

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

Joint Investigation by the Department of Public Utilities and the Department of Telecommunications and Cable on their own motion instituting a rulemaking pursuant to G.L. c. 30A, § 2, 220 CMR 2.00, and 2.07 CMR 2.00, to amend 220 CMR 45.00: Pole Attachment, Duct, Conduit, and Right-of-Way Complaint and Enforcement Procedures.

D.P.U. 26-10

D.T.C. 26-1

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 conducted on public rights-of-way in the Commonwealth.

D.P.U. 25-10

D.T.C. 25-1

GONETSPEED’S INITIAL COMMENTS

CRC Communications, LLC, d/b/a GoNetspeed (“GoNetspeed”) strongly supports the Departments’ effort to modernize Massachusetts’ pole attachment framework. However, the Proposed Rules require meaningful revisions to ensure they reduce — rather than reinforce — the barriers that currently slow broadband deployment. Several provisions—including the aggregation of applications into 60-day windows for timeline applicability, limiting OTMR to medium-sized jobs or smaller, extended timeframes for municipal approvals and correction of pre-existing conditions, and weak enforcement and dispute-resolution mechanisms—risk leaving Massachusetts with some of the least favorable broadband deployment conditions in the Northeast.

The importance of expanding broadband access has been repeatedly emphasized by the Healey–Driscoll Administration. Governor Maura Healey has stated that “Internet access is an economic imperative,” and that high-speed internet is essential for work, entrepreneurship, and participation in the digital economy.¹ Lieutenant Governor Kim Driscoll has likewise recognized that expanding internet access will bring significant economic benefits to individuals, schools, businesses, and nonprofits across the state.² The Departments’ final rules should advance—rather than inadvertently undermine—these goals.

Clear, enforceable rules governing access to utility poles are essential to the efficient deployment of broadband infrastructure across the Commonwealth. The Departments’ proposal to adopt One Touch Make-Ready (“OTMR”), pole access timelines, self-help remedies, cost allocation standards, and pole owner reporting obligations represents a meaningful improvement over the prior minimal regulatory framework..

At the same time, the Proposed Rules represent a frustrating step backward from the previously circulated Joint Discussion Draft³ and fall short of the frameworks adopted in neighboring jurisdictions and under the Federal Communications Commission (“FCC”) pole attachment rules, which govern pole attachments in 28 states, including Rhode Island, and serve as the model for many others.⁴ These departures from widely adopted processes risk increasing

¹ See <https://broadband.masstech.org/news/healey-driscoll-administration-awards-more-126-million-expand-internet-96-massachusetts-cities>

² See <https://masstech.org/news/healey-driscoll-administration-awards-more-126-million-expand-internet-96-massachusetts-cities>

³ See Potential Amendments to 220 CMR 45.00, June 18, 2025 <https://www.mass.gov/doc/dpu-25-10dtc-25-1-potential-amendments-to-220-cmr-4500/download>

⁴ The rules govern directly in 26 states where the FCC has jurisdiction, including Rhode Island, and in 2 states (Pennsylvania and West Virginia) that have adopted the FCC rules wholesale. Numerous other states have adopted OTMR, access timelines and self-help remedies that closely resemble the FCC’s rules. See Ex. 1.

the time, effort, and expense required for broadband deployment without corresponding improvements in safety, reliability, or operational efficiency.

For five years, GoNetspeed has worked to construct a fiber network in Massachusetts to provide fast, reliable, and competitively priced broadband service to residents, businesses, and institutions across the Commonwealth. Based on that experience, these comments identify several areas targeted revisions are necessary to ensure that the final rules advance the Commonwealth's broadband policy goals.

As drafted, the Proposed Rules would extend deployment timelines beyond those permitted under the FCC's framework and in neighboring states, limit the effectiveness of self-help remedies, and preserve broad pole owner discretion to deny access or impose additional costs—even where the underlying conditions were created by the pole owner itself. The proposal would also codify inefficient joint pole owner application processes that require attachers to submit multiple applications for the same pole and make it more difficult and time-consuming for attachers to obtain timely relief from the Departments, even when pole owner practices delay deployments. Together, these provisions risk undermining the timelines established in the rules and perpetuating disincentives to broadband investment.

These outcomes are not inevitable. With the targeted revisions proposed by GoNetspeed in redlines to the Proposed Rules shown in Appendix A to these comments (“GoNetspeed's Revisions”), the Departments will establish a regulatory framework that promotes timely pole access, ensures appropriate accountability of pole owners and licensees, and encourages rapid deployment of competitive broadband networks. These improvements are particularly important as Massachusetts seeks to expand broadband availability, improve affordability, and attract continued investment in next-generation infrastructure.

Facilitating competitive broadband deployment will improve residents' well-being, strengthen local economies, and better position Massachusetts to compete for private investment in digital infrastructure. Companies such as GoNetspeed are prepared to invest substantial capital to expand high-speed broadband services across the state, including through innovative partnerships that increase competition and consumer choice. A clear and efficient pole attachment framework is essential to unlocking that investment and demonstrating that "Massachusetts means business," and welcomes broadband infrastructure development.

Without GoNetspeed's Revisions, the Proposed Rules would entrench the very delays and high costs that have historically limited broadband investment in the Commonwealth. With the changes, Massachusetts can adopt a modern regulatory framework that promotes competition, accelerates deployment, attracts investment, and advances the Administration's goal of ubiquitous, affordable broadband.

I. Changes to the Proposed Rules Are Needed to Ensure that all of Massachusetts Has Access to Affordable, High Speed Broadband Services In the Near Future

Massachusetts' broadband prices are among the highest in the country,⁵ and portions of the Commonwealth remain unserved by high-speed broadband.⁶ For several years, GoNetspeed has worked to expand high-speed broadband access across Massachusetts, introducing competition and its concomitant improvements to price and performance. However, the Commonwealth's lack of clear and effective regulatory processes to facilitate and encourage pole attachment access significantly hinders deployment and investment.

In GoNetspeed's experience, in Massachusetts, it currently takes roughly four years from

⁵ [Cheapest and Most Expensive States for Internet Service](#)

⁶ Over 50 communities in Western Massachusetts and parts of Berkshire, Franklin, and Hampden counties along with specific pockets in urban areas like Springfield, still face limited broadband access.

the time a pole attachment permit application is filed until a pole requiring make-ready work is ready for attachment.⁷ The cost per mile to deploy broadband infrastructure in Massachusetts also exceeds that of neighboring states with similar population density and topography by *2 to 5 times*.⁸

Although the Proposed Rules appear intended to address the investment disincentives created by these lengthy timelines and high costs, in many respects they instead codify the status quo. It would still take several years to complete the pole attachment process for large broadband deployments, and the rules do little to address the ability of broadband providers to control deployment costs. In addition, rather than establishing a rapid process for resolving pole attachment disputes that impede broadband deployment—as the FCC and many certified states have done—the Proposed Rules would lengthen the timeline for adjudicating complaints. Proposed procedural changes also risk removing disputes from the federal statutory resolution deadline by, for example, converting a pole attachment complaint into a rulemaking proceeding. Delaying resolution beyond the 180-day deadline runs counter to the widely accepted view among legislators and regulators that pole-attachment disputes must be resolved promptly to serve as an effective deterrent..

If left unaddressed, these shortcomings will ultimately increase costs and delay access to affordable broadband for Massachusetts residents, businesses, schools, and institutions. Aligning the rules more closely with the FCC framework and practices adopted by neighboring states would remedy those issues and create a more attractive environment for broadband investment.

⁷ See GoNetspeed Presentation D.P.U. 25-10/D.T.C. 25-1 Technical Sessions June 23-27, 2025, attached hereto as Ex. 2, at slide 4; see also [Streamline Mass. Fiber Regulation, Firm Pleads - The Boston Globe](#)

⁸ See Initial Brief of CRC Communications LLC, d/b/a Otelco, filed in CRC Communications LLC, d/b/a OTELCO v. Massachusetts Electric Co. d/b/a National Grid, and Verizon New England Inc., DTC 22-4 (Aug. 18, 2022) at 8-10 (make-ready costs in Massachusetts tripled OTELCO's budgeted 25k/mile whereas the company's make-ready costs were under 10k/mile in Maine, and under 8k in Connecticut).

A. The Proposed Pole Access Timelines Should Be Shortened to Align with FCC and Nearby States' Rules

The FCC first adopted pole attachment access timelines in 2011⁹ and has refined them through subsequent rulemakings to improve their effectiveness.¹⁰ Among other changes, the FCC expanded the job sizes subject to the timelines, strengthened attachers' ability to use qualified contractors when pole owners fail to meet deadlines by extending self-help to make-ready work in the power space, and introduced One Touch Make-Ready ("OTMR"), which allows attachers to perform certain simple make-ready work in the communications space using approved contractors.¹¹ The FCC also created the Rapid Broadband Assessment Team ("RBAT") to facilitate mediation and expedited resolution of pole attachment disputes delaying broadband deployment.¹² The FCC rules apply in 28 states (26 directly and 2 that have adopted them wholesale) and serve as the model for many other certified states that regulate pole attachments themselves. Indeed, all other states in the Northeast, including those neighboring Massachusetts, have pole attachment rules based on the FCC's.¹³

⁹ See *In re Implementation of Section 224 of the Act; A National Broadband Plan for Our Future* ("FCC 2011 Order"), WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, FCC 11-50, 26 FCC Rcd. 5240 (Apr. 7, 2011).

¹⁰ See *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705, (Aug. 3, 2018); *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd. 12379 (FCC Dec. 15, 2023); *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* ("FCC 2025 Order"), WC Docket No. 17-84, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, FCC 25-38, 2025 WL 2144600 (FCC July 25, 2025).

¹¹ See 47 C.F.R. §§ 1.1411 - 1.1412.

¹² See 47 C.F.R. § 1.415.

¹³ See Ex. 1.

1. The proposed timelines significantly exceed the widely adopted FCC timelines.

The Proposed Rules would limit the number of pole attachment applications that may be filed within a 60-day window rather than the 30-day window permitted under the FCC’s rules, significantly extending the attachment timelines.¹⁴ This change alone would introduce an automatic one-month delay at the outset of broadband deployments requiring access to more than 5,000 poles. For projects requiring access to more than 10,000 poles – something that is common for broadband deployments in Massachusetts - the delay would compound as applications must be staggered across multiple filing windows.¹⁵

The Proposed Rules would also, unlike the FCC rules, restrict the availability of OTMR to mid-size rather than larger jobs and lengthen several key timelines governing advance notice, application completeness review, and make-ready work. Specifically, the Proposed Rules would increase FCC advance notice requirements from 15 to 45 days for Mid-Size Orders and from 60 to 90 days for Large Orders,¹⁶ increase FCC timelines governing review of applications for completeness for Mid-Size Jobs (10 to 15 days) and Large Jobs (10 to 30 days) and extend resubmission completeness reviews from 5 to 15 days,¹⁷ and use the FCC timelines governing work **above** the communications space for “Complex Make-Ready” in the communications space, **extending the timelines for complex make-ready by 60 days for each job size.**¹⁸

¹⁴ See Proposed Rule 220 CMR 45.06(1).

¹⁵ See Ex. 3.

¹⁶ See Proposed Rule 220 CMR 45.07(1); see also Ex. 3.

¹⁷ See Proposed Rule 220 CMR 45.08(d)(2); see also Ex. 3.

¹⁸ See Proposed Rule 220 CMR 45.08(5)(b)7 and 8; see also Ex. 3.

Critically, the make-ready clock would not begin until after receipt of required governmental approvals¹⁹ — a process that typically has no established deadlines, is often lengthy and unpredictable and is already accounted for in Proposed Rule 45.10 allowing timeline deviations.²⁰ This requirement, which does not exist in the FCC’s or any other state’s pole attachment framework,²¹ would undermine the integrity of the entire timeline structure and introduce the potential for open-ended delay.

In a similarly critical defect, the Proposed Rules do not clearly require pole owners to complete work above the communications space within the same timelines applicable to third-party attachers. Specifically, the Proposed Rules define “complex work” as “transfers and work *within the communications space*.”²² While the definition further provides that an application is considered complex if it requires work above the communications space or a pole replacement, the make-ready completion timeline appears only in the notice to *existing licensees*,²³ and does not clearly state that the pole owner’s work above the communications space must also be completed within that same timeline. The FCC addressed a similar ambiguity in its original timelines in 2018 by requiring utilities to complete their make-ready work above the communications space within the same timeframe applicable to existing attachers.²⁴ The Massachusetts rules should do the same.

¹⁹ *See id.*

²⁰ The Proposed Rules already allow the utility to extend the make-ready timelines “pending issuance of permits or approvals by a government authority,” or to accommodate local traffic or roadway moratoriums or flagging requirements. 220 CMR 45.10(1)(a).

²¹ *See Ex. 1.*

²² *See Proposed Rule 220 CMR 45.02 (emphasis added).*

²³ *See Proposed Rule 220 CMR 45.08(5)(b)8.*

²⁴ *See 47 C.F.R. § 1.1411(g)* (“A utility shall complete ... its make-ready above the communications space by the same dates for existing attachers...”; *see also FCC OTMR Order ¶¶ 96-100* (“We expect the availability of self-help above the communications space will strongly encourage utilities and existing

The Proposed Rules would also pause attachment timelines while pole owners attempt to recover costs from existing licensees for correcting pre-existing non-compliant conditions – again introducing unbounded delay to the attachment process.²⁵ Neither the FCC nor any nearby certified states include such a pause.²⁶ In practice, these disputes can take months or even years to resolve. Where the National Electrical Safety Code (“NESC”) permits non-compliant conditions to be scheduled for correction rather than immediately remedied, attachments should be allowed to proceed provided they do not worsen the condition.²⁷

As shown in Exhibit 3, these provisions collectively would substantially lengthen broadband deployment timelines compared to those applicable under the FCC rules and in nearby states. For example, an attacher seeking to deploy using 5,500 poles owned by one utility, could, under FCC rules, apply for and obtain access to all poles (including poles requiring make-ready above the communications space) in less than one year. In fact, based on GoNetspeed’s experience, the vast majority of those poles would likely be eligible for OTMR, and thus eligible for attachment in just over 2 months. In contrast, under the Proposed Rules the same 5,500 pole order in Massachusetts would *not* be eligible for OTMR and would take *at least 16 months* – before work above the power space was complete.

Moreover, in Massachusetts, where two electric utilities and one telephone company own the vast majority of utility poles, broadband deployments typically require access to tens of thousands of poles controlled by just one of these entities. Yet to take advantage of OTMR – which

attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when they do not.”).

²⁵ See Proposed Rule 220 CMR 45.08(2)(f)2.(1).

²⁶ See Ex. 1.

²⁷ See *infra*.

the Proposed Rules limit to Mid-Sized Orders or smaller – attachers would have to limit applications to no more than 2,999 poles filed no more frequently than once every 60 days.²⁸ In addition to vastly improved timelines, OTMR gives attachers the ability to better control deployment costs. To stay within the Mid-Size timelines, attachers will need to stagger deployment projects using the Mid-Size Order category over many months. Thus, even modest extensions to individual procedural timelines compound across typically large projects, producing significant delays in overall network deployment.

For example,²⁹ an attacher in an FCC-regulated state seeking access to 29,500 poles as part of a broadband deployment could submit applications for **5,999 poles**, the FCC defined large order size cap, in Months 1, 2, 3, and 4, and the remaining 5,504 poles in Month 5. For poles requiring complex make-ready within the communications space,³⁰ the access process for the entire job could take up to **359 days** (roughly **12 months**³¹), while poles requiring work above the communications space could take up to **419 days** (roughly **14 months**).³² If the make-ready timelines are not met, attachers have self-help remedies regardless of where on the pole work is

²⁸ See Proposed Rule 220 CMR 45.06(1).

²⁹ This example presumes an application will require one-resubmission for completeness and no deviations by the pole owner or existing attachers and uses calendar days; where the Proposed Rules use business days, the example converts to calendar days presuming no holidays.

³⁰ This analysis does not include simple make-ready, which is eligible for and thus analyzed under the OTMR timelines. Under the FCC rules amended in 2025, because this is a large job, the attacher would provide 60 days advance notice of its plans prior to filing its application. Once the application is filed, the first 300 poles on both applications would be subject to the survey, estimate and make-ready timelines applicable to regular size jobs, the next 2,700 poles would be subject to timelines applicable to mid-sized jobs, and the next 3,000 poles would be subject to timelines governing large jobs.

³¹ While 7 calendar months have 31 days and February has 28, this hypothetical uses 30-day months for both the FCC and Massachusetts timelines to facilitate comparison.

³² See Ex. 3.

needed. Under FCC rules, OTMR is also available for large size jobs involving only simple make-ready, such that many of these poles could be ready for attachment in as little as **75 days**.³³

By contrast, under the Proposed Rules in Massachusetts, a licensee seeking access to the same 29,500 poles would need file **10 applications** over 19 months³⁴ to wait at least **914 days**—nearly **31 months**—before complex make-ready work within and above the communications space is completed and attachments can occur on all poles.³⁵ This is due primarily to the fact that an attacher seeking to utilize OTMR would have to limit its applications to 2,999 poles once every two months. Under the Proposed Rules for mid-size jobs, the licensee could submit an application for only 2,999 poles in Months 1, 3, 5, 7, 9, 11, 13, 15, 17 and the remaining 2,509 poles in month 19.³⁶ If, by chance, the number of poles increased to 29,992 poles, the Massachusetts dates would extend another **2 months**, while the FCC timelines would remain the same. This example also does not account for delays likely attributable to correction of preexisting non-compliance, nor does it factor in any utilities requiring additional advance notice. Moreover, even longer timelines that would apply if the poles were jointly owned by municipal lighting plant utilities, which the Proposed Rules would extend to the telephone company joint owner, that competes directly with entities seeking attachment.³⁷

The combined effect is that the Proposed Rules would result in deployment timelines at least twice as long as those applicable in states governed by the FCC's or analogous frameworks.

³³ FCC rules provide utilities 10 days to review OTMR applications for completeness and 45 days to review Large Job OTMR applications. 47 C.F.R. § 1.1411(k).

³⁴ See Ex. 4.

³⁵ See Ex. 3.

³⁶ *Id.*

³⁷ Because these utilities typically own fewer poles, the pole-count thresholds in the Proposed Rules would likely place a greater share of applications into larger job categories subject to longer timelines. See Proposed Rule 220 CMR 45.06(2).

This estimate is conservative because it assumes that all required governmental approvals are obtained within 60 days, although in practice those approvals could take significantly longer, or, under the Proposed Rules, be withheld altogether.³⁸ It also assumes that the pole owner will correct or cause correction of pre-existing noncompliant conditions within the make-ready timelines, which is rarely the case. Delaying make-ready timelines until local approvals are obtained and pre-existing conditions are resolved would effectively dismantle the entire timeline framework and introduce the risk of indefinite delay. If this issue is not resolved, all of the Departments' and process participants' efforts will have been for nought.

These issues render the Proposed Rules problematic in the extreme. The Proposed Rules timeline closely tracks the amount of time it takes, on average, to gain access to utility poles in Massachusetts today *without regulations* – **four years**.³⁹ Bottom line, the Proposed Rules work **little to no improvement** in the time to deploy broadband networks in Massachusetts.

2. Targeted changes to the proposed timelines are necessary to facilitate timely, affordable broadband deployment.

GoNetspeed's proposed revisions to the Proposed Rules, included in its attached redline, align them more closely with the FCC's and other states' frameworks. These revisions shorten the

³⁸ The Proposed Rules do not specify the types of authorizations that utilities must obtain to perform make-ready work, or when such authorizations are required.

³⁹ See *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 Initial Comments, at 7 (Mass. Dep't of Pub. Utils. & Mass. Dep't of Telecomms. & Cable Mar. 18, 2025), <https://www.mass.gov/doc/dpu-25-10dtc-25-1-crc-communications-comments/download>; *In Re Petition of CRC Communications, LLC d/b/a GoNetspeed for a Rulemaking Proceeding to Amend 220 CMR 45.00: Pole attachment, duct, conduit and right-of-way complaint and enforcement procedures*, Petition for Rulemaking filed by GoNetspeed, D.T.C. 22-4 (Mass. Dep't of Telecomms. & Cable, Nov. 14, 2024), <https://www.mass.gov/doc/dtc-24-5-crc-communications-petition-for-rulemaking/download>.

proposed timelines to align with the FCC's,⁴⁰ clarify applicability of the make-ready timelines to work above the communications space, allow licensees to attach pending correction of pre-existing non-compliance where doing so comports with the NESC, and ensure that make-ready timelines run concurrently with the process for obtaining local governmental approvals rather than sequentially.

