

GoNetspeed Appendix 1

GoNetspeed's Proposed Rules

Exhibit A

Proposed Pole Attachment Regulations

220 CMR §§ 45.02; 45.03; 45.04

220 CMR 45.02

45.02: DEFINITIONS

As used in 220 CMR 45.00 except as otherwise required by context.

Abandoned Joint-Use Utility Pole. A joint-use utility pole from which all attachments have been removed.

Assigned Space. The space on a utility pole assigned by this Regulation.

Attachment. 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. "Duct" and "conduit" is not limited to "telegraph" or "telephone" ducts and conduits.

Attaching Entity. A joint-use entity with an attachment to a joint-use utility pole.

Blue Book. The "Blue Book" is "SR-1421, Blue Book – Manual of Construction Procedures" published by Telcordia.

Complainant. A licensee, or a utility who files a complaint.

Complaint. A filing by either a licensee, or a utility alleging that it has been denied access to a pole, duct, conduit, or rights-of-way owned or controlled, in whole or in part, by one or more utilities in violation of 220 CMR 45.00, and/or alleging that a rate, term or condition for an attachment is not just and reasonable. A complaint shall constitute an initial pleading within the meaning of 207 CMR 1.04(1) and 220 CMR 1.04(1).

Complex Make-Ready. "Any make ready work above the communications space; transfers and work within the communications space that would be reasonably likely to cause a service outage or facility damage, including the splicing of any communication attachment or relocation of an existing wireless attachment; and the replacement of a joint-use utility pole. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

Communications Space. The portion on a joint-use utility pole that begins at the bottom of the communications worker safety zone and ends at the lowest point above grade to which a horizontal communications wire can be attached consistent with the National Electrical Safety Code.

Department. The Department of Public Utilities and/or Department of Telecommunications and Cable.

Joint-Use Entity. A utility, licensee, or wireless provider.

Joint-Use Utility Pole. A utility pole on which there attachments by an electric utility or a municipally owned lighting plant and attachments by one or more joint-use entities. Joint-use utility poles do not include poles whose sole purpose is supporting electrical transmission conductors as defined by the Federal Energy Regulatory Commission. However, if an electric utility under-builds a transmission line with distribution, those poles are considered joint-use utility poles.

Licensee. A cable television operator, telecommunications service provider, internet service provider or any person, firm or corporation ~~other than a utility~~, which is authorized to construct lines or cables upon, along, under and across the public ways. For the purposes of 220 CMR 45.02 Licensee, shall also include a municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its service territory pursuant to M.G.L. c. 164, § 47E, but only for those attachments that are outside its service territory.

Make-Ready Work. The modification or replacement of a joint-use utility pole, or of the lines or equipment on the joint-use utility pole, to accommodate additional facilities on the joint-use utility pole.

National Electrical Safety Code. The applicable edition of the "National Electric Safety Code (NESC) published by the Institute of Electrical and Electronics Engineers and approved by the American National Standards Institute Code C2.

Overlash. The tying or lashing of additional communications wires, cables, and facilities to existing communications wires, cables, or supporting strand already attached to poles.

Pole Attachment. The physical connection of a facility to a pole, duct, conduit, or right-of-way owned or controlled by a utility that a licensee or wireless provider uses to provide communications or electric service.

Replaced Joint-Use Utility-Pole. A joint-use utility pole that has been replaced by a new joint-use utility pole. Once the last attachment has been removed from the pole, the pole becomes an abandoned joint-use utility pole.

Respondent. A licensee or a utility against whom a complaint has been filed.

Requesting Party. A utility or joint-use entity that is seeking to place attachments on joint-use utility poles.

Simple Make-Ready. Make-ready work where existing attachments in the communications space of a joint-use utility pole can be transferred without any reasonable expectation of a service outage or facility damage and where the transfer does not require splicing of any existing communication attachment or relocation of an existing wireless

attachment. Simple make ready does not apply to attachments above the communications space or pole replacements.

Survey. The measurement of poles and the facilities thereon, including any necessary assessment of physical integrity, and any engineering and design work necessary to install new facilities.

Temporary Attachment. An NESC compliant alternative to complete pole attachment licenses that have not been released in a timely manner installed by a method other than drilling a new hole on the pole.

Usable Space. The total space which would be available for attachments, without regard to attachments previously made, (a) upon a pole above the lowest permissible point of attachment of a wire or cable upon such pole which will result in compliance with any applicable law, regulation or electrical safety code or (b) within any telegraph or telephone duct or conduit.

