New England Connectivity and Telecommunications Association

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

REPLY COMMENTS OF THE NEW ENGLAND CONNECTIVITY AND TELECOMMUNICATIONS ASSOCIATION

The record in this proceeding supports the recommendations of the New England Connectivity and Telecommunications Association ("NECTA")[1] that the Department of Public Utilities ("DPU") and the Department of Telecommunications and Cable ("DTC") (collectively, "the Departments") should modernize the Massachusetts Formula by updating the presumptions for pole height and the appurtenance factor, and establish efficient and effective pole access

[1] NECTA is a five-state regional trade association representing substantially all private cable broadband companies in Massachusetts, Connecticut, New Hampshire, Rhode Island, and Vermont ("NECTA Members"). NECTA Members have long been committed to expanding broadband access and adoption to all Bay Staters and have worked with the Massachusetts Broadband Institute for years to reach unserved and underserved areas in the Commonwealth. NECTA Members offer advanced communication services, among other services, in Massachusetts via facilities and equipment attached to utility poles that are owned by electric distribution companies such as Eversource, National Grid, and Unitil, incumbent local exchange carriers, such as Verizon Communications, and municipalities. NECTA Members are attached to approximately 80 percent of the more than 1.5 million utility poles in Massachusetts.

protocols by adopting the regulations of the Federal Communications Commission ("FCC"). In addition, NECTA offers these reply comments regarding the need for the Departments to establish a process for rapid dispute resolution, the need for the Departments to mitigate the inefficiencies of joint pole ownership, the Departments' Memorandum of Agreement ("MOA"), the Departments' draft redline of 220 CMR 45.00, and various other subjects addressed in initial comments, including responsibility for violations, MassDOT timelines, post-construction inspections, timely transfers, and the importance of accurate make-ready estimates and true-ups.

I. The Record Supports the Departments Modernizing the Massachusetts Formula.

As the Departments consider their engagement strategy in this proceeding and the upcoming rulemaking, NECTA encourages the Departments to keep in mind that utility poles continue to be provided in a monopoly business environment.[2] The Massachusetts Formula[3] has been in place for decades, but the record in this proceeding clearly demonstrates that the pole landscape in Massachusetts is drastically different than it was in the 1990s, let alone the 1970s when the foundation for the Massachusetts Formula was first established. NECTA urges the Departments to update the Massachusetts Formula with two important changes: 1) a rebuttable presumption of a 40-foot pole height, and 2) a rebuttable presumption of a 22.5-percent appurtenance factor.

As an initial matter, NECTA does not agree with the view of some parties that a review of the Commonwealth's attachment rates is not urgent.[4] As NECTA noted in its initial comments,

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2 *See, e.g.*, Charlemont Comments at 3 (referencing lack of practical choice to agree with pole owners' demands). Further, pole owners often compete directly with attachers, creating the possibility of perverse relationship incentives for pole owners.

3 *See A-R Cable Servs., Inc. v. Mass. Elec. Co.*, D.T.E. 98-52, *Order* (Nov. 6, 1998); *Cablevision of Boston Co.*, D.P.U./D.T.E. 97-82, *Order* (Apr. 15, 1998); *Greater Media, Inc. v. New England Tel. & Tel.*, D.P.U. 91-218, *Order* (Apr. 17, 1992).

4 *See* GoNetspeed Comments at 17-18.

NECTA members alone pay pole owners approximately $18 million in attachment rent each year in Massachusetts—about $1.5 million every month.[5] Broadband deployment, and achievement of the Commonwealth's broadband policy goals, rely on fair and reasonably priced access to utility poles, which NECTA members, and other similar companies, use to support their facilities and efficiently build out their networks. And rental payments do not impact only pole attachers and their customers. As discussed during the Departments' Technical Sessions, although rental revenues that utilities receive from attachers represent a very small percentage of total electric utility revenues, such rental revenues offset the revenue that utilities require from residential electric ratepayers.[6] With this dynamic in mind, the Massachusetts Formula is designed to fully compensate pole owners, and it is essential for all stakeholders that the presumptions and inputs used in that formula are accurate and updated to ensure accurate, just, and reasonable rates.[7] Indeed, accurate pole attachment rates best ensure that residential electric customers do not subsidize costs for attachers, and vice versa. The Commonwealth's pole rate structure should be modernized, and the Departments should make this topic a policy priority.[8]

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5 NECTA Comments at 12.

