by federal or state funding, the attacher should provide notice to the pole owner "within 10 days of the date which the applicable award is announced" with relevant information on the proposed build-out (or 90 days in the event of a large pole order).[468]

- **Negotiated Agreements.** The PUC could require all future contracts between attachers and pole owners to be shared with the PUC for review. In Vermont, all future contracts must be shared with the equivalent of their PUC.[469]

- **Refunds and Overcharges.** Pole attachers expressed a concern with a lack of clarity around refunds and overcharges. The PUC or State Legislature could create timelines by which the pole owners must either refund attachers for overpayments or bill attachers for underpayments.

  Attachers have also proposed a cap on how much they can be overcharged. Pole owners, presumably, may be opposed to this policy. Especially given noted variability in costs due to supply chain and labor shortages, an inability to fully recoup unexpected costs may shift costs onto pole owners that they otherwise would not have to bear.

3. Opacity in Costs, Data, and Timing

- **List of Approved Third-Party Contractors.** The PUC could require pole owners to share their list of approved third-party contractors. As written, Chapter 880 is only permissive, saying that a pole owner "may" share a list. In contrast, in some states, like Vermont, pole owners must "maintain and keep up to date a reasonably sufficient list of contractors."[470] However, this proposal will only be effective if it is also paired with an incentive for pole owners to do so. Despite the fact that the FCC's rules have required utilities to make available and keep up to date a reasonably sufficient list of authorized contractors, according to the Broadband Deployment Advisory Committee of the FCC, "[in]n practice, this often has not been done."[471] In Vermont, in the event that they do not provide such a list, "the new Attaching Entity may choose its own qualified contractor."[472]

  Alternatively, contractors could be deemed approved if they have been "approved by the same utility in another state or other utilities in the same state."[473]

---

[468] *See* Brett Heather Freedson, *Reply Comments of Virginia Electric and Power Company D/B/A Dominion Energy North Carolina and Dominion Energy Virginia Dominion Energy South Carolina, Inc. and Xcel Energy Services Inc.*, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, at 9 (Mar. 13, 2024) [2024 Dominion FCC Comments].
[469] *See* Rules and Orders of the Vermont Utility Commission, Pole Attachments at § 3.700: Pole Attachments, at § 3.704(A)(2).
[470] *See id.* at § 3.708(K).
[471] Addendum to the Report of the Competitive Access to Broadband Infrastructure Working Group, Presented to the Broadband Deployment Advisory Committee of the FCC (Apr. 25, 2018), at 2, https://www.fcc.gov/sites/default/files/bdac-cabi-report-04252018.pdf.
[472] *See* Rules and Orders of the Vermont Utility Commission, Pole Attachments at § 3.700: Pole Attachments, at § 3.708(K).
[473] Steve Morris & Maria Browne, *Comments of NCTA - The Internet & Television Association*, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, at 19 (Feb. 13, 2024).

- **Approval of Third-Party Contractors.** The PUC could allow attachers to certify or assume liability for unauthorized pole attachments. Currently, pole owners have discretion to prevent any third-party contractors from doing work on their poles. As discussed, this ability to limit who can work on poles, while stemming from a very legitimate concern around quality and safety, also has the consequence of restricting the number of parties that can do this important work. An alternative to address this issue may be allowing the attacher to voluntarily take on that risk, giving them the ability to weigh the trade-off of a faster process with higher liability.

  However, there are serious potential downsides to this proposal. Attachers or contractors may not be able to fully, or even partially, absorb the cost of a comprehensive project violation (and any related remediation). Even though this may result in a short-term benefit, a violation could jeopardize an entire project from a funding perspective and result in larger disputes about how to allocate the costs of such a violation.

- **Incentives for Timeline Compliance.** Pole owners could be penalized for their failure to complete steps within Chapter 880 in a certain time period. Inversely, pole owners could receive a subsidy for their ability to complete steps within Chapter 880 in advance of a certain time period, in order to incentivize quicker pole attachment work. The challenge would be sizing the subsidy or penalty in an amount that would alter behavior but not be too onerous long-term on the relevant parties.

- **Penalties for Unauthorized Pole Attachments.** Pole attachers could be penalized for their failure to attach properly or for attaching to a pole without authorization. For example, in Oregon, a pole owner may impose a sanction for the failure to have a contract with the pole owner, to have a permit, or to act within certain deadlines is "subject to sanction."[474] This would require violations to be enforced and adjudicated, which could consume time and resources (and result potentially in false positives).