Enforceable and reasonably prompt access timelines are essential to broadband deployment. Even modest delays at each stage of the pole attachment process can compound across large projects, slowing construction, increasing costs, and delaying service to customers. Clear, accelerated timelines provide attachers with the certainty needed for deployment planning and help ensure that pole access decisions are applied consistently and without discrimination. Timeline certainty allows providers to communicate confidently with other stakeholders including municipalities, contractors, and, most critically, customers. There's nothing quite like missing a deployment commitment to damage a company's reputation and erode a customer's goodwill. As the FCC has recognized, delay and inconsistency in the pole attachment process deter investment and impede broadband deployment.⁴¹

Massachusetts has recognized the importance of enforceable pole attachment timelines and has taken an important step by proposing deadlines for key stages of the attachment process.⁴²

⁴⁰ The DTC has publicly supported the FCC's timelines. *See FCC 2011 Order*, WC Docket No. 07-245, DTC Comments, at 3 (Mass. Dep't of Telecomms. & Cable Aug. 16, 2010), <https://www.fcc.gov/ecfs/document/6015851281/2>.

⁴¹ *See FCC 2011 Order*, 26 FCC Rcd. at 5241.

⁴² *See Joint Investigation by the Department of Public Utilities and the Department of Telecommunications and Cable on their own motion instituting a rulemaking pursuant to G.L. c. 30A, § 2, 220 CMR 2.00, and 207 CMR 2.00, to amend 220 CMR 45.00: Pole Attachment, Duct, Conduit, and Right-of-Way Complaint and Enforcement Procedures ("Joint Rulemaking Order")*, Order Instituting Joint Rulemaking and Further Inquiry on Memorandum of Agreement, D.P.U. 26-10, D.T.C. 26-1, at 10 (Mass. Dep't of Pub. Utils. & Dep't of Telecomms. & Cable Mar. 6, 2026).

However, the proposed timelines still fall short of what is needed to support timely, large-scale broadband deployment. In states governed by FCC rules—and in other New England states that have adopted similarly accelerated frameworks⁴³—clear and enforceable timelines compress the survey, estimate, and make-ready process, allowing broadband networks to be deployed in roughly half the time required in Massachusetts today. By contrast, the Proposed Rules would largely codify the status quo, perpetuating the delays and uncertainty that have historically characterized pole access in the Commonwealth. Unless the final rules include shorter and more effective timelines, investor-backed providers such as GoNetspeed may be forced to reconsider significant investments in competitive fiber-to-the-home (“FTTH”) networks in Massachusetts, placing millions of dollars in private and federal broadband funding at risk.

B. The Proposed Rules Should be Revised to Expand OTMR to Include Large Jobs and Improve Attachers’ Ability to Use Approved Contractors to Perform Survey and Make-Ready Work Including Above the Communications Space

The Proposed Rules would limit the application sizes eligible for OTMR, prohibit attachers from supervising approved contractors in the performance of make-ready work above the communications space when utilities fail to meet required timelines, and require attachers to hire separate contractors from both the electric and telephone company pole owner lists when performing self-help survey work or OTMR while simultaneously making it difficult to address insufficiently robust contractor lists.⁴⁴ These restrictions and limitations depart from the FCC framework and would undermine the effectiveness of the pole attachment process. Critically,

⁴³ See Ex. 1.

⁴⁴ Proposed Rule 220 CMR 48.09(f)1.(1) (“the new licensee shall use a contractor included on the authorized contractor lists maintained by each utility with ownership of the poles”). However, proposed rule 45.08(6)(b) provides that if the work in the communications space is not performed in a timely manner, then the licensee may hire a contractor from the telephone utility’s approved contract list to complete the make-ready.

timelines without enforceable remedies are effectively advisory, not binding. Unless these shortcomings are addressed, even shortened pole access timelines will not translate into accelerated deployment in support of the Commonwealth’s broadband goals.

1. Large order applications must be eligible for OTMR.

OTMR has proven to be one of the most effective tools for accelerating broadband deployment. By allowing a single qualified contractor to perform simple communications-space survey and make-ready work in a coordinated process, OTMR eliminates the inefficiencies associated with multi-party coordination.

As explained by the FCC in 2018, “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 process.”⁴⁵ As Verizon argued in 2018 advocacy to the FCC in support of OTMR, “[e]xpediting the make-ready process can reduce payback periods and thus spur increased investment for next-generation networks. The current process is inefficient; impeding broadband deployment and creating additional burdens for pole owners.”⁴⁶ Further, OTMR gives much greater control to the applicant over costs by allowing more immediate communication and control with the contractor performing the work, unfiltered by the pole-owner middleman.

⁴⁵ See *FCC OTMR Order* ¶ 22; see also *City of Portland v. United States*, 969 F.3d 1020, 1049-50 (9th Cir. 2020) (affirming the FCC’s OTMR rules and stating “the FCC intended to make it faster and cheaper for broadband providers to attach to already-existing utility poles.”).

⁴⁶ [Verizon Wireline Ex Parte Letter](#) from Katharine R. Saunders, Managing Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-84 (filed Nov. 13, 2017), at Attachment, Nicholas Vantzelfde, Managing Partner, Communications Media Advisors, LLC, [Perspectives on the Current State of Make Ready and the Potential Impact of a One-Touch Make-Ready Policy](#) (CMA Report) at 4 (2017).

In Massachusetts, where three utilities own the vast majority of distribution poles eligible for attachment, and broadband deployments require access to thousands – typically tens of thousands – of poles, it is critical that OTMR be available for large order applications.

In limiting OTMR to mid-sized jobs and smaller, the Departments cite to utilities’ claims that OTMR is “rarely” used.⁴⁷ This is not GoNetspeed’s experience. In Maine, where GoNetspeed applied to attach to close to 50,000 poles, about 90% of the poles were eligible for OTMR. The vast majority of those poles were applied for and built over a 3-year period (2022 – 2024).⁴⁸ Moreover, as shown in the example above, using OTMR in Massachusetts would greatly reduce build-out delays created by the Proposed Timelines – from 3.5 years to just months. There is no reason to artificially limit OTMR to exclude large jobs. If required make-ready work is not simple, it makes no sense for an attacher to include it in an OTMR application as doing so would only delay the project. Additionally, protections exist to ensure that the OTMR right is not abused. Caps on the number of poles that can be applied for apply regardless of whether the poles qualify for OTMR. And, Proposed Rule 45.09 incorporates the FCC’s steps for ensuring safety and reliability, such as:

- Limiting OTMR to poles requiring only simple make-ready work in the communications space;⁴⁹
- Requiring new attachers to use utility-approved contractors to perform simple make-ready (this actually exceeds the FCC rule, which allows attachers to use qualified contractors when owner lists are not sufficient);⁵⁰

⁴⁷ See *Joint Rulemaking Order* at 48 (citing D.P.U. 25-10, D.T.C. 25-1, EDC Joint Reply Comments at 17 (Aug. 8, 2025)).

⁴⁸ Notably, under the Proposed Rules, at a pace of 5,000 poles once every 60 days, it would take nearly 2 years just to *apply* to attach to these poles.

⁴⁹ See Proposed Rules 220 CMR 45.09(1)(c) and (d).

⁵⁰ See Proposed Rule 220 CMR 45.093(a).

- Requiring new attachers to notify existing attachers and the utility pole owner in advance to give them a reasonable opportunity to be present during surveys and OTMR work, so that “new attachers [will] perform quality work and . . . provide the utility and existing attachers an opportunity for oversight to protect safety and prevent equipment damage.”⁵¹; and
- Allowing existing attachers and the utility the ability to inspect and request any corrective measures soon after the new attacher performs OTMR work.⁵²

All of these steps ensure that the make-ready work performed by the new attacher will be *at least* of the same quality as make-ready that would be performed by the utility pole owner or other attachers. After all, there is no requirement that incumbent pole owners submit their own work—or that of their contractors—for outside approval or inspection. In other words, there is no independent check on a pole owner’s substandard construction.

2. Licensees must be permitted to manage approved contractors performing work above the communications space if electric utilities miss make-ready timelines.

Rules are only effective if they are reasonably enforceable.⁵³ Limiting self-help remedies to the communications space weakens their effectiveness and eliminates confidence in any codified timeframes. If work above the communications space is delayed, the entire project may stall even if communications-space work has been completed.

The FCC addressed this problem in 2018 by allowing attachers to use approved contractors to perform power-space work when utilities fail to meet deadlines. In doing so, it found that “complaints are an important but insufficient tool for encouraging compliance with” pole

⁵¹ See Proposed Rule 220 CMR 45.09(3)(b); see also *FCC OTMR Order* ¶ 27.

⁵² See Proposed Rule 220 CMR 45.09(3).

⁵³ See *Resolution Adopting Commission Enforcement Policy*, Resolution M-4846, at 1, 2 (Pub. Util. Comm’n of Cal: Executive Div. Nov. 5, 2020) (explaining that “the primary purpose of an effective enforcement program is to deter misbehavior or illegal conduct by utilities” and noting that “strong enforcement is critical to ensuring that the CPUC’s statutory mandates are carried out”), (<https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/safety-and-enforcement-division/documents/m-4846.pdf>).

attachment timelines.⁵⁴ In contrast, “the availability of self-help above the communications space will strongly encourage utilities and existing attachers to meet their makeready deadlines and give new attachers the tools to deploy quickly when they do not.”⁵⁵ A self-help remedy also provides attachers with predictable deployment milestone – which is paramount for construction sequencing, scheduling labor, financing and meeting funding-driven deployment deadlines, as well as marketing and sales efforts. Other states, including Maine, Vermont and Ohio, have followed the FCC’s lead.⁵⁶ Vermont has allowed self-help in the power space since 2020 and Maine, including for pole replacements, since 2021.⁵⁷ California has allowed self-help in the power space since 2022⁵⁸ and recently proposed extending the self-help remedy to simple pole replacements.⁵⁹

As the Departments recognize with respect to work in the communications space, the availability of a self-help remedy when timelines are missed serves two important functions: it incentivizes compliance with established deadlines and provides certainty to those investing in

⁵⁴ See *FCC OTMR Order* ¶ 98.

⁵⁵ *Id.*

⁵⁶ See Vermont 3.708(L); 65-407 CMR Ch. 880, § 2; Ohio Admin. Code 4901:1-3-03(6). See also Ex. 1.

⁵⁷ See *Vermont Public Utility Commission, Memorandum re: Adopted Rule 3.700, Pole Attachments*, Case No. 19-0252-RULE (Vt. Pub. Util. Comm’n Jan. 24, 2020); see also *Amendments to Chapter 880 of the Commission’s Rules – Attachments to Joint Utility Poles; Determination and Allocation of Costs; Procedure*, Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2020-00281 (Me. Pub. Utils. Comm’n Apr. 8, 2021).

⁵⁸ *Decision Adopting One-Touch Make-Ready Requirements*, Decision 22-10-025, Investigation No. 17-06-027, Rulemaking No. 17-06-028, app. A, § IV.C.2.e, at 61 (Cal. Pub. Utils. Comm’n Oct. 20, 2022) (“Allowing for self-help remedies avoids the potential for delays that might occur under a non-OTMR process.”), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M498/K026/498026496.PDF>.

⁵⁹ See *Decision Adopting Revised Rights-of-Way Rules and Resolving Petition for Modification of Decision (D.) 21-10-019 and Petition for Modification of D.22-10-025*, Proposed Decision of Comm’r Reynolds, Investigation No. 17-06-027, Rulemaking No. 17-06-028, at 43 (Cal. Pub. Utils. Comm’n Apr. 10, 2026) (proposed decision), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M604/K598/604598889.PDF>.

broadband networks that required work will be completed by a date certain. The Proposed Rules, however, would prohibit attachers from exercising self-help for make-ready work above the communications space when electric utilities fail to perform that work within the applicable timelines. The Order provides little explanation for this limitation beyond noting electric utilities' opposition.

This restriction is unwarranted. The right to exercise self-help arises only after a utility has already failed to meet the timelines set forth in the rules—timelines that themselves may be extended through permitted deviations. In other words, the remedy is triggered only *after the utility has been afforded ample opportunity to complete the work*. In practice, the availability of self-help primarily serves as a backstop that encourages utilities to complete make-ready work on time.

Even when self-help is invoked, GoNetspeed's Revisions would still preserve important safeguards. The attacher may perform the work only through highly qualified contractors approved by the utility—contractors that are often already used by the utility to perform similar work in the power space.⁶⁰ Pole owners and existing attachers receive advance notice of the work and may oversee its performance, and the attacher remains fully responsible – under the rules and contractually - for any damage caused by its contractors.⁶¹ These protections ensure that safety and reliability are maintained while allowing projects to move forward when utilities fail to act.

⁶⁰ See Proposed Rule 220 CMR 45.08(6)(b); see also *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 at 19-21, (Mass. Dep't of Pub. Utils. & Dep't of Telecomms. & Cable Aug. 8, 2025), <https://fileservice.eea.comacloud.net/V3.1.0/FileService.Api/file//aceihhdhj?Y1lpE5be07deOO81PkZ6hfQhs/2b91Ji2Ak1vuq3aS6PcSxI+blU344Kxhm+qpOeg0hKFj9M9l/xQR8+/8GqPvdGgrFe6XR6ngIfa80wd3rxFD8G4j981M2Rna9aVTXA>

⁶¹ *Id.*

Indeed, utilities in other states, including nearby New York, voluntarily allow or even require attachers to coordinate work performed by utility-approved contractors in the power space. And in neighboring Rhode Island, self-help is already available for make-ready work above the communications space. Maine has allowed self-help for work above the communications space, including for pole replacements, for nearly five years. Vermont has allowed self-help in the power space since 2020. There is no record of significant problems resulting from use of the self-help remedy for owners' nonperformance in those states.

For these reasons, the Departments should revise the Proposed Rules to permit attachers to exercise self-help for make-ready work above the communications space when electric utilities fail to perform such work within the applicable timelines. Doing so will strengthen incentives for timely performance, provide greater certainty for broadband deployment, and better align Massachusetts' rules with the FCC framework and the practices adopted in other states.

3. The Proposed Rules should be revised to ensure that contractor approval processes and limitations do not impede broadband deployment.

The Proposed Rules currently require licensees performing OTMR or self-help survey work to retain contractors from *both* the electric and telephone pole owner approved contractor lists unless the same contractor appears on both lists.⁶² Yet, the rules do not establish any process requiring electric utilities to review or act on requests to add contractors to their approved lists. As a result, under the Proposed Rules, licensees may be required to rely on electric utility contractor lists for OTMR and survey work that are insufficient to meet deployment needs—particularly during periods of heavy construction when approved contractors may already be fully committed to other work.

⁶² See Proposed Rule 220 CMR 45.11(2).

In practice, contractor availability can become a significant bottleneck. If the approved contractor lists maintained by electric utilities are too limited or the listed contractors are unavailable, attachers may be unable to proceed with surveys, OTMR work, or other authorized activities—even where the rules otherwise permit them to do so. Without a clear process and timeline for reviewing requests to add qualified contractors to those lists, the contractor approval requirement risks becoming an unintended barrier to broadband deployment.

As discussed above, the best solution here is to add a self-help remedy for work above the communications space using approved contractors – as is available in neighboring states of Rhode Island, Maine and Vermont—and then to modify the rules to extend the requirements for adding contractors to approved lists – currently only governing telephone utilities – to electric utilities. These proposed changes are reflected in GoNetspeed’s Proposed Revisions.

Another way to address this problem would be to eliminate the requirement that attachers retain electric-utility-approved contractors for OTMR, survey work, and other work limited to the communications space. OTMR is limited to “simple make-ready” work performed entirely within the communications space, and qualified communications contractors are fully capable of determining whether work remains within that space during the survey process. Requiring attachers to retain both electric and communications contractors for work confined to the communications space illogically and unnecessarily increases costs and administrative complexity while also increasing the likelihood of delays due to contractor availability with no corresponding benefit to safety or reliability. Electrical workers are no more trained to perform communications work than communications workers are trained to work in the power space. There is no reason to require their presence where their expertise is not relevant.

The rules should require attachers performing OTMR or surveys to retain a contractor approved by the telephone pole owner for work within the communications space, while limiting the requirement to hire an electric-utility-approved contractor to situations where make-ready work must be performed in the power supply space. This approach would preserve safety and utility oversight while reducing unnecessary duplication and ensuring that contractor approval requirements do not impede broadband deployment.

Establishing defined timelines for reviewing attacher requests to all approved lists would ensure that contractor approval processes do not become an unintended barrier to deployment while preserving utilities' ability to reject or remove contractors for legitimate safety or performance concerns.

C. The Final Rules Should Require Pole Owners to Appoint a Single Pole Administrator and Use a Widely Available Joint Utility Electronic Notification System for Managing Pole Access and Transfers

It is critical that the pole attachment process be structured to operate as efficiently as possible. Achieving that goal requires minimizing unnecessary duplication and overlap among the various entities involved in reviewing and performing attachment work. Where multiple parties are required to perform the same administrative or operational functions, the process becomes slower, more expensive, and less predictable for all participants. The Departments can promote efficiency by adopting measures such as requiring joint pole owners to designate a single administrator to manage access requests, mandating utilities' use of an electronic notification system to coordinate applications and make-ready work, and allowing utilities to transfer attachers' facilities when they transfer their own during pole replacements, rather than punishing attachers for failing to timely transfer. Streamlining these aspects of the process will reduce administrative burdens, accelerate deployment timelines, and better support the Commonwealth's broadband objectives.

1. Single Pole Administrator

The Proposed Rules would codify the current inefficient process for attaching to jointly owned poles in Massachusetts by requiring attachers to submit applications to both pole owners, obtain surveys from both owners, and coordinate contractor approvals with each owner. This cumbersome and duplicative process has led to inconsistency, higher costs and significant deployment delays.

The rules should instead require joint pole owners to designate a single pole administrator responsible for coordinating the attachment process. Although some coordination with joint owners may still be necessary, establishing a single point of contact would make it significantly easier for attachers to navigate differing attachment agreements and inconsistent requirements throughout the application process.

States that have adopted this approach, including neighboring Connecticut, use the pole administrator as a “traffic cop” responsible for coordinating make-ready work, including pole replacements. A single pole administrator can also facilitate storm restoration and repair coordination, serve as a clearinghouse for distributing information regarding downed poles or sagging lines to joint owners, attachers, and public safety personnel, coordinate pole relocations associated with roadway projects, and manage the Departments’ proposed single-visit transfer process.

2. Joint Utility Electronic Notification System

GoNetspeed agrees that the pole attachment process would benefit from the use of an electronic notification system to coordinate applications, surveys, and make-ready work. However, rather than merely requiring attachers to participate in such a system if one is adopted, the rules should require pole owners to work collaboratively with attachers to implement and maintain a

Joint Utility Electronic Notification System to manage the attachment process and pole transfers. Maine has required use of such a system since 2023.⁶³

The rules should also codify the current practice of not charging attachers a separate fee to participate in such systems, as attachers already contribute to utilities' administrative overhead through annual pole attachment rental fees. In addition, all joint pole owners should be required to use the same system to ensure consistency and avoid duplicative administrative processes. The pole owners will realize cost-saving efficiencies from adoption of such a system. Requiring attachers to pay a fee will result in an undeserved and unjust windfall to the owners.

Finally, rather than designating a single system provider, the rules should allow pole owners to select among available systems in consultation with attachers and, where appropriate, through a competitive procurement process. This approach would help ensure that the selected system remains cost-effective, efficient, and responsive to the needs of all users.

3. Single Visit Transfer Process

The Order proposes to implement a Single Visit Transfer Process ("SVTP") to address situations in which an existing licensee in the communications space fails to timely perform required work—other than make ready—on its attachments.⁶⁴ Such work would most commonly involve transferring facilities to newly installed replacement poles, but could, as worded, also include correcting certain non-compliant pole conditions.

GoNetspeed generally supports the concept of a utility managed transfer process, but has concerns with the specific rule proposed by the Departments. As an initial matter, the rules should

⁶³ See *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, Dkt. No. 2023-00058, Order Amending Rule and Statement of Factual and Policy Basis (Sept. 12, 2023); 65-407 CMR Ch. 880, § 5.

