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August 18, 2022

Shonda Green, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118-6500

Re: D.T.C. 22-4 – CRC Communications LLC v. Massachusetts Electric

Dear Secretary Green:

Enclosed for filing in the above matter is the Brief of Verizon MA.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alex Moore", written over a light blue horizontal line.

Alexander W. Moore

cc: Service List

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

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Petition of CRC Communications LLC,)	
d/b/a OTELCO)	
)	D.T.C. 22-4
)	
v.)	
)	
Massachusetts Electric Company d/b/a)	
National Grid, and Verizon New England Inc.)	
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BRIEF OF VERIZON MA

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Dated: August 18, 2022

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**COMMONWEALTH OF MASSACHUSETTS
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BRIEF OF VERIZON MA

INTRODUCTION

In this proceeding, CRC Communications LLA, d/b/a OTELCO (“OTELCO”) seeks to fundamentally rewrite Massachusetts pole attachment policy in OTELCO’s favor based on allegations that the pole attachment and make-ready policies and procedures that Massachusetts pole owners have followed for decades are unfair, discriminatory and unreasonable. The record in this case, however, demonstrates that the policies and procedures of Verizon New England, Inc., d/b/a Verizon Massachusetts (“Verizon MA”) and Massachusetts Electric Company d/b/a National Grid (“National Grid”) regarding opposite-side construction (i.e. “boxing” of poles), the order of attachments on the poles, and charging third-party pole attachers for the make-ready costs they cause are just and reasonable, and that those policies fairly balance the interest of third-party attachers in efficient deployment of communications infrastructure with the interests of pole owners and the general public in deploying and maintaining networks that are safe, reliable and efficient to restore in the event of emergencies.

Verizon MA recognizes the importance of access to high-speed broadband, and strongly supports efforts to expand broadband facilities throughout Massachusetts to ensure that all

residents of the state have meaningful Internet access. In fact, Verizon MA's affiliates provide wireless telephone and broadband services across the country via tens of thousands of facilities attached to utility poles owned by other companies, so Verizon MA has a vested interest in efficient, reasonable, and nondiscriminatory pole attachment procedures. But Verizon MA also recognizes the importance of preserving the safety and reliability of its network in Massachusetts.

The record demonstrates that Verizon MA's longstanding policy against boxing is reasonably designed to protect the integrity of the network, and that allowing third parties to box poles as OTELCO proposes would make it harder to work on poles in the future by preventing technicians from climbing them, would make it more difficult, time consuming and expensive to replace poles that have been boxed, would siphon Verizon MA's finite construction resources from other worthy projects, and would delay restoration of services following catastrophic damage to the poles, exacerbating the risk of harm to the public. The Department should not allow OTELCO to shift the costs of deploying its network to the pole owners, existing attachers, and the general public by boxing poles. *See* Argument Part I below.

Verizon MA's requirement that third parties install their facilities on the poles above those of Verizon MA is also just and reasonable. As shown in Part II below, allowing third parties to attach below Verizon MA is likely to result in mid-span clearance violations and potentially damage to the facilities. It would also make pole removal less efficient, more expensive and take longer, and it is likely to delay emergency restoration of service if the facility is pulled down. Again, allowing OTELCO to use this technique would effectively let it pass the costs of deploying its network on to Verizon MA and the public, and contrary to OTELCO's

claims, it is unlikely to result in anything more than nominal cost savings to OTELCO. *See* Argument Part II below.

OTELCO's allegation that Verizon MA has improperly charged it for work to remediate pre-existing code violations on the poles is equally unsupported by the record. Verizon MA has demonstrated that the few specific examples offered by OTELCO in support of this claim are in fact examples of poles in which the only work Verizon MA assessed to OTELCO is work that is necessary to prepare the poles to accommodate OTELCO's attachments – work that would still be necessary even if the pre-existing conditions were remedied. As explained in part III below, those costs are caused by OTELCO and only by OTELCO, and are therefore properly assessed to OTELCO.

Finally, as explained in part IV below, Verizon's treatment of OTELCO's attachment applications has been timely, fair, and reasonable given the size of OTELCO's project, the volume of applications it has submitted and the huge number of poles covered by those applications.

The Department should dismiss OTELCO's Complaint because Verizon MA's policy against boxing and attaching below Verizon MA, and Verizon MA's policy of charging third parties for the costs of making poles ready to accept new attachments, are just and reasonable in order to protect the integrity and efficient operation and maintenance of the network. OTELCO's desire to save money on its large network build in the Commonwealth is no basis for discarding longstanding policies that fairly and reasonably balance the safety and reliability of the network with the desire of third parties to deploy their own facilities on Verizon MA's poles in an efficient and timely manner.

