



128th MAINE LEGISLATURE

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Legislative Document

No. 406

S.P. 133

In Senate, February 7, 2017

An Act To Amend the Law Regarding Joint Use of Certain Utility and Telecommunications Infrastructure

Submitted by the Public Utilities Commission pursuant to Joint Rule 204.
Reference to the Committee on Energy, Utilities and Technology suggested and ordered
printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator WOODSOME of York.
Cosponsored by Representative BERRY of Bowdoinham and
Senator: President THIBODEAU of Waldo.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 35-A MRS §711**, as amended by PL 2011, c. 623, Pt. B, §4, is further
3 amended to read:

4 **§711. Joint use of equipment**

5 **1. Joint use permitted.** The commission may order that joint use be permitted and
6 prescribe reasonable compensation and reasonable terms and conditions for the joint use
7 when, ~~after a hearing had upon its own motion or upon complaint of a public utility, voice~~
8 ~~service provider, dark fiber provider, wholesale competitive local exchange carrier or~~
9 ~~cable television system affected,~~ it finds the following:

10 A. That public convenience and necessity require the use by one public utility, voice
11 service provider, dark fiber provider, wholesale competitive local exchange carrier ~~or~~
12 cable television system, unlit fiber provider, telecommunications service provider or
13 information service provider of the conduits, subways, wires, poles, pipes or other
14 equipment, or any part of them, on, over or under any street or highway and
15 belonging to another public utility, voice service provider, dark fiber provider,
16 wholesale competitive local exchange carrier ~~or~~ cable television system, unlit fiber
17 provider, telecommunications service provider or information service provider; and

18 B. That joint use will not result in irreparable injury to the owner or other users of
19 the conduits, subways, wires, poles, pipes or other equipment or in any substantial
20 detriment to the service; ~~and~~

21 ~~C. That the public utilities, voice service provider, dark fiber provider, wholesale~~
22 ~~competitive local exchange carrier or cable television system have failed to agree~~
23 ~~upon the use or the terms and conditions or compensation for the use.~~

24 **2. Liability of user.** If joint use is ordered, the public utility, voice service provider,
25 dark fiber provider, wholesale competitive local exchange carrier ~~or~~ cable television
26 system, unlit fiber provider, telecommunications service provider or information service
27 provider to whom the use is permitted is liable to the owner or other users of the conduits,
28 subways, wires, poles, pipes or other equipment for damage that may result from its use
29 to the property of the owner or other users.

30 **3. Interests of subscribers.** Any actions taken or orders issued by the commission
31 under this section ~~shall~~ must take into account the interests of the subscribers of the
32 affected voice service provider, dark fiber provider, wholesale competitive local
33 exchange carrier, cable television system, unlit fiber provider, telecommunications
34 service provider or information service provider, as well as the customers of the affected
35 public utilities.

36 **4. Rules.** The commission shall adopt ~~a rule~~ rules governing ~~the resolution of pole~~
37 ~~attachment rate disputes~~ joint use. ~~The~~ In establishing compensation or rates, the
38 commission shall consider various formulas, including, but not limited to, the formula
39 adopted by the Federal Communications Commission as codified in 47 Code of Federal
40 Regulations, Part 1, Subpart J, as amended.

1 ~~5. **Dark fiber provider.** This section applies to a dark fiber provider only with~~
2 ~~respect to the construction and maintenance of federally supported dark fiber.~~

3 **6. Definitions.** As used in this section, unless the context otherwise indicates, the
4 following terms have the following meanings.

5 A. "Information service" has the same meaning as in 47 United States Code, Section
6 153(24).

7 B. "Telecommunications service" has the same meaning as in 47 United States Code,
8 Section 153(53).

9 C. "Unlit fiber" means one or more strands within a bundle of fiber-optic cable
10 through which an associated light signal or light communication transmission must be
11 provided to provide communications service, but excluding the electronic equipment
12 required in order to render the fiber capable of transmitting communications.

13 SUMMARY

14 This bill makes the following changes to the laws governing joint use of equipment
15 regulated by the Public Utilities Commission.

16 1. It changes the conditions under which the commission may order joint use of
17 equipment by eliminating the requirement that a hearing be held upon the commission's
18 motion or that a complaint be filed by an affected entity before the commission may order
19 joint use of equipment. It also eliminates the requirement that the commission find that
20 the parties have failed to agree on the terms and conditions or compensation for the joint
21 use of equipment before the commission may enter an order.

22 2. It adds unlit fiber providers, telecommunications service providers and
23 information service providers to the list of entities that may be subject to an order for
24 joint use of equipment.

25 3. It expands the types of subscribers whose interests must be taken into account by
26 the commission when taking actions or issuing orders related to joint use of equipment.

27 4. It requires the commission to adopt rules governing joint use of equipment.