



New England Connectivity and
Telecommunications Association

**TESTIMONY OF THE NEW ENGLAND CONNECTIVITY & TELECOMMUNICATIONS
ASSOCIATION, INC. REGARDING SB 595**

Chairman Avar, Vice Chairman Pearl, and Members of the Committee on Energy and Natural Resources,

On behalf of the New England Connectivity and Telecommunications Association (NECTA), I appreciate the opportunity to submit testimony in favor of SB 595, *An Act relative to the rates for pole attachments*. NECTA members in New Hampshire include Breezeline (formerly Atlantic Broadband), Charter Communications, and Comcast. Together, our members service approximately 485,000 customers and offer their services to more than 695,000 locations in 185 New Hampshire communities.

SB 595 will clarify New Hampshire's existing pole-attachment regime by providing guidance to the Department of Energy (DOE) and the Public Utilities Commission (PUC) on how the fees broadband communications providers pay utility pole owners for pole attachments should be calculated. This is necessary because there is a conflict between current law (RSA 374:34-a, III), which calls for the Department to adopt a formula, and the current Chapter PUC 1300 rules, in which the PUC considers a formula but also as many as five other factors.

Specifically, SB 595 instructs the DOE to develop a formula that uses pole owners' historical cost data that is available to both pole owners and pole attachers. As utility poles are depreciating regulatory assets used to serve utility customers and attaching entities, utilities recover their pole investments through their distribution rates based on historical cost information. SB 595 simply asks that pole attachment rates be set the same way. Using a formula to set pole rates is simpler and more transparent than other approaches, ensuring maximum consistency and predictability for all stakeholders.

In adopting this formula, SB 595 directs the DOE to give deference to the longstanding, widely accepted, and judicially approved Federal Communications Commission (FCC) pole attachment formula while allowing the DOE flexibility to determine what is right for New Hampshire. Massachusetts, Maine, Vermont, and Connecticut have all adopted the FCC formula for calculating pole attachment rates. SB 595 ensures that the adopted formula is non-discriminatory and that pole owners are adequately compensated for ongoing costs, including a return on capital and ongoing maintenance costs arising from pole

attachers' use of the poles. Notably, pole attachment fees broadband providers pay are *in addition* to the costs they pay upfront to attach to a pole in the first instance. Those one-time, up-front costs paid by attachers—such as the cost to replace a pole when needed to make room for a new attachment—are not included in the formula.

SB 595 makes clear that the DOE has all the necessary authority to implement the new statute, including the power to require adequate recordkeeping and timely access to information necessary for the formula. Indeed, a formula is only as good as its inputs, and the legislation ensures that pole owners' historical cost information, that is used as the formula's inputs, is adequately maintained and is available to the DOE, the PUC, and attachers when necessary to determine the reasonableness of the rates. These inputs are, or should be, already maintained and available to the pole owners under their accounting principles, meaning that this will not cause undue burden to the pole owners.

Importantly, SB 595 also calls for the creation of an accelerated dispute resolution process. Examples of disputes that must be resolved quickly include issues related to access to a pole and whether the pole owner or attacher should pay to replace a pole that may have been damaged or unsafe under industry standards and was already scheduled to be replaced. The cost-causer must be determined. The FCC recently recognized that lengthy and expensive disputes are delaying investment in broadband deployment and adopted an accelerated dispute resolution process for disputes within its jurisdiction. New Hampshire has certified to the FCC that it will regulate disputes, but the PUC's current rules do not have a process to quickly resolve disputes. The Maine and Vermont PUC rules contain an accelerated dispute resolution process. Without an accelerated process, the PUC is only bound to resolve a dispute within 180 days.

Additionally, this legislation is necessary because under pole attachment agreements in New Hampshire, pole attachment rates are not negotiated. The pole owner provides advance notice of an increase in the rate, and attaching entities have no ability to assess the reasonableness of the rate unless it is based on a formula. Similarly, if an attachment rate has been in effect for many years, without a formula, attaching entities have no ability to determine whether the rate remains reasonable. No one would argue, for example, that electric rates should not be based on costs and should never go down.

Accordingly, if disputes about pole rates arise between pole owners and pole attachers, a clear, predictable, and quick process of resolving disputes benefits all parties. This legislation, calling for formula-based rates and an accelerated dispute resolution process, checks all these boxes. New Hampshire's current statute actually calls for a formula, but its rules also include the consideration of up to five other factors that cannot be applied easily, consistently, or predictably. A formula will afford all parties greater certainty and predictability, which will lead to fewer costly disputes. This provides business certainty for pole owners as to revenues and attachers as to their costs, particularly important as they extend their broadband networks.

Utility poles are among the last remaining monopoly assets in an increasingly deregulated industry. In many cases, the poles are owned by competitors of the very entities that are seeking to attach to them.

There is no economical alternative to attaching to utility poles for wired networks. It has long been recognized that this dynamic creates an imbalance in negotiating power which can lead to disputes absent a formula-based approach. SB 595 seeks to level this playing field by implementing a requirement, already in New Hampshire statute, that the DOE adopt a formula to be utilized to calculate pole attachment rates. Consistent application of this formula will provide clarity, transparency, and predictability, to the benefit of all stakeholders.

We thank you for your attention to this testimony. Please do not hesitate to reach out with any questions.

Sincerely,

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