ARGUMENT

I. VERIZON MA’S POLICY AGAINST BOXING IS JUST AND REASONABLY DESIGNED TO ENSURE THE EFFICIENT MANAGEMENT AND MAINTENANCE OF THE NETWORK AND THE RELIABLE DELIVERY OF SERVICES.

A. Boxing poles would make future work on the network more difficult, time-consuming and expensive, divert limited resources from other projects, and threaten public safety by delaying storm recovery efforts.

Verizon MA’s longstanding policy against boxing is reasonably designed to protect the integrity of the network. Allowing third parties to box poles would make it more difficult and expensive for pole owners and other attachers to perform work on the poles in the future, drain resources from expanding Verizon MA’s own broadband network and working on other projects for other stakeholders, and would delay emergency work to restore service to customers during an outage due to storms or other damage to the poles.

Verizon MA has a longstanding policy against boxing poles because boxing negatively impacts the safety and reliability of the overall network.¹ Boxing prevents technicians from climbing a pole past the opposite side facility, and so from accessing any Verizon MA facilities located higher on the pole, as when Verizon MA has multiple attachments on the same pole.² Verizon MA would need to send a bucket truck whenever work needs to be done on a boxed pole, “driving up costs and imposing a burden on Verizon MA’s limited inventory of bucket

¹ See Wolanin Aff., ¶ 9 and Exhibit A, Verizon Partner Solutions, Description of Limiting Circumstances to Use of Boxing and Extension Arms on Verizon Poles, revised May 22, 2019 (“Exhibit A”).

² Verizon Direct Testimony at 4, 5 (stating that where a pole is boxed, “there is not enough space for a technician to use gaffs to climb past that part of the pole. My crews would not do that.”) As the FCC has found, “boxing and bracketing in the communications space can limit the use of climbing as a means of maintenance and repair, and also complicate pole change out.” *In re Implementation of Section 224 of the Act: National Broadband Plan for Our Future*, 26 FCC Rcd 5240 (April 7, 2011), ¶ 229.

trucks.”³ Additionally, Verizon MA owns many poles in backyards and alleys which are not accessible by bucket truck, so boxing those poles would prevent maintenance work on the Verizon MA facilities on those poles.⁴

Boxing makes it more complicated, time-consuming, and expensive to replace a pole.⁵ Verizon MA and National Grid have both explained that, because the cut-and-kick method cannot be used to replace a boxed pole, “a new pole has to be set in a new hole down the line, instead of placing it in the same hole as we would normally do.”⁶ The change in pole location means that when existing attachers transfer equipment to the new pole, they must relocate the attachment hardware as well, adding time and cost to every pole replacement.⁷

Allowing third parties to box poles that support lines running in multiple directions would be especially harmful and costly. In those circumstances, Verizon MA would need to place the new pole in the same hole used by the old pole, to align it with the various lines of facilities. That would require Verizon MA to identify the third party that had boxed the pole, likely using a new database developed for that purpose, and coordinate with the boxing party to remove its facilities from the old pole before the pole owner could replace it.⁸ Not only would that drive up Verizon MA’s costs, but it would substantially delay completion of the pole replacement and any larger projects that depend on that work.⁹

³ Verizon Direct Testimony at 4.

⁴ *Id.*

⁵ *See* Verizon Direct Testimony at 5-7.

⁶ Verizon Direct Testimony at 5; National Grid response to IR DTC-NG 1-23.

⁷ *Id.*

⁸ Verizon Direct Testimony at 6-7.

⁹ *See id.* at 7.

Moreover, if third parties are allowed to box a large number of poles, the overall extra pole replacement time will materially constrain and impair Verizon MA's resources for other projects. As Verizon MA's witnesses explained:

... Verizon MA has only a finite number of outside plant technicians and crews to work on the poles. The longer it takes our crews to replace poles that have been boxed, the fewer jobs they will be able to complete in a day or a week. If third parties are allowed to box large numbers of poles across the state, then the added time demands on Verizon MA's workforce to replace boxed poles would limit our ability to do other work, as mentioned above, including expanding our broadband network, maintaining the network, performing make-ready for other attachers or removing and rebuilding network facilities in response to municipal or state projects¹⁰

Finally, boxing poles would pose a serious public safety concern. "[O]pposite-side construction will delay emergency restoration work where poles that have been boxed come down in a storm or due to other catastrophic damage."¹¹ The need for Verizon MA and the electric company joint pole owner to coordinate emergency restoration efforts with the party that boxed a downed pole or series of downed poles "could significantly delay restoring service to customers and clearing roadways for public use."¹² OTELCO's witness suggested that the Department could address the admitted ill effects of boxing by directing the boxing party to pay the pole owners the incremental costs of replacing a boxed pole¹³ (see further discussion below), but that would in no way address the harm to the general public when restoration of electrical or telephone service following a storm is delayed because OTELCO boxed the downed poles, or when the pole owners have to wait for OTELCO to show up and remove its facilities from

¹⁰ See *id.* at 7-8; see also *id.* at 2 ("[Boxing poles], if done at scale, would impair Verizon MA's ability to perform other needed work, including expanding its own, fiber-optic-based broadband network, performing make-ready work for attachers and moving and rebuilding its network facilities in response to state and municipal construction projects.")

