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 207 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

COMMENTS OF THE NEW ENGLAND CONNECTIVITY AND TELECOMMUNICATIONS ASSOCIATION

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May 12, 2026

TABLE OF CONTENTS

The New England Connectivity and Telecommunications Association, Inc. ("NECTA")[1] respectfully submits these comments in response to the Order Instituting Joint Rulemaking and Further Inquiry on Memorandum of Agreement issued by the Department of Public Utilities ("DPU") and the Department of Telecommunications and Cable ("DTC") (together, the "Departments") on March 6, 2026, in dockets D.P.U. 26-10/D.T.C. 26-1 and D.P.U. 25-10-A/D.T.C. 25-1-A.[2]

I. INTRODUCTION AND SUMMARY

NECTA's members are significant investors in broadband infrastructure across the Commonwealth. They deploy and maintain extensive broadband networks that serve residential, business, municipal, and governmental customers across Massachusetts. NECTA members rely on timely, predictable access to utility poles and associated infrastructure to build, maintain, and upgrade those networks and are therefore directly affected by the proposed revisions to 220 CMR 45.00, and rely on timely, predictable access to utility poles and associated infrastructure to

[1] NECTA is a five-state regional trade association representing substantially all private cable broadband companies in Massachusetts, Connecticut, New Hampshire, Rhode Island, and Vermont ("NECTA Members"). NECTA Members have long been committed to expanding broadband access and adoption to all Bay Staters and have worked with the Massachusetts Broadband Institute for decades to reach unserved and underserved areas in the Commonwealth. NECTA Members offer advanced communication services, among other services, in Massachusetts via facilities and equipment attached to utility poles that are jointly owned or solely owned by electric distribution companies such as Eversource, National Grid, and Unitil, incumbent local exchange carriers, such as Verizon Communications, and municipal light plants. NECTA Members are attached to approximately 80 percent of the more than 1.5 million utility poles in Massachusetts. Collectively, NECTA Members pay pole owners approximately $18 million in pole attachment fees per year to attach our facilities.

[2] *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*., D.P.U. 26-10/D.T.C. 26-1, Order Instituting Joint Rulemaking and Further Inquiry on Memorandum of Agreement (Mar. 6, 2026) ("Order").

build, maintain, and upgrade those networks. NECTA's members' continued investment in broadband infrastructure—and ability to meet the growing demand for high-speed internet service—depends in significant part on the efficiency and clarity of the Commonwealth's pole attachment regulatory framework.

NECTA appreciates the Departments' efforts to update the Commonwealth's pole attachment regulations, which have not been substantively revised in more than forty years and contain no timelines for pole access. The stated goals of this rulemaking—facilitating broadband deployment, supporting the energy transition, and promoting infrastructure modernization—are goals that NECTA shares and has long advocated. NECTA's members filed extensive comments and data during the inquiry proceeding in D.P.U. 25-10/D.T.C. 25-1, urging the Departments to expand and improve their pole attachment regulations to incorporate survey, make-ready, self-help, one-touch make-ready ("OTMR"), timeline, and expedited dispute resolution requirements.

The timing of this rulemaking is particularly significant. The Commonwealth, like states across the country, faces urgent pressure to close the digital divide and ensure that all residents have access to reliable, high-speed broadband service. Federal funding programs, including the Broadband Equity, Access, and Deployment ("BEAD") program authorized by the Infrastructure Investment and Jobs Act of 2021, are providing unprecedented levels of investment in broadband infrastructure, but these programs come with strict deployment timelines and milestones that require efficient regulatory processes. Massachusetts has also set its own ambitious broadband deployment goals as part of its economic development and equity agendas. In addition, rapidly growing consumer demand for increased bandwidth and data speeds due to the increased prevalence of streaming video, online gaming, remote work, and artificial intelligence has led to increased deployment of facilities in areas where existing service may not meet this demand

growth. The pole attachment regulatory framework that the Departments adopt in this proceeding will directly determine whether broadband providers can meet these obligations. It will also determine how much longer unserved and underserved Massachusetts residents will have to wait to get connected to broadband service. At the same time, utilities are replacing poles for reliability, to incorporate distributed generation and possibly install EV chargers at an increasing rate resulting in work by communications attachers. The entire pole "ecosystem" will benefit from having an updated framework.

Unfortunately, the proposed regulations will not achieve these shared objectives in their current form. While the Departments' intentions are commendable, the DPU-DTC Joint Proposed Amendments to Regulations provided as Attachment A (redline) and Attachment B (clean) to the Order (the "Proposed Rules"), in their current form, would create a complicated, burdensome, and confusing pole attachment regime that is likely to impede and delay rather than advance the very goals this rulemaking is intended to serve. The Proposed Rules introduce numerous procedural steps, ambiguous timelines, and expansive provisions allowing timeline deviations that, taken together, would result in deployment periods that are significantly longer than those under the Federal Communications Commission's ("FCC") rules or the rules of neighboring states where many of the same utilities and contractors already operate.[3] Rather than providing "greater certainty and guidance," the Proposed Rules create a multi-stage process not seen anywhere in the country with overlapping notice periods, sequential meetings, ambiguous deadline triggers, and broad deviation provisions that will be difficult for any party—

[3] As discussed in greater detail below, several of the largest pole owners, attachers, and their contractors that operate in Massachusetts also operate in neighboring states that have adopted rules identical or substantially similar to the FCC's rules. For example, Verizon operates in Connecticut, New York, and Rhode Island, Eversource operates in Connecticut and New Hampshire, and National Grid operates in New York.

attacher, utility, or government authority—to navigate. The sheer number of steps, interwoven deadlines, and conditional requirements in the Proposed Rules is, itself, a barrier to efficient deployment, even before one considers the substantive problems with many of those individual provisions.

NECTA therefore urges the Departments to revise the Proposed Rules to: 1) align core pole attachment timelines more closely with the FCC framework and neighboring-state practice; 2) eliminate or substantially narrow provisions that allow utilities to aggregate unrelated applications or restart deadlines; 3) make self-help and OTMR meaningful remedies when deadlines are missed; 4) clarify that deviations from standard timelines must be narrow, justified, and subject to Department oversight; and (5) establish meaningful expedited dispute resolution processes.

To illustrate the delay the Proposed Rules would impose, NECTA has prepared a detailed day-by-day timeline analysis. That analysis shows that a mid-sized project involving as few as 301 poles would require a minimum of approximately **245 days** (simple make-ready only) **to 305 days** (with complex make-ready) under the Proposed Rules—*not including the time for local permitting*—and a large or very large project would take approximately **404 to 464 days** at minimum to complete make-ready. And those calculations are conservative; they do not include the time the rules allow for the utility to obtain local permits, and they assume there are no resubmissions, missed deadlines, or other delays. Real-world deployment will almost certainly take longer.

Such lengthy minimum deployment timelines are inconsistent with the Departments' stated goals for this proceeding and are particularly problematic given that broadband providers

are under increasing pressure to complete buildouts within deadlines imposed by federal and state funding programs, such as the BEAD program.

NECTA's written comments are accompanied by proposed redline edits to the Proposed Rules, with explanatory margin comments included (attached as Exhibit B). Through these comments and the accompanying submission, NECTA urges the Departments to streamline, clarify, and otherwise rework the Proposed Rules to provide certainty, reduce ambiguity, and support the timely deployment of broadband services across the Commonwealth. NECTA's specific comments and recommendations are organized as follows: Section II addresses the unreasonable timelines and undue complexity in the Proposed Rules; Section III discusses the overbroad provisions that allow deviations from the timelines; Section IV examines the novel pole attachment agreement requirement; Section V addresses concerns with the formal complaint and dispute resolution processes; Section VI raises additional concerns regarding specific regulatory provisions; and Section VII explains the operation of Connecticut's single-visit transfer program and proposes adoption of a similar approach in Massachusetts to reduce the prevalence of double poles. Finally, in light of the many practical issues raised by the Proposed Rules, NECTA supports creation of a pole working group, including all relevant stakeholders, to meet on a regularly scheduled basis to improve coordination, reduce delays and bottlenecks, and improve access to critical pole infrastructure.

II. THE PROPOSED RULES WILL RESULT IN AN UNREASONABLE TIME-TO-BUILD AND ARE UNDULY COMPLEX

The most fundamental concerns raised by the Proposed Rules are that they will result in extremely long timelines for deployment and they create unnecessary complexity and ambiguity. Rather than establishing clear, enforceable deadlines that move applications efficiently from submission to survey, make-ready, and installation, the Proposed Rules add multiple preliminary

steps, uncertain and overinclusive aggregation rules, extended notice periods, and broad opportunities for timeline deviations. These features will not only make the process harder to administer for all stakeholders but will materially increase the time required to complete broadband deployment projects in Massachusetts.