⁶⁴ See *Joint Rulemaking Order* at 23–27.

include an option for utilities and licensees to enter into voluntary agreements governing transfers required in the context of pole replacements. Under such agreements, the utility could transfer the licensee's facilities at the same time it transfers its own facilities during pole replacement work. This approach is efficient and can reduce both costs and construction delays. Additionally, any such process – including one that exists for moving facilities not moved in a reasonable time period - should ensure that charges to licensees are limited to reasonable actual cost recovery, that the licensee receives advance notice of the work, and that the licensee has the opportunity to approve the contractor performing the transfer.

GoNetspeed does not believe it is necessary or appropriate to extend the SVTP to all work other than make ready, which could include the correction of alleged non-compliant conditions. In practice, pole owners frequently assert that attachers created non-compliant conditions when the cause may be uncertain or attributable to other parties. For example, when utilities add transformers or other equipment, those additions may encroach on the communications worker safety zone and create clearance violations unrelated to existing communications attachments. If a utility corrects such conditions without documenting the original configuration, the affected attacher may be placed at a disadvantage in demonstrating that its facilities were not the source of the violation.

For these reasons, the SVTP should be limited to transfers associated with pole replacements rather than extended to the correction of non-compliant conditions.

D. The Final Rules Must Ensure Non-Discriminatory Access to Essential Infrastructure

Utility poles are essential infrastructure and, in Massachusetts as elsewhere in the country, represent the only practical pathway for deploying communications facilities.⁶⁵ At the same time, the Commonwealth’s primary telephone pole owner, Verizon, competes directly with licensees while electric utilities have little operational incentive to accommodate third-party communications attachments despite having been granted the public benefit of installing their facilities in public rights-of-way. For these reasons, the regulatory framework governing pole access must ensure that pole owners do not use their control over this infrastructure to delay or disadvantage competitors.

Non-discriminatory access is not optional – it is a legal obligation and foundational principal for utility infrastructure access.⁶⁶ In accordance with G.L. c. 166, § 25A, a utility must provide telecommunications service providers “with nondiscriminatory access to any pole or right-of-way used or useful, in whole or in part, owned or controlled by it...” Consistent with the FCC’s framework, Massachusetts pole owners should not be permitted to delay access based on the presence of pre-existing non-compliant conditions not caused by the requesting attacher, as the Proposed Rules currently allow.⁶⁷ Where such conditions create genuine safety risks, the pole owner should be required to correct them immediately – even if it believes another licensee caused them – because safety should take precedence and cost allocation can be addressed afterward.

⁶⁵ See *Nat’l Cable & Telecomms. Ass’n v. Gulf Power Co.*, 534 U.S. 327 (2002) (recognizing poles as essential to communications network deployment) (“*NCTA*”); see also *FCC 2011 Order*, 26 FCC Rcd. at 5377-78 (“Utility poles are *essential* to providing broadband service, wired and wireless, because that’s where communications companies string cables and, increasingly, place wireless antennas.”) (emphasis added).

⁶⁶ See G.L. c. 166, § 25A and 47 U.S.C. § 224(f)(1).

⁶⁷ See Proposed Rules 220 CMR 45.08(2)(f), 45.09(2)(g) and 45.12(4)(b).

Where non-compliance can, under the NESC, be scheduled for correction at a later date, and the proposed attachment would not worsen the non-compliant condition, there is no reason to delay the attachment process.

1. The rules should reflect the NESC’s distinction between imminent safety risks and technical non-conformance.

The NESC distinguishes between violations that “endanger life or property” and those “that are not immediately threatening to life or property.”⁶⁸ If a violation “could reasonably be expected to endanger life or property,” it should be “promptly repaired.”⁶⁹ However, most cases of nonconformance are technical and do not present an imminent safety threat. NESC Rule 214 therefore allow such conditions to be recorded and corrected later.

Under the NESC, attachers may perform additional work on a pole with technical nonconformance so long as that work does not create a new violation or worsen the existing condition.⁷⁰ Consistent with this principle, the Departments should revise the Proposed Rules to allow attachments to proceed where the NESC permits pre-existing noncompliance to be corrected on a scheduled basis and the proposed attachment would not exacerbate the condition.

2. The rules should expressly permit reasonable alternative construction techniques.

The final rules should also codify the principle – affirmed by the DTC in response to

⁶⁸ See NESC Rules 214A4 and 214A5.

⁶⁹ *Id.*

⁷⁰ See NESC Rule 13B4; *see also* Interpretation IR548 (Mar. 26, 2009) (“If adding a new item, replacing an existing item, or rearranging existing items would not, in itself, either (1) create a structural, clearance, or grounding non-conformance; or (2) worsen an existing nonconformance, then the addition, replacement or alteration can be performed, but the other corrective work must be scheduled and accomplished under Rules 214A4 and A5.”).

GoNetspeed’s petition in DTC 22-4⁷¹ – that pole owners are required to allow NESC compliant construction techniques such as extension arms or opposite-side construction (“boxing”)⁷² on a case by case basis, just as pole owners use or permit the use of these techniques on their own facilities.

The FCC and other regulators have long recognized that non-discriminatory access requires attachers to be treated similarly to pole owners.⁷³ “A utility may not simply prohibit an attacher from using boxing, bracketing, or any other attachment technique on a going forward basis where the utility, at the time of an attacher’s request, employs such techniques itself.”⁷⁴ Indeed, states such as New York⁷⁵ and Connecticut⁷⁶ expressly allow attachers to use extension arms and boxing to obtain NESC-required separations between attachments, which helps to avoid premature and costly pole replacements.

By contrast, the Proposed Rule would prohibit licensees from overlashing facilities onto the lowest communications lines on a pole (typically Verizon’s), regardless of whether such overlashing complies with the NESC or whether the lowest attached provider routinely overlashes

⁷¹ *CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.*, Final Order, D.T.C. 22-4 (Oct. 11, 2022) (<https://www.mass.gov/doc/dtc-22-4-final-order/download>).

⁷² See Telecordia Blue Book – Manual of Construction Procedures at Figure 3-1 (2017).

⁷³ See *FCC 2011 Order* ¶ 227.

⁷⁴ *Id.*

⁷⁵ See *Proceeding to Review Certain Pole Attachment Rules, Case 22-M-0101*, Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings at 29 (NY PSC July 22, 2024) (citing N.Y. Pub. Serv. Law § 119-a(4)) (requiring pole owners to consider alternative attachment methods including but not limited to pole-top attachments, strand-mounted attachments, overlashing, boxing and bracketing, extension arms, and temporary attachments), [Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings.pdf](#).

⁷⁶ See *Application of NetSpeed, LLC for Approval of Installation of Facilities Under and Over Certain Public Rights-of-Way – Pole Attachment Dispute*, Decision, Docket No. 18-04-20RE01 (CT PURA Oct. 30, 2019) (allowing for temporary attachments to utility poles by third parties in the event that the pole owners cannot comply with the make-ready timeframes).

its own facilities.⁷⁷ This restriction effectively reserves space on the pole for the incumbent telephone company provider, which the FCC long ago ruled was *per se* discriminatory.⁷⁸ If Massachusetts truly “means business,” the final rules must remove anticompetitive preferential treatment for incumbent providers.

3. The rules should provide balanced timeline flexibility.

The final adopted rules should also ensure that attacher applicants are afforded a reasonable ability to deviate from timelines imposed by the rules when events occur outside of their control, similar to that provided to utilities and existing communications attachers. As the Proposed Rules currently stand, an attacher that fails to comply with numerous and varied deadlines can be forced to restart the entire application.⁷⁹

While new attachers have strong incentives to meet their obligations promptly, unforeseen circumstances may arise which make strict compliance infeasible. The Proposed Rules already recognize this reality by allowing pole owners and existing attachers to deviate from timelines for good cause.⁸⁰ Attachers should be afforded comparable flexibility to ensure the rules operate fairly and efficiently. GoNetspeed’s proposed rule changes create a deviation for new attachers that mirror those for pole owners and existing attachers.

⁷⁷ See Proposed Rule 220 CMR 45.12(c)(3).

⁷⁸ See *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, 11 FCC Rcd. 15499, FCC 96-325 (FCC Aug. 8, 1996).

⁷⁹ See Ex. 5 (listing 10 Proposed Rules that separately require an attacher to restart the application process if it fails to meet a deadline).

⁸⁰ See Proposed Rule 220 CMR 45.10(1) (allowing utility deviations for, *inter alia*, service outages, weather emergencies, and local permitting delays) and 45.10(2) (excusing existing attachers for delays caused by other licensees, or where safety or service interruptions prevent timely performance).

4. The rules should protect confidential information.

The final adopted rules should also include strong confidentiality protections for sensitive information submitted by Licensees during the attachment process. The Proposed Rules require extensive disclosure of deployment plans through advance notice and coordination requirements. Because this information may include detailed fiber routes, deployment strategies, and deployment timeframes, it is highly sensitive from a competitive perspective. A broadband provider needs protection from the obvious adverse effects of the requirements to consult with, and apply to, the primary competitor in the market.

Without appropriate safeguards, this information could be misused for competitive intelligence or marketing purposes by entities that compete directly with the requesting attachers. To prevent such misuse, the Departments should incorporate confidentiality provisions requiring that information submitted in advance notices and pole attachment applications be treated as confidential and used only by personnel with a legitimate operational need to manage the pole attachment process. GoNetspeed's Proposed Revisions to section 45.04(5) include language based on the existing Maine and California confidentiality regulations.

For example, for nearly 20 years, California's pole attachment rules have restricted access to application information to utility personnel with an actual, verifiable need to know in order to respond to requests for information or access, and prohibit disclosure to sales, marketing and other non-operational personnel.⁸¹ Other states, such as Maine, have adopted similar safeguards.⁸² The

⁸¹ See *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, R.95-04-045, Decision 98-10-058, Appendix A, Rule V (Cal. PUC Oct. 22, 1998).

⁸² The Maine Public Utilities Commission has mandated confidentiality requirements for information stored in or used by its comprehensive pole attachment database and management system, established by regulation in 2023. See Maine PUC Regulations, Ch. 880, § 5(B), <https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/407c880%20-%20JUL%202025.docx>

Departments should implement comparable protections to ensure that entities seeking pole access can provide the information necessary to process applications without risking disclosure of competitively sensitive deployment plans.

E. The Final Rules Should Ensure Reasonable and Predictable Make-ready Costs

GoNetspeed appreciates that the Proposed Rules include provisions protecting attaching entities from being charged for make-ready and pole replacement costs not necessitated by their attachments.⁸³ As the FCC has recognized, such limitations are essential to ensure that attachers are not required to subsidize infrastructure upgrades unrelated to their attachments.⁸⁴

An equally important principle, however, is that attachment charges must be reasonable – both in amount and in the manner in which they are presented. Reasonable and predictable costs are essential for broadband providers when making investment decisions involving tens or hundreds of millions of dollars. Additional refinements to the Proposed Rules are necessary to ensure that this principle is fully realized.

1. Attachers should be permitted to review and challenge excessive estimates.

The Proposed Rules should be revised to allow attachers a meaningful opportunity to question and address unreasonably high make-ready estimates. Broadband providers, such as GoNetspeed, typically have decades of experience deploying communications networks, including in states with physical, geographic, and urban-rural characteristics similar to Massachusetts. As

⁸³ See Proposed Rule 220 CMR 45.08(8)(d) (limiting pole replacement costs chargeable to an attacher to those solely necessitated by the attachment and defining when a replacement is not necessitated solely by an attachment similar to the FCC’s clarification).

⁸⁴ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 36 FCC Rcd. 776 (Jan. 19, 2021).

such, they have a strong understanding of typical construction costs per mile when using existing utility poles.

When make-ready estimates are double or even triple expected costs, it often indicates that an excessive number of poles have been designated for replacement or that other assumptions warrant review. In such circumstances, pole owners should be required to work collaboratively with attachers to evaluate whether alternative construction approaches could reduce costs while maintaining safety and reliability. GoNetspeed's proposed targeted rule revisions would facilitate this type of collaborative review.

This review should not be counted toward deadlines imposed by the rules on the requesting attachment. Rather, attachers should be afforded a limited opportunity to review and seek modification of cost estimates when reasonable grounds exist to question them. The attacher's obligation to accept and pay an estimate should therefore be tolled for up to 30 days while such concerns are evaluated.

For example, information obtained through cyclical pole inspection reports may reveal that certain poles identified for replacement were already scheduled for replacement as part of the utility's maintenance program. In such circumstances, those costs should not be attributed to the requesting attacher because they were not necessitated solely by the attachment.

2. The rules should limit excessive invoice true-ups.

The Proposed Rules should also ensure that attachers are not confronted with final invoices that exceed estimated costs by multiples of the original estimate. In GoNetspeed's experience in Massachusetts, one pole owner's final invoices routinely exceed estimated costs by several multiples, purportedly due to cost increases stemming from delays or changes in the scope of estimated work.

GoNetspeed recognizes that cost increases may occur when additional work is identified during construction despite good-faith engineering efforts. In such circumstances, the pole owner should issue a change order describing the revised scope and cost of the work. The attacher could then promptly review the change and either approve the revised work or withdraw its application for the affected poles if the revised scope exceeds its budget or deployment timeline. Several states already require pole owners to obtain an attacher's approval before undertaking materially more expensive work.⁸⁵ New York goes even further and makes estimates binding on the pole owner.⁸⁶

Where costs increase for other reasons, the rules should impose reasonable limits on invoice true-ups and provide attachers with an opportunity to review and dispute increased charges. For example, charges exceeding estimates by more than five percent should require clear, itemized justification, and final invoices should not exceed estimates by more than twenty percent without attacher approval. Similar protections are currently under consideration in an open FCC rulemaking addressing make-ready cost transparency.⁸⁷

II. The Rules Should Ensure That All Attachers Benefit from New Rules and That Pole Attachment Complaints Are Addressed Expeditiously

While GoNetspeed strongly urges the Departments to adopt the targeted rule changes discussed above, it is equally important that the final framework ensure that all eligible attachers benefit from the new rules and that disputes arising under the rules are resolved promptly and afford attachers complete relief from unlawful utility practices. As part of their certification

⁸⁵ See *In re: Review of the General Order dated March 12, 1999 (Pole Attachments)*, Final Order, Docket No. R-26968, at 11 (La. PSC August 6, 2014) (“if additional work is required that changes the original estimate of Make-Ready Costs, the changes will be provided to the Applicant for review”).

⁸⁶ See *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues* (“2004 Order”), Case 03-M-0432, Order Adopting Policy Statement on Pole Attachments, at 4 (N.Y. PSC August 6, 2004) (make-ready estimates are binding for the scope of work identified).

⁸⁷ See *FCC 2025 Order*.

responsibilities under 47 U.S.C. § 224(c) (“Section 224”), the Departments must ensure that pole attachment regulations are both effective and capable of providing timely relief when disputes arise. Although the Departments’ efforts to revise the pole attachment rules and the Memorandum of Agreement (“MOA”) governing dispute resolution are appreciated, several aspects of the current proposal risk delaying the resolution of disputes and undermining the effectiveness of the regulatory framework.

A. The Rules Should Apply to Pending Applications

The Proposed Rules would apply only to applications filed after the effective date of the regulations, leaving pending applications subject to the existing — or more accurately non-existent — framework.⁸⁸ This approach unfairly and discriminatorily penalizes early actors that have already invested significant time and resources pursuing pole access under a regulatory system the Departments themselves have recognized requires reform.

These rules have been under development for several years, and pole owners have been aware that regulatory changes were forthcoming. Indeed, to retain its certification, Massachusetts must have “issued and made effective regulations.”⁸⁹ Accordingly, the final rules should apply to all pole attachment applications pending at the time the regulations take effect, notwithstanding conflicting provisions in existing agreements.

B. The Rules Should Provide an Expedited Process for Resolving Access Disputes

The Proposed Rules would extend the timeline for adjudicating all pole attachment complaints from 180 to 360 days while simultaneously failing to establish an expedited process

⁸⁸ See Order at 18 (“these proposed revisions ... would only apply prospectively, i.e., to utility pole applications submitted after [the effective date for the proposed revisions]”).

⁸⁹ See 47 C.F.R. § 224(c)(3).

for resolving pole access disputes that delay broadband deployment. That is backward. To make matters worse, the accompanying MOA merely commits the Departments to “explore” alternative dispute resolution processes,⁹⁰ which provides little certainty for attachers seeking timely relief.

Pole access disputes can halt network construction entirely, increasing costs, disrupting construction schedules, and jeopardizing project funding. The final rules should therefore provide an expedited process for resolving access disputes—such as the 7 business day process that applies in Maine.⁹¹ Under Maine’s successful dispute resolution process, after giving one day’s advance notice to the other party, a complainant may file a complaint with the Maine Commission’s Rapid Response Team. The respondent *may* file a response. The Rapid Response Team schedules a preliminary conference call within two business days and additional conference calls and written submissions as appropriate. The Rapid Response Team must issue a final decision within 7 business days of the complaint filing. A party may appeal to the Commission within 5 business days of the Rapid Response Team’s decision.

At minimum, the rules should include a 60-day accelerated review process, with a maximum resolution timeframe of 180 days—while allowing disputes involving rates, terms, and conditions to follow a longer adjudicatory timeline if necessary. Establishing an accelerated review option would align Massachusetts with the FCC’s approach and mirror timelines adopted in several other states, including Ohio,⁹² Pennsylvania,⁹³ and West Virginia.⁹⁴

⁹⁰ See *Joint Rulemaking Order*, Att. E, at 3.

⁹¹ Maine PUC Rules, Ch. 880, Attachment A.

⁹² See Ohio Admin. Code 4901:1-3-05(A) (requiring the Commission to issue a decision resolving issue(s) presented in a complaint within 60 days after the filing of briefs).

⁹³ See 52 Pa. Code § 77.4(a)(incorporating the FCC framework, including the accelerated dispute-resolution process, into Pennsylvania’s regulatory scheme by reference).

⁹⁴ See W. Va. Code R. § 150-38-13 (requiring the Commission to issue an order within 180 days of the filing of a formal complaint initiating a pole attachment except for good cause); see also *In re Adopting &*

C. The Rules Should Not Encourage Converting Complaints into Rulemakings

The Proposed Rules create a significant risk that pole attachment disputes will not be resolved within the federal statutory timeframe because they expressly direct the Departments to consider whether a complaint would be better addressed through a rulemaking proceeding.⁹⁵ Unlike complaint adjudications, rulemakings are not subject to statutory resolution timelines and can take years to complete—as this very proceeding demonstrates.

This provision is particularly problematic because any rules adopted in this proceeding will necessarily be new and cannot anticipate every circumstance in which a pole owner’s actions may impede broadband deployment. As a result, the Departments will inevitably encounter new and nuanced issues when applying the rules in practice. By encouraging consideration of rulemaking as an alternative to adjudication, the Proposed Rules create a risk that disputes that should be resolved through the complaint process will instead be diverted into rulemakings, delaying resolution indefinitely. In such case, the Departments would not have met their obligation to resolve disputes within the statutorily defined timelines, and attachers would be well within their rights to seek redress from the FCC.

Critically, a rulemaking proceeding, by its nature, will not remedy a utility’s past wrongs and will leave attachers without an effective means of recovering unlawfully imposed costs. Unless the Departments resolve complaints and afford appropriate relief to attachers, they will not be fulfilling their certification responsibilities under Section 224, and risk losing jurisdiction over pole attachments entirely. Moreover, the possibility of a complaint proceeding is a far more

Implementing Recommendations of the Pole Attachment Task Force, General Order No. 261.2, Case No. 24-0703-T-E-CTV-GI (W. Va. Pub. Serv. Comm’n Feb. 25, 2025) (adopting an accelerated informal pre-complaint dispute resolution process referred to as the Rapid Response Team (RRT) for pole attachment disputes that delay deployment of broadband projects).

⁹⁵ See Proposed Rule 220 CMR 45.15(5).

effective deterrent to unlawful pole owner actions than the prospect of a rulemaking process that may take years to complete.

Complaint proceedings exist to address specific disputes and provide relief for past wrongs within defined timelines, ensuring that deployment is not stalled while broader policy questions are debated, and pole owners' unlawful past practices are remedied. Where the rules are clear, the parties are less likely to require Department intervention in the first place. But when disputes do arise, they must be resolved through a predictable adjudicatory process rather than potentially open-ended rulemaking proceedings.