Utility. Any person, firm, corporation or municipal lighting plant that owns or controls or shares ownership or control of poles, ducts, conduits or rights of way used or useful, in whole or in part, for supporting or enclosing wires or cables for the transmission of intelligence by telegraph, telephone or television or for the transmission of electricity for light, heat or power.

Telecommunication Service. The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunication Service Provider. Any person, firm or corporation other than a utility, which provides telecommunications service.

~~Wireless Provider. Any person, firm or corporation other than a utility, which provides telecommunications service.~~

220 CMR 45.03

45.03: Duty to Provide Access; Modifications; Notice of Removal, Increase or Modification; and Petition for Interim Relief

- (1) In accordance with M.G.L. c. 166, § 25A, a utility shall provide a licensee and a wireless provider with nondiscriminatory access to any pole, duct, conduit, or right-of-way used or useful, in whole or in part, owned or controlled by it. Notwithstanding this obligation, a utility may deny a licensee or a wireless provider access to its poles, ducts, conduits, or rights-of-way, on a nondiscriminatory basis

for valid reasons of insufficient capacity, reasons of safety, reliability, generally applicable engineering standards, or for good cause shown. Any exclusive contract between a utility and a licensee entered into or extended after August 18, 2000 concerning access to any pole, duct, conduit, or right-of-way, owned or controlled, in whole or in part, by such utility shall be presumptively invalid insofar as its exclusivity provisions are concerned, unless shown to be in the public interest.

- (2) (a) Requests for access to a utility's poles, ducts, conduits, rights-of-way owned or controlled, in whole or in part, by one or more utilities must be in an adequately descriptive writing directed to an appropriate named recipient designated by the utility. A utility is required to make such a designation. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant information supporting its denial, and shall explain how such information relates to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

(b) If access is not denied in accordance with (2)(a) of 220 CMR 45.03, the utility shall process requests for access in accordance with 220 CMR 45.04 1(a)-(g).

(c) A utility shall be required to maintain records of all surveys, permit approvals and pole replacements for a minimum of six years, and shall, upon request from a Licensee who has submitted a pole attachment permit application, produce any records related to the poles the Licensee has requested to access.

- (3) (a) A utility shall provide a licensee no less than 60 days written notice prior to:
1. removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of the licensee's attachment agreement;
 2. any change in attachment rates, terms or conditions; or
 3. any modification of facilities other than routine maintenance or modification in response to emergencies.
- (b) any licensee that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or rights-of-way accessible;
- (c) any licensee that obtains an attachment to a pole, duct, conduit, or right-of-way shall not be required later to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an

additional attachment or the modification of an existing attachment sought by any other entity, including the owner of such pole, duct, conduit, or rights-of-way.

(d) A licensee shall be responsible for the reasonable, actual costs of the make-ready work necessitated solely as a result of its additional attachment, which shall not include:

1. costs associated with correcting non-compliant conditions of a pole, duct or conduit the requesting party did not cause;
2. costs of replacing a pole identified by the owner as requiring replacement for any reason other than lack of capacity to accommodate requesting party's attachment; or
3. costs caused by a utility's failure to comply with the pole access timelines set forth in 220 CMR 45.04 1(a)-(g).

~~(d)~~ (e) Exceptions: A utility may provide to a licensee less than 60 days written notice of removal, change or modification if such removal, change or modification of facilities or telecommunications equipment is due to routine maintenance or an emergency.

~~(e)~~ (f) when a utility provides a licensee with less than 60 days' written notice pursuant to 220 CMR 45.03(3), such utility shall endeavor to provide its licensee with as much notice as is practicable in the particular circumstances.

- (4) In conjunction with the complaint procedure outlined in [220 CMR 45.04](#) through [45.09](#), a licensee may file with the Department a "Petition for Interim Relief" of the action proposed in a notice received pursuant to 220 CMR 45.03(3)(a) within 15 days of receipt of such notice. Such submission will not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of the licensee's service to its customers, a copy of the notice, and certification of service as required by 207 CMR 1.00: *Procedural Rules* and 220 CMR 1.00: *Procedural Rules*. The named respondent may file an answer within seven days of the date on which the Petition for Interim Relief was filed. No further filings with respect to this petition will be considered unless requested or authorized by the Department and no extensions of time will be granted with respect to this petition unless allowed pursuant to [207 CMR 1.02\(5\)](#) and [220 CMR 1.02\(5\)](#).

