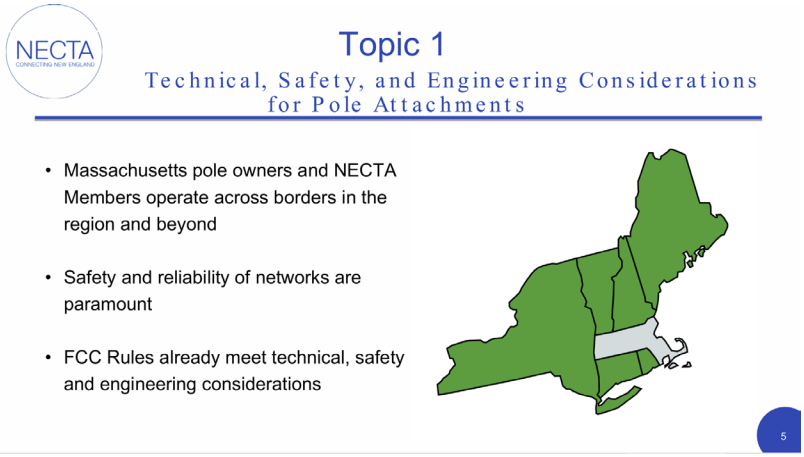
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Joint Notice of Inquiry by the Department of Public Utilities and the Department of Telecommunications and Cable on their own Motion to explore utility pole attachment, conduit access, double pole, and related considerations applicable to utility work conducted on public rights-of-way in the Commonwealth.	D.P.U. 25-10 D.T.C. 25-1

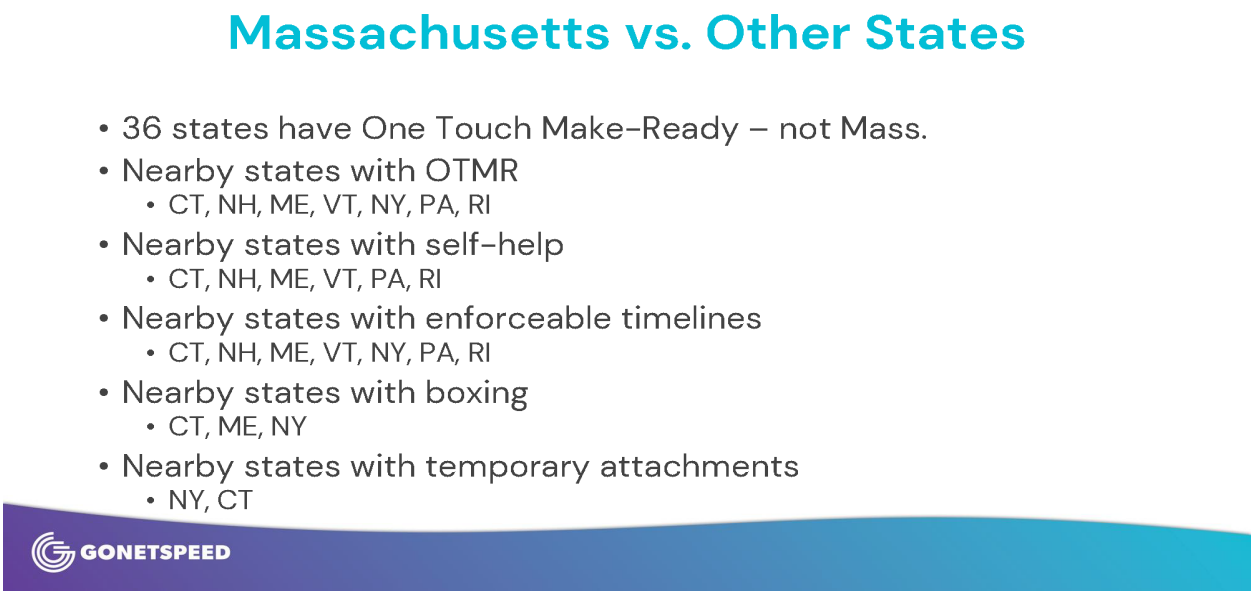
GONETSPEED'S REPLY COMMENTS

Maine means business. Connecticut means business. New Hampshire, New York, Rhode Island, Vermont, and Pensylvania mean business.

Massachusetts — ????



As NECTA's map shows, Massachusetts is the only one of the Northeastern states that has yet to adopt the pole attachment rules that feature some combination of, in particular, One Touch Make-Ready (OTMR), and also enforceable timelines, use of contractors, regulatory self-help, and alternative attachment measures such as boxing and temporary attachments, in effect in three-quarters of the states in the country.



GoNetspeed Presentation, p. 7.[1]

GoNetspeed's Proposed Regulations[2] submitted earlier in this Inquiry incorporate the best features that have proven effective in the real-world experience in other states — including other states where National Grid, Eversource, Unitil, and Verizon operate. They include OTMR, enforceable timelines, regulatory self-help, and boxing, temporary attachments, and other attachment method enhancements. In the nearby states of Maine and Connecticut, GoNetspeed has built and is building modern broadband networks serving hundreds of thousands of locations at a fraction of the time and cost as in Massachusetts.[3] Adopting GoNetspeed's proposal will improve the well-being of the Commonwealth's citizens, better position the Commonwealth to compete for investment dollars, and show that, indeed, Massachusetts Means Business.

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[1] https://www.mass.gov/doc/dtc-25-1-crc-communications-tech-session-presentation-2/download.

[2] GoNetspeed incorporates by reference its Initial Comments (March 18, 2025) (https://www.mass.gov/doc/dpu-25-10dtc-25-1-crc-communications-comments/download), which in turn attached and incorporated by reference GoNetspeed's November 14, 2024 rulemaking petition (https://www.mass.gov/doc/dpu-25-10dtc-25-1-crc-communications-petition/download) and Proposed Rules (https://www.mass.gov/doc/dpu-25-10dtc-25-1-crc-communications-exhibit-a/download).

[3] GoNetspeed Initial Comments at 6-7.

I. Objective of This Proceeding — Promptly Ensure Pole Owners' Compliance with Legal Obligations to Provide Pole Access.

The objective of this proceeding should be expeditiously to craft a set of rules that will ensure pole owners' compliance with their legal obligations to provide communications providers with non-discriminatory access to utility poles.

Adopting GoNetspeed's proposed regulations submitted in this Inquiry is the best way to accomplish that goal. GoNetspeed's proposal incorporates practices and procedures that have proven effective in states where — ***today*** — broadband networks are being deployed efficiently and affordably — in stark contrast to the experience in Massachusetts.

Further, the operational reforms proposed by GoNetspeed should be adopted promptly, within three months. Adoption of these processes should be noncontroversial and can be accomplished in a short time frame. Examination of other, more complicated issues such as the status of the MOA or provisions related to electric vehicle chargers should not hold up bringing the benefits of efficient and effective make-ready procedures to Massachusetts.

A. Nondiscriminatory Access is a Legal Obligation of Pole Ownership.

Pole ownership carries with it legal obligations to provide non-discriminatory access upon just and reasonable rates, terms and conditions. These arise under both state law:

> A utility shall provide a wireless provider [*i.e.,* any person, firm or corporation other than a utility, which provides telecommunications service] with nondiscriminatory access to any pole or right-of-way used or useful, in whole or in part, owned or controlled by it for the purpose of installing a wireless attachment.[4]

and federal law:

> A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.[5]

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[4] G.L. c. 166, § 25A.

