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

Joint Notice of Inquiry by the Department of Public Utilities and the Department of Telecommunications and Cable on their own Motion to explore utility pole attachment, conduit access, double pole, and related considerations applicable to utility work conducted on public rights-of-way in the Commonwealth.	D.P.U. 25-10 D.T.C. 25-1

GONETSPEED'S INITIAL COMMENTS

It is time — way past time, in fact — for Massachusetts to adopt pole attachment processes and procedures that already are in place in the majority of American states. These include one-touch make-ready ("OTMR"); timelines for surveys, estimates and make-ready work; use of qualified contractors to relieve owners' workloads; modern construction techniques such as "boxing;" NESC-compliant temporary attachments to mitigate delay; and other reforms that have made broadband deployment in other states more efficient, quicker, and less expensive than here.

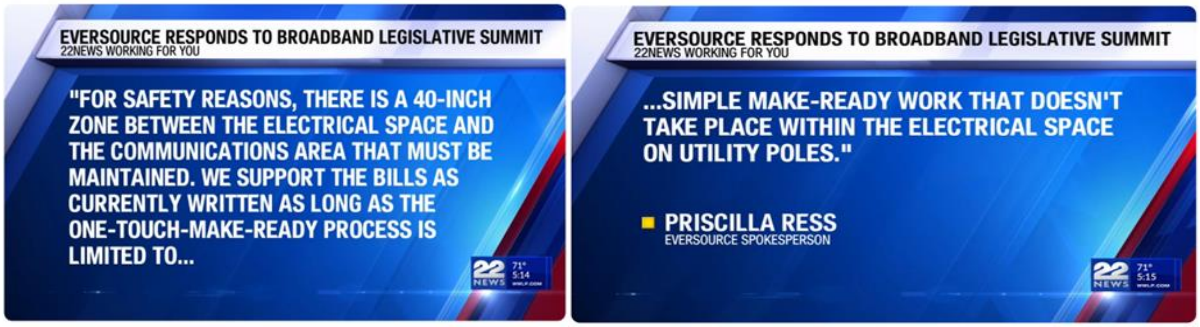
These reforms are not controversial. Verizon, the Commonwealth's largest pole owner, supports them.

> ***Verizon MA agrees… that the Departments should adopt the FCC's one-touch make-ready (OTMR) rules,*** including rules governing the timeline for access to utility poles, use of contractors and overlashing (47 C.F.R. §§ 1.1411, 1.1412 and l.1415). . . . The FCC has determined that OTMR reduces barriers to access, which leads to increased deployment, decreased costs for consumers, and increased service speeds, in large part by better aligning incentives than does the current multi-party make-ready process. The FCC's timeline and related rules are likewise designed to speed deployment (including deployment of broadband) and reduce costs for all parties.[1]

[1] *Joint Rulemaking Pursuant to Executive Order No. 562 to Reduce Unnecessary Regulatory Burden To Amend 220 CMR 45.00*, D.P.U. 19-76 / D.T.C. 19-4, Reply Comments of Verizon New England Inc, at 1(Sept. 24, 2019) (emphasis added; footnotes and citations omitted) (https://www.mass.gov/doc/dtc-19-4-verizon-new-england-inc-reply-comments/download).

Verizon recently reiterated its support for OTMR rules in a California Public Service Commission proceeding, stating it had extensive experience fielding OTMR requests and "no records of issues or concerns related to OTMR."[2]

Eversource was quoted on a Springfield television station in May 2024 as follows:



Thus, one of the principal electric utility pole owners in Massachusetts supports at least the OTMR process.[3]

Similarly, National Grid, another of the state's major pole owners, has expressed unconditional support for a one-touch process for simple make-ready work in other jurisdictions, most recently in New York. "OTMR could provide a valuable resource to coordinate prompt make ready work among telecom, broadband and CATV providers."[4]

Pole owners and attachers alike recognize the efficiencies and cost savings of the OTMR process, often based on experience in jurisdictions where it is in effect.

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[2] *See* Decision 22-10-025 Adopting One-Touch Make-Ready Requirements, Rulemaking 17-0-028 (Cal. PUC 2022) at 17 (https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M498/K026/498026496.PDF).