- **Timelines for Large Pole Orders.** The PUC could set specific timelines for large pole orders. Chapter 880 does not offer specific time frames; so, pole owners and attachers must negotiate in "good faith" to determine the timing. In reality, this has not resulted in large pole orders being achieved in a timely fashion. As mentioned, the FCC is currently considering such a proposal.[475] Specifically, it has proposed new timelines for all large pole orders, which would be 90 days longer than the current make-ready timelines at the federal level. For example, a survey would have to be completed within 135 days and make-ready work would have to occur in 150 to 180 days depending on whether such work occurred in the communications space or above it.

  Those opposed to the FCC proposal have argued that "no one-size-fits-all timeline"[476] exists that one could easily apply to all situations. Since pole owners "cannot control or predict [many] real-world variables [such as the location of the poles, local permitting processes, the type of make-ready work required, other attachers, material and/or work shortages, weather, etc.] that will impact the timing of a deployment project" and pole attachers can only control some of them, they are concerned about having a set deadline to comply with such requests.[477]

  Some pole owners, at the federal level, have been amenable to creating timelines for large pole orders, but only if they are well in excess of the current make-ready timelines.[478] For example, Dominion proposed being allowed to do surveys over 150 days (5 months) versus the current timeline of 60 days (2 months) for applications involving between 300 and 3,000 poles. Dominion proposed doing make-

[474] *See* ORE. ADMIN. RULES §§ 860-028-0100(4)(e); 860-028-0120(5)(a)
[475] *2023 FCC Order*, at 32.
[476] Nirali Patel, *Letter from US Telecom*, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Aug. 7, 2024).
[477] *Id.*
[478] *See 2024 Dominion Energy FCC Comments*, at 13.

ready work between 165 and 285 days (5.5 and 9.5 months, respectively) depending on whether such work occurred in the communications space or above it versus the current timeline of 75 to 135 days (2.5 and 4.5 months, respectively) for applications involving between 300 and 3,000 poles.

On the other hand, some attachers and supportive groups (e.g., NCTA) have argued that 90 days is too long, noting "construction milestones do not afford additional time for larger deployments." Instead, they propose that new timeframes be only 45 days longer than the standard make-ready timelines.[479]

- **Eliminate Limits on Order Sizes.** The PUC could set a rule that would prevent attachers from setting a maximum order size for pole applications. Attachers have stated that they are currently limited to approximately 2,000 poles (below the size of a large pole order). If such limits are not removed, the purpose of modifying the timelines for large pole orders would not be effective for such attachers.

  For similar reasons stated above, there may be legal issues that inhibit the ability of the PUC (in contrast to the FCC) from modifying the terms of negotiated contracts between pole owners and pole attachers ex-post that would merit further explanation by policymakers.[480]

- **Pole Replacement Fund.** In several states, states have created and funded a pole replacement fund to avoid disputes over the costs of replacing a pole in order to "speed and facilitate the deployment of broadband."[481] For example, in North Carolina, the state funded a $100 million program available to prequalified vendors to reimburse "an amount equal to 50% of eligible pole replacement costs paid or incurred by the [attacher] or $10,000, whichever is less, for each pole replaced" if it were incurred at any point after June 1, 2021.[482] Such a fund would likely require additional funding, either from the MCA's existing funding sources or from new funding authorized by the State Legislature.

4. Dispute Resolution

- **Shot Clock / Modified Self-Help Remedy.** In the event of an unresolved dispute, the PUC or State Legislature could create a timeline by which a certain outcome must occur, otherwise one of the parties will be able to deviate from the traditional process, in order to facilitate speedier resolution of a dispute. Depending on how this is structured, this would place more bargaining power in the hands of one party or another, shaping the bargaining / dispute resolution dynamics. For example, the PUC could state that an inability to agree on the approval of a new third-party contractor by X date results in that contractor automatically being authorized. Presumably, if the pole owner felt strongly about the contractor, they would then be motivated to respond in a timely manner (e.g., disapproving of the contractor, per their right under Chapter 880). However, the risk is that forced resolution can lead to bad outcomes that the processes are meant to avoid (e.g., a poorly trained contractor performing pole attachment work and causing technical issues that need to be fixed down the road).

[479] *See* Steve Morris, *Comments of NCTA - The Internet & Television Association*, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 (Feb. 13, 2024).
[480] *See supra* text accompanying note 378.
[481] See *Broadband Pole Replacement Program*, NCDIT, https://www.ncbroadband.gov/polereplacement.
[482] *Id.*

Recommendations

Ultimately, any specific policy recommendations that are made to the State Legislature should be developed by the MCA and Maine PUC respectively, reflecting outcomes from this analysis and from their own direct engagement with stakeholders.