6 Despite the significant overall impact of attachment rental fees on attachers, the trickle-down impact on an individual residential electric ratepayer of an attachment-rate change is actually very small, to the point of being *de minimis*. *Cf.* Charlotte Matherly, *In the name of government efficiency, a new bill could strip NH's consumer advocate of its independence*, CONCORD MONITOR, Nov. 28, 2024, https://www.concordmonitor.com/legislator-would-repeal-office-of-the-consumer-advocate-NH-58158782 (reporting that New Hampshire Consumer Advocate Donald Kreis "said his office, which has requested $2.3 million in the next two-year state budget cycle, has a 'miniscule effect' on utility rates. . . . The [Office of the Consumer Advocate] runs on a little over $1 million each year. If that amount was divided across every residential ratepayer in New Hampshire, Kreis said it works out to 'tenths of a cent' per unit of energy.").

7 *See* Massachusetts Attorney General's Office Comments at 2.

8 Eversource and National Grid briefly mention the 40 feet of safety space being considered "usable space" in the Massachusetts Formula and suggest that it should be removed. Eversource Comments at 27; National Grid Comments at 25-26. This line of argument was squarely rejected by the FCC decades ago. FCC, *In re Amendment of Rules & Policies Governing Pole Attachments*, CS Docket No. 97-98, *Report & Order*, FCC 00-116, ¶¶ 20-22 (2000) ("The [safety] space is usable and is used by the electric utilities."). Defining the safety space as usable space is fully consistent with the fundamental economic principle of cost causation: but for the danger of high-voltage electric lines, there would be no need for the safety space. Communications attachers are already effectively paying for required separation space for their wires in

As outlined in our initial comments, the most accurate attachment rates are calculated using pole owners' *actual* pole height and *actual* appurtenance investment. Many pole owners already do this now using data derived from regular pole inspections and modern recordkeeping technology, rather than outdated presumptions.[9] NECTA appreciates the recent efforts of these pole owners such as National Grid and Verizon to increase the accuracy of their attachment rate methodology by eschewing presumptions for actual data.[10] However, not every pole owner in the Commonwealth has made the same effort as was made evident during the Departments' Technical Sessions in this proceeding. Some pole owners claim that they still do not maintain the records necessary to use their actual pole height and actual appurtenance investment in their rate calculations—or unfortunately claim that they have the records but choose not to use them in their pole rate calculations.[11] For example, one pole owner oddly states that it "does not believe that Usable Space can be determined using internal records of purchased pole length (i.e., GIS, CPR)."[12] Setting aside the fact that other similarly situated pole owners seem to disagree with this statement, even if it were true that GIS or continuing property records do not capture pole height with 100% accuracy, it is certainly reasonable to assume these records are considerably

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their annual rental rates given that those rates are based on occupancy of a full foot of space, and their attached wires occupy a much smaller amount of space, generally an inch or two. Further, if the Departments were to analyze the practicalities of a pole's usable and unusable space as they pertain to the Massachusetts Formula, any such discussion would necessarily have to include pole-top attachments and the currently "unusable" space below the minimum road clearance, which is very much used for power supplies, cabinets, EVSE, street signs, and myriad other items.

9 *See, e.g.*, Verizon Comments at 3 ("Verizon MA will be using the actual average height of its poles based on Verizon MA's pole inventory moving forward."); Electric Distribution Companies' Technical Sessions Presentations, Topic 6, Slide 15, Line 46 (showing that National Grid uses its actual average pole height to calculate attachments rates).

10 *See* National Grid Comments at 6; Verizon Comments at 3.

11 *See* Electric Distribution Companies' Technical Sessions Presentations, Topic 6.

12 Electric Distribution Companies' Technical Sessions Presentations, Topic 6, Slide 9.

more accurate than a presumption that was initially developed about 50 years ago.[13] As noted above, it is NECTA's position that the best outcome for all interested stakeholders would be that all pole owners use their *actual* average pole height and *actual* appurtenance investment to calculate attachment rates.

The benefit of using actual data notwithstanding, NECTA understands the role that presumptions play in a pole attachment rental formula, including in an updated Massachusetts Formula. However, the presumptions should not exist exactly as they did in the 1990s. Indeed, maintaining presumptions at those extremely outdated levels undermines the purpose of presumptive values in this (or any) formula, which is to provide representative values where the use of actual values is not practically feasible, for ease of administration and minimization of disputes.