[3] *See Massachusetts First Ever Broadband Legislative Summit* (from WWLP-22 News television broadcast May 13, 2024) (https://youtu.be/3fq53TMJkyE?si=VqzXXYu3hvD-B-t5)

[4] *Proceeding to Review Certain Pole Attachment Rules,* Case No. 22-M-0101, Reply Comments of the Joint Utilities, at unnumbered p. 3 (NY PSC, May 20, 2022) (https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0A88AFEC-0644-40CC-AB86-8240A2738BE1}); *see id.*, Comments of the Joint Utilities Responding to the Notice Seeking Comments, at 16 (Apr. 7, 2022) (https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={9C4B3CF2-1BF4-4A60-AE51-A1EA0D39044B})

Other states that have recently considered the question have all landed in the same place: implementing these reforms in whole, or at least in large measure. The vast majority have done so while also ensuring that annual pole attachment rents are set using the FCC's formula for setting cable operator rates (currently the case in Massachusetts),[5] and also adopting cost-causation policies to ensure that non-recurring charges are reasonable and cost-based.

CRC Communications, LLC, d/b/a GoNetspeed commends the Departments for recognizing that Massachusetts' lack of modern pole attachment processes has been a drag on advancement of the social, educational, health, and economic well-being of its citizens, and has put the Commonwealth at a competitive disadvantage vis-à-vis other states and, as a result, opening this rulemaking inquiry to address those issues.[6]

I. Competition.

The general benefits of competition are near axiomatic, but bear repeating, for they form the lens through which the Departments should be viewing this proceeding.

> Competitive markets promote economic efficiency and growth. Their benefits can include lower prices and better products for consumers, greater opportunities for

[5] *See In re Cablevision of Bos., Inc.*, D.P.U./D.T.E. 97-82, 1998 WL 35235111 (Apr. 15, 1998) (https://www.mass.gov/doc/dpudte-97-82-final-order/download). Continued reliance upon the current Massachusetts Formula used to calculate rates charged to both cable and telecommunications companies will help to ensure that rates remain just, reasonable and non-discriminatory.

[6] Last November, GoNetspeed filed with the Departments a rulemaking petition requesting adoption of rules modelled on those in effect at the FCC and other states, including the nearby states of Maine and Connecticut. *See* Petition for Rulemaking filed by GoNetspeed on Nov. 14, 2024 ("Petition") (attached hereto). The Departments docketed these as D.P.U. 24-188 / D.T.C. 24-5, but declined to take up the matter, instead deferring to this proceeding. *See* Joint Order Opening Investigation at 16 & n. 24; *CRC Communications, LLC,* D.P.U. 24-188/D.T.C. 24-5, Closing Memorandum for D.P.U. 24-188/D.T.C. 24-5, March 11, 2025 (https://www.mass.gov/doc/dpu-24-188dtc-24-5-closing-memorandum/download)

Rather than submitting in this proceeding a brand-new, rewritten document containing the same substance as its November 2024 Petition and Proposed Regulations, in the interests of economy and efficiency GoNetspeed attaches the Petition and accompanying redlined rules proposal ("Proposed Regulations") to these comments and incorporates them by reference in their entirety. These Initial Comments recount the highlights of the prior filing and provide additional comments relevant and helpful to the present inquiry.

> workers, and a level playing field for entrepreneurs and small businesses that seek to enter new markets or expand their share.[7]

This applies as much to the telecommunications market as any other. Then-Representative, now Senator, Ed Markey, one of the principal architects of the Telecommunications Act of 1996, urging its passage on the floor of the House of Representatives, remarked:

> I believe strongly that we need to bring competition to every nook and corner of the telecommunications industry and break down monopoly barriers so that small companies and electronic entrepreneurs could get into the game, create jobs, and compete for consumers. . . . For me, competition has consistently been the preferred vehicle for bringing affordable and high-quality telecommunications technologies to the American consumer.[8]

Massachusetts' telecommunications policy consistently has endorsed competitive markets as "the best way to achieve economic efficiency, technological innovations, and a greater sensitivity to customer demands."[9]

One of the DTC's core missions is to "[p]romote sustainable competition, which will increase consumer welfare for all Massachusetts residents."[10] Every year since FY 2017 (at least), the DTC's published annual reports have specified among its general responsibilities:

> 2) Promote Competition
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> - Revise existing policies and develop new policies in response to new technologies and market conditions.