A. The Proposed 60-Day Aggregation Rule Is Ambiguous and Overinclusive

Many of the Proposed Rules depend on the threshold issue of what size "order" is involved. NECTA recognizes that at some point, the number of poles being applied for may impact how long the process may take. NECTA also recognizes that on some level, the Proposed Rules use order size thresholds that are similar to those used by other regulators, including the FCC. But unlike the FCC's rules, the Proposed Rules create significant ambiguity and overreaching by adopting a rolling, 60-day period to determine the size of an order.

Under proposed 220 CMR 45.06(1), a utility may treat multiple applications from a single licensee within a 60-day period as a single request, with the total number of poles across all applications determining the order category and the applicable timelines based on the filing date of the most recent application. However, the Proposed Rules do not specify a clear beginning and end date for this 60-day window. This makes the 60-day period a rolling window, creating a risk that applications or poles will be double-counted, resulting in smaller orders classified as mid-sized or large orders and thereby artificially extending the applicable timelines.

The problem is not merely administrative. Order size is the gateway issue for many of the most important deadlines in the Proposed Rules. Yet proposed 220 CMR 45.06(1) does not clearly state when the 60-day period begins, when it ends, whether applications may be counted more than once, whether unrelated projects (perhaps in different geographic locations) may be combined, or whether previously submitted applications may be retroactively reclassified based on later filings. This ambiguity would invite inconsistent implementation and could allow longer

timelines on projects that do not warrant them. For example, suppose a licensee submits applications as follows:

- Jan 1 – 49 poles
- Jan. 14 – 50 poles
- Jan 30 – 50 poles
- Feb. 14 – 50 poles
- Feb. 28 – 100 poles
- Mar. 7 – 102 poles

Under the Proposed Rules, the applications submitted January 1, 14, 30, February 14 and February 28 constitute less than a mid-sized order because they total 299 poles. However, the Proposed Rules would allow a utility to claim that the applications from January 14 through March 7 are 352 poles within a 60-day period, which is a mid-sized order. Given that a mid-sized order triggers different timeframes and obligations, the method of calculating the 60-day period is critical. But it is unclear under the Proposed Rules whether the applications submitted on January 14 through February 28 are part of a mid-sized order. At the time they were submitted, they were not. Do they become part of a mid-sized order retroactively when the March 7 application for 102 poles is submitted? If so, how do the Proposed Rules, and in particular the rules governing the pre-application meet-and-confer process apply? In addition to these ambiguities, the act of tracking myriad applications and the exact number of days that have passed is also a daunting task.

NECTA strongly recommends using a single calendar month to track submissions, instead of 60 days. The Departments should also clarify that applications may be aggregated only when they are part of the same planned deployment project, and that aggregation may not restart deadlines for applications that were complete when filed.

On top of these issues with a rolling period, the proposed use of a 60-day period is too long—twice as long as the FCC.[4] The Proposed Rules assume that when companies apply for more than 300 poles in a 60-day period, the poles are all part of a project. But that is not necessarily true. A company can have multiple new customers in different locations and reaching each of them may require a small number of new pole attachments. Although not part of a single, coordinated project, the number of poles needed for new attachments could add up to a "mid-sized" order over the course of any given 60-day period. Treating multiple projects like this, particularly when located in entirely different areas, as a single project does not make practical sense.

The practical consequences of the ambiguity in the Proposed Rules are significant. The size of an order directly impacts numerous deadlines throughout the attachment process, including the required advance notice period (45 days for mid-sized orders versus 90 days for large and very large orders), the meet-and-confer deadline (30 days for mid-sized versus 60 days for large and very large orders), the completeness review period (15 business days for mid-sized versus 30 days for large and very large orders), and the survey and make-ready timelines. If the 60-day aggregation provision is misapplied, attachers could find their projects subjected to significantly longer timelines than warranted by the actual scope of their work. For example, if a few new pole attachments that are necessary to reach an individual customer are swept into 300-plus poles elsewhere over the course of 60-days, the few discrete pole become part of a mid-

[4] 47 C.F.R. § 1.1411(h)(5).

sized order and reaching that new customer could take months. In addition to being untenable, the result is antithetical to the Commonwealth's goal of providing broadband to all residents.[5]

The proposed advance notice requirements for mid-sized, large, and very large orders (45, 90, and 90 days, respectively) are the primary example of this and are fundamentally unworkable given the reality of how attachers actually plan and execute projects. The timeframes appear to rest on an assumption that attachers fully develop individual deployment projects—including identification of all poles, route planning, and engineering specifications—before applying for pole access. Yet, broadband providers typically receive engineering designs and specifications from their contractors on a rolling basis as projects develop, not in a single, comprehensive package delivered at the outset of a project. Route planning, pole identification, and engineering analysis proceed iteratively as construction teams gather field data, refine designs, and respond to conditions on the ground. This allows for faster deployment, as project phases can proceed in parallel as opposed to waiting for each step in the process to be fully complete before the next phase can begin. An attacher may not know the full scope of a deployment project—including the total number of poles it will need to access—until well into the planning process. Under these circumstances, attachers will never know with certainty how much advance notice to provide or when to provide it. If an attacher underestimates the project scope and provides 45 days of advance notice for what it believes to be a mid-sized order, only to later discover that the final pole count pushes the order into the large category requiring 90 days of notice, the attacher faces the prospect of restarting the advance notice period entirely—adding months of delay through no fault of its own and despite good-faith compliance efforts.

[5] *See, e.g.*, 2008 Mass. Acts c. 231, § 1 (establishing the Massachusetts Broadband Institute and creating a fund "to achieve the deployment of affordable and ubiquitous broadband access for every citizen of the Commonwealth . . .").

To mitigate these practical problems, NECTA recommends using a calendar month for tracking applications for purposes of order size, and it recommends only counting as part of a single "order"—particularly for meet and confer obligations—applications that are legitimately part of the same overall project. The Departments should not adopt an aggregation rule that allows unrelated applications to be combined, deadlines to be restarted, or ordinary customer-driven service requests to be delayed based solely on the happenstance of when other applications were filed.

B. The Proposed Timelines Result in Unacceptably Long Deployment Periods.

In addition to these threshold practical issues, the Proposed Rules result in unreasonably long deployment periods. The timelines suffer from the addition of unnecessary procedural requirements at virtually every stage of the attachment process without any obvious corresponding benefits to attachers or utilities. The result is a process that, far from facilitating broadband deployment, competition, or consumer services and choice, would substantially delay them.

NECTA prepared a detailed, day-by-day timeline analysis of the Proposed Rules, tracing every step from initial advance notice through completion of facility installation and comparing the steps with the time under the FCC's rules.[6] This analysis reveals that any project involving more than 300 poles would take ***nearly a year*** to even complete make-ready before attachment could take place—and that is under the most optimistic assumptions. This is extremely problematic and demonstrates that the proposed timelines are fundamentally incompatible timely construction of funded broadband projects and the delivery of faster, competitive advanced services to customers in Massachusetts. By comparison, the FCC's framework is designed to

[6] Attached hereto as Exhibit A.

move deployment projects from initial application to completion within a matter of months, a much more practical and reasonable timeline.[7] The difference between the timeline for completion under the FCC's approach and the Proposed Rules is not attributable to any single provision of the Proposed Rules, but to the cumulative effect of the extra steps, each adding days, weeks, or months to the deployment timeline.

For example, for mid-sized orders (301 to 3,000 poles), completing all required steps—advance notice, meet-and-confer, application submission and completeness review, survey, make-ready cost estimation and payment, government permitting, a second make-ready meet-and-confer, make-ready work, and facility installation—would require approximately 245 days for simple make-ready and 305 days for complex make-ready, not even including the time added by local permitting.[8] This assumes that no additional government approvals are required and that there are no delays attributable to resubmissions, missed deadlines, or other complications. In contrast, the FCC's timelines *include* time needed for local permits.[9] For large and very large orders (3,001 to 5,000 or more poles), the timeline stretches even longer, to approximately 404-464 days, plus local permitting.[10] These figures represent the minimum timelines for completing make-ready; any real-world delays will almost certainly extend these timelines.

The Proposed Rules include timelines that are significantly longer the FCC's rules and those of several surrounding states. The FCC's rules, adopted with only minor changes in nearby

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[7] *See Implementation of Section 224 of the Act*, Report and Order, 26 FCC Rcd. 5240, ¶ 8 (2011) ("*FCC First Report and Order*") (noting that the Order establishes timelines between 148 days for applications with fewer than 300 poles to 238 days for large applications for wireless attachments above the communications space).

[8] *See* Ex. A (totals column).

[9] *See* 47 C.F.R. § 1.1411(f), (g). Although not explicit, the FCC's rules are inclusive of all steps that must take place during the make-ready stage.

