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June 14, 2024

Shonda Green, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, MA 02118-6500

Re: D.T.C. 22-4 – Pole Attachment Complaint of CRC Communications LLC,
d/b/a OTELCO

Dear Secretary Green:

Enclosed for filing in the above-captioned proceeding is the Reply Brief of Verizon MA on Survey Issues.

Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Moore", written in a cursive style.

Alexander W. Moore

Enclosure
cc: Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

CRC Communications LLC, d/b/a Otelco)	
)	
v.)	D.T.C. 22-4
)	
Massachusetts Electric Company d/b/a)	
National Grid, and Verizon New England Inc.)	

REPLY BRIEF OF VERIZON MA ON SURVEY ISSUES

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) submits this reply brief in response to the Initial Brief of CRC Communications LLC, d/b/a/ OTELCO dated June 7, 2024 (“OTELCO Brief”). OTELCO’s arguments against updating the pole survey data from 2021-2022 are inconsistent with and not supported by the record. Further, the Department should reject OTELCO’s groundless efforts to require the pole owners to pay the costs of collecting the needed data, which is necessary solely to evaluate OTELCO’s request to box hundreds of poles.

I. New surveys are needed to supplement the existing data, which does not show whether the poles at issue are suitable for boxing – specifically whether they are corner poles – or the effects that boxing one pole may have on neighboring poles.

Verizon MA demonstrated in its Brief, at 6-10, that the preconstruction materials filed by OTELCO are not sufficient to evaluate whether boxing any of the poles would cause a specific safety, reliability, or engineering issue regarding that pole, consistent with the substantive standard the Department established in the Final Order issued on October 11, 2022 (“Order”). Specifically, Verizon MA demonstrated that those materials do not always include enough

information to determine whether a pole is a corner pole or to determine how boxing one pole may affect neighboring poles or the mid-span clearances between them.

O TELCO insists that all of the necessary information is available, *see* O TELCO Brief at 20, 21, but it fails to provide record evidence in support. O TELCO says that its witness Mr. Teed testified that information on all of the standards Verizon MA identified in assessing whether a pole is suitable for boxing can be found in the materials it filed, *id.* at 22, but as Verizon MA demonstrated in its Brief, at 8, Mr. Teed does *not* testify as to whether any of the three poles he analyzed is a corner pole or whether the line changes direction at that pole. O TELCO also cites to the declarations of Samuel DeJesus (at ¶¶ 4-6) and Kyle Reagan (at ¶ 4) for the proposition that, “Information on each of [Verizon MA’s] conditions is present in the Exhibit 5s, Verizon Form 3s and Verizon Prelims, as well as the O’Calc Reports, IKE files and photographs.” O TELCO Brief at 22. While both of those witnesses list in detail the data included in each of these documents, however, neither one of them states that any of the materials identify whether a pole is a corner pole or whether the line changes direction at a given pole. O TELCO also asserts that “Mr. Teed identified the specific locations of each of these pole conditions in each of the separate surveys.” O TELCO Brief at 22. But, again, Mr. Teed does not state anywhere in his testimony where the Department can look to determine whether a pole is a corner pole.¹

O TELCO now claims in its brief that the existence of guy wires on a pole “indicat[es] an angle or change in direction” and thus that the pole is a corner pole. *Id.* None of its witnesses,

¹ To be clear, Verizon MA has long acknowledged that the O-Calc reports do show whether a pole is a corner pole. *See* Sur-reply of Verizon MA in Opposition to Motion For Enforcement of the Final Order, at 3. But National Grid’s contractor, Osmose, generates an O-Calc report only if a pole presents an engineering loading issue, and there are no O-Calc reports for most of the poles at issue here. *See id.* at 3, and Wolanin Direct at 2; *see also* Banks Reb. at 5 (“These reports are conducted only on a subset of poles”).

however, testified to this, and the record evidence makes clear that a pole may have a guy wire but not be a corner pole. Mr. Teed testified that all three of the poles he analyzed are guyed, *see* Teed. Reb. at 6-7, yet OTELCO's Boxing Data Compilation classifies only one of these poles (pole #2) as a corner pole and says that the other two poles (pole #1 and pole #14) are not. *See* Boxing Data Compilation, lines 278, 279 and 283. So the mere fact that a pole has a guy wire does not show that it is a corner pole, and thus whether it is suitable for boxing.