With that in mind, based on the analysis above, this report makes several recommendations for the MCA (both in general and as it helps Maine PUC to prepare its final report for the State Legislature) to consider:

1. **The MCA should consider using its full arsenal of tools to better facilitate the pole attachment process in Maine.** The MCA has a number of unique strengths at its disposal:
    a. **Informational.** Occupying a unique role within Maine's broadband ecosystem, the MCA can use its contacts/knowledge to act as a key facilitator in the pole attachment process.
        i. **Working Group.** The MCA can establish an informal working group of pole owners, attachers, third-party contractors, and relevant state or local entities (e.g., Maine Department of Transportation) that meets once every month or two during the deployment of federal broadband funding. The purpose of the working group would **not** be to serve as an alternative dispute resolution mechanism, but rather to ensure that all parties are as informed as possible on current challenges and can exchange information on how to navigate the process most efficiently.
        ii. **Trainings.** The MCA can arrange and host training sessions among attachers or third-party consultants, similar to the Alden One Training that occurred in the past. For example, MCA could host a training on which attachment work pole owners are most comfortable with and ways to avoid post-inspection disputes.

            Such trainings may be particularly helpful for newer and/or less experienced firms, including new broadband utility districts, who have a greater need for education, training, and technical competency development to be successful.
    b. **Financial.** As the state's broadband office, the MCA already has committed state and federal funding at its disposal that it can apply to incentivize parties to act:
        i. **Improve the Labor Force.** All stakeholders emphasized that the labor supply is not currently sufficient to meet the current demand for the pole attachment process. The MCA has already worked proactively to understand the state's broadband labor gap and identify ways to address it, including working with the Maine Community College System to develop a targeted broadband training program, coordinating with the Maine Department of Labor to establish broadband apprenticeship and pre-employment opportunities, and engaging with industry partners to identify needs and craft programs to address gaps.[483]

            The MCA can expand those efforts to also focus on the pole attachment process. For instance, the MCA can use funding either to (1) continue to train new employees that can be hired by pole owners, attachers, and/or contractors and/or (2) subsidize the employment of more staff at these entities, to the extent the issue is not the size of the current labor pool but rather the headcount at respective firms.
        ii. **Grant Conditions.** The MCA should consider using its grant programs to incentivize compliance with existing terms. For instance, parties receiving MCA funding may

[483] *See Workforce Development*, Maine Connectivity Auth. (last accessed on July 31, 2024), https://www.maineconnectivity.org/workforce.

agree to use Alden One – whether in their capacity as a pole owner or a pole attacher. Parties could also commit to participate in a working group (see above) or digitize certain parts of their processes.

c. However, importantly, the MCA should be cautious about being seen as an advocate for one group of stakeholders over another. The MCA has spent significant time building and fostering its current relationships. To achieve the state's connectivity goals, the MCA must continue those relationships and work with all stakeholders involved – not only directly with respect to pole attachments but across a variety of other initiatives (e.g., MOOSE Net).

2. **The State Legislature should consider expanding the powers of the Maine PUC (or other state entities) so it can be more responsive to future policy challenges in the pole attachment space.**

   a. **The scope of the Maine PUC's authority is still not fully clear as the existing rules are presumptive, rather than prescriptive.** It is unclear whether a Maine PUC rulemaking that attempts to implement broader changes (e.g., the creation of a single pole administrator or penalties) would be permissible due to the text of section 711 of Title 35-A. The uncertainty over the scope of the Maine PUC's statutory authority may limit the PUC's ability to act or pursue certain initiatives in the future. New legislation could mitigate these concerns.

   b. In addition to strengthening current powers, **the State Legislature could consider granting the Maine PUC (or a different state entity) new powers.** For example, the State Legislature could grant the power to impose fines on pole owners or attachers for failing to achieve certain milestones, as laid out above in the "***Potential Policy Options***" section (e.g., failure to meet deadlines; not using certain processes; or attaching to poles without authorization).

   c. **If the State Legislature desires shorter-term changes, it should also be cautious about passing legislation that delegates an issue for the Maine PUC to regulate on.** Legislators in New Hampshire and New York passed statutes that tasked their respective public utilities commissions with the responsibility to issue new rules on certain topics. While these statutes resulted in fruitful regulations, they took considerable time and effort to implement (more than one year). Given the expected timing of BEAD funding deployment in Maine, for improvements to be the most effective in Maine's current broadband deployment efforts, they will need to realistically be implemented within the next 12 months.

