



Town of Shutesbury

P. O. Box 276
1 Cooleyville Road
Shutesbury, MA 01072
(413) 259-1214

November 1, 2020

Shonda D. Green
Department Secretary
Massachusetts Department of Telecommunications & Cable
1000 Washington Street, Suite 600
Boston, MA 02118

Subject: Petition to Remove Surety Bond Requirement for Utility License Agreements for Municipalities

Dear Ms. Green,

We hereby humbly petition the Department of Telecommunications & Cable to review the “reasonableness” of one particular item in the Terms and Conditions of our attachment agreement contracts with our three local utility companies.

Shutesbury was one of the early towns in Massachusetts to build a municipal broadband network and now 87% of our resident households rely on it to deliver their telecommunications. Our fiber cable system spans all 42 miles of our public roadways and is attached in the communications space of approximately 1500 utility poles.

Each and every one of these utility poles is jointly owned by Verizon and either National Grid or Eversource. In order to install our fiber network using their poles we expected that we would have to pay to the utilities “just and reasonable rates, terms and conditions” as regulated by the Department of Telecommunications & Cable. And we were happy to comply.

In 2017 we obtained license agreement contracts from each of these three utilities. Our MLP Board reviewed those contracts at the time, and we noted one particular item in the attachment agreements that did not seem reasonable to us.

Each standard agreement includes a requirement for the Town to maintain a surety insurance bond that guarantees to pay for all costs of removal of the municipal fiber network if the town ceases to comply with the license agreements - or if the Town declares bankruptcy and cannot pay for pole attachment rentals and/or fiber removal. The Town currently pays \$6,750 per year to an insurance company to maintain those surety bonds. See Surety Bond Clauses in the Appendix below.

At the time we inquired if it would be possible to amend any parts of the agreements before signing and were told that this was their well-established standard attachment agreement. The licensing agents assured that any proposed changes would have to go through an extensive legal review that would take several months. Our townspeople were desperate for reliable internet and we could not afford to delay the project further so we signed those standard agreements. We have not reached out to the three utility companies for a negotiation of the standard agreement in the intervening years because we found that trying to communicate with the utility companies throughout the make-ready process was an immense challenge and a drain on our Town's resources. As a mostly volunteer run committee we simply don't have the resources or lawyers to advocate with each individual utility and navigate the process of getting each agreement changed.

We therefore would like to file a petition respectfully requesting that the DTC review the surety bond requirement as it pertains to municipal entities, and consider whether it meets the DTC 220CMR standards of "reasonableness".

In support of our Petition for Review we submit that such surety bonds add an unnecessary and unreasonable expense to municipal broadband networks and should be waived for the Town of Shutesbury and for all municipalities for the following reasons:

- We submit that, because of the aforementioned difficulty for a small town to negotiate with a huge telecommunications company like Verizon, and because the very same situation applies to many other small towns in western Massachusetts, the DTC can obviate the need for every town to negotiate this specific matter with the utilities to individually obtain the required contractual modification.
- A Town is different than a typical communications company,. As evidence of that assertion we include some typical utility Pole Petitions (see Appendix: Pole Petitions). We routinely receive these petitions, submitted by utility corporations, requesting charters to place poles on the Town's public way. The language appears little changed from the 1920's to now. Every single petition for over 100 years proposes to "reserve space for one crossarm" on every pole for the Town to use for fire and police signal systems, but never stipulates any requirement for the Town to maintain a surety- bond for the removal of such equipment. We would submit that the reason there is no bond requirement is because of the implicit spirit of mutual benefit involved in the Town/utility relationship.
- Also, unlike other potential attaching entities like CATV, we build and maintain the public way at no cost to the utilities.
- The Town has not subsequently imposed any retaliatory or reciprocal bonding requirement on utility companies to require pole removal, even though telephone companies have occasionally declared bankruptcy and copper phonelines are becoming obsolete. The current utility bonding requirement is not reciprocal and is inconsistent with the spirit of the underlying Town pole charters.
- We agree that the surety bond requirement is quite necessary and reasonable for other entities such as CATV corporations who routinely use space on utility poles. These corporations are more transient and more subject to volatile market and technology forces than towns, which are more stable entities. (Consider the "1735" founding year reference in our Town seal above.)
- Even in the unlikely event that the Town did declare bankruptcy, the State would appoint an administrator that would by law, reorganize the Town's finances to meet all contractual obligations. Also, given that the municipal fiber system is a valuable asset that has long-term value and is compatible with FiOS and future 5G technologies, it would be sold and not removed.