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[13] *See* FCC, *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, *Memorandum Opinion & Second Report & Order*, 72 FCC 2d. 59, 69, ¶ 22 (1979). Eversource's internal records show a pole height of 38.69', over a foot taller than the 37.5' presumption. *See* Eversource Comments at Attachment ES-A-4.

A. The Record Supports Modernizing the Pole-Height Presumption to 40 Feet.

The record in this proceeding supports the fact that the Departments' existing 37.5-foot presumption for pole height can no longer be justified. The table below includes the average pole heights reported in this proceeding:[14]

Entity	Reported Average Pole Height in Feet
Mansfield MED	"Pole heights are 40, 45', and 50'"
Peabody MLP	"PMLP: 45'; Joint: 40'"
Holden MLD	40
Littleton ELWD	40
Middleborough GED	40
Middleton ELD	40
Princeton MLD	40
SELCO	40
Templeton MLWP	40
West Boylston MLP	40
Reading MLP	39.03
Eversource	38.69
Georgetown MLD	38
National Grid	37.97
Verizon	37.92
Paxton MLD	35
Hingham ELD	35
Braintree ELD	35
Unitil	"Unitil is unable to provide this information."

The data contained in this table alone justifies increasing the Commonwealth's pole-height presumption to 40 feet. In considering an adjustment to the presumption, however, it is important that the Departments also consider industry trends. It is an unequivocal fact that utility poles are getting taller. For example, National Grid confirmed during the Technical Sessions that its standard install for new poles is 40 feet. Several other commenters also confirmed this trend

[14] If an entity reported an average pole height in this proceeding and that entity does not appear in this table, any such omission was inadvertent.

as they take steps to harden their networks, provide for future electric demand growth, and make space for new broadband attachments (which attachers pay for, at least in part).[15]

Between the empirical pole-height data in the record, and the indisputable trend of taller poles, there is no valid policy basis for maintaining the current 37.5-foot presumption. For all these reasons, the Departments should take timely action based upon this clear evidence and establish a 40-foot presumption for pole height or, alternatively, should require pole owners to use their *actual* pole height when calculating attachment rates to maximize accuracy.

B. The Record Supports Modernizing the Appurtenance-Factor Presumption to 22.5 Percent.

Like the need to use actual pole height to ensure accurate attachment rates, pole owners should use their *actual* investment in appurtenances in rate calculations. If the Departments decide not to require pole owners to use their actual investment, but instead decide to maintain a presumed appurtenance factor, that factor should be increased to 22.5% rather than remaining at the existing 15% level. It would not be a burden for pole owners to use their actual investment in appurtenances, and the record establishes that some utilities are already doing so. For example, National Grid represents that it currently uses its actual appurtenance factor of 19.58%,[16] and Unitil also represents that it uses its actual appurtenance investment, although it is not

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15 Eversource Comments at 31 ("If more equipment related to clean energy or broadband deployment are attached to poles, there may be a need for taller poles to provide the space needed for these new attachments."); SELCO Comments at 3 ("All new poles are either 40' or 45' to accommodate multiple attachments."); Templeton MLWP Comments at 3 ("All new poles are either 40' or 45' to accommodate multiple attachments."); Verizon Technical Sessions Presentations, Topic 6, Slide 6 (showing a relatively significant increase in average pole height from 2024 to 2025); West Boylston MLP at 3 ("All new poles are either 40' or 45' to accommodate multiple attachments.").

16 Electric Distribution Companies' Technical Sessions Presentations, Topic 6, Slide 12, Line 5 (showing that National Grid uses its actual appurtenance factor of 19.58% to calculate attachments rates); *see also* NECTA Comments at 18 n.79 (identifying other properly calculated appurtenance factors well above 15%).

immediately evident what percentage is being used.[17] Given the fact that there is more investment in appurtenances occurring to support the hardening of the network and other upgrades, pole owners' average investment in appurtenances is now greater than the Departments' 15% presumption, meaning the presumption results in an overstatement of pole investment versus appurtenance investment.[18] Based upon the representations made in this proceeding, and the fact that attachers do not possess any data to rebut the presumption because any such data resides with the pole owners, it is appropriate for the Departments to either require pole owners to use their actual investment in appurtenances, or increase the presumed appurtenance factor to 22.5%.

II. The Record Supports the Departments' Adopting the FCC's Pole Access Rules at 47 C.F.R. §§ 1.1411, 1.1412, and 1.1416.