[5] 47 U.S.C. § 224(f)(1).

The obligation to provide nondiscriminatory, just and reasonable access to poles is no less an obligation than any other legal obligation. It has the same importance and priority as "providing . . . reliable service to customers" and other "public service obligations in terms of providing safe, reliable … service to customers" cited by the EDCs in their filings.[6]

It is the responsibility of pole owners to comply with ***all*** legal obligations to which they are subject. Pole owners may not pick and choose the laws they will obey. It is not their job to decide that one set of legal obligations is "paramount" to the other.[7] Pole owners may not elect to ignore obligations they dislike or legal mandates with which they disagree. They may not favor obligations they are used to and resist new obligations with which they are unfamiliar (although, all four of the pole owners in this proceeding operate in other states under rules being considered here).

It is up to the pole owners' management to figure out how to obey the law. They may need to adopt new ways of doing things (although, again, they already operate in multiple states under the same rules being considered in this inquiry). They will need to marshal the personnel and other resources necessary to get the job done.

Matthew DeTura of CTIA articulately stated the problem at the June 24th technical session. He pointed out that under discussion were several legal obligations and policy directives, all of which were equally important and all of which had to be complied with — broadband and wireless deployment, EVSE deployment, and ensuring an adequate and robust grid. However, at that point, two days into the sessions, we had not heard many solutions.

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[6] Essentially identical language appears in National Grid's Initial Comments (March 18, 2025) at 21 and Eversource's Initial Comments (March 18, 2025) at 23.

[7] EDC Topic 7, p. 4; Ms. Banks' remarks, 6/25/25.

This is where "Massachusetts Means Business" should take over. As Attorney DeTura aptly stated, there are many tools in the toolbox to accomplish these objectives. "Can't do!" is not the attitude that will serve the citizens of the Commonwealth or allow it to succeed in the competition for broadband investment dollars.

B. The Need for Strong and Comprehensive Regulatory Action.

FCC Commissioner Anna Gomez recently remarked: "[U]tility poles are the unsung heroes of broadband deployment. However, this means that when the pole attachment process runs into bumps in the road, the broadband deployment process slows down. We cannot afford to let that happen."[8] Unfortunately, that appears to be exactly what the pole owners in Massachusetts would let happen.

Astonishingly, given the attendance of DPU Chair Van Nostrand, DPU Commissioners Fraser and Rubin, and DTC Commissioner Charles at various times throughout the technical sessions, "Can't do!" — or perhaps, "Won't do!" — was a constant refrain from the pole owners. And the attitude was just as prevalent in the discussions of pole-mounted electric vehicle chargers as during the discussions of broadband communications attachments.

Thus, it is critically important that regulations permit broadband providers to retain control over broadband deployment projects. Adopting One Touch Make-Ready and regulatory self-help in the power space as well as in the communications space appears to be the only way to ensure that state-of-the-art, 2025-era communications networks are built and their benefits are brought to citizens, businesses, schools, and other institutions in the Commonwealth.

[8] FCC July 2025 Open Commission Meeting, Remarks of Cmr. Gomez, at approximately time stamp 17:50 (https://www.fcc.gov/July2025).

Relying exclusively on the pole owners simply will not get the job done. That has been recognized by Congress, the FCC and other states' regulators, and the courts. As a result, the FCC and other state regulators enacted the "self-help" remedy, allowing attachers to complete make-ready work using qualified contractors, first in the communications space, and when that proved inadequate to solve the problem, also in the power space. They also created the One Touch Make-Ready alternative, under which a qualified contractor retained and supervised by the attacher surveys, engineers, and performs any required simple make-ready work in one fell swoop.

The FCC recognized this principle in first permitting self-help in the communications space in 2011.

> The transfer of control to the new attacher, including the ability to hire contractors, is key to the effectiveness of the timeline. First, the prospect of surrendering control of the pole to an attacher may spur a utility to complete a survey or make-ready that it might otherwise not timely perform. Second, if the pole owner lacks the resources or the will to perform make-ready, the prospective attacher may pursue the project through any lawful means, including use of additional resources. Finally, because the remedy takes effect automatically, the benefit is immediate, and does not depend on the time- and resource-consuming complaint process.[9]

Later, the FCC realized that confining a self-help remedy to the communications space was not enough. It therefore expanded the existing regulatory self-help remedy to include the power space: "We expect the availability of self-help above the communications space will strongly encourage utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when they do not."[10]

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[9] *In re Implementation of Section 224 of the Act,* WC Dkt. No. 07-245, Report and Order and Order on Reconsideration, FCC 11-50, ¶ 50 (rel. April 7, 2011) ("FCC 2011 Order") (https://docs.fcc.gov/public/attachments/FCC-11-50A1.pdf).

[10] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Dkt. No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, ¶ 98 (rel. Aug. 3, 2018) ("FCC OTMR Order") (https://docs.fcc.gov/public/attachments/FCC-18-111A1_Rcd.pdf).

In addition, the FCC concluded some seven years ago that taking the matter largely out of the pole owners' hands would work to reduce delays, and so adopted the OTMR process: "OTMR speeds broadband deployment by better aligning incentives than the current multi-party process. It puts the parties most interested in efficient broadband deployment — new attachers — in a position to control the survey and make-ready processes."[11] The Ninth Circuit, in affirming the FCC OTMR rules, stated, "In adopting the One-Touch Make-Ready Order, the FCC intended to make it faster and cheaper for broadband providers to attach to already-existing utility poles."[12]

Then, two weeks ago, the FCC found it necessary to act again. It released a Fifth Report and Order in its ongoing pole attachment proceeding, WC Dkt. No. 17-84.[13] Among other reforms discussed in Part II.A.2 below, it imposed timelines on larger pole attachment orders, the lack of which it found was impeding necessary broadband rollout efforts. In a statement accompanying the order, FCC Chairman Carr's remarks were pointed. Describing his visit with line workers at a broadband deployment project in Idaho, he stated:

> Unfortunately, for too long, this work [replacing 30 year-old plant and attaching new, high-speed lines to the poles] has been made even harder by a regulatory regime that does not make it easy to build new high-speed infrastructure. In particular, a lack of standard rules and timelines for processing requests to attach to a large number of poles have slowed the rollout of new connections and led to costly disputes between broadband builders and utility pole owners. This is unacceptable.[14]

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[11] FCC OTMR Order, ¶ 22.

[12] *City of Portland v. United States*, 969 F.3d 1020, 1049-50 (9th Cir. 2020) (https://scholar.google.com/scholar_case?case=4746271813344711063&q=969+F.+3d+1020&hl=en&as_sdt=4,114,129).

[13] *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Docket No. 17-84, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, FCC 25-38 (rel. July 25, 2025) ("Fifth Report and Order") (https://docs.fcc.gov/public/attachments/FCC-25-38A1.pdf).

[14] *Id.,* Statement of Chairman Brendan Carr.

This situation is just as unacceptable in Massachusetts as it is in Idaho. This Inquiry and subsequent rulemaking presents the opportunity to bring Massachusetts in line with what the rest of the country already is doing to enjoy the benefits of modern broadband networks.

