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CLECs Urge Maine to Mandate Pole-Attachment Rates Using FCC Cable Formula

The Maine Public Utilities Commission should prescribe new rates for pole attachments effective Jan. 1, based on the FCC cable rate formula, said a CLEC lawyer at a PUC rulemaking hearing in docket 2019-00028 [livestreamed](#) Wednesday. Consolidated Communications said Maine should keep its current Chapter 880 formula. Unknown RF danger is one reason to treat wireless attachments differently from pole attachments, the ILEC said.

The PUC is weighing a plan to adopt the FCC cable formula while allowing pole owners and attachers to “remain free to negotiate” their own rate agreements (see [1905280037](#)). Lincolnville Communications, FirstLight Fiber and Otelco support adopting the federal formula but are concerned the PUC will adopt it on a “presumptive” basis, said Preti Flaherty CLEC attorney Joseph Donahue. That approach would allow existing rates to continue until existing agreements expire and if pole riders and owners fail to agree to a new rate, he said. It “could take years for these pole-attachment rates to filter their way down into the actual bills that are going to be issued to pole attachers, thereby delaying for quite some time the benefits of having these rates in effect which ... are efficient, cost-based and reasonable.”

CLECs think the PUC has authority to make a rule prescribing rates, so they developed an amendment, said Donahue. PUC Staff Attorney Jody McColman asked the lawyer to file it so others can comment. The PUC should require rates based on the FCC formula to take effect by Jan. 1, Donahue said. That would mean pole owners in

September would have to file new rates with the commission with information justifying rates, he said. The PUC would open a proceeding to review rates and determine if they're in compliance; if not, the commission would determine the correct rate, and if that decision came after Jan. 1, a true-up could be retroactive, he said. If a pole owner later wants to change rates, it would provide 60 days' notice to all attachers with backup information, and a process would be set for attachers to contest rates at the PUC.

The PUC should keep the existing state formula or adopt the FCC's previous telecom formula from 2007, said Consolidated Senior Director-Regulatory Sarah Davis. The cable formula doesn't allow for full recovery of pole costs in an equitable way, she said. It would put Consolidated at a competitive disadvantage, slowing broadband investment.

Maine is one of only two states with pole-attachment authority that hasn't adopted the FCC cable rate, countered Sheppard Mullin cable attorney Dave Thomas. Wireless companies think it would be a dramatic improvement that would support 5G deployment, said Verrill Dana attorney Nora Healy for CTIA.

Wireless attachments should be treated differently, Davis said. "They take up more space" and "create more dangers," the Consolidated official said. "Our workers have come upon signs that say it's a danger and that these need to be shut off because of the RF that is coming off them." Consolidated is studying those risks, she said. RF concerns have flared lately as small cells roll out (see [1906140050](#)).

The Telecommunications Association of Maine seeks safe harbor allowing pole owners that are much smaller than Consolidated to opt into rates developed by the big ILEC, said Executive Director Ben Sanborn. TAM's rural carrier members include pole owners and riders. Consolidated has some costs small RLECs don't, but that bigger company also has "economies of scale" that TAM members lack, so "it will balance out," he said. Small carriers' time is better spent "working with the attachers rather than doing these calculations," Sanborn said. McColman asked him to file draft language.

After the PUC decides on rates, the next and third phase of the proceeding will mainly be to adopt one-touch, make ready, and possibly to create a statewide pole-attachments database, said McColman. The PUC also must address a Maine law ([LD-1192](#)) enacted last month that exempts municipalities from pole expenses (see [1905090032](#)). Noting the new law's timing with the PUC's open rulemaking, McColman joked, "I don't think the legislature had us in mind when they passed the bill."

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