D. The Complaint Process Should Include a Neutral Decision-Making Mechanism

Finally, the revised MOA would shift from a system in which a single Department adjudicates complaints to one in which both Departments share jurisdiction and must agree on the outcome. Given the DPU's prior statements that its primary responsibility is ensuring the safe and reliable delivery of electricity to Massachusetts residents, there is a significant risk that disputes involving electric utilities will not be resolved in the statutorily allotted time (resulting in the loss of jurisdiction to the FCC) or would be resolved in a manner that disproportionately favors electric utilities.

GoNetspeed has previously explained that the statutory authority to regulate pole attachments rests unambiguously with the DTC.⁹⁶ At minimum, the revised framework should ensure that one Department cannot effectively block prompt resolution of a dispute simply by withholding agreement. To ensure against this result, the rules should retain the 180 day complaint clock and adopt a shorter timeframe for access disputes demonstrated to be interfering with

⁹⁶ See GoNetspeed Reply Comments, *supra* at 24-25.

broadband deployment. That way, if a joint decision is not feasible, that the attacher may timely bring its complaint to the FCC.

Another way to address this issue would for the final rules to provide for the participation of a neutral third party with equal weight in adjudicating disputes where appropriate, helping ensure balanced decision-making and greater confidence in the process. Involving an independent decision-maker would help ensure that disputes are evaluated through a balanced and objective process, particularly in situations where attachers may otherwise perceive the utility or the regulating authority as having aligned interests. A neutral participant could help assess the technical and factual record, provide an independent perspective on contested issues, and promote outcomes grounded in fairness and transparency. Incorporating such a mechanism would not only improve the credibility of the dispute-resolution process but also increase stakeholders' confidence that complaints will be considered impartially and resolved on the merits.

E. Timely And Predictable Dispute Resolution is Essential to Broadband Deployment

For these reasons, the final rules should be revised to ensure that pole attachment disputes are resolved promptly and predictably. In particular, the Departments should clarify that the regulations apply to all pending pole attachment applications, establish an expedited dispute resolution process for access disputes that impede broadband deployment, adopt clear timelines for complaint adjudication consistent with federal law, and ensure that the revised adjudication framework does not allow outcomes to be skewed in favor of electric utilities.

III. Conclusion

GoNetspeed commends the Departments for undertaking the important task of modernizing Massachusetts' pole attachment framework. While the Proposed Rules represent a

meaningful step forward, several provisions risk perpetuating the delays, uncertainty, and costs that have historically hindered broadband deployment in the Commonwealth.

By adopting the targeted revisions proposed by GoNetspeed, the Departments can establish a regulatory framework that aligns with the FCC's proven approach, promotes timely pole access, and supports the rapid deployment of competitive broadband networks throughout Massachusetts.

May 12, 2026

Respectfully submitted,

/s/ *Maria T. Browne*

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

s/ *Gregory M. Kennan*

Gregory M. Kennan (BBO #267780)
Of Counsel
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

/s/ *Jamie Hoare*

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

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DPU-DTC Joint Proposed Amendments to Regulations

220 CMR 45.00

Attachment B – Clean Regulations (Proposed)

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220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 45.00: POLE ATTACHMENT, DUCT, CONDUIT AND RIGHT-OF-WAY
ACCESS, REMOVAL, COMPLAINT AND ENFORCEMENT
PROCEDURES

Section

45.01: Purpose and Applicability

45.02: Definitions

45.03: Computation of Time

45.04: Duties of Licensees and Attachment Owners

45.05: Duties of Utilities

45.06: Utility Poles – Attachment Application Size

45.07: Utility Poles – Advance Notice and Meet-and-Confer Requirements

45.08: Utility Poles – Non-OTMR Option – Timelines, Application, Survey, Make-Ready, and
Related Requirements for Access

45.09: Utility Poles – OTMR Option – Timelines, Application, Survey, Make-Ready, and
Related Requirements for Access

45.10: Utility Poles – Deviation from Timelines

45.11: Utility Poles – Contractors for Surveys and Make-Ready

45.12: Utility Poles – Overlapping Wires in the Communications Space

45.13: Utility Poles – Terms and Conditions Presumed Reasonable

45.14: Petitions for Interim Relief and Alternative Dispute Resolution Procedure

45.15: Formal Complaint Procedure

45.16: Rates Charged Any Affiliate, Subsidiary, or Associate Company

45.17: Annual Informational Filings and Website Postings

45.18: Severability

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45.01: Purpose and Applicability

220 CMR 45.00 effects legislative policy in favor of competition and consumer choice in telecommunications, while also preserving consumer protections to ensure utility services are safe, secure, reliable, and affordable, by providing access, removal, complaint, and enforcement procedures that: (1) ensure that telecommunications carriers and cable system operators have nondiscriminatory access to poles, ducts, conduits, and rights-of-ways owned or controlled, in whole or in part, by one or more utilities with rates, terms and conditions that are just and reasonable; and (2) consider the interests of both consumers of utility services and subscribers of telecommunications and cable television services. The general procedural rules set forth at 207 CMR 1.00: Procedural Rules and 220 CMR 1.00: Procedural Rules are also applicable except to the extent that they are inconsistent with 220 CMR 45.00.

For purposes of enforcement and dispute resolution, the following regulations will take effect 90 days after final publication in the Massachusetts Register: 220 CMR 45.06: Utility Poles – Attachment Application Size through 220 CMR 45.12: Utility Poles – Overlapping Wires in the Communications Space, and 220 CMR 45.17: Annual Informational Filings and Website Postings. [These regulations will apply to all pole attachment applications pending with a Utility as of the date these regulations take effect.](#)

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45.02: Definitions

For the purposes of 220 CMR 45.00, the following terms are defined as follows, unless the context otherwise requires:

Appropriate Government Authority. A government entity with jurisdiction over the public rights-of-way affected by a new licensee's proposed project, that may be involved in approving permits or other requests necessary to complete a new licensee's project, or that may be asked to provide resources to facilitate completion of a new licensee's project.

Attachment. Any wire or cable for transmission of intelligence by telegraph, wireless communication, telephone, television, including cable television, or other means of telecommunication, 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.

Communications Space. The lower usable space on a pole, which typically is reserved for low-voltage communications equipment and facilities and is separated from the electric supply space by a communication worker safety zone.

Complainant. A licensee or a utility that files a complaint pursuant to 220 CMR 45.15: Formal Complaint Procedure.

Complaint. A petition with supporting documentation filed by either a licensee or a utility concurrently to the Department of Public Utilities and the Department of Telecommunications and Cable pursuant to 220 CMR 45.15: Formal Complaint Procedure. A complaint shall constitute an initial pleading within the meaning of 207 CMR 1.04(1) and 220 CMR 1.04(1).

Cyclical Pole Inspection Report. Any report that a utility creates in the normal course of its business that sets forth the results of a routine inspection of its poles during the utility's normal pole inspection cycle.

Department. The Department of Public Utilities and the Department of Telecommunications and Cable.

EVSE. Electric vehicle supply equipment.

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Licensee. Any person, firm, or corporation, inclusive of wireless providers, other than a utility, that is authorized to construct lines or cables, including EVSE attachments, upon, along, under, and across the public rights-of-way. For the purposes of 220 CMR 45.02: Licensee, the term 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 with respect to attachments located outside its service territory. A licensee shall be classified as either an “existing licensee,” or a “new licensee,” depending on the circumstances surrounding a particular attachment or attachment application.

Existing Licensee. Any person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility, with an authorized attachment installed upon any pole or in any duct or conduit owned or controlled, in whole or in part, by one or more utilities.

New Licensee. Any person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility, requesting to install a new or upgraded attachments upon any pole or in any duct or conduit owned or controlled, in whole or in part, by one or more utilities. A new licensee includes any existing licensee that submits an application to one or more utilities to install a new attachment upon a pole or in any duct or conduit owned or controlled, in whole or in part, by the utilities.

Make-Ready. The modification or replacement of a pole, or of the lines or equipment on a pole, to accommodate new or upgraded telecommunications, including those of advanced telecommunications capability, and cable television attachments.

Complex Make-Ready. Transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or damage to any attachment or pole, including, but not limited to, the splicing of an existing attachment, the relocation of an existing wireless attachment, or the relocation of an EVSE attachment. An attachment application shall be considered to require complex make-ready if it necessitates work above the communications space, necessitates a pole replacement, or involves wireless telecommunications attachments generally.

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Simple Make-Ready. Make-ready where attachments in the communications space could be modified or transferred without any reasonable expectation of a service outage or damage to any attachment or utility pole, and does not require the splicing of an existing attachment, the relocation of an existing wireless attachment, the relocation of an EVSE attachment, the replacement of a pole, or the involvement of any other wireless activities.

NESC. The National Electrical Safety Code.

~~NJUNS. The National Joint Use Notification System.~~

OSHA. Occupational Safety and Health Administration.

OTMR. One-Touch Make-Ready. The process by which a new licensee opts to perform all simple make-ready required to accommodate a new attachment in the communications space on a pole or, if authorized by the electric utility, above the communications space on a pole, as authorized by 220 CMR 45.09.

Respondent. A licensee or a utility against which a petition for interim relief or formal complaint has been filed pursuant to 220 CMR 45.14: Petitions for Interim Relief and Alternative Dispute Resolution Procedure or 220 CMR 45.15: Formal Complaint Procedure.

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.

Any person, firm, corporation, or municipal lighting plant that occupies space on poles, ducts, conduits or rights of way it does not own or control, is not a utility with respect to such poles, ducts, conduits or rights of way.

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Wireless Attachment. An attachment, other than a wire attachment, ~~responsible~~-used for wireless activities, including, but not limited to, those involving mobile, fixed, and point-to-point wireless communications or the provision of wireless internet service.

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45.03: Computation of Time

Computation of any period of time referred to in 220 CMR 45.00 shall begin with the first day following the day on which the act that initiates such period of time occurs. The last day of the period so computed shall be included unless it is a day that the Department is closed, in which event the period shall run until the end of the next following business day. When such period of time, with intervening Saturdays, Sundays, and legal holidays counted, is five calendar days or less, the said Saturdays, Sundays, and legal holidays shall be excluded from the computation; otherwise, such days shall be included in the computation.

45.04: Duties of Licensees and Attachment Owners

- (1) Except as set forth in 220 CMR 45.00, n No person, firm, or corporation shall install an attachment upon any pole, duct, conduit, or right-of-way owned or controlled, in whole or in part, by one or more utilities without the consent of the utility and where required, any appropriate government authority. Unauthorized attachments may be subject to removal by a utility.
- (2) Joint Utility Electronic Notification Databases. All licensees on poles located on public rights-of-way shall:
 - (a) register and participate in any widely available, reasonably priced joint utility electronic notification database ~~such as NJUNS~~ utilized by the utilities that are subject to M.G.L. c. 164, § 34B;
 - (b) maintain a current contact, including the individual's name, telephone number, and e-mail address, within ~~NJUNS~~ the joint utility electronic notification database and any successor database to receive next-to-go notifications relating to the licensee's attachments, and to facilitate make-ready or other work identified by a next-to-go notification; and
 - (c) update the joint utility electronic notification database ~~NJUNS~~ and any successor database with all relevant information relating to any work performed by the licensee on its attachments, including self-help and OTMR work, or affecting a pole, duct, conduit, or right-of-way no later than five business days after said work is completed.
- (3) When an existing licensee receives a next-to-go or other notification ~~from a utility, a new licensee, NJUNS, or any successor database to NJUNS~~ through the joint utility electronic notification database, informing the existing licensee of its duty to modify one or more of its attachments as part of the make-ready process, the existing licensee shall complete such work within a reasonable time in coordination with the utility and other licensees to the pole. ~~For make-ready in the communications space, f~~ Failure to complete such work within a reasonable time may result in modification of the existing licensee's attachment by a new licensee pursuant to the self-help provisions identified in 220 CMR 45.08(6).

Commented [GNS1]: The purpose of self-help is to eliminate delays in attachment by allowing the licensee to perform surveys and make-ready work when timelines are missed or when the work is so simple the licensee may use a qualified contractor to perform the work without waiting months. The attachment can be made once make-ready work is completed using either self-help or OTMR and so a license may not be issued until after the attachment is made at the time of a post-attachment inspection.

Commented [GNS2]: FCC rules provide a self-help right for make-ready work in the power supply space. This should be a requirement in Massachusetts.

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(4) Consistent with M.G.L. c. 166, § 31, the owner of an attachment located on a pole shall affix to such an attachment an identification tag listing, at a minimum, the name or initials of the owner. The identification tag shall be affixed on or near each pole where the attachment is installed and must be maintained in legible condition.

(5) (a) Any licensee or attachment owner shall maintain the confidentiality of all data and information contained in or submitted through any joint-use software system, as well as any information received from a utility or other attaching entity in connection with requests for information or requests for access to poles or other support structures. Such information includes, but is not limited to, pole attachment locations, descriptions, and specifications; pole attachment applications; requests for information and responses thereto; information regarding the availability of surplus space or excess capacity; and any maps, plans, drawings, or other materials designated as confidential or proprietary.

(b) A licensee or attachment owner shall not disclose such confidential or proprietary information except to personnel with an actual, verifiable need to know for the purpose of preparing or responding to requests for information or requests for access. Licensees shall take all reasonable precautions to prevent unauthorized disclosure and shall ensure that employees with access to such information are informed of and comply with these nondisclosure obligations. Violations of this obligation may result in sanctions imposed by the Commission and may give rise to additional remedies available under applicable law.

Commented [GNS3]: Follows ME and CA, which recognize the need to protect attacher proprietary information against misuse by competitors.

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45.05: Duties of Utilities

- (1) In accordance with M.G.L. c. 166, § 25A, a utility shall provide a licensee 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 new licensee access to its poles, ducts, conduits, or rights-of-way on a nondiscriminatory basis for valid reasons of insufficient capacity, reasons of safety, reliability, or generally applicable engineering standards. Any exclusive contract between a utility and an existing 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) Requests for access to a utility's poles, ducts, conduits, or 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 the appropriate named recipient identified by the utility on its website in accordance with 220 CMR 45.17(2)(e). A utility shall confirm in writing the approval or denial of a new licensee's request for access no later than the date established by 220 CMR 45.08(2)(f) for non-OTMR applications and by 220 CMR 45.09(2)(g) for OTMR applications. For all other requests for access, the utility shall confirm in writing the approval or denial of the request no later than 45 days after submission of the request. In all instances, a 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, as applicable, for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.
- (3) [A utility shall use a widely available, reasonably priced joint utility electronic notification database for notices and work covered by the rules in 220 CMR 45.00. Information concerning the joint utility electronic notification database shall be posted on the utility's website in accordance with 220 CMR 45.17. A utility shall make electronic payment methods available to licensees whenever a payment is required by 220 CMR 45.00 and may assess a reasonable charge to licensees for electronic payments other than for an electronic funds transfer or other debit transaction which shall not be assessed any charge.](#)

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- (4) (a) A utility shall provide an existing licensee no less than 60 days' written notice prior to:
1. removal of that licensee's existing attachment or termination of any service to that attachment, with such removal or termination arising out of a rate, term, or condition of the attachment agreement between the licensee and the utility;
 2. any change in attachment rates, terms, or conditions; or
 3. any modification of facilities other than the exceptions enumerated under 220 CMR 45.05(4)(d).
- (b) Any existing 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 responsible for the costs of rearranging or replacing its attachment if such changes are required due to a new attachment or the modification of an existing attachment requested by another entity, including the owner of such pole, duct, conduit, or right-of-way.
- (d) Exceptions: A utility may provide to an existing licensee or an entity with an unauthorized attachment less than 60 days' written notice of removal, change, or modification if such removal, change, or modification of the attachment is due to routine maintenance, an emergency, the need to accommodate a small or large clean energy infrastructure project, or the need to accommodate make-ready for an application submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option. A utility shall make a good faith effort to identify the owner of an unauthorized attachment. If, after such effort, the owner cannot be identified, the utility may remove the attachment without providing 60 days' prior notice.
- (e) When a utility provides an existing licensee with less than 60 days' written notice, the utility shall make reasonable efforts to provide the licensee with as much notice as practicable under the circumstances.

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- (5) (a) A utility shall maintain the confidentiality of all data and information contained in or submitted through any joint utility electronic notification database, as well as any information received from an entity seeking access to poles or other support structures. Such information includes, but is not limited to, pole attachment locations, descriptions, and specifications; pole attachment applications; requests for information and responses thereto; information regarding the availability of surplus space or excess capacity; and any maps, plans, drawings, or other materials that disclose an attacher's network plans or potential areas of competition.
- (b) A utility shall not disclose such confidential or proprietary information except to personnel with an actual, verifiable need to know for the purpose of responding to requests for information, evaluating access requests, or administering pole attachment processes. Utilities shall take all reasonable precautions to prevent unauthorized disclosure and shall ensure that employees with access to such information are informed of and comply with these nondisclosure obligations. Under no circumstances shall a utility disclose confidential or proprietary information to marketing, sales, customer service, or other personnel engaged in competitive business activities. Violations of this obligation may result in sanctions imposed by the Departments and may give rise to additional remedies available under applicable law.

45.06: Utility Poles – Attachment Application Size

(1) For the purposes of 220 CMR 45.00, an application to attach to a utility’s poles by a licensee for the provision of a telecommunications service, including one of advanced telecommunications capability, or cable television shall be categorized by the number of poles identified in the attachment application, as detailed below. The utility may treat multiple applications from a single licensee within a ~~60~~³⁰-day period as a single request. In such cases, the applicable timelines identified in 220 CMR 45.07 through 220 CMR 45.09 will restart based on the filing date of the most recent application, and the total number of poles across all applications will determine the category of the combined request.

- (a) Small Orders. Attachment requests up to the lesser of 50 poles or 0.1 percent of the utility’s poles in Massachusetts.
- (b) Regular Orders. Attachment requests exceeding small orders up to the lesser of 300 poles or 0.5 percent of the utility’s poles in Massachusetts.
- (c) Mid-Sized Orders. Attachment requests exceeding regular orders up to the lesser of 3,000 poles or 5.0 percent of the utility’s poles in Massachusetts.
- (d) Large Orders. Attachment requests exceeding mid-sized orders up to the lesser of ~~5~~⁶,000 poles or 10.0 percent of the utility’s poles in ~~Massachusetts~~.
- (e) Very Large Orders. Attachment requests greater than the lesser of ~~6~~⁵,000 poles or 10.0 percent of the utility’s poles in Massachusetts.

(2) For applications involving poles jointly owned by an electric municipal lighting plant utility and a telephone utility, ~~for both utilities,~~ the applicable order application size, timelines, and related requirements identified in 220 CMR 45.07 through 220 CMR 45.12, applicable to the electric municipal lighting plant shall be based on the size of the application to the municipal lighting plant. The joint owner must comply with the timelines applicable to the size of the application to the joint owner.

Commented [GNS4]: The FCC rules define timelines by the number of poles on applications filed in a 30 day period. This is a critical difference and significantly impacts the pace with which attachment applications will be processed in Massachusetts. The 60 day timeframe would dramatically increase the time to build in Mass for new entrants seeking to deliver high-speed service across large areas or multiple communities in the Commonwealth.

Commented [GNS5]: This change is necessary to be consistent with the FCC rules which govern in 24 states regulated by the FCC, such as in neighboring state of RI, and states that have adopted the FCC pole attachment rules wholesale, such as Pennsylvania and West Virginia.

45.07: Utility Poles – Advance Notice and Meet-and-Confer Requirements

(1) Advance Notice.

(a) For anticipated applications involving mid-sized, large, and very large orders to be submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, a new licensee for telecommunications, including those of advanced telecommunications capabilities, or cable television attachments shall provide advance written notice concurrently to each utility, existing licensee in the communications space, and, where required, the appropriate government authority which would be affected by or require action relating to the anticipated work. New licensees may rely upon tags on poles or on existing facilities as well as information posted by the Utility on its website in accordance with 220 CMR 45.17 to identify the utility and existing licensees(s). Such notice shall be provided at least 145 days in advance for mid-sized orders and at least ~~90~~60 days in advance for large and very large orders.

(b) At a minimum, such advance notice shall contain:

1. the name, telephone number, and e-mail address of the applicant;
2. a description of the proposed deployment area(s) by municipality and route(s), in order of priority;
3. a target build-out schedule for each of the proposed deployment area(s) and route(s);
4. an indication of whether the project is being funded by a government source that requires build-out by a date certain or the new licensee risks losing said funding and, if so, identify the funding source and the end date by which the project may be jeopardized;
5. a request to meet-and-confer within 30 days of the notice date for ~~mid-sized orders and within 60 days of the notice date for~~ large and very large orders; and
6. the name, telephone number, e-mail address, job title, and business affiliation of each individual who received a copy of the advance written notice.

