

D.T.C. 25-1/D.P.U. 25-10

Potential Amendments to Agencies' Shared Regulations – 220 CMR 45.00

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220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 45.00: POLE ATTACHMENT, DUCT, CONDUIT AND RIGHT-OF-WAY COMPLAINT AND ENFORCEMENT PROCEDURES

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45.01: Purpose and Applicability

220 CMR 45.00 effects legislative policy in favor of competition and consumer choice in telecommunications by providing ~~for complaint and enforcement~~ procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to poles, ducts, conduits, and rights-of-ways owned or controlled, in whole or in part, by one or more utilities with rates, terms and conditions that are just and reasonable. [A utility shall not establish rates, terms or conditions related to attachment applications or attachment agreements which conflict with applicable state laws or these regulations.](#) The general procedural rules set forth at 207 CMR 1.00: Procedural Rules and 220 CMR 1.00: Procedural Rules are also applicable except to the extent that they are inconsistent with 220 CMR 45.00.

45.02: Definitions

As used in 220 CMR 45.00, except as otherwise required by ~~the context,~~ the following terms shall have the following meanings:

Attacher. Any person, firm, or corporation other than a utility which provides telecommunications service or is authorized to construct lines or cables upon, along, under, and across the public way. Attacher shall include any entity that constitutes a “licensee” or “wireless provider” under M.G.L. c. 166, § 25A. A municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its electric service territory pursuant to M.G.L. c. 164, § 47E shall be considered an Attacher but only for those attachments that are outside its electric service territory. An Attacher shall be classified as either an “Existing Attacher,” or a “New Attacher,” depending on the circumstances surrounding a particular attachment.

Existing Attacher. Any Attacher with an authorized attachment installed upon any utility pole or in any Duct or Conduit owned or controlled, in whole or in part, by one or more Utilities.

New Attacher. Any Attacher requesting to install a new attachment upon any utility pole or in any Duct or Conduit owned or controlled, in whole or in part, by one or more Utilities.

Attachment. Any wire or cable for transmission of intelligence by telegraph, wireless communication, telephone or television, including cable television, or for the transmission of electricity for light, heat, or power and any related device, apparatus, appliance, or equipment installed upon any utility pole or in any ~~telegraph~~Duct or ~~telephone duct or conduit~~Conduit owned or controlled, in whole or in part, by one or more ~~utilities.~~ “Duct” and “conduit” is not limited to “telegraph” or “telephone” ducts and conduitsUtilities.

Complainant. A licensee or a utility who files a complaint.

Business Day. Any day that is not a Saturday, Sunday, or legal holiday. Where a deadline or period of time is quantified in days and does not reference the term “business days,” then said deadline or period of time shall be calculated using calendar days.

Communications Space. The lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

Complainant. An Attacher or a Utility that files a complaint.

Complaint. A filing by either ~~a licensee~~ an Attacher or a ~~utility~~ Utility alleging that it has been denied access to a utility pole, ~~duct, conduit~~ Duct, Conduit, or rights-of-way owned or controlled, in whole or in part, by one or more ~~utilities~~ Utilities in violation of 220 CMR 45.00, and/or alleging that a rate, term or condition for an ~~attachment~~ Attachment is not just and reasonable. A complaint shall constitute an initial pleading within the meaning of 207 CMR 1.04(1) and 220 CMR 1.04(1).

Conduit. A structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed.

Department. The Department of Public Utilities and/or Department of Telecommunications and Cable.

~~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, 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.~~

Duct. A single enclosed raceway for conductors, cables, or wires.

Make-Ready. The modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional attachments.

Complex Make-Ready. Transfers and work within the Communications Space that would be reasonably likely to cause a service outage(s) or damage to any Attachment or utility pole, including work such as splicing of any communication Attachment or relocation of existing wireless Attachments. All wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

Simple Make-Ready. Make-Ready where Attachments in the Communications Space of a utility pole could be transferred without any reasonable expectation of a service outage or damage to any Attachment or utility pole and does not require splicing of any existing communication Attachment or relocation of an existing wireless Attachment.

Respondent. ~~A licensee~~An Attacher or a ~~utility~~Utility against whom a complaint has been filed.

Splicing. The mechanical joining of one or more severed conductors in a single length of a cable, including the replacement of insulation, semi-conductive tape, metallic shielding, and the outer jacket(s).