C. Operational Reforms Can and Should Be Implemented Promptly Even If Other Issues Require More Time to Resolve.

The operational reforms GoNetspeed has proposed should be adopted promptly to ensure that the Healey-Driscoll Administration's goal of ubiquitous broadband can be achieved expeditiously. As recently recognized by the FCC, standard rules and timelines for processing pole attachment requests are essential to the rollout of new connections and to avoid costly disputes between broadband builders and utility pole owners. As GoNetspeed suggested in our Initial Comments, it makes the most sense to phase this proceeding and first enact rules — or conduct a pilot program — to govern the key operational aspects of the pole attachment program. To this end, GoNetspeed respectfully urges implementation of OTMR, timelines, approved contractor remedies, and operational improvements like opposite-side construction and temporary attachments by no later than November 10, 2025.

These proposed rules have been supported by Massachusetts pole owners, already are in place in three-quarters of the other states, and are familiar to pole owners and attachers alike. Establishing rules on these topics has the greatest potential for positive impact. Setting timelines and allowing entities to utilize available qualified contractors should immediately unclog pole access bottlenecks, facilitate broadband deployment and also could be used to facilitate EV charging attachments and to eliminate the double pole situation. Issues like reviewing the Departments' MOA, revisions to the dispute process, review of attachment rates, and the possibility of a public database, while important, are not as urgent for purposes of deploying networks on utility poles.

The longer Massachusetts takes to effect reforms, the further behind it falls. Other states are not hesitant to take action to speed and improve the pole attachment process. Just last week, the West Virginia Public Service Commission entered a general order permitting temporary pole attachments pending conclusion of a rulemaking proceeding to include temporary attachments in its pole attachment regulations.[15] In its general order, the PSC stated its conviction to take action to facilitate pole attachment processes when necessary:

> [P]ole owners have a duty within the regulatory framework provided by the Commission pursuant to the authority delegated by the West Virginia legislature to allow for non-discriminatory access to poles by third-party attachers. The Commission expects the utility owners of the necessary infrastructure, the utility poles, to expedite, not hinder, attachments that will accelerate access to sorely needed broadband throughout West Virginia. The issues surrounding expedited pole attachments have not been resolved as we had hoped through timely cooperation between all affected parties, including pole owners, existing attachers and new attachers.[16]

Therefore, the PSC issued the General Order, pending a rulemaking that will use that Order's provisions as a model.[17] Massachusetts would benefit from a similarly decisive approach.

Given the familiarity of both owners and attachers with processes in states just miles away from Massachusetts, this should not be controversial. There is no reason why the operational reforms in effect in nearby states, and under which the pole owners in this case already operate, cannot be put into place within a matter of a few months. At that point, facilities can be deployed and customers can enjoy the benefits of contemporary networks. Once these high-priority tasks

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[15] *In the Matter of Adopting and Implementing Policy and Procedures for Limited Use of Temporary Pole Attachments* General Order No. 261.3, (July 28, 2025) (https://www.psc.state.wv.us/scripts/WebDocket/ViewDownload.cfm?CaseActivityID=645969&NotType=WebDocket). The specific rules adopted in the General Order were contained in a June 16, 2025 brief submitted by DQE Communications, LLC in DQE Communications LLC — Petition for Rulemaking to Modify the Commission's Rules Governing Pole Attachments, Case No. 25-0350-T-P (https://www.psc.state.wv.us/scripts/WebDocket/ViewDownload.cfm?CaseActivityID=643225&NotType=WebDocket).

[16] General Order 261.3, at 6.

[17] *Id.*

are accomplished, work may proceed on some of the more arcane, administrative aspects of the proceeding.[18]

II. GoNetspeed's Proposal Incorporates the Proven Best Features from Other Regulatory Regimes.

A. GoNetspeed's Proposal.

1. GoNetspeed's Filed Proposal.

As described in detail in our Initial Comments, GoNetspeed's Proposal is an amalgam of the best aspects of pole attachment regulatory programs in effect in other nearby states and across the country.

GoNetspeed's proposed regulations are largely based on Maine's regulations,[19] which have been operating successfully since April 2021. The Maine rules themselves reflect and expand upon the FCC regulations.[20] The proposal includes definite timelines for the various stages of make-ready work, "self-help" using approved qualified contractors in the event the pole owner fails to complete surveys or make-ready within the specified deadlines, and a One-Touch Make-Ready process that allows attachers, at their option, to use qualified contractors to perform surveys and simple make-ready work in a single pole visit. GoNetspeed's filed proposal also goes further, and includes additional modifications reflecting best practices (such as opposite-side construction

[18] *See* GoNetspeed Initial Comments at 17-18.

[19] Maine Public Utilities Commission, Chapter 880: Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure (https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/407c880-2023-174%20%28AMD%29.docx).

[20] 47 C.F.R. §§ 1.1411(c), (d), (e), (i), (j), 1.1412 (https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-1/subpart-J/section-1.1411; https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-1/subpart-J/section-1.1412).

or "boxing" and temporary attachments) that other states near Massachusetts have found to be effective in ensuring that networks are built efficiently and timely.[21]

At least 36 of the fifty states are operating under the FCC rules directly or under their own rules substantially based on the FCC rules with modifications that those individual states deemed desirable.[22]

The FCC and equivalent state rules, therefore, represent the state of the art in pole attachment processes. Far from pushing the envelope or constituting the risky "bleeding edge" of change, adopting FCC-like rules would allow Massachusetts to benefit from the experience and standardization that 36 other states already enjoy. To be clear, GoNetspeed is not seeking radical new meausres. Rather, it urges the sensible adoption of rules commonly employed elsewhere to foster the safe expansion of broadband networks. It is the "Can't do!" attitude of the pole owners that places Massachusetts well outside the norm. But there is no valid reason why Massachusetts should not enjoy the same efficient pole attachment processes as its neighbor states.

2. Desirable Additions to GoNetspeed's Proposal.

Two weeks ago, subsequent to the initial briefing and technical sessions in this Inquiry, the FCC released its Fifth Report and Order noted above. It addresses and improves specific aspects of the pole attachment process. The rules amendments adopted by the FCC are attached. GoNetspeed respectfully suggests that the enhancements in that order also be included in the rules adopted in Massachusetts.

[21] GoNetspeed Initial Comments at 10-17.

[22] GoNetspeed Initial Comments at 8-10.

In that order, the FCC stated that while it "has taken significant steps in recent years to expedite the pole attachment process, . . . there is more work to be done."[23] To "advance the goal of ubiquitous high-speed broadband,"[24] the FCC amended its rules to:

- Establish a timeline for "large" pole attachment requests – *i.e.,* those exceeding the lesser of 3,000 poles or 5% of a utility's poles in the state up to the lesser of 6,000 poles or 10% of a utility's poles in the state, but provide that an attacher that fails to provide advance written notice of such orders waives the applicable timelines.[25]

- Require attachers to provide advance written notice to utilities of forthcoming larger pole attachment orders and impose a meet-and-confer requirement following the notice for orders in the largest order category.[26]

- Improve timelines by requiring prompt 15-day notification from utilities if they cannot meet survey and make-ready deadlines, allowing self-help for estimates, and prohibiting utility-imposed limits on application size and frequency that have the effect of restricting the number of pole attachments that attachers may seek in a given timeframe.[27]

- Expedite the contractor approval process by requiring utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request, after which time the contractor is deemed approved.[28]

Further, the FCC proposed for consideration additional reforms "to make the process more efficient . . . [and] further the Commission's goal of expediting broadband deployment by reducing barriers to infrastructure investment." These include:

- Eliminating the requirement for full advance payment of make-ready charges and substituting installment or progress-based payments.[29]

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[23] Fifth Report and Order, ¶ 2.

