**COMMONWEALTH OF MASSACHUSETTS**
**DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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| Comcast of Massachusetts III, Inc.<br><br>*Complainant*,<br><br>v.<br><br>Peabody Municipal Light Plant and Peabody Municipal Lighting Commission<br><br>*Respondents*. | D.T.C. 14-2 |

## COMCAST'S INITIAL PHASE I BRIEF

Comcast of Massachusetts III, Inc. ("Comcast") submits that, as a matter of law, the Department should affirm in Phase I that its well-established "Massachusetts Formula" for determining proper pole attachment rates applies to municipal lighting plants — including Peabody Municipal Light Plant and Peabody Municipal Lighting Commission (collectively, "PMLP").[1]

The applicability of the Massachusetts Formula to PMLP is warranted for two principal reasons. First, both G.L. c. 166, § 25A ("Section 25A") and the Department's regulations are clear that municipal lighting plants like PMLP are pole-owning utilities. The Department's precedent developed in *Cablevision of Boston Co., et al. v. Boston Edison Co.*, 1998 WL

[1] The Hearing Officer's *Order on Hearing Procedure and Motion to Intervene* (June 23, 2014) (hereinafter "June 23 Order") established a two-phase procedural schedule. In Phase I, the Hearing Officer will resolve the legal issue of "whether the Massachusetts Formula for establishing the maximum permitted pole attachment rates applies to municipal light plants and municipal lights commissions established pursuant to G.L. c. 164." *Id.* at 7. Phase II "shall be an evidentiary hearing on the PMLP rates, including discovery into the [PMLP] specific facts of the case." *Id.* at 9. The Hearing Officer also permitted intervention by Ashburnham Municipal Light Plant ("AMLP") in Phase I, but denied such participation in Phase II. *Id.* at 9-10. PMLP and AMLP subsequently filed a motion for reconsideration, which is currently pending, and to which Comcast is responding separately.

35235111 (Apr. 15, 1998) ("*Cablevision of Boston*") and *A-R Cable Services, Inc., et al. v. Massachusetts Electric Co.*, D.T.E. 98-52 (Nov. 6, 1998) ("*A-R Cable Services*") is similarly clear: the Massachusetts Formula developed therein applies to all Massachusetts utilities, including municipal lighting plants. As a consequence, PMLP must abide by the Massachusetts Formula, which was established to resolve precisely this type of dispute.

Second, because the inputs to the Massachusetts Formula are based on a utility's publicly reported investment and cost data, there is no basis whatsoever for asserting that practical difficulties preclude the application of the Formula to municipal lighting plants. Moreover, the suitability of the Massachusetts Formula for municipal lighting plants is further confirmed by the fact that the FCC Formula – upon which the Massachusetts Formula is based – is already successfully applied to investor-owned and municipally-owned utilities alike in numerous other states.

## I. MUNICIPAL LIGHTING PLANTS ARE POLE OWNING UTILITIES UNDER MASSACHUSETTS LAW AND THE DEPARTMENT'S POLE ATTACHMENT REGULATIONS

Under G.L. c. 166, § 25A ("Section 25A"), the Department must "determine a just and reasonable rate for the use of poles . . . by assuring the utility recovery of not less than the additional costs of making provision for attachments nor more than the proportional capital and operating expenses of the utility attributable to that portion of the pole . . . ." This provision indisputably governs the pole attachment rates that PMLP may charge Comcast for at least three reasons.

