

Senate Committee on Finance

H. 513

An Act Relating to Broadband Deployment throughout Vermont

Comments of James White Comcast, Senior Director Regulatory Affairs April 18, 2019

Good afternoon Chair Cummings, Vice Chair MacDonald, and esteemed Members of the Committee. Comcast appreciates the opportunity to offer comments on H. 513. Comcast's comments focus on Sections 19 and 20 that concern "make ready" for pole attachments and pole rates.

Comcast appreciates the challenge of bringing broadband to rural areas. From 2011 to 2017, Comcast invested more than \$173.1 million in technology and infrastructure in Vermont. Comcast offers several levels of broadband service starting at 15/2 Mbps up to 1-Gig/35 Mbps to residential and business customers in the 156 communities we serve in Vermont.

Comcast also offers Internet Essentials, the nation's largest and most comprehensive broadband adoption program that provides low-cost 15 Mbps broadband service for \$9.95 a month, including discounted computers and digital training and for families with children eligible for the National School Lunch Program, low-income veterans, and those receiving HUD housing assistance. In Vermont, 10,800 people in 2,700 households have broadband because of Internet Essentials. Information on Internet Essentials is available at internetessentials.com.

Pole Make Ready

Summary of Position: The Commission should be directed to consider both traditional pole make ready and One Touch Make Ready (OTMR) in a rulemaking, but should not necessarily be required to implement OTMR at this point in time. Comcast supports a rapid dispute resolution process.

Make-ready is the process by which space is made available on a utility pole for a new attaching entity. Typically, attaching entities move their own facilities and equipment in a sequential fashion, observing applicable safety codes, in order to make room for the new entity. The new attaching entity pays for the make ready performed by all attaching entities, including for the placement of a taller pole if one is required. Out of concern for safety and continuity of service, and to prevent damage to its facilities, each attaching entity traditionally performs its own work in sequence within specified time frames.

In recent years, there has been an increased interest in an OTMR approach. OTMR involves the new attacher using a qualified contractor to perform certain types of make-ready work on behalf of all attaching entities in order to shorten the make-ready period.

The Commission already has opened a rulemaking in which it can consider revisions to the current, traditional make ready rules, and also OTMR. But, the Commission should not necessarily be required to implement OTMR at this time. The FCC has adopted new rules addressing both traditional make-ready with streamlined timelines, and also optional OTMR rules for “simple” make ready work. Simple make ready is work in the communications space on a pole, and that does not involve pole replacements. The FCC’s rules do not allow the optional OTMR process to be used for “complex” make ready which involves work in the electric space on the pole, pole replacements, or fiber splicing. The FCC’s rules will not go into effect for at least 30 days and only apply in states that have not certified like Vermont that they regulate pole attachments.

Comcast supports a revision to the existing pole attachment rules to shorten the time periods for traditional make-ready, which would expedite the construction process, as well as permit “self-help” remedies for attaching entities when make-ready is not accomplished on time. This would align Vermont with Maine and New Hampshire, where their PUCs recently took action to streamline their pole attachment process, but did not adopt OTMR. Comcast also would support a rapid dispute resolution process as contemplated by Section 19.

However, if the legislature requires implementation of OTMR policies, Comcast recommends that the Commission be required to adopt, or incorporate by reference the FCC’s OTMR regulations and any subsequent modifications thereof. It would be critical to maintain the FCC’s distinction between “simple” and “complex” make ready that reflected the FCC’s attempt to address important questions related to the types of make-ready work that can be performed safely by another entity’s contractor, ways to prevent service outages and ensure continuity of service, and how to compensate existing attachers for damage to their facilities or other liabilities. Adoption of the FCC’s rules would prevent having different OTMR rules in different jurisdictions which is confusing and unproductive.

With respect to Section 20, the Commission’s pole attachment rules already cover Broadband Service Providers by treating them as Attaching Entities (Rule 3.702), so we do not believe that making such a distinction in the bill is necessary. That said, the concepts set out in Section 20 – for example, not allowing joint ownership of a pole to delay make-ready, allowing self-help in response to the untimely performance of make-ready, and the use of contractors – should be covered in the Commission’s current rulemaking on the make-ready process. So, in sum, with regard to Section 20, we recommend (1) removing the reference to Broadband Service Providers and (2) incorporating the language in Section 20 into Section 19 so that those issues can be addressed in a rulemaking covering all Attaching Entities, not just Broadband Service Providers.

Pole Rates

Summary of Position: The Commission should be required to revise Rule 3.700 to effectuate “fair and reasonable uniform pole rates for each pole owner based on actual space occupied by the attaching entity, regardless of the type of service delivered by the attaching entity”.

In Vermont, entities that attach to utility poles are customers and pole rates are included in the pole owners’ tariffs. Under current Commission rules, attaching entities pay different rates depending on the services they offer rather than on the amount of space they occupy on the pole. With a few exceptions, Vermont’s pole owners have not changed their pole rates in 15 years, and it is doubtful that those rates properly reflect current costs. Pole rates have not been reduced to reflect reductions in the federal income tax. In some instances, ownership of poles has changed, but the pole rates have not been adjusted.

Section 19(a) (2) of H. 513 appropriately recognizes pole rates as a factor affecting broadband deployment by requiring the Commission to implement measures to ... “promote fair and reasonable rates”. The Commission already uses the FCC’s cable rate formula, but the regulations contain presumptions that some attaching entities occupy more space than others depending on the type of service they provide. This results in attaching entities paying different pole rates although they occupy the same amount of space on the pole.

The US Supreme Court has determined that the FCC’s cable formula is fully-compensatory to the pole owner, covering the capital and maintenance costs. The FCC long-ago harmonized the rates paid by cable and telecommunications attachers. Recently, on March 22, 2019, the Maine PUC proposed adoption of the FCC’s cable rate formula in its Notice of Rulemaking in Docket No. 2019-00028. Massachusetts has had a uniform formula rate for years, and Connecticut and New Hampshire also have harmonized pole rates. Comcast urges Vermont to follow suit.

Comcast notes that every time a new entity attaches to a utility pole, the new entity pays all the upfront make ready costs. After that, the entity pays annual pole rent. This includes wireline and wireless attachers. In recent years, there has been a significant increase in new pole attachments on utility poles in Vermont with an attendant increase in pole rents paid to pole owners.

Because make-ready and OTMR, and pole rates are very difficult topics, adding a few months to the December 1, 2019 deadline to send final proposed rules to the Secretary of State and LCAR would be appropriate.

Thank you for the opportunity to appear today.