Usable Space. The total space which would be available for ~~attachments~~Attachments, without regard to attachments previously made;

(a) upon a ~~utility~~ pole above the lowest permissible point of ~~attachment~~Attachment of a wire or cable upon such ~~utility~~ pole which will result in compliance with any applicable law, regulation or electrical safety code, or

(b) within any telegraph or telephone ~~duet~~Duct or ~~conduit~~Conduit.

Utility. Any person, firm, corporation or municipal lighting plant that owns or controls or shares ownership or control of ~~utility~~ poles, ~~ducts, conduits~~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.

45.03: Computation of Time

Computation of any period of time referred to in 220 CMR 45.00 shall begin with the first day following the day on which the act which initiates such period of time occurs, regardless of whether the first day is a business day. The last day of the period so computed shall be included unless it is not a business day, in which case the period shall run until the end of the immediately subsequent business day.

45.04: Duty to Provide Access; Modifications; Notice of Removal, Increase or Modification; and
Petition for Interim Relief

- (1) In accordance with M.G.L. c. 166, § 25A, a utility shall provide ~~a licensee and a wireless provider~~an attacher with nondiscriminatory access to any pole, duct, conduit, or right-of-way used or useful, in whole or in part, owned or controlled by it. Notwithstanding this obligation, a utility may deny a ~~licensee or a wireless provider~~new attacher access to its poles, ducts, conduits, or rights-of-way, on a nondiscriminatory basis for valid reasons of insufficient capacity, reasons of safety, reliability, generally applicable engineering standards, or for good cause shown. Any exclusive contract between a utility and ~~a licensee~~an existing attacher entered into or extended after August 18, 2000, concerning access to any pole, duct, conduit, or right-of-way, owned or controlled, in whole or in part, by such utility shall be presumptively invalid insofar as its exclusivity provisions are concerned, unless shown to be in the public interest.
- (2) Requests for access to a utility's poles, ducts, conduits, rights-of-way owned or controlled, in whole or in part, by one or more utilities must be in an adequately descriptive writing directed to an appropriate named recipient designated by the utility. A utility is required to make such a designation. If access is not granted within forty-five (45) days of after an attachment application is complete under 220 CMR 45.05(1)(a)(5) (or sixty (60) days in the request for access, case of larger orders as defined in 220 CMR 45.05(5)), the utility must confirm the denial in writing by the conclusion of the forty-fifth (45th) day (or sixtieth (60th) day in the case of larger orders as described in 220 CMR 45.05(5)). The ~~utility's~~utility's denial of access shall be specific, shall include all relevant information supporting its denial, and shall explain how such information relates to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.
- (3) (a) A utility shall provide ~~a licensee~~an existing attacher no ~~less~~fewer than sixty (60) days' written notice prior to:

prior to:

1. removal of ~~facilities~~an existing attachment or termination of any service to ~~those facilities~~that attachment, such removal or termination arising out of a rate, term, or condition of the ~~licensee's~~ attachment agreement between the attacher and the utility;
 2. any change in existing attachment rates, terms, or conditions; or
 3. any modification of ~~facilities~~existing attachments other than routine maintenance ~~or~~, modification in response to emergencies, or make-ready pursuant to 220 CMR 45.05.
- (b) ~~(b)~~ any ~~licensee~~existing attacher that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or rights-of-way accessible;
- (c) ~~(c)~~ any ~~licensee~~attacher that obtains an attachment to a pole, duct, conduit, or right-of-way shall not be required later to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity, including the owner of such pole, duct, conduit, or rights-of-way;
- (d) ~~(d)~~ Exceptions: A utility may provide to ~~a licensee~~an existing attacher fewer than sixty (60) days' written notice of removal, change or modification if such removal, change or modification of ~~facilities or telecommunications equipment~~the attachment is due to routine maintenance or an emergency.
- (e) ~~(e)~~ When a utility provides ~~a licensee~~an existing attacher with ~~less~~fewer than sixty (60) days' written notice pursuant to 220 CMR 45.~~0304~~08(3), such utility shall endeavor to provide ~~its licensee~~the attacher with as much notice as is practicable in the particular circumstances.
- (4) In conjunction with the complaint procedure outlined in 220 CMR 45.~~04 through 08~~ – 45.0913, a ~~licensee~~new or existing attacher may file with the Department a "Petition for Interim Relief" of the action proposed in a notice received pursuant to 220 CMR 45.~~0304~~08(3)(a) within fifteen (15) days of receipt of such notice. Such submission will not

be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of the [licensee's attacher's](#) service to its customers, a copy of the notice, and certification of service as required by 207 CMR 1.00: Procedural Rules and 220 CMR 1.00: Procedural Rules. The named respondent may file an answer within seven [\(7\)](#) days of the date on which the Petition for Interim Relief was filed. No further filings with respect to this petition will be considered unless requested or authorized by the Department and no extensions of time will be granted with respect to this petition unless allowed pursuant to 207 CMR 1.02(5) and 220 CMR 1.02(5).