First, Section 25A does not distinguish among the different types of pole-owning utilities that are subject to Department regulation. Section 25A defines a "utility" as "***any*** person, firm, corporation or ***municipal lighting plant*** that owns or controls or shares ownership or control of

poles . . . ." (Emphases added.) The identical definition is found in the Department's pole attachment regulations, 220 CMR § 45.02. PMLP admits in paragraph 2 of its May 2, 2014 Response to Comcast's Complaint that it is "a municipal electric department operating pursuant to Chapter 164 of the M.G.L." All Massachusetts municipal lighting plants, including PMLP, are thus subject to the requirements of Section 25A and the Department's pole attachment regulations which permit only just and reasonable pole attachment rates.[2]

Second, Section 25A defines "attachment" as "any wire or cable for transmission of intelligence by telegraph, wireless communication, telephone or television, including cable television . . . installed upon any pole . . . owned or controlled, in whole or in part, by one or more utilities. . . ." "Licensee" is defined as "any person, firm or corporation . . . authorized to construct lines or cables upon, along, under and across the public ways." These definitions also are mirrored in 220 CMR § 45.02. Comcast is a franchised cable operator authorized to construct lines across the public rights-of-way and provides video, Internet, voice and other communications services. Compl. ¶¶ 1, 5 and Affidavit of James G. White, Jr., ¶ 3. Therefore, for purposes of Section 25A and the Department's rules, Comcast is a "licensee" and Comcast's "wire" and "cables" installed upon PMLP's poles constitute "attachments" under Section 25A as a matter of law.

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[2] Confusingly, PMLP both denies the applicability of Section 25A and simultaneously alleges that its different rate formula "meets the requirements" of Section 25A. *Compare* PMLP Response ¶¶ 2 and 17 *with* ¶ 20. In any event, the intent of the Legislature to apply the pole attachment rate regulation provisions of Section 25A to all utilities, including municipal lighting plants, is further evidenced by the paragraph pertaining to nondiscriminatory access for wireless providers. The final sentence of that paragraph states: "This paragraph shall not apply to municipal lighting plants." This demonstrates that the Legislature knows how to exempt municipal lighting plants from statutory provisions when it intends to do so.

Third, the final paragraph of Section 25A specifies that the Department of Telecommunications and Energy ("DTE"), which has since been split into the Department and the Department of Public Utilities ("DPU"):

> shall determine a just and reasonable rate for the use of poles . . . of a utility for attachments of a licensee by assuring the utility recovery of not . . . more than the proportional capital and operating expenses of the utility attributable to that portion of the pole . . . occupied by the attachment.

Thus, the Legislature has charged the Department and the DPU with determining just and reasonable pole attachment rates for ***all*** utilities – regardless of whether the utility is owned by shareholders or by a municipal governmental entity. The Department's and the DPU's predecessor agency, the DTE, met this obligation by: (1) promulgating (through the rulemaking process) pole attachment rate regulations (220 CMR §§ 45.02 and 45.04), which provide additional specificity about the requirements of a "just and reasonable rate"; and (2) adopting (through the adjudicatory process) "a method to estimate the fully-allocated costs of pole attachments that is consistent with G.L. c. 166, § 25A" – a method the DTE labeled "the Massachusetts Formula" in *Cablevision of Boston* and *A-R Cable Services*. "[T]he Department, as a successor agency to the DTE, and prior to that, the [DPU], considers all previous orders of the DTE and DPU to be precedential."[3]

## II. *CABLEVISION OF BOSTON* AND *A-R CABLE SERVICES* APPLY TO ALL MASSACHUSETTS UTILITIES, INCLUDING MUNICIPAL LIGHTING PLANTS

Although *Cablevision of Boston* and *A-R Cable Services* happened to involve investor-owned utilities ("IOUs"), both decisions make clear that the legal analysis and the Formula apply to determining rates for "attachments" to poles owned or controlled by all pole-owning utilities,

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[3] June 23 Order at 3 n.2.

which, as discussed above, necessarily include municipal lighting plants. As explained above, the definition of "attachment" in Section 25A means the facilities of a licensee "installed upon any pole . . . owned or controlled, in whole or in part, by one or more *utilities*,"[4] and the term "utilities" includes municipal lighting plants.[5]

For example, in *Cablevision of Boston*, the DTE ruled:

> By this Order, the Department establishes a method designed to capture the fully-allocated costs of aerial pole *attachments*, which is based on, but not precisely identical to, the federal approach being used by the FCC. . . .
>
> The Department finds that basing our method for determining aerial pole *attachment* rates on the federal approach is consistent with the Department's earlier decision in Greater Media, and more importantly, is consistent with . . . [Section 25A] and 220 CMR §§ 45.00 et seq. . . .
>
> The intent of the Department, as expressed in Greater Media, is to promote the goal of resolving pole *attachment* complaints by a simple and expeditious procedure based on public records so that all of the parties can calculate pole *attachment* rates as prescribed by the Department without the need for our intervention.[6]

This language makes clear that the DTE was directing all utilities to apply the Massachusetts Formula to establish attachment rates - not just for Boston Edison Company attachments or for a subset of attachments to investor owned utility poles.[7] And if this language was not clear enough, the DTE reaffirmed in *A-R Cable Services* that the pole attachment rate formula promulgated in *Cablevision of Boston* – which it labeled the "Massachusetts Formula" – applies to attachment rates charged by all utilities throughout the Commonwealth:

> The method for determining pole *attachment* rates was set by the Department in a proceeding that considered the aerial pole attachment rates of Boston Edison Company. [citing *Cablevision of Boston*].

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[4] Section 25A (emphasis added).
[5] *Id.*
[6] *Cablevision of Boston* at 18-19 (emphases added).
[7] Of course, the law provides for individually negotiated pole attachment rates by contract, subject to the Massachusetts Formula where the parties cannot agree on the rate.

. . .

B. Massachusetts Formula

> In the recent [Cablevision of Boston] case, the Department established a method to estimate the fully-allocated costs of pole *attachments* that is consistent with G.L. c. 166, § 25A and the related pole attachment regulations. The Department's pole attachment formula reasonably balances the interests of subscribers of CATV services as well as the interests of consumers of *utility* services as required by G.L. c. 166, § 25A.[8]

PMLP states that the Massachusetts Formula does not recover all the utility's relevant costs and does not provide a just and reasonable rate with respect to attachments to its poles due to its status as a municipal utility. It claims that its status as a municipal utility requires adjustments or potentially a different formula. The fact that PMLP would prefer a rate higher than the Massachusetts Formula might allow, however, does not exempt it from the Formula itself or make the Formula inapplicable to its pole attachment rates. Indeed, PMLP offers no legal support for the position that the Massachusetts Formula is inapplicable to its attachment rates. The adjudicated Massachusetts Formula establishes a method to determine the fully allocated costs of pole attachments, resulting in "just and reasonable rates" in accordance with Section 25A. Any adjustments to inputs and evidence PMLP seeks to explore to support any adjustments would be appropriate in a Phase II inquiry. They are not relevant here.

Regardless of the pole-owning utility's corporate structure, the Massachusetts Formula captures all the relevant electric company costs associated with owning distribution poles and hosting third-party attachments. Accordingly, the pole owner's costs can be fairly allocated (and a cost-based rate established) with a minimum of dispute, because the Formula relies on each

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[8] *A-R Cable Services* at 3, 7 (emphases added and citations omitted). The case specifically establishes that the Massachusetts Formula appropriately balances the interests of consumers of attachers and those of the "utility" (which includes municipal lighting plants) services.

utility's specific publicly reported investment, cost and expense data.[9] Indeed, through its adoption of the Massachusetts Formula, the DTE intended:

> to simplify the regulation of pole attachment rates as much as possible *by adopting standards that rely upon publicly available data.* The Department's intent remains to have a simple, predictable, and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention.[10]

The Department's *Cablevision of Boston* and *A-R Cable Services* cases have been a resounding success. For the past 15 years, utilities and third-party attachers throughout the Commonwealth have successfully negotiated pole attachment rates using the Massachusetts Formula as the reference point of reasonableness and (to Comcast's knowledge) neither the Department nor the DPU have been burdened with a pole attachment rate complaint case. This stable and efficient process ended abruptly when PMLP and AMLP unilaterally and inexplicably concluded that they were free to ignore Massachusetts law, free to ignore binding Department precedent, and thus free to devise their own pole attachment rate formula (one version for PMLP and another for AMLP) which – not surprisingly – yield significantly higher pole attachment rates than the Massachusetts Formula allows.