The Departments should adopt the FCC's well-established and comprehensive pole attachment rules, which govern attachment access timelines, one-touch make-ready, self-help and the use of contractors for surveys and make-ready, and overlashing. Several commenters support the concept of adopting these FCC rules or something generally comparable, or at the very least do not oppose the adoption of certain of these regulatory frameworks.[19] For example, the Massachusetts Executive Office of Economic Development ("EOED") and Executive Office of Energy and Environmental Affairs ("EEA") "strongly encourage moving towards a version of

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17 Electric Distribution Companies' Technical Sessions Presentations, Topic 6, Slide 18 (reporting that Unitil's appurtenance factor is "based on the Company's actual records").

18 *See* NECTA Comments at 17-19 (referencing actual appurtenance factors in Massachusetts and Connecticut of 22.91%, 34.9%, and 22.67%).

19 *See, e.g.*, Crown Castle Comments; CTIA Comments at 3-5; GoNetspeed Comments; EOED and EEA Comments; Massachusetts Municipal Association Comments at 3; Peabody Municipal Light Plant Comments at 12; Town of Shutesbury Comments at 1-2; Unitil Comments at 15 (expressing no opinion on the adoption of 47 C.F.R. § 1.1412); Verizon Comments at 18 (expressing no opinion on the adoption of 47 C.F.R. § 1.1411).

the One-Touch-Make-Ready model for pole attachments, involving a single site visit for all pole-related construction work, tailored to Massachusetts' specific context."[20]

A small number of commenters, however, raise some concerns about safety and network reliability as potential bases for why the FCC rules should not be adopted in the Commonwealth.[21] There is no dispute that the safety of workers and reliability of the networks are critically important; NECTA and its members share those sentiments. However, there should also be no dispute that the FCC, and several certified states including all other certified states in New England (i.e., Connecticut, Maine, New Hampshire, and Vermont), have already carefully considered these issues and determined that the FCC rules satisfy technical, safety, and engineering concerns, including protections for pole owners, such as requiring that contractors be pole-owner-approved.[22] The concerns that some commenters seem to express with the use of contractors is perplexing given that pole owners consistently use contractors for their own pole work and, under the FCC rules, any contractor working on a pole above the communications space must be vetted and approved by the pole owner.[23] It is instructive that of the certified states that have adopted, either wholesale or comprehensive rules consistent with, the FCC rules, NECTA is not aware of any that have subsequently revised their rules based upon claims that they created safety issues. Other than perfunctory references to safety in the record and at the

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20 EOED and EEA Comments at 3.

21 *See* Eversource Comments at 25; National Grid Comments at 24. Despite these claims, most of the major pole owners in Massachusetts confirm that their pole-owning affiliates in neighboring states utilize some form of the FCC's rules. *See* Eversource Comments at 10-12 (identifying such affiliates in Connecticut and New Hampshire); Unitil Comments at 8 (identifying such an affiliate in New Hampshire); Verizon Comments at 8-9 (identifying such affiliates in Connecticut, Maryland, New York, Pennsylvania, and Virginia). National Grid states that its affiliate in New York does not use one-touch make-ready, but New York has recently adopted the FCC's one-touch make-ready regime. *See* National Grid Comments at 12; N.Y. Pub. Serv. Comm'n, Case 22-M-0101, Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings (July 22, 2024).

22 *See* GoNetspeed Comments at 11-12.

23 47 C.F.R. § 1.1412.

Technical Sessions,[24] there is no evidence that the FCC's rules create any safety hazard or otherwise jeopardize network reliability.

A couple commenters claim that "G.L. c. 166, § 25A does not permit self-help remedies for poles that have electric power lines."[25] This claim fails for at least two reasons. Section 25A states, in relevant part, "No attachments shall be made without the consent of the utility to the poles, towers, piers, abutments, conduits, manholes, and other fixtures necessary to sustain, protect, or operate the wires or cables of any lines *used principally for the supply of electricity in bulk*."[26] First, regarding consent, by the time an attacher would reach self-help for the physical attachment process, the pole owner(s) has already approved the attacher's application, and the attacher has received and paid the make-ready estimate, but the pole owner or existing attachers have failed to meet the make-ready timelines.[27] Accordingly, at this point in the process, the pole owner has already granted consent to attach. Second, regarding poles that have electric power lines, it is NECTA's understanding that "electricity in bulk" is electricity carried by transmission lines on transmission poles.[28] However, this Notice of Inquiry is addressing distribution poles, not transmission poles, so this provision in the law does not apply.[29] In short, the assertion that § 25A does not allow self-help fails, and is refuted by the statute's plain language and the operation of the relevant FCC rule.