45.05: Timeline for Access to Utility Poles

(1) Application review and survey.

(a) Application completeness. A utility shall review a new attacher's attachment application for completeness before reviewing the application on its merits.

1. Each utility shall be required to maintain a detailed list of all information it requires to be included in an attacher's application. Said information shall be limited to that which is reasonably necessary to conduct surveys or make-ready work pursuant to 220 CMR 45.00.
2. Each utility shall make the list it maintains pursuant to 220 CMR 45.05(1)(a)(1) available in writing publicly.
3. Each utility shall notify the Department of Telecommunications and Cable within thirty (30) days of any changes made to the list it maintains pursuant to 220 CMR 45.05(1)(a)(1) and provide said Department with a copy of its list reflective of any changes.
4. A new attacher's attachment application is considered complete if it provides the utility with the information required according to the list maintained by the utility pursuant to 220 CMR 45.05(1)(a)(1).
5. A utility shall determine within ten (10) business days after receipt of a new attacher's attachment application whether the application is complete and notify the attacher of that decision. If the utility does not respond within ten (10) business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.
6. A new attacher may resubmit an application that a utility determines is incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within five (5) business days after its resubmission unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons.

The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(b) Application review on the merits. A utility shall respond to the new attacher either by granting access or, consistent with 220 CMR 45.04(2), denying access no later than forty-five (45) days after an attachment application is complete under 220 CMR 45.05(1)(a)(5) (or sixty (60) days in the case of larger orders as described in 220 CMR 45.05(5)). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

(c) Survey.

1. A utility shall complete a survey of poles for which access has been requested no later than forty-five (45) days after an attachment application is complete under 220 CMR 45.05(1)(a)(5) (or no later than sixty (60) days in the case of larger orders as described in 220 CMR 45.05(5)).
2. A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than three (3) business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, as well as the name, telephone number, and email address of the contractor performing the survey.
3. Where a new attacher has conducted a survey pursuant to 220 CMR 45.05(8)(c), a utility can elect to satisfy its survey obligations in this paragraph by notifying affected existing attachers of its intent to use the survey conducted by the new attacher pursuant to 220 CMR 45.05(8)(c) and by providing a copy of the survey to the affected existing attachers within the time period set forth in 220 CMR 45.05(1)(c)(1). A utility relying on a survey conducted pursuant to 220 CMR 45.05(8)(c) to satisfy all of its obligations under 220 CMR 45.05(1)(c)(1) shall have fifteen (15)

days to make such a notification to affected existing attachers rather than a forty-five (45) day survey period.

(d) Information from cyclical pole inspection reports.

1. Upon submitting its attachment application, a new attacher may request in writing that the utility provide, as to the poles covered by such attachment application, the information regarding those poles contained in the utility's most recent cyclical pole inspection reports, or, if available, any more recent pole inspection report. The utility shall provide the new attacher with this information within ten (10) business days of the new attacher's written request.
2. Utilities shall retain copies of their pole inspection reports, in the form they are created, until a superseding report covering all poles included in the attachment application is completed.
3. For the purposes of this section, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of a routine inspection of its poles during the utility's normal pole inspection cycle.
4. After requesting and receiving pole inspection information from a utility related to poles covered by its application, a new attacher may amend an attachment application at any time until the utility grants or denies the original application.
 - (1) A utility that receives such an amended attachment application may, at its option, restart the forty-five (45) day period (or sixty (60) day period for larger orders) for responding to the application and conducting the survey.
 - (2) A utility electing to restart the forty-five (45) day period (or sixty (60) day period for larger orders) shall notify the attacher of its intent to do so within five (5) business days of receipt of the amended application or by the forty-fifth (45th) day (or sixtieth (60th) day for larger orders) after the original application is considered complete, whichever is earlier.

