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January 19, 2021

Shona D. Green, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118

Re: D.T.C. 20-4; Petition to Remove Surety Bond Requirement for Utility License Agreements for Municipalities, D.T.C. 20-4

Dear Ms. Green,

NSTAR Electric Company d/b/a Eversource Energy ("Eversource" or the "Company") provides the following comments in response to the Town of Shutesbury's ("Town") Petition to Remove Surety Bond Requirement for Utility License Agreements for Municipalities submitted to the Massachusetts Department of Telecommunications and Cable ("DTC") dated December 1, 2020 ("Petition").[1] In its Petition, the Town requests that the requirement for it to maintain a surety insurance bond to pay for the costs of potential removal of its fiber network be waived because it is unreasonable and unnecessary (Petition, at 3). The Town essentially makes two arguments: (1) the Town is "different than the typical communications company" because it builds and maintains public ways; and (2) utility companies "are never likely to have to exercise their rights against such a bond" because municipalities are "more stable" than commercial entities and in the "unlikely event that the Town did declare bankruptcy", the Town would still "meet all its contractual obligations" or its fiber network "would be sold and not removed" (Petition, at 2-3). The DTC should reject these arguments because they are flawed and inconsistent with the law.

Surety bonds guarantee that one party fulfills a contractual obligation to a second party through a contract with a third party in the event that the first party defaults on its contract. Surety bonds are common requirement in the construction field. See 40 U.S.C. §§ 270a-270f. The Company requires surety bonds of pole attaching entities to ensure recovery of various costs after the attachment is made such as repair costs, the cost of removal and annual licensing fees.

The Company is legally obligated to provide nondiscriminatory access to its poles for attachment. M.G.L. c. 166, §25A; 220 CMR §§ 45.01 and 45.03. Consistent with that obligation, the Company requires a surety bond of any entity that wishes to attach to the Company's poles in order to provide commercial telecommunications services.

[1] The Town did not serve the Company with a copy of its petition/complaint. See 220 CMR § 45.04(2). In the event, the DTC does not deny the Town's petition, the Company requests a hearing on this matter. See 220 CMR § 45.05(3).

The Town argues that it should be exempt from this surety bond requirement because it is "different than the typical communications company" since it builds and maintains the public ways (Petition, at 2). This argument is erroneous. The Company already permits municipalities to attach equipment to its poles without charge and without a surety bond when the attached equipment is used for essential governmental functions such as public safety. In this case, the Town is going beyond that and seeking to have the surety bond requirement waived for pole attachments used to provide telecommunication services, which is a commercial activity, and not a governmental function. There are other commercial entities in the private sector that can and do provide the same type of telecommunication services that the Town provides its residents. Therefore, the Town is requesting that it be treated differently, and more favorably, than other telecommunications service providers in the competitive market place. Waiving the surety bond requirement for one provider of telecommunications services but not for other telecommunication service providers would be inconsistent with the Company's legal obligation to provide nondiscriminatory access to its poles.

The Town argues that it differs from other telecommunication providers because municipalities are "more stable" than commercial entities and in the "unlikely event that the Town did declare bankruptcy," the Town would still "meet all its contractual obligations" or its fiber network "would be sold and not removed" (Petition, at 2-3). This argument is flawed. First, not all municipalities are financially stable. There will be instances where some commercial entities have higher credit ratings than municipalities. Therefore, municipalities are not always or inherently more stable than all telecommunication providers. Second, in the event, a municipality did experience severe financial troubles comparable to a bankruptcy, there is no legal guarantee that the municipality would honor all its contractual obligations, including annual fees, to the Company. Therefore, it is only prudent for the Company to require a municipality to have a surety bond. Third, there is no assurance that a municipality's fiber network would never be removed. Communication networks are ever evolving technologically. At some point in the future, a municipality's communications network could become technologically obsolete and need to be removed because it is of little value. Therefore, a surety bond is needed in the event a network needs to be removed due to technological obsolescence.

The Town further argues that utility companies "are never likely to have to exercise their rights against such a bond." (Petition, at 3). This argument is speculative. Although the likelihood is low that the surety bond of a municipality would have to be called upon, the possibility remains. This is why entities insure against many fairly remote risks. Unlikely events do occur. An unlikely event could cause a municipality to fail in fulfilling its contractual obligations related to pole attachments. A surety bond ensures that any cost arising from such an unlikely event is borne by the pole attacher rather than the pole owner and its customers.

Accordingly, a surety bond requirement is reasonable and necessary even for a municipality. Furthermore, to exempt municipalities from the surety bond requirement would be discriminatory and give them an advantage over their private sector competitors in providing telecommunication services.

Please contact me with any questions. Thank you for your attention to this matter.

Very truly yours,

Steven Frias

Enclosures

cc: Mark A. Merante, Presiding Officer, Department of Telecommunications and Cable
Service List, D.T.C. 20-4