



New England Cable & Telecommunications Association, Inc.
● 53 State Street ● Suite 525 ● Boston, MA 02109
Tel: 781.843.3418

New England Cable & Telecommunications Association, Inc.

September 8, 2022

VIA E-MAIL

Shonda D. Green, Secretary
Department of Telecommunications & Cable
1000 Washington St., Suite 600
Boston, MA 02118-6500
dte.filing@mass.gov

RE: D.T.C. 22-4 – CRC Communications LLC d/b/a OTELCO v.
Massachusetts Electric Company and Verizon New England, Inc.

Dear Secretary Green:

By this letter, the New England Cable and Telecommunications Association, Inc. (“NECTA”)¹ respectfully replies to the Initial Briefs of Massachusetts Electric Company d/b/a National Grid (“National Grid”), Verizon New England, Inc. (“Verizon”) and the Department of Public Utilities (“DPU”).

NECTA shares the DPU’s view that broadband is important and integral to businesses, educational institutions, and individuals in the Commonwealth as underscored by the Massachusetts Strategic Broadband Plan² (“Massachusetts Strategic Plan”). The DPU points to the Commonwealth’s dedication, to date, of substantial time, energy and funding towards the deployment of high-speed broadband deployment and to the participation of a last-mile working group that focused on the coordination of activities required to make space available on utility poles.³ However, the job is not complete. Unserved and underserved locations remain. The Massachusetts Strategic Plan shows that another \$330 million in funding is forthcoming.⁴ It is vitally important for the Commonwealth to make efficient and timely use of these funds. A regulatory environment that provides business certainty around broadband deployment without

¹ NECTA is a non-profit corporation and trade association that represents the interests of most community antenna television ("cable") and broadband internet providers in Massachusetts, including affiliates of Charter Communications, Comcast and Cox (collectively, the "NECTA Members") and their competitive local exchange company affiliates. NECTA offers the following comments as a Limited Participant in the proceeding.

² <https://broadband.masstech.org/massachusetts-broadband-strategic-plan>. DPU Initial Brief at 7.

³ DPU Initial Brief at 7-8.

⁴ Massachusetts Strategic Plan at 21.

sacrificing safety by not prohibiting last-mile construction techniques that can be implemented safely in limited situations is an essential component in this effort.

In considering the issues raised by OTELCO, the Department of Telecommunications and Cable (“DTC”) must be guided by the underlying principle of the Massachusetts pole attachment rule that “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.”⁵ In short, the interests of both utility customers and customers of pole attaching entities in today’s broadband environment must be considered.⁶

Additionally, with respect to the issues raised by OTELCO’s complaint, NECTA strongly urges the DTC to consider federal law and state law and regulations in other jurisdictions rooted in the same principles of nondiscriminatory access to poles on just and reasonable terms and conditions.⁷ Pole owners and communications companies like NECTA members operate in multiple jurisdictions. Having similar regulations – standard rules of the road based on generally applicable safety standards⁸ – rather than different ones in each state, provides business certainty and promotes timely and efficient access to poles.⁹

NECTA members compete vigorously with Verizon, OTELCO, wireless broadband providers and other communications companies, and the customers of all these companies rely on electric power for their services to function. NECTA members are also committed to the safety of the electric companies’ networks, employees and contractors. NECTA has no reason to support unsafe construction practices or practices that would impede service restoration. NECTA supports the practices of boxing in limited situations to avoid a pole replacement and attaching below the ILEC, when done safely and in compliance with the National Electric Safety Code (“NESC”) as a means of supporting timely and efficient deployment of broadband across the Commonwealth.¹⁰ NECTA also strongly supports the requirement that pole owners provide

⁵ 220 CMR §§45.03(1), 45.01, and M.G.L. c. 166 §25A – the Department “shall have authority to regulate the rates, terms and conditions applicable to attachments, and in so doing shall be authorized to consider and shall consider the interest of subscribers of cable television services and wireless telecommunications services as well as the interest of consumers of utility services; and upon its own motion or upon petition of any utility or licensee said department shall determine and enforce reasonable rates, terms and conditions of use of poles”.

⁶ NECTA does not agree with the DPU’s position that the status quo (prohibiting boxing and placement below the ILEC) is necessarily non-discriminatory and just and reasonable. See also, National Grid Initial Brief at 7; Verizon Initial Brief at 4.

⁷ See 47 USC §224(f) and 47 CFR §1.1403(a) - utility shall provide nondiscriminatory access to poles. NH PUC 1301.01 – mandate of RSA 374:34 is to ensure rates, terms and conditions for pole attachments that are non-discriminatory, just and reasonable. 35-A MRSA §711.1.A – certificate of public convenient and necessity required joint use entity to provide non-discriminatory access, ME Chapter 880 (Pole) Rules §2.A.1 – utility must provide requesting party with non-discriminatory access. VT PUC Rule 3.701(A) – Vermont pole rule governs attachments on terms that are just and reasonable.

