

**STATE OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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| In the Matter of |) | |
| |) | |
| Joint Notice of Inquiry by the Department of |) | Docket Nos. D.P.U 25-10/D.T.C. 25-1 |
| 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 on |) | |
| Public Rights-of-Way in the Commonwealth |) | |

REPLY COMMENTS OF CROWN CASTLE FIBER LLC

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REPLY COMMENTS OF CROWN CASTLE FIBER LLC

Crown Castle Fiber LLC (“Crown Castle”) submits these reply comments in response to comments filed regarding the Massachusetts Department of Public Utilities (“DPU”) and Department of Telecommunications and Cable (“DTC”) (together, the “Departments”) Joint Order Opening Inquiry (“*Inquiry*”) issued January 17, 2025, in the above-captioned proceeding.¹

I. INTRODUCTION

Crown Castle offers these reply comments to address the record on three major points: (i) the record supports targeted modifications to update the Massachusetts Formula for calculating pole attachment rental rates; (ii) commenters agree that updating the pole access and attachment timeframe rules would benefit all, and the best approach is to adopt the Federal Communications Commission’s (“FCC”) comprehensive pole attachment regulatory framework found at 47 C.F.R. Sections 1.1411, 1.1412, 1.1415, and 1.1416; and (iii) the record is clear that the

¹ *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 on Public Rights-of-Way in the Commonwealth*, Docket Nos. D.P.U 25-10/D.T.C. 25-1 (Jan, 17, 2025).

Departments should adopt an accelerated alternative dispute resolution solution, ideally modeled on the FCC's approach. Modernizing the Departments' rules in this manner would keep Massachusetts at the forefront of broadband deployment and facilitate a more effective, efficient attachment process for both pole owners and attachers, ultimately benefiting Massachusetts communities through increased competition and improved access to broadband services.

II. THE RECORD SUPPORTS UPDATING THE MASSACHUSETTS POLE ATTACHMENT RATE FORMULA

Crown Castle agrees with the New England Connectivity and Telecommunications Association ("NECTA") that the Departments should continue to rely on the Massachusetts Formula as the basis for their pole attachment rate calculations.² As NECTA explained, the FCC's cable rate formula, on which the Massachusetts Formula is based, is fully compensatory and is "best-suited to promote effective competition, market efficiency, and resource utilization."³ As the record shows, many pole owners rely on the Massachusetts Formula and support its continued use, and given its solid policy underpinnings rooted in the FCC cable formula, it is accordingly appropriate to continue to use it as the basis for determining pole attachment rates.⁴ However, the Departments should update the Massachusetts Formula to

² See Comments of the New England Connectivity and Telecommunications Association, Docket Nos. D.P.U. 25-10, D.T.C. 25-1, at 12-14 (filed March 18, 2025) ("NECTA Comments").

³ NECTA Comments at 14.

⁴ See Comments of Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, Docket Nos. D.P.U. 25-10, D.T.C. 25-1, at 4 (filed March 18, 2025) ("National Grid Comments"); Comments of NSTAR Electric Company d/b/a Eversource Energy, Docket Nos. D.P.U. 25-10, D.T.C. 25-1, at 5 (filed March 18, 2025) ("Eversource Comments"); Comments of Verizon, Docket Nos. D.P.U. 25-10, D.T.C. 25-1, at 3 (filed March 18, 2025) ("Verizon Comments"). Many municipal light plants also rely on the Massachusetts Formula. See Paxton Municipal Light Plant Comments at 2; Littleton Electric Light and Water Departments Comments at 3; West Boylston Municipal Light Plant Comments at 2; Hingham Municipal Light Plant Comments at 4; Braintree Electric Light Department Comments at 3;

reflect the current pole infrastructure landscape and prevent pole owners from recovering “more than the proportional capital and operating expenses attributable to that portion of the pole . . . occupied by the attachment[,]” as required under Massachusetts law.⁵ Specifically, the Departments should update the presumptive factors relied on in the Massachusetts formula to more accurately reflect current pole characteristics.⁶

The Massachusetts Formula utilizes several presumptive values, including a presumed average pole height of 37.5 feet and a presumed appurtenance factor of 15 percent.⁷ As NECTA points out in its comments, these presumptive values are decades old and no longer accurately reflect the average height or other characteristics of poles in the field today. Accordingly, they should be updated with new presumptive values drawn from current data. Crown Castle agrees with NECTA that the Departments should “modernize their presumed pole height and join other states by establishing a rebuttable presumption of a 40-foot pole for attachment rate purposes.”⁸ Crown Castle also supports NECTA’s proposal of a presumed appurtenance factor of at least 22.5 percent.