¹¹ *Id.* at 8.

¹² *Id.*

¹³ Slavin Direct Testimony at 13.

downed poles before they can install new ones and clear a roadway for the public to use.¹⁴ The Department should not permit OTELCO to subsidize its build at the expense of the general public's safety and access to services.

Verizon MA's policy regarding boxing is fair, reasonable, and nondiscriminatory, and follows applicable law and regulatory guidance. The FCC has clearly established that "a utility may limit the circumstances in which a particular technique can be used so long as its standards are 'clear, objective, and applied equally to both the utility and the attaching entity.'"¹⁵ Consistent with this guidance, Verizon MA allows third parties to box poles, but only in the very limited circumstances where Verizon MA would do the same based on its case-by-case assessment of a number of factors.¹⁶ Verizon MA applies this policy equally to its own attachments and third-party licensees.¹⁷

B. OTELCO's arguments in favor of boxing have no merit and no support in the record.

OTELCO offers many arguments in support of boxing, but none of them has merit or reflects sound public policy. OTELCO asserts, for example, that it is *technically possible* to box poles within the bounds of the NESC,¹⁸ but the minimum safety requirements of the NESC alone are not always sufficient to protect the reliability and safety of the network.¹⁹ And in any event, as National Grid has explained, because boxing prevents technicians from safely climbing past

¹⁴ Verizon Direct Testimony at 7-8.

¹⁵ *In the Matter of Implementation of Section 224 of the Act*, WC Docket No. 07-245, *A National Broadband Plan for our Future*, GN Docket No. 09-51, Report and Order and Order on Reconsideration, P 236 (quoting 2010 Pole Attachment Order).

¹⁶ Wolanin Aff. ¶¶ 8-10 and Exhibit A.

¹⁷ *See id.*

¹⁸ *See* Slavin Testimony at 6, 8.

¹⁹ *See* Wolanin Aff., ¶ 9 and Exhibits A and B thereto; *see also* Answer at P 38.

the opposite-side facility, it is inconsistent with NESC Rule 236(a)(1), which requires that a pole have a climbing space “past any conductors, support arms, or other parts.”²⁰

Similarly, OTELCO makes much of a diagram in the Blue Book illustrating boxing on a pole, but neither that diagram nor anything else in the Blue Book endorses or condones boxing. Rather, the diagram merely anticipates that boxing may happen, and it shows how it should be done to maintain the required clearance between facilities.

Contrary to OTELCO’s arguments, boxing is not an appropriate way to circumvent the need to replace a pole, because it unfairly benefits the boxing attacher by shifting the costs of the necessary pole replacement to the pole owner and the other attachers on the pole:

Mr. Slavin seems to be saying that where a pole would be difficult to replace, boxing is a more practical solution. But as I explained above, boxing only puts off the day of reckoning. Where a pole would already be difficult to replace due to its location or the presence of side-taps or other existing facilities, boxing the pole would only make a difficult task more difficult when the pole eventually is replaced. The added costs of replacing such a pole, and the additional resources needed to get the job done, could be significant. So the practical solution is not to box the pole but to replace it, and avoid especially problematic pole replacements in the future.²¹

OTELCO also points to its deployments in Connecticut as proof that it is safe to box poles, claiming that it “has never had an incident involving its facilities in Connecticut attributable to Boxing,” that in its experience, boxing has not delayed restoration of services in emergencies, and that OTELCO has “observed no difference in operational costs where poles are boxed compared to where poles are not boxed...”²² The Department should give no weight to this testimony, because neither OTELCO nor its witness is in a position to observe the damaging effects of boxing in Connecticut. Pole owners are not likely to notify third-party attachers if a

²⁰ See National Grid Joint Rebuttal Testimony at 9.

²² See Perrone Testimony at 4; Perrone Responsive Testimony at 4.

power company or ILEC technician is injured while working on a boxed pole or to explain to the boxing party how its opposite-side construction delayed the pole owner's emergency work.²³ Similarly, as a third party attacher, OTELCO would not be aware of the added operational costs of boxing, which would fall on the pole owners and other existing attachers on the poles, not on the boxing party.²⁴

Moreover, OTELCO has only attached to facilities in Connecticut within the last five years, and it recently admitted in response to a data request that of the 110,000 poles OTELCO has boxed in the state, only 20 have been replaced.²⁵ So if OTELCO has not yet been called out to assist in replacing a pole it has boxed in Connecticut, that is not meaningful evidence that boxing does not delay pole replacement or emergency storm restoration work.