⁸ *E.g.*, the NESC and the Telcordia Blue Book.

⁹ The Commonwealth would benefit from regulations setting forth rules of the road for pole access, and NECTA would participate in such a docket.

¹⁰ See NECTA Initial Brief at 2-3. If sufficient space is available on a pole for a new attacher, and the ILEC wants to retain lowest pole placement, the ILEC can do so by shifting its facilities downward at its expense. The ILEC should not be allowed to forestall competition by preventing access to usable space on a pole.

detailed pole-by-pole make ready estimates upon request. Planning and construction of broadband networks are impeded when pole owners provide make ready cost estimates on a project basis.¹¹

As indicated in NECTA's Initial Brief,¹² the DTC is urged to make it clear that pole owners cannot charge a new attacher to remediate existing non-compliant pole conditions. NECTA agrees with Verizon that if a make ready survey determines a pole needs to be replaced because of conditions such as damage, rot or lean, the pole owner should not charge the new attacher to replace the pole. Further, NECTA agrees with Verizon that where remediating a non-compliant condition on a pole would require replacing the pole with a taller one, the pole owner should not charge the new attacher for the pole replacement.¹³

However, NECTA differs with Verizon where a taller pole is needed to accommodate a new attacher, even after allowing for the remediation of non-compliant pole conditions. In those situations, NECTA recommends that the DTC make it explicit that the costs of pole replacements be shared between owner and attacher equitably, with the attacher only responsible for those costs for which their new attachment is solely responsible. To that end, NECTA proposes that a third-party attacher that causes the need for a pole replacement is responsible only for a reasonable estimate of the net book value of the pole that has been replaced.¹⁴

Finally, NECTA notes that the Massachusetts pole attachment regulations do not address OTELCO's issues. In NECTA's experience, filing formal complaints is time consuming and expensive. Telecommunications attachers file complaints only as a matter of last resort. Therefore, the DTC must render a decision on OTELCO's complaint within the prescribed timeframe.¹⁵

¹¹ See NECTA Initial Brief at 11. NECTA disagrees with National Grid's position that it should only have to provide additional cost breakdown in its "sole discretion" when the cost is unusually high. National Grid Initial Brief at 23.

¹² See NECTA Initial Brief at 10.

¹³ Verizon agrees with these principles. Verizon Initial Brief at 19-20. Where there is an existing non-compliant pole condition, National Grid agrees it should bear the cost of replacing the old pole with a new pole of the same height and class. See National Grid's Initial Brief at 19.

¹⁴ NECTA notes that the FCC recently initiated a rulemaking proceeding to consider, among other things, the allocation of costs for pole replacements. See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Second Further Notice of Proposed Rulemaking, FCC 22-20, 2022 FCC LEXIS 946 (Mar. 18, 2022)* ("FNPRM"). As NECTA noted in its Initial Brief, the FCC previously clarified that a pole owner cannot require a new attacher to pay the entire cost of pole replacement "when a pole already requires replacement (e.g., because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is made. See NECTA Initial Brief at 10, citing *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling*, 36 FCC Rcd 776 at ¶ 8 (2021).

¹⁵ The DPU urges the DTC not to decide the issues in this docket in an "abridged" time frame. DPU Initial Brief at 12. However, unlike other certified states, Massachusetts does not have regulations addressing the issues raised by OTELCO. In the absence of such regulations, complaints are the only avenue of redress. 47 U.S.C. §224(c)(3) – a "State shall not be considered to regulate the rates, terms and conditions of pole attachments (A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and (B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter (i) within 180 days after the complaint is filed with the State, or (ii) within the applicable period prescribed

NECTA appreciates the DTC's consideration of the positions expressed in NECTA's Initial Brief and in this letter.

Sincerely,

/s/ David C. Soutter

David C. Soutter, Esq.
Director of Public Policy and Regulatory
Affairs
New England Cable and Telecommunications
Association
53 State Street Suite 525
Boston, MA 02109
dsoutter@necta.info

Enc.

cc: Service List (email only)

for such action in the rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint". Under 220 C.M.R. §45.08, the DTC must issue an order within 180 days of the complaint being filed.

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

CRC Communications LLC d/b/a OTELCO
v. Massachusetts Electric Company d/b/a
National Grid and Verizon New England Inc.

D.T.C. 22-4

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically served the attached letter in lieu of a reply brief from the New England Cable and Telecommunications Association upon the Service List for the above captioned proceeding, in accordance with the requirements of 207 CMR 1.05.

Respectfully submitted,

/s/ David C. Soutter

David C. Soutter, Esq.
Director of Public Policy and Regulatory
Affairs
New England Cable and Telecommunications
Association
53 State Street Suite 525
Boston, MA 02109
dsoutter@necta.info

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