[10] *See* Ex. A (totals column).

states including Connecticut, New York, Vermont, Maine, and New Hampshire,[11] are designed to ensure that pole attachment processes move efficiently, balancing the legitimate interests of pole owners and existing attachers alike. The Proposed Rules deviate from this model in ways that add time without adding benefit to either pole owners or attachers. To illustrate the magnitude of the disparity, under the FCC's rules, when a new attacher submits an application, the utility has 45 days from receipt to review the application and complete the survey (60 days for mid-sized and 90 days for large orders).[12] The utility then provides a make-ready estimate within 14 days of completing the survey (29 days for large orders).[13] Upon receipt of payment of the make-ready estimate, the utility notifies existing attachers, and make-ready proceeds within 30 days in the communications space (75 days for mid-sized or 120 days for large orders) and 90 days in the electric space (135 days for mid-sized or 180 days for orders).[14] Self-help is available in both the communications and electric spaces if these deadlines are missed.[15] The entire process—from application to installation—can be completed in as few as 178 days for a mid-sized project, including all local permitting. Whereas a mid-sized project under the Proposed Rules would take at least 245 days, plus any additional time for the local permitting steps, to complete make-ready.

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[11] *See, e.g.*, Connecticut Public Utilities Regulatory Authority, *Investigation of Third-Party Pole Attachment Process*, Docket No. 19-01-52RE01, Final Decision (May 11, 2022) ("2022 PURA Order"); CMR Ch. 880, §§ 1-11; New York Public Service Commission, *Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings*, Case 22-M-0101 (July 22, 2024) ("*2024 NY PSC Order*"); N.H. Code Admin. R. En §§ 1301.01-1303.13; Vt. Admin. Code 18-1-8:3.700 *et seq*.

[12] 47 C.F.R. § 1.1411(d)(2), (3).

[13] 47 C.F.R. § 1.1411(e).

[14] 47 C.F.R. § 1.1411(f), (g).

[15] 47 C.F.R. § 1.1411(j).

Compared to the rules in other certified states and the FCC's rules, the Proposed Rules add additional time at each step in the process and the discrepancies matter, threatening the timely completion of funded projects. Broadband providers are under significant pressure to complete network buildouts, both to expand and improve service for customers and to meet deadlines imposed by federal and state broadband funding programs. For example, the BEAD program and other federal broadband funding initiatives require recipients to meet specific deployment milestones or risk forfeiting their awards.[16] A regulatory regime that leads to nearly a year or more to complete a single project is fundamentally at odds with these obligations.[17] It is also at odds with the Departments' goal of "seek[ing] to coordinate and facilitate ***accelerated*** utility pole and conduit work for broadband deployment."[18]

As further described below, the Departments should reconsider their current proposals, which include a number of additional requirements, and instead develop rules that ensure that the regulatory framework around pole attachments facilitates, rather than frustrates, the Departments' broadband goals and the ability of providers to meet federal and state deployment commitments. At minimum, the Departments should streamline the Proposed Rules to eliminate

[16] *See, e.g.*, *Broadband Equity, Access, and Deployment (BEAD) Program: BEAD Restructuring Policy Notice*, Notice, NTIA, 11 (rel. June 6, 2025) ("As required by IIJA, all subgrantees must deploy the planned broadband network, regardless of the technology utilized, and be able to perform a standard installation for each customer that desires broadband services within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity.").

[17] A mid-sized project involving complex make-ready takes at least 305 days, plus local permitting time. Ex. A.

[18] *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, Joint Order Opening Inquiry, at 28 (Jan. 17, 2025) (emphasis added).

unnecessary preliminary steps, narrow the circumstances in which timelines may be extended, align core application and make-ready deadlines with the FCC framework, and ensure that deadlines are clear, enforceable, and administrable for utilities, attachers, contractors, municipalities, and the Departments alike.

C. The Proposed Rules Add Steps and Requirements That Create Unreasonable Delay, Ambiguity, and Uncertainty.

The Proposed Rules add several specific procedural steps and additional requirements beyond those in the FCC's rules and those of other certified states, introducing ambiguity and uncertainty, and driving the extended timelines that will result from the proposed regulatory framework.[19] While some of these additions may have been well-intentioned, reflecting a desire for greater coordination and transparency, their practical effect is to add layers of unnecessary delay to an already lengthy process. The problem is not that coordination is unnecessary. Coordination among attachers, utilities, existing licensees, and government authorities can be valuable. The problem is that the Proposed Rules convert coordination into mandatory procedural prerequisites, duplicative meetings, additional payment steps, and open-ended tolling periods that delay broadband deployment without ensuring better outcomes or, indeed, any benefit at all.

Individually, each addition might seem modest, but collectively, they transform a process that should take months into one that may take a year or more. NECTA addresses each of the most problematic additions below, explaining how each contributes to the unreasonable

[19] *Compare* Order at Sec. I, J, Att. C *with* 47 C.F.R. § 1.1411; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report & Order & Declaratory Ruling, 33 FCC Rcd. 7705, ¶ 14 (2018) ("*FCC Third Report and Order*").

deployment timelines and why each represents an unnecessary departure from the FCC's proven framework.

1. The Pre-Application Meet-And-Confer Requirement Is Overbroad and Unworkable

Section 45.07 of the Proposed Rules would impose a mandatory pre-application meet-and-confer requirement that extends beyond pole owners to existing licensees and multiple government authorities.[20] Under the Proposed Rules, the new licensee, utilities, existing licensees in the communications space, and all local authorities must meet and confer within 30 days after the advance notice for mid-sized orders and within 60 days for large and very large orders.[21] Yet, the FCC requires a meet-and-confer ***only for large orders***, within 30 days of the advance notice, ***and only between the new attacher and the utility***.[22] The Departments should eliminate the different timeframes based on order size to use only a 30-day time, and remove government entities and existing attachers from the meet-and-confer process. Until the survey is completed, the make-ready estimate is prepared, and the estimate is accepted and paid, it is uncertain even whether a pole project will proceed. Similar to the FCC's approach, any meet-and-confer requirement at the application stage should only apply to the utilities to allow them to engage in workforce planning. Further, the size of an order should have no impact on when the required parties could meet and confer regarding the application—*i.e.*, a larger order should not affect *when* a new attacher and utility can meet once the utility has notice of the impending application. The Departments' expansion of this requirement to mid-sized orders and, more

[20] Order, Att. B at 13-14, 220 CMR 45.07(2).

[21] *Id.* at 13-14, 220 CMR 45.07(2)(a).

[22] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Fifth Report and Order, 40 FCC Rcd. 5395, ¶ 19 (2025) ("*FCC Fifth Report and Order*").

importantly, to a broader range of participants adds unnecessary delay and raises serious competitive concerns.

The requirements in Section 45.07(2)(a) requiring a new attacher to send invitations to "each appropriate government authority that received notice" and all participants must find a "mutually agreeable date and time" within the prescribed timeframe[23] is unworkable. The Proposed Rules essentially create a mandatory pre-permitting process that the local governments themselves do not necessarily impose and is not within the Departments' statutory authority.[24] The Proposed Rules provide no mechanism for proceeding if one or more parties are unable or unwilling to participate within the timeframe, creating the risk that a single non-responsive party can effectively delay the entire process indefinitely. Furthermore, the Proposed Rules do not specify what happens if the meet-and-confer cannot be scheduled within the prescribed period, whether the applicant may proceed with its application regardless, or whether failure to convene the meeting has any consequence for the non-participating parties.[25]

Additionally, the broad and vague term "Appropriate government entities" is problematically overly broad. The term encompasses all government entities with jurisdiction over public rights-of-way, entities that may be involved in approving permits, or entities that may be asked to provide resources for the applicant's project.[26] The practical difficulties of including any government authorities in the meet-and-confer process are compounded by the breadth of this definition. In any given municipality, multiple departments could be included, such as the department of public works, the police department (which controls traffic details), the planning

[23] Order, Att. B at 13-14, 220 CMR 45.07(2)(a).

[24] *See* G.L. c. 166, § 25A.

[25] *See* Order, Att. B at 13-14, 220 CMR 45.07(2).

[26] *See id.* at 4, 220 CMR 45.02 ("Appropriate Government Authority").

board, the tree warden, the conservation commission, and potentially the legislative body. For projects that span multiple municipalities—as many broadband deployment projects do—the number of government authorities that could be "affected by or require action relating to the anticipated work"[27] is potentially massive. The logistics of coordinating a meeting among all of these entities, in addition to the utilities and existing licensees, within a 30- or 60-day window, are daunting if not impossible.