Further, OTELCO cannot simply reimburse Verizon MA and other pole owners for the additional costs caused the substandard practices it would like to make the norm for poles across the state.²⁶ Such costs are difficult, if not, impossible to predict and quantify, let alone document and recover years after the fact. As Verizon MA's witnesses explained:

[T]here is no guarantee that the third party that boxed those poles will still be in business and able to pay the added costs of replacing the boxed pole. Second, some of the costs imposed by boxing are difficult if not impossible to quantify. Where replacing a pole requires coordinating with the third-party that boxed the pole, the extent to which the project will be delayed depends in large part on the responsiveness of the third party, and may even cause delays in larger related projects.²⁷

Likewise, "[p]ayment of the 'incremental' costs of replacing a boxed pole would not compensate Verizon MA for its reduced overall capacity to complete other work – or the other parties who may

²³ See Verizon Direct Testimony at 9.

²⁴ *Id.*

²⁵ See Perrone Testimony at 2; OTELCO response to information request VZ-OTELCO 2-2.

²⁶ See Slavin Testimony at 13.

²⁷ Verizon Direct Testimony at 7.

depend on the timely completion of that work.”²⁸ And as noted above, such payment would in no way compensate the public for the delays in service restoration and storm cleanup that result from boxing.

OTELCO’s Complaint cites a number of nearby states that it claims “support the use of opposite side construction.”²⁹ But, with the sole exception of Maine, none of the states OTELCO lists require a pole owner to allow third party attachers to box a pole unless the pole owner also would box that pole.³⁰ Likewise, the FCC, requires only that a pole owner provide third-party attachers the same ability to box poles that the owner allows itself.³¹ This nondiscrimination standard is entirely consistent with Verizon MA’s policy and practice on boxing. Thus, far from being an outlier, the policy of the pole owners in Massachusetts allowing boxing only in rare circumstances is consistent with the regulations in the majority of nearby states and the FCC.

OTELCO alleges that Verizon MA has boxed nine poles in the state,³² apparently in an effort to show that Verizon MA’s policy on boxing, though facially non-discriminatory, nevertheless has been applied in a way that favors Verizon MA. This argument also falls flat. As Verizon MA has explained, three of these poles are not boxed (in that no facility in the

²⁸ *Id.* 8.

²⁹ OTELCO Complaint at 43.

³⁰ No rule or regulation in New Jersey, New Hampshire, New York, Pennsylvania, Rhode Island, or Vermont precludes or is inconsistent with Verizon MA’s policy allowing licensees to box a pole only in limited circumstances where Verizon MA too would box the pole. While the Connecticut Public Utilities Regulatory Authority (“PURA”) recently declined to prohibit boxing as a general rule, it recognized the concerns associated with boxing, and its decision allows pole owners the discretion to decide whether or not to allow boxing on their poles. *See Connecticut Public Utilities Regulatory Authority, Docket No. 19-01-52RE01, PURA Investigation of Developments in the Third Party Pole Attachment Process – Make-Ready, Decision* (May 11, 2022).

³¹ *See In re Implementation of Section 224 of the Act: National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864 (May 20, 2010), ¶ 13.

³² *See Allen Direct Testimony* at 5.

communications space on the pole is attached on the side of the pole opposite other facilities), and one of these poles was boxed consistent with Verizon MA's policy.³³ But whether the number of boxed poles is five or nine, it is a tiny fraction of the 22,000+ Verizon MA poles that are the subject of OTELCO's attachment applications. Thus, the record shows only isolated errors on the part of Verizon MA, hardly the kind of widespread boxing of poles that would support a claim of discriminatory treatment of third party attachers.

OTELCO also claims that it was not aware of Verizon MA's written policy on boxing until May of 2022³⁴, but that is immaterial to the claims before the Department. This is not a case in which the pole attacher alleges that it reasonably relied on the ability to box poles in planning its project, only to learn too late that the pole owners prohibit boxing except in rare circumstances, and OTELCO makes no such claim. Indeed, OTELCO knew or should have known from the beginning of its project not to rely on boxing,³⁵ and OTELCO admits that its budget for Massachusetts was not based on the assumption it would be allowed to box poles.³⁶ Moreover, the policy that OTELCO learned of in May of 2022 is slightly *less restrictive* than the total ban on boxing that OTELCO had previously understood to be Verizon MA's policy.³⁷ Any claim by OTELCO that it has been harmed by Verizon MA's failure to disclose earlier that it allows boxing in certain situations – a claim that OTELCO has not articulated – would be belied

³³ Verizon Response to Information Request OTELCO-VZ 2-7.

³⁴ Wolanin Aff. ¶ 13.

³⁵ See Verizon Direct Testimony at 28, explaining that “Any reasonable company planning a project to build a new network on tens of thousands of poles would be expected to do a preliminary investigation of the state of those poles in the planning stage of the project” and that even a cursory drive-by inspection would have showed OTELCO that very few poles in Massachusetts are boxed.