New Section 45.04

220 CMR 45.04

45.04 Terms and Conditions.

(1) Utilities shall adhere to the following reasonable pole attachment terms and conditions:

- (a) Request. A request to attach facilities to a joint-use utility pole must be in writing and must provide the utility with the information necessary under its procedures to begin to survey the poles to which attachment is sought. A utility must review a licensee's attachment for completeness before reviewing the application on its merits. A licensee's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.
1. A utility must determine within 10 business days after receipt of a licensee's attachment application whether the application is complete and notify the licensee of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the licensee that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete.
 2. Any resubmitted application need only address the utility's reasons for finding the application incomplete and will be deemed complete within five business days after its resubmission, unless the utility specifies to the licensee which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The licensee may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph will apply to the utility's review.
 3. Notwithstanding the foregoing, a licensee may submit a request to attach a service drop to a pole within 45 calendar days after the fact, and need not submit a request to overlash to existing facilities, so long as the licensee provides written notice of the overlash within 10 calendar days after making it. The utility then has 30 calendar days in which to inspect the overlash and determine compliance.

- (b) Survey. A utility must complete a survey and respond to a licensee within 45 calendar days of receipt of a complete request to attach facilities to its utility poles (or within 60 calendar days, in the case of larger orders as described in Subsection (1)(g) of this Section). This response may be a notification that the utility has completed a survey of poles for which access has been requested provided that a utility shall provide a copy of the survey and any associated documentation to a licensee upon request.
- (c) Estimate. Where a request for access is not denied, a utility must present to a licensee an estimate of charges to perform all necessary make-ready work within 14 calendar days of providing the survey required by Subsection (1)(b) of this Section, or in the case where a licensee's contractor has performed a survey, within 14 calendar days of receipt by the utility of such survey. The estimate must be detailed and include documentation sufficient to determine the basis for all charges.
1. A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 60 calendar days after the estimate is presented.
 2. A licensee may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.
 3. An estimate is binding for the work identified. If additional work is required which changes the original estimate the change must be approved by the licensee.
- (d) Make-Ready. Upon receipt of payment specified in Subsection (1)(c) 2. of this Section, a utility must notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.
1. For attachments in the communications space, the notice must:
 - i. Specify where and what make-ready will be performed.
 - 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 larger orders as described in Subsection (g) of this Section).
 - iii. State that any attaching entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

iv. State that if make-ready is not completed within the allotted time period the licensee may complete the specified make-ready.

v. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

vi. State that the attaching entity must affix an identification tag to each attachment within five feet of each joint-use utility pole that identifies the joint use entity and contains a contact telephone number, and that the tags must be maintained in a legible condition with current information. Licensees must tag all attachments installed after the effective date of this Section upon installation. Attachments installed prior to the effective date of this Section must be tagged within seven years of the effective date of this Section.

2. For attachments above the communications space, the notice must:

i. Specify where and what make-ready will be performed.

ii. Set a date for completion of make-ready that is no later than 90 calendar days after notification is sent (or 135 calendar days in the case of larger orders, as described in Subsection (1)(f)3. of this Section).

iii. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

iv. State that the utility has and may assert a right to 15 additional calendar days to complete make-ready.

v. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

(e) Attachments Above the Communications Space. For attachments above the communications space, a utility must ensure that make-ready is completed within the time periods established in Subsection (1)(d) 2. of this Section (or, if the utility has asserted its 15-calendar day right, 15 calendar days later).

(f) Compliance with Time Periods. For the purposes of compliance with the time periods in this section:

1. A utility must apply the time periods described in Subsections (1)(a)-(e) of this Section to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in Massachusetts.
2. A utility may add 15 calendar days to the survey period described in Subsection (b) of this Section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in Massachusetts.
3. A utility may add 45 calendar days to the make-ready periods described in Subsection (d) of this Section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in Massachusetts.
4. A utility must negotiate in good faith the timing of all requests for pole attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in Massachusetts.
5. A utility may treat multiple requests from a requesting party as one request when the requests are filed within 30 calendar days of one another but shall not limit the number of poles on an application or the number of application in a way that conflicts with the timelines in this Section.
6. A utility may add up to 45 calendar days to the make-ready periods described in Subsection 1(d) if a force majeure event interrupts compliance.