OTELCO also asserts that each of Verizon MA's boxing standards "is visible on the IKE photographs, photos accompanying the O'Calc Reports, and Google Earth and Google Maps photographs as well." OTELCO Brief at 23, *citing* Teed. Reb. and DeJesus Decl. But neither of these witnesses identifies any photograph on which it is "visible" that the pole is a corner pole or explains how that can be seen in a photograph, and Mr. Wolanin testified that it is very difficult to do. *See* Wolanin Reb. at 7.

Verizon MA also demonstrated that the available materials do not always include enough information to determine how boxing one pole may affect neighboring poles or the mid-span clearances between them. *See* Wolanin Reb. at 7-8; Verizon MA Brief at 7-8. OTELCO asserts generally that "mid-span clearance information is available in the Verizon Prelims as well as the O'Calc reports," OTELCO Brief at 23, but Mr. Wolanin explained that a necessary data point in this analysis is the mid-span height of the lowest cable on the poles, and that this data is not included in the Verizon Prelims for some poles. *See* Wolanin Reb. at 8. One does not need to look far to find an example of this. The very same Verizon Prelim that Mr. Teed used in his analysis (Teed. Reb. Exhibit C) also includes a pole # 9 at line 19, sequence number 14, that was recommended for replacement, but the column labelled "Mid-Span Information" does not include the height of the cables at mid-span between poles 9 and 10. Other examples of this can

be found in other Prelims. *See e.g.* Verizon Prelim Palm A-1, line 19 (pole #4) and line 25 (pole #10), each of which is missing the mid-span height of the telco cable (i.e. Verizon MA’s facility, the lowest one on the pole) to one of the neighboring poles. If OTELCO is allowed to box any of these poles, the Pole Owners would be unable to determine the proper height of attachments on the neighboring poles without this information.

OTELCO asserts that the mid-span clearances between attachments can be assessed from photographs and that “[n]ecessary modifications can be made in the field” by “sagging in” OTELCO’s new line or simply by boxing an entire line of poles. OTELCO Brief at 23-24. Verizon MA’s concern, however, is not that the communications attachments will be too close to each other at the mid-span, but that the lowest one will be too close to the ground – closer than it would have been if one of the poles had been replaced with a taller one as originally planned. That could violate applicable ground clearance standards and create a safety hazard. In order to prevent that, the facilities attached to the neighboring pole may need to be attached higher on the pole than currently planned. *See Wolanin Reb.* at 7-8. OTELCO cannot accomplish this as an impromptu fix while in the field because, among other reasons, it does not have authority to move the existing attachments of other parties on the poles. Verizon MA needs to know in advance of construction whether boxing one pole changes where attachments must be located on neighboring poles, and where they need to go. To do that, Verizon MA needs to know the current height of the attachments at mid-span, which is not currently available for some of the poles. *See id.*

II. New surveys are necessary to update the original survey data, which is stale.

Verizon MA and National Grid each submitted substantial, uncontroverted evidence demonstrating that the conditions on many of the poles covered by OTELCO’s applications have likely changed since the existing survey data was collected two to three years ago. *See Verizon*

MA Brief at 2-6; Initial Brief of Massachusetts Electric Company d/b/a National Grid (“National Grid Brief”) at 4-6. The Pole Owners also explained how failing to update the old survey data now will likely bog down the make-ready construction work in delays and cost increases as changed pole conditions are only belatedly discovered in the field, resulting in piecemeal, inefficient re-design of the project while it is in progress. *See id.*

O TELCO asserts that the original survey data is not stale, but none of its arguments has merit. First, O TELCO says that the Pole Owners’ claim that the data is stale are belied by the length of time it takes to survey and then complete the make-ready construction work. *See* O TELCO Brief at 27-30. In particular, O TELCO asserts that Verizon MA takes 179 days on average to provide make-ready estimates to O TELCO, and that, “Under current Pole Owner practices, the Survey information will always be more than 18 months old at the time O TELCO is allowed to attach.” *Id.* at 28. O TELCO’s witness Mr. Allen alleges that survey data can be even older, up to two to three years old, when construction is complete. *See* Allen Reb. at 6.

