To Senate Finance Committee

Comments on H. 513

by Irv Thomae, Chair
Central Vermont Telecommunications District (ECFiber)

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I have been a Norwich resident since 1975,-a member of the ECFiber Governing Board since it first convened in April of 2008, and board Chair since December 2012.

ECFiber is pleased to support H.513, especially the Broadband Development Loan Fund. We hope to comment on that part of the bill at a future hearing, but my principal focus today will be on Sections 19 and 20, which deal with pole-attachment and makeready issues.

As Vermont's first Communications Union District, ECFiber has grappled with many impediments to rapid deployment of rural broadband. Our experience over several years of construction shows that efforts to accelerate broadband deployment anywhere in rural Vermont will encounter unpredictable delays leading to lost revenue, and cost over-runs depleting precious capital, unless and until pole-attachment regulations are updated as envisioned in H. 513 Sections 19 and 20. These changes are essential to Vermont's economic future.

Federal and state law entitle bonafide communications providers to apply for and rent space for their cables on existing utility poles. Although nominally governed by the Public Utility Commission's Rule 3.700, that process currently lacks transparency, accountability, and timeliness. Those deficiencies constitute a major impediment to rapid deployment of modern broadband here in Vermont.

In response to a petition from the Public Service Dept, the PUC has recently opened a "rule-making proceeding" for review and revision of Rule 3.700. Sections 19 and 20 of H. 513 provide significant support to that urgently needed revision process.

The detailed steps by which a new provider gains access to the poles are provided as an appendix to my remarks. In the great majority of cases, poles are supposed to be "made ready" within 120 days after the Pole Owning Utility receives payment for the work to be done. In actual fact, however, because the current "system" has no enforcement provisions, make-ready projects frequently languish for many months beyond the nominal 120 days from payment.

Some 14% of the poles needed for ECFiber's 2017 six-town build were late by 240 days or more, meaning that at least one full year passed between that make-ready payment and pole access. The very last group of 177 Thetford poles was licensed 370 days late, or 16 months after payment. Protracted and unpredictable elays such as those have real consequences. Rural communities fall further behind educationally, economically, and even in population, while a CUD or other startup enterprise attempting to serve them typically must pay debt service from a smaller revenue stream than planned. In effect, those prepayments for makeready work constitute forced, interest-free, loans from grassroots enterprises to the state's largest utility companies.

The Department (in its filing with the PUC), as supported by H.513, would offer a solution by empowering applicants to engage qualified third-party contractors to perform the work directly when appropriate. Reinforcing that proposal, Section 19(a) of the Committee bill calls upon the PUC to consider a number of badly needed improvements, beginning with "one-touch make-ready policies"; and 19(b) calls upon the PUC to file its final proposed revised Rule by Dec. 1 of 2019. That timing requirement is especially prudent in view of the fact that a proceeding for revision of a related rule governing rental fees that pole owners may charge to attachees has still not been fully completed some 2 3/4 years after first being opened in the summer of 2016.

The current rules, and even the Department's proposed revisions, use the term "Pole-Owning Utility" in the singular. However, at least in ECFiber's member towns, a very large majority of the poles are jointly owned by an electric company and a phone company, typically GMP and CCI, respectively. As joint owners, it is their current practice to require separate but parallel applications and payments for each group of poles. After a jointly conducted pole survey, each co-owner issues its own make-ready quote, accepts separate payment, and (so far as we know) applies separately for any necessary permits. Worse, there have been numerous occasions in the past when a joint owner has completed all work on a batch of poles except for replacing one or two poles without which the co-owner cannot proceed. In some cases, the second owner has then claimed that its 120-day completion period did not begin with receipt of payment but with the first owner's replacing those poles. Both transparency and accountability have been sorely lacking. Timely broadband deployment requires that joint owners must be held jointly responsible for timely completion, and that is the reason for Section 20 (2) (A), which now reads "The applicable make-ready completion period shall not be extended solely because a utility pole is jointly owned."

Section 20(2)(B) empowers the applicant to engage a qualified third-party contractor to undertake or finish make-ready work which has not been completed on time. Independent broadband providers in Maine have found a similar "self-help" provision so effective that since their PUC adopted a similar provision, it has not once needed to be

invoked. Such a rule would also strongly encourage improved transparency, as pole owners would find it beneficial to document for applicants the dates on which their pre-payments were received, the dates when any necessary AOT or railroad permits were applied for and received, and the schedule for any needed pole replacements.

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, Some parties have suggested that if implemented at all, OTMR should be confined to "simple" make-ready, excluding all cases in which one or more poles need to be replaced. We find this argument disingenuous at best. Our records show a very strong correlation between pole replacements and major delays, with too many instances to count of "we expect to do that the week after next." I must reluctantly conclude that until the law and regulations strongly "encourage" pole-owning utilities to prioritize timely pole replacements, every effort to accelerate broadband deployment anywhere in rural Vermont will encounter unpredictable delays, with consequences including frustrated would-be end users, cost over-runs, and heightened business risks for public or private enterprises attempting to bridge the digital divide.

Thank you very much.

Irv Thomae

Appendix I: A Review of the Basic Steps by which New Providers Access Poles

Step 1: After designing a route, an 'attaching entity' submits to the "Pole-Owning Utility" sequential lists of the needed poles within a specified town, organized by logically related main and side roads and grouped into 'pole applications' (batches) covering as many as 200 poles each. Each application is accompanied by a standard per-pole fee.

Step 2 a: The pole owner(s) schedule a Pole Survey, typically involving technical personnel from the applicant as well as the pole owner(s), to determine what work needs to be done on which poles to make room for the newcomer. (Typically, a large majority of poles will need no work at all. Existing cables may have to be moved on between 20 and 25% of poles, and a small number of poles may need replacement to create sufficient vertical space.)

Step 2b: For each surveyed pole application, an invoice for the proposed work is sent to the applicant.

Step 3: After receiving payment, the pole owner(s) and other attachees already present on the poles are supposed to carry out the specified makeready work within certain time limits. (See below, with noted exception.) Upon completion, a "pole license" is issued, signifying that the applicant may now attach its cables to those poles. As a practical reality of course, because cable must be strung sequentially, the applicant must wait until all the poles covered by an application have been licensed.

The time periods currently allowed for steps 2 and 3 depend on what percentage of a pole owner's total poles within Vermont are being applied for, as follows:

# of Poles	Survey & Quote	Makeready Work*	Total elapsed time
<.5% of company's total poles	60 days	120 days	6 months
more than .5% but < 3%	90 days	180 days	9 months
More than 3% of total poles	Negotiated	Negotiated	??

*Notes:1. Pole owners have not always started this interval immediately upon receiving payment.

2. If the pole owner(s) must first obtain AOT or railroad permits, the interval for make-ready completion does not begin until those permits have been obtained.

3. Although each and every pole must be surveyed, in ECFiber's experience fewer than 25% of poles require any work at all, and a much smaller number need replacement. Even when building 250 to 300 miles in one year, poles requiring actual make-ready work within the same timeframe have not added up to .5% of either company's total Vermont poles.