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[7] Benefits of Competition and Indicators of Market Power, Council of Economic Advisors Issue Brief (Updated May 2016), at 14 (https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160502_competition_issue_brief_updated_cea.pdf).

[8] 142 Cong. Rec. 2231 (remarks of Rep. Markey) (Feb. 1, 1996) (https://www.govinfo.gov/content/pkg/GPO-CRECB-1996-pt2/pdf/GPO-CRECB-1996-pt2-4-2.pdf).

[9] *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts,* D.T.E. 01-31-Phase I, at iv (May 8, 2022) (https://www.mass.gov/doc/58orderpdf/download).

[10] Massachusetts Department of Telecommunications and Cable Competition Status Report at i (Feb. 12, 2010) (https://www.mass.gov/doc/competition-report-complete-document-incl-ex-summary-main-report-and-appendices/download).

- Collect and compile data on the status of competition in the telecommunications and cable industries in Massachusetts.
- Develop and implement policies that promote competition and service in areas of the state where it lags.
- Develop and enforce policies to promote wholesale and retail competition; and
- Implement competition-related rule changes consistent with state and federal law.[11]

This proceeding presents a golden opportunity to fulfill these responsibilities. Competition in modern broadband services is hampered by high costs and long delays in deployment of physical networks caused by the lack of enforceable timelines, inefficient and irregular make-ready processes, and pole owners' refusal to allow efficient yet safe alternative pole attachment techniques. Competition will bring lower prices, better performance, and increased choice to the consumers and businesses of the Commonwealth. But currently, whole regions of the state lack any meaningful competition in broadband providers, effectively subjecting them to monopoly pricing.

Adoption of the remedies and regulations proffered here will help cure this deficit, and encourage broadband investment to the benefit of ALL residents and businesses in Massachusetts.

But there is another important aspect to facilitating competitive broadband. Companies deploying modern broadband networks make choices on where to invest their resources in part based on the ease, cost, and efficiency of construction, deployment, and operation. Competition is not limited to broadband providers; it also applies to states. Stated plainly, states where it is more expensive and/or difficult to build networks risk losing out on investment opportunities to

[11] Massachusetts Department of Telecommunications and Cable FY 2024 Annual Report, at 3 (https://www.mass.gov/doc/fy-2024-annual-report/download). The annual reports from FYs 2017 through 2024 may be accessed here: https://www.mass.gov/info-details/dtc-reports.

states with less complicated, more efficient, faster, and cheaper processes — especially make-ready. Right now, Massachusetts is in the former category. The Departments should seize this chance to move the Commonwealth into the latter category. To ensure that the Commonwealth is best able to attract investment from competitive broadband providers, it must reform pole attachment processes to bring them into parity (at least) with competing neighboring jurisdictions.

II. The Problem in Massachusetts.

GoNetspeed is a high-speed fiber internet provider serving residential and business customers. It is the largest independent builder of broadband networks in the Northeast.

Within the past few years, GoNetspeed has been able to construct 1,500 route miles of last-mile fiber to provide service to approximately 140,000 residents in Connecticut over a twenty-four month period. In Maine, over a similar twenty-four month period, GoNetspeed built a network consisting of 1,000 route miles passing 90,000 homes.

The relatively expeditious timeframes under which GoNetspeed has been able to deploy last-mile fiber networks in Connecticut and Maine can be traced directly to those states' pole attachment rules providing definite timeframes for pole access by pole owners, alternatives such as OTMR and temporary attachments, remedies for slow or non-performance by owners such as self-help and opposite-side construction, and other improvements.

Massachusetts is a different story entirely. The lack of regulations establishing uniform processes and timeframes has allowed pole owners to impose long, drawn-out pole attachment processes, which require would-be attachers to file separate applications with each joint-pole owner, pay each joint pole owner to separately survey and engineer the same pole, wait months for the pole owners to reconcile their separate survey and engineering results and years for make-ready work to be performed. As a result, GoNetSpeed's experience in Massachusetts today is that

it takes over a year to obtain survey and engineering results, and approximately four years before make-ready work is complete and attachments can be finalized. Petition at 12-13. Further, the lack of clear rules governing pole access encourages costly and dilatory litigation, further exacerbating the delay and cost of deploying network and serving customers. Respectfully, the system in Massachusetts is simply not working.