Moreover, extending the meet-and-confer requirement to existing attachers raises both logistical and competitive concerns. From a logistical perspective, a new attacher likely would not know the identities of existing attachers on the poles it seeks to access, making it difficult, if not impossible, to provide notice of the meet-and-confer to those existing attachers as required by the Proposed Rules. Existing attacher information is typically maintained by the pole owner rather than by the prospective applicant (and often, even pole owners are unable to identify owners of attachments on their poles). From a competitive perspective, requiring existing licensees to participate in the meet-and-confer also raises competitive concerns because those licensees may be direct competitors of the new attacher and may gain inappropriate insight into the applicant's deployment plans, route priorities, and buildout schedule.[28] Once notified, an existing attacher who offers services that compete with those offered by the applicant could take steps to blunt competition through advance marketing campaigns or taking steps, including overlashing, to create additional capacity on its network before the applicant can deploy its facilities. Indeed, applicants and utilities uniformly regard information in pole applications as confidential. This concern is not merely theoretical; it is a well-recognized issue that the FCC

[27] *Id.* at 12, 220 CMR 45.07(1)(a); *see id.* at 12, 220 CMR 45.07(b)(5).

[28] *See id*. at 13, 220 CMR 45.07(2)(a).

addressed by limiting its meet-and-confer requirement to the utility and the new attacher.[29] NECTA urges the Departments to adopt a similar approach.[30]

The Proposed Rules also require the parties to "meet-and-confer to engage in good faith discussions regarding the mechanics and timing of the application and implementation schedule,"[31] but the Order provides no guidance on the purpose, expected scope, or outcomes of these meetings. It is unclear what constitutes "good faith" and what, precisely, the parties are expected to discuss, decide, or agree upon. The Proposed Rules are silent on these questions, creating uncertainty about whether non-cooperation by any single party can effectively block the entire process (including existing attachers, who may have an incentive to do just that).

NECTA supports cooperation and coordination between attachers, utilities, and government authorities, and recognizes that government permitting is an important part of the pole attachment process. However, mandatory meet-and-confer requirements that include multiple government authorities as participants—with automatic delays built into the schedule—are not the appropriate vehicle for achieving this coordination. NECTA questions the utility of any such mandatory meetings with municipal officials, and its members are always willing to discuss any projects with such officials outside of the regulatory process should there be interest.

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[29] *See FCC Fifth Report and Order* ¶ 19.

[30] *See id.* (setting forth the specific topics of discussion during the meet-and-confer: "We encourage the parties to discuss and plan, among other things, the utility's ability to meet deadlines for an order, the availability of contractors (particularly the need for, and availability of, electric space contractors to the extent necessary), a prioritization of the poles to be worked on, the status of local permitting efforts, and estimated timelines for the work.").

[31] Order, Att. B at 13, 220 CMR 45.07(2)(a).

NECTA therefore recommends that the Departments limit any required pre-application meet-and-confer to large or very large orders and limit required participation to the new attacher and the pole owner.

2. The Second Meet-and-Confer Requirement at the Make-Ready Stage Should be Eliminated

The Proposed Rules impose a second meet-and-confer at the make-ready stage, adding an additional 30 to 60 days to the deployment timeline. The practical effect is to impose a mandatory pause in the process at a critical juncture. Under proposed 220 CMR 45.08(5)(c), no later than 30 days after the make-ready notice for mid-sized orders and 60 days for large and very large orders, the new licensee, utilities, and existing licensees must again meet and confer regarding the mechanics and timing of the implementation schedule.[32] This second meet and confer requirement suffers from the same deficiencies as the first one. New licensees already obtain all required local permits at the appropriate step in the process and existing licensees will receive notice of any make ready they will be required to perform.[33] NECTA encourages the Departments to remove this second meet-and-confer from the Proposed Rules.

3. The Advance Notice Requirements are Excessive and Impractical

The proposed advance notice requirement is excessive as well, going well beyond the FCC's requirements and those of neighboring states. The requirement would add substantial delay before the application process can even begin. Under the Proposed Rules, a new licensee must provide at least 45 days of advance notice to the utilities for mid-sized orders and at least 90 days for large and very large orders before the licensee may even submit its application.[34] By

[32] *Id.* at 25, 220 CMR 45.08(5)(c).

[33] Order at 34-46.

[34] *Id.*, Att. B at 12, 220 CMR 45.07(1)(a).

comparison, the FCC requires only 15 days of advance notice for mid-sized orders and 60 days for large orders.[35] The proposal thus adds a month of pre-application waiting time before the real process can begin. During that period, the application cannot be submitted, the utility's review period does not begin, and the survey or make-ready timelines are not triggered. Yet, no meaningful benefit is gained from the extra time.

The scope of the requirement is also overbroad and difficult to administer for all the same reasons identified above in relation to the meet-and-confer.

NECTA does not object to reasonable communication with municipalities. The problem is that the Proposed Rules make government authorities part of a mandatory pre-application process even though the local governments themselves do not impose the requirement, the Departments have no authority to compel their participation, and the Proposed Rules do not explain what happens if they do not respond. The Departments have provided no reason why Massachusetts requires an additional month of advance notice, why notice must be expanded to parties beyond the utility, or what tangible benefits would justify the notable delays these proposals will cause.[36] Accordingly, NECTA recommends that the Departments align the advance-notice requirements with the FCC's rules and require advance notice only to the pole owner.

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[35] *FCC Fifth Report and Order* ¶¶ 14, 16 ("[I]n recognition that applying the prior notice requirements to Mid-Sized Orders risks slowing the process for completing these orders, which according to commenters are often not scheduled in advance and can regularly exceed 300 poles in a thirty-day period, we shorten the advance notice period for Mid-Sized Orders associated with a single network deployment to 15 days."). Many neighboring states do not require such advance notice. *See, e.g.*, 2022 PURA Order at 19 (noting that pole owners had requested an advance notice requirement but declining to adopt one); CMR Ch. 880, § 2; N.H. Code Admin. R. En §§ 1301.003-1303.04 (set forth application requirements, which do not include advance notice); NY PSC Order (not adopting pre-application notice requirements).

[36] *See* Order at 31-33.

4. The Survey Estimate and Payment Process Adds Unnecessary Delay

The Proposed Rules add unnecessary requirements for survey cost estimates and payments in lieu of simpler application fee structures that are currently being used. Specifically, the Proposed Rules would disallow the upfront payment of per-pole fees that cover the survey and preparation of the make-ready estimate currently used by utilities and instead require the utility to provide a detailed, itemized estimate of survey costs, which the new licensee must pay within 30 days of receiving notice that the application is complete, or the application may be voided.[37] But the Proposed Rules do not need to create such a granular timeline—*i.e.*, create separate payment schedules for survey estimates *at all*. Currently, many utilities require payment of an application fee and per-pole fees concurrently with the application. They do not estimate the exact survey costs for each application. Requiring that they do so would add an unnecessary burden on the utility to create the estimate and on the applicant to review the estimate and make a timely payment, with the additional possibility of a true up, steps that take time and impose costs.[38]

NECTA does not object to paying actual reasonable survey costs. The problem is dictating the business relationship between the applicant and pole owner by eliminating the method currently used by some pole owners under their pole agreements and mandating a process that can add unnecessary delay, particularly if there are disputes over the survey cost estimate. The Proposed Rules, by imposing additional, unnecessarily granular steps, threaten to upend a process that is currently working and add unnecessary delay. This is a departure from the more streamlined approach used under the FCC's and other neighboring states' rules, which

[37] *Id.* Att. B at 17, 220 CMR 45.08(2)(e).

[38] The proposed rule does not discuss the cost or fee for the utility to prepare the make-ready estimate.

do not require a separate survey cost estimate and payment step but instead incorporate survey costs into the overall make-ready estimate provided within 14 days of completing the survey.[39] The proposed approach adds an additional transactional step and an additional potential point of delay, particularly if there could be disputes over the survey cost estimate.

These requirements also create an additional significant and unnecessary risk for applicants. Under proposed 220 CMR 45.08(2)(e)(2), if the applicant does not accept the survey estimate and make payment within 30 days after receipt of notice of application completeness and the survey estimate, the "contract" may be voided. This is disproportionate to the problem and provides no opportunity for dispute resolution or cure. An applicant that does not accept and pay the survey estimate within the 30-day period because it disagrees with the estimate or experiences administrative delays in processing payment could forfeit its application fee and be forced to restart the process from the beginning. Moreover, without a provision for rapid dispute resolution, disagreements over the amount of the survey estimate would not be resolved and the process would keep repeating itself in successive applications. This penalty is not only unnecessary but threatens to significantly delay or completely derail deployments, especially given the unduly short payment deadline (which NECTA addresses in greater detail below).