But the bulk of the time it took Verizon MA to prepare make-ready estimates for O TELCO was spent waiting for O TELCO and Osmose to resolve their discussions over preliminary make-ready recommendations. *See* Response to DTC-VZ 3-5(E). And as Verizon MA has previously pointed out, the survey data at issue here is already two to three years old before construction has even begun. Moving forward with make-ready construction on the basis of survey data that old is unprecedented for Verizon MA. *See* Response to DTC-VZ 3-6, explaining that, “Pole applicants generally pay Verizon MA’s make-ready estimates within a few months of when they are issued, or they withdraw their applications” but that in the one instance in which survey data aged 18 months before construction had commenced, Verizon MA required a resurvey and the applicant paid for it.

Second, OTELCO argues that despite the Pole Owners' testimony, it cannot be common practice to require resurveys because larger projects would never get completed due to constant resurveying, giving as an example to the 10-year MBI broadband deployment project. *See* OTELCO Brief at 29. But OTELCO ignores the obvious – not all of the surveys for the massive MBI project were done at the same time, so they didn't age out.

Third, OTELCO argues at length that if the pole network has changed over time due to work done by the Pole Owners, they should have records of that work and should be able to identify specific changes to individual poles, making new surveys unnecessary. *See* OTELCO Brief at 30-32. The issue, however, is not a lack of raw work and licensing records. The issue is that the information in those records has not been organized to track changes by pole. Verizon MA explained long ago that it has no business need to track every change on each of its poles over time and therefore does not maintain the kind of database that would allow it to easily discern the current status of all attachments on every pole, as OTELCO would like. *See* Verizon MA Opposition to Motion for Enforcement of Final Order ("Verizon MA Opposition"), at 12, *verified* at Wolanin Direct at 2; *see also* Banks Direct at 6. And as noted previously, the Department should give no weight to Mr. Allen's bald and unsupported claim that maintaining such a database is "best practice for any utility." *See* Allen Reb. at 8.²

Fourth, OTELCO argues that changes to the poles over time are unlikely to affect its ability to box poles. *See* OTELCO Brief at 33-36. By narrowly focusing on the poles it wants to box, however, OTELCO misses the larger issue, which is that in the absence of new surveys,

² OTELCO's demand to order the Pole Owners to produce "all relevant records regarding changes to pole conditions since the preconstruction surveys were conducted," *see* OTELCO Brief at 33, must be rejected for its innumerable procedural failings alone. Among other things, OTELCO never sought such data in discovery, Verizon MA never refused to produce it, OTELCO never moved to compel, and discovery in this proceeding closed two years ago. Producing those records, a monumental task, would not be helpful in any event, because the data in them would still need to be pulled, organized and cross-referenced with each of the 6,500 poles at issue here.

changed conditions on the 4,800 other poles covered by OTELCO's applications will likely delay make-ready construction as individual work orders are sent back to engineering for redesign. *See* Verizon MA Brief, at 5-6.

The only argument OTELCO offers regarding changed conditions on those 4,800 poles is that "there should be no other third party attachers in line ahead of OTELCO" but that if there are, then the Pole Owners can use the surveys for those attachers in place of new surveys of the overlapping poles for OTELCO. *See* OTELCO Brief at 34. OTELCO doesn't explain why there "should be" no other third-party attachers on any of the poles, and in fact, there is or may soon be at least one, in that Verizon MA has issued make-ready estimates on third-party applications to attach to some of the poles at issue here and is awaiting payment by the applicant before beginning construction. *See* Response to DTC-VZ 3-2(B). Further, OTELCO completely ignores the enormous effort it would require to cross-reference multiple sets of surveys for other parties with the surveys for OTELCO to identify overlapping poles and integrate the changes to the existing surveys. OTELCO also presumes that the Pole Owners are free to use survey data gathered at the expense of another applicant for the benefit of OTELCO. Finally and most importantly, as the Pole Owners have repeatedly explained, third-party attachments are only one of the many causes of changes on the poles, including government projects, work to upgrade and expand the network, storms and storm restoration work. *See, e.g.,* Wolanin Reb. at 3-4.