(g) Deviation from Time Periods. A utility or attaching entity may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility or attaching entity to complete the make-ready work within the prescribed time frame. A utility or attaching entity that so deviates must immediately notify, in writing, the licensee and other affected attaching entities, and must include the reason for and date and duration of the deviation. The utility or attaching entity may deviate from the time limits specified in this section for a period no longer than necessary and must resume make-ready performance without discrimination when it returns to routine operations. For pole replacements, a utility may add 45 calendar days to the make-ready periods described in Subsection (1)(d) of this Section for orders requiring the replacement of 10 or fewer poles, or 90 calendar days for orders requiring the replacement of more than 10 but less than 25 poles. For orders requiring the replacement of 25 poles or more, the utility and the attaching entity may deviate from the time limits specified in this

section for a period no longer than reasonably necessary to perform the pole replacements.

(h) Self-Help

1. 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. If a licensee exercises this option, the licensee must permit the utility and any affected attaching entities to be present for any field inspections and must provide the utility and any affected attaching entities three business days' notice of any field inspections. 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.
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.

In addition:

3. The licensee must permit the utility and any affected attaching entity to be present for any make-ready work and must provide the utility and any affected attaching entities five business days' notice of the make-ready work;
4. The licensee must immediately notify a utility or affected attaching entity if the make-ready work damages any equipment or causes an outage that is reasonably likely to interrupt service. Upon receiving notice from the licensee, the utility or affected attaching entity may either:
 - i. Complete any necessary remedial work and bill the requesting party for the reasonable costs related to fixing the damage; or

- ii. Require the requesting party to fix the damage at its expense immediately following notice from the utility or affected attaching entity; and
- 5. The licensee must notify the utility and any affected attaching entity of the completion of the make-ready work within 15 calendar days of completion. Such notice must provide the utility and any affected attaching entities 90 calendar days from receipt of the notice to inspect the make-ready work, and advise that the utility and any affected attaching entities have 14 calendar days from the completion of their inspection to notify the licensee of any damage or code violation resulting from the make-ready work. The utility or affected attaching entity may either complete any necessary remedial work and bill the requesting party for reasonable costs associated with the remediation or require the licensee to perform the remediation at the licensee's expense within 14 calendar days of notification.

(i) Approved Contractors for Survey and Make-Ready.

- 1. A utility may make available a list of contractors it authorizes to perform surveys and make-ready in the communications space on its poles in cases involving one-touch make-ready under Subsection (1)(l) of this Section and in cases where the utility has failed to meet deadlines specified in Subsections (1)(b) and (1)(d) of this Section. Listed contractors must be trained to work with coaxial and fiber optic cable and be reasonably insured or bonded.
- 2. A utility may make available a list of contractors it authorizes to perform surveys and make-ready above the communications space on its utility poles in cases where the utility has failed to meet deadlines specified in Subsections (1)(b) and (1)(d) of this Section. Listed contractors must be trained and appropriately licensed to work above the communications space and be reasonably insured or bonded.
- 3. If a licensee hires a contractor for purposes specified in Subsection (1)(h) of this Section, the requesting party may choose from the utility's list of authorized contractors or request the addition to the utility's authorized contractor list any contractor that meets the minimum qualifications in Subsection (i)6. of this Section, and the utility may not unreasonably deny such a request.
- 4. If a utility does not provide a list of approved contractors for surveys or simple make-ready or no contractor on the utility's

contractor list is available within a reasonable time period then the licensee may choose its own qualified contractor that meets the requirements in Subsection (1)(i)6. of this Section. When choosing a contractor that is not on the utility's list, the licensee must certify to utility that its contractor meets the minimum qualifications described in Subsection (1) (i)6. of this Section when providing notices required by Subsections (1)(h) and (1)(l) of this Section.

5. A utility may disqualify any contractor chosen by a licensee that is not on the utility's contractor 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 Subsection (i)6. of this Section or to meet the utility publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice requirements of Subsections (1)(h) and (1)(l) of this Section and in its objection must identify at least one available qualified contractor.
6. In addition to the requirements in Subsections (1)(i)1. and 2. of this Section, utilities must ensure that contractors on their lists as described in this Section, and licensees must ensure that contractors they select pursuant to Subsection (1)(i)4. of this Section, meet the following minimum requirements:

 - i. The contractor has agreed to follow published safety and operational guidelines of the pole owner, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code guidelines;
 - ii. The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;
 - iii. The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration rules; and
 - iv. The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available.