## III. THE MASSACHUSETTS FORMULA CAN BE EASILY AND PROPERLY APPLIED TO MUNICIPAL LIGHTING PLANTS

### *A. The Formula Inputs Are Based on Each Utility's Publicly Reported Investment and Cost Data.*

The Massachusetts Formula, like the FCC cable formula on which it is based, is generally flexible as to inputs and can accommodate any differences between specific utilities in terms of

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[9] As explained in Section III herein, there are no material accounting differences between IOU and municipal lighting plants with respect to establishing just and reasonable attachment rates. In any event, even if there were some accounting differences, those can be accommodated in Phase II.

[10] *A-R Cable Services* at 7 (emphasis added and citations omitted).

underlying cost structure. In *A-R Cable Services*, the Department described application of the Massachusetts Formula as follows:

> The Department's method for calculating a fully allocated pole attachment rate involves three steps: (1) placing an average value on a utility's net investment in poles (i.e., the costs of bare poles and the costs to install the poles); (2) developing an annual carrying charge to recover the ongoing cost of poles (i.e., a utility's rate of return, depreciation, taxes, and administrative and maintenance expenses); and (3) allocating the costs among the utility and others using the pole to attach their lines and equipment.[11]

As illustrated below, each of the three major components of the Massachusetts Formula – net investment in poles, carrying charges and space allocation – are fundamentally the same for municipal lighting plants and IOUs.

**Net Investment in Poles.** Account 364 (poles, towers and fixtures) is the starting point of the Massachusetts Formula and both municipal lighting plants and IOUs book pole costs in an identical manner to Account 364. Moreover, under the Massachusetts Formula, computation of net investment in poles is even more straightforward for municipal lighting plants than it is for IOUs. Because IOUs do not report accumulated depreciation for poles in their public accounting reports, attachers must estimate this figure through a proration calculation.[12] By contrast, a municipal lighting plant's net investment in poles is *directly* reported in cell "g6" on page 17 of a municipal lighting plant's annual report filed with the DPU.[13] The use of utility specific data in

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[11] *A-R Cable Services* at 8.

[12] *See Cablevision of Boston* at 27-28 and Table 1 (Rows B and KK). IOUs report their data in FERC Form 1 reports and are not required to report account specific accumulated depreciation. In *Cablevision of Boston*, the most detailed level of accumulation depreciation reported was at the level of distribution plant, and accordingly, accumulated depreciation for pole account 364 was estimated based on a proration of the reported value for aggregate distribution plant.

[13] *See* Comcast Compl., Exhibit 14, page 17, cell g6. Accordingly, in its Complaint, Comcast utilized PMLP's own publicly reported data for pole depreciation rather than a less accurate estimate derived through proration. *See* Comcast Compl., Exhibit 13, Row D. As explained in *Cablevision of Boston*, "[t]he Department's goal is to accurately calculate pole costs while balancing the need to use publicly available data in its pole attachment rate." *Cablevision of Boston* at 27.

lieu of presumptive or estimated values is fully consistent with the Massachusetts Formula. Indeed, the Department used specific utility data in lieu of presumptive values for a number of formula inputs in *A-R Cable Services*.[14]

Nor do municipal lighting plants incur accumulated deferred taxes ("ADT") because, as non-profit, government-owned entities, they do not pay income taxes. Therefore, zero-dollar figures are inserted in the ADT-related portions of the Massachusetts Formula for municipal lighting plants, which further simplifies the Formula.