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24 *See* Eversource Comments at 25; National Grid Comments at 24.

25 Eversource Comments at 23; National Grid Comments at 21.

26 G.L. c. 166, § 25A (emphasis added).

27 47 C.F.R. § 1.1412.

28 G.L. c. 166, § 25A.

29 *Joint Notice of Inquiry by the Dep't of Pub. Utils. & the Dep't of Telecomms. & Cable on their own Motion to explore util. pole attachment, conduit access, double pole, & related considerations applicable to util. work conducted on pub. rights-of-way in the Commonwealth*, D.P.U. 25-10/D.T.C. 25-1, *Joint Order Opening Inquiry* at 1 (Jan. 17, 2025) (referring throughout to "electric distribution infrastructure," "electric distribution companies" or "EDCs," and Eversource, National Grid, and Unitil's "distribution system[s]").

These commenters also suggest various exemptions to the FCC's timelines for events that are beyond their control.[30] However, the FCC rules already address this issue.[31] Put another way, the FCC's rules themselves would satisfy the concerns raised by these commenters.

Still other comments tepidly suggest that some of the existing rules in Massachusetts, including attachment timelines, "have operated well for decades."[32] First, this claim is unsupported in the record. Second, we do not operate in the same attachment landscape that existed decades ago, or even years ago, with there now being many more entities seeking pole access to offer broadband services.[33] Third, the relative effectiveness of a regime over time does not mean that the regime cannot or should not be improved. The Departments should avoid a 'this-is-how-we've-always-done-it' mindset that has no place in the dynamic, innovative, and competitive broadband industry.

Finally, the concern that the FCC rules will increase utilities' costs[34] is unsupported. Under state law, utilities charge the new attacher for required make-ready work.[35] Any cost increase related to the FCC's timelines can be avoided by utilities relying on the resources of approved contractors, whose costs will be fully covered by the new attacher.[36]

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30 Eversource Comments at 26-27; National Grid Comments at 25; Unitil Comments at 15.

31 *See* 47 C.F.R. § 1.1411(g) (adding time into the timelines for large pole applications); 47 C.F.R. § 1.1411(h) (enabling pole owners to "deviate from the time limits specified" in the section for several reasons). Some existing pole attachment agreements address these concerns as well.

32 Eversource Comments at 24; National Grid Comments at 23; Unitil Comments at 14-15.

33 *See* Eversource Comments at 16 (noting the "large volume of new attachers coming to Massachusetts"); National Grid Comments at 30 (identifying an increase in the average number of attachments on a pole); Verizon Comments at 23 (referencing an increase in broadband deployment).

34 *See* Electric Distribution Companies' Technical Sessions Presentations, Topic 1.

35 G.L. c. 166, § 25A

36 *See id.* (providing that make-ready shall be paid by the new attacher).

The Departments should find that the record supports adopting the FCC's pole-access rules to ensure timely pole access with predictable timeframes. Further, given how active the FCC has been in improving its pole attachment rules for all stakeholders—including additional access safeguards adopted just two weeks ago[37]—NECTA agrees with CTIA that the Departments should implement an automatic trigger for keeping pace with the FCC's rules.[38] This would save the Departments resources while ensuring that the Commonwealth does not fall back behind other states.

III. The Record Supports the Departments' Adopting Rapid Dispute Resolution.

Commenters agree that 180 days (or longer) is too long for resolution of a pole attachment dispute.[39] As NECTA stated during the Departments' Technical Sessions, the need to streamline dispute resolution should be modeled after one or more of many existing accelerated dispute resolution forums, including the DPU's Distributed Generation and Clean Energy Ombudsperson's Office, the DTC's "rocket docket" regulations at 207 CMR 15.00, the FCC's Rapid Broadband Assessment Team ("RBAT"), and the Maine PUC's Rapid Response Process Team ("RRPT"). Some commenters suggest that the current dispute resolution framework has worked well.[40] However, the relative dearth of pole complaints over the years is primarily driven by the fact that the process is a drawn-out, resource-intensive, six-month complaint proceeding. This process discourages attachers from filing a formal complaint, which in turn can discourage

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37 FCC, *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, FCC 25-38, *Fifth Report & Order, Fourth Further Notice of Proposed Rulemaking, & Orders on Reconsideration* (2025).

