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Mark Marini, Secretary  
Department of Public Utilities  
One South Station, 5th Floor  
Boston, MA 02110;

Shonda D. Green, Secretary  
Department of Telecommunications  
and Cable  
1000 Washington Street, Suite 820  
Boston, MA 02118.

Re: Joint Investigation by the Department of Public Utilities and the Department of Telecommunications and Cable, on their own motions, instituting a rulemaking pursuant to Executive Order No. 562 to Reduce Unnecessary Regulatory Burden, G.L. c. 30A, § 2, 220 CMR 2.00, and 207 CMR 2.00, to amend 220 CMR 45.00.  
D.P.U 19-76  
D.T.C. 19-4  
Initial Comments of ExteNet Systems, Inc.

Dear Mr. Marini and Ms. Green:

Enclosed for filing, please find an original and two (2) copies of the Initial Comments of ExteNet Systems, Inc. in the above-captioned proceeding. These comments have also been sent via Electronic Mail.

If you have any questions in this matter, please do not hesitate to contact me. I can be reached at (630) 245-2064 or via e-mail at [<hrashes@extenetsystems.com>](mailto:hrashes@extenetsystems.com).

Very truly yours,



Haran C. Rashes

Enclosures

cc: Tina Chin, Hearing Officer (via e-mail to [tina.chin@mass.gov](mailto:tina.chin@mass.gov))  
Rosalie Fazio, Hearing Officer (via e-mail to [rosalie.fazio@mass.gov](mailto:rosalie.fazio@mass.gov))

**THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Joint Investigation by the Department of Public )  
Utilities and the Department of Telecommunications )  
and Cable, on their own motions, instituting a )  
rulemaking pursuant to Executive Order No. 562 to )  
Reduce Unnecessary Regulatory Burden, )  
G.L. c. 30A, § 2, 220 CMR 2.00, and 207 CMR )  
2.00, to amend 220 CMR 45.00. /

D.P.U 19-76  
D.T.C. 19-4

**INITIAL COMMENTS OF  
EXTENET SYSTEMS, INC.**

ExteNet Systems, Inc. (“ExteNet”), pursuant to the July 11, 2019, Order Instituting Joint Rulemaking (“Order”) issued by the Massachusetts Department of Public Utilities (“DPU”) and the Massachusetts Department of Telecommunications (“DTC”) (jointly, the “Departments”), hereby respectfully submits the following comments and suggestions regarding the amendments and revisions to the Massachusetts Rules and Regulations regarding Pole Attachment, Duct, Conduit and Right-of-Way Complaint and Enforcement Procedures adoption, 220 CMR 45.00, *et seq.* (“Pole Attachment Rules”).

**I. INTRODUCTION**

In 1978 Congress amended the Communications Act of 1934 to provide for the regulation of utility pole attachments.<sup>1</sup> In doing so, Congress granted jurisdiction to the Federal Communications Commission (FCC) to “regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates,

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<sup>1</sup> 92 Stat. 35, Pub. L. 95–234 (1978).

terms, and conditions.”<sup>2</sup> However, “in any case where such matters are regulated by a State,” Congress stated that FCC jurisdiction shall not apply.<sup>3</sup> States that sought to exercise jurisdiction over pole attachments were required to certify<sup>4</sup> to the FCC that they have promulgated “rules and regulations implementing the State’s regulatory authority over pole attachments” and have a procedure in place to resolve complaints within 180 days (unless the State’s rules and regulations for such complaints allow additional time, but not more than 360 days).<sup>5</sup> To date, twenty states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions.<sup>6</sup> These states are commonly referred to as “non-FCC states.”

Massachusetts apparently certified that they regulate pole attachments sometime between the 1978 amendment and the 1996 Amendments to the Communications Act of 1996. (the “1996 Act”)<sup>7</sup> Congress enacted the 1996 Act, which amended the Communications Act of 1934, as a “pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans . . . .” In those states where the FCC does regulate pole attachments, the FCC has

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<sup>2</sup> 47 U.S.C. §224(b)(1).

<sup>3</sup> 47 U.S.C. §224(c)(1).

<sup>4</sup> 47 U.S.C. §224(c)(2).

<sup>5</sup> 47 U.S.C. §224(c)(3).