At minimum, the Proposed Rules should provide notice and an opportunity to cure before an application may be voided and should preserve the applicant's right to dispute unreasonable survey charges without forfeiting its application. Moreover, however, the Departments should abandon this proposal and simply allow utilities to continue using reasonable application or

[39] 47 C.F.R. § 1.1411(d), (e); *see FCC First Report and Order* ¶¶ 24-29 (adopting a straightforward four-step process in which payment of the "estimate" (which includes the survey) initiates the make-ready timeline); *see also, e.g., 2024 NY PSC Order* at 4-5; CMR ch. 880 § 2(A)(2), (4); N.H. Code Admin R. En. §§ 1303.4, 12; Vt. Admin Cide 18-1-8:3.708(B), (C).

survey fees without requiring a separate survey estimate and payment step. There is no need to micromanage a process that works.

5. The Make-Ready Timeline Should Start with Payment of the Make-Ready Estimate

The requirement in proposed 220 CMR 45.08(4) for the utility pole owner to obtain any necessary government approvals for make-ready before the make-ready timeline even begins[40] is unreasonable, unnecessary, and will significantly delay the process.

Preliminarily, it is not clear whether the Departments have the statutory authority to impose this requirement. G.L. c. 166, § 25A provides that "[n]o attachments shall be made without the consent of the utility to the poles, towers, piers, abutments, conduits, manholes, and other fixtures necessary to sustain, protect, or operate the wires or cables of any lines used principally for the supply of electricity in bulk."[41] This statute requires utility consent for attachments—it does not authorize the Departments to impose a prerequisite of local government approval before make-ready timelines can begin.[42] By conditioning the commencement of make-ready on local government permitting, the Proposed Rules go beyond what the statute permits and effectively delegate control over the attachment process to entities over which the Departments have no regulatory authority.

Moreover, even if the Departments have the authority to adopt proposed 220 CMR 45.08(4), this proposal is another example of the Proposed Rules adding rigidity and complexity

[40] Order, Att. B at 22, 220 CMR 45.08(5)(a).

[41] G.L. c. 166, § 25A.

[42] The definition of "Licensee" as a company "which is authorized to construct lines or cables upon, along, under and across the public ways" is a reference to the entity's general authority to occupy the public rights of way, such as a cable franchise, not that it has obtained specific permits for a specific installation. G.L. c. 166, § 25A.

to the process by prescribing an additional threshold step. Utilities and attaching parties must comply with all applicable laws and regulations and they obtain any necessary permits at the appropriate time before performing make-ready work. There is no reason to mandate that this occurs before any work that does not require permitting takes place. Further, the time allowed in the Proposed Rules—and even the preferable, shorter timelines in the FCC rules—for utilities and other attaching parties to perform their make-ready already includes sufficient time to obtain any state or local government permits. In fact, the FCC's prescribed timelines have no exclusion for such permitting. That time should not be separately counted, but, instead, it is properly part of the total amount of time provided for make-ready in the timeline.

In addition to adding a separate, undefined set of days for local permitting itself, the proposal creates a circular permitting problem, in which some projects may never be able to proceed if a local government requires a project to be complete before issuing permits. Some local governments require that a project be substantially or fully completed before granting additional permits or approvals for subsequent phases. Under such local permitting frameworks, an attacher cannot obtain a permit to proceed with make-ready until it demonstrates completion of prior work—but under the Departments' proposal, the attacher cannot proceed with that prior work until it obtains the very permits that depend on the work's completion. This creates a circular trap: the local government will not issue permits until the make-ready work is done, but the Proposed Rules would not allow work to begin until permits are issued. The result is an indefinite delay that the Proposed Rules do not provide any mechanism to resolve. This problem is especially acute because the Departments have no authority to control or dictate how local governments handle their own permitting processes. Municipal permitting requirements vary widely across Massachusetts, and the Departments cannot compel a local government to change

its permitting sequence or timeline. Attachers caught in this situation would have no recourse under the Proposed Rules—they would simply be stuck, unable to move forward with either permitting or make-ready work, while the deployment timeline remains paused indefinitely.

Situating the government permitting step before any make-ready work begins introduces an entirely open-ended variable at the start of the timeline that is outside the control, influence, or recourse of any party to the attachment application has any control, creating perhaps the single most significant source of potential delay in the Proposed Rules. The practical effect is that government permitting becomes an unnecessary block—and perhaps an indefinite one—in the application timeline, *before the make-ready is even started*. To rectify this, NECTA proposes to change the trigger in the Proposed Rules for the make-ready timelines from "receipt of government authority approvals" to simply "the notice," thereby eliminating the open-ended permitting delay. NECTA also proposes to delete the words "to toll" from 220 CMR 45.07(c)(2) and 45.08(4)(b) of the Proposed Rules and to make clear that make-ready timelines "will begin upon payment of the make-ready estimates."

D. The Timeline Rules Are Ambiguous and Unnecessarily Complicated

In addition to imposing unreasonably long deployment periods, the proposed timelines contain numerous ambiguities that will create confusion and uncertainty for both attachers and utilities. These ambiguities undermine the Departments' goal of providing "greater certainty and guidance" on the terms and conditions of pole access and are likely to generate disputes that could have been avoided with clearer rules.[43] In a regulatory framework with dozens of interrelated deadlines, triggering events, and conditional requirements, clarity is essential. Every

[43] Order at 11, 37.

ambiguity is a potential dispute, and every dispute is a potential delay. NECTA identifies the most significant ambiguities below and recommends specific corrections.

The Proposed Rules contain confusing language regarding whether make-ready timelines "toll" or "run" when no government approval is necessary. Proposed 220 CMR 45.08(4)(b) states that if no permitting or approval applications are required, the utility must notify the licensee within ten business days of the make-ready payment, and that "[t]he make-ready timelines identified in 220 CMR 45.08(5) will begin ***to toll*** at the end of that ten-day period."[44] In standard legal usage, "tolling" means the pausing or suspension of a deadline—the opposite of a deadline beginning to run.[45] Under the current proposed language, "begin to toll" would mean that the timelines are stopped (*i.e.*, tolled). The Departments' apparent intent is that the make-ready timelines will begin to ***run*** after the ten-day period, but the use of the word "toll" introduces confusion. This ambiguity should be corrected by replacing "toll" with "run" or similar language. NECTA proposes changes to the Proposed Rules that would delete the phrase "begin to toll at the end of that ten-day period" and replace it with language stating that the make-ready timelines "will begin upon payment of the make-ready estimates," eliminating the confusing terminology and the unnecessary additional 10 business days.

Relatedly, as noted above, the Proposed Rules do not clearly specify make-ready completion deadlines in scenarios where no government authority approval is necessary. While the Proposed Rules provide detailed timelines triggered by receipt of government authority approvals, they do not explicitly address the timeline when such approvals are not required, beyond stating that the make-ready timelines "begin to toll" after the ten-day notification

[44] *Id.* Att. B at 22, 220 CMR 45.08(4)(b) (emphasis added).

[45] *Toll*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("(Of a time period, esp. a statutory one) to stop the running of; to abate <toll the limitations period>.").

period.[46] This gap leaves open the question of when, precisely, make-ready must be completed in the scenario where no government permits are needed. As currently drafted, the Proposed Rules should be amended to state clearly that the applicable make-ready period begins upon payment of the make-ready estimate and expires at the end of the applicable make-ready interval set forth in 220 CMR 45.08(5).

Additionally, the Proposed Rules do not specify a deadline for utilities to provide a final survey invoice after completion of survey work.[47] There is also no corresponding deadline for a final make-ready invoice (only the initial make-ready cost estimate). These omissions create the potential for open-ended billing disputes that could further delay the attachment process. If the Departments retain a separate survey-cost process, the rules should require any final survey invoice to be issued within a fixed period after completion of the survey. And the rules should make clear that any billing dispute over survey costs or make-ready costs does not delay the survey, make-ready estimate, make-ready notice, or installation process. Indeed, NECTA members have received final make-ready invoices months, even years after utilities completed their make-ready work.

Finally, it is unclear whether pole owners must wait to receive make-ready payments before filing necessary permitting applications with government authorities. The Proposed Rules state that utilities shall submit permitting applications "[i]n coordination with any jointly-owning utilities and after the utilities have received full payment for their make-ready estimates."[48] This language suggests that the utility may not file for permits until payment is received, which would

[46] *See* Order, Att. B at 22-25, 220 CMR 45.08(5)(a)-(c).

[47] *See id.* at 17, 220 CMR 45.08(2)(e)(3) (stating only "after the utility completes all survey work . . ." without any specific deadline for "after").

[48] *Id.* at 21, 220 CMR 45.08(4)(a)(1).

add additional sequential delay to the process. If this is the Departments' intent, it is an unnecessary bottleneck; if it is not the intent, the language should be clarified to allow utilities to pursue permitting concurrently with the payment process. NECTA recommends that the Departments make clear that utilities may begin preparing and submitting any necessary permitting applications as soon as the relevant information is available and that permitting activity should proceed concurrently, not sequentially, wherever possible.

