

STATE OF MAINE)	Docket No. 2015-00295
)	
PUBLIC UTILITIES COMMISSION)	
)	DECEMBER 4, 2015
MAINE PUBLIC UTILITIES COMMISSION)	
)	REPLY COMMENTS of CTIA – The
Inquiry into Amendment of Chapter 880 of)	Wireless Association®
the Commission’s Rules)	

I. Introduction

CTIA – The Wireless Association® (“CTIA”)¹ hereby supplements its November 2, 2015 Comments in this proceeding in order to reply to comments filed by other interested parties.²

The overwhelming majority of those filing comments support CTIA’s position that the “telecommunications landscape has changed substantially since the [Commission’s Chapter 880] rules were originally promulgated, and modernization of the pole attachment rules is essential to ensure Maine’s rules not only promote the deployment of broadband, but do so in a technologically-neutral manner.”³ Indeed, TAM “agrees that there is a need to look at the existing Rules regarding pole attachments given substantial changes in the market since Chapter 880 was last updated.”⁴

Other commenters emphasized the importance of forward-looking infrastructure policy to Maine’s economic success. GWI noted that “Maine’s economic prospects are inextricably tied

¹ CTIA-The Wireless Association® is an international nonprofit membership organization that has represented the wireless communications industry since 1984. Membership in the association includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. More information about CTIA is available on the Association’s website at <http://www.ctia.org/about-us>.

² In addition to CTIA, the Commission received comments from the Office of the Public Advocate (“OPA”), Biddeford Internet Corporation d/b/a Great Works Internet (“GWI”), the Telecommunications Association of Maine (“TAM”), Tilson Technology Management, Inc. (“Tilson”), PCIA – The Wireless Infrastructure Association (“PCIA”), Time Warner Cable Northeast LLC, Comcast of Maine/New Hampshire, Inc., Metrocast, and Bee Line Cable (collectively, the “Cable Operators”), Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE (“FairPoint”), segTEL Inc., d/b/a FirstLight Fiber, Oxford Networks, Emera Maine, and Central Maine Power (“CMP”).

³ CTIA Comments at 1-2.

⁴ TAM Comments at 1.

to its ability to update and improve its telecommunications infrastructure.”⁵ In the same vein, the Cable Operators highlighted that “the Commission’s current rules fail to account for the growth of the Internet and broadband networks, which, in the Legislature’s words, is important ‘for the economic health and vitality’ of Maine’s residents, businesses, and institutions.”⁶

Given this broad support for the Commission to update its pole attachment rules, CTIA reiterates its request for the Commission to establish a forward-looking, technology-neutral pole attachment policy in order to promote broadband deployment in Maine. Pursuant to 35-A M.R.S. § 711, the Commission is authorized to order joint access to poles for a broad array of communications providers, including a “public utility, voice provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system.” Inequitable access and pricing policies are an impediment to deployment of broadband and other advanced services in the State of Maine, and the Commission has the jurisdiction and discretion to correct such policies.

Although many commenters suggested changes that are aligned with the important goal of promoting broadband deployment, not all Comments have merit. The Commission should reject certain positions in the Comments filed by FairPoint and CMP, as they are contrary to the rights, goals and objectives of the forward-looking, technology-neutral pole attachment policy guaranteed under Maine and federal law. If accepted, FairPoint’s and CMP’s suggestions regarding the Commission’s pole attachment rules would operate to the detriment of the State’s telecommunications consumers by potentially impeding broadband deployment. Moreover, contrary to Comments filed by FairPoint, not only does the Commission have the authority to

⁵ GWI Comments at 1.

⁶ Cable Operators’ Comments at 1-2, quoting 35-A M.R.S. § 7101(2).

grant the requested reform of its pole attachment rules, but FairPoint's assertion is in direct conflict with positions it has taken on the issue in previous proceedings before the Commission.