<sup>6</sup> The following jurisdictions have certified that they regulate pole attachments: Alaska, Arkansas, California, Connecticut, Delaware, District of Columbia, Idaho, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Utah, Vermont, and, Washington. WC Docket No. 10-101, Public Notice, 25 FCC Rcd 5541, 5541-42 (WCB 2010).

<sup>7</sup> 110 Stat. 56, Pub L. 104-104 (1996).

issued a series of FCC Orders<sup>8</sup> outlining procedures and rules for such that are applicable to telecommunications providers attaching to utility poles. These rules and procedures have been generally codified in the Code of Federal Regulations.<sup>9</sup>

While ExteNet respects the Departments' proposed revisions to the Pole Attachment Rules and believes that such revisions do comply with the Governor's Executive Order 562, ExteNet believes that any revisions to the Pole Attachment Rules should also update the rules to account for technological and telecommunications market development since the rules were initially adopted. As further discussed below, ExteNet respectfully proposes three additional revisions to the Pole Attachment Rules to provide for: 1) clarification of applicability of the Pole Attachment Rules; 2) adoption of FCC Rates for Pole Attachments; and 3) adoption of the FCC's One Touch Make Ready Rules.

## **II. ABOUT EXTENET SYSTEMS, INC.**

ExteNet has a vital interest in access to and the regulation of the terms and conditions upon which ExteNet attaches to utility poles within the Commonwealth of Massachusetts. ExteNet designs, builds, owns, manages and operates indoor and outdoor distributed network systems to help meet the growing demand for improved mobile and wireless broadband coverage and capacity in key strategic markets across the United States – including many such markets here in

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<sup>8</sup> See primarily: In The Matter of Implementation of Section 224 of the Act, WC Docket No. 07-245; A National Broadband Plan for Our Future, GN Docket No. 09-51 (April 7, 2011) ("2011 FCC Pole Order"), *aff'd*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013); In The Matter of Implementation of Section 224 of the Act, WC Docket No. 07-245; A National Broadband Plan for Our Future, GN Docket No. 09-51; FCC 15-151 (Nov. 17, 2015) ("2015 FCC Pole Order"); and, In the Matter of: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT 17-79; FCC 18-11, Aug. 2, 2018 ("2018 FCC Pole Order").

<sup>9</sup> 47 C.F.R. §§1.1401 - 1.1425.

Massachusetts. Distributed network systems bring wireless network elements such as low-powered wireless antennas and access points closer to the user to ensure ubiquitous and high-capacity wireless broadband connectivity. Utilizing distributed antenna systems, remote radio heads, small cells, Wi-Fi and distributed core soft-switching technologies, ExteNet enables wireless service providers, enterprises and venues to better serve their subscribers, customers, workers, residents, tenants and communities.

ExteNet owns and operates multi-carrier – often referred to as “neutral-host” – and multi-technology distributed network systems to ensure multiple wireless service providers can provide wireless telecommunication and eventually 5G services in the most effective and efficient manner. Utilizing its neutral host facilities, ExteNet also provides the necessary pathways for provision of licensed and/or unlicensed spectrum to the general public on a nondiscriminatory basis. ExteNet creates a scalable network design utilizing its high-bandwidth fiber network to ensure that wireless network densification needs of users and wireless service providers are met and can evolve over time as user demands dictate.

Typically, ExteNet installs distributed network systems on existing utility poles, street lights, and other existing facilities located in the public right-of-way. In addition, ExteNet attaches its ExteNet owned backhaul fiber to these facilities and to conduit located in the public rights-of-way. These utility poles and conduit are often owned by the public utility companies under the regulatory jurisdiction of the Commission. Non-discriminatory and equitable access to these public utility company owned and controlled utility poles, conduit, and rights-of-way are essential not only to ExteNet but to all telecommunications providers offering service to the people of Massachusetts who are clamoring for additional wireless access and bandwidth.

ExteNet, through its predecessor in interest, ClearLinx Network Corporation, is registered with the DTC to provide intrastate telecommunications services in Massachusetts.