7. A licensee that hires a contractor for survey or make-ready work must provide a utility or affected attaching entity with a reasonable opportunity for a representative to accompany and consult with the authorized contractor and the requesting party.

8. The consulting representative of an electric utility may make determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

(j) Non-Compliant Poles and Attachments.

A licensee is not responsible for make-ready costs to the extent that those costs are included in the utility's maintenance as administrative expenses or booked asset costs. A licensee is not required to bear the costs of modifying attachments that are on the pole at the time of the licensee's application but that were not in compliance with applicable safety, engineering, and construction codes and standards at the time of the attachments' construction or installation, or the costs of replacing a pole identified by the utility as requiring replacement for any reason other than lack of capacity to accommodate licensee's attachment.

(k) Notice. A utility must provide a licensee no less than 60 calendar days written notice prior to:

1. Any increase in pole attachment rates; or

2. Any modification of facilities other than routine maintenance or modification in response to emergencies.

(l) One Touch Make-Ready Option for Simple Make-Ready.

For attachments involving simple make-ready, a licensee may elect to proceed with the process described in this Subsection instead of the process described in Subsection (a)-(h) of this Section. It is the responsibility of the licensee to ensure that its contractor determines whether the make-ready requested in an attachment application is simple make-ready.

1. Attachment Application.

- i. An application for attachment must be submitted in writing and must provide the utility with the information necessary to grant or deny the application.

- ii. A licensee electing the one touch make-ready option must indicate that it intends to perform one-touch make-ready in its attachment application and must identify the simple make-ready it will perform.
- iii. A utility must review the licensee's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.
- iv. A utility must complete its review for completeness within 10 business days of receipt of the application and notify the licensee of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.
- v. If the utility timely notifies the licensee that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and must be deemed complete within 5 business days after its resubmission, unless the utility specifies to the licensee which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The licensee may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.
- vi. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the licensee 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 larger orders as described in Subsection (f)3. of this Section).
- vii. If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant

evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

- viii. Within the 15-day application review period (or within 30 days in the case of larger orders as described in Subsection (f)3. of this Section), a utility may object to the designation by the licensee's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

2. Surveys. The licensee is responsible for all surveys required as part of the one-touch make-ready process and must use a contractor that is appropriately trained and licensed as well as reasonably insured or bonded and otherwise meets the requirements of Subsection (f) of this Section.

- i. A licensee may need to perform a survey to determine whether the necessary make-ready work is simple or complex before filing an application for one-touch make-ready.
- ii. The licensee must permit the utility and any affected attaching entity to be present for any field inspection conducted as part of the licensee's surveys. The licensee must use commercially reasonable efforts to notify the utility and any affected attaching entities three business days before a field inspection as part of any survey and must provide the date, time, and location of the surveys, and the name of the contractor performing the surveys.

3. Make-Ready. If the utility approves the licensee's attachment application and if the licensee has provided 15 calendar days' prior written notice of the make-ready to the utility and affected attaching entities, the licensee may proceed with make-ready using a contractor that is appropriately trained and licensed as well as reasonably insured or bonded and otherwise meets the requirements of Subsection (1)(i)6. of this Section.

- i. The prior written notice must include the date and time of the make-ready work, a description of the work involved, and the name of the contractor being used by the licensee and must provide the utility and any affected attaching entities a reasonable opportunity to be present for any make-ready work.
 - ii. The licensee must immediately notify a utility or affected attaching entity if the make-ready work damages any equipment or causes an outage that is reasonably likely to interrupt service. Upon receiving notice from the licensee, the utility or affected attaching entity may either:
 - 1. Complete any necessary remedial work and bill the licensee for the reasonable costs related to fixing the damage; or
 - 2. Require the licensee to fix the damage at its expense immediately following notice from the utility or affected attaching entity.
 - iii. In performing make-ready work, if the licensee, the utility, or an affected attaching entity determines that any work classified as simple make-ready is actually complex make-ready, then that specific make-ready work must be halted, and the determining party must provide immediate notice to the other parties of its determination and the affected poles. The affected make-ready will then be governed by Subsection (a) – (h) of this Section, and the utility must provide notice required by Subsection (d) of this Section as soon as reasonably practicable.
 - 4. Post-Make-Ready Timeline. A licensee must notify the utility and any affected attaching entities with notice of the completion of the make-ready work within 15 calendar days of completion. Such notice must provide the utility and any affected attaching entities 90 calendar days from receipt of the notice to inspect the make-ready work, and that the utility and any affected attaching entities have 14 calendar days from the completion of their inspection to notify the requesting party of any damage or code violation resulting from the make-ready work. The utility or affected attaching entity may either complete any necessary remedial work and bill the licensee for reasonable costs associated with the remediation or require the licensee to perform the remediation at the licensee's expense within 14 calendar days of notification
- (m) Replaced and Abandoned Joint Use Utility Poles.