38 *See* CTIA Comments at 5 (referencing the practice of the Pennsylvania PUC and the West Virginia PSC); NECTA Comments at 9.

39 CTIA Comments at 5-6; Crown Castle Comments at 8.

40 Eversource Comments at 34; National Grid Comments at 33-34; Unitil Comments at 21.

pole owners from engaging in meaningful negotiations in this monopoly environment.[41] The Departments' adoption of a more streamlined dispute resolution process, including the potential for alternative dispute resolution, will encourage collaboration and partnership and preserve resources of all stakeholders.

IV. The Record Supports the Departments Reducing or Eliminating Inefficiencies Created by Joint Pole Ownership.

Many commenters express frustration with some of the practical consequences of joint pole ownership.[42] These frustrations stem from the inherent nature of the joint pole ownership structure but are nonetheless redressable. The Departments should take this opportunity to "shrink deployment timelines on jointly-owned poles by consolidating review processes and approval steps, establishing standard processing timelines, and enabling greater cost certainty for attachers."[43] In its initial comments, NECTA suggested that the Departments designate or require designation of a single pole administrator ("SPA") for each pole.[44] At the Technical Sessions, National Grid stated that it was not fundamentally averse to SPAs but that it believed the challenges outweighed the benefits. Even if that were true, it would likely only be true in the short term. Once any initial onboarding and coordination challenges are overcome, the pole ecosystem would benefit from the existence of SPAs and a more streamlined process in perpetuity.

Eversource and National Grid specifically identify one benefit of having a SPA, and reasonably point out that one make-ready survey could be performed by one company with the

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41 During the Technical Sessions, reference was made to a years-long rate dispute still unresolved.

42 *See, e.g.*, Charlemont Comments at 3; Crown Castle Comments at 5-6; Eversource Comments at 10, 21; GoNetspeed Comments; National Grid Comments at 20, 27; South Hadley ELD Comments at 2.

43 EOED and EEA Comments at 3. EOED and EEA also suggest that the Departments explore a single visit transfer program, an exploration that NECTA would support. *Id.*

44 NECTA Comments at 10-11.

requisite expertise, rather than having two separate surveys for the power space and the communications space, which is what is done today.[45] NECTA proposed this as well in its initial comments.[46] There is no need for two truck rolls to survey every pole, particularly given the volume of surveys occurring in today's buildout landscape.[47] A single survey will also avoid the time-consuming reconciliation process.[48] Crown Castle notes, as did NECTA, that the FCC long ago ruled "utility procedures requiring attachers to undergo a duplicative permitting or payment process to be unjust and unreasonable."[49] The Departments should take this opportunity to mitigate some of the inefficiencies of joint pole ownership, and implement revisions that will encourage a more streamlined, and more economical, deployment process for all parties involved.

V. The Departments' Memorandum of Agreement.

The Departments intend to adopt joint adjudication procedures in their next MOA revision, but should be cautious about any other material changes to the MOA.[50] NECTA does not oppose joint adjudications and, in that spirit, disagrees with the request of some commenters that a single agency should have the ability to unilaterally dismiss a "complaint which seeks relief that is more appropriate for a rulemaking."[51] Whether relief is more appropriate for a

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45 Eversource Comments at 21; National Grid Comments at 20, 27.

46 NECTA Comments at 11.

47 *See* FCC, *In re Implementation of Section 224 of the Act*, WC Docket No. 07-245, *Report & Order & Order on Reconsideration*, 26 FCC Rcd. 5240, ¶ 84 (2011) (finding that "joint ownership or control of poles should not create or justify a confusing or onerous process for attachers").

48 *See* Eversource Comments at 10; National Grid Comments at 20.

49 Crown Castle Comments at 6 (citing the FCC); NECTA Comments at 11 (same).

50 *See Joint Notice of Inquiry by the Dep't of Pub. Utils. & the Dep't of Telecomms. & Cable on their own Motion to explore util. pole attachment, conduit access, double pole, & related considerations applicable to util. work conducted on pub. rights-of-way in the Commonwealth*, D.P.U. 25-10/D.T.C. 25-1, Memo. at 2 (July 11, 2025).