In sum, the Departments should clarify their proposed timelines to avoid confusion, uncertainty, and disputes. The easiest and best way for the Departments to do this is to adopt the FCC's timeline rules.

E. Inconsistency with Neighboring States Creates Inefficiencies and Practical Issues

The Proposed Rules are markedly inconsistent with the processes in surrounding states where many of the same utilities, attachers, and contractors already work. This inconsistency is particularly problematic because the major utilities operating in Massachusetts also operate in neighboring states under different regulatory frameworks. Eversource, one of the two largest electric distribution companies in Massachusetts, also operates and owns poles in Connecticut and New Hampshire. Both of those states follow rules that are essentially aligned with the FCC's framework.[49] National Grid, which operates a substantial portion of the electric distribution infrastructure in Massachusetts, also operates in New York, which follows rules closely aligned with the FCC's framework.[50] Verizon, the ILEC and sole or joint owner of the vast majority of poles in Massachusetts, also operates in New York, Connecticut (having recently

[49] *See* N.H. Code Admin. R. En §§ 1301.01-1303.13; 2022 PURA Order at 28 (adopting FCC timelines).

[50] *See 2024 NY PSC Order*.

acquired Frontier), and Pennsylvania, which have adopted rules that essentially follow FCC rules as well as Rhode Island, in which the FCC rules apply directly.[51]

Similarly, NECTA members operate and are attached to poles across New England. NECTA members and the utilities—and their contractors—are already familiar with and operating under the FCC's pole rules essentially being followed by all other New England States, Pennsylvania, and New York. They have developed internal procedures, trained their personnel, and organized their operations around the FCC's timeline requirements. The Massachusetts proposal would impose a significantly more burdensome regime for pole access for work performed in the Commonwealth. That result would not promote safety, coordination, or efficiency; it would instead require parties to administer a Massachusetts-specific process that differs materially from the process they use in nearby jurisdictions. Indeed, as Massachusetts is currently without pole-access rules, attachers and utilities can mold their processes in Massachusetts to match other states if they wish. And while pole-access rules of the road are certainly needed, what the Departments have proposed will make operations much more difficult for all stakeholders.

The Departments acknowledged in their Order that they considered "attachment and conduit access regulations implemented in other states that assert jurisdiction over these matters, *i.e.*, reverse-preemption states such as New York, Maine, Vermont, and Connecticut, as well as those states where the FCC's regulations apply."[52] However, the Proposed Rules deviate from

[51] *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 37 FCC Rcd. 6724 (2022) (not listing Rhode Island). Indeed, Pennsylvania has adopted the FCC's rules. *See Adoption of Federal Communications Commission Regulations Pursuant to 52 Pa. Code § 77.4*, Order, L-2018-3002672 (2025) (adopting certain FCC regulations pursuant to 52 Pa. Code § 77.4 in response to FCC amendment of 47 C.F.R. § 1.1415).

[52] Order at 15.

these models in significant ways that add complexity and delay without corresponding benefits.[53] Ultimately, the Proposed Rules deviate so much that they effectively undermine the core features of those original models. The Departments have not identified any significant issues that are unique to Massachusetts that would require pole-access rules more complicated and time-consuming than have proven effective in neighboring states. If the FCC's framework is adequate to facilitate broadband deployment in Connecticut, New Hampshire, New York, Rhode Island, and Pennsylvania, and utilities using the same contractors to operate under that framework, there is no reason to believe that a significantly more burdensome framework is necessary in Massachusetts. NECTA strongly urges the Departments not to adopt additional time-consuming steps or requirements beyond those currently being used in neighboring states and instead reconsider and adopt rules more closely aligned with the FCC's framework and the practices in neighboring states, thereby promoting efficiency, consistency and predictability for all stakeholders.

III. THE TIMELINE DEVIATION PROVISIONS ARE TOO BROAD AND TOO AMBIGUOUS

A. The "Good Cause" Standard Lacks Meaningful Constraint

Proposed 220 CMR 45.10 addresses permitted deviations from the timelines in the Proposed Rules. NECTA recognizes that some flexibility is necessary to account for genuinely extraordinary circumstances that may prevent the timely completion of make-ready work. Truly unforeseeable events can make it impossible for utilities to meet their deadlines, and a well-designed deviation framework can accommodate these realities without undermining the

[53] *See, e.g.*, Order 31 (noting that the proposed rules *expand* upon certain FCC requirements); *id.* (specifically noting its deviation from FCC rules by delaying make-ready timelines until the utility has received all permits and approvals from local governments).

integrity of the timeline rules. However, the deviation provisions in the Proposed Rules threaten to render the timelines meaningless, rendering the make-ready deadlines aspirational rather than enforceable. These provisions lack the objective criteria, exhaustive scope, and enforceable constraints necessary to ensure that deviations remain the exception rather than the rule.

The deviation provisions in proposed 220 CMR 45.10 would allow a utility to deviate from make-ready timelines for "good cause," but the enumerated grounds for asserting good cause are illustrative, not exhaustive, and are too open-ended. The regulation uses the phrase "including, but not limited to," signaling that the five listed grounds—(1) repair work to restore service following widespread outage; (2) major weather or emergency events; (3) roadway or traffic moratoriums; (4) availability of police details or flaggers; and (5) pending issuance of permits—are merely examples, and that any other reason constituting "good cause" could justify deviation.[54] The concern is that each of these listed grounds is unclear or undefined. For instance, "major weather or emergency events" is undefined and could conceivably encompass routine seasonal weather, such as typical summer thunderstorms or winter snow fall, that are a normal and predictable part of conducting pole work in New England. To trigger a deviation, an event should have to be truly severe and unforeseeable. When the FCC adopted its timelines in 2011, it explained that "[e]mergencies and certain events during the make-ready phase that are beyond a utility's control may legitimately interrupt pole attachment projects," and explained good cause would include "an emergency that requires federal disaster relief," but made clear that the clock could not be stopped for "routine or foreseeable events such as repairing damage cause by routine seasonal storms . . . alleged lack of resources; or awaiting resolution of

[54] Order, Att. B at 37, 220 CMR 45.10(a).

regulatory proceedings. . . ."[55] Thus, under the Proposed Rules, the "availability of police details or flaggers" could justify delay due to the utility's failure to timely reserve the resources or without requiring the utility to demonstrate that the resources were genuinely unavailable despite reasonable efforts. And "pending issuance of permits" could serve as a catch-all for any permitting delay, regardless of whether the utility bears responsibility for the delay. NECTA recommends that the Departments narrow the deviation provisions to include only specifically defined grounds that are tied to objective criteria.

The breadth of the proposed deviation provisions is further compounded by the absence of any maximum deviation period for utilities. There is no cap on the total amount of time a utility may deviate, no requirement that the utility resume compliance within a specified period, and no escalation mechanism if the deviation extends beyond a reasonable period. A utility could, in theory, invoke the deviation provisions for months, with no consequence other than the obligation to send periodic update notices. The Departments should adopt a deviation framework that includes a maximum deviation period after which the applicant would be entitled to invoke self-help or seek expedited relief from the Departments.

NECTA therefore recommends that any deviation provision be narrowly limited to defined, objectively verifiable circumstances; require the entity invoking the deviation to provide specific supporting facts; include a maximum deviation period; and preserve the new licensee's right to challenge an unsupported deviation without losing access to self-help.[56] A deviation notice should not, by itself, suspend the new licensee's self-help rights unless the deviation is justified and limited to work actually affected by the extraordinary circumstance.

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[55] *FCC First Report and Order* ¶ 68.

[56] This situation is good example of the need for rapid dispute resolution. *See infra* Section V.

B. Existing Licensee Deviations Further Compound Delays

The Proposed Rules also permit existing licensees to deviate from complex make-ready timelines for utility delays, delays caused by other licensees, or safety or service interruptions. The maximum extension periods available to existing licensees are substantial: 60 days for small and regular orders, 105 days for mid-sized orders, and 150 days for large orders.[57] These licensee deviation periods are separate from and in addition to the utility deviation periods discussed above. When combined with utility deviations, the total potential delay is staggering: a large order that already takes 440 to 500 days in the best case could be extended by months or even years if both utility and licensee deviations are invoked. The compounding effect of these separate deviation rights means that delays can cascade through the system, with each party citing the delays of others as justification for its own deviation.

At minimum, the Proposed Rules should provide that deviations by existing licensees are available only where the existing licensee demonstrates that compliance is impossible despite reasonable efforts, that any extension is limited to the specific poles and work actually affected, and that the extension does not prevent the new licensee from invoking self-help for unaffected work. Without these constraints, the deviation provisions will undermine the very deadlines the Proposed Rules purport to establish.