[24] *Id.*

[25] *Id.,* ¶¶ 20-28.

[26] *Id.,* ¶¶ 14-19. These requirements should allay the pole owners' concerns, expressed repeatedly at the technical sessions, that they are receiving pole attachment orders involving magnitudes they did not expect and are not prepared to handle.

[27] *Id.,* ¶¶ 30-39.

[28] *Id.,* ¶¶ 40-50.

[29] *Id.,* ¶ 56.

- Imposing a cost ceiling on make-ready true-ups in cases where the attacher and pole owner do not agree in advance to costs exceeding the make-ready estimate.[30]

- Expanding OTMR to include any work in the communications space, including work meeting the definition of "complex make-ready."[31]

- Setting a deadline for utilities to onboard approved or deemed-approved contractors.[32]

In general, Massachusetts' rules should incorporate all aspects of other jurisdictions' regulations that advance the goal of rapid and efficient deployment of much needed broadband networks. Nearby certified states have improved their pole attachment processes by borrowing other states' innovations. Massachusetts would benefit from a similar practice. Accordingly, the FCC's recently adopted and proposed rules should also be adopted in Massachusetts.

3. Other Rule Proposals on the Table.

In addition to GoNetspeed's proposed rules, NECTA and the Departments have suggested rules for consideration in this docket. Like GoNetspeed's proposal, these reflect the prevailing model for pole attachments throughout large areas of the country.

NECTA has suggested adoption of essentially the FCC rules, with addional enhancements such as temporary attachments.[33]

The Departments circulated a Discussion Draft of rules on June 18th ("Discussion Draft").[34] These consisted of a redline of the existing Part 45 regulations with amendments that in many respects resemble the FCC rules, with some additional modifications and enhancements.

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[30] *Id.,* ¶¶ 57-59.

[31] *Id.,* ¶ 60.

[32] *Id.,* ¶¶ 61-65.

[33] NECTA Presentation, p. 10.

[34] https://www.mass.gov/doc/dpu-25-10dtc-25-1-potential-amendments-to-220-cmr-4500/download.

Accordingly, all three sets of proposed rules suggested in this Inquiry are based to varying degrees on the FCC rules, and feature practices and procedures that predominate contemporary pole attachment practices in large areas of the country, such as OTMR, use of contractors, and regulatory self-help.

The pole owners, on the other hand, did not submit any rule proposal at all. Throughout the four days of technical sessions, the owners expressed many dissatisfactions with the current state of affairs and negative views of the other parties' proposals. But, consistent with their unvaryingly negative approach to this proceeding, they chose not to contribute affirmatively to the discussions in written comments or at the technical sessions by proposing specific rules for consideration.

III. Issues Raised at the Technical Sessions.

GoNetspeed in this section responds to certain issues raised during the technical sessions on June 23-26.

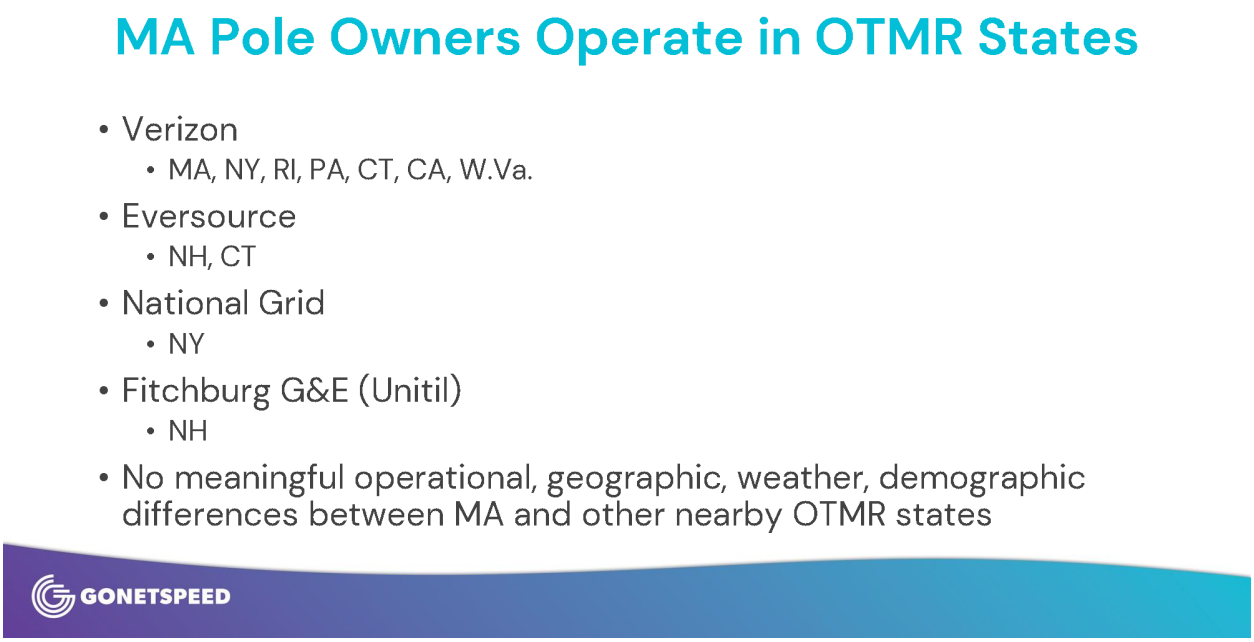
A. Massachusetts Is Not Different So Far as Pole Attachments Go.

At the June 24th technical session, National Grid's Ms. Banks remarked to the effect, "You can't compare Massachusetts to other states. Massachusetts is different." Ms. Banks' statement is spot on in many respects; Massachusetts is indeed unique in many positive ways.

However, in the context relevant to this Inquiry, pole attachments, there is only one aspect where Massachusetts is different from other Northeastern states and most other states in the country: ***Massachusetts does not have workable, contemporary pole attachment rules, while most everyone else does.***

Neither Ms. Banks nor other pole owner representatives have articulated any meaningful operational, management, personnel, geographic, weather, demographic or other differences

between Massachusetts and other nearby states that would justify rules that are less effective to facilitate broadband buildouts than in other states. In fact, each of the pole owners in this case operates in nearby states where OTMR and other contemporary pole attachment procedures are in effect.



GoNetspeed Presentation, p. 16.

The pole owners have stated no reason why their personnel, equipment, and systems in nearby states can operate under pole attachment regulations that permit OTMR, use of contractors, regulatory self-help, temporary attachments, etc., but face insurmountable obstacles to the use of such procedures just across the border here in Massachusetts.

B. Regulatory Self-Help Is a Remedy.

The pole owners fundamentally misunderstand what the regulatory self-help remedy is. They say, for example:

> Self-help "Bypasses application, survey, design process and pre-construction review by EDC. There would be no oversight of the process by the pole owners."[35]
>
> "Self-help bypasses review and approval process by EDCs."[36]

Regulatory self-help does no such things. It is not the lawless, Wild West free-for-all the pole owners make it out to be. Instead, it is a ***remedy*** — a remedy that attachers may use when pole owners do not comply with their regulatory obligations in a timely manner. And, numerous safeguards are built into the process to ensure that work is performed properly and safely.

