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Cc: Faith Brown <FBrown@leg.state.vt.us>

Subject: Further comments on H513 Sections 19 & 20

Madam Chair and members of the Finance Committee,

I would like to supplement my April 18th testimony on Sections 19 and 20 of House Bill 513 with the following comments, which include a suggested minor amendment:

In my prepared testimony, I had written "/One-touch make-ready (OTMR), in which all cables needing relocation are moved by a single contractor, saves time, money, vehicular emissions, and minimizes traffic disruptions. Electric utilities have raised legitimate safety concerns about work in the power space at the top of each pole, and it may indeed be appropriate to limit OTMR primarily to work in the communications space./"

As passed by the House, Section 19 (a) now begins

(a) The Public Utility Commission shall revise Rule 3.700 to implement the following:

(1) one-touch make-ready policies for pole attachments; [...]

During discussion, I had suggested adding the phrase "in the communications space" after "one-touch make-ready". After considering comments from several other witnesses during the past two weeks, I believe a few more words are needed.

Other witnesses, notably Mr. White of Comcast, have proposed directing the Public Utility Commission simply to adopt the FCC's policies for pole attachments, which distinguish between "simple" and "complex" makeready. Under those FCC policies, any job that requires one or more poles to be replaced is defined as "complex", whereupon OTMR is immediately disallowed.

ECFiber's "2018" construction in six towns involved new attachments to about 6700 poles, of which 185 poles needed to be replaced. Only 55 of those 185 were completed within 120 days after payment. That's why we believe that simply following FCC precedent - which is mute concerning pole replacements - will be insufficient to resolve the makeready bottleneck in broadband deployment.

I propose the following amended language for Section 19 (a) (1):

(a) The Public Utility Commission shall revise Rule 3.700 to implement the following:

(1) one-touch make-ready policies for pole attachments _in the communications space, augmented by measures to require __pole owning utilities to complete any needed pole replacements within the first half of the applicable time period for__ makeready completion, or pay penalties to the applicant;_

[....]

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Once necessary pole replacements have been completed, most makeready jobs will then resolve to the "simple" category, after which OTMR becomes feasible. "Penalties to the applicant" might, for example, imitate typical credit-card terms such as "1 1/2% interest per month or fraction thereof" on the pre-paid makeready invoice affected by the delayed pole replacement.

I would also point out that Mr. White's proposed amendment appears to omit the refund provision of Section 20 (2) (C), which as passed by the House provides

"If the make-ready work is not completed within the applicable make-ready completion period, the pole owner 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."

That "self-help" provision is a key component of the Vermont PSD's proposal. Although it is also found in the FCC rules that Mr. White would have us adopt, the refund aspect is not.

Respectfully,

Irv Thomae

Chair, East Central Vermont Telecommunications District (ECFiber)