Commented [GNS6]: The FCC's most recent pole attachment Order adopted this advance notice requirement but requires 15 days for mid-size and 60 days for large jobs (not 45 and 90 days) recognizing that otherwise, the attachment timelines would be unreasonably extended. The proposed 15 and 60 days is not only consistent with the FCC's new rules, it is more than enough time for utilities to make accommodations in their labor and material resources which they routinely make much more quickly when responding to weather events and their own construction needs. Similarly, government authorities have their own timelines that already account for their preparatory needs by building in extra days. They require no additional advance notice.

Commented [GNS7]: Again, the FCC recently adopted this but limited the meet and confer to large jobs. Notice alone is sufficient for mid-sized orders.

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(c) Failure to Provide Advance Notice.

1. If a new licensee files an attachment application without the required advance written notice, including the required minimum information, then the utility may notify the new licensee and any jointly-owning utility within ten business days that the notifying utility is treating the date of filing of such application as the beginning of the ~~45~~¹⁵-day advance notice for mid-sized orders or the ~~90~~⁶⁰-day advance notice for large orders.
2. Such notice from the utility to the licensee shall indicate that the application initiates the advance notice period and that the applicable timelines identified in 220 CMR 45.07 will ~~not begin to toll until~~^{begin} after the relevant advance notice period has ended. The notice shall also state that the licensee must request the meet-and-confer required by 220 CMR 45.07(2) within five business days. At the end of the advance notice period, the new licensee must submit either a new application or notify the utility and any jointly-owning utilities that the new licensee intends to proceed with its original submission as its application.
3. If the new licensee does not request the meet-and-confer described in 220 CMR 45.07(2) within five business days after the utility notifies the new licensee of their failure to provide the required advance written notice, the new licensee's application will be considered void. In such a circumstance, the utility shall notify the new licensee and any jointly-owning utility in writing within three business days that the application is voided.

(2) Meet-and-Confer Requirements.

- (a) No later than 30 days after ~~the date of the notice for mid-sized orders and no later than 60 days after~~ the date of the notice for large and very large orders, the new licensee, utilities, and existing licensees in the communications space shall meet-and-confer to engage in good faith discussions regarding the mechanics and timing of the application and implementation schedule. Invitations to attend and participate in this meet-and-confer shall be sent as soon as practicable by the new licensee to each appropriate government authority that received notice.

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- (b) The entities subject to this meet-and-confer requirement shall find a mutually agreeable date and time for the meeting (which can take place in-person, virtually, or by phone) within the requisite timeframe after the advance notice is provided.

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45.08: Utility Poles – Non-OTMR Option – Timelines, Application, Survey, Make-Ready, and Related Requirements for Access

(1) Applicability. The non-OTMR process identified in 220 CMR 45.08 shall be limited to new licensees seeking to attach telecommunications, including those of advanced telecommunications capabilities, and cable television provider facilities to the communications space of a pole. The non-OTMR process identified in 220 CMR 45.08 shall apply if one of the following conditions are met:

- (a) the application is categorized as a small, regular, ~~or~~ mid-sized or large order but includes attachments that require complex make-ready;
- (b) the application is characterized as ~~large or a~~ very large order; or
- (c) if a new licensee does not elect to proceed with the OTMR option identified in 220 CMR 45.09 in its initial application to the utility for the project.

(2) Application and Survey Process.

- (a) If no single application process exists between utilities that jointly own poles, within 30 days of these rules becoming effective, the utilities shall appoint a single pole administrator to process pole attachment applications for both utilities. The identification and contact information for the single pole administrator shall be posted on the utility's website in accordance with 220 CMR 45.17. ~~then a~~ new licensee shall ~~concurrently~~ submit pole attachment applications to ~~each utility that shares ownership of the poles identified in the application~~ the single pole administrator. The licensee shall also include in a cover letter the contact information for the individual(s) at each utility to whom the respective application(s) were submitted.
- (b) If a new licensee anticipates utilizing overlashing in connection with the work described in its pole attachment application, then it shall provide documentation of any overlashing approvals it has received from existing licensees and comply with the requirements identified in 220 CMR 45.12(3)(a).
- (c) A utility shall confirm receipt of an attachment application through a written notice provided to the applicant and any utility that jointly owns any poles identified in the application within one business day of receiving the application.

Commented [GNS8]: This change is needed to ensure that OTMR is available for large orders like it is under the FCC's rules.

Commented [GNS9]: This change is needed to eliminate delays caused by joint owners failing to agree and to eliminate unnecessary costs incurred by having to proceed through duplicative survey and engineering processes.

(d) Application Completeness.

1. A utility shall review a new licensee's attachment application for completeness before reviewing the application on its merits. A new licensee's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master pole attachment agreement or in requirements that are available in writing publicly at the time of application's submission, to begin to survey the affected poles.

~~2.~~ Within ten business days ~~for small and regular orders, 15 business days for~~

~~3.2 mid-sized orders, and 30 days for large and very large orders~~ following

the receipt of an attachment application from a new licensee, the utility shall assess the application for completeness and notify both the licensee and any utilities that jointly own the poles identified in the application in writing of its determination. As part of its notification, ~~if~~ a utility determines that the application is incomplete, it must specify the reasoning for its determination in the notification.

Commented [GNS10]: Conformed to FCC timeline.

4.3 Resubmission Process.

(1) A new licensee may resubmit an application within ten business days after receiving notice that the original submission was incomplete. If the resubmission is not made within ten business days, the utility may treat the resubmission as a new application and notify the new licensee and jointly-owning utilities accordingly. A timely resubmission need only address the deficiencies identified in the utility's notice.

(2) A utility shall determine within ~~15~~ business days whether the resubmitted application is complete and notify the licensee and jointly-owning utilities of that decision. If the utility determines that the resubmitted application is still incomplete, it must specify the deficiencies that were not addressed and why the resubmission failed to resolve them.

Commented [GNS11]: Conformed to FCC timeline.

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(3) The new licensee may resubmit its application as many times as it chooses within 60 days of the initial application for small and regular orders, 75 days for mid-size orders, and 90 days for large and very large orders, if in each case the licensee makes a good faith effort to address the deficiencies identified by the utility. For each resubmission, the utility shall have 15 business days to review and respond, as specified above.

~~(4)~~

~~(5)~~(4) A utility may not charge a separate application fee for any resubmissions made in accordance with this process within 60, 75 or 90 days, as applicable, of the new licensee's initial application.

(e) Survey Estimate and Payment.

1. When a utility provides notice to a new licensee that an application is complete, it shall also present to the new licensee a detailed, itemized estimate of charges to perform all necessary survey work. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, internal and external labor hours and costs, gas mileage, and other related costs that form the basis of the estimate.
2. A new licensee may dispute or accept an estimate and make payment within 30 days after receipt of an estimate, otherwise the ~~contract estimate~~ may be withdrawn ~~is voided~~. A utility shall not be required to conduct survey work until it receives payment from the new licensee in the full amount of the estimate.
3. Final Invoice. After the utility completes all survey work, it shall provide the new licensee with a detailed, itemized final invoice for the actual survey charges incurred. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of its invoice, and explain with documentary support any ~~substantial~~ overages ~~from~~ the exceeds 5.0 percent of the initial estimates.

In no event may the invoice exceed the estimate by more than 20 percent.
The cost of the survey work shall not increase solely as a result of the utility's inability to complete the survey in a timely manner.

(f) Survey and Application Review on the Merits.

1. A utility shall coordinate and confer with any jointly-owning utilities to complete a survey of poles for which access has been requested and shall, in coordination with any jointly-owning utilities, conduct the survey, review the application on its merits, and provide a written response to the new licensee either granting or denying access within the following timeframes from the receipt of a complete application: 45 days for small and regular orders, 60 days for mid-sized orders, or 90 days for large orders. For very large orders, the utility, any jointly-owning utilities, and new licensee shall negotiate in good faith to establish the timeline for completing survey work and issuing a written decision either granting or denying access.
2. A utility shall permit the new licensee, any existing licensees on the affected poles, and any jointly-owning utilities, to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected licensees and jointly-owning utilities with at least three business days' advance notice of any field inspection as part of the survey and shall provide the date, time, and location of the survey, as well as the name, telephone number, and e-mail address of the contractor or employee performing the survey.

- (1) A utility may not deny the new licensee pole access based on a preexisting violation not caused by any prior attachments of the new licensee, unless the violation involves a threat of imminent harm to persons or property ~~safety issue~~ or impacts the structural integrity of the pole. In any instance where a preexisting violation is identified by the utility that involves a threat of imminent harm to persons or property requires and corrective work outside the communications space, the utility shall promptly correct the

Commented [GNS12]: The NESC distinguishes between non-compliant conditions that may be scheduled for correction and those that require immediate attention. Also, the FCC rules do not permit the utility to deny access based on alleged safety issues since non-compliance with governing standards – even if only technical – may always be characterized as safety related. The important question is how the NESC – the standard bearer for pole safety – classifies the violation. If it is one that can be scheduled for correction – not immediately addressed – then the utility may not deny access on this ground.

violation. Where a violation requires work by parties other than the utility, the utility ~~it~~ shall update ~~NJUNS~~ the joint utility electronic notification database or any successor database on the details of the violation and notify the jointly-owning ~~utility of the violation. The utility shall also notify~~ and any existing licensee potentially responsible for the violation, identifying the location of the pole, describing the violation, and requesting details from the jointly-owning utility or existing licensee on how and when the violation will be ~~resolved~~.

- (2) The utility shall permit the new licensee an opportunity to modify and resubmit its application within ten business days based on the utility's denial of access.

(3) Make-Ready Cost Estimate and Payment.

(a) Cost Estimate. For all applications other than very large orders, where a new licensee's request for access is not denied, a utility shall present to the new licensee a detailed, itemized estimate, on a pole-by-pole basis where requested, of costs to perform all necessary make-ready within ten business days of notifying a licensee that their attachment application has been approved on the merits, or in the case where a new licensee has performed a self-help survey pursuant to 220 CMR 45.08(6)(a), within ten business days of receipt by the utility of such survey. If the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present costs on a per-job basis rather than present a pole-by-pole estimate for those fixed costs. The utility shall provide documentation and calculations that are sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith the timeline for completing make-ready cost estimates for very large orders.

(b) Information from Cyclical Pole Inspection Reports.

1. Within five business days of receiving a make-ready cost estimate, a new licensee may request in writing that the utility provide, as to the poles

Commented [GNS13]: In many cases the utility has created a violation when it adds equipment to a pole after an attachment is made. In other cases, the non-compliant condition was created so many years ago it is difficult to determine which entity caused the violation. At the end of the day, if the violation must be remedied by a pole replacement, the utility stands to benefit significantly from the installation of a brand new, taller, stronger pole. Accordingly, it is important to clarify that the utility or its joint own may bear responsibility for the correction.

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requiring replacement as a result of the application, a copy of the utility's most recent cyclical pole inspection report for each pole that would require replacement, or, if available, any more recent pole inspection report. The utility shall provide the new licensee with this information within five business days of the new licensee's written request.

~~2.~~ After requesting and receiving copies of the requested pole inspection reports, a new licensee may amend an attachment application [or seek adjustments to the make-ready cost estimate to account for information contained in the pole inspection report](#) within five ~~3.~~^{2.} business days.

(1) A utility that receives ~~such~~ an amended attachment application may, at its option, restart the period for responding to the application and conducting the survey as if the application were newly filed.

~~(2)~~ A utility electing to restart the period shall notify the licensee of its intent to do so within five business days of receipt of the amended application.

~~(2)~~⁽³⁾ [The timelines in 220 CMR 45.00 may be tolled for up to 30 days where the licensee seeks adjustments to the make-ready cost estimate.](#)

(c) Withdrawn Estimate.

1. If the new licensee fails to submit payment to the utility for the make-ready within ten business days of receiving the cost estimate from the utility, or within ten business days of receiving cyclical pole report data from the utility if requested by the new licensee in accordance with 220 CMR 45.08(3)(b), [excluding any tolled period](#), the utility may withdraw the cost estimate to perform make-ready. If the utility withdraws the cost estimate, the utility shall notify the new licensee and any jointly-owning utilities of the withdrawal.
2. If the estimate is withdrawn, the new licensee may submit a single request for updated cost estimates from a utility and any jointly-owning utility no

Commented [GNS14]: The reports may show that certain poles already require replacement.

later than 45 days after the original withdrawing utility provided the original estimate. The utilities shall provide the updated estimates within ten business days. If payment is not received from the new licensee within ten business days of receipt of an updated estimate, a utility may withdraw the updated cost estimate and shall notify the new licensee and any jointly-owning utilities of the withdrawal.

3. If the new licensee has not paid in full a make-ready cost estimate within 60 days of receiving the [initial or updated](#) estimate, [as applicable](#), then the new licensee's application and any corresponding survey work conducted in response to the application may be voided by the utilities. If a utility seeks to void a new licensee's application or any corresponding survey work conducted in response to the application, it shall notify the new licensee and any jointly-owning utility by written notice that clearly identifies the date on which the application or survey work is void.
4. Municipal New Licensee. Pursuant to M.G.L. c. 41, § 56, written notice of acceptance of a make-ready cost estimate shall satisfy the requirements of 220 CMR 45.08(c) in lieu of payment when the new licensee is a municipality, or any political subdivision thereof. Payment in full shall be provided by such a new licensee within 30 days of receipt of a final invoice provided pursuant to 220 CMR 45.08(3)(d).

- (d) Final Invoice. After the utility completes make-ready to accommodate the new licensee's attachment, the utility shall provide the new licensee with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new licensee's attachment. If the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may instead present those costs on a per-job basis for those fixed costs. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of its invoice, and explain with documentary support and corresponding calculations any ~~substantial~~ overages from the initial estimates [of 5.0 percent or more](#). [In no event may the invoice](#)

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exceed the estimate by more than 20 percent. The cost of make-ready work shall not increase solely as a result of the utility's inability to complete the make-ready work in a timely manner.

(e) A utility may not charge a new licensee to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards or guidelines if the non-compliance is due to work performed by an entity other than the new licensee prior to the new attachment or the pole already requires replacement.

(4) Permitting and Governmental Approvals.

(a) Required.

1. In coordination with any jointly-owning utilities and after the utilities have received full payment for their make-ready estimates, within 15 business days for small and regular orders, 30 days for mid-sized orders, and 60 days for large orders, a utility shall submit to the appropriate government authorities any necessary permitting or approval applications required to complete its make-ready. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith and coordinate the timeline for submitting to the appropriate government authorities all permitting and approval applications for very large orders.
2. Upon request, a utility shall provide a copy to the new licensee of each permitting and approval application submitted to the appropriate government authorities.
3. A utility shall provide on at least a monthly basis regular, written updates to new licensees and jointly-owning utilities on to the status of any pending permitting and approval application requests submitted to all government authorities whose approvals are necessary to commence any make-ready identified for the new licensee's request.
4. A new licensee shall respond within five business days to any written requests for information from a utility to respond to government authority inquiries relating to the permitting and approval applications. If a government authority rejects or requests modification to any make-ready

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identified in a permitting or approval application, then the new licensee, utility, and any jointly-owning utility shall, within five business days of such rejection or request, confer and coordinate on amending the underlying pole attachment application to the utility and the corresponding permitting and approval applications to the applicable government authority.

(b) Not Required. If no permitting or approval applications are required to be submitted by the utility, then the utility must notify the licensee within ~~ten~~five business days of the make-ready payment. The make-ready timelines identified in 220 CMR 45.08(5) will ~~begin to toll~~begin at the end of that ten-day period.

(5) Make-Ready Notifications and Timelines.

(a) After receipt of payment in full for make-ready cost estimates, entry into any required new or amended pole attachment agreement with the new licensee for the attachments identified in its application, and within a commercially reasonable time after the utility receives the necessary permitting and approvals from government authorities in order to commence make-ready, a utility shall issue notifications in writing to the new licensee, all known entities and existing licensees with existing attachments, and appropriate government authorities that may be affected by the make-ready in the locations where government authority approvals were obtained. Where certain necessary government authority approvals are outstanding, ~~t~~The notices ~~will~~ may be staggered based on when the utility receives any necessary government authority approvals in order to commence work on portions of the new licensee's planned deployment project.

(b) The make-ready notices provided by the utility shall:

1. identify with specificity the deployment area(s), route(s) and street names, and pole numbers with existing licensees where make-ready needs to be performed;
2. if a meet-and-confer was conducted prior to the new licensee's application to the utility, identify the date of the prior meet-and-confer and all individuals and their associated entities that attended the meeting;

3. include a request to meet-and-confer at least once within 30 days of the date of the make-ready notice for mid-sized orders and within 60 days of the date of the make-ready notice for large and very large orders;
4. if an existing licensee must modify or shift its attachments to accommodate the new licensee, explain that the new licensee is responsible for the cost of that make-ready for the existing licensee;
5. if an existing licensee must modify or shift its attachments to accommodate the new license in the communications space, explain that the existing licensee may allow the new licensee to perform necessary make-ready to the existing licensee's facilities by submitting written approval to the new licensee and any utilities that own the affected poles within ten business days of the make-ready notice;
6. remind existing licensees that they must update ~~NJUNS (or any successor database)~~ [the joint utility electronic notification database](#) within five business days of completing any make-ready on the poles identified for make-ready;
7. for areas requiring ~~only simple~~ make-ready [in the communications space](#):
 - (1) set a date for sequential completion of make-ready for all existing licensees in the communications space from the top down that is no later than 30 days after [the date the make-ready notice is sent](#) ~~receipt of government authority approvals for poles identified in small and regular orders originally submitted by the new licensee~~, 75 days after [the date the make-ready notice is sent](#) ~~receipt of government authority approvals~~ for poles identified in mid-sized orders originally submitted by the new licensee, or 120 days after [the date the make-ready notice is sent](#) ~~receipt of government authority approvals~~ for poles identified in large orders originally submitted by the new licensee; and
 - (2) explain that if make-ready is not completed by the completion date set by the utility and the existing licensee has not provided prior approval, the new licensee may automatically hire a contractor

Commented [GNS15]: This conforms to the FCC rules.

Commented [GNS16]: This conforms to the FCC rules. Any government authority required should be pursued in tandem with the timelines. Deviations in 45.10 already allow for extending timelines to accommodate any required approval from government authorities.

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from the appropriate utility's authorized contractor list to complete the make-ready specified in the communications space and consistent with the self-help requirements identified in 220 CMR 45.08(6);

8. for areas requiring ~~complex~~ make-ready above the communications space:
 - (1) identify with specificity the utility's planned make-ready schedule, including the planned sequence and anticipated work dates for the deployment area(s), route(s) and street names, and pole numbers (with associated existing licensees) where make-ready will be performed;
 - (2) set a date for sequential completion of make-ready from the top down for all existing licensees that is no later than 90 days after receipt of government authority approvals for poles identified in small and regular orders originally submitted by the new licensee, 135 days after receipt of government authority approvals for poles identified in mid-sized orders originally submitted by the new licensee, or 180 days after receipt of government authority approvals for poles identified in large orders originally submitted by the new licensee; and
 - (3) explain that the utilities and existing licensees may deviate from the timelines consistent with 220 CMR 45.10: Deviation from Timelines.
9. for poles originally identified in very large orders submitted by the new licensee, explain that make-ready by all existing licensees, the utility and jointly-owning utility, and the new licensee must be negotiated, coordinated, and performed in good faith and in consultation with the appropriate government authorities;
10. explain that the existing licensee may modify its attachment consistent with the specified make-ready at any time after all licensees higher on the pole have shifted their attachments but no later than date set for completion; and

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11. provide contact information for the utility, jointly-owning utility, and new licensee, including the name, telephone number, and e-mail address of each relevant contact to coordinate the make-ready that needs to be performed and share other, relevant information.

(c) Meet-and-Confer Requirement.

1. No later than 30 days after the date of the make-ready notice for mid-sized orders and no later than 60 days after the date of the make-ready notice for large and very large orders, the new licensee, utilities, and existing licensees in the communications space shall meet-and-confer to engage in good faith discussions regarding the mechanics and timing of the implementation schedule. Invitations to attend and participate in this meet-and-confer shall be sent as soon as practicable by the utility to each appropriate government authority that received the make-ready notice.
2. The entities subject to this meet-and-confer requirement shall find a mutually agreeable date and time for the meeting (which can take place in-person, virtually, or by phone) within the timeframe specified in the prior paragraph.