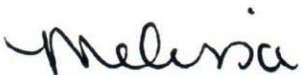
Even if it had no further value as a communication system, it would make sense for the utility to leave it in place. This is because the galvanized steel support cable used by the relatively light fiber cable is located above the phone cable in all locations, and regularly protects the phone cable from falling trees. The Town's steel support cable and guys also add stability and significant strength to the utility pole system against storms, wind and tree falls.

- The utility companies would not be negatively impacted by a waiver because they are never likely to have to exercise their rights against such a bond., It is money being paid to an insurance company for security against a supremely unlikely event. The utility does not get any of that money and is never likely to benefit. The only benefiting party is the insurance company. In effect, they sell the very same product twice! Consider if one of the utilities exercised their "cable removal for default" clause; there would be no cables left for the other utility to charge to remove.
- The Verizon and National Grid attachment license agreements for the University of Massachusetts, Amherst, do not entail an ongoing surety bond requirement, so there is precedent for a waiver/exceptions to the surety bond requirement for certain entities.
- Our National Grid attachment license agreement includes a clause that this insurance bonding requirement is potentially negotiable. (Section 3.3 of License Agreement, see Appendix).

Remedy Proposed: We respectfully request that the DTC instruct the utilities to amend our attachment agreements to waive all such ongoing surety bond requirements for the Town of Shutesbury, and for all towns in the Commonwealth who have municipal broadband networks.

We would also take this opportunity to gratefully acknowledge the excellent work of your department, as it carries out its crucial responsibilities to regulate the telecommunications infrastructure for the benefit and betterment of the whole Commonwealth. We would not otherwise have such a fantastic broadband system in our Town.

Respectfully,
The Shutesbury Select Board and MLP Manager



Melissa Makepeace-O'Neil,
Select Board, Chair



April Stein
Select Board



Rita Farrell
Select Board



Gayle Huntress
Town of Shutesbury
Municipal Light Plant Manager
413.887.8505
broadband@shutesbury.org

Appendix: National Grid, Surety Bond Excerpt

Section 3.0: FEES AND CHARGES

3.3 Licensee shall furnish bond or other satisfactory evidence of financial security in such form (APPENDIX III Form E hereto attached) and amount as Licensor from time to time may require, to guarantee the payment of any sums which may become due to Licensor for fees due hereunder or charges for work performed for the benefit of Licensee under this Agreement, including the removal of Licensee's Attachments upon termination of this Agreement or upon termination of any License issued hereunder. The financial security requirement may be waived in writing by Licensor and reinstated if waived. The bond or other satisfactory evidence of financial security shall remain in full force and effect until all Attachments have been removed and all sums due to Licensor have been fully paid.

Form E
(NAME OF INSURANCE COMPANY)
BOND

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, THAT _____ a corporation of _____, located at _____, as the Principal and _____, a corporation organized under the laws of _____ and authorized to do business in the State of _____ and having its principal office at _____, (hereinafter called the Surety), as Surety, are held firmly bound unto _____, hereinafter referred to as Oblige, in the full and just sum of _____ to the payment of which sum well and truly be made, the Principal and Surety bind themselves, and each of their successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Agreement, dated _____, with Oblige, wherein the Oblige has granted permission to the Principal to make attachment of Cables together with the necessary Appurtenant Facilities including attachments for service wires leading from poles to Principal's customers, to certain poles of the Obliges, located in _____.

WHEREAS, THE OBLIGES are willing to permit such attachments to be made subject to the terms and conditions of the aforesaid Agreement and providing a bond is given by the Principal covering the true and faithful performance of said Agreement, which Agreement is or may be attached hereto for reference.

NOW THEREFOR, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well and truly perform and carry out the covenants, terms and conditions of said agreement, then this obligation shall be void; otherwise it shall remain in full force an effect.

The surety may cancel and terminate this Bond by giving thirty (30) days written notice thereof by Registered Mail to the Oblige, in which event the cancellation and termination shall be effected thirty (30) days after said Oblige received such notice, but notwithstanding said cancellation or said expiration date, this bond shall remain in full force and effect as to attachments authorized under said agreement prior to the effective date of cancellation or expiration date until all of said attachments shall have been removed and as to any other obligations or responsibilities accrued prior to said cancellation date or said expiration date.

