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Mary L. Cottrell, Secretary
Department of Public Utilities
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Catrice C. Williams, Secretary
Department of Telecommunications and Cable
Two South Station – 4th Floor
Boston, Massachusetts 02110

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MASS. DEPT OF
TELECOMMUNICATIONS & CABLE

Re: Memorandum of Agreement Regarding Jurisdiction over Pole Attachment and Double Pole Disputes

Dear Secretaries Cottrell and Williams:

On July 18, 2008, the Department of Public Utilities ("DPU") and the Department of Telecommunications and Cable ("DTC") requested comments on a "Memorandum of Agreement between the Department of Public Utilities and Department of Telecommunications and Cable regarding the regulation of attachments to utility poles, ducts, and conduits pursuant to G.L. c. 166, § 25A and double poles pursuant to G.L. c. 164, § 34B." The Attorney General submits the following comments.

The Memorandum of Agreement recognizes that under the Pole Attachment Regulations, 220 C.M.R. § 45.00 et seq. the agency having jurisdiction to hear a properly filed pole attachment complaint has 180 days from the date of filing to issue a final order. In order to meet this time standard, the DPU and DTC have agreed to a 15-day consultation period, during which the agencies would confer to determine which agency should hear the dispute. The agencies have agreed to "endeavor to complete all tasks in the Consultation Plan within 30 calendar days of receipt of filing by both agencies."

There are, however, certain exigencies that may arise prior to the 180-day deadline to issue a final order. For example, a utility may need to modify or remove a pole attachment for routine maintenance or emergencies, but is only obligated to give the licensee "as much notice as is practicable in the particular circumstances," which may be less than 60 days' written notice. 220 C.M.R. § 45.03(3). If the licensee files a Petition for Interim Relief with either the DPU or the DTC, pursuant to 220 C.M.R. § 45.03(4), the agency before which the petition was filed may

be asked to rule on the petition prior to the 15-day consultation period between the DPU and DTC. In order to protect utilities and licensees adequately, the agency before which the petition was filed should review the merits of the petition in a timely manner. Both agencies are equally capable of reviewing a petition for injunctive relief according to the standards set forth in 220 C.M.R. § 45.03(4).

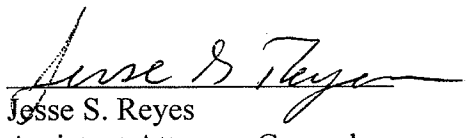
The Memorandum of Agreement should make clear that parties are still obligated to meet the time standards set forth in the Pole Attachment Regulations. Further, the agency before which a pole attachment complaint has been filed should continue to manage the procedural schedule until it is determined that the agency should not hear the case. The consultation period should not serve to delay the timely resolution of a dispute.

Whichever agency ultimately retains jurisdiction over the dispute must remain cognizant of applicable safety, reliability, and engineering standards. 220 C.M.R. § 45.03(1). Although as a result of the separation of the DPU and DTC, the DTC may not have retained staff with expertise in the electric power distribution system standards, the DTC has an obligation to obtain the necessary expertise in order to enforce nondiscriminatory access regulations in any case where applicable safety, reliability, and engineering standards are at issue. In order to issue a reasoned opinion based on substantial evidence in the record, the DTC may retain the assistance of subject-matter experts as necessary or engage in a personnel-sharing arrangement with the DPU.

Finally, in order to conserve the resources of all participants, the DPU and DTC should reconsider the proposal to engage a "collaborative forum" to address pole attachment and double pole "issues," without having first considered the scope of work of this forum. If commenters to the Memorandum of Agreement have identified specific issues that the DPU and DTC believe need to be resolved in a collaborative forum, those issues should be identified prior to creating such a process.

The Attorney General is pleased to have the opportunity to provide comments to the DPU and DTC regarding the Memorandum of Agreement. Should you have any questions about the foregoing comments, please contact the undersigned.

Respectfully submitted,



Jesse S. Reyes
Assistant Attorney General

cc: Laura Olton, General Counsel, DPU
Geoffrey Why, General Counsel, DTC