

**Before the
MAINE PUBLIC UTILITIES COMMISSION**

Amendments to Chapter 880 of the)	
Commission’s Rules – Attachments to Joint)	Docket No. 2019-00028
Use Utility Poles; Determination and)	
Allocation of Costs; Procedure)	
)	

FINAL COMMENTS OF CTIA

CTIA respectfully submits its final comments in response to the Maine Public Utilities Commission’s (“Commission’s”) Notice of Rulemaking (“Notice”), entered March 22, 2019 in the above-captioned docket.

I. INTRODUCTION

As noted previously by CTIA in comments¹ and at the Hearing in this proceeding held June 19, 2019,² CTIA supports the Commission adopting the FCC’s cable rate methodology for pole attachments, as do nearly all commenters in this proceeding. While CTIA continues to agree with the FCC that the telecommunications rate methodology is the correct methodology for determination of wireless attachment rates, the Commission’s proposed adoption of the FCC’s cable rate methodology, as outlined in the Notice, represents a dramatic improvement over the Commission’s prior rate methodology, and will promote broadband deployment in Maine. CTIA also supports the proposed amendment to the Commission’s rules submitted by Lincolnville Communications Inc., *et al.* (“Lincolnville”).³ Lincolnville’s amendment, which includes the

¹ See Comments of CTIA, Docket No. 2018-00010 (May 23, 2018) at 5; Comments of CTIA, Docket No. 2019-00028 (April 19, 2019) at 1-2.

² See Hearing Transcript, Docket No. 2019-00028 (June 19, 2019) (“Hearing Transcript”) at 21-22.

³ See Lincolnville Communications, Inc., TVC Albany, Inc., d/b/a FirstLight Fiber, and CRC Communications Inc. and Mid-Maine TelPlus, d/b/a OTT Communications, “LV/FL/OT Amendment,” Docket No. 2019-00028 (June 19, 2019).

FCC’s cable rate methodology for pole attachments, would also accomplish the important goal of making the Commission’s pole attachment rates prescriptive.

The Commission also asked in this round of comments for parties’ opinions on proposed legislation, L.D. 1192, which would address the municipal make-ready cost issues raised in this proceeding.⁴ CTIA has no comment regarding the proposed legislation at this time.

II. THE COMMISSION SHOULD ADOPT THE FCC’S CABLE RATE METHODOLOGY FOR POLE ATTACHMENTS

As noted *supra*, CTIA supports the Commission adopting the FCC’s cable rate methodology for pole attachments. Indeed, based on the record of the proceeding, the only party in opposition to adoption of the FCC’s cable rate methodology is Consolidated Communications of Northern New England, LLC (“Consolidated”), and its arguments against the rate methodology are unpersuasive.

Consolidated argues that the FCC’s cable rate methodology “fails to adequately compensate utilities for all the costs they incur.”⁵ Consolidated then suggests that lack of compensation would mean the inability for it to ensure “just and reasonable” rates as required in Maine.⁶

Despite this claim, Consolidated also acknowledges the fact that – as both CTIA and the Commission have previously noted – the cable rate methodology “has been found to be fully compensatory by both regulators and courts.”⁷ So without legal argument, Consolidated’s comments attempt to frame the policy debate by asking the Commission to explain “why it is reasonable to shift costs away from predominantly large cable companies on to its largest

⁴ See Hearing Transcript at 19, 24.

⁵ Comments of Consolidated Communications of Northern New England Company, LLC, Docket No. 2019-00028 (May 24, 2019) (“Consolidated May 24 Comments”) at 1.

⁶ See *id.*

⁷ See *id.* at 2; see also Notice at 3-4; Comments of CTIA, Docket No. 2018-00010 (May 23, 2018) at 2.

competitor in the state.”⁸ Putting aside its failure to acknowledge the impact on wireless attachers providing much-needed broadband service in Maine, Consolidated still fails to accurately describe the policy balance in question.