III. OTELCO has offered no valid grounds for shifting the costs of new surveys to the Pole Owners.

As the cost-causer, OTELCO must be responsible for the cost of any new surveys. *See* Verizon MA Brief at 10-11. OTELCO demands that the Department shift those costs to the Pole Owners, but none of the arguments it offers in support have merit.

First, OTELCO apparently asserts that this entire proceeding, and the fact that no make-ready work has been done on its applications in the meantime, came about because “both Pole Owners falsely state that they do not allow boxing on their poles under any circumstances...” OTELCO Brief at 37. But it was OTELCO, not the Pole Owners, that initiated this proceeding and decided not to pay any of the make-ready estimates while this proceeding has worn on. And OTELCO vastly overstates the significance of Verizon MA’s statement in February of 2022 that it never allows boxing. Verizon MA’s written policy on allowing boxing was available on its wholesale website at all times, and the practical consequences of that policy are that Verizon MA rarely allows boxing in any event. *See* Reply Brief of Verizon MA dated September 8, 2022, at 6. As to OTELCO’s tired assertion that the Pole Owners box their own poles, OTELCO Brief at 37, the only evidence it has offered is a handful of photographs of such poles, showing only isolated errors by Verizon MA technicians. *See* Wolanin Reb. at 9-10; *see also* Brief of Verizon MA dated August 18, 2022, at 10-11. Moreover, in the phase of this case addressing OTELCO’s substantive claims, the Department rejected OTELCO’s blanket request to box all poles accessible by bucket truck and made no finding of discrimination by the Pole Owners in application of their boxing policies. *See* Final Order at 23. The Department also found that Verizon MA had offered reasonable grounds for refusing to allow OTELCO to box 10 of the 14 poles offered as examples. *See id.* at 22. Thus, the Pole Owners acted within their rights in declining OTELCO’s general request to box poles.

Second, OTELCO argues that even before it filed this proceeding, “the Pole Owners have had the affirmative obligation to only deny pole access for reasons of safety, reliability and generally applicable engineering concerns all along” and that if they had applied that standard to OTELCO’s initial request in early 2022, OTELCO would not have filed suit. *See* OTELCO Brief at 40. In rejecting OTELCO’s general request to box, however, the Pole Owners were applying boxing

policies that had been in place for many years, that were consistent with all statutes and regulations, and that addressed an issue on which the Department had never provided guidance in the form of rules or decisions in pole attachment disputes. OTELCO does not even try to explain how the Pole Owners should have known in February of 2022 the new standard that the Department would establish in the Final Order eight months later. Indeed, OTELCO itself never advocated to the Department for the result the Department later reached – that a request to box poles scheduled for replacement must be considered on a pole-by-pole basis and must be allowed unless it would cause a “specific safety, reliability, or engineering issues regarding a specific pole.” Order at 23. There is no basis for presuming that the Pole Owners should have anticipated an outcome that even OTELCO, the complainant, did not seek, advocate for or anticipate.

Equally lacking in merit is OTELCO’s argument that the Pole Owners unreasonably delayed this proceeding by requiring new surveys in order to evaluate OTELCO’s October, 2022, request to box poles scheduled to be replaced. *See* OTELCO Brief at 37, 42. The Pole Owners have demonstrated in their testimony, briefs and now reply briefs the validity of their concerns that the original survey data is stale and does not include all the information they would need to evaluate OTELCO’s request. It is also worth pointing out in this context that some of the key information OTELCO now relies on in claiming that the existing data is sufficient to evaluate poles for boxing was not available to the Pole Owners in November of 2022. Specifically, the IKE photographs taken by OTELCO’s contractor are the only documents from which it can be determined whether a pole has side-taps or is on an embankment.³ OTELCO’s witness Mr. Teed relies exclusively on these photographs in concluding that each of the three poles he reviewed is accessible by bucket truck and that boxing would not physically interfere

³ Other than the O-Calc reports, which as explained above address only a few of the poles at issue.

with guy wires on the poles. *See* Teed. Reb. at 7-8. But OTELCO only produced the IKE photographs as part of its direct testimony in May of 2024, so Verizon MA’s prior statements that the existing survey data did not show whether a pole had side-taps or was on an embankment, *see e.g.* Verizon MA Opposition at 4, 5 and 9, were accurate based on Verizon MA’s knowledge at the time.