Just shy of 14 years ago, circumstances like those in Massachusetts today are what led the FCC to realize that its approach to the attachment process at the time — private negotiations and case-specific adjudications when necessary — wasn't working, either. As a result, the FCC took action. It concluded that a lack of uniform rules governing the pole attachment process was hindering the deployment of advanced telecommunications capability to all Americans.[12]

> In its efforts to identify barriers to affordable telecommunications and broadband services, the Commission has recognized that lack of reliable, timely, and affordable access to physical infrastructure—particularly utility poles—is often a significant barrier to deploying wireline and wireless services. There are several reasons for this. First, the process and timeline for negotiating access to poles varies across the various utility companies that own this key infrastructure. The absence of fixed timelines and the potential for delay creates uncertainty that deters investment. Second, if a pole owner does not comply with applicable requirements, the party requesting access may have limited remedies; because of time constraints, cost, or the need to maintain a working relationship with the pole owner, it may not wish to pursue the enforcement process. Third, the wide disparity in pole rental rates distorts service providers' decisions regarding deployment and offering of advanced services. . . .
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> . . . .
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> In implementing section 224, the Commission historically relied primarily on private negotiations among pole owners and attachers and, when necessary, case-specific adjudication by the Commission, to ensure just and reasonable rates, terms, and conditions, rather than adopting comprehensive access rules. But the Commission's experience during the past 15 years has revealed the need to establish a more detailed framework to govern the rates, terms and conditions for pole attachments. The National Broadband Plan found that the cost of deploying a

[12] *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future,* WC Dkt. No. 07-245, GN Dkt. No. 09-51, Report and Order and Order on Reconsideration, FCC 11-50, 26 FCC Rcd 5240, ¶ 2 (Apr. 7, 2011) (footnotes omitted) (https://docs.fcc.gov/public/attachments/FCC-11-50A1_Rcd.pdf).

> broadband network depends significantly on the costs that service providers incur to access poles and other infrastructure. . . .
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> The record in this proceeding demonstrates that the current framework often results in negotiation processes that may be so prolonged, unpredictable, and costly that they impose unreasonable costs on attachers and may create inefficiencies by deterring market entry. We are also persuaded by evidence in the record that widely disparate pole rental rates distort infrastructure investment decisions and in turn could negatively affect the availability of advanced services and broadband, contrary to the policy goals of the Act. Obtaining access to poles and other infrastructure is critical to deployment of telecommunications and broadband services. Therefore, to the extent that access to poles is more burdensome or expensive than necessary, it creates a significant obstacle to making service available and affordable.[13]

The problems in Massachusetts today, like those the FCC identified 15 years ago, call for the same solution: rules establishing a specific timeline for access and other specified reforms to make the pole attachment process more transparent, faster, less costly, and more efficient.[14] In addition, the establishment of clear timeframes, together with attacher-driven procedures and remedies, reduces the likelihood of fundamental disagreements which would otherwise result in litigation before the Departments. And in those instances where litigation is unavoidable, the issues involved would be necessarily limited by the established regulations.

III. Framework of GoNetspeed's Proposal

GoNetspeed has proposed regulations that are largely modeled on the FCC's pole attachment rules with modifications reflecting best practices in effect in other, nearby states.[15] The FCC rules include definite timelines for the various stages of make-ready work, "self-help" using approved qualified contractors in the event the pole owner fails to complete surveys or make-ready

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[13] *Id.*, ¶¶ 3, 5-6.

[14] *See id.*, ¶ 8. *See also* Connecting America: The National Broadband Plan (FCC, March 17, 2010), at Chapter 6 (recognizing need for rules establishing clear timelines for each step in the pole attachment process) (https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf).