1. Replaced Poles. All attaching entities with attachments above the communications space on a replaced joint-use utility pole must move their attachments to the new pole within 30 calendar days of written notification that a new pole has been set. All attaching entities with attachments in the communications space of a replaced joint-use utility pole must move their attachments to the new pole in a sequential manner, beginning with the highest attachment on the pole and working down. The move process must begin:

- i. In the case of a pole with attachments above the communications space, within 30 calendar days of notification of the completion of the move of those attachments to the new pole; or
- ii. In the case of a pole without attachments above the communications space, within 30 calendar days of notification of the setting of the new pole.

Once the highest attachment is moved, that attacher must notify the utility who in turn must notify the next attacher. Each subsequent attacher must move its attachment within 15 calendar days of notification.

2. Abandoned Poles. The utility responsible for the maintenance of an abandoned joint-use utility pole must remove the abandoned pole within 120 calendar days of the removal of the last communications or electric attachment (whichever is removed last) from the pole. Pole owners must remove poles that were abandoned before the effective date of this Section within 180 calendar days of the effective date of this Section. If the owner of a pole cannot be determined, the responsibility for removal of the pole lies with the utility responsible for maintenance of the pole.

(n) Temporary Attachments

1. Temporary Attachment Process

- i. Consideration for temporary attachments will be given upon the expiration of timelines set forth in Subsection (1)(d) of this Section or earlier, if the relevant utility determines that it is appropriate and, based on high application volumes, that the timelines cannot be met, or if a survey has not been completed within the time frames set forth in Subsection (b) of this Section.

- ii. Licensees shall not attach to a utility pole using temporary attachments without prior consent of the utility(s), unless the processes and conditions set forth in this Subsection (1)(n) are met and complied with.
- iii. A temporary attachment shall be granted where the requirements of this Part are satisfied if, in the engineering judgment of the pole owning utility, such temporary attachment could not reasonably be expected to endanger human life or property. If the application of said engineering judgment by the utility shall disclose a pre-existing noncompliant condition on a pole that could reasonably be expected to endanger human life or property, such noncompliant condition shall be remedied by the responsible utility within fourteen (14) days, and the request for temporary attachment shall then be granted.
- iv. Prior to the temporary attachment being made, where a telecommunications service provider has an ownership interest in the pole, it will determine the permanent and temporary attachment point for jointly owned poles. The electric utility will make that determination for poles it solely owns. The temporary attachments shall be placed in the locations identified so as not to impede other owners/attachers from completing the required make ready work or accessing their facilities on the pole.
- v. Upon receiving a completed request for permission to install a temporary pole attachment that contains all of the information as is reasonably necessary for a utility to evaluate the request, the utility shall provide its response to the requesting licensee within ten (10) business days of receiving the request. If a response to the temporary attachment request is not received by the licensee within ten days of request for temporary attachment, the licensee may proceed as if the request was granted.
- vii. Notwithstanding Subsection (1)(n)1.v., of this Section, if a survey sufficient to make such a determination has not been made within the time frame set forth in Subsection (1)(b) a licensee may submit a survey performed by a qualified contractor at the licensee's cost with proposed attachment locations to the utility. The utility shall have thirty (30) days from receipt thereof to review the survey and recommendations and to direct changes to proposed

attachment locations. In the absence of such changes by the utility within the thirty (30) day period, the licensee may proceed with the attachments as proposed by the qualified contractor.