(2) Estimate. Where a new attacher's request for access is not denied, a utility shall present to the new attacher a detailed, itemized estimate, on a pole-by-pole basis, of charges to perform all necessary make-ready within fourteen (14) days of providing the response required by 220 CMR 45.05(1)(b), or in the case where a new attacher has performed a survey, within fourteen (14) days of receipt by the utility of such survey. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole estimate for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(a) A utility may withdraw an estimate of charges that has not already been accepted by a new attacher to perform make-ready work no earlier than fourteen (14) days after the estimate is presented.

(b) A new attacher may accept an estimate and make payment any time after receipt of an estimate, except it may not accept if the estimate is withdrawn by the utility under 220 CMR 45.11(2)(a).

(c) Final invoice: After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole invoice for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, labor, and other related costs that form the basis of its invoice.

(d) A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party

equipment were out of compliance because of work performed by a party other than the new attacher.

(e) A utility shall not recover an amount greater than the actual cost of make-ready it performs. When a utility performs make-ready that is necessary to facilitate attachments by two or more new attachers, it shall charge each new attacher no greater than the sum of the make-ready necessary to facilitate said new attacher's attachment and a pro rata share of the make-ready necessary to facilitate the attachments of said new attacher and one or more distinct attachers.

(3) Make-ready. Upon receipt of payment specified in 220 CMR 45.05(2)(b), a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

(a) For attachments in the communications space, the notice shall:

1. Specify where and what make-ready will be performed;
2. Set a date for completion of make-ready in the communications space that is no later than thirty (30) days after notification is sent (or up to seventy-five (75) days in the case of larger orders as described in 220 CMR 45.05(5));
3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion;
4. 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 hire a pre-approved contractor to complete the make-ready specified pursuant to 220 CMR 45.05(7) and 220 CMR 45.06; and
5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For attachments above the communications space, the notice shall:

1. Specify where and what make-ready will be performed;
2. Set a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or one hundred thirty-five (135) days in the case of larger orders, as described in 220 CMR 45.05(5));

3. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion;
 4. State that the utility may assert its right to fifteen (15) additional days to complete make-ready;
 5. State that if make-ready is not completed by the completion date set by the utility in 220 CMR 45.05(3)(b)(2) (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready specified pursuant to 220 CMR 45.05(3)(a)(1); and
 6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.
- (4) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in 220 CMR 45.05(3)(a)(2) or its make-ready above the communications space by the same dates for existing attachers in 220 CMR 45.05(3)(b)(2) (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).
- (5) For the purposes of compliance with the time periods in this section:
- (a) Smaller Orders. A utility shall apply the timelines described in 220 CMR 45.05(1) – (4) to all requests less than the lesser of three thousand (3000) poles or five (5) percent of the utility’s poles physically located in the Commonwealth of Massachusetts.
 - (b) Surveys for Larger Orders. A utility may add fifteen (15) days to the survey period described in 220 CMR 45.05(1) to larger orders equal to or greater than the lesser of three thousand (3000) poles or five (5) percent of the utility’s poles physically located in the Commonwealth of Massachusetts.
 - (c) Make-Ready for Larger Orders. A utility may add forty-five (45) days to the make-ready periods described in 220 CMR 45.05(3) to larger orders equal to or greater than the lesser of three thousand (3000) poles or five (5) percent of the utility’s poles physically located in the Commonwealth of Massachusetts.

- (d) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within thirty (30) days of one another.
- (6) Deviation from the time limits specified in this section.
- (a) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.
- (b) A utility may deviate from the time limits specified in this section during performance of make-ready for good cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section, including, but not limited to, repair work required to restore service following weather events or major accidents. A utility that deviates shall immediately notify, in writing, the new attacher, affected existing attachers, and the Department of Telecommunications and Cable and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility choosing to deviate from the time limits specified in this section may do so for a period of no longer than fourteen (14) days and shall resume make-ready without discrimination when returning to normal operations. A utility may petition the Department of Telecommunications and Cable at any time to request permission to deviate from the time limits specified in this section for a period greater than fourteen (14) days. Notice of the filing of such a petition shall simultaneously be provided to any new attachers whose applications would be affected and shall include a copy of the petition. The filing of such a petition shall not pause or interrupt the calculation of time for any time limit specified in this section unless and until it is approved. A utility shall not delay completion of make-ready because utility poles, existing attachments, or existing third-party equipment are out of compliance if the non-compliance was caused by a party other than the new attacher.
- (c) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher

that deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond sixty (60) days from the date the notice described in 220 CMR 45.05(3) is sent by the utility (or up to one hundred and five (105) days in the case of larger orders described in 220 CMR 45.05(5)). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

(7) Self-help remedy.