[15] *See* Proposed Regulations appended hereto.

within the specified deadlines, and a one-touch process that allows attachers, at their option, to use qualified contractors to perform surveys and simple make-ready work in a single pole visit.[16] The FCC rules govern pole attachments directly in 26 states, including neighboring Rhode Island.[17]

In addition, the trend among states that have adopted their own regulations under the "reverse-preemption" procedures of 47 U.S.C § 224(c)[18] is to either adopt the FCC rules wholesale, as Pennsylvania[19] and West Virginia[20] have done, or to adopt rules largely modeled on the FCC rules. Massachusetts' self-regulating Northeastern neighbors all have embraced a form of the FCC's OTMR rules as well as the FCC's timelines and self-help remedies, including Maine,[21]

[16] 47 C.F.R. §§ 1.1411(c), (d), (e), (i), (j), 1.1412 (https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-1/subpart-J/section-1.1411; https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-1/subpart-J/section-1.1412).

[17] *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, DA 22-630 (June 13, 2022). https://docs.fcc.gov/public/attachments/DA-22-630A1.pdf. States are subject to the FCC's rules unless they have adopted their own regulations. 47 U.S.C § 224(c).

[18] https://www.govinfo.gov/content/pkg/USCODE-2009-title47/pdf/USCODE-2009-title47-chap5-subchapII-partI-sec224.pdf.

[19] *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, L-2018-3002672, Final Rulemaking Order (entered Sept. 3, 2019) (https://www.puc.pa.gov/pcdocs/1634454.docx).

[20] *General Order No. 261, Adopting and Implementing Rules Governing Pole attachment sand Assumption of Jurisdiction Over Pole Attachments* (W. Va. PSC adopted Dec. 5, 2019) at 22 ("The Legislature . . . has directed the Commission to achieve reverse-preemption by adopting the FCC scheme of pole attachment regulation, including the FCC dispute resolution procedure.") (https://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=532173); *see also* W. Va. Code § 150-38-1 et seq. (https://www.law.cornell.edu/regulatons/west-virginia/agency-150/title-150/series-150-38)

[21] Maine PUC Rules, ch. 880, § 2 (setting forth reasonable terms and conditions for access to utility poles) (https://www.maine.gov/mpuc/sites/maine.gov.mpuc/files/inline-files/Ch%20880%20Order%20Adopting%20and%20Dated%20Rule_1.pdf).

Connecticut,[22] New Hampshire,[23] Vermont,[24] and New York.[25] California also recently adopted the FCC's OTMR process.[26]

This means that at least 34 of the fifty states are operating under the FCC or substantively similar pole attachment process rules.

The FCC and equivalent state rules, therefore, represent the state of the art in pole attachment processes. Far from pushing the envelope or constituting the risky "bleeding edge" of change, adopting FCC-like rules would allow Massachusetts to benefit from the experience and standardization that 34 other states already enjoy.

IV. Specific Areas of Recommendation.

A. One Touch Make-Ready.

The single greatest improvement in speed, efficiency, and cost of broadband deployment would be achieved by adoption of OTMR and approved contractor procedures already allowed by the FCC (including in Rhode Island) and the nearby states of Connecticut, New Hampshire, Vermont, Maine, New York, and Pennsylvania.

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[22] PURA Investigation of Developments in Third-Party Pole Attachment Process – Make-Ready, Docket No. 19-01-52RE01, Final Decision (May 11, 2022) (https://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/4d4b047910a0304d8525883f0055a9cb/$FILE/190152RE01-051122.pdf).

[23] N.H. Code Admin. R., Ch. En 1300, Utility Pole Attachments (https://gc.nh.gov/rules/state_agencies/en1300.html).

[24] VT PUC Rule 3.700, Pole Attachments (https://puc.vermont.gov/sites/psbnew/files/doc_library/Rule-3.700-pole-attachment.pdf).

[25] *Proceeding to Review Certain Pole Attachment Rules*, Case No. 22-M-101, Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings (NY PSC, July 22, 2024) (https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={50BDDB90-0000-C410-9EF2-CDC6C6C31988}).

[26] Decision 22-10-025 Adopting OTMR (Cal. PUC) (https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M498/K026/498026496.PDF)

A key factor in GoNetspeed's success in building networks in Maine is that it has used OTMR extensively. Adopting OTMR here would allow Massachusetts citizens, especially in the western parts of the state, to enjoy the same benefits.