- viii. If any pre-existing condition or defect that would reasonably be expected to endanger human life or property is identified, the licensee or its contractor shall not make the temporary attachment and the relevant utility shall immediately be notified by the licensee and informed of the condition or defect. If, in the engineering judgment/analysis of the utility, such determination is correct, the responsible parties shall correct the nonconformity within fourteen (14) days. Work on the affected pole shall not proceed until the identified condition or defect has been rectified.
- ix. Licensees shall pay for any reasonable additional utility costs associated with processing temporary attachments under this Subsection. Absent error, omission, other non-compliance or correction necessitated by the licensee, such costs will be no greater than the then-current pole attachment application fee.
- x. If any utility denies a licensee's request to install a temporary attachment then such denial shall be set forth in writing issued to the licensee and shall include particular reasons, on a pole by pole basis, for the denial.

2. National Electrical Safety Code (NESC) Requirements

- i. A licensee shall use competent and qualified workers to install temporary attachments permitted under this Subsection. Those workers shall be capable of identifying a condition or defect that would reasonably be expected to endanger human life or property. These workers shall, by way of engineering judgment/analysis, determine if a pole that is currently overloaded or will become overloaded with the addition of the temporary attachment can withstand the expected loads during the time the temporary attachment is connected to that pole.
- ii. Temporary attachments must meet applicable NESC vertical clearances between supply and communications conductors and equipment. The resulting installation must meet the safety requirements of the current NESC edition

or a previous edition that is currently applicable to the existing installation.

- iii. Temporary attachments shall not create a NESC violation, but a temporary attachment license will not be denied on the basis of pole loading unless an additional load could reasonably be expected to endanger human life or property.
- iv. Temporary attachments may use an existing hole in the pole or be installed using lag bolts. Cables with a messenger shall be attached using a messenger clamp and lag bolt, unless an existing hole is available. In no case shall a new through hole be drilled in the pole for temporary attachments.
- V. Self-supporting cables may be attached using J-Hooks in accordance with the guidelines outlined in the Telcordia Blue Book- Manual of Construction Procedures SR-1421 (Blue Book).
- vi. Temporary attachments may be constructed in accordance with the requirements of NESC Grade N construction.
- vii. Temporary attachments may be made on crossarms, extension arms, alley arms or brackets. The attachment of the crossarms, extension arms, alley arms or brackets to the pole must meet all NESC Grade N requirements and not create a NESC violation.

3. Other Temporary Attachment Requirements

- i. Licensees and utilities will maintain regular communications regarding construction schedules.
- ii. Licensee will provide specific examples of temporary attachment methods and materials they will use that meet NESC code requirements and keep such technical information on file with the utilities.
- iii. If specified by a utility, temporary attachments must meet the requirements of the Telcordia Blue Book - Manual of Construction Procedures.
- iv. Temporary attachments shall be replaced with permanent attachments (through-bolt construction) within 90 days after notification is provided to the licensee that all make

ready work has been completed and a pole attachment license released.

- v. If the licensee does not remove or otherwise make permanent its temporary attachments in accordance with iv., such licensee loses its privilege to make additional temporary attachments until all delinquent attachments are remedied. If multiple, or repeated delinquent attachments are not promptly remedied then the utility may petition the Department to disallow such licensee from making additional temporary attachments until such time as all temporary attachments that can be made permanent are made permanent.
- vi. The Pole Attachment License Fee will be assessed for each pole for which a temporary attachment approval has been granted

2. Unreasonable Terms and Conditions. The following terms and conditions are presumed to be unreasonable for the joint-use of utility poles:

- (a) Boxing. A prohibition on boxing poles (i.e., placing cables on the side of a pole opposite to the side where existing communications facilities are attached) which can be safely accessed by emergency equipment and bucket trucks or ladders provided that such technique complies with the requirements of applicable codes.
- (b) Extension Arms. A prohibition on using extension arms to clear obstacles, improve alignment, or provide space that would not otherwise be available without a replacement pole, to the extent that the installation of extension arms complies with applicable codes.
- (c) Lowest Pole Position. A prohibition against attachments below existing attachments, to the extent that space is not available above existing attachments along the proposed route (or most of the route) of the additional attachments.
- (d) Pole Top Attachments. A prohibition against pole top attachments and the use of space above the primary or secondary power for wireless attachments, to the extent such proposed pole top installations comply with the NESC.
- (e) A requirement that a separate survey be conducted for each utility for poles jointly-owned by two utilities.

3. Presumption Rebuttable. A utility or joint-use entity may overcome the presumption that a term or condition described in paragraph 2 of this Subsection is unreasonable by presenting clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable or unsafe result.