(a) Surveys. If a utility fails to complete a survey as specified in 220 CMR 45.05(1)(c)(1), then a new attacher may conduct the survey in place of the utility and, as specified in 220 CMR 45.06, hire a contractor to complete the survey.

1. A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.
2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of no fewer than three (3) business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) Make-ready. If make-ready is not complete by the date specified pursuant to 220 CMR 45.05(3), then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in 220 CMR 45.06, hire a contractor to complete the make-ready.

1. A new attacher shall permit the affected utility and existing attachers to be present for any make-ready.
2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of no fewer than five (5) business days of the impending make-ready. The notice shall

include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

3. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

(1) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(2) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

4. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least ninety (90) days from receipt in which to inspect the make-ready. The affected utility and existing attachers have fourteen (14) days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within fourteen (14) days following notice from the utility or existing attacher.

(c) Pole replacements. An attacher conducting make-ready pursuant to 220 CMR 45.05(3)(b) shall not replace a utility pole.

(8) One-touch make-ready option. For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in 220 CMR 45.05(1) – (4) and (7).

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.
2. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information required according to the list maintained by the utility pursuant to 220 CMR 45.05(1)(a)(1).

(1) A utility has ten (10) business days after receipt of a new attacher's attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within ten (10) business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.

(2) If the utility timely notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within five (5) business days after its resubmission unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(b) Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application no later than fifteen (15) days after an attachment application is complete under 220 CMR 45.05(1)(a)(5) (or no later than thirty (30) days in the case of larger orders as described in 220 CMR 45.05(5)). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

1. If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.
2. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as described in 220 CMR 45.05(5)), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(c) Surveys. The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in 220 CMR 45.06(1).

1. The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than three (3) business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(d) Make-ready. If the new attacher's attachment application is approved and if it has provided at least fifteen (15) days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in 220 CMR 45.06(2).

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name, telephone number, and email address of the contractor being used by the new attacher and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.
2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:
 - (1) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or
 - (2) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.
3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted, and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by 220 CMR 45.05(2) – (7) and the utility shall provide the notice required by 220 CMR 45.05(3) as soon as reasonably practicable.

(e) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least ninety (90) days from receipt in which to inspect the make-ready. The affected utility and existing attachers have fourteen (14) days after completion of

their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within fourteen (14) days following notice from the utility or existing attacher.

45.06: Contractors for Surveys and Make-Ready

(1) Contractors for Surveys. A utility shall make publicly available and keep up to date a reasonably sufficient list of contractors it authorizes to conduct surveys. Each utility shall notify the Department of Telecommunications and Cable within seven (7) days of any changes made to said list and provide said Department with a copy of the list that reflects any changes and clearly states its effective date. When choosing a contractor to perform a survey pursuant to 220 CMR 45.00, a new attacher must choose a contractor from the list in effect on the date the new attacher sent its application to the utility.

(a) New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in 220 CMR 45.06(4). Such a request must be made in writing to the utility and include a certification that the contractor meets the minimum qualifications described in 220 CMR 45.06(4), as well as the name, telephone number, and email address of the contractor.

(b) If the utility does not provide a list of approved contractors for surveys or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in 220 CMR 45.06(4). When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in 220 CMR 45.06(4) and provide the name, telephone number, and email address of the contractor when providing notices required by 220 CMR 45.05(7) – (8).

(c) The utility may reject any contractor requested by an attacher pursuant to 220 CMR 45.06(1)(a) or chosen by a new attacher pursuant to 220 CMR 45.06(1)(b), but such rejection must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in 220 CMR 45.06(4) or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor rejection within the notice periods provided by the new attacher in 220 CMR 45.05(7)(a)(2) or 220 CMR 45.05(8)(b). Notice of a contractor rejection shall be specific, shall include all relevant information

supporting its rejection, and shall explain how such information relates to reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in 220 CMR 45.06(4) or to meet the utility's publicly available and commercially reasonable safety or reliability standards. A notice of contractor rejection in response to a new attacher's choosing of a contractor pursuant to 220 CMR 45.06(1)(b) shall additionally identify at least one available qualified contractor.