The pole owners do understand, at least, that regulatory self-help comes into play when they have failed in their responsibilities to perform surveys or make-ready work:

> Self-Help: Definition: Allows requesting attaching companies to perform make-ready work in **both the power and communication space *when timelines are not met.***[37]

In this at least, they are correct. The self-help remedy becomes available when the pole owner fails to do its job and complete a survey or make-ready work on time. All of the proposed rules submitted in this proceeding permit self-help upon the pole owner missing a deadline in the make-ready process.

For example, with respect to surveys, GoNetspeed's proposal states:

> Survey. Within 15 calendar days of receiving a complete application, a utility shall either commit to meeting the timelines specified in Subsection (1)(b) of this Section or a licensee may hire a contractor to complete a survey so long as it provides the utility 10 calendar days' written notice of its intent to do so.[38]

The FCC rules advocated by NECTA are similar, permitting self-help when the owner fails to perform a survey:

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[35] EDC Topic 1, p. 35.

[36] EDC Topic 1, p. 37.

[37] EDC's Topic 1, p. 35 (bold in original; bold italics added).

[38] GoNetspeed Proposed § 45.04(1)(h)(1).

> Surveys. If a utility fails to complete a survey as specified in paragraph (c)(3)(i) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in § 1.1412, hire a contractor to complete a survey.[39]

The Discussion Draft is to the same effect:

> Surveys. If a utility fails to complete a survey as specified in 220 CMR 45.05(1)(c)(1), then a new attacher may conduct the survey in place of the utility and, as specified in 220 CMR 45.06, hire a contractor to complete the survey.[40]

The same is true for make-ready work. In all three proposals, the self-help remedy is triggered when the pole owner does not timely complete the work. GoNetspeed's proposal states:

> 2. Make-Ready Work. Within 15 calendar days of reaching agreement with a licensee concerning the make-ready work that must be performed to accommodate the licensee's attachment, a utility shall commit to meeting the time period specified in Subsections (1)(d) through (g) of this Section, or a requesting party may hire a contractor to complete the make-ready. A utility that commits to meeting the timelines but fails to do so shall be responsible for any resulting additional costs incurred by a licensee.[41]

The FCC rules provide:

> Make-ready. If make-ready is not complete by the date specified in paragraph (e) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in § 1.1412, hire a contractor to complete the make-ready.[42]

The Discussion Draft, again, is similar:

> (b) Make-ready. If make-ready is not complete by the date specified pursuant to 220 CMR 45.05(3), then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in 220 CMR 45.06, hire a contractor to complete the make-ready.[43]

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[39] 47 C.F.R. § 1.1411(i)(1).

[40] Discussion Draft, § 45.05(7)(b).

[41] GoNetspeed Proposed § 45.04(1)(h)(2).

[42] 47 C.F.R. § 1.1411(i)(2).

[43] Discussion Draft, § 45.05(7)(b).

C. Many Controls Are In Place to Ensure Safe Work That Complies with Applicable Standards.

Contrary to the pole owners' mischaracterization, many safeguards are in place to ensure that the work attachers are forced to pick up when owners fail their responsibilities is performed competently, safely, and in compliance with applicable laws, codes, and technical standards. In particular, all of the rules proposals submitted in this inquiry contain many opportunities for inspection and oversight by the pole owners as well as mechanisms to ensure compliance with those standards in the unlikely event of error or omission.

First, it is absolutely ***not*** the case that the self-help remedy bypasses the application, design, and review process. As noted above, self-help for make-ready work is triggered after the pole owners have reviewed the application, had the opportunity to review an attacher's designation of certain make-ready as simple and thus eligible for OTMR, specified any required complex make-ready work, accepted estimated payments from the attacher,[44] and either communicated to attachers that they cannot meet the timelines or simply not gotten the job done.

Second, under OTMR and regulatory self-help, the pole owners remain very involved in the process, if they choose to. All of the submitted proposals contain requirements that owners be notified of anticipated work. All state that pole owners may be present when work is being performed. And all of the proposals give pole owners the right to require correction of work not performed in accordance with applicable standards. These are set forth in detail in the next section of this filing.

[44] This brings up another issue – that of requiring prompt refunds of estimated overpayments. In a self-help scenario, the attacher ends up paying twice – an estimated payment to the owner, then paying its own contractor to do the same work. While the attacher is entitled to a refund, having to pay 100% of make-ready in advance ties up the attacher's capital and unjustly enriches the owner, who got paid for work it did not do and has use of that capital until a refund eventually is made. As noted above in Part II.A.2, the FCC is considering reforms to these unreasonable and inefficient advance payment requirements.

Finally, there is a simple solution to the pole owners' concerns about the inefficiency or safety of work done through the self-help remedy — get the work done themselves within a reasonable time frame.

D. The Pole Owners' Concerns with the Safety of Work Performed by Qualified Contractors are Way Overblown.

The rules proposed for consideration in this Inquiry (GoNetspeed's Proposal, Departments' Discussion Draft, and FCC rules) contain ***many, many, many*** provisions that give the owners visibility into, oversight of, and ability to ensure safety during the make-ready process, under conventional make-ready and under regulatory self-help and OTMR. (In the examples below, "GNS" refers to GoNetspeed's Proposal and "DD" to the Discussion Draft.)

Conventional Make-Ready

Utility reviews make-ready application for completeness.
DD 45.05(1)(a) GNS 45.04(1)(a) FCC 47 CFR § 1.1411(c)(1)

Utility reviews application on the merits
DD 45.05(1)(b) GNS 45.04(1)(a) FCC 1.1411(c)(2)

Utility performs and completes a survey.
DD 45.05(1)(c) GNS 45.04(1)(b) FCC 1.1411(c)(3)

Utility provides an estimate – detailed and includes documentation of all charges [therefore, specifying in detail the work that must be done]
DD 45.05(2) GNS 45.04(1)(c) FCC 1.1411(d)

Utility sends notice to all attachers specifying where and what make-ready will be performed, and deadline for completion.
DD 45.05(3) GNS 45.04(1)(d) FCC 1.1411(5)

GNS Proposal also requires attachers in the communications space to affix ID tags [facilitating future work and/or identification of attachers]
GNS 45.04(1)(d)(1)(vi)

Regulatory Self-help

If the utility fails to meet survey response deadline, the new attacher may conduct the survey. Utility must be notified of any field inspection and may be present.

DD 45.05(7)(a) GNS 45.04(1)(h)(1) FCC 1.1411(i)(1)

If make-ready is not complete by the specified deadline, the new attacher may conduct the make-ready. Utility and existing attachers must be notified and may be present for make-ready work.

DD 45.05(7)(b)(1)-(2) GNS 45.04(1)(h)(2)-(3) FCC 1.1411(i)(2)(i)

The new attacher must immediately notify the utility and existing attachers of any damage; must perform repairs as directed or must pay for repairs performed by the utility or existing attacher.

DD 45.05(7)(b)(3) GNS 45.04(1)(h)(4) FCC 1.1411(i)(2)(ii)

The new attacher must notify the utility and any existing attacher of completion. Utility or existing attacher may conduct a post-completion inspection. Upon notice, new attacher must repair or correct any nonconformity, or the utility or existing attachers may do so and bill the new attacher.

DD 45.05(7)(b)(3) GNS 45.04(1)(h)(5) FCC 1.1411(i)(2)(iii)

Contractors for Self-help or OTMR

Utility shall maintain a list of approved contractors; generally, a licensee must use a contractor on the list if available.

Discusssion Draft – "shall" for surveys, simple M/R, complex M/R.
GNS – "may" for surveys, simple, complex.
FCC – "shall" for complex surveys and M/R; "may" for simple surveys and M/R.