II. Discussion

A. Contrary to FairPoint's Assertions, 35-A M.R.S. § 711 Provides the Commission with Authority to Reform the Pole Attachment Rules in this Proceeding

The Commission should reject FairPoint's contention that 35-A M.R.S. § 711 does not provide the Commission with authority to prescribe rules of general applicability as proposed by OPA in this proceeding.⁷ FairPoint contends that the Commission should either deny the OPA's request or undertake a rulemaking for the limited purpose of making changes to Chapter 880 to "add the entities listed in section 711."⁸ However, as 35-A M.R.S. § 711 grants the Commission authority to promulgate a rule incorporating a rate formula such as that proposed by OPA, FairPoint's position should be rejected.⁹

Even if there were ambiguity regarding the interpretation of the statute, which there is not, the Supreme Judicial Court of Maine found that the Commission has wide latitude to act where the legislature has granted it authority. In *Verizon New England v. Public Utilities Commission*, 875 A.2d 118, 123, 2005 ME 64 (2005), the Supreme Judicial Court of Maine expressed an expansive view of the Commission's authority under state law and the federal Telecommunications Act of 1996.¹⁰ The court relied on various Maine statutes, including 35-A M.R.S. §§ 711, 7101, and 7903(2) and (3), in upholding a Commission ruling ordering Verizon to unbundle a portion of its local loop as a valid exercise of authority. The *Verizon* Court stated

⁷ See, FairPoint Comments at 2-3.

⁸ *Id.* at 3.

⁹ See, *Request of the Office of the Public Advocate for Rulemaking*, Docket No. 2015-00198, June 29, 2015 at Attachment A (OPA's suggested revisions to Chapter 880). OPA has suggested a narrowly tailored rule that "describe[s] the calculation of rates and costs related to the joint use of utility poles which shall be presumed to be reasonable in any dispute under 35-A M.R.S.A. § 711." See, Attachment A, §4. CTIA does not concede that the Commission lacks authority to adopt a broader rule, but that point is not addressed here.

¹⁰ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

that “the legislature has granted broad authority to the PUC to make orders that are necessary to carry out the purpose of making modern telecommunications services more available to Maine residents upon terms that are just and reasonable.” As support, the Court cited to 35-A M.R.S. § 1306(2), which gives the Commission the authority to prevent unjust and unreasonable practices.¹¹

Given the *Verizon* Court’s expansive reading of the Commission’s authority over matters within its jurisdiction, coupled with the plain language of the statute, FairPoint’s position is clearly unsustainable. FairPoint’s assertion that the Commission can only announce reasonable rates, terms and conditions by order resolving a dispute, but not by rule, is based on an erroneous interpretation of Section 711. FairPoint concedes that the Commission has the authority, under Section 711(4), to promulgate rules governing the resolution of disputes regarding pole attachment rates.¹² However, FairPoint denies that Section 711 authorizes the Commission to promulgate a rule that announces the rate formula the Commission will use to resolve such rate disputes. Instead, FairPoint indicates that “[p]ole attachment disputes are to be resolved on a case-by-case basis.”¹³

FairPoint’s denial of the Commission’s authority to promulgate a generally applicable rule ignores the plain language of the statute and the *Verizon* Court’s interpretation of the Commission’s broad authority to act where it has jurisdiction. Section 711(4), captioned “Rules,” requires both that the Commission adopt a rule governing the resolution of pole disputes, *and* that the Commission shall consider various rate formulas, including the FCC’s rate formula. FairPoint entirely ignores the later portion of Section 711(4), which requires the

¹¹ *See*, 875 A. 2d 118 at 123.

¹² FairPoint Comments at 2 (“the Commission “*shall adopt*” rules regarding how “*rate disputes*” are resolved.”) (emphasis added).

¹³ FairPoint Comments at 2. It bears noting that promulgation of a rate formula used in all disputes is not at odds with pole attachment disputes being resolved on a case-by-case basis. FairPoint’s contrary position is illogical.

Commission, in adopting a rule governing the resolution of pole attachment rate disputes, to consider pole attachment rate formulas. Reading Section 711(4) in its entirety makes clear that the Commission is authorized to promulgate a rule announcing the rate formula it will use to determine a reasonable pole attachment rate. This conclusion is further reinforced by the *Verizon* Court's holding.

It also bears noting that not only is FairPoint's position unfounded and contrary to precedent, it is also at odds with the position FairPoint took the last time the Commission considered pole attachment policies.¹⁴ In that proceeding, FairPoint argued that the Commission's earlier 2006 Order in Docket No. 2005-486¹⁵ could not "be given broad application due to the fact that it was not the result of the rulemaking requirements under Maine's APA. Laws of general applicability adopted by administrative agencies must be conducted through administrative rulemaking."¹⁶ The instant docket was commenced in response to the OPA's June 29, 2015 Petition seeking a rulemaking. Yet, in stark contrast to its 2011 position, FairPoint now inexplicably argues that the Commission lacks the authority to do precisely that which FairPoint argued it should in the 2011 proceeding: promulgate rules of general applicability in a rulemaking docket.