(2) Contractors for Simple Make-Ready. A utility shall make publicly available and keep up to date a reasonably sufficient list of contractors it authorizes to perform simple make-ready. Each utility shall notify the Department of Telecommunications and Cable within seven (7) days of any changes made to said list and provide said Department with a copy of the list that reflects any changes and clearly states its effective date. When choosing a contractor to perform simple make-ready pursuant to 220 CMR 45.00, a new attacher must choose a contractor from the list in effect on the date the new attacher sent its application to the utility.

(a) New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in 220 CMR 45.06(4). Such a request must be made in writing to the utility and include a certification that the contractor meets the minimum qualifications described in 220 CMR 45.06(4), as well as the name, telephone number, and email address of the contractor.

(b) If the utility does not provide a list of approved contractors for simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in 220 CMR 45.06(4). When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in 220 CMR 45.06(4) and provide the name, telephone number, and email address of the contractor when providing notices required by 220 CMR 45.05(7) – (8).

(c) The utility may reject any contractor requested by an attacher pursuant to 220 CMR 45.06(2)(a) or chosen by a new attacher pursuant to 220 CMR 45.06(2)(b), but such rejection must be based on reasonable safety or reliability concerns

related to the contractor's failure to meet any of the minimum qualifications described in 220 CMR 45.06(4) or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor rejection within the notice periods provided by the new attacher in 220 CMR 45.05(7)(b)(2) or 220 CMR 45.05(8)(b). Notice of a contractor rejection shall be specific, shall include all relevant information supporting its rejection, and shall explain how such information relates to reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in 220 CMR 45.06(4) or to meet the utility's publicly available and commercially reasonable safety or reliability standards. A notice of contractor rejection in response to a new attacher's choosing of a contractor pursuant to 220 CMR 45.06(2)(b) shall additionally identify at least one available qualified contractor.

(3) Contractors for Complex Make-Ready and Make-Ready Above the Communications Space. A utility shall make publicly available and keep up to date a reasonably sufficient list of contractors it authorizes to perform make-ready that is complex or above the communications space. Each utility shall notify the Department of Telecommunications and Cable within seven (7) days of any changes made to said list and provide said Department with a copy of the list that reflects any changes and clearly states its effective date. When choosing a contractor to perform make-ready that is complex or above the communications space pursuant to 220 CMR 45.00, a new attacher must choose a contractor from the list in effect on the date the new attacher sent its application to the utility.

(a) New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in 220 CMR 45.06(4). Such a request must be made in writing to the utility and include a certification that the contractor meets the minimum qualifications described in 220 CMR 45.06(4), as well as the name, telephone number, and email address of the contractor.

(b) If the utility does not provide a list of approved contractors for make-ready that is complex or above the communications space, or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its

own qualified contractor that meets the requirements in 220 CMR 45.06(4). When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in 220 CMR 45.06(4) and provide the name, telephone number, and email address of the contractor when providing notices required by 220 CMR 45.05(7).

- (c) The utility may reject any contractor requested by an attacher pursuant to 220 CMR 45.06(3)(a) or chosen by a new attacher pursuant to 220 CMR 45.06(3)(b), but such rejection must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in 220 CMR 45.06(4) or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor rejection within the notice periods provided by the new attacher in 220 CMR 45.05(7)(b)(2). Notice of a contractor rejection shall be specific, shall include all relevant information supporting its rejection, and shall explain how such information relates to reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in 220 CMR 45.06(4) or to meet the utility's publicly available and commercially reasonable safety or reliability standards. A notice of contractor rejection in response to a new attacher's choosing of a contractor pursuant to 220 CMR 45.06(3)(b) shall additionally identify at least one available qualified contractor.
- (4) Contractor Minimum Qualification Requirements. Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to 220 CMR 45.06, meet the following minimum requirements:
- (a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;
 - (b) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;
 - (c) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and

Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;

- (d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and
 - (e) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.
- (5) The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

45.07: Overlashing

- (1) Prior approval. A utility shall not require prior approval for:
 - (a) An existing attacher that overlashes its existing wires on a pole; or
 - (b) For third party overlashing of an existing attachment that is conducted with the specific, written permission of an existing attacher.
- (2) Preexisting violations. A utility may not prevent an existing attacher from overlashing because another existing attacher has not fixed a preexisting violation. A utility may not require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher.
- (3) Advance notice. A utility may require no more than fifteen (15) days advance notice of planned overlashing. If a utility requires advance notice for overlashing, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. If after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlash within the fifteen (15) day advance notice period and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. A utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash.
- (4) Overlashers' responsibility. A party that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party is responsible at its expense for any necessary repairs.
- (5) Post-overlashing review. An overlashing party shall notify the affected utility within fifteen (15) days of completion of the overlash on a particular pole. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlash. The utility has fourteen (14) days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash. If the utility discovers damage or code violations caused by the overlash on

equipment belonging to the utility, then the utility shall inform the overlying party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlying party for the reasonable costs related to fixing the damage or code violations or require the overlying party to fix the damage or code violations at its expense within fourteen (14) days following notice from the utility.