Without these adjustments to the presumptive inputs for pole height and appurtenance factor, the pole attachment rates determined by the Massachusetts Formula, relying on outdated presumptive values, will drive a *de facto* subsidy from attachers to pole owners as rates will be higher than should be reasonably permitted given the actual characteristics of the infrastructure.

Middleton Electric Light Department Comments at 3; Georgetown Municipal Light Department Comments at 4.

⁵ G.L. c. 166, § 25A.

⁶ See NECTA Comments at 14-15.

⁷ See *Cablevision of Boston Co.*, D.P.U./D.T.E. 97-82, Order at 40 n.23, 43 (Apr. 15, 1998); *A-R Cable Servs., Inc. v. Mass. Elec. Co.*, D.T.E. 98-52, Order at 12-13 (Nov. 6, 1998).

⁸ NECTA Comments at 15.

This is not only *per se* inequitable, it undermines principles of competitive neutrality because pole owners are increasingly competing with attachers as providers of broadband service.⁹ It is therefore imperative that the Departments now update the presumptive inputs in the Massachusetts Formula to ensure a fair competitive playing field between pole owners and attachers.

A. The Departments Should Adopt a Rebuttable Presumption of 40-Foot Average Pole Height

The Departments' current rebuttable presumption of a 37.5-foot pole is outdated, drawn from data collected nearly 50 years ago, and average pole height has increased significantly in that time as taller poles are needed to accommodate a larger number of attachers.¹⁰ As NECTA explains, "40-foot poles are now the standard for placement in service today."¹¹ Accordingly, the Departments should update the presumptive pole height used in the Massachusetts Formula to ensure the actual usable space on the pole is properly accounted for.

Importantly, increasing the Massachusetts Formula's presumptive pole height to 40 feet will not result in harm to pole owners in those rare cases where the average pole height in a given utility's service area is less than 40 feet, because the respective utility can rebut the presumption with credible evidence of its poles' actual average height.¹² And, as NECTA points out, the owner of the poles is better-positioned to rebut a presumptive pole height than is an attacher, because the owner has unfettered access to all of its pole data and records—which the

⁹ See NECTA Comments at 12.

¹⁰ See NECTA Comments at 15-16.

¹¹ NECTA Comments at 16.

¹² See NECTA Comments at 16 (quoting *Cablevision of Boston Co.*, D.P.U./D.T.E. 97-82, Order at 43-44 (Apr. 15, 1998)).

attacher does not.¹³ Therefore the burden of rebutting the presumptive pole height is appropriately placed on the pole owner rather than the attacher.

B. The Departments Should Adopt a Rebuttable Presumption of a 22.5 Percent Appurtenance Factor

Similarly, the Departments should update the presumptive pole appurtenance factor. Utilities have been investing increasingly in non-pole appurtenances, such as cross-arms, as part of network hardening and resiliency efforts.¹⁴ Accordingly, the current presumption of 15 percent underestimates utilities' non-pole (appurtenance) investment, resulting in artificially inflated pole attachment rates. The Departments should increase the presumptive appurtenance factor to 22.5 percent, which is more consistent with current investment.¹⁵ And, as with pole height, this value can also be rebutted by the pole owner in cases where their records demonstrate that actual appurtenance investment is lower than the presumptive value.¹⁶

III. MASSACHUSETTS POLE ATTACHMENT REGULATIONS SHOULD ALIGN WITH FCC RULES TO FACILITATE EFFICIENT BROADBAND DEPLOYMENT

Broadband deployment is time- and resource-intensive, and relies heavily on access to utility poles. In the absence of clear, mandatory pole attachment timelines and effective enforcement mechanisms, delays are inevitable. To avoid regulatory uncertainty and delay, the Departments should harmonize their rules with the FCC's pole attachment regulations.¹⁷ As NECTA explained, doing so would provide the certainty broadband providers need to invest in

¹³ See NECTA Comments at 16.