**Carrying Charges.** Municipal lighting plants and IOUs report their annual pole maintenance expenses (Account 593) and "administrative & general expenses" (Accounts 920 - 931) in the same manner,[15] and calculation of these carrying charges is identical for both types of utilities. Similarly, the calculation of a utility's depreciation carrying charge is identical for both municipal lighting plants and IOUs.[16]

Regarding the tax component, although municipal lighting plants do not pay income taxes, some municipal lighting plants including PMLP pay modest "contributions in lieu of taxes" to the municipal government.[17] This is an appropriate proxy for the "normalized tax expense" carrying charge element of the Massachusetts Formula.[18]

Regarding the rate of return component of the carrying charge, although PMLP is a non-profit, debt-free, government-owned entity with a massive amount of "unappropriated earned

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[14] *See A-R Cable Services* at 32 (Data inputs for Net Investment in Appurtenances and Usable Space).

[15] For municipal lighting plants, these costs are reported on page 41 of the annual report, while IOUs report these costs on pages 322-23 of the FERC Form 1 reports.

[16] *See Cablevision of Boston* at Table 1, Rows X – BB; *A-R Cable Services* at 32, Rows X – BB; and Comcast Compl., Exhibit 13, Rows X – BB.

[17] For example, in 2012, PMLP paid $480,000 to the City of Peabody and $15,000 to the Town of Lynnfield, for a total of $495,000. *See* Comcast Compl., Exhibit 14, PMLP's 2012 Annual Report at page 21.

[18] *See* Comcast Complaint, Exhibit 13, Row O.

surplus,"[19] Comcast believes a rate of return carrying charge is nonetheless appropriate under the Massachusetts Formula for PMLP and municipal lighting plants generally.[20] In its initial rate calculation PMLP used a return element of 5.0%,[21] which Comcast also used in its rate calculation.[22] In its most recent rate calculation, however, PMLP inexplicably increased the return carrying charge to 8.0% – an increase of 60%.[23] In any event, as an input to the Formula, the appropriate level of return for PMLP can be determined in Phase II.

**Space Allocation**. A pole owned by a municipal lighting plant is physically the same as a pole owned by an IOU and hosts third-party attachments in an identical way, so there is no rational reason to allocate space differently for municipally-owned poles. The Department thoroughly examined space allocation issues in *Cablevision of Boston* and *A-R Cable Services*.

In *Cablevision of Boston*, the Department adopted a presumption of 13.5 feet of usable space, which may be rebutted only if "a company provides credible evidence, in the form of a statistical analysis or projections using actual pole surveys, that its average usable space is materially different from 13.5 feet."[24] Similarly, in *Cablevision of Boston*, the Department adopted a rebuttable presumption that attachments occupy one foot of usable space.[25] In *A-R Cable Services*, the Department held that the 40-inch "neutral zone" and pole top portions of a

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[19] As of December 31, 2012, PMLP had accumulated an Unappropriated Earned Surplus of approximately $36.5 million, an amount that represents nearly 40% of its total assets of $94.9 million. *See* Comcast Compl., Exhibit 14, PMLP's 2012 Annual Report at pages 11-12.

[20] For PMLP, which retains a substantial earned surplus and holds zero long-term debt, this provides the utility with cost recovery in excess of the actual economic cost of capital.

[21] *See* Comcast Compl., Exhibit 8, page 5, Row 3 ("Utility 'margin' on poles, towers and fixtures . . . 5%").

[22] *See* Comcast Compl., Exhibit 13, Row CC.

[23] *See* PMLP Answer, La Capra Affidavit, Appendix B, Exhibit 3, Row 18.

[24] *Cablevision of Boston* at 43-44.

[25] *Cablevision of Boston* at 44.

pole "are 'usable' for pole attachment ratemaking purposes," which is "consistent with the Massachusetts statutes and regulations governing pole attachments."[26]

PMLP has not even attempted to rebut any of these presumptions. Comcast therefore used the Department's presumptions of 1.0 foot of occupied space and 13.5 feet of usable space in its rate calculation.[27] PMLP could, of course, attempt to rebut these presumptions in Phase II of this proceeding, in accordance with the Department's directives from *Cablevision of Boston* and *A-R Cable Services*.