DD 45.06((1)-(3) GNS 45.04(1)(i) FCC 1.1412(a)-(b)

Extensive list of minimum contractor qualification requirements. E.g., agreement to follow safety standards and relevant laws and regulations; knowledge of how to read and follow engineering plans; adequately insured or bonded.

DD 45.06(4) GNS 45.04(1)(i)(6) FCC 1.1412(c)

One-Touch Make-Ready (OTMR)

Utility receives and reviews OTMR application for completeness

DD 45.05(8)(a)(2) GNS 45.04(1)(l)(1)(i)-(v) FCC 1.1411(j)(1)

Utility reviews OTMR application on the merits. Utility also may object to the characterization of the work as "simple make-ready."

DD 45.05(8)(b) GNS 45.04(1)(l)(1)(vi)-(viii) FCC 1.1411(j)(2)

New attacher must notify utility and other attaching entities of any field inspection as part of the OTMR survey and permit them to be present

DD 45.05(8)(c) GNS 45.04(1)(l)(2)(i) FCC 1.1411(j)(3)(i)

New attacher must give prior written notice of OTMR work to utility and other attachers and permit them to be present

DD 45.05(8)(d) GNS 45.04(1)(l)(3)(i) FCC 1.1411(j)(4), (j)(4)(i)

New attacher must immediately notify the utility or affected attacher of any damage; utility or other attachers may require licensee to correct, or correct and bill the licensee

DD 45.05(8)(d)(2) GNS 45.04(1)(l)(3)(ii) FCC 1.1411(j)(4)(ii)

If utility or new attacher determines during the OTMR work that any part is not simple-make-ready, that particular work must be halted. Work then reverts to normal make-ready performed by the utility, and the utility must provide conventional make-ready notice to affected attachers.

DD 45.05(8)(d)(3) GNS 45.04(1)(l)(3)(iii) FCC 1.1411(j)(4)(iii)

Licensee must notify utility and attachers of OTMR completion; utility and attaching entities may inspect, notify the new attacher of violations, and correct them at new attacher's expense or require new attacher to correct them

DD 45.05(8)(e) GNS 45.04(1)(l)(4)` FCC 1.1411(j)(5)

E. Collective Bargaining Agreements

The EDCs and Verizon oppose rules providing for OTMR and regulatory self-help by new attachers using contractors. They vaguely claim that work by contractors on their facilities would violate collective bargaining agreements.

The EDCs state, "Pole work is bound by labor agreements and most unions are not in agreement of third-party's conducting self-help," and "Pole work is bound by labor agreements and some unions are not in favor of third-party's conducting self-help."[45] Verizon asserts, "Contractors may not work on Verizon facilities."[46]

At the Technical Session on Tuesday, June 24, Verizon was asked why it asserts that contractors may not work on its facilities. Verizon's response was to the effect that labor

[45] EDC Topic 1, pp. 34 and 37, respectively.

[46] VZ Topic 3, p. 3.

agreements prohibited it. When further asked to describe the specific prohibition or restriction in those agreements, Verizon stated that it would not discuss the provisions in its agreements at the technical sessions. In response to a follow-up question whether it would provide those agreements to the Departments and participants for their examination, Verizon responded that it would not produce any of its agreements.

Any objections to OTMR and self-help based on the pole owners' assertions regarding labor agreements should be disregarded. Those objections are unfounded in fact and law.

The pole owners have provided no fact to support their claims. It is odd indeed for someone to base a legal claim or defense on supposed contractual language and then refuse to provide such language.

But, more importantly, the pole owners do not explain how a contract between an employer and employee regarding work that the employee is performing on behalf of the employer governs when neither the employer nor its employee is doing the work — as would be the case when the new attacher is performing the work in an OTMR or regulatory self-help situation.

The FCC considered and rejected a similar claim in its *OTMR Order*.

> We decline to adopt a requirement that OTMR must be performed by union contractors where an existing attacher has entered into a collective bargaining agreement (CBA) that requires the existing attacher to use union workers for pole attachment work. . . . New attachers that are not parties to a CBA have no obligations under such a CBA. It is the new attacher's contractor that will be performing the make-ready work, so the CBA is not implicated.[47]

Likewise here, it would be the new attacher performing the work under OTMR or self-help, and the labor agreement would not apply.

[47] OTMR Order, ¶ 47 (footnote omitted).

Finally, at the technical session, Verizon admitted that it uses contractors, or allows contractors to be used, for work on its attachments in Rhode Island. Rhode Island, of course, is subject to the FCC rules permitting OTMR, self-help, and use of contractors in both the communications space and the power space. When asked why it uses contractors in Rhode Island, Verizon's response was, "Because we have to."

If Verizon and the other pole owners "had to" permit use of contractors in Massachusetts because regulations required it, process improvements like OTMR and regulatory self-help would work here, too.

F. Adjudications: Dismissal of Complaints Involving "Policy" Issues

Both the EDCs and Verizon recommend a procedure under which a complaint may be dismissed if the issues raised are of a general or policy nature more appropriate for a rulemaking than an adjudication.

> If a Pole Attachment complaint seeks relief more appropriate for a rulemaking either DPU or DTC can dismiss complaint.[48]

> Verizon would support a process that enabled the Departments to dismiss a formal complaint and open a rulemaking instead when it would be more appropriate to address the issues raised on an industrywide basis.[49]

Any adopted rules should not include such a provision as the pole owners request. First and foremost, it is a solution in search of a problem. Both Departments have the authority to commence rulemakings when appropriate.[50] There is no need for a second grant of such authority.

Beyond that, such a provision would create injustices of its own, by inevitably delaying resolution of the specific dispute that one or more parties brought to the regulators for resolution.

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[48] EDC Topic 7, p. 3.

[49] Verizon Topic 7, p. 2.

[50] 207 C.M.R. 2.01; 220 CMR 2.02.

As NECTA correctly pointed out,[51] many disputes involve both policy and individual issues. Separating the two will be a challenge in most cases. There is no guarantee that a rulemaking will resolve the dispute set forth in the complaint. For example, a rule may prescribe how to calculate rates. But rules are prospective only and will not resolve the issue of what amounts should have been paid in the past. In addition, a process to sort out which issues should be transferred to a rulemaking and which issues should remain for adjudication will take time. In the meantime, the claimed injury will continue unabated. "Justice delayed is justice denied." The rules adopted in this proceeding should not foster such a result.

IV. Respective Authority of the Departments

Both the EDCs and Verizon favor a dispute resolution process that grants DPU a veto or superior voting power over the DTC.[52] Such proposals do not square with the statutory scheme enacted by the Legislature. The authority to regulate pole attachments rests unambiguously with the DTC. At very least, there appears no interpretation of the law that would give the DPU a veto over DTC decisions or superior voting power over the DTC.

G.L. c. 166, § 25A is the principal statute governing regulation of pole attachments in Massachusetts. "Attachments" include both communications and electric facilities:

> "'Attachment", means any wire or cable for transmission of intelligence by telegraph, wireless communication, telephone or television, including cable television, ***or for the transmission of electricity for light, heat, or power*** and any related device, apparatus, appliance or equipment installed upon any pole or in any telegraph or telephone duct or conduit owned or controlled, in whole or in part, by one or more utilities. [emphasis added]

The grant of regulatory authority in section 25A states:

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[51] NECTA Presentation p. 22 and Workshop, 5/25.