³⁶ OTELCO response to VZ-OTELCO 2-3.

³⁷ See Complaint at ¶ 29.

by OTELCO's failure, since learning of Verizon MA's written policy, to put forth to Verizon MA any poles that OTELCO believes would qualify for boxing under the written policy.³⁸

Finally, OTELCO speculates that if Massachusetts does not allow boxing, broadband providers will invest dollars once earmarked for Massachusetts in other states where deployment costs are more favorable.³⁹ In fact, OTELCO stated in the record that it chose to build in Massachusetts without the expectation that it would be able to box poles.⁴⁰ And there are already at least three large broadband providers in the Commonwealth who did not find the costs of deployment prohibitive. Restrictions on boxing remain standard industry practice and do not appear to be a significant factor in broadband providers' decisions about where to invest.

Boxing a large number of poles across the Commonwealth instead of paying for standard make-ready work would undoubtedly allow OTELCO to build its network faster and cheaper, but it would do so by passing the costs on to pole owners, pole workers, other attachers, and the general public.⁴¹ The Department should deny OTELCO's request to remake Massachusetts pole attachment policy to its own advantage by shifting the costs of its deployment to others.

II. ALLOWING OTELCO TO ATTACH BELOW VERIZON MA WOULD LIKELY RESULT IN MID-SPAN CLEARANCE VIOLATIONS, DELAY POLE REMOVAL AND MAKE THAT WORK MORE EXPENSIVE, AND DELAY SERVICE RESTORATION IN EMERGENCIES.

As set forth in Verizon MA's Direct Testimony, "There is a standard hierarchy of facilities placement on utility poles, with the electrical service facilities at the top, a neutral zone, then

³⁸ See Verizon Direct Testimony at 10.

³⁹ Perrone Testimony at 4-5.

⁴⁰ OTELCO Response to VZ-O 2-3.

⁴¹ See, e.g., Verizon Direct Testimony at 7.

municipal and other third-party communications providers' attachments and finally, the larger, heavier telephone facilities.”⁴² The Telcordia Blue explains the basis for the hierarchy as follows:

Within the communications space on the pole, considerations of cable characteristics (weight per foot, diameter, sag characteristics, etc.) should determine preferred hierarchy on the pole. Given the heavier nature of metallic pair traditional communications (telephony) plant, ***it is recommended that fiber optic and coaxial communications plant be placed above existing metallic pair communications plant*** as long as this is possible without compromising the 40 inches of separation between communications space and electrical power space on the pole.

Since the larger and heavier pair count metallic cables will tend to have larger sags and overload factors than fiber or coaxial cables, ***locating these metallic cables as the lowest on the pole will provide an additional safety factor to avoid physical contact or interference between different communications cables*** and between cable plant of different telecom carrier companies.⁴³

OTELCO seeks to jettison this longstanding industry practice on the grounds that attaching its cables below Verizon MA's facilities will make OTELCO's deployment cheaper and easier.⁴⁴ But the reasoning underlying the industry practice and the Blue Book's recommendation that lighter cables be attached above larger, heavier cables is sound. The record in this proceeding contains extensive evidence documenting the many safety, reliability, and practical reasons for Verizon MA's policy.⁴⁵ First and most fundamentally, Verizon MA's legacy copper cable is the heaviest communications cable on its poles, and the copper's comparative weight and size means it will sag more than other facilities in response to changing weather. As Verizon MA's witnesses explained:

[O]ur experience managing and working on the actual Verizon MA network in Massachusetts is that copper cables commonly sag more in the summer heat than

⁴² See Verizon Direct Testimony at 14.

⁴³ Telcordia Blue Book (2017 Edition), Section 3.2.1 titled “Hierarchy on Pole.” (Emphasis added.)

⁴⁴ See Allen Testimony at 18.

⁴⁵ See Wolanin Aff., ¶¶ 14-15 and Exhibit B thereto, a Verizon Network Operations and Engineering Flash on Pole Attachments, Issue 3.4 dated May 12, 2020, § 3.1.; see also Verizon Direct Testimony at 14-21.

fiber-optic cables. The larger copper cables also sag more under snow and ice loading due to winter storms than the smaller fiber-optic cables.⁴⁶

This means that the copper cable needs to be lowest on the pole to ensure that cables maintain the proper minimum mid-span clearance and do not cross in the middle of a span, potentially damaging them as they chafe against each other.⁴⁷ OTELCO's expert witness claims that there is little likelihood of this happening, but even he admitted that it "is very hard to universally maintain" the required mid-span clearance between neighboring facilities.⁴⁸

Second, the presence of third-party facilities below those of Verizon MA on a pole would make that pole more time-consuming and costly to replace.⁴⁹ When Verizon MA replaces a pole, the work necessary to transfer facilities from the old pole to the new pole proceeds according to the standard hierarchy followed across the utility sector.⁵⁰ Beginning at the top, attachers transfer their facilities following the facilities' order on the pole. At the lowest position on the pole, Verizon MA is the last to transfer its facilities and will remove the old pole at the same time.⁵¹ If OTELCO is attached below Verizon MA, Verizon MA will need to dispatch crews twice to accomplish this work: once to move Verizon MA facilities to the new pole, and a second time to remove the pole once OTELCO has removed its facilities.⁵²

In addition, allowing OTELCO to attach below Verizon MA on some poles and above it on others would greatly increase the complexity of make-ready surveys, rendering them more

⁴⁶ See Verizon Direct Testimony at 18.