51 *See* Eversource Comments at 34; National Grid Comments at 33-34; Until Comments at 21.

rulemaking is a matter of interpretation, and the interpretation of both Departments must be considered in a true joint adjudication. Some comments also advocate that in the event the Departments were to reach an impasse on adjudicating a pole attachment complaint, the DPU should have unilateral authority in some loosely defined scenarios.[52] This proposal should also be rejected because it is inconsistent with the principles of joint adjudication and is inconsistent with Chapter 166. If anything, in the event of an impasse during a joint adjudication, the position of the agency that would have had jurisdiction under the existing MOA should be adopted. This would track the policy logic of the original MOA if needed, while still enabling utilization of both agencies' expertise in adjudications.

VI. Additional Reactions.

In this section, NECTA responds to various proposals and other comments submitted in the record.[53]

NECTA is not opposed to the proposal of Eversource and National Grid that attachers be held responsible if their attachment is placed in the power space without proper authorization or by workers not qualified to work in the power space.[54] Any such attachment would not comply with applicable safety standards. NECTA members attach in their designated pole position, determined through surveying and utility-approved engineering performed prior to attachment, and any vendor working on their behalf will be held accountable if these standards are not met. However, NECTA members disagree that financial penalties are proper. If financial penalties are adopted, attachers must be given notice and an opportunity to respond and/or cure prior to any penalty being imposed. NECTA members have experienced third parties moving their facilities

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52 *See* Eversource Comments at 34; National Grid Comments at 33; Until Comments at 20-21.

53 The lack of reference to any particular proposal or comment does not connote agreement or opposition.

54 *See* Eversource Comments at 22; National Grid Comments at 20.

without their authorization. Absent an opportunity to respond and/or cure, NECTA members could be penalized for a safety violation that they did not cause.

NECTA agrees with National Grid's comments at the Technical Sessions that MassDOT permitting timelines could unduly delay broadband deployment. The solution to this, however, is not to avoid adopting the FCC's timelines. Letting MassDOT timelines govern pole attachments across the entire state would be an unreasonable result. DOT permitting is an issue in many states; however, this has not dissuaded our neighboring states from adopting the FCC's timelines and other rules. The Departments should adopt the FCC's timelines and simultaneously work with MassDOT to look at ways to reduce permitting timelines for the benefit of all stakeholders, including pole owners and attachers.[55]

NECTA opposes allowing a pole owner to engage in a post-construction inspection prior to issuing a license to attach, which would delay a new attacher's ability to access a pole and timely attach its facilities.[56] First, this proposal is inconsistent with existing pole attachment agreements, which require a license or other authorization prior to attaching. Second, this would result in additional, unnecessary, delays in the access timeline. Finally, pole owners may perform a post-construction inspection after new attachers build their facilities, which allows the pole owner to identify any damage or violations that need to be remediated. Pole owners should not be allowed to delay pole access and charge attachers for additional, unnecessary, work.

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55 Letter from the National Governors' Association, to The Honorable Susan Collins, Chair, Senate Comm. on Appropriations, The Honorable Tom Cole, Chairman, House Comm. on Appropriations, The Honorable Patty Murray, Vice Chair, Senate Comm. on Appropriations, and The Honorable Rosa DeLauro, Ranking Member, House Comm. on Appropriations (July 26, 2025) (identifying permitting reform as a priority and supporting "a commitment to expeditiously conduct permit reviews"), https://www.nga.org/advocacy-communications/economic-development-and-revitalization-task-force-outlines-priorities-for-fy-2026/.

56 *See* Eversource Comments at 22; National Grid Comments at 20.

Moreover, the FCC rules have established post-construction inspection processes, as do parties' existing pole attachment agreements.[57]

NECTA opposes Verizon's suggestion that the Departments establish an affirmative right for pole owners to transfer or remove an attacher's facilities as part of the make-ready process if the attacher fails to do so within a specified period.[58] NECTA members have established response processes and work collaboratively with pole owners on necessary transfers once they receive notification that a transfer is necessary. Moreover, pole attachment agreements generally govern pole owners' remedies in situations where a transfer has not been completed timely; there is no need for the Departments to take this action.

Finally, NECTA generally agrees in principle with Crown Castle and GoNetspeed about refining the process for make-ready true-ups.[59] At times, NECTA members have faced exorbitant make-ready true-ups that come years after the construction work has been completed, and results in true-up invoicing that is several times higher than the initial estimates. If an attacher were presented with the higher estimate costs up front, when the make-ready estimate is presented by the pole owner and approved by the attacher, it is possible that the attacher would decide not to move forward with the build in that location. To incentivize accurate make-ready estimates, the Departments could limit make-ready true-ups to a small percentage of the initial estimate.[60] The Departments should also codify a requirement that true-ups be reciprocal, meaning pole owners should be required to reimburse attachers if the actual costs are lower than the make-ready estimate.