3. **In the long run, structural change may be most appropriate for improving the pole attachment process in Maine given stakeholders' goals, incentives, and capacity constraints, which make it difficult to effectively coordinate at times.** If policymakers want to pursue structural changes, legislation may be a more powerful means to do so.

   a. **However, policymakers may want to wait to pursue changes and focus on lower hanging fruit that can be implemented in the short-term.** It is critical that the broadband providers deploy government broadband funding as efficiently as possible. Any type of legislation or rulemaking that implements significant structural change may detract stakeholders' time and attention from other reform efforts that are easier and quicker to achieve. Not only would such a change potentially invite legal challenges, but it would require existing stakeholders to change their internal processes to accommodate any new legal reforms (e.g., new single pole administrator or owner), which may be administratively burdensome and distracting. There may also be benefit in seeing how the recent reform efforts pan out in order to tailor future legislative efforts to address unresolved pain points in the pole attachment process.

b. **Policymakers should remember that the needs related to the BEAD deployment may be unique to BEAD and not necessarily the needs of pole owners and attachers on a longer-term basis.** The MCA expects over $500 million of federal funding to be deployed over the next few years. This heightened need may affect the relative trade-offs between different parties' goals, incentives, and constraints. However, the elevated level of deployment that the State is likely to experience during this time period will likely not be mirrored in the future. Therefore, any changes that are useful now, given potential trade-offs, may not make sense to mandate on a perpetual, go-forward basis. Policymakers should consider whether to make certain changes time-bound or limited.

The above recommendations are ultimately not meant to exclude any of the other potential policy options or ideas considered throughout the report. Many options may or may not be appropriate based on the willingness and interest of various actors. Future discussions and data may reveal limitations in some of these options or make other ones appear relatively more attractive. Instead, the recommendations included here are meant to reflect key areas where stakeholders can and should definitively act now. This section also seeks to communicate important considerations in weighing the potential trade-offs of certain approaches (e.g., pursuing a rulemaking or legislative change versus a voluntary one).

Appendix A: Timeline for a Pole Attachment (Federal vs. Maine Regime)

		Complex Make Ready						One Touch Make Ready (OMTR)			
		Federal[484]			Maine[485]			Federal		Maine	
Size (Lesser of):[486]	Poles (#)	<300	300-3k	>3k[487]	<300	300-3k	>3k	<300	>300	<300	>300
	Poles (%)	<0.5%	0.5-5.0%	>5.0%	<0.5%	0.5-5.0%	>5.0%	<0.5%	>5.0%	<0.5%	>5.0%
Submit Application. Pole owner reviews + determines if complete [488]		10 days			10 days			10 days		10 days	
Survey. Pole owner conducts a study to determine whether and where attachment is feasible, and what make-ready is required[489]		45 days	60 days	Good faith	45 days	60 days	Good faith	15 days	30 days	15 days	30 days
Offer of Estimate. Pole owner presents an estimate of charges for performing all necessary MR work[490]		14 days	14 days	Good faith	14 days	14 days	Good faith	N/A		N/A	
Acceptance / Payment of Estimate. Attacher accepts estimate and pays.[491]		14 days	14 days	Good faith	60 days	60 days	Good faith	N/A		N/A	
Notice of Make Ready. Attacher provides pole owner and existing attachers with notice [for OTMR only][492]		N/A	N/A	N/A	N/A	N/A	N/A	15 days		15 days	
Completion of Make Ready.[493] Relevant party conducts make ready work.		90 days	135 days	Good faith	90 days	135 days	Good faith	N/A		N/A	

[484] 47 C.F.R. § 1.1401 et al.
[485] 65-407 C.M.R. ch. 880.
[486] "A pole owner may treat multiple requests from a requesting party as one request when the requests are filed within 30 calendar days of one another." *Id.* § 2(A)(7)(e).
[487] The FCC has implanted a new rule that allows an attacher to designate the first 3,000 poles (or 5 percent) of a larger order to be processed under the timelines for 300-3,000 poles (or 0.5-5.0 percent). *See* Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, 23 FCC Rcd. 109 (Dec. 15, 2023). The FCC is also exploring establishing specific timelines for all pole orders of this magnitude. The Maine PUC has not yet formally considered or adopted similar proposals at this time.
[488] 65-407 C.M.R. ch. 880 §§ 2(A)(1)(a); 2(A)(13)(a).
[489] *Id.* §§ 2(A)(2); 2(A)(13)(b).
[490] *Id.* § 2(A)(4).
[491] *Id.* § 2(A)(4)(a).
[492] *Id.* § 2(A)(13)(c).
[493] *Id.* §§ 2(A)(5); 2(A)(13)(c)-(d). Assuming that attachments are above the communications space. If they are below, the timelines are 60 days shorter (30 days and 75 days, respectively). In addition, in Maine, a "pole owner may add up to 45 calendar days to the make-ready periods . . . if a force majeure event interrupts compliance." *Id.* § 2(A)(7)(f).