45.08: Complaint

- (1) A complaint will commence a proceeding under 220 CMR 45.00. Complainants may join together to file a joint complaint.
- (2) Every complaint shall conform to the requirements specified in 207 CMR 1.04(1)(b) and 220 CMR 1.04(1)(b) and shall be accompanied by certification of service on any utility, [licensee/attacher](#), or party named as complainant or respondent. The complaint shall also contain the following:
 - (a) a copy of the attachment agreement, if any, between the [licensee/attacher](#) and the utility. If no attachment agreement exists, the petition shall contain:
 1. a statement that the utility uses or controls, in whole or in part, those poles, ducts, conduits, or rights-of-way at issue which are used or designated for attachments;
 2. a statement that the [licensee/attacher](#) currently has attachments on the utility's poles, ducts, conduits, or rights-of-way or has requested that attachments be placed on the utility's poles, ducts, conduits, or rights-of-way;
 - (b) the specific attachment rate, term or condition which is claimed to be unjust or unreasonable;
 - (c) in any case where it is claimed that a term or condition is unjust or unreasonable, the complaint shall specify all information and argument relied upon to justify said claim;
 - (d) in any case where it is claimed that a rate is unjust or unreasonable, or that a term or condition requires review of the associated rate, the data, information, and argument in support of said claim shall include, but not be limited to, the following, where applicable and available to the complainant:
 1. the gross investment by the utility for the pole lines;
 2. the investment by the utility in appurtenances not used by or useful to the [licensee/attacher](#). This may be expressed as a percentage of the gross pole investment, and shall include a list of specific appurtenances considered not used or useful;
 3. the depreciation reserve for the gross pole line investment;

4. the total number of poles (A) owned; and (B) controlled or used by the utility;
5. the total number of poles which are the subject of the complaint;
6. the annual carrying charges attributable to the cost of owning a pole, and the specific factors used in the determination of these charges. Annual carrying charges may be expressed as a percentage of net pole investment;
7. the average amount of useable space per pole for those poles used for pole attachments; and
8. the reimbursements received from the attacher for non-recurring costs.

Data and information should be based on historical or original cost methodology, to the extent possible. Data should be derived from publicly available reports filed with the Department of Telecommunications and Cable, the Department of Public Utilities, the Federal Communications Commission, the Federal Energy Regulatory Commission, such as the Federal Energy Regulatory Commission's Form No. 1, or other reports filed with state or regulatory agencies. The source of any data shall be identified. Calculations made in connection with these figures should be provided to the complainant upon request, as should the computation of any rate determined by using the formula adopted for calculating reasonable attachments rates in Massachusetts.

- (e) In addition to meeting the other requirements of 220 CMR 45.0400, in any case where it is claimed that a complainant has been improperly denied access to a pole, duct, conduit, right-of-way, owned or controlled, in whole or in part, by one or more utilities the complaint shall include the data and information necessary to support the claim, including:
1. The reasons given for the denial of access to the poles, ducts, conduits, and rights-of-way, owned or controlled, in whole or in part, by one or more utilities;
 2. The basis for the complainant's claim that the denial of access is improper;
 3. The remedy sought by the complainant;

4. A copy of the written request to the utility for access to its poles, ducts, conduits or rights-of-way; and
 5. A copy of the ~~utility's~~ utility's response to the complainant's written request, including all information given by the utility to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a utility's written response;
- (f) a statement that the utility and ~~licensee~~ attacher have been unable to agree and a brief summary, including dates, of all steps taken to resolve the problem prior to filing. If no such steps were taken, the complainant shall state the reason(s) why;
 - (g) any other information and arguments relied upon to attempt to establish that a rate, term, or condition is not reasonable; and
 - (h) a statement that the complainant requests that a hearing be convened pursuant to 207 CMR 1.06: Hearings and 220 CMR 1.06: Hearings or that it waives its right to a formal hearing.
- (3) Where the attachments involve ducts, conduits or rights-of-ways, appropriate data and information, equivalent to that required by 220 CMR 45.0408(2), shall be filed.
 - (4) All factual allegations set forth in the complaint shall be supported by affidavit(s).