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57 *See* 47 C.F.R. § 1.1411(j)(5).

58 *See* Verizon Comments at 17.

59 Crown Castle Comments at 8; *see also* GoNetspeed Petition for Rulemaking at 35-36.

60 *See* Crown Castle Comments at 8.

VII. The Departments' Proposed Redline of 220 CMR 45.00.

NECTA and its members appreciate the significant work that went into the draft redlines to the Departments' shared regulations, 220 CMR 45.00, and believe that the proposals to modernize pole access rules in Massachusetts, including changes to track the FCC's pole access rules, are a productive start.[61] NECTA offers specific feedback below on a few discrete items.

- NECTA recommends changing Potential 220 CMR § 45.05(3)(a)(4) to read: "State that if make-ready is not completed by the completion date set by the utility in 220 CMR 45.05(3)(a)(2), the new attacher may complete the make-ready specified pursuant to 220 CMR 45.05(7) and 220 CMR 45.06." This change accounts for the possibility of a utility failing to keep an approved list of contractors or there being no approved contractor available.

- NECTA recommends appending the following sentence to Potential 220 CMR § 45.05(5)(d): "A request can only be counted as part of a single 30-day period."

- NECTA recommends removing from Potential 220 CMR § 45.05(6)(b) the following: "including, but not limited to, repair work required to restore service following weather events or major accidents." As discussed above, the FCC rules provide pole owners additional time to complete work to account for delay events beyond pole owners' control, but this language in Potential 220 CMR § 45.05(6)(b) is not part of the rules.[62] Further, the phrase "weather event" is vague and could be interpreted very broadly to include normal weather conditions that do not actually impact project work.

- NECTA recommends specifying in Potential 220 CMR § 45.05(6)(b) the standards (e.g., NESC) with which compliance is being referenced.

- NECTA recommends changing the timeline milestone throughout from "after an attachment application is complete" to "upon receipt of a completed application."

- NECTA recommends expanding the available contractors in 220 CMR § 45.06(3) to include new contractors added since application submitted.

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61 *See Joint Notice of Inquiry by the Dep't of Pub. Utils. & the Dep't of Telecomms. & Cable on their own Motion to explore util. pole attachment, conduit access, double pole, & related considerations applicable to util. work conducted on pub. rights-of-way in the Commonwealth*, D.P.U. 25-10/D.T.C. 25-1, Memo. Attachment (June 18, 2025).

62 *See supra* p. 11 (citing 47 C.F.R. § 1.1411(g), which adds time into the timelines for large pole applications and 47 C.F.R. § 1.1411(h), which enables pole owners to "deviate from the time limits specified" in the section for several reasons).

Finally, the improvements in the redlines notwithstanding, as discussed *supra*, the Departments should also codify the Massachusetts Formula consistent with the above comments[63] and adopt rapid dispute resolution in Potential 220 CMR § 45.12.[64]

VIII. Conclusion.

NECTA and its members again applaud the Departments for recognizing the need for pole attachment reform in the Commonwealth and for undertaking this proceeding. The Departments must now take the next step to modernize the Massachusetts Formula, adopt the FCC's pole access regulations, adopt rapid dispute resolution, mitigate the inefficiencies of joint pole ownership, and otherwise update the Commonwealth's pole attachment regime as outlined herein, and in NECTA's initial comments.[65]

Respectfully submitted,

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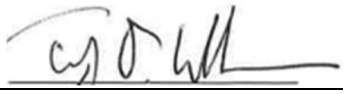
/s/ 

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63 *See supra* Section I.

64 *See supra* Section III.

65 *See* NECTA Comments (advocating for, in addition to what is discussed herein, use of temporary attachments, inclusion in the Massachusetts Formula of excess accumulated deferred income taxes created by the Tax Cut and Jobs Act of 2017, proration of accumulated depreciation and accumulated deferred income taxes to poles as the FCC does, consideration of tariffing attachment rates, requiring pole owners to track all data relevant to the Massachusetts Formula and to report such data to the Departments, and requiring pole owners to provide attachers detailed data and a calculation supporting any new attachment rate concurrent with the advance notice of the increase).