IV. REQUIREMENT OF AN AMENDED POLE ATTACHMENT AGREEMENT TO TRIGGER MAKE-READY TIMELINES IS AMBIGUOUS AND UNNECESSARY

Proposed 220 CMR 45.08(5)(a), which requires the utility to enter into a new or amended pole agreement with the new licensee before issuing notices concerning the upcoming make-ready work, appears to be based on a fundamental misunderstanding of the process. An executed

[57] Order, Att. B at 38, 220 CMR 45.10(2)(a).

pole agreement is a prerequisite to the ability to submit pole applications, which, if approved, result in the utility issuing licenses (approvals) for attachments to specific poles.

There is no practical or legal need to amend pole attachment agreements for every make-ready estimate or new attachment. In practice, attachers and utilities do not currently execute new or amended agreements for each application or set of attachments. Pole attachment agreements are framework agreements that establish the general terms and conditions of the relationship between the attacher and the utility; they are not pole-specific. Individual attachment applications are processed under that framework without the need for separate contractual amendments for each additional pole or each issuance of a new license.

Requiring execution of a new or amended pole attachment agreement as a prerequisite to commencing the make-ready shot clock also creates a new and potentially open-ended delay. There is no timeline specified in the Proposed Rules for negotiation or execution of the agreement. This means that a utility could delay make-ready indefinitely simply by refusing to finalize the agreement, or, at a minimum, the utility could create significant delay by insisting on protracted negotiations over terms. Alternatively, the requirement opens the door for utilities to force unreasonable contract terms on attaching parties who have no leverage to negotiate. There is no mechanism in the Proposed Rules for an applicant to trigger the shot clock if the utility will not agree to reasonable terms, leaving the applicant with no remedy other than filing a formal complaint—a process that itself can take 180 to 360 days. This gives the utility effective veto power over the commencement of make-ready, with no regulatory backstop and no remedy short of filing a formal complaint. This proposed requirement is particularly troubling given the monopoly environment of pole access where attachers are often left at the mercy of pole-owner terms and conditions.

Massachusetts should not require execution of a new or amended pole attachment agreement for each application but should adopt the FCC's framework, under which the utility's obligation to issue make-ready notices is immediately triggered by the utility's receipt of payment. This trigger is clean and objective and avoids delay. If the Departments believe that any agreement-related condition is necessary, the rules should clarify that an existing pole attachment agreement satisfies the requirement and that no new or amended agreement is required for attachments processed under that agreement.

V. THE PROPOSED COMPLAINT PROCESS WILL RESULT IN DELAYS

A. The Departments Should Adopt a Concrete, Expedited, and Enforceable ADR Mechanism That Will Be Useful in Practice

The proposed ADR provision in proposed 220 CMR 45.14(2) merely states that a utility or licensee "may first pursue" alternative dispute resolution consistent with (1) any contractual terms entered into by the involved parties, or (2) any informal process established by the Departments and outlined in any Memorandum of Agreement between the two agencies.[58] This provision does not actually add anything to current law and is insufficient to support deployment for several reasons.

First, there is no established ADR process in the Proposed Rules themselves; the rules merely contemplate that an ADR process might exist in a future MOA between the Departments. The Draft Amended and Restated MOA attached to the Order does not include a substantive ADR mechanism. Thus, even if a party were willing to participate in ADR, there is currently no process to follow and no framework for producing a resolution. The Departments have expressed their intent to explore the implementation of an ADR mechanism and have requested

[58] Order, Att. B at 45, 220 CMR 45.14(2).

comment on whether elements of the FCC's RBAT process could be adopted.[59] NECTA strongly supports the development of a robust, expedited ADR process that would provide parties with a meaningful alternative to formal complaint proceedings. However, until such a process is established, the proposed ADR provision in proposed 220 CMR 45.14(2) is essentially a placeholder that provides no practical benefit.

Existing pole attachment agreements typically do not include rapid dispute resolution mechanisms. The contractual ADR referenced in the Proposed Rules would depend on provisions negotiated between the utility and the attacher, but in NECTA's experience, pole attachment agreements rarely contain expedited dispute resolution procedures that would be meaningfully helpful in resolving time-sensitive pole attachment disputes. Again, this is a monopoly environment and pole owners have historically had no incentive to adopt such provisions. It is the Departments that are tasked statutorily with leveling this playing field. Without a regulatory backstop, the proposed ADR provision is unlikely to provide a meaningful alternative to the formal complaint process.

That said, the Departments have, to their credit, recognized the importance of ADR and have specifically requested comment on whether elements of the FCC's Rapid Broadband Assessment Team ("RBAT") process could be adopted.[60] Broadly, the RBAT process allows parties to submit disputes to a dedicated team within the FCC for rapid, informal resolution, with the goal of resolving them before a formal complaint needs to be filed.[61] The RBAT process has

[59] Order at 62, 64-65.

[60] *Id.* at 64-65.

[61] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd. 12,379, ¶¶ 14-18 (2023) ("*Fourth Report and Order*").

been effective in resolving pole attachment disputes quickly and efficiently,[62] and its adoption in Massachusetts—adapted as necessary to reflect the Commonwealth's dual-agency structure—would provide a meaningful alternative to the formal complaint process that the Proposed Rules currently contemplate.

Further, while NECTA supports this inquiry and agrees that the FCC's RBAT process provides a useful model for streamlining pole attachment disputes, the Departments should also consider adopting a framework that aligns with the Maine Public Utilities Commission's Rapid Response Process Team ("RRPT") model.[63] Similar to the FCC's RBAT, the Maine RRPT is a staff-mediated, expedited dispute resolution process designed to resolve pole attachment disputes quickly and without excessive cost burdens, allowing attachers to resume deployment as soon as possible. Further, the Maine RRPT also operates through streamlined, largely informal procedures. And the Maine RRPT model is even more expedient than the FCC's, resolving complaints within a matter of days.[64] The RRPT process starts with a complainant providing notice to the party with whom there is a dispute and indicating plans to file the complaint with

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[62] *See, e.g.*, *Comcast Cable Communications, LLC* v. *Appalachian Power Company*, EB Docket No. 25-330, FCC 26-6 (rel. Feb. 5, 2026); *see also* News Release, *FCC Issues Precedent-Setting Order Under Expedited Review Process for Pole Attachment Complaints*, FCC (Feb. 5, 2026), https://docs.fcc.gov/public/attachments/DOC-418491A1.pdf.

[63] *See* Maine Public Utilities Commission, *Investigation into Practices and Acts Regarding Access to Utility Poles*, Docket No. 2010-00371, Order, Attachment A (July 12, 2011) (summarizing the expediated pole attachment complaint process); *Expedited Pole Attachment Complaint Process*, MAINE PUBLIC UTILITIES COMMISSION, https://www.maine.gov/mpuc/regulated-utilities/telecom/programs/pole-attachment/complaint-process (last visited May 12, 2026) ("*RRPT Summary*"); *see also Rapid Response Process*, MAINE PUBLIC UTILITIES COMMISSION, https://www.maine.gov/mpuc/regulated-utilities/telecom/approved-companies/rapid-response (last visited May 12, 2026) ("*RRPT Process*").

[64] *See RRPT Summary* § 5.b.

the RRPT *the next business day*.[65] The process is further streamlined by the requirement that the complaint include the underlying facts of the dispute, the potential harm, the steps already taken to resolve the issue, and whether a preliminary finding is requested.[66] Once the complaint is filed, the RRPT schedules a preliminary conference call within *two business days of the filing*, at which time the respondent may provide an oral response.[67] At the conclusion of this call, the RRPT may request additional information, schedule follow-up calls, issue a preliminary finding, or dismiss the complaint.[68] All proceedings are conducted through conference calls and email rather than through formal hearings, and the RRPT controls any production of information rather than permitting the parties to conduct formal discovery.[69] Within ***seven business days after the filing of the complaint***, the RRPT issues a final written decision, which remains in effect pending any appeal.[70] While a party may appeal the RRPT's ruling, it must do so within five business days.[71]

The Maine RRPT strikes the proper balance between effective, rapid dispute resolution and the protection of the parties' rights to have their dispute adjudicated by the full commission and should be replicated and implemented in Massachusetts. The benefits of Maine's RRPT process are notable. *First*, the seven-business-day resolution timeline stands in stark contrast to the 180-day (or potentially 360-day) timelines contemplated by the Departments' proposed

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[65] *Id.* § 1.a.

[66] *Id.* § 2.b, 3.b.

[67] *Id.* § 3.b, 4.a.

[68] *Id.* § 4.a.