SIGNED, SEALED AND DATED this _____ day of _____, _____

(PRINCIPAL)

By: _____

ATTEST:

(SURETY)

_____ By: _____

Appendix: Verizon, Surety Bond Excerpt

ARTICLE XII - SURETY REQUIREMENTS

- 12.1 Licensee shall furnish either a Surety Bond or irrevocable Letter of Credit at Licensee's option, satisfactory to the Licensor according to the following criteria:

Poles	Security
1 – 50	\$10,000
51 – 500	\$75,000
501 – 2000	\$300,000
2001 – 3000	\$450,000
3,000 +	\$500,000 minimum

- 12.2 If the financial security is in the form of a bond, irrevocable Letter of Credit, or other security as deemed acceptable by Licensor, such instrument shall be issued by a nationally recognized and rated surety company or bank and shall guarantee Licensee's obligations under the agreement. The Licensee is obligated to maintain the security in the full amount for the terms of the agreement.
- 12.3 The amount of the bond or the financial security shall not operate as a limitation upon the obligations of the Licensee.

ARTICLE XIII - LIABILITY AND DAMAGES

- 13.1 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements consistent with applicable law. Licensor shall not be liable to Licensee for any interruption of Licensee's service nor for interference with the operation of Licensee's communications services arising in any manner, except from Licensor's negligence or willful misconduct, out of the use of Licensor's poles.
- 13.2 Licensor shall exercise reasonable care to avoid damaging the facilities of Licensee attached to poles under this Agreement, and shall make an immediate report to Licensee of the occurrence of any such damage caused by Licensor's employees, agents or contractors.

Appendix: Pole Petitions

MASS. FORM 556
11-1-45

PETITION FOR POLE AND WIRE LOCATIONS

To the Board of Selectmen
of Shutesbury Massachusetts.
Springfield, Mass., May 11, 1948

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY requests permission to locate a line of wires, cables, poles, and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way or ways:—

West Pelham Road

Eleven (11) poles, seven (7) poles on the west side, four (4) poles on the east side, located approximately 140 feet north of Shutesbury-Pelham Town Line, north for approximately 2992 feet.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to erect and maintain a line of wires, cables and poles, together with such sustaining and protecting fixtures as it may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked—N. E. T. & T. Co., No. B-6798-A Dated 5-7-48

Also for permission to lay and maintain underground laterals, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

Your petitioner agrees to reserve space for one crossarm at a suitable point on each of said poles for the fire, police, telephone and telegraph signal wires belonging to the municipality and used by it exclusively for municipal purposes.

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY

By *J. Huber*
District Plant Engineer

PETITION FOR JOINT OR IDENTICAL POLE LOCATIONS
Springfield MA, Dated December 26, 2007

To the Board of Selectmen of the Town of Shutesbury Massachusetts

**VERIZON NEW ENGLAND and
NATIONAL GRID**

Request permission to locate poles, wires, cables and fixtures, including the necessary anchors, guys and other such sustaining and protecting fixtures to be owned and used in common by your petitioners, along and across the following public way or ways:

LEVERETT ROAD: Place two (2) jointly owned poles on the Southerly side of Leverett Road at the following approximate locations:

- T.38/E.78 - two thousand four hundred ninety-five (2495) feet Westerly from the centerline of Pratt Corner Road.
- T.39/E.79 - two thousand six hundred forty-five (2645) feet Westerly from the centerline of Pratt Corner Road.

LEVERETT ROAD: Place three (3) jointly owned poles on the Northerly side of Leverett Road at the following approximate locations:

- T.40/E.80 - two thousand seven hundred ninety-five (2795) feet Westerly from the centerline of Pratt Corner Road.
- T.41/E.81 - two thousand nine hundred seventy (2970) feet Westerly from the centerline of Pratt Corner Road.
- T.42/E.82 - three thousand one hundred forty-five (3145) feet Westerly from the centerline of Pratt Corner Road.

Reason: Place five (5) jointly owned poles to provide for the distribution of intelligence and telecommunications and for the transmission of high and low voltage electric current to customers in Shutesbury and Leverett.

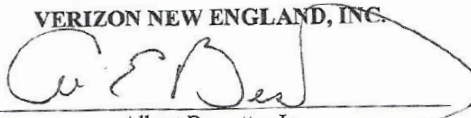
Wherefore they pray that after due notice and hearing as provided by law, they be granted joint or identical locations for and permission to erect and maintain poles, wires, and cables, together with anchors, guys and other such sustaining and protecting fixtures as they may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked- Verizon No. 9ACTHN dated December 26, 2007.

Also for permission to lay and maintain underground laterals, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Your petitioners agree to reserve space for one crossarm at a suitable point on each of said poles for the fire and police telephone signal wires belonging to the municipality and used by it exclusively for municipal purposes.

VERIZON NEW ENGLAND, INC.

By _____



Albert Bessette, Jr.
Manager-Right of Way