⁴⁷ Id. at 17-18.

⁴⁸ Slavin response Testimony, at 2.

⁴⁹ Wolanin Aff. ¶ 15;

⁵⁰ Wolanin Aff., Exhibit B.

⁵¹ Id.

⁵² Verizon Direct Testimony at 14.

costly and time-consuming for any third party that wishes to attach to those poles in the future.⁵³ It would also increase the make-ready expenses for such attachers, by requiring Verizon MA to schedule its work to move its own attachments on poles into two dispatches, rather than the single dispatch Verizon MA can use today.⁵⁴ The Department should not allow OTELCO to shift the costs of its build to other users of the poles.

Finally and most critically, OTELCO's proposal would delay restoring the network in the event of catastrophic pole damage.⁵⁵ If third parties are allowed to attach below Verizon MA, police, public safety officials, and other utilities could not rely on the standard hierarchy of attachments as a means of identifying the owners of facilities in need of re-attachment or repair.⁵⁶ As Verizon MA's witnesses explained,

Where the lowest attacher on the pole could be any one of a number of parties, municipal officials will not know who to notify. At best, they would call Verizon MA or the power company, and we would try to identify the owner of the facility. Either way, the confusion over who owns the lowest facility on the pole is likely to delay the clean-up and restoration work.⁵⁷

For these reasons, the Department should find that Verizon MA's policy against third-party attachments below its own facilities is just and reasonable.

OTELCO proposes to pay Verizon MA to move OTELCO's facility during pole replacement as a way to offset the increased costs associated with attachment below Verizon MA's facilities.⁵⁸ But that would not address the safety concerns caused by this attachment technique. In addition, Verizon MA is not a construction company for other providers. Given

⁵³ See Verizon Direct Testimony at 15 "[T]he surveyors would need to identify different heights for the new attachments on different poles and, if dead ending is to be used, which poles could support that technique."

⁵⁴ *Id.* at 16.

⁵⁵ *Id.*

⁵⁶ *Id.* at 14.

⁵⁷ *Id.* at 16.

⁵⁸ Allen Testimony at 19-20.

that Verizon MA has finite resources for outside construction work, imposing new demands on those resources would force Verizon MA to set aside or at least re-prioritize and delay the other work it performs on the network, including expanding Verizon MA's Fios broadband services, maintaining existing infrastructure, and construction in response to municipal and state road and other projects.⁵⁹ That would be both unfair to Verizon MA and poor public policy.

OTELCO also claims that it could add extra "sag" to its fiber when it is installed below copper,⁶⁰ and that in any event, the copper cables will likely sag no more, and possibly even *less than*, the lighter, fiber-optic cables over time.⁶¹ But Verizon MA's experts, speaking from decades of experience in the field, have explained that while on paper, sagging-in is possible, it is difficult to achieve in practice, and that in the field, copper cables commonly sag more than fiber-optic cables, both in the summer heat and in the winter under snow and ice loading.⁶² The Blue Book is clear that for safety and reliability reasons, copper should be placed lowest on the pole:

Since the larger and heavier pair count metallic cables will tend to have larger sags and overload factors than fiber or coaxial cables, locating these metallic cables as the lowest on the pole will provide an additional safety factor to avoid physical contact or interference between different communications cables and between cable plant of different telecom carrier companies.⁶³

The Department should give little weight to OTELCO's claims that it has attached its facilities in the bottom position on over 16,000 poles in Maine without any of the issues Verizon MA has raised. OTELCO has admitted that it only installed those attachments within the last

⁵⁹ See Verizon Direct Testimony at 21.

⁶⁰ See Allen Testimony at 18.

⁶¹ See Slavin Responsive Testimony at 16.

⁶² Verizon Direct Testimony at 17-18.