*B. The Formula Properly Deals with Unusable Space*

The Department has twice determined that the Massachusetts Formula *is*, in fact, based on "fully allocated costs."[28] The FCC has also specifically *rejected* the claim (repeated in PMLP's Response)[29] that the FCC Formula (and, accordingly, the Massachusetts Formula) does not allocate costs of the unusable space to attachers:

> [The power company]'s repeated claims that cable attachers do not pay for any costs of unusable space *is a complete mischaracterization of* the Pole Attachment Act and the Commission's rules. Cable attachers pay all of the costs associated with the pole attachment, which are allocated based on the portion of usable space occupied by the attachment. The costs associated with the entire pole are included in that calculation.[30]

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[26] *A-R Cable Services* at 28.

[27] *See* Comcast Compl., Exhibit 13, Rows DD and EE.

[28] *Cablevision of Boston* at 18 ("Using the method based on the federal approach to pole attachment rates, which is outlined below, meets Massachusetts statutory standards as it adequately assures that BECo recovers any additional costs caused by the attachment of Complainants' cables to BECo's poles, while assuring that the Complainants are required to pay no more than the fully allocated costs for the pole space occupied by them."); *A-R Cable Services* at 7 ("In the recent [*Cablevision of Boston*] case, the Department established a method to estimate the fully allocated costs of pole attachment . . . .) and 8 ("The Department's method for calculating a fully allocated pole attachment rate involves three steps . . . .").

[29] PMLP Response ¶ 7.

[30] *Alabama Cable Telecomms. Ass'n v. Alabama Power Co.*, 16 FCC Rcd 12209, 12236 ¶ 60 (2001) (emphasis added), *aff'd*, *Alabama Power Co. v. FCC*, 311 F.3d 1357 (11th Cir. 2002), *cert. denied*, 540 U.S. 937 (2003).

Thus there is no basis for any argument that the FCC or Massachusetts Formulas either create a subsidy or will otherwise prevent PMLP from recovering the legitimate costs of hosting and accommodating Comcast's attachments. The Department's Massachusetts Formula is consistent with and furthers the objectives and express terms of Section 25A.

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As demonstrated above, the Massachusetts Formula is easily and properly applied to municipal lighting plants. The particulars of applying it to PMLP will be addressed in Phase II of this proceeding, along with the development of any additional facts needed to finalize PMLP's rate computation.[31]

## IV. OTHER STATES HAVE APPLIED THE FCC FORMULA TO MUNICIPAL UTILITIES

The fact that the Massachusetts Formula is appropriate for municipal lighting plants, without prejudice to those pole owners, is confirmed by the fact that the FCC Formula – upon which the Massachusetts Formula is based – is successfully applied to IOUs and municipally-owned utilities in a number of other states.[32] Indeed, earlier this year, the state of Missouri adopted legislation applying the FCC Formula to attachment rates charged by municipally-owned utilities.[33]

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[31] For example, it appears that PMLP has to date not filed its annual report for 2013 with the DPU, so Comcast has used older cost data from 2012. Similarly, PMLP has failed to provide Comcast with an accurate count of the number of poles it owns, so Comcast has estimated this figure. In Phase II those issues can be easily dealt with through discovery or stipulation.

[32] Alaska Stat. §§ 42.05.311, 42.05.321; Alaska Stat. § 42.05.990(5) (munis are included within the definition of a public utility, which are subject to regulation applying the FCC Formula); N.C. Gen. Stat. § 62-350(a) (recently applied to require municipal utilities to utilize the FCC Formula to set pole rates in *Time Warner Entm't-Advance/Newhouse P'ship v. Town of Landis*, No. 10 CVS 1172, slip op. at 26, ¶ 83 (N.C. Super. Ct. Rowan Cnty. June 24, 2014); Or. Rev. Stat. § 757.270–290, 759.650–675; Colo. Rev. Stat. § 38-5.5-108(1).