Finally, FairPoint has raised no valid argument showing either that it is exempted from the Commission's jurisdiction over poles, or that the legislature has removed the Commission's jurisdiction over the rates, terms and conditions of pole attachments in Maine. Although Maine's

¹⁴ See Docket No. 2010-00371, *Maine Public Utilities Commission Investigation into Practices and Acts Regarding Access to Utility Poles*.

¹⁵ Docket No. 2005-486 *Oxford Networks K/K/A Oxford County Telephone Request for Commission Investigation into Verizon's Practices and Acts Regarding Access to Utility Poles*.

¹⁶ Docket No. 2010-00371, FairPoint Brief at 12 (February 1, 2011) (Emphasis added).

2011 telecommunications reform law limited the reach of certain provisions, Section 711 was not impacted by the reform law.¹⁷

B. The Commission Should Ensure that Pole Attachment Rates are Fair and Justifiable

The Commission is correct in taking this opportunity to reform pole attachment policy to protect attachers against unreasonable rates, as evidenced by the broad support from commenters favoring such reforms. Although CMP asserts that its current pole attachment agreements are based on negotiated rates, and are “fair and justifiable,”¹⁸ that should not prevent the Commission from codifying reforms that ensure uniform, technology-neutral rates for attachers, as supported by both commenters, and by federal law and policy.

The National Broadband Plan asserted that pole attachment rates should be “as low and close to uniform as possible” to promote broadband and benefit consumers, as such rates would minimize distortions in the marketplace and provide greater incentive for attachers to deploy.¹⁹ Similarly, the Federal Communications Commission (“FCC”) has expressed support for the adoption of uniform, technology-neutral rates for pole attachments.²⁰ In its 2011 Report and Order on Reconsideration, the FCC reduced telecommunications attachment rents to levels produced using the FCC “cable formula” to “increase the availability of robust, affordable, telecommunications and advanced services to consumers throughout the nation.”²¹ The FCC recently brought an end to the “telecom/cable” debate in an Order ensuring that pole attachment

¹⁷ See, 35-A.M.R.S.A. §§ 7231, 7232 and 7233.

¹⁸ CMP Comments at 3.

¹⁹ National Broadband Plan at 109-111, available at <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf> (last accessed December 2, 2015).

²⁰ Report and Order on Reconsideration, *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, 26 FCC 5240 (2011) (“The telecom rate formula generally resulted in higher pole rental rates than the cable rate formula”) (the “Report and Order on Reconsideration”).

²¹ Report and Order on Reconsideration, at para. 2.

rates for telecommunications providers approximate the rate for cable providers.²² In its *Order on Reconsideration* last week, the FCC stressed that it was acting “to support incentives for deployment of broadband facilities, particularly in rural areas, and to harmonize regulatory treatment between states where the Commission regulates the rates, terms, and conditions for pole attachments and states where such matters are regulated by the state.”²³

Insofar as they advocate for the status quo with regard to Maine’s pole attachment policy, CMP’s comments run counter to the prevailing, consistent sentiment expressed by commenters in this docket, as well as the direction of pole attachment policy at the federal level and in other states.²⁴ Accordingly, the Commission should maintain its course in this proceeding and continue to investigate amendments to the state’s pole attachment rules that will guarantee fair and reasonable rates, terms and conditions for all attachers.

III. Conclusion

In its *Order on Reconsideration* addressing broadband policy, the FCC noted that “by keeping pole attachment rates unified and low, we further our overarching goal to accelerate deployment of broadband by removing barriers to infrastructure investment and promoting competition.”²⁵ The Commission’s consideration of the issue of Maine’s pole attachment rules is particularly timely, and provides the mechanism by which to establish forward-thinking policy that keeps pace with these goals and objectives shared by Maine and the federal government.

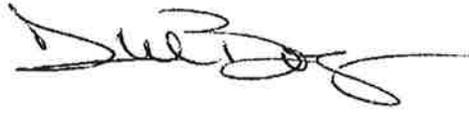
²² Order on Reconsideration, *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, FCC 15-151 (November 24, 2015).

²³ *Id.* at 3, para. 4.

²⁴ Presently, 30 states are under the FCC’s jurisdiction regarding pole attachment and thus follow the federal rate. See *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, 25 FCC Rcd 5541 (WCB 2010). In many of the remaining 20 states, their rate formulas closely mirror the federal formula.

²⁵ *Id.*

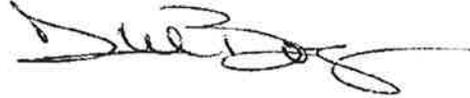
Respectfully submitted,
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