⁶³ Telcordia Blue Book (2017 Edition), Section 3.2.1 "Hierarchy on Pole."

year,⁶⁴ and the problems caused by attaching lighter fiber-optic facilities below heavier copper ones generally develop over time as facilities age and are subject to wear and tear.⁶⁵ That OTELCO has not yet experienced such problems is neither surprising nor evidence that they will not occur in the future. In addition, OTELCO has admitted that it did not in fact attach its facilities *below* the facilities of the ILEC (an OTELCO affiliate) on approximately 4,000 of the poles in Maine but instead overlashed to them, so OTELCO's experience on those poles tells the Department nothing about the alleged safety of attaching below the ILEC in any event.⁶⁶

Moreover, Massachusetts' heavy storm loading clearance requirements make it more likely that OTELCO will encounter poles that cannot accommodate attachment below Verizon MA. OTELCO has not explained how it intends to attach below Verizon MA on some poles in a line of poles but then attach above Verizon MA (and possibly other existing attachers) on other poles, and any such plan that relies on a vertical run up a pole is likely to violate NESC requirements for clearances between facilities.⁶⁷

Finally, OTELCO's fundamental argument in favor of attaching below Verizon MA – that it would save OTELCO a lot of money – has no basis in fact. OTELCO's consultant, CHR Solutions, projects that OTELCO could save \$94,000 on a single pole application by attaching below Verizon MA's facilities and thereby avoiding pole replacements.⁶⁸ But the poles CHR cites do not have room for additional attachments whether they go above or below Verizon MA,⁶⁹ Simply changing the order of attachments on a pole, with OTELCO attaching below Verizon MA instead of above, does not save space on the pole. Either way, these poles must be

⁶⁴ See OTELCO Response to VZ-O 2-1.

⁶⁵ Verizon Direct Testimony at 17-18.

⁶⁶ See OTELCO response to VZ-O 2-1.

⁶⁷ See Verizon Direct Testimony at 15.

⁶⁸ See *id.* at 19 and Allen Exhibit DA-7.

⁶⁹ Verizon Direct Testimony at 19.

replaced. It appears to Verizon MA that CHR's alleged cost savings can only be realized by applying overly low ground clearance requirements, and when the proper clearances are applied, the cost savings for OTELCO, if any, would be minimal.⁷⁰

III. VERIZON HAS NOT CHARGED OTELCO FOR REMEDIATING PRE-EXISTING CONDITIONS.

Verizon MA has not charged OTELCO for make-ready work that was not caused by OTELCO's proposed attachments. OTELCO alleges that a number of the pole replacements that Verizon MA has indicated are necessary are actually being performed to correct preexisting NESC or other violations on the poles. However, none of the make-ready estimates Verizon MA has given OTELCO are for work to remediate preexisting conditions on a pole.⁷¹ In fact, Verizon MA does not require immediate remediation of preexisting conditions found during a make-ready survey if the pole has room to accommodate a new attachment in compliance with applicable requirements.⁷² And if make-ready surveys determine that a pole needs to be replaced due to factors other than the new attachment – such as damage, rot, or excessive lean – Verizon MA does not charge the third party attacher for that replacement, because the need to replace the pole was not caused by the new attachment.⁷³

But when OTELCO is the party causing a pole to be replaced or other work to on a pole, OTELCO is responsible for all costs associated with adding its attachment to the pole:

Where a non-compliant pole would require work to accommodate a new attachment even in the absence of code violations, then the new attacher is obligated to pay for that make-ready work. For example, where remediating a non-compliant condition on a pole would require replacing the pole with a taller one, Verizon MA would not bill the cost of the pole replacement to the new attacher. However, if the non-compliant condition could be

⁷⁰ *Id.* at 19-20.

⁷¹ Verizon Direct Testimony at 23.

⁷² *Id.*

⁷³ *Id.* at 25.

fixed without replacing the pole but the now-compliant pole would not be tall enough to accommodate the new attachment, then the new attacher would be required to pay for the pole replacement, because that work was made necessary by the new attachment.⁷⁴

The pole replacements Verizon MA has assessed to OTELCO are required because there is not enough room on the existing pole for OTELCO to add its attachment without the pole being replaced with a taller pole that has enough room.⁷⁵

The record in this proceeding does not identify any poles for which Verizon MA has charged OTELCO the costs of remediating pre-existing code violations on Verizon MA's poles. OTELCO offered a list of five poles on which it alleged that "OTELCO is being charged to rearrange existing facilities that did not meet the NESC required separation of communications lines from energized power facilities, including for pole replacements."⁷⁶ But that allegation is simply false. While there are pre-existing code violations on some of these poles, those violations are immaterial, because each of these poles could be brought into compliance without replacing it but would still not have enough room for OTELCO's additional attachment.⁷⁷ Consequently the reason each of these poles has to be replaced is to accommodate OTELCO's attachment, not to remediate the preexisting violations.⁷⁸ OTELCO should be held responsible for these costs, for which it is the sole cost causer.

OTELCO claims that it should not be charged for make-ready work, or perhaps should be given a discount, where there are code violations on the pole, even if there is room on the pole to

⁷⁴ *Id.* at 22.