~~2.3.~~ This meet-and-confer requirement shall not extend the timelines in 200 CMR 45.08(5).

(6) Self-Help Remedies.

- (a) Surveys. If a utility fails to complete a survey within the timeline specified in 220 CMR 45.08(2)(f), then a new licensee may conduct the survey in place of the utility by hiring a contractor from the utility's pre-approved contractor list to complete the survey.
 1. If the new licensee elects to conduct self-help, it shall notify the utility's single pole administrator and ~~any jointly-owning utility~~ in writing within five business days of its decision to pursue self-help.
 2. A new licensee shall permit the affected utility and existing licensees to be present for any field inspection conducted as part of the new licensee's survey.

3. A new licensee shall use commercially reasonable efforts to provide the affected utility and existing licensees with at least three business days' advance notice before conducting any field inspection as part of a survey. The notice shall include the date and time of the survey, a description of the work involved, and the name, telephone number, and e-mail address of the contractor selected by the new licensee.

(b) Make-Ready. If ~~simple or complex~~ make-ready ~~in the communications space~~ is not complete within the timelines specified pursuant to 220 CMR 45.08(5), the utilities and existing licensees have not provided any notice of deviations from the timelines in accordance with 220 CMR 45.10: Utility Poles – Deviation from Timelines, ~~the electric utility has completed any necessary make-ready on the pole~~, and the new licensee has received the requisite authorization(s) to install its attachments along public rights-of-way by the appropriate government authorities, then a new licensee may conduct the make-ready ~~in the communications space~~ in place of the ~~telephone~~ utility and existing telecommunications, cable television, and municipal licensees, as applicable, by hiring a contractor from the ~~telephone~~ utility's pre-approved contractor list to complete the make-ready.

1. If the new licensee elects to conduct the make-ready, it shall notify the ~~telephone-affected~~ utility, any jointly-owning ~~electric~~ utility, and the ~~applicable-affected~~ existing licensees in writing within five business days of its decision to pursue self-help.
2. A new licensee shall permit the ~~telephone-affected~~ utility, any jointly--owning ~~electric~~ utility, and ~~affected~~ existing licensees to be present for any make-ready.
3. A new licensee shall use commercially reasonable efforts to provide the ~~telephone-affected~~ utility, any jointly-owning ~~electric~~ utility, and ~~affected~~ existing licensees with at least five days' advance notice of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name, telephone number, and e-mail address of the contractor selected by the new licensee.

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4. During the course of performing self-help, in the event that the contractor selected by the new licensee identifies the need for adjustments to make-ready identified in the survey(s) or unexpected safety violations on particular poles, the new licensee's contractor shall cease make-ready on the affected pole(s) and the new licensee shall immediately notify the ~~utilities~~-affected utility of the changed circumstances from the make-ready plan and ~~utilities'~~ surveys. The new licensee shall propose a modification and the affected utility ~~utilities~~ shall have three business days ~~shall to~~ confer and coordinate on resolving the make-ready on the affected pole(s) within a commercially reasonable timeframe or the proposed modification shall be deemed approved.
5. The new licensee shall notify an affected utility or existing licensee immediately if make-ready damages the equipment of a utility or an existing licensee or causes an outage that is reasonably likely to interrupt the service of a utility or existing licensee. Upon receiving notice from the new licensee, the utility or existing licensee may either:
 - (1) complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, costs related to loss of service to customers, and other related costs that form the basis of the invoice; or
 - (2) require the new licensee to fix the damage at its expense immediately following notice from the utility or existing licensee.
6. After completion of make-ready on a particular pole or set of poles on a particular day, a new licensee shall update ~~NJUNS (or any successor database)~~ the joint utility electronic notification database within five business days and notify the affected utility and existing licensees within ten business days. Upon receipt of the notice, a utility and existing licensees may notify the new licensee of any damage or code violations caused on their equipment by the make-ready conducted by the new

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licensee. If the utility or an existing licensee notifies the new licensee of such damage or code violations, then the utility or existing licensee shall provide adequate documentation of the damage or the code violations. The utility or existing licensee may either:

- (1) complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage or code violations and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of the invoice; or
- (2) require the new licensee to fix the damage or code violations at its expense within ten business days following notice from the utility or existing licensee.

(7) Temporary Attachments.

In lieu of exercising its self-help remedies, a licensee may make a temporary attachment, including by (a) placing its cable on the opposite side of the pole from other cables in the communications space where it can do so in compliance with governing safety codes, or (b) using extension arms to clear obstacles, improve alignment, or provide space that would not otherwise be available without replacing the pole, to the extent the installation of extension arms complies with applicable codes. Any temporary attachments shall be made permanent upon completion of make-ready work.

~~Self-Help Make-Ready Limitations. A licensee conducting make-ready pursuant to 220 CMR 45.08(6)(b) shall be limited to make-ready in the communications space involving municipal, cable television, and telecommunications provider attachments and shall not include work to replace a pole.~~

(8) New Licensee Obligations.

- (a) A new licensee shall install its new and upgraded attachments identified in its application only after it has received any required authorization from the applicable authorized government authorities.
- (b) A new licensee shall install its new and upgraded attachments within 30 days of notice of completed make-ready for poles originally identified in its applications

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for small and regular orders, within 45 days of notice of completed make-ready for poles originally identified in its applications for mid-sized orders, and within 60 days of notice of completed make-ready for poles originally identified in its applications for large and very large orders.

~~(b)~~(c) ____ The new licensee may forfeit its designated space on the utilities' poles to other licensees in the utilities' queue for failure to meet these timelines.

~~(e)~~(d) ____ A new licensee shall be responsible for ~~the make-ready costs, including the cost~~ of removing an existing pole, only when the ~~existing pole is replaced with a new pole as part of~~ make-ready work is necessitated solely by the new licensee's application. A licensee shall not be responsible for any portion of make-ready costs resulting in utility betterment. For the purposes of 220 CMR 45.00, a pole replacement is not necessitated solely by a new licensee's application when:

1. A pole replacement is otherwise required by law;
2. The existing pole fails applicable engineering standards, such as those contained in the NESC;
3. A previous or contemporaneous change to a utility's internal construction standards necessitates replacement of an existing pole;
4. The pole is required to be replaced due to road expansion or alternation, property development, in connection with storm hardening, as the result of grid modernization efforts, or similar government-imposed requirements;
or
5. The current pole already is on the utility's internal replacement schedule, regardless of when the replacement is scheduled to take place.

In accordance with 220 CMR 45.08(7)(c)(1) – (5), costs may be assigned and recovered from a pole owner, an existing licensee, or an entity other than the new licensee whose application necessitated the replacement of an existing pole.

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45.09: Utility Poles – OTMR Option – Timelines, Application, Survey, Make-Ready, and Related Requirements for Access

(1) Applicability. The OTMR process identified in 220 CMR 45.09 may only apply if the following conditions are met:

(a) the new licensee seeks to attach telecommunications, including those of advanced telecommunications capabilities, or cable television provider facilities to the communications space of a pole;

(b) the application size is categorized as a small, regular, ~~or~~ mid-size or large order;

(c) the poles identified in the application require only simple make-ready;

(d) the need for complex make-ready is not identified during the survey process; and the new licensee expressly elects to proceed with the OTMR process identified in 220 CMR 45.09 in its initial application to the utility or in a subsequently amended application.

~~(d)~~(e) A utility may allow licensees to follow the OTMR process for work above the communications space of a pole provided such agreement is documented in writing and conforms to the rules in 220 CMR 45.09.

(2) Application Process.

(a) If no single application process exists between utilities that jointly own poles, within 30 days of the date of these rules become effective, the utilities shall appoint a single pole administrator to process pole attachment applications for both utilities The identification and contact information for the single pole administrator shall be posted on the utility’s website in accordance with 220 CMR 45.17. then a new licensee shall ~~concurrently~~ submit pole attachment applications to the utilities’ single pole administrator. to each utility that shares ownership of the poles identified in the application the contact information of each individual from each utility to whom an application(s) to attach to jointly-owned poles was also submitted.

(b) If a new licensee anticipates ~~utilizing~~ overlapping facilities to existing licensee or utility communications attachments in connection with the work described in a pole attachment application, then it shall provide documentation of any

Commented [GNS18]: Again, OTMR should be available for large orders, as it is at the FCC.

overlapping approvals it has received from existing licensees [or the utility](#) and comply with the requirements identified in 220 CMR 45.12(3)(a).

- (c) A new licensee that elects to proceed under the OTMR process must make this election in writing in its initial attachment application and must identify the simple make-ready on a pole-by-pole basis that it proposes to perform.
- (d) A utility shall confirm receipt of an attachment application through a written notice provided to the applicant and any utility that jointly owns any poles identified in the application within one business day of receiving the application.
- (e) Application Completeness.

1. The utility shall review the new licensee's [OTMR](#) attachment application for completeness before reviewing the application on its merits. A new licensee's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master pole attachment agreement or in publicly available written requirements in effect at the time of submission of the application, to make an informed decision on the application.
2. After receipt of a new licensee's application, a utility shall determine within ten business days whether the application is complete and notify the licensee and any utilities that jointly own the poles identified in the application of that decision. As part of its notification, if the utility notifies the new licensee and jointly-owning utilities that the new licensee's attachment application is not complete, then the notifying utility must specify all reasons for finding the application incomplete.
3. Resubmission Process.

- (1) A new licensee may resubmit an application within ten business days after receiving notice that the original submission was incomplete. If the resubmission is not made within ten business days, the utility may treat the resubmission as a new application and notify the new licensee and jointly-owning utilities accordingly. A timely resubmission need only address the deficiencies identified in the utility's notice.

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- (2) A utility shall determine within ~~15~~ business days whether the resubmitted application is complete and notify the licensee and jointly-owning utilities of that decision, unless the notifying utility specifies to the new licensee and jointly-owning utilities which deficiencies were not addressed and how the resubmission failed to resolve them.
- (3) The new licensee may resubmit its application as many times as it chooses within 60 days of the initial application if in each case the licensee makes a good faith effort to address the deficiencies identified by the utility. For each resubmission, the utility shall have 15 business days to review and respond, as specified above.
- (4) A utility may not charge a separate application fee for any resubmissions made in accordance with this process within 60 days of the new licensee's initial application or any additional period necessitated by a deviation in accordance with 220 CMR 45.10.

Commented [GNS19]: Conforms to the FCC rules.

(f) Survey Process.

1. If the utility deems the OTMR application complete, then within 30 days after this determination, the new licensee shall conduct and submit copies to the utilities of the survey(s) conducted to facilitate review of the application's merits.

- (1) To perform the OTMR survey(s), the new licensee shall use a contractor included on the telephone utility's authorized contractor lists ~~maintained by each utility with ownership of the poles.~~ If the telephone and electric utility do not include the same contractors on their authorized lists, then the new licensee shall utilize ~~at least one contractor included on the electric utility list and one~~ the contractor included on the ~~telephone~~ telephone utility list ~~or added to the utility list~~ in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready.

Commented [GNS20]: OTMR is entirely in the communications space. Telephone company contractors are entirely capable of assessing whether work is limited to the communications space and simple. Electric utilities may review reports and oversee work if they choose.

Commented [GNS21]: OTMR is in the communications space. Only one contractor is needed to assess simple work in the communications space. The electric utility has the right to review and reject that contractor's conclusion that work qualifies as simple and also has ultimate control of which contractors perform work on its facilities.

- (2) If the new licensee fails to conduct and submit to the utilities copies of the requisite surveys within 30 business days of its

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notification of application completeness [or any applicable deviation period](#), then the non-OTMR survey and make-ready requirements outlined in 220 CMR 45.08: Utility Poles – Non-OTMR Option, commencing with the survey estimate requirements identified in 220 CMR 45.08(2)(e), shall apply to the application.

2. The new licensee shall permit the utility and any existing licensees on the affected poles to be present for any field inspection conducted as part of the new licensee's surveys. The new licensee shall use commercially reasonable efforts to provide the utility and affected existing licensees within at least three business days' advance notice of any field inspection conducted as part of a survey and shall provide the date, time, and location of the surveys, and name, telephone number, and e-mail address of the contractor performing the surveys.

(g) Application Review on the Merits. The utility shall coordinate and confer with any jointly-owning utilities to each complete a review on the merits of an application requesting OTMR and respond to the new licensee by either granting or denying an application within 15 business days of receipt of copies of the survey(s) conducted by the new licensee.

1. Denial of access.

- (1) Any denial of access 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, if applicable, for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.
- (2) A utility may not deny the new licensee pole access based on a preexisting violation not caused by any prior attachments of the new licensee unless the violation involves a ~~safety issue~~ [threat of imminent harm to persons or property](#) or impacts the structural integrity of the pole. In any instance where a preexisting violation [that involves a threat of imminent harm to persons or property](#)

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requires corrective work outside the communications space, the utility shall promptly correct the violation. Where a violation requires work by parties other than the utility, the is identified by the utility, it shall update ~~NJUNS~~ the joint utility electronic notification ~~or any successor~~ database on the details of the violation and notify the jointly-owning utility and of the violation. ~~The utility shall also notify the any~~ existing licensee(s) potentially responsible for the violation by identifying the location of the pole, describing the violation, and requesting ing details from the existing licensee ~~on how and when the violation will be resolved~~ whether it caused the violation. ~~In such an instance~~ Where a violation involves a threat of imminent harm to persons or property necessitating immediate corrective work, the period of time for a new licensee to resubmit its application shall not begin until the preexisting violation has been resolved. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith the timeline for when the violation will be resolved, so that the new licensee may submit a new application.

2. Denial of OTMR.

- (1) Within the 15 business day review period of an OTMR survey and application on its merits, a utility may object in writing to the new licensee and any jointly-owning utilities to the designation by the new licensee or its contractor that the required make-ready is simple. If the utility objects to the contractor's determination that the required 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, is made in good faith, and explains how such evidence and information relate to a determination that the required make-ready is not simple.

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- (2) In the event of a utility denial of an OTMR request, the utility, any jointly-owning utility, and the new licensee shall immediately proceed with the survey, make-ready, and associated timelines identified in 220 CMR 45.08: Utility Poles – Non-OTMR Option to process the application.
- (3) Make-Ready.
- (a) If the new licensee’s attachment application is approved on the merits, has entered into final or amended pole attachment agreements with the utilities for the attachments identified in its application, has received the necessary permitting and approvals from government authorities, has provided at least 15 business days’ prior written notice of the OTMR to the affected utility and existing licensees, and the utility has not denied the application or objected to the OTMR request, the new licensee may proceed with make-ready and attach its facilities within 30 days of the necessary authorizations using a contractor included on the simple make-ready authorized contractor list of the telephone utility and required pursuant to 220 CMR 45.11: Utility Poles - Contractors for Surveys and Make-Ready.
- (b) The prior written notice of OTMR provided pursuant to 45.09(3)(a) shall include the date and time of the OTMR, a description of the work involved, the name, telephone number, and e-mail address of the contractor or employee being used by the new licensee and provide the affected utility and existing licensees with a reasonable opportunity to be present for any make-ready.
- (c) The new licensee shall notify an affected utility or existing licensee immediately if the make-ready damages the equipment of a utility or an existing licensee or causes an outage that is reasonably likely to interrupt the service of a utility or existing licensee. Upon receiving notice from the new licensee, the utility or existing licensee may either:
1. complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage,

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costs related to loss of service to customers, and other related costs that form the basis of the invoice; or

2. require the new licensee to fix the damage at its expense immediately following notice from the utility or existing licensee.

(d) In performing the OTMR work, if the new licensee or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted on the affected poles, and the determining entity must provide notice within ten business days to the other entity or entities of its determination and the impacted poles. The affected make-ready shall then be governed by 220 CMR 45.08(3)-(5) and the utility shall provide the notice required by 220 CMR 45.08(5) as soon as reasonably practicable.

(e) A new licensee shall conduct its approved OTMR within 30 days of the utilities' approvals of the licensee's application(s) on the merits. The new licensee may forfeit its designated space on the utilities' poles to other licensees in the utilities' queue for failure to meet this timeline.

(4) Post-Make-Ready Timelines.

(a) A new licensee shall notify the affected utility and existing licensees within ten business days after completion of the make-ready on a particular pole or group of poles conducted on the same day. The affected utility and existing licensees shall have ~~at least~~ 90 days from receipt in which to inspect the make-ready.

(b) The affected utility and existing licensees have 15 business days after completion of their inspection to notify the new licensee of any damage or code violations caused by make-ready conducted by the new licensee on their equipment. If the utility or an existing licensee notifies the new licensee of such damage or code violations, then the utility or existing licensee shall provide adequate documentation of the damage or the code violations. The utility or existing licensee may either:

1. complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage or code violations and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas

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- mileage, costs related to any loss of service to customers, and other related costs that form the basis of the invoice; or
2. require the new licensee to fix the damage or code violations at its expense within 15 business days following notice from the utility or existing licensee.

45.10: Utility Poles – Deviation from Timelines

(1) Utility Make-Ready.

- (a) A utility may deviate from the time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option during performance of make-ready for good cause that renders it infeasible for the utility to complete the make-ready within the specified time limits. Good cause shall include, but is not limited to: (1) repair work required to restore service following a widespread service outage; (2) major weather or emergency events that trigger the utility's emergency response plan; (3) roadway or traffic moratoriums implemented by a government authority; (4) availability of police details or flaggers as required by a government authority; and (5) pending issuance of permits or approvals by a government authority.
- (b) A utility that deviates from the time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option shall notify as soon as practicable, in writing, the new licensee, all affected existing licensees, and, if applicable, appropriate government authorities of the deviation. This notification shall identify the affected poles, include a detailed explanation of the reason for the deviation, and provide a new completion date. A utility shall provide updated notifications to new licensees, all affected existing licensees, and, if applicable, appropriate government authorities at least every 30 days for as long as the deviation persists. In addition to the information included in the initial notification, each updated notification shall include a detailed description of any efforts taken to ameliorate the cause of the deviation and any make-ready that was completed in the preceding 30 days.
- (c) The utility shall deviate from the make-ready time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations and is able to proceed with the work.

(2) Existing Licensee Complex Make-Ready.

- (a) An existing licensee may deviate from the time limits specified in 220 CMR 45.08(5)(b)(8)(2) during performance of complex make-ready for reasons of utility delays, delays caused by other licensees required to move their attachments

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before the existing licensee, or safety or service interruptions that render it infeasible for the existing licensee to complete the complex make-ready within the specified time limits. An existing licensee that deviates for safety or service interruptions shall as soon as practicable notify, in writing, the utilities, new licensee, other affected existing licensees, and, if applicable, appropriate government authorities, 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 220 CMR 45.08(5)(b)(8)(2) is provided by the utility for small and regular orders, up to 105 days in the case of mid-sized orders, up to 150 days for large orders, or up to a certain number of days agreed to in coordination with the utilities and new licensee for very large orders.

(b) The existing licensee shall deviate from the time limits specified in 220 CMR 45.08(5)(b)(8)(2) for a period no longer than necessary to complete make-ready on the affected poles.

(3) New Licensee Deviation for Attachments and Submissions.

(a) A new licensee may deviate from the time limits specified in 220 CMR 45.08 for good cause that renders it infeasible for it to attach within the specified time limits. Good cause shall include, but is not limited to: (1) repair work required to restore service following a widespread service outage; (2) major weather or emergency events that trigger the licensee's emergency response plan; (3) roadway or traffic moratoriums implemented by a government authority; (4) availability of police details or flaggers as required by a government authority; and (5) pending issuance of permits or approvals by a government authority.