¹⁴ See NECTA Comments at 17.

¹⁵ See NECTA Comments at 18.

¹⁶ See NECTA Comments at 18.

¹⁷ 47 C.F.R. §§ 1.1411, 1.1412, 1.1415, 1.1416.

deployment while minimizing confusion and delay, leading to faster, more efficient broadband deployment in the Commonwealth.¹⁸ The record in this proceeding supports adoption of the federal rules, as discussed more fully below, and the Departments should seize this opportunity to update and improve their pole attachment regulatory framework.

A. The Record Supports Adoption of the FCC’s Rules Governing Access To Utility Poles

As Crown Castle explained in its comments, the lack of clear, enforceable timelines in the pole attachment process is a significant source of delay in broadband deployment, but it is also highly addressable.¹⁹ The Departments’ 45-day deadline for responding to an application to attach mirror’s the FCC’s rules and is a good start.²⁰ But establishing reasonable deadlines for each stage of make-ready would prevent the excessive delays that currently plague the majority of the pole attachment process,²¹ and the FCC’s timeline at Sec. 1.1411²² is well-established and widely used—even among states that regulate poles.²³

Crown Castle and other commenters noted that significant delays throughout the pole attachment process currently undermine efforts to expeditiously deploy broadband in

¹⁸ See NECTA Comments at 5.

¹⁹ See Comments of Crown Castle, Docket Nos. D.P.U. 25-10, D.T.C. 25-1, at 4 (filed March 18, 2025) (“Crown Castle Comments”).

²⁰ 220 C.M.R. § 45.03(2) (“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.”).

²¹ See Crown Castle Comments at 4-5; Comments of GoNetSpeed, Docket Nos. D.P.U. 25-10, D.T.C. 25-1, at 13 (filed March 18, 2025) (“GoNetSpeed Comments”); NECTA Comments at 5, 7.

²² 47 C.F.R. § 1.1411.

²³ See GoNetSpeed Comments at 9-10 (listing Connecticut, Maine, New Hampshire, New York, and Vermont as adopting the FCC’s timelines); NECTA Comments at 6-7 (listing Connecticut, Maine, New Hampshire, New York, Ohio, Pennsylvania, Vermont, and West Virginia as certified state that have adopted pole attachment timelines modeled on the FCC’s rules).

Massachusetts.²⁴ The FCC’s rules would not permit such pervasive delay. As NECTA explained in its comments, “it is well established fact that the FCC’s rules—including, but not limited to, attachment timelines, one-touch make-ready, the use of contractors for surveys and make-ready, and rapid dispute resolutions speeds broadband deployment.”²⁵ For example, FCC rules require that attachers be permitted to submit a single application for jointly owned poles.²⁶ Conversely, in Massachusetts, attachers must submit separate applications and undergo separate survey and estimate processes with each owner of a jointly owned pole.²⁷ As Crown Castle explained in its comments, adopting the FCC’s streamlined approach on this issue, alone, would save significant time and resources,²⁸ a point on which other commenters, including at least one utility, agree.²⁹ Implementing the FCC’s comprehensive pole attachment regulatory framework would protect the rights of both pole owners and attachers while providing the solid regulatory foundation needed to foster investment.³⁰

²⁴ See Crown Castle Comments at 5-6 (asserting over 200 days from application to license where make-ready is required); GoNetSpeed Comments at 13 (asserting over a year to obtain survey and engineering results and four years to complete make-ready and attachment).

²⁵ NECTA Comments at 7.

²⁶ See Crown Castle Comments at 6 (citing *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 ¶ 84 (2011) (“We emphasize . . . that joint ownership or control of poles should not create or justify a confusing or onerous process for attachers. Thus, for example, we would consider utility procedures requiring attachers to undergo a duplicative permitting or payment process to be unjust and unreasonable.”)).

²⁷ See Crown Castle Comments at 5; see also Eversource Comments at 7-8; Verizon Comments at 7; National Grid Comments at 7-8.