⁷⁵ *Id.* at 24; *see also* Verizon MA's response to information request DTC-VZ 1-15.

⁷⁶ Declaration of David Allen, ¶11 and Exhibit C thereto.

⁷⁷ *See* Verizon Direct Testimony at 24 and Verizon MA's response to information request DTC-VZ 1-16, explaining that "the four pole replacements and the other work that Verizon MA assessed OTELCO on these five poles are all necessary to prepare the poles to accept OTELCO's attachments and is caused by OTELCO, not by the location of the existing attachments. OTELCO was properly invoiced for the costs of this work."

⁷⁸ Verizon Direct Testimony at 24.

fix those violations but not enough room to add OTELCO's attachment.⁷⁹ The presence of pre-existing violations in that situation, however, does not change the cost of making the pole ready for the new attachment, so the new attacher is not entitled to a discount:

...the costs charged to OTELCO in that scenario – for replacing the pole and transferring the facilities to the new pole – would be the same whether the [existing] CATV provider moves down the old pole first and then to the new pole or whether it transfers its attachment directly to the new pole from its non-complaint position on the old pole. In other words, whether the pre-existing attacher saves money or not, it is OTELCO – and no one else – that is causing the pole to be replaced, and OTELCO is responsible to pay the full costs of the replacement work.⁸⁰

OTELCO has offered no principled explanation why the Department should now reverse longstanding rules of cost causation and free OTELCO from paying the cost of replacing a pole that needs to be replaced *solely* to accommodate OTELCO's new attachment and *not* in order to remedy pre-existing code violations. Conversely, OTELCO has also failed to show why the cost of such a pole replacement should fall on any other party – the pole owners or the owner(s) of any attachments that are not in compliance with code – none of whom has caused the pole to be replaced.

IV. VERIZON MA'S PROCESSING OF OTELCO'S APPLICATIONS HAS BEEN TIMELY AND REASONABLE GIVEN THE ENORMOUS VOLUME OF APPLICATIONS OTELCO HAS SUBMITTED TO VERIZON MA.

OTELCO's proposed build-out amounts to one of the largest third-party pole attachment projects in Massachusetts in decades.⁸¹ OTELCO has submitted 266 applications to Verizon MA to attach to over 22,000 poles in Massachusetts.⁸² Each attachment "generates a substantial

⁷⁹ See Allen Testimony at 12.

⁸⁰ Verizon Direct Testimony at 23.

⁸¹ Verizon Direct Testimony at 26.

⁸² Wolanin Aff. ¶ 2-4. Otelco subsequently withdrew 38 of those applications.

amount of work to survey every pole and develop a make-ready estimate”⁸³ even while Verizon MA’s personnel are also attending to the applications of other third party attachers. In light of the size of OTELCO’s project and the other demands on Verizon MA’s personnel, Verizon MA’s performance in processing OTELCO’s applications is more than fair and reasonable. As Verizon MA’s witnesses explained, “A project as large as OTELCO’s will take time to complete the surveys, prepare the make-ready estimates and perform related tasks.”⁸⁴

OTELCO’s claims are also inconsistent with section 4.2 of the Pole Attachment Agreement between Verizon MA and OTELCO, which provides Verizon MA the right to limit an applicant’s filing to no more than 2,000 poles on all applications that are pending approval by Verizon MA at any one time.⁸⁵ Verizon MA has not invoked the 2,000 pole limit on OTELCO, but it makes clear that both parties understood from the beginning that there is a limit to the volume of poles that Verizon MA can process for attachment, and OTELCO has exceeded it by a factor of ten.⁸⁶ Verizon MA also explained to OTELCO in 2021 that it is not reasonably feasible for Verizon MA to survey over 22,000 poles within the constraint of 45 days, because “the sheer volume, added to the company’s existing work load for other customers’ applications, would far exceed our survey team resources, and additional time would be necessary.”⁸⁷ The Department should reject OTELCO’s claims that Verizon MA has unreasonably delayed the processing of OTELCO’s pole attachment applications.

⁸³ See Verizon Direct Testimony at 26; *see also* Verizon MA’s responses to information requests DTC-VZ 1-23 and 1-32.

⁸⁴ Verizon Direct Testimony at 26.

⁸⁵ See Verizon Direct Testimony at 26, *quoting* Exhibit 2 to OTELCO’s Complaint.

⁸⁶ Verizon Direct Testimony at 27.

⁸⁷ Wolanin Aff., ¶ 4.

CONCLUSION

For the reasons stated above, Verizon MA's pole attachment policies against boxing of poles and third-party attachments below Verizon MA's, and its policy billing third-party attachers for the make-ready work solely caused by them, are just, reasonable and non-discriminatory, and there is no basis for any of the relief sought in the Complaint. The Department should reject OTELCO's Complaint and deny its requests to amend Massachusetts pole attachment regulations, policies, and procedures.

Respectfully submitted,

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