Based on the authority granted by the DTC, ExteNet has been able to negotiate pole attachment agreements with Boston Edison Company d/b/a Eversource, Massachusetts Department of Conservation and Recreation, Massachusetts Electric Company d/b/a National Grid, Nantucket Electric Company d/b/a National Grid, Verizon New England Inc., and Western Massachusetts Electric Company d/b/a Eversource – each of which are public utilities under the jurisdiction of these Departments. These agreements permit the placement of fiber, antennae and wireless equipment on utility-owned poles within the public rights-of-way.

### **III. SUGGESTED CHANGES TO POLE ATTACHMENT RULES**

#### **A. Clarification of applicability of the Pole Attachment Rules**

In the 1996 Amendments to Section 224 of the Communications Act., Congress modified “subsection (a)(4), by inserting after ‘system’ the following: ‘or provider of telecommunications service.’”<sup>10</sup> Thus, subsection (a)(4) now reads, “The term ‘pole attachment’ means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”<sup>11</sup> This is in marked contrast to the Massachusetts regulatory definition of Licensee (as proposed to be modified) in 220 CMR 45.02:

Licensee. Any person, firm or corporation other than a utility, which is authorized to construct lines or cables upon, along, under and across the public ways. For the purposes of 220 CMR 45.02: Licensee, the term shall also include a municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its service territory pursuant to M.G.L. c. 164, § 47E, but only for those attachments that are outside its service territory.

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<sup>10</sup> 110 Stat. 56, Pub L. 104-104 (1996).

<sup>11</sup> 47 U.S.C. § 224(a)(4).

47 C.F.R. § 224 defines a “Utility” as:

The term “utility” means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.<sup>12</sup>

Again, this is markedly different from the Massachusetts regulatory definition of Utility (as proposed to be modified) in 220 CMR 45.02:

Utility. Any person, firm, corporation or municipal lighting plant that owns or controls or shares ownership or control of poles, ducts, conduits or rights-of-way used or useful, in whole or in part, for supporting or enclosing wires or cables for the transmission of intelligence by telegraph, telephone or television or for the transmission of electricity for light, heat or power.

Arguably, this leaves providers such as ExteNet in a potential legal limbo. ExteNet believes that it is a licensee under the regulations and should be treated as such. However, because there are circumstances in Massachusetts where ExteNet has been forced erect its own utility poles to accommodate the installation of its personal wireless facilities, it could be argued that ExteNet is a utility and not an eligible “licensee.” Clearly the definitional language was written before the rise of competitive local exchange carriers and wireless service providers –telecommunications carriers without fixed “territories” in which they owned and controlled a plethora of poles. ExteNet respectfully requests that the Departments correct this to assure that Massachusetts is in full compliance with the intent and spirit of Section 224.

ExteNet proposes modifying the definition of “Licensee,” as follows to correct this discrepancy:

Licensee. Any person, firm or corporation other than a utility, which is authorized to construct lines or cables upon, along, under and

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<sup>12</sup> 47 U.S.C. § 224(a)(1).

across the public ways. For the purposes of 220 CMR 45.02: Licensee, the term shall also include a municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its service territory pursuant to M.G.L. c. 164, § 47E, but only for those attachments that are outside its service territory. The term Licensee shall also include entities registered with the Massachusetts Department of Telecommunications and Cable to provide intrastate telecommunications services in Massachusetts, whether or not such registered entities are otherwise Utilities under this section.

**B. Adoption of FCC Rates for Pole Attachments**

Though DTC has a separate pending proceeding, seeking “comment on the data currently available for calculating rates for attachments to telecommunications carrier-owned poles in Massachusetts and whether it should require telecommunications carriers to file at the state level all data necessary to calculate pole attachment rates in Massachusetts,”<sup>13</sup> it is unclear whether such proceeding will standardize the rates charged by Utilities to Licensees for pole attachments. The existing regulations, which are not proposed to be changed address rates in the context of 220 CMR 45.10:

A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which the utility would be liable under 220 CMR 45.10.

