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August 14, 2015

Via Electronic and First Class Mail

Sara J. Clark, Secretary
Department of Telecommunications & Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118-6500

RE: Department of Telecommunications and Cable Regulation Review

Dear Ms. Clark:

On July 27, 2015, the Department of Telecommunications and Cable ("DTC") requested comments from interested stakeholders regarding its review of its regulations in compliance with Executive Order No. 562 (March 31, 2015). The Department of Public Utilities ("DPU") offers the following comments.

As noted by the DTC in its request for comments, pursuant to Chapter 19 of the Acts of 2007 ("Chapter 19"), the Department of Telecommunications and Energy ("DTE") was dissolved, and the DTC and the DPU were created as separate agencies with jurisdiction, respectively, over telecommunications and energy companies. See St. 2007, c. 19 (April 11, 2007). Title 220 of the Code of Massachusetts Regulations ("Title 220") is assigned to the DPU. Because Title 220 is assigned to the DPU, any changes made within that Title must be made by the DPU.¹ Subsequent to the reorganization, the DPU conducted a rulemaking in which it revised its regulations within Title 220 to be consistent with Chapter 19. Order Instituting Rulemaking, D.P.U. 07-105, at 1 (2007). In that proceeding, the DPU did not

¹ Changes to the regulations at 220 C.M.R. § 45 et seq., must be made jointly by the DPU and the DTC as discussed further below.

revise any regulations within Title 220 specific to telecommunications and cable, and stated that we anticipated a future rulemaking whereby the DPU would rescind any telecommunications and cable regulations in coordination with the DTC implementing the same or substantially similar regulations addressing telecommunications and cable. Order Adopting Regulations, D.P.U. 07-105, at 1 n.2 (2008). The DPU and the DTC have not undertaken this coordinated rulemaking, and, as a result, certain regulations relevant to telecommunications and cable remain within Title 220.

The DTC identifies twelve sections of Title 220 in its request for comment. These sections include regulations relevant to telecommunications and cable, regulations that are applicable to entities regulated by the DPU and the DTC, and regulations over which the DPU and the DTC share authority. The DPU addresses each category in further detail below.

Certain sections of regulations within Title 220 identified by the DTC in its request for comment relate only to telecommunications and cable: 220 C.M.R. § 13.00 et seq.; §15.00 et seq.; § 16.00 et seq.; § 26.09; § 26.10;² § 37.00 et seq.; and §273.00 et seq. The DPU did not make any changes to these regulations in D.P.U. 07-105.³ In fact, these sections still bear the designation of “DTE.” To the extent that the DTC proposes to promulgate its own versions of these regulations within a separate title of the regulations, such as Title 207, the DPU is supportive of such an endeavor and will coordinate efforts in rescinding the corresponding sections of Title 220.

DTC’s request for comment also identifies sections of Title 220 that are of more general applicability and are regulations relevant to the DPU’s jurisdiction, such as 220 C.M.R. § 1 et seq. (Procedural Rules); 220 C.M.R. § 2 et seq. (Adoption of Regulations); 220 C.M.R. § 5 et seq. (Tariffs, Schedules, and Contracts); 220 C.M.R. § 77 et seq. (Voting Trust Certificates of Public Utilities); and 220 C.M.R. § 78 et seq. (Accounting Treatment of Investment Tax Credit for Utilities). Where necessary, the DPU revised these regulations within Title 220 to be consistent with Chapter 19 in its rulemaking in D.P.U. 07-105. To the extent that any of these regulations are also relevant to telecommunications or cable, the DPU does not oppose the DTC promulgating its own versions of these regulations within a separate

² The DPU notes that the sections of 220 C.M.R. § 26.00 et seq. (excluding §§ 26.09 and 26.10) are regulations relevant to the DPU’s jurisdiction. As such, the DPU would object to the modification by another state agency of any sections in 220 C.M.R. § 26.00 et seq. other than §26.09 or §26.10.

³ We note that 220 C.M.R. § 37 et seq. and 220 C.M.R. § 273 et seq. reference the “Department of Public Utilities.” These regulations were promulgated by the Department of Public Utilities as the predecessor agency to the DTE, and were not updated when the agency’s name was changed to DTE.

title of the code, perhaps codifying those within the DTC's 207 C.M.R. sections, while the DPU's existing regulations within Title 220 remain unchanged.⁴

Finally, the DTC included in its request for comment the regulations at 220 C.M.R. § 45 *et seq.* (Pole Attachment, Duct, Conduit and Right-of-Way Complaint and Enforcement Procedures). These regulations are subject to the jurisdiction of both the DPU and the DTC. Prior to April 11, 2007, regulatory jurisdiction over pole and conduit access and rate disputes resided solely with the DTE. On October 14, 2008, the DTC and the DPU entered into a Memorandum of Agreement ("MOA") that addresses this shared jurisdiction over the regulation of attachments to utility poles, ducts, and conduits pursuant to G.L. c. 166, § 25A and double poles pursuant to G.L. c. 164, § 34B. A sixth extension of this MOA remains in effect until its expiration on February 18, 2017. Pursuant to ¶ 6 of the MOA, to the extent that any changes are contemplated to the regulations, policies, or procedures applicable to pole attachments, such changes must be jointly developed and promulgated by the DPU and the DTC. Accordingly, any review of the regulations at 220 C.M.R. § 45 *et seq.* must be conducted jointly and, therefore, would be outside the scope of this regulations review intended by the DTC pursuant to its issued notice for comments.

Thank you for the opportunity to provide these comments. Please feel free to contact me directly at (617) 305-3500 should you wish to discuss any of the information provided herein.

Respectfully Submitted,



Kevin F. Penders, Esq.
General Counsel

cc: Angela O'Connor, Chairman, DPU
Sandra Callahan Merrick, General Counsel, DTC

⁴ The DPU has reviewed all of its regulations and has submitted its recommendations in compliance with Executive Order No. 562. As noted above, changes to these regulations within Title 220 would have to be undertaken by the DPU. In its request for comment the DTC notes that its longstanding practice has been to rely upon the versions of the regulations posted on the DTC's website, and not the updated regulations within Title 220 as revised by the DPU (Request for Comment at 2, n.5).