(b) A new licensee may deviate from the time limits specified in 220 CMR 45.09(e) for good cause that renders it infeasible to complete OTMR and attach in 30 days. Good cause shall include, but it is not limited to: (1) repair work required to restore service following a widespread service outage; (2) major weather or emergency events that trigger the licensee's emergency response plan; (3) roadway or traffic moratoriums implemented by a government authority; (4)

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[availability of police details or flaggers as required by a government authority;](#)
[and \(5\) pending issuance of permits or approvals by a government authority](#)

45.11: Utility Poles – Contractors for Surveys and Make-Ready

- (1) Authorized Contractor Lists Maintained by Utilities. Each utility shall maintain a reasonably sufficient list of contractors it authorizes to conduct surveys related to the poles it solely or jointly owns, and each telephone utility shall also maintain a reasonably sufficient list of contractors it authorizes to conduct simple make-ready and complex make-ready in the communications space related to the poles it solely or jointly owns.
- (2) Licensee Selection of Authorized Contractors. When selecting a contractor for a self-help survey or make-ready in accordance with 220 CMR 45.08(6) or OTMR in accordance with 220 CMR 45.09: Utility Poles – OTMR Option, a licensee shall choose a contractor on the relevant list, ~~as applicable~~, of each utility with ownership of the affected pole(s), if applicable, as of the date the licensee sends notice of its intent to use the contractor.
- (3) Licensee Requests to Add Contractors to the Telephone-Utility Authorized Contractor Lists. New and existing licensees may request the addition to the ~~telephone~~-utility survey and make-ready lists of any contractor that meets the minimum qualifications identified in 220 CMR 45.11(4). Such a request shall be made in writing to the telephone utility for contractors having only communications work expertise and to the electric utility for qualified electrical contractors and include a certification that the contractor meets the minimum qualifications, as well as the name, telephone number, and e-mail address of the contractor. When such requests are made related to anticipated work on poles that are jointly-owned, the licensee shall submit notification of the request ~~concurrently to the jointly owning electric utility~~ single pole administrator.
 - (a) The telephone utility shall provide notice to the licensee of its acceptance or rejection of the licensee's request within ten business days of the utility's receipt of the request.
 - (b) The electric utility shall provide notice to the licensee of its acceptance or rejection of the licensee's request within thirty days of the utility's receipt of the request.
 - ~~(a)~~(c) If a utility fails to provide the response required by paragraph (3)(a) 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, 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.

~~(b)~~(d) ~~The telephone~~A utility may reject a request made by a licensee to add a contractor to any of the utility's preauthorized contractor lists, provided, however, that the grounds for such a rejection shall be limited to reasonable safety or reliability concerns related to the contractor's ability to meet the minimum qualifications or the utility's publicly available and commercially reasonable safety or reliability standards. Notice of a contractor rejection shall be specific, include all relevant information supporting its rejection, and explain how such information relates to the contractor's failure to meet the minimum qualifications or to meet the utility's publicly available and commercially reasonable safety or reliability standards. A notice of contractor rejection shall also identify at least one available, qualified contractor.

(4) Contractor Minimum Qualification Requirements. For purposes of 220 CMR 45.00, ~~telephone~~-utilities, new licensee applicants, and existing licensees shall ensure that the contractors they select to perform surveys or to perform make-ready in the ~~communications space~~ provide written confirmation that the contractors meet the following minimum requirements prior to conducting any work:

- (a) the contractor has agreed to follow and is experienced with the published safety and operational guidelines of the telephone utility, the jointly-owning electric utility, and the NESC;
- (b) the contractor has acknowledged that it knows how to read and follow, and is experienced with reading and following the licensed-engineered pole designs for make-ready, if required by the utility;
- (c) 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 OSHA requirements;
- (d) the contractor meets or exceeds any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available;
- (e) the contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on poles,

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facilities, and attachments owned by the utilities and existing licensees, and for potential damages caused by the contractor to the poles, facilities, and attachments; and

(f) the contractor is licensed and authorized to work in Massachusetts.

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45.12: Utility Poles – Overlapping Wires in the Communications Space

- (1) Applicability. The overlapping requirements and limitations identified in 220 CMR 45.12 shall only apply to the overlapping of wires or cables in the communications space by licensees for the transmission of intelligence by telegraph, wireless communication, telephone, television, including cable television, and other means of telecommunications, including those of advanced telecommunications capabilities.
- (2) Prior Approval for Overlapping.
 - (a) A utility shall not require prior approval by the utility for an existing licensee to overlap to the existing licensee's own existing wires on a pole.
 - (b) A new licensee shall obtain, on a pole-by-pole basis, the specific, written permission of an existing licensee to overlap to the existing licensee's wires.
- (3) Licensee Duties.
 - (a) In its initial pole attachment application to a utility submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, a new licensee [seeking to overlap facilities of an existing licensee or utility](#) shall provide documentation of any [required](#) approvals obtained from [such](#) existing licensees [or utility](#).
 1. The overlapping approvals provided in the application shall be provided on the existing attacher's [or utility's](#) letterhead, identify with specificity the wires and poles on which overlapping is allowed, and identify a contact name, telephone number, and e-mail address of the individual or team responsible for the approval.
 2. For purposes of inputs into ~~NJUNS~~ [the joint utility electronic notification and any successor](#) databases, as well as future work to be performed on the poles and associated attachments proposed to be overlapped by the new licensee, the overlapping approvals from the existing licensees [or utility](#) shall identify whether the new or existing licensee [or utility](#) will be responsible for shifting the overlapped wires upon any future request by the utility or other licensees.

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- (b) A licensee that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.
 - (c) A licensee may not overlash to the lowest telephone utility lines on a pole unless that telephone utility has overlashed its lines in the lowest position.
 - (d) If damage to a pole or other existing attachment results from the licensee's overlashing, or overlashing work causes safety or engineering standard violations, then the overlashing licensee shall be responsible at its expense for any necessary repairs.
 - (e) A licensee that engages in overlashing shall not obscure identification tags on existing attachments. If an overlashing licensee obscures the identification tags of another licensee, the overlashing licensee shall be responsible at its expense for new identification tags to be affixed to the wires where the other licensee's tags were obscured.
- (4) Preexisting Violations.
- (a) A utility may not require an existing licensee that overlashes its existing wires on a pole to fix preexisting violations caused by another existing licensee.
 - ~~(b)~~ A utility may not require an new licensee prohibit overlashing to an existing licensee's or a utility's wires by a new
 - ~~(e)~~ (b) _____ licensee on a pole by pole basis if the existing wires have to correct preexisting violations caused by another licensee.
- (5) ~~that cannot be resolved during the make-ready process.~~ Opportunity to Modify Proposal. Consistent with the requirements of 220 CMR 45.08(2)(b) and 220 CMR 45.09(2)(b), if after receiving copies of overlashing approvals in the new licensee's initial application, and after any surveys have been conducted pursuant to 220 CMR 45.08(2)(f), 220 CMR 45.08(6)(a), or 220 CMR 45.09(2)(f), the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, the utility must provide specific documentation of the issue to the new licensee in order to provide the new licensee with an opportunity to modify the scope of work proposed in its application. A new licensee shall submit within 15 business days to the utility and any jointly-owning utility a revised application that modifies the proposed scope of work. The utility shall

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review and respond to the revised application in accordance with the timelines identified in 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, as applicable, for review of an application on its merits.

- (6) Post-Overlapping Review. An overlapping licensee shall notify the affected utility and existing licensee(s) within 15 business days of completion of the overlap on a particular pole or group of poles conducted on the same day. The notice shall provide the affected utility and existing licensee(s) ~~at least~~ 90 days from receipt in which to inspect the overlap. The utility and existing licensees(s) each have 15 business days after completion of its inspection to notify the overlapping party of any damage or code violations to its equipment caused by the overlap. If the utility or any existing licensee(s) discovers damage or code violations caused by the overlap on equipment belonging to the utility or the existing license the utility or existing licensee shall inform the overlapping party and provide adequate documentation of the damage or code violations. Depending on the owner of the facility damaged, the utility or existing licensee may either:
- (a) complete any necessary remedial work and bill the overlapping licensee with an itemized invoice of costs related to fixing the damage and with documentation that is sufficient to determine the specific code violation and basis of all charges, including any material, internal and external labor costs, gas mileage, costs related to loss of service to customers, and other related costs that form the basis of the invoice; or
 - (b) notify the overlapping licensee of the specific code violations and require the overlapping licensee to fix the damage or code violations at its expense within 15 business days following notice from the utility.

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45.13: Utility Poles – Terms and Conditions Presumed Reasonable

The provisions established in 220 CMR 45.04: Duties of Licensees and Attachment Owners through 220 CMR 45.12: Overlapping Wires in the Communications Space are presumed to be reasonable terms and conditions for non-discriminatory pole access on public rights-of-way in Massachusetts. A utility shall not establish rates, terms or conditions related to attachment applications or attachment agreements which conflict with applicable state laws or these regulations. These regulations shall apply to all agreements, contracts, tariffs, and other arrangements between entities covered by these regulations, including those entered into prior to the effective date of these regulations. To the extent any such agreement conflicts with these regulations, the regulations shall control and the conflicting provisions shall be deemed void and of no force or effect.

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45.14: Petitions for Interim Relief and Alternative Dispute Resolution Procedure

- (1) Petition for Interim Relief. In conjunction with the formal complaint procedure outlined in 220 CMR 45.15: Formal Complaint Procedure, a licensee may file with the Department a Petition for Interim Relief of the action proposed (a) in a notice received pursuant to 220 CMR 45.05(4)(a) within 15 business days of receipt of such notice or (b) to address a denial of access that is impeding or delaying broadband deployment. Such a filing 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). The Department shall adjudicate the petition within 30 days of receipt.
- (2) Alternative Dispute Resolution. Within 30 days of the rules becoming effective, the Department of Public Utilities and the Department of Telecommunications and Cable shall adopt an expedited informal process to help in resolving complaints of utility practices alleged to be impeding or delaying broadband deployment. Such processes shall allow for the Department to provide guidance and advice to the parties on the most effective means of resolving their dispute, including Department supervised mediation. Prior to the filing of a formal complaint pursuant to 220 CMR 45.15: Formal Complaint Procedure, a utility or a licensee may first pursue an informal, alternative dispute resolution consistent with: (1) any contractual terms entered into by the involved parties; or (2) ~~any~~ the informal process established by the Department of Public Utilities ~~and or~~ the Department of Telecommunications and Cable and outlined in any Memorandum of Agreement between the two agencies.

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45.15: Formal Complaint Procedure

(1)

Upon receipt of ~~The Department of Public Utilities and the Department of Telecommunications and Cable will jointly adjudicate~~ any formal complaint filed in accordance with 220 CMR 45.15, the Department of Public Utilities and the Department of Telecommunications and Cable shall assign one agency to adjudicate the complaint. The other agency may participate in the proceeding as an interested party but shall have no final decision making authority concerning the relief requested in the formal complaint.

(2) ~~Formal Complaint Procedure. Each~~ The adjudicating agency will assign a ~~separate~~ docket number to the filing, and any procedural requirements, rulings, and orders will be ~~jointly~~ issued by ~~both agencies~~ the adjudicating agency. In issuing any rulings or orders in a formal complaint proceeding, the Department shall consider the interests of both consumers of utility services and subscribers of telecommunications and cable television services.

(3) Complaint.

(a) A petition with supporting documentation submitted concurrently to the Department of Public Utilities and Department of Telecommunications and Cable by either a utility or licensee alleging a dispute under M.G.L. c. 166, § 25A, 220 CMR 45.00, or otherwise involving allegations of discriminatory access or an unjust or unreasonable rate, term, or condition will commence a formal complaint proceeding under 220 CMR 45.15: Formal Complaint Procedure. Complainants may join together to file a joint complaint.

(b) Each complaint shall conform to the requirements specified in 207 CMR 1.04(1)(b) and 220 CMR 1.04(1)(b) and shall be accompanied by: (1) a cover letter describing the filing and noting the distribution of copies, and (2) a certification of service on any utility, licensee, or party named as complainant or respondent. The complaint shall also contain supporting information and documentation, with each document individually pre-marked for identification in the upper right-hand corner with the docket number(s), exhibit name limited to 20 characters, date of filing with the Department, page number, and total number of

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pages in the document. The supporting documentation shall include the following, as applicable:

1. a copy of the attachment agreement, if any, between the licensee and the utility, and if no attachment agreement exists, the complaint shall contain:
 - (1) a statement that the utility uses or controls, in whole or in part, those poles, ducts, conduits, or rights-of-way at issue which are used or designated for attachments; and
 - (2) a statement that the licensee currently has attachments on the utility's poles, ducts, conduits, or rights-of-way or has requested that attachments be placed on the utility's poles, ducts, conduits, or rights-of-way;
2. in any complaint where it is claimed that a term or condition is unjust or unreasonable, the complaint shall identify the specific term or condition that is claimed to be unjust or unreasonable, and provide all information and arguments relied upon to justify said claim;
3. in any complaint where it is claimed that a rate is unjust or unreasonable, or that a term or condition requires review of the associated rate, the data, information, and arguments in support of said claim shall include, but not be limited to, the following, where applicable and available to the complainant:
 - (1) analysis and discussion addressing why the specific rate is claimed to be unjust or unreasonable;
 - (2) the gross investment by the utility for the pole lines;
 - (3) the investment by the utility in appurtenances not used by or useful to the licensee. This may be expressed as a percentage of the gross pole investment, and shall include a list of specific appurtenances considered not used or useful;
 - (4) the depreciation reserve for the gross pole line investment;
 - (5) the total number of poles (A) owned; and (B) controlled or used by the utility;
 - (6) the total number of poles which are the subject of the complaint;

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- (7) the annual carrying charges attributable to the cost of owning a pole, and the specific factors used in the determination of these charges. Annual carrying charges may be expressed as a percentage of net pole investment;
- (8) the average amount of useable space per pole for those poles used for pole attachments; and
- (9) the reimbursements received from the licensee for non-recurring costs;

Data and information should be based on historical or original cost methodology, to the extent possible. Data should be derived from publicly available reports filed with the Department of Telecommunications and Cable, the Department of Public Utilities, the Federal Communications Commission, the Federal Energy Regulatory Commission, such as the Federal Energy Regulatory Commission's Form No. 1, or other reports filed with state or regulatory agencies. The source of any data shall be identified. Calculations made in connection with these figures should be provided to the complainant upon request, as should the computation of any rate determined by using the formula adopted for calculating reasonable attachments rates in Massachusetts;

4. in any complaint where it is claimed that a complainant has been improperly denied access to a pole, duct, conduit, or right-of-way, owned or controlled, in whole or in part, by one or more utilities, the complaint shall include the data and information necessary to support the claim, including:
 - (1) the reasons given for the denial of access to the poles, ducts, conduits, or rights-of-way, owned or controlled, in whole or in part, by one or more utilities;
 - (2) the basis for the complainant's claim that the denial of access is improper;
 - (3) the remedy sought by the complainant;

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- (4) a copy of the written request to the utility for access to its poles, ducts, conduits, or rights-of-way; and
 - (5) a copy of the utility's response to the complainant's written request, including all information given by the utility to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a utility's written response;
 - (6) a statement that the utility and licensee have been unable to agree and a brief summary, including dates, of all steps taken to resolve the problem prior to filing, and if no such steps were taken, the complainant shall state the reason(s) why;
 - (7) if applicable, any other information and arguments relied upon to argue that a rate, term, or condition is not reasonable; and
 - (8) a statement that the complainant requests that a hearing be convened pursuant to 207 CMR 1.06: Hearings and 220 CMR 1.06: Hearings or that it waives its right to a formal hearing; and
5. in any complaint brought by a utility against a licensee alleging a dispute under M.G.L. c. 166, § 25A or 220 CMR 45.00, the complaint shall include the data and information necessary to support the claim, including:
- (1) analysis and discussion involving the basis for the complainant's claim;
 - (2) the remedy sought by the complainant;
 - (3) a statement that the utility and licensee have been unable to agree and a brief summary, including dates, of all steps taken to resolve the problem prior to filing, and if no such steps were taken, the complainant shall state the reason(s) why; and
 - (4) if applicable, any other information, arguments, and supporting documentation relied upon to support the complaint.
- (c) Where the attachments involve ducts, conduits, or rights-of-ways, appropriate data and information, equivalent to that required by 220 CMR 45.15(2)(b), shall be filed.

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- (d) All factual allegations set forth in the complaint or supporting documentation shall be authenticated by affidavit(s) at the time of filing. Any complaint shall also include any relevant witness testimony in support of the complaint and a summary list of each document, including the associated pre-marked exhibit identifier, submitted with the complaint.
- (e) The complainant shall include a statement either that the complainant requests the opportunity for a hearing to be conducted pursuant to M.G.L. c. 30A, § 10, 207 CMR 1.06(6)-(7), and 220 CMR 1.06(5)-(6), or that it waives its right to a formal hearing.
- (4) Response.
- (a) The response to a formal complaint under 220 CMR 45.15: Formal Complaint Procedure shall be filed with both the Department of Public Utilities and the Department of Telecommunications and Cable, as well as served on the complainant, within ten business days after service of the document to which the response is directed.
- (b) The response shall specifically address all contentions made by the complainant. All factual statements shall be supported by affidavit(s).
- (c) The response shall include a statement either that the respondent requests the opportunity for a hearing pursuant to M.G.L. c. 30A, § 10, 207 CMR 1.06(6)-(7), and 220 CMR 1.06(5)-(6), or that it waives its right to a formal hearing.

~~(5) Policy Considerations. Within 15 business days of receipt of a response to a complaint, the presiding officers assigned to the complaint by the Department of Public Utilities and the Department of Telecommunications and Cable may make a determination that the allegations raise policy considerations of general applicability which are not presently addressed by these regulations. If such a determination is made, the presiding officers may jointly issue a written recommendation that some, or all, of the complaint be converted into a petition for joint rulemaking pursuant to the Memorandum of Agreement between the Department of Telecommunications and Cable and the Department of Public Utilities. Such a recommendation shall be granted only by a joint order signed by the Commissioner of the Department of Telecommunications and Cable and the Commission of the Department of Public Utilities. During the pendency of any~~

Commented [GNS23]: The Department's existing complaint process already allows it to address a concern that a complaint seeks a rule change. Notably, whether a rate, term and condition is just and reasonable may require the Department to consider circumstances not expressly addressed in the rules. Keeping this language runs the risk that any time a Department is asked to determine that a rate, term or condition is unjust or unreasonable for any reason not specifically set forth in the rule, it will feel compelled to open a rulemaking. In fact, it is common for regulatory bodies to supplement rules with conclusions reached in adjudicatory proceedings about what is or is not just and reasonable.

~~such presiding officer determination or joint agency order on converting a petition into a joint rulemaking, the presiding officers may jointly establish a procedural schedule to commence the adjudication of the underlying complaint.~~

~~(6)~~(5) Notice of Complaint, Intervention, and Comments. The Department shall give public notice by such means as it deems appropriate, consistent with due process, that a formal complaint has been filed and docketed. Such notice shall include a brief description of the complaint and shall set a deadline for the filing of petitions to intervene and for the opportunity for comments to be filed by any person permitted to intervene as a party. That time limit for intervention requests shall be no shorter than 14 days after such public notice, and the time limit for comments submitted by intervenors shall be no later than 20 days after issuance of any decision by the Department permitting intervention.

~~(7)~~(6) Intervention. The procedures outlined in 207 CMR 1.03: Appearances; Intervention and Participation: Parties and 220 CMR 1.03: Appearances; Intervention and Participation: Parties shall generally apply to petitions to intervene under 220 CMR 45.15: Formal Complaint Procedure.

~~(8)~~(7) Presiding Officers and Procedural Schedule. After the receipt of a complaint, to the extent that it is deemed necessary and practicable, the presiding officers shall jointly establish a detailed schedule for the proceeding, including, but not limited to, dates reserved for potential evidentiary hearings or dates for the parties to file information requests and responses, objections to discovery questions and responses to those objections, requests for an evidentiary hearing, testimony, stipulations, settlement proposals, and briefs. The presiding officers shall also jointly address any other procedural matters that will aid in the orderly disposition of the case. The presiding officers may direct the parties to attend a procedural call or procedural conference to discuss procedural matters relating to the proceeding at any time before the commencement of an evidentiary hearing.

~~(9)~~(8) Meetings and Evidentiary Hearings. The Department may decide each complaint upon the filings and information before it, may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute, or may, in its discretion, require a hearing upon any issues.

~~(+0)~~(9) Department Consideration of Formal Complaint. Where one of the parties has failed to provide information required to be provided by 220 CMR 45.00 or requested by the Department, or where costs, values or amounts are disputed, the Department may estimate such costs, values or amounts it considers reasonable on the basis of available evidence of record, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

~~(+1)~~(10) Remedies. If the Department finds a violation of M.G.L. c. 166 § 25A or 220 CMR 45.00, it may prescribe a just and reasonable rate, term or condition and may:

- (a) terminate the unjust or unreasonable rate, term, or condition;
- (b) substitute in the attachment agreement the reasonable rate, term or condition established by the Department; or
- (c) order relief the Department finds appropriate under the circumstances.