When it incorporated OTMR into its rules in August 2018, the FCC explained, "OTMR speeds broadband deployment by better aligning incentives than the current multi-party process. It puts the parties most interested in efficient broadband deployment — new attachers — in a position to control the survey and make-ready processes."[27] The Ninth Circuit, in affirming the FCC OTMR rules, stated, "In adopting the One-Touch Make-Ready Order, the FCC intended to make it faster and cheaper for broadband providers to attach to already-existing utility poles."[28]

Deployment using OTMR is faster and less costly because one entity — the prospective attacher — controls and performs all the required attachment activities from start to finish. Less coordination and administration and fewer truck rolls are needed. And, the fact that the entity seeking to deploy is the one performing the work, there is added incentive to get the job done, and do it right in the first place so as to avoid re-dos.

GoNetspeed has suggested amendments to incorporate OTMR, modeled after the FCC and Maine rules, at Proposed Regulations § 45.04(1)(l).

Experience shows that OTMR and the other pole access improvements proposed herein are safe. Indeed, as set forth in GoNetspeed's Proposed Regulations, contractors engaged by prospective attachers must be qualified and adhere to industry standard safety protocols such as the National Electrical Safety Code and Telcordia Blue Book. Proposed Regulations §

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[27] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Dkt. No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, ¶ 22 (Aug. 3, 2018) ("FCC Third R&O") (https://docs.fcc.gov/public/attachments/FCC-18-111A1_Rcd.pdf).

[28] *City of Portland v. United States,* 969 F.3d 1020**,** 1049-50 (9th Cir. 2020) (City of Portland v. US, 969 F. 3d 1020 - Court of Appeals, 9th Circuit 2020 - Google Scholar).

45.04(1)(i)(6). Furthermore, attachers must inform owners as to when and where they are performing work so that owners have the opportunity to inspect and observe. Proposed Regulations § 45.04(1)(l)(2)(ii), (3)(i).

The benefits of OMTR and self-help using approved contractors when pole owners lack resources to timely complete the work themselves are not limited to broadband providers and their customers. One-touch concepts have been used to great effect in Connecticut to address the seemingly intractable issue of double poles. There, on a town-by-town basis, an approved contractor (from the one-touch approved contractor pool) is selected to transfer facilities of all communications providers from the old pole to the new, and then to remove the stub pole. The efficiencies of using a single contractor to move all facilities are self-evident. But most importantly, double poles actually are resolved, achieving a result otherwise Sisyphean.

One-touch principles similarly would benefit installation of pole-mounted EV chargers. Where existing facilities need rearrangement before EV charger installation, one-touch principles would clearly streamline the process.

Importantly, however, there is little reason to delay adoption of rules tailored to the expansion of broadband and competition throughout the Commonwealth to simultaneously consider rules for novel issues such as pole mounted EV chargers. To the contrary, what has made remediation of double poles in Connecticut so successful, at least in part, was the existence of regulatory infrastructure to allow analogous, well accepted practices to be extended to other troublesome issues. Connecticut had already provided for the use of approved contractors for make-ready work. Extending the use of the approved contractors to remediate double poles was a natural, and in hindsight almost obvious, extension of a well-established practice. The

Departments should quickly adopt the well-established OTMR rules, together with self-help remedies, to allow the practices to become familiar, facilitating their use with other issues.

Please see GoNetspeed's Petition at 17-18, 19-20 for a fuller discussion.

B. Enforceable Timelines.

Incredibly, current part 45.00 imposes only one deadline in pole owners' make-ready obligations: "If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day." § 45.03(2). In contrast, states governed by the FCC rules, as well as all the other New England states, have specific, enforceable deadlines under which a pole owner must process applications, and perform surveys, engineering, estimates, and make-ready work. Without such rules, GoNetspeed's recent experience in Massachusetts is that it takes over a year to obtain survey and engineering results, and approximately four years before make-ready work is complete and attachments can be finalized.