Fourth, OTELCO’s claim that the Pole Owners initially based their requirement of new surveys solely on the age of the survey data, *see* OTELCO Brief at 37 and 38-39, is inconsistent with the evidence. Verizon MA advised OTELCO in its initial response to OTELCO’s boxing request that Verizon MA would need to resurvey the poles “[i]n order to determine whether these poles are suitable for boxing...” *See* Allen Decl. (February 22, 2023) Ex. A (email from David Wolanin to Debbie Brill-Poulin dated November 14, 2022). Verizon MA reiterated that concern and explained it in greater depth during the subsequent conference calls among the parties and in a later email in which Verizon MA also laid out for OTELCO the standards it intended to apply in effectuating the Department’s Order. *See id.* (email from David Wolanin to David Allen dated December 13, 2022) and Verizon MA Opposition at 3-5, *verified* at Wolanin Direct at 2.

Finally, OTELCO argues that new surveys will not save it money. OTELCO Brief at 41-42. As Verizon MA explained in its initial Brief, at 5-6, however, OTELCO’s theory that its contractor can address changed pole conditions during installation of OTELCO’s attachments makes no sense, because any changed conditions on the poles will result in delays and cost increases in the make-ready construction by the Pole Owners, which takes place *before* OTELCO’s contractor begins construction. Further, OTELCO overstates the costs of collecting new data in the field, OTELCO Brief at 41, because the cost figures it uses represent the cost of the entire survey process “from collecting the data in the field to providing a make-ready

estimate to the applicant....” Response to DTC-VZ 3-8(C). The cost of collecting new data in the field alone would be just a portion of these total costs. The remaining costs – for the work of determining which poles, if any, can be boxed, reconciling those results with National Grid and preparing new make-ready estimates to OTELCO – will be incurred whether or not new data is collected in the field, as a direct result of OTELCO’s request to box these poles. OTELCO has not offered any argument for why those costs should be shifted to the Pole Owners.

IV. OTELCO has offered no valid grounds for the extreme and unwarranted relief it seeks.

OTELCO asks the Department to retain jurisdiction of this case, now in its third year, and once again seeks a slew of radical and extreme changes in the Pole Owners’ long-established make-ready process, such as appointment of OTELCO’s handpicked contractor to perform new surveys and decide in the first instance which poles may be boxed, new deadlines on completion of make-ready work and self-help rights for OTELCO.⁴ *See* OTELCO Brief at 45-52.

As grounds for such massive relief, OTELCO spuriously claims that “the Pole Owners cannot be trusted to quickly perform any additional surveys, nor to fairly evaluate OTELCO’s boxing requests....” *Id.* at 45. OTELCO’s claims are entirely manufactured and have no support in the record.

With respect to the timing of new surveys, OTELCO cites to Verizon MA’s statement in its Response to DTC-VZ 3-8(F) that it will take approximately six months to re-issue make-ready estimates for all of OTELCO applications, *id.*, but OTELCO ignores the rest of Verizon MA’s Response, which estimates that Verizon MA could issue revised make-ready estimates for some of the applications in just two months, allowing make-ready construction work to proceed on

⁴ OTELCO also seeks an order allowing OTELCO to pay just 50% of the estimated make-ready costs up front, *id.*, but it doesn’t even try to offer any basis for that request.