~~(+2)~~(11) ~~(+1)~~ Time Limit. The Department shall issue a final Order on any formal complaint filed by a new licensee in accordance with 220 CMR 45.00 within 180 days after the complaint is filed, although the deadline may be extended up to 360 days after the complaint is filed by a joint order signed by a designated Commissioner from each Department issued within the initial 180 days. Formal complaints filed by any party other than a new licensee shall not be subject to these time limits.

~~(+3)~~(12) Appeal from Department Decisions. The Department shall notify all parties of their rights to appeal a final decision of the Department pursuant to M.G.L. c. 25, § 5, and of the time limits on their rights to appeal.

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45.16: Rates Charged Any Affiliate, Subsidiary, or Associate Company

A utility that engages in the provision of telecommunications services or cable television services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which the utility would be liable under 220 CMR 45.16.

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45.17: Annual Informational Filings and Website Postings

(1) Utilities shall annually submit an informational filing with both the Department of Public Utilities and the Department of Telecommunications and Cable on or before July 1 in a docket designated by each agency.

(a) Content. The informational filing shall, at a minimum, include the following:

1. a cover letter that:
 - (1) states the purpose of the filing;
 - (2) identifies the designated docket numbers; and
 - (3) identifies the name, address, telephone number, and e-mail address of the individual submitting the filing, as well as the name of the entity on behalf of which the filing is being submitted;
2. as of December 31 of the preceding calendar year:
 - (1) a list of approved survey and, as applicable, make-ready contractors identified in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready; and
 - (2) a list of the annual sole- and jointly-owned pole, duct, and conduit attachment rates charged by the utility for telecommunications, wireless, cable television, and, if applicable, EVSE attachments;
3. for the preceding calendar year through December 31, a spreadsheet that identifies:
 - (1) the total number of pole attachment applications received, categorized by application size and the total number of poles included in those applications;
 - (2) a summary breakdown of each application received, categorized by application size, that identifies:
 - (a) the date the application was received by the utility;
 - (b) the date on which all work included in the application was completed or is expected to be completed;

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- (c) the amount of time that elapsed between receipt of the application by the utility and the date on which all work included in the application was completed, if applicable;
 - (d) the total number of poles included in the application;
 - (e) the number of poles surveyed by the utility;
 - (f) whether the licensee elected OTMR and whether the utility approved the OTMR;
 - (g) the number of poles with completed simple versus complex make-ready;
 - (h) the number of poles requiring replacement and replaced as a result of the request, and the number of double poles remaining; and
 - (i) the number and type of attachments (i.e., wireline telecommunications, wireless telecommunications, cable television, and municipal) associated with the request; and
 - (j) identification of the web address(es) with access to the information required pursuant to 220 CMR 45.17(2).
- (b) The information submitted in filings pursuant to 220 CMR 45.17(1) will not be considered or treated as confidential or proprietary by the Department.
- (2) Website Postings. Each utility shall implement and maintain on its website a dedicated, publicly-accessible page that provides, at a minimum:
- (a) a current list of approved contractors identified in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready;
 - (b) a current list of the annual sole- and jointly-owned pole attachment and conduit rates charged by the utility for wireline telecommunications, wireless telecommunications, cable television, and, if applicable, EVSE attachments;

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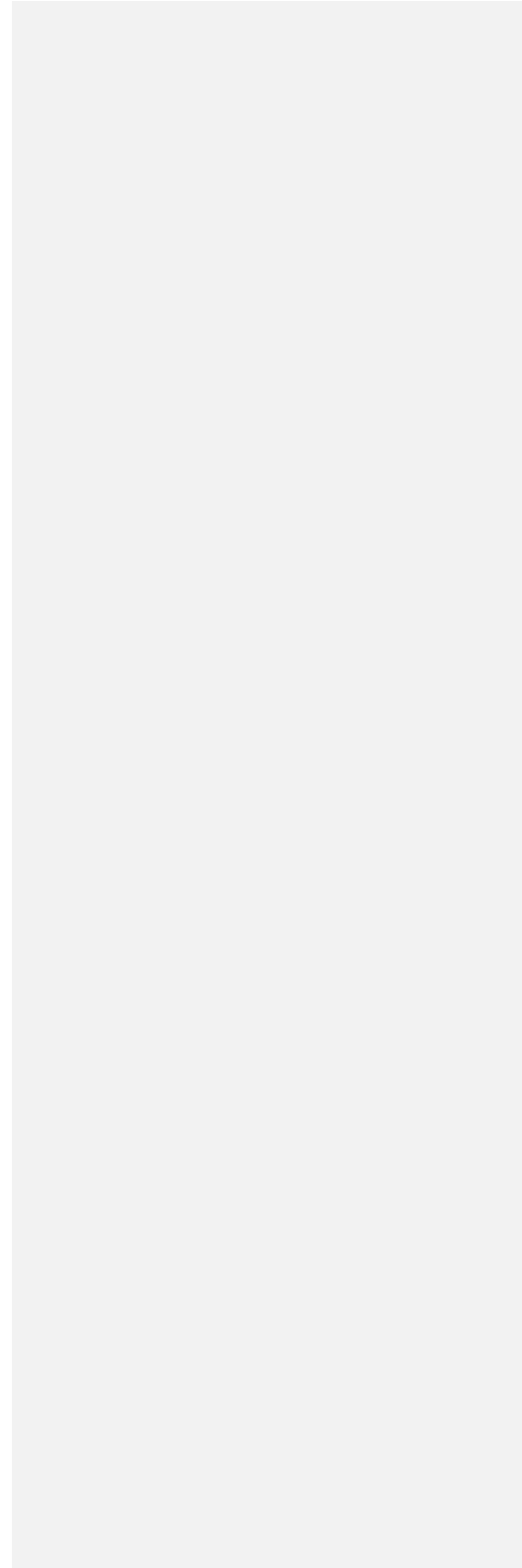
- (c) a current list of, and links to pole, duct, and conduit attachment agreement templates utilized by the utility, as well as associated instructional and informational guides, if available;
- (d) links or details on relevant safety and operational guidelines of the utility applicable to pole attachment and conduit access applications; ~~and~~
- (e) appropriate recipient and contact information at the utility for pole attachment and conduit access application submittals and questions, including the identity and contact information for any appointed single pole administrator;
- (f) a description of and instructions for using the utility's joint utility electronic notification database; and
- ~~(e)~~ (g) a current list of, and contact information for, licensees with facilities occupying the utility's poles, ducts or conduit.

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45.18: Severability

The provisions of 220 CMR 45.00 shall be deemed severable if any particular provision is rendered invalid by judicial determination or by statutory amendment.

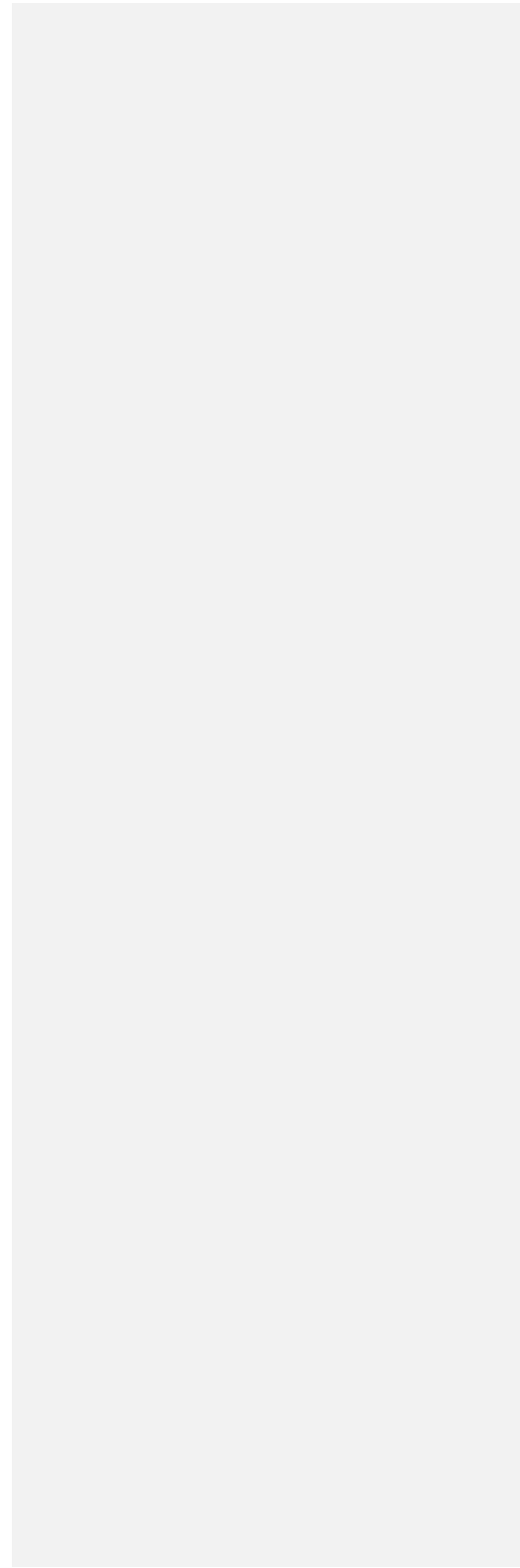


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REGULATORY AUTHORITY

220 CMR 45.00; 47 U.S.C. § 224; 47 C.F.R. § 1.1405; M.G.L. c. 25; M.G.L. c. 25C;
M.G.L. c. 159; M.G.L. c. 164; and M.G.L. c. 166.



Massachusetts Proposed Rules vs. Other States

OTMR:

Nearby states with OTMR: **CT**,¹ **ME**,² **NH**,³ **NY**,⁴ **OH**,⁵ **PA**,⁶ **RI**,⁷ **VT**⁸

Nearby States that limit OTMR by application Size: **0**

TIMELINES:

Nearby states with timelines: **CT**, **ME**, **NH**, **NY**, **OH**, **PA**, **RI**, **VT**

Nearby states that pause make-ready timelines for government approvals: **0**

Nearby states that pause make-ready for correction of pre-existing non-compliance: **0**

SELF-HELP:

Nearby states with self-help: **CT**, **ME**, **NH**, **NY**, **OH**, **PA**, **RI**, **VT**

Nearby states that allow self-help above communications space: **ME**, **OH**, **PA**, **RI**, **VT**

PROCESS:

Nearby states with accelerated dispute resolution: **ME**, **OH**, **PA**, **RI**, **WV**

Nearby states that require electronic notification systems for make-ready: **ME**

States with confidentiality protections for attacher information: **CA**, **ME**

¹ Connecticut's pole attachment rules referenced herein are located in *PURA Investigation of Developments in the Third Party Pole Attachment Process – Make Ready*, [Final Decision](#), Docket 19-01-52RE01, (May 11, 2022); *PURA Investigation of Developments in the Third Party Pole Attachment Process*, [Final Decision](#), Docket No. 19-01-52 (May 19, 2021).

² Maine's pole attachment rules referenced herein are located at [65-407 C.M.R. Ch. 880](#), *et seq.*

³ New Hampshire's pole attachment rules referenced herein are located at [N.H. Code Admin. R. En 1300](#), *et seq.*

⁴ New York's adopted One-Touch Make-Ready in *Case 22-M-0101, Proceeding to Review Certain Pole Attachment Rules*, [Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings](#) (July 22, 2024).

⁵ Ohio pole attachment rules referenced herein are located at [Ohio Admin. Code 4901:1-3](#), *et seq.*

⁶ Pennsylvania's pole attachment rules referenced herein are located at [52 Pa. Code § 77](#), *et seq.*

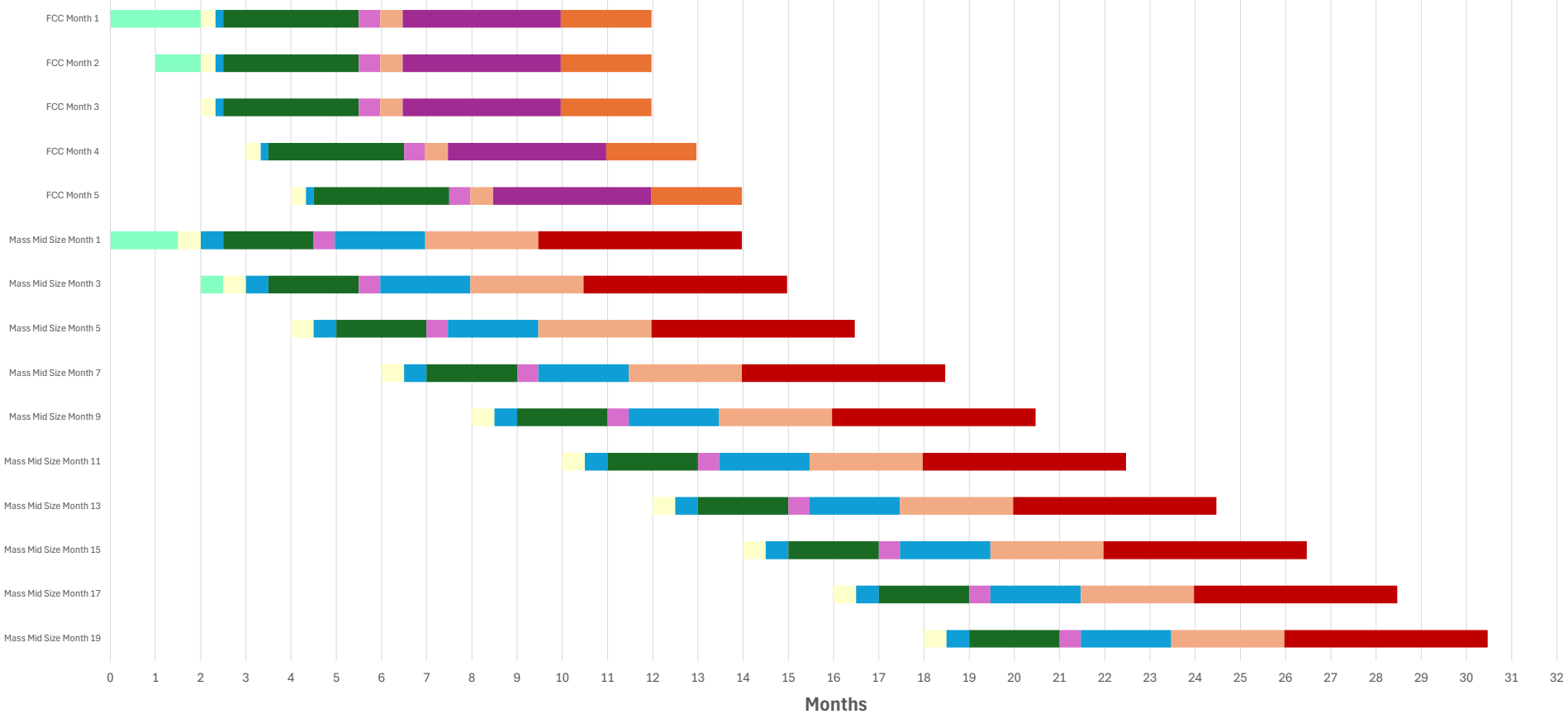
⁷ Rhode Island has not certified that it regulates pole attachments, and is therefore governed by FCC pole attachment rules. *See States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, [DA 22-630](#), (June 13, 2022).

⁸ Vermont's pole attachment rules referenced herein are located at [Vt. Admin. Code 18-1-8:3.701](#), *et seq.*

Broadband Investment Incentives

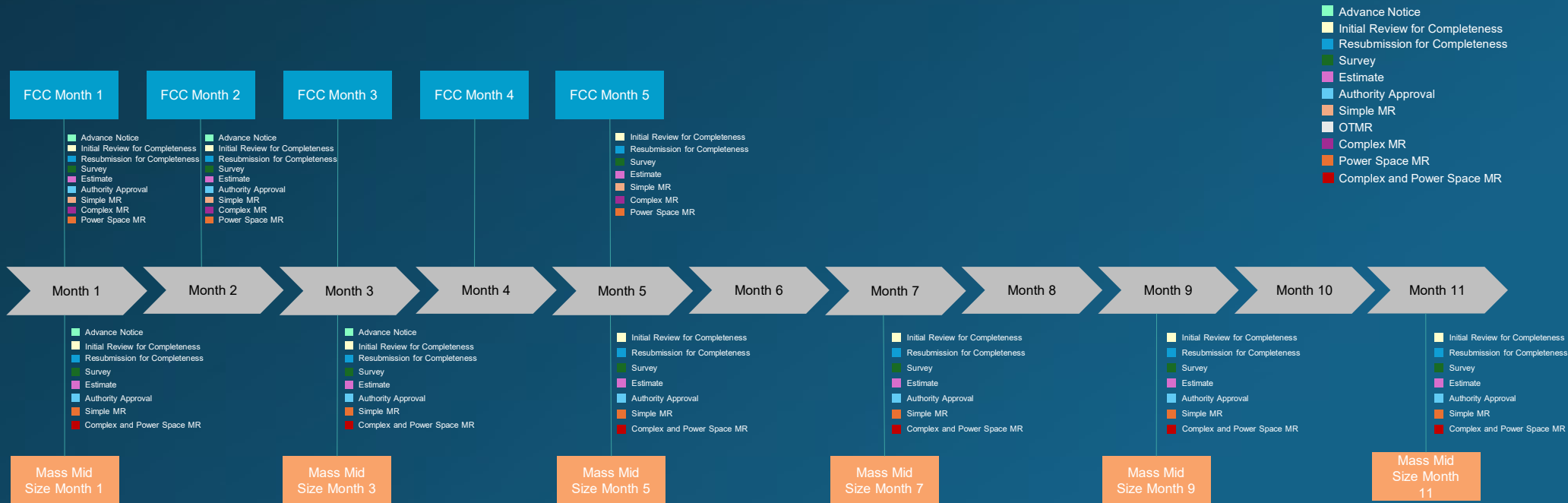
- Providers have choices where to invest
- Timely, efficient deployment of durable, state-of-the art networks
→ more investment
- MA = slow, expensive, chaotic with no corresponding advantage in safety/reliability
- GoNetspeed experience
 - CT: 1,500 route miles, 140,000 residents served – 24 months
 - ME: 1,000 route miles, 90,000 homes – 24 months
 - MA: One year for survey, four years for make-ready
- Crown Castle experience
 - NG poles: average 277 days application to license
 - VZ poles: average 207 days application to license

FCC vs Massachusetts Pole Access Timelines
29,500 Pole Job



■ Advance Notice
 ■ Initial Review for Completeness
 ■ Resubmission for Completeness
 ■ Survey
 ■ Estimate
 ■ Authority Approval
 ■ Simple MR
 ■ Complex MR
 ■ Power Space MR
 ■ Complex and Power Space MR

Application Submission Timeline Mass v. FCC



**Proposed Rules that Require an Attacher to Restart the
Application Process if it Fails to Meet a Deadline**

220 CMR 45.07(1)(c)3.: If the licensee fails to request meet and confer 5 business days after utility notifies new license of failure to provide required advance notice, the new licensee's application will be considered void.

220 CMR 45.08(2)(d)3.(1): If a resubmission for completeness of a non-OTMR application is not made in 10 business days, utility may treat the resubmission as a new application, triggering another application fee.

220 CMR 45.08(2)(d)3.(3): The new licensee may only resubmit for completeness of non-OTMR application for 60 days – after which resubmission is a new application.

220 CMR 45.08(2)(e)2.: If licensee does not accept and pay the survey estimate in 30 days, the contract is voided.

220 CMR 45.08(3)(b)3.(1): Where an applicant discovers information from a pole inspection report supporting an amendment of its application, the pole owner may restart the application process.

220 CMR 45.08(3)(c)3.: If the new licensee does not pay the make-ready estimate in full within 60 days, the application and survey work may be voided by the utility.

220 CMR 45.08(8)(e): If the new licensee does not attach within timelines prescribed by 45.08(8)(b), it may forfeit its designated space to other licensees in the queue.

220 CMR 45.09(2)(e)3.(1): If a resubmission for completeness of an OTMR application is not made in 10 business days, the utility may treat the resubmission as a new application, triggering another application fee.

220 CMR 45.09(2)(e)3.(3): The new licensee may only resubmit for completeness of non-OTMR application for 60 days – after which resubmission is a new application.

220 CMR 45.09(2)(g)2.(2): If owner determines OTMR requested work is not simple, the process returns to survey stage.

220 CMR 45.09(3)(e): If the new licensee does not attach within 30 days, it may forfeit its designated space to other licensees in the queue.