Nearly fifteen years ago, the DTC supported enforceable timelines as a way to ensure that make-ready work is performed, and citizens can begin to enjoy the benefits of broadband deployment, reasonably expeditiously:

> [T]he MDTC agrees with the five-stage comprehensive timeline proposed by the FCC, since "timely action by all the relevant participants in the pole attachment process is important to ensure just and reasonable access to poles." The MDTC also agrees that a timeline for every phase of the pole attachment process, rather than just the application response period, would significantly reduce the average length of the process and would provide attachers with greater certainty without imposing an unnecessarily heavy burden on pole owners.[29]

GoNetspeed's proposal generally reflects the FCC and Maine timelines. Field surveys would be conducted in 45-60 days, depending on the number of poles, followed 14 days later by

[29] DTC Comments in *Implementation of Section 224 of the Act*, WC Docket No. 07-245 (Aug. 16, 2010) at 3 (footnotes omitted) (https://www.fcc.gov/ecfs/document/6015851281/2).

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make-ready estimates. Proposed § 45.04(1)(c). Once the scope of make-ready is agreed upon, make-ready work would be completed between 30 and 150 days, again depending upon the number of poles with longer timelines applying where work is required in the power space. Proposed § 45.04(1)(d)-(e). Deviations from the timelines are available for force majeure events. Proposed § 45.04(1)(f)(6), (g).

Please see GoNetspeed's Petition at 14-16 for a fuller discussion.

C. Qualified Contractor Remedy.

GoNetspeed proposes to add self-help remedies that would enable an attaching entity to supervise a qualified contractor, typically approved by the pole owner, in the performance of surveys or make-ready work, when the pole owner fails to meet the required timelines. The proposal is primarily based on the successful processes adopted by the FCC and Maine. Specifically, under the Proposed Regulations, the pole owner has the ability to offer a list of approved contractors and to approve additional contractors offered by an attacher. If the pole owner does not maintain such a list an attacher may use a qualified contractor but must certify to the utility that its contractor meets minimum qualifications set forth in the rules. See Proposed 45.04(1)(i).

In addition, GoNetspeed includes a proposal currently before the FCC to require a pole owner to notify attachers earlier in the application process whether it will be able to meet the timelines so the attacher can elect self-help before too much time has passed and resources have been spent using the pole owner's workforce or contractors. In the event an owner then misses deadlines for work it has agreed to perform, it must reimburse the attacher for any extra costs the attacher incurs as a result. Proposed § 45.04(1)(h)(1) & (2). This encourages pole owners to be open regarding their capabilities, and to alert attachers early when the pole owner knows

timeframes will be missed. The proposed timeframes should not act as a "shot clock," and where a pole owner knows that under current conditions, applicable timelines would be missed, an attacher should be permitted to proceed with the work using a qualified contractor.

Just as with OTMR, self-help does not sacrifice safety. Contractors hired by attachers must meet minimum qualifications specified in the rules. Work must conform to industry norms like the NESC and Telcordia Blue Book. Proposed § 45.04(1)(i)(6). In addition, the attacher must notify the owner as to where and when work will be performed so the owner may be present and observe, notify the owner if a contractor causes damage, and either fix the problem or pay for repairs. Proposed § 45.04(1)(h)(4) & (5). As is the case with OTMR, these so-called "self-help remedies" are commonplace throughout the nation. The techniques have been used now for years, and their efficacy is clear. And, as is the case with OTMR, quick adoption of rules in this area will create the regulatory infrastructure necessary for expansion of the concepts into other areas, including pole mounted EV chargers.

Please see GoNetspeed's Petition at 16-19 for a fuller discussion.

D. Temporary Attachments.

GoNetspeed's Proposed Regulations, much like the rules in place in New York and Connecticut, provide attachers with the option of using temporary attachments to mitigate extended delays in the completion of make-ready work. Proposed Regulations, § 45.04(1)(n). The Proposed Regulations include strict specifications, including compliance with NESC rules governing separation of communications and power facilities, and timelines for construction. Proposed § 45.04(1)(n)(2). Additionally, the Proposed Regulations provide that temporary attachments must meet the requirements of the Telcordia Blue Book – Manual of Construction Procedures, if specified by the pole owning utility. Proposed § 45.04(1)(n)(3)(iii).