And, also address rates in the “Remedies” section stating that the Department may “determine....that the rate, term or condition complained of is not just and reasonable,” thus putting the burden of such upon the Licensee complaining about such unjust and unreasonable

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<sup>13</sup> Order, p. 3, fn 4. See also, *Investigation by the Dep’t of Telecomms. & Cable on its own Motion into Accounting Practices & Recordkeeping of Telecomms. Carriers*, D.T.C. 18-3, *Order Opening Notice of Inquiry* (June 25, 2018).



rates.<sup>14</sup> By not having a formula for specifically setting pole attachment rates, it is questionable whether or not Massachusetts actually “has issued and made effective rules and regulations implementing the State’s regulatory authority over pole attachments.” including “regulate[ing] the rates, terms, and conditions for pole attachments” as it certified to the FCC under 47 C.F.R. § 224(c).

ExteNet respectfully requests that the Departments proactively regulate the rates that Utilities charge Licensees for pole attachments to ensure that such is just and reasonable and non-discriminatory. One methodology for doing so would be to incorporate by reference the FCC’s pole attachment rate formula by including a section in the regulations as follows:

45.xx: Rates for Pole Attachments

Rates for attachments to poles shall be considered *prima facie* just and reasonable if they comply with the formulas and conditions set forth by the Federal Communications Commission in 47 C.F.R. §§ 1.1409, 1.1416, 1.1417 and 1.1418 inclusive of future changes as those regulations may be amended.

**C. Adoption of the FCC’s One Touch Make Ready Rules.**

On August 2, 2018, the FCC adopted a framework to help improve and speed the process of preparing utility poles for new attachments — a process known as “make ready.”<sup>15</sup> “Make-ready generally refers to the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the pole.”<sup>16</sup> In its *One Touch Make Ready Order*, the FCC

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<sup>14</sup> 220 CMR 45.07.

<sup>15</sup> *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT 17-84, WC 17-29, FCC 18-133, Aug. 2, 2018 (“*One Touch Make Ready Order*”).

<sup>16</sup> *Id.* at ¶2.

fundamentally shift[ed] the framework for the vast majority of attachments governed by federal law by adopting a new pole attachment process that includes ‘one touch make-ready’ (“OTMR”), in which the new attacher performs all make-ready work. OTMR speeds and reduces the cost of broadband deployment by allowing the party with the strongest incentive—the new attacher—to prepare the pole quickly by performing all of the work itself, rather than spreading the work across multiple parties.<sup>17</sup>

The FCC’s OTMR rules, along with timelines for determining what modifications must be made to existing utility poles for new attachments are codified in 47 CFR §§ 1.1411, 1.1412, and 1.1415. The OTMR rules became effective in states where the FCC regulates pole attachments on May 20, 2019.<sup>18</sup>

Today, each Massachusetts utility has its own procedures, rules, conditions, and timelines, for: 1) determining what, if any, modifications must be made to a utility pole prior to installation of a new attachment; 2) who bears the cost of making such modifications; 3) who performs the work for the modifications, and 4) timelines for each of the previous three (3) items. There is nothing in the current or proposed Massachusetts regulations to standardize make ready-work. Because there is no standard, the burden in a complaint would be on the licensee to prove why any delay or burdensome requirement is not just and reasonable.

ExteNet respectfully urges the Departments to consider adoption of the FCC’s OTMR rules to help standardize the act of attaching new facilities to Massachusetts utility poles and ensure that such is done in an efficient and orderly manner. This could be accomplished with the following addition to the Regulations:

45.xx: Pole Modifications for Attachments

The Department incorporates by reference the timeline for access to utility poles, the rules for contractors for survey and make-ready and

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<sup>17</sup> *Id.*

<sup>18</sup> 84 Fed. Reg. 16,412 (2019).

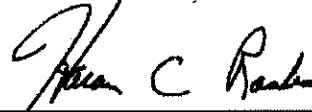
over-lashing established by the Federal Communications Commission in 47 C.F.R. §§ 1.1411, 1.1412, and 1.1415, inclusive of future changes as those regulations may be amended.

#### IV. CONCLUSION

ExteNet commends the Departments for commencing this proceeding to examine the Massachusetts Rules and Regulations regarding Pole Attachment, Duct, Conduit and Right-of-Way Complaint and Enforcement Procedures and appreciates the opportunity to submit the above comments and suggestions. We look forward to continuing to work with the Departments to continue to advance telecommunications technology installed on utility poles throughout this Commonwealth.

Respectfully Submitted,  
EXTENET SYSTEMS, INC.

By: \_\_\_\_\_

  
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