[33] Mo. Rev. Stat. § 67.5104.

The fact that authorities in numerous other states rely on the FCC Formula to establish maximum attachment rates for pole attachments to municipally-owned poles reaffirms that there are no material differences between IOUs and municipally owned utilities when it comes to establishing just, reasonable, and compensatory rates for pole attachments. This conclusion also reflects decades of judicial decisions, including by the United States Supreme Court, confirming that the FCC Formula provides fully compensatory rates for pole attachments.[34] In addition, agency decisions at the state and federal levels reaffirm that the FCC Formula (and formulas based on that method, like the Massachusetts Formula) establishes rates based on fully-allocated costs and is not a subsidy because the Formula "reasonably balances the interests of subscribers of CATV services as well as the interests of consumers of utility services" as required by Section 25A.[35]

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[34] *See FCC v. Florida Power Corp.*, 480 U.S. 245, 253-54 (1987) (finding that it could not "seriously be argued, that a rate providing for the recovery of fully allocated cost, including the cost of capital, is confiscatory."); *Alabama Power Co. v. FCC*, 311 F.3d at 1370-71 ("[A]ny implementation of the [FCC cable pole attachment rate] (which provides for much more than marginal cost) necessarily provides just compensation.").

[35] *See Implementation of Section 224 of the Act,* 26 FCC Rcd 5240, 5309 (2011) (the FCC cable formula is a fully allocated cost methodology), *aff'd, Am. Elec. Power Serv. Corp. v. FCC*, 2013 U.S. App. LEXIS 3924 (D.C. Cir. 2013); Oregon Pole Attachment Rulemakings, 2007 Ore. PUC LEXIS 115, at *24 (" . . . the [FCC's] cable formula has been found to fairly compensate pole owners for use of space on the pole . . . we will follow the cable rate formula and the subsequent FCC and court decisions interpreting it."); Consideration of Rules Governing Joint Use of Utility Facilities and Amending Joint-Use Regulations Adopted Under 3 AAC 52.900 – 3 AAC 52.940, Order Adopting Regulations, 2002 Alas. PUC LEXIS 489, at *6 (Oct. 2, 2002) ("The CATV formula is reasonable and should be the default formula for calculating pole attachment rates . . . . We find that the formula provides the right balance given the significant power and control of the pole owner over its facilities."); California Competition Decision, 1998 Cal. PUC LEXIS 879 at *87-89 ("We conclude that the adoption of attachment rates based on the [FCC cable rate] formula provides reasonable compensation to the utility owner . . . [T]he formula does not result in a subsidy since the formula is based upon the costs of the utility. A subsidy would require that the rate be set below cost. The fact that the rate is below the maximum amount that the utility could extract for its pole attachment through market power absent Commission intervention does not constitute a subsidy."); *Trenton Cable TV, Inc. v. Missouri PSC*, Memorandum Opinion and Order, File No. PA-81-0037, 1985 FCC LEXIS 4014 ¶ 4 (Common Carrier Bureau, 1985) ("Since any rate within the range assures that the utility will receive at least the additional costs which would not be

## V. CONCLUSION

For all of the reasons discussed above, the Department should rule that the Department's Massachusetts Formula applies to municipal lighting plants, including PMLP.

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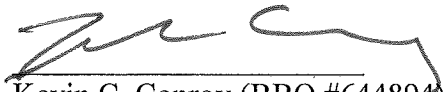
incurred but for the provision of cable attachments, that rate will not subsidize cable subscribers at the expense of the public.").

Respectfully submitted,



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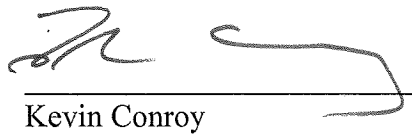
Dated: July 8, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2014, I served the foregoing document by personal delivery and first-class U.S. Mail to the attached Service List in accordance with the requirements of 220 CMR 1.05.



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