²⁸ See Crown Castle Comments at 6.

²⁹ See National Grid Comments at 20 (recommending that a single survey be performed for both communications and electric space for jointly owned poles).

³⁰ See Crown Castle Comments at 4; NECTA Comments at 5.

Despite misguided comments suggesting the contrary,³¹ adopting and implementing the FCC’s rules, or rules derived from them, is within the Departments’ authority and readily permitted under Massachusetts law. The statute requires the Departments to “consider the interest of subscribers of cable television services and wireless telecommunications services as well as the interest of consumers of utility services . . . [and] 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[.]”³² The statutory mandate is to uphold just and reasonable terms and conditions of pole attachment, and there is no language in the statute that forbids adopting rules modeled on the federal rules if that is the best approach for all interested parties, as it is here. And by adopting the FCC’s pole attachment regulations, the Departments would not be abdicating their regulatory duties; to the contrary, doing so would be a wise exercise of their authority in the manner best suited to ensure efficient, effective broadband deployment.

B. The Record Supports Adoption of a Rapid Dispute Resolution Process

Speedy resolution of disputes between pole owners and attachers is essential to avoid unnecessary additional delay to broadband deployment. Currently, Massachusetts’ pole attachment complaint process takes up to half a year, not including appeals, causing significant additional delay in the already complex and expensive process of broadband deployment.³³ Therefore, in addition to implementing the FCC’s pole access rules and timelines, the Departments should adopt an expedited dispute resolution process similar to the FCC’s recently created Rapid Broadband Assessment Team (“RBAT”). As NECTA explained, implementation

³¹ See Eversource Comments at 26-27; National Grid Comments at 22.

³² G.L. c. 166, § 25A.

³³ See NECTA Comments at 9.

of a solution modeled on the RBAT would help speed the process of resolving issues that arise during the pole attachment process, and would address the need for an alternative dispute resolution process in the Commonwealth.

The record in this proceeding demonstrates the need for, and supports adoption of, an alternative dispute resolution process. In addition to NECTA's recommendation that the Departments adopt the RBAT approach, CTIA also advocates adoption of a rapid dispute process modeled on the FCC's approach.³⁴ While electric utilities assert that an alternative dispute resolution process is not necessary in Massachusetts, they acknowledge that the current timeline for complaint adjudication is 180 days.³⁵ A faster alternative to supplement the formal complaint process would be appropriate where a dispute may be settled through mediation or an alternate means; that a given electric utility has been involved in few complaint proceedings in recent memory may simply reflect the reality that the formal process is too burdensome and time-consuming for many disputes and therefore attachers, who often lack significant bargaining power relative to pole owners, may forego relief in the interest of expediting their deployments.³⁶ Crown Castle agrees with NECTA and CTIA that adoption of an accelerated alternative dispute resolution in Massachusetts would help prevent the delays that currently slow deployment to communities in need of broadband connectivity.³⁷ And a number of states have implemented such solutions, including Pennsylvania, Maine, New York, and West Virginia, indicating an

³⁴ Comments of CTIA, Docket Nos. D.P.U. 25-10, D.T.C. 25-1, at 5 (filed March 18, 2025) ("CTIA Comments").

³⁵ See Eversource Comments at 34; National Grid Comments at 34.

³⁶ See Eversource Comments at 34-35; National Grid Comments at 33-34.

³⁷ See CTIA Comments at 5-6; NECTA Comments at 8-9.

increasing acknowledgement of their usefulness.³⁸ The Departments should take this opportunity to implement an accelerated alternative dispute resolution process, helping to ensure Massachusetts' leadership role among states facilitating efficient broadband deployment.

IV. CONCLUSION

As set forth herein, the Departments should adopt the above-described changes to their pole attachments rules, which all received clear support in the record, to update and streamline the pole attachment process and reduce barriers to deployment in Massachusetts. These commonsense changes will result in a more equitable and efficient process for attaching to poles in the interests of pole owners and attachers alike, and ultimately for the benefit of all Massachusetts consumers.

Respectfully submitted,

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³⁸ See CTIA Comments at 5; NECTA Comments at 9.