[52] EDC Topic 7, p. 3; Verizon Topic 7, p. 2.

> The department of telecommunications and energy 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 or of communication ducts or conduits of a utility for attachments of a licensee in any case in which the utility and licensee fail to agree.

The grant of "authority to regulate the rates, terms and conditions applicable to attachments" lies clearly and unambiguously with the DTC. G.L. c. 166, § 5 states plainly and directly:

> In this chapter, "department" or ***"department of telecommunications and energy"*** ***means the department of telecommunications and cable.*** [emphasis supplied]

"This chapter," of course, is chapter 166. The redefinition of "DTE" to mean "DTC" applies throughout the chapter. Therefore, the "department of telecommunications and energy" holding the regulatory authority specified in c. 166, § 25A, ***is the DTC.***

The grant to the DTC of regulatory authority over pole attachments — both communications and electrical — was a conscious choice of the Legislature when it created the DTC. The sentence in chapter 166, section 5 defining the former DTE as the DTC was specifically added as part of the 2007 enabling legislation that split up the old DTE and created the DTC.

> SECTION 43. Section 5 of chapter 166, as so appearing, is hereby amended by adding the following sentence:- In this chapter, "department" or "department of telecommunications and energy" means the department of telecommunications and cable.[53]

This legislative amendment shows the Legislature's specific intent that the DTC is the regulatory and enforcement authority over the provisions in ***all*** of Chapter 166, including the pole attachment provisions of section 25A.

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[53] Acts (2007), Chapter 19, § 43 (https://malegislature.gov/Laws/SessionLaws/Acts/2007/Chapter19).

Accordingly, rulemaking and adjudicatory authority over "attachments" — defined in section 25A to include both communications and electrical (including EVSE) attachments — rests with the DTC.

V. Conclusion.

GoNetspeed's rules proposals are widely accepted in other states, favored by pole owners in the Commonwealth, and at this juncture are noncontroversial. They should be quickly adopted. Doing so not only will enhance the well-being of the Commonwealth's citizens, but also will foster competition and show that Massachusetts Means Business.

August 8, 2025

Respectfully submitted,

/s/ Maria T. Browne
Maria T. Browne
Davis Wright Tremaine LLP
1301 K Street NW, Suite 500 East
Washington, D.C. 20005
202-973-4281 (Direct Phone)
202-973-4200 (Main Phone)
mariabrowne@dwt.com

s/ Gregory M. Kennan
Gregory M. Kennan (BBO #267780)
Fagelbaum & Heller LLP
20 N. Main St., Suite 125
P.O. Box 230
Sherborn, MA 01770
508-318-5611 Tel.
508-259-0786 Mob.
gmk@fhllplaw.com

Jamie Hoare
Chief Legal Counsel
GoNetspeed
777 Canal View Blvd #600
Rochester, NY 14623
585-978-8104
jamie.hoare@gonetspeed.com

APPENDIX A

Final Rules

The Federal Communications Commission amends part 1 of Title 47 of the Code of Federal Regulations as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.1403 paragraphs (b) by revising and (c)(3) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(b) * * * If access is not granted within the time periods specified in §§ 1.1411(d)(1) through (2) and (h), the utility must confirm the denial in writing by the applicable deadline. * * *

(c) * * * * *

(3) Any modification of facilities by the utility other than make-ready noticed pursuant to §1.1411(f), routine maintenance, or modification in response to emergencies.

* * * * *

3. Revise § 1.1411 to read as follows:

§ 1.1411 Timeline for access to utility poles.

(a) *Definitions.*

* * * * *

(4) The term "Mid-Sized Order" means pole attachment orders greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state and up to the lesser of 3,000 poles or 5 percent of the utility's poles in a state.

(5) The term "Large Order" means pole attachment orders greater than the lesser of 3,000 poles or 5 percent of the utility's poles in a state up to the lesser of 6,000 poles or 10 percent of the utility's poles in a state.

* * * * *

(c) *Advance notice for Mid-Sized and Large Orders; meet and confer for Large Orders.*

(1) New attachers shall give written advance notice to utilities as soon as practicable, but in no event less than 15 days before submitting a Mid-Sized Order and 60 days before submitting a Large Order. For Mid-Sized Orders only, the advance notice requirement is limited to instances where the order threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher. The notice shall set forth detailed information that will allow the utility to properly assess the potential resource needs for the order, including but not limited to: (1) the new attacher's contact information: (2) a description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) for a Large Order a request to meet and confer with the utility within 30 days of the date of the notice.

(2) If an application is filed without the required written advance notice, including the required minimum information, then the utility may, upon prompt notice to the new attacher, treat such application as the 15-day advance notice for Mid-Sized Orders associated with a single network deployment or the 60-day advance notice for Large Orders. Such notice from the utility to the attacher shall state that the

application will commence the advance notice period and that the applicable timelines do not begin to run until after expiration of the relevant advance notice period. If it is a Large Order, the notice shall also state that the attacher must request the meet-and confer required by our rules. At the end of the advance notice period, the new attacher can submit a new application or notify the utility that it is continuing with its original submission as its application, and the utility may not impose any additional or increased fees. Failure by the utility to give prompt notice that it is treating the attacher's application as the advance notice will result in the application proceeding to be processed under the applicable timelines without an advance notice period or meet-and-confer requirement. If the attacher fails to request the meet-and-confer described in paragraph (c)(3) of this section, then the advance notice period will not begin to run until such request is made.

(3) New attachers and utilities shall meet and confer within 30 days after an advance notice is given to negotiate in good faith the mechanics and the timing of processing Large Orders. The parties shall find a mutually agreeable day and time for a meeting (which can be in person, virtual, or by phone) within the 30-day period after the advance notice is given.

(d) *Application review and survey.* * * *

(2) *Application review on the merits.* A utility shall respond to the new attacher either by granting access or, consistent with §1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of Mid-Sized Orders or within 90 days in the case of Large Orders as described in paragraph (h) of this section). * * *

(3) *Survey.*

(i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of Mid-Size Orders or within 90 days in the case of Large Orders as described in paragraph (h) of this section). A utility shall notify a new attacher within 15 days of receipt of a complete application if the utility knows or reasonably should know that it cannot meet the survey deadline. A new attacher can elect self-help for the survey work pursuant to § 1.1411(j)(1) any time after it receives the utility's notice.

* * * * *

(iii) Where a new attacher has conducted a survey pursuant to paragraph (k)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (k)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (d)(3)(i) of this section. A utility relying on a survey conducted pursuant to paragraph (k)(3) of this section to satisfy all of its obligations under paragraph (d)(3)(i) of this section shall have 15 days to make such a notification to affected attachers rather than the applicable survey period.

(4) *Information from cyclical pole inspection reports.* * * *

* * * * *

(iv) * * *

(A) A utility that receives such an amended attachment application may, at its option, restart the 45-day period (or 60-day period for Mid-Sized Orders or 90-day period for Large Orders) for responding to the application and conducting the survey.

(B) A utility electing to restart the 45-day period (or 60-day period for Mid-Sized Orders or 90-day period for Large Orders) shall notify the attacher of its intent to do so within five (5) business days of receipt of the amended application or by the 45th day (or 60th or 90th day, if applicable) after the original application is considered complete, whichever is earlier.