45.0509: Response

- (1) The response to a complaint under 220 CMR 45.00 shall be filed within [fourteen \(14\)](#) days after service of the document to which the response is directed.
- (2) The response shall specifically address all contentions made by the complainant. All factual statements shall be supported by affidavit(s).
- (3) The response shall include a statement either that the respondent requests that a hearing be convened pursuant to 207 CMR 1.06: Hearings and 220 CMR 1.06: Hearings or that it waives its right to a formal hearing.

45.0610: Procedures Where Formal Hearing is Waived

- (1) Applicability. The procedures set forth in 220 CMR 45.0610 apply only if no party requests and is granted a hearing. If a full hearing is to be convened, the procedures contained in 207 CMR 1.06: Hearings and 220 CMR 1.06: Hearings shall apply.
- (2) Notice. The Department shall give public notice by such means as it deems appropriate, consistent with due process, that a complaint has been filed and docketed. Such notice shall include a brief description of the complaint and shall set a time limit for filing of petitions to intervene. That time limit shall be no shorter than fourteen (14) days after such public notice.
- (3) Intervention. The procedures outlined in 207 CMR 1.03: Appearances; Intervention and Participation; Parties and 220 CMR 1.03: Appearances; Intervention and Participation; Parties shall generally apply to petitions to intervene under 220 CMR 45.0610. If a person is allowed by the Department to intervene, the ruling on intervention shall be in writing and shall inform the petitioner of its right to a hearing, its responsibility to request a hearing within seven (7) days after service of the ruling, and of the consequence of failure to make such a request (namely, waiver of the right to a hearing on the ruling). If a hearing is requested and granted, the procedures set forth in 207 CMR 1.06: Hearings and 220 CMR 1.06: Hearings shall apply.
- (4) Reply and Comments. The complainant shall have twenty (20) days from the date the response is served to file a reply. Any person permitted to intervene as a party shall have the opportunity to file comments with the Department not later than twenty (20) days after issuance of the Order permitting intervention. Any such comments shall be served on all parties and the parties may file a reply to the comments within twenty (20) days after service. Unless authorized by the Department, no further filings shall be considered.
- (5) Meetings and Evidentiary Proceedings. The Department may decide each complaint upon the filings and information before it, may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute, or may, in its discretion, order evidentiary proceedings upon any issues.
- (6) Department Consideration of Complaint. In its consideration of the complaint, response, reply, and comments, the Department may take notice of any information contained in

publicly available filings made by the parties and may accept, subject to rebuttal, studies that may have been conducted. The Department may also request that one or more of the parties make additional filings or provide additional information. Where one of the parties has failed to provide information required to be provided by 220 CMR 45.00 or requested by the Department, or where costs, values or amounts are disputed, the Department may estimate such costs, values or amounts it considers reasonable on the basis of available evidence of record, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

45.0711: Remedies

If the Department determines that a denial for access is discriminatory or that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term or condition and may:

- (1) terminate the unjust and unreasonable rate, term, or condition; and
- (2) substitute in the attachment agreement the reasonable rate, term or condition established by the Department; or
- (3) order relief the Department finds appropriate under the circumstances.

45.0812: Time Limit

The Department shall issue a final Order on the complaint filed in accordance with 220 CMR 45.00 within ~~180~~ one hundred and eighty (180) days after the complaint is filed.

45.0913: Appeal from Department Decisions

The Department shall notify all parties of their rights to appeal a final decision of the Department pursuant to M.G.L. c. 25, § 5, and of the time limits on their rights to appeal.

45.1014: Rates Charged Any Affiliate, Subsidiary, or Associate Company

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 45.1014.

45.~~44~~15: Severability

The provisions of 220 CMR 45.00 shall be deemed severable if any particular provision(s) is (are) rendered invalid by judicial determination or by statutory amendment.

REGULATORY AUTHORITY

220 CMR 45.00; 47 U.S.C. § 224; 47 [CFR C.F.R.](#) § 1.1405; M.G.L. c. 159; and M.G.L. c. [166, § 25A](#).

~~166, § 25A.~~