those applications even while revisions to other make-ready estimates are underway. OTELCO also asserts that “the Pole Owners general practice is to schedule make-ready work over a year in advance,” *id.*; *see also id.* at 27-28, but there is no evidence in the record on this point. Indeed, the only evidence OTELCO cites is National Grid’s response to DTC-NG 3-11(D), which discusses how National Grid expects to decide whether boxing is allowed on a pole and says absolutely nothing about scheduling make-ready work. Finally, and surprisingly, OTELCO argues that delays in make-ready work will result if changed conditions on the poles are allowed to stop the work. *See* OTELCO Brief at 46. That is exactly why new surveys are needed – to identify changed conditions on the poles and revise the planned work before it begins. Moreover, delays in the make-ready construction – whatever they may be – have no bearing on the speed at which the Pole Owners perform make-ready surveys.⁵

With respect to Verizon MA’s alleged bias, OTELCO points only to Verizon MA’s Response to DTC-VZ 3-8, *see* OTELCO Brief at 47, in which Verizon MA stated in part that:

Verizon MA would allow OTELCO to box any pole that is scheduled to be replaced at OTELCO’s expense as part of the make-ready work unless conditions at a given pole create a specific safety, reliability, or engineering issue regarding that pole.

...

With the guidance of the Final Order, Verizon MA intends to not allow OTELCO, or any other attacher, to box a pole if there are side-taps on the pole, if the pole is a corner pole, if there is conduit riser on the pole, if there is a large piece of equipment mounted in the communications space on the pole, or if the pole is on a steep embankment.

Response to DTC-VZ 3-8(D) and (E). OTELCO says that, “Verizon’s response says very little about how these conditions relate to safety, reliability or generally applicable engineering concerns....” OTELCO Brief at 47. But of course, Verizon MA’s standards speak directly to

⁵ The Department has already rejected a previous request by OTELCO to impose “commercially reasonable timeframes” on the Pole Owners’ make-ready process on the grounds that it is too slow, because no such claim had been included in the Complaint. *See* Order at 49. That remains the case today.

those concerns, in that they are based directly on the Order, in which the Department found that Verizon MA had reasonably declined OTELCO's request to box poles that have side-taps, are corner poles or are located on an embankment, all of which it found to constitute "specific safety, reliability, or generally applicable engineering reasons for denying boxing." *See* Order at 22.

The full analysis in the Order was straight-forward:

Poles 1 and 8 have sidetaps and guy-wire support making bucket-truck access, which is required for boxed poles, more difficult than it is for a normal pole and less safe. Wolanin Aff. at Ex. E. Similarly, for Poles 5, 9, 13, and 14, Verizon states that the poles are corner poles, "guyed to help counter the resulting tension on the pole[s]." *Id.* The Department agrees with Verizon that boxing would add even more tension on these corner poles, potentially causing the poles to flip when they are replaced. *Id.* Verizon also provides a reasonable explanation for Poles 6 and 12, stating that these poles should not be boxed because of a steep embankment making bucket truck access more difficult and less safe. *Id.* Finally, Verizon's decision not to box Poles 7 and 11 was also reasonable because boxing is not needed to avoid replacing these poles. *Id.*; *see also* Allen Decl. at Ex. E; Allen Test. at 16 (discussing avoiding pole replacement as the reason for boxing).

OTELCO's claim that Verizon MA's standards are overly generalized and do not provide any "pole specific analysis," *id.*, are likewise nonsense. Verizon MA's standards by their express terms apply at the individual pole level, in the same level of detail as the Department's analysis quoted above. Highlighting this, three of Verizon MA's pole-specific standards (regarding side-taps, corner poles and embankments) are the very same standards the Department has already approved.

In addition, whether Verizon MA's standards comply with the Order is a substantive issue that is not now before the Department both because the substantive phase of this case closed long ago and because Verizon MA has not yet even applied its new standards to a single pole, so addressing the issue now would be woefully premature.

CONCLUSION

For the above reasons, the Department should find that the Pole Owners' requirement of conducting new surveys of all of the poles covered by OTELCO's applications, at OTELCO's expense, is just and reasonable. The Department should reject OTELCO's demands to rework the make-ready process.

Respectfully submitted,

VERIZON NEW ENGLAND INC., D/B/A VERIZON
MASSACHUSETTS

By its attorney,



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Dated: June 14, 2024