(e) *Estimate.* Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all

necessary make-ready within 14 days of completing the survey required by paragraph (d)(3) of this section (or within 29 days in the case of Large Orders as described in paragraph (h)(3) of this section), or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey (or within 29 days in the case of Large Orders as described in paragraph (h)(3) of this section). * * *

* * * * *

(f) *Make-ready*. Upon receipt of payment specified in paragraph (e)(2) of this section, a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

(1) * * *

(ii) Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of Mid-Sized Orders or up to 120 days in the case of Large Orders as described in paragraph (h) of this section).

* * * * *

(iv) State that if make-ready is not completed by the completion date set by the utility in paragraph (f)(1)(ii) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (f)(1)(i) in this section.

* * * * *

(2) * * *

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of Mid-Sized Orders or 180 days in the case of Large Orders, as described in paragraph (h) of this section).

* * * * *

(v) State that if make-ready is not completed by the completion date set by the utility in paragraph (f)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (f)(2)(i) of this section.

* * * * *

(3) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (f)(1)(ii) of this section for communications space attachments or paragraph (f)(2)(ii) of this section for attachments above the communications space.

(4) Utilities shall notify a new attacher as soon as practicable but no later than 15 days after receipt of payment specified in paragraph (e)(2) of this section if the utility knows or reasonably should know that it cannot meet the make-ready deadline. Existing attachers shall notify the utility and a new attacher as soon as practicable but no later than 15 days after receiving notice from the utility pursuant to the requirements of paragraph (e) of this section that the existing attacher knows or reasonably should know that it cannot meet the make-ready deadline. Pursuant to paragraph (j)(3) of this section, a new attacher can elect self-help for the make-ready work that the notifying party cannot do any time after it receives the notice.

(g) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (f)(1)(ii) of this section or its make-ready above the communications space

by the same dates for existing attachers in paragraph (f)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(h) * * *

(1) A utility shall apply the timeline described in paragraphs (d) through (g) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

(2) A utility may add 15 days to the survey period described in paragraph (d) of this section and 45 days to the make-ready periods described in paragraph (f) of this section, for orders greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state and up to the lesser of 3,000 poles or 5 percent of the utility's poles in a state (Mid-Sized Orders).

(3) A utility may add 45 days to the survey period described in paragraph (d) of this section, 15 days to the estimate period described in paragraph (e) of this section, and 90 days to the make-ready periods described in paragraph (f) of this section to orders greater than the lesser of 3,000 poles or 5 percent of the utility's poles in a state up to the lesser of 6,000 poles or 10 percent of the utility's poles in a state (Large Orders).

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 6,000 poles or 10 percent of the utility's poles in a state.

(5) * * * However, a utility shall not impose application size limits in combination with application frequency limits that have the effect of restricting the number of pole attachments new attachers may seek in a given timeframe.

(i) *Deviation from the time limits specified in this section.* * * *

(3) * * * An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (f)(1) of this section is sent by the utility (or up to 105 days in the case of Mid-Sized Orders or up to 150 days in the case of Large Orders). * * *

(j) *Self-help remedy.*

(1) *Surveys*. If a utility fails to complete a survey as specified in paragraph (d)(3)(i) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in §1.1412, hire a contractor to complete a survey.

* * * * *

(2) *Estimates.* If the utility fails to present an estimate to the new attacher by the date specified in paragraph (e) of this section, then a new attacher may prepare the estimate in accordance with the requirements applicable to utility-prepared estimates set forth in paragraph (e) of this section. If a new attacher exercises its self-help option to prepare an estimate for utility review, the new attacher shall (1) wait until the utility's 14-day deadline (or 29 days in the case of Large Orders) has expired before exercising the self-help remedy; (2) provide notice to the utility that it is exercising its self-help remedy for an estimate; (3) use an approved contractor to prepare the estimate in accordance with § 1.1412(a)-(b); and (4) allow utilities the ability to review and approve the self-help estimate at the attacher's expense, but expenses must be reasonable and based only on the actual costs incurred by the utility in reviewing the estimate. The new attacher cannot use self-help for estimates of pole replacements. The utility must provide the new attacher with a written decision on the self-help estimate within 14 days of receiving the estimate from the new attacher or before it is withdrawn by the attacher, whichever is later. If the estimate is accepted by the utility, then it is subject to the reconciliation process set forth in § 1.1411(e)(3). If the estimate is not accepted by the utility, then the utility must detail in writing the reasons for non-acceptance. The attacher then has the ability to submit a revised estimate to the utility without starting the pole attachment timeline from the beginning.

(3) *Make-ready.* If make-ready is not complete by the date specified in paragraph (f) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in §1.1412, hire a contractor to complete the make-ready.

* * * * *

(4) *Pole replacements.* * * *

(k) *One-touch make-ready option.* For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (d) through (g) and (j) of this section.

* * * * *

(2) *Application review on the merits.* The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of Mid-Sized Orders or within 45 days in the case of Large Orders as described in paragraph (h) of this section).

* * * * *

(ii) Within the 15-day application review period (or within 30 days in the case of Mid-Sized Orders or within 45 days in the case of Large Orders as described in paragraph (h) of this section), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. * * *

* * * * *

(4) *Make-ready.* * * *

* * * * *

(iii) * * * The affected make-ready shall then be governed by paragraphs (e) through (j) of this section and the utility shall provide the notice required by paragraph (f) of this section as soon as reasonably practicable.

* * * * *

4. Amend § 1.1412 by revising the introductory text of paragraphs (b)(1) and (b)(2) and add paragraph (e) to read as follows:

§ 1.1412 Contractors for survey, estimates, and make-ready.

* * * * *

(b) *Contractors for simple work.* A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys, estimates, and simple make-ready. * * *

(1) If the utility does not provide a list of approved contractors for surveys, estimates, or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (c) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (c) of this section when providing notices required by §1.1411(j)(1)(ii), (j)(2)(i), (k)(3)(i), and (k)(4).

(2) The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in §1.1411(j)(1)(ii), (j)(2)(i), (k)(3)(i), and (k)(4) and in its objection must identify at least one available qualified contractor.

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(e) Utilities must respond to an attacher's request to add contractors to their lists of contractors authorized to perform self-help surveys, estimates, and make-ready, as provided by paragraphs (a) and (b) of this section, within 30 days of receipt.

(1) The response must state whether the contractor meets the requirements of paragraph (c) of this section and will be added to the utility's list of approved contractors for survey, estimate, and make-ready work pursuant to paragraph (a) or (b) of this section following the successful completion of any reasonable steps to begin work established by the utility. For contractors proposed to perform work above the communications space, such reasonable steps may include any evaluation, approval, orientation, or other requirements that the utility would ordinarily apply to contractors that perform work on its electric power system. If the contractor has been denied, the response must describe the bases for rejection, be nondiscriminatory, and based on a fair application of commercially reasonable requirements for contractors related to issues of safety or reliability.

(2) If a utility fails to provide the response required by paragraph (e)(1) of this section within 30 days of receipt of an attacher's request, the contractor proposed by the attacher will be deemed approved to perform self-help surveys, estimates, and make-ready work on the utility's poles consistent with paragraphs (a) or (b) of this section, and must be added to the utility's approved list of contractors following the successful completion of any reasonable steps to begin work established by the utility.

(3) A utility may disqualify a contractor that has been approved pursuant to paragraph (e)(1) or deemed approved pursuant to paragraph (e)(2) based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's uniformly applied and reasonable safety or reliability standards. Written notice must be provided to the attacher stating the specific safety and reliability bases for the disqualification.