Rather, as the FCC noted when rejecting utility arguments for higher rates during its harmonization of the telecommunications and cable rate methodologies, the real policy balance at issue (for the FCC and for Maine), is to “advance the deployment and adoption of broadband Internet access” by limiting the artificial marketplace distortions caused by high attachment rates, while still allowing fair compensation for utilities – and the FCC has found that the cable rate clearly meets that balance.⁹

In that order, the FCC went on to say that “the express reason for the statutory imposition of cost-based, regulated rates is to bypass the economic principle that ‘public utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents . . . in the form of unreasonably high pole attachment rates.’ By enacting cost-based rate formulas, Congress has already accounted for the economics of scarcity that so favor pole owners.”¹⁰ While Consolidated acknowledges that it is “close to, if not the largest pole owning utility” in Maine,¹¹ it disregards that fact in making the claim that the FCC’s cable rate methodology “forces Consolidated to compete on a playing field that is not level.”¹² If there is tilt to the competitive playing field in Maine telecommunications, it is caused by Consolidated – “by virtue of [its] size and exclusive control over access to pole lines”¹³ – being in the position to

⁸ Consolidated May 24 Comments at 2.

⁹ See Order on Reconsideration, *In re Implementation of Section 224 of the Act – A National Broadband Plan for Our Future*, FCC 15-151 (November 17, 2015) (“FCC Pole Attachment Rate Harmonization Order”) at paras. 24-25.

¹⁰ *Id.* at para. 29 (citing S. Rep. No. 580, 95th Congress, 1st Sess. at 19-21 (1977) at 13).

¹¹ Consolidated May 24 Comments at 2.

¹² *Id.*

¹³ FCC Pole Attachment Rate Harmonization Order at para 29.

distort the broadband marketplace by providing broadband service on its network of monopoly owned and controlled poles while charging monopoly rents to its competitors for use of the same facilities. Consolidated crying foul about competition disregards the very principle the FCC's cable rate methodology helps to protect against.

When framing the policy debate, Consolidated also neglects to mention that, as the FCC noted in its order, there is an "artificial disincentive" for providers to invest in states with higher rates "relative to states that established a uniform rate identical or similar to the [FCC's] cable rate formula."¹⁴ Given the widespread adoption of the FCC's rate methodologies, with 30 states under FCC jurisdiction for pole attachments and a number of others using the FCC methodologies or closely related variations of the methodologies, Consolidated's efforts to argue that Maine should be different ring hollow, and would stifle broadband investment in Maine in the larger picture of New England deployment.

Consolidated also makes vague and unsupported claims about "unknown safety concerns" for wireless attachments,¹⁵ but such issues are fully outside the scope of this proceeding, and constitute a collateral attack on the determinations previously made by the Commission in Docket No. 2017-00183, which already considered non-rate aspects of the Commission's pole attachment rules.¹⁶ Furthermore, wireless attachers have been safely attaching equipment to poles for decades under applicable federal, state, and local regulations as well as other applicable construction and engineering standards, and will continue to do so. Accordingly, these claims should be dismissed.

¹⁴ FCC Pole Attachment Rate Harmonization Order at para. 22.

¹⁵ See Consolidated May 24 Comments at 3-4; see also Hearing Transcript at 5.

¹⁶ And, as a general principle, regulation of radiofrequency emissions is reserved exclusively to the FCC. See, e.g., 47 U.S.C. § 332(c)(7)(B)(iv).

For all these reasons, the Commission should move promptly to adopt the FCC’s cable rate methodology for pole attachments.

III. CTIA SUPPORTS LINCOLNVILLE’S PROPOSAL TO MAKE POLE ATTACHMENT RATES PRESCRIPTIVE

CTIA also supports the amendment proposed by Lincolnville. The amendment would still enact the FCC’s cable rate methodology for attachments, which, as discussed above, CTIA supports. Further, the amendment provides an avenue for the Commission to make the proposed rates prescriptive, rather than presumptive. This is a position widely supported by parties, and one which, as CTIA and other parties discussed in prior comments, is appropriate and lawful.¹⁷

IV. CONCLUSION

CTIA looks forward to continuing to work with the Commission to remove barriers to wireless deployment in Maine. The Commission should therefore promptly adopt the FCC’s cable rate methodology for pole attachments, preferably via Lincolnville’s amended proposed rules.

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

¹⁷ See Comments of CTIA-The Wireless Association®, Docket No. 2018-00010 (February 9, 2018) at 5-7; see also Follow-Up Comments of Lincolnville Communications, FirstLight, and OTELCO, Docket No. 2019-00028 (May 24, 2019) at 3-6.

Nora Healy

Nora R. Healy
Geoffrey G. Why
Attorneys for CTIA

VERRILL DANA, LLP
One Portland Square
Portland, ME 04101-4054
gwhy@verrilldana.com
nhealy@verrilldana.com

July 12, 2019