In addition, under GoNetspeed's Proposed Regulations, temporary attachments must be replaced with permanent attachments within 90 days after notification that all make-ready work has been completed. To guard against abuse, in the event the attacher fails to remove or otherwise make permanent its temporary attachments within 90 days, such attacher loses its privilege to make additional temporary attachments until all delinquent attachments are remedied. If multiple or repeated delinquent attachments are not promptly remedied then such attacher would lose its privilege to make additional temporary attachments. Proposed § 45.04(1)(n)(3)(iv)-(vi).

Connecticut's temporary attachment guidelines, which are one of the bases upon which the Proposed Regulations were modeled, have substantially mitigated delays in Connecticut and contributed to GoNetspeed's ability to deploy networks in that state within the timeframes previously specified.

Please see GoNetspeed's Petition at 23-25 for a fuller discussion.

E. Other Time- and Cost-Saving Attachment Methods.

GoNetspeed recommends the use of widely-accepted alternative attachment methods to avoid the most time-consuming and costly make-ready work: pole replacements. These techniques include opposite-side construction or "boxing," use of extension arms, and attaching at the lowest position on the pole (i.e., below the incumbent phone company). GoNetspeed's Proposed Regulations, like those in effect in Maine and New York, include a presumption that blanket prohibitions against the use of boxing, extension arms, attachment at the lowest available position on the pole, and pole top attachments are unreasonable.

Please see GoNetspeed's Petition at 25-30 for a fuller discussion.

F. Additional Cost-Saving Reforms.

Obviously, excessive costs imposed by pole owners hinder broadband development and unjustly enrich pole owners, particularly those that compete with new-entrant broadband providers, with anticompetitive effects. Accordingly, GoNetspeed's Proposed Regulations suggest measures to contain and control excessive and unnecessary costs.

These include limitations on the costs owners may impose on new attachers, restrictions like those recently adopted at the FCC on the extent to which owners may charge new attachers for pole replacements, requiring owners to provide itemized statements of make-ready charges, and, as in New York, specifying that owners' make-ready estimates are binding.

In addition, the Proposed Regulations deem unreasonable duplicative applications and survey/engineering work by joint pole owners.

Please see GoNetspeed's Petition at 31-38 for a fuller discussion.

G. Status of the MOA

Renegotiation of the MOA is premature, and would introduce unnecessary uncertainty into the process of this rulemaking. The Order Opening Inquiry seeks comment on many topics. It will be very difficult to cover all topics in a reasonably prompt manner. It makes sense to focus initially on OTMR, make-ready timelines and approved contractor remedies since these have been supported by Massachusetts pole owners, already are in place in 34 other states, and thus should be not be controversial. These rules also have the greatest potential for positive impact. Setting timelines and allowing entities to utilize available qualified contractors should immediately unclog pole access bottlenecks, facilitate broadband deployment and also could be used to facilitate EV charging attachments and to eliminate the double pole situation. Issues like reviewing the Departments' MOA, revisions to the dispute process, review of attachment rates, and the

possibility of a public database, while important, are not as urgent. In fact, adoption of OTMR, timelines and self-help remedies should further reduce the need to revisit those issues.

V. Conclusion.

The need to remove barriers and obstacles to ubiquitous and expeditious deployment of broadband infrastructure has never been more acute than at the present time. GoNetspeed urges the Departments to adopt the reforms enjoyed in numerous other states and outlined above. Adopting OTMR, expanded self-help, tighter timelines, and other reforms like in the FCC regulations will put Massachusetts on equal footing with the majority of American states, and in particular its Northeastern neighbors, in facilitating needed broadband expansion and deployment. By so doing, the health, welfare, and prosperity of the Commonwealth and its citizens will benefit.

Importantly, as noted, GoNetspeed's proposals are widely accepted, favored by pole owners in the Commonwealth, and should not be controversial. The Departments should avoid delay, and quickly adopt the regulations proposed herein. Doing so not only will advance the DTC's mandate to foster competition, but also will emplace a framework that will be amenable to other issues, such as pole-mounted EV chargers and double poles.

GoNetspeed appreciates the efforts of the Departments to bring needed reforms to the Commonwealth's pole attachment regulations, and looks forward to further participation and constructive dialog on these important matters.

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Respectfully submitted,

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