[69] *Id.*

[70] *Id.* § 5.b.

[71] *Id.* § 5.c.

framework, ensuring that disputes do not become prolonged impediments to broadband deployment. *Second*, the RRPT process is streamlined, inexpensive, and staff-mediated. The RRPT process lacks costly formal discovery requirements and in-person hearings, making expedited resolution of pole disputes accessible to a wide range of participants, including smaller attachers that may lack the resources to engage in protracted proceedings. *Finally*, the very existence of a swift and effective dispute resolution process like the RRPT can reduce the number of disputes and improve deployment speed. Reducing the barriers to staff-led and enforced rapid dispute resolution creates incentives for pole owners to resolve disputes on their own, lest they risk a negative outcome through a more formal dispute resolution process. This creates a deterrent effect that ultimately encourages cooperation and business-to-business solutions before disputes escalate. In turn, this improves the efficiency and speed of network deployment, the stated goal of this rulemaking. It also frees up Department resources, allowing staff to focus on larger and more complex disputes or proceedings that could have a larger impact on Massachusetts more generally.

The effectiveness of rapid dispute resolution options has not gone unrecognized. New York, Pennsylvania, and West Virginia have adopted similar rapid response processes, and as the Departments recognize, the FCC's RBAT process functions similarly to the RRPT model. Yet, the Massachusetts proposal's elaborate procedural requirements are sharply at odds with these models and if adopted will likely result in significantly longer complaint resolution timelines. Accordingly, NECTA urges the Departments to adopt a more streamlined complaint process modeled on Maine's approach or at least the FCC's RBAT—models that prioritize expeditious and low-cost resolution of disputes between the parties directly involved. At a minimum, the Departments should adopt in the regulations an ADR mechanism that includes a pre-complaint

consultation period during which the Departments' staff would work with the parties to attempt to resolve the dispute informally, with binding authority to issue interim guidance or directives if the parties are unable to reach an agreement within a specified period. NECTA urges the Departments to prioritize the establishment of these important and effective ADR procedures.

In sum, NECTA urges the Departments to establish an expedited staff-mediated process in the rules themselves, not merely in a future MOA. That process should include: 1) notice to the opposing party before filing; 2) a short written submission identifying the dispute, harm, requested relief, and prior resolution efforts; 3) a preliminary staff conference within two business days; 4) authority for staff to issue interim guidance or directives; 5) a written determination within a short fixed period; and 6) an expediated appeal process that does not automatically stay interim relief. Without these elements, ADR will not provide a meaningful alternative to pursuing the formal, lengthy complaint process.

B. An Individual Complaint Should Not Be Converted to a Rulemaking

The proposed framework for the Departments to convert complaints into rulemakings creates a significant risk of delay for complainants seeking timely resolution of a specific pole attachment dispute. Under proposed 220 CMR 45.15(4), within 15 business days of receipt of a response to a complaint, the presiding officers assigned by the DPU and the DTC may determine that the complaint raises "policy considerations of general applicability which are not presently addressed by these regulations."[72] 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 MOA between the Departments.[73]

[72] Order, Att. B at 50, 220 CMR 45.15(4).

[73] *Id.*

This mechanism is particularly concerning because these are entirely new regulations that have never been applied or interpreted. The broad language of the proposal—authorizing conversion whenever a complaint raises "policy considerations of general applicability which are not presently addressed by these regulations"—could be invoked in nearly every case, because no policy considerations related to the forthcoming regulations have yet been "addressed" through adjudication. This creates a risk that respondents will argue that every complaint raises novel policy questions, thereby shunting the dispute into an open-ended rulemaking proceeding and avoiding the obligation to resolve the underlying dispute within the statutory timeframe or provide timely relief to the aggrieved attacher.

The outcome would fundamentally deprive the complaining party—usually the attacher trying to deploy or upgrade its networks—of timely resolution, and could prevent the attacher from completing deployment while the dispute remains pending.[74] NECTA recommends that the Departments eliminate the rulemaking-conversion provision, or, at a minimum, ensure that (1) conversion is limited to truly novel policy questions that cannot reasonably be resolved within the existing regulatory framework, (2) conversion does not toll or suspend the timeline for resolving the underlying complaint, (3) if the presiding officers come to an impasse on whether the proceeding should be converted to a rulemaking, the proceeding remains a complaint, and (4) the complaint proceeds to adjudication on a parallel track regardless of whether a rulemaking is also initiated. The Departments should also clarify that any rulemaking conversion affects only

[74] While the Proposed Rules state that the presiding officers may establish a procedural schedule to commence the adjudication of the underlying complaint during the pendency of any rulemaking conversion determination, this is discretionary, not mandatory, and provides no assurance that the complaint will be resolved within a reasonable timeframe. *See id*. at 50, 220 CMR 45.15(7).

prospective policy issues and does not prevent the Departments from granting case-specific relief in the underlying dispute.

C. Public Comment and Intervention Requirements Compound the Problem

Compounding the risk of delay is the proposed requirement for public notice of every complaint filed and docketed, a deadline for petitions to intervene (no shorter than 14 days after notice), and an opportunity for intervenors to file comments (within 20 days of the issuance of any decision permitting intervention).[75] Under proposed 220 CMR 45.15(5), the Departments must give public notice of each formal complaint, including a brief description and deadlines for intervention and comments. This effectively transforms every bilateral pole attachment dispute into a quasi-public proceeding, creating opportunities for delay through intervention and comment by parties with adverse interests and no direct stake in the dispute. The rules should avoid turning every pole complaint into a broad public proceeding. Doing so would deprive the complainant of the ability to obtain prompt relief, which would often mean preventing the timely deployment of new networks or enhanced services.

The intervention and comment procedures also raise concerns about the confidentiality of sensitive business information. Pole attachment disputes often involve proprietary data about deployment plans, customer counts, construction costs, and competitive strategies. If every complaint is subject to public notice and intervention, attachers may be reluctant to file complaints that require the disclosure of such information, or may be forced to seek confidential treatment for substantial portions of their filings. This adds additional procedural complexity and delay to an already burdensome process. The Departments should consider whether the public notice and intervention requirements are truly necessary for bilateral pole attachment

[75] Order, Att. B at 50-51, 220 CMR 45.15(5).

disputes, or whether a more streamlined, confidential process would better serve the interests of the parties and the goals of the regulations.

NECTA recommends that the Departments limit intervention and public-comment procedures to complaints that present issues of broad industry wide significance. For ordinary bilateral disputes, the Departments should provide a streamlined adjudicatory process focused on the parties directly involved, while preserving appropriate protections for confidential business information.

D. The 360-Day Extension Undermines the Complaint Resolution Deadline

Federal law requires states asserting jurisdiction over pole attachment complaints to take final action within 180 days after the complaint is filed, or within 360 days if prescribed within the regulations of the state.[76] The Proposed Rules explicitly incorporate the 360-day extension, allowing the Departments to extend the complaint resolution deadline from 180 to 360 days by a joint order signed by a designated Commissioner from each Department, issued within the initial 180-day period.[77] While the Departments state in their Order that they would "endeavor to resolve formal complaints as expeditiously as possible within the initial 180 days,"[78] the mere availability of the 360-day extension removes the urgency that the 180-day requirement was designed to create. The Departments also observe that if they fail to resolve a formal complaint within the permissible timeframe allowed under federal law, jurisdiction over the complaint would revert to the FCC—an outcome that should provide a strong incentive for timely resolution, but that is undermined if the permissible timeframe is routinely doubled. If the

[76] *See* 47 U.S.C. § 224(c)(3)(B)(ii).

[77] Order, Att. B at 52, 220 CMR 45.15(11).

[78] Order at 62.

Departments routinely invoke the 360-day extension, the complaint process could take nearly a full year to produce a resolution—a period during which the underlying pole attachment dispute remains unresolved, and the complainant's deployment is stalled. NECTA acknowledges that federal law permits the 360-day timeframe but urges the Departments to limit its use to truly extraordinary circumstances and to establish objective criteria for when the extension may be invoked, rather than adopting the full 360-day period as a default option. Consistent with the discussion above regarding rapid dispute resolution, this 360-day proposal is going the opposite direction of the FCC and neighboring states. At a minimum, the Departments should commit to publishing data on the frequency and reasons for invoking the 360-day extension, so that stakeholders and the public can assess whether the extension is being used appropriately.

NECTA recommends that the rule state expressly that the Departments will resolve formal complaints within 180 days absent extraordinary circumstances and that any extension to 360 days must be supported by specific written findings explaining why resolution within 180 days is infeasible. The rules should also require the Departments to identify the remaining procedural steps and expected schedule whenever an extension is granted.

VI. ADDITIONAL CONCERNS

In addition to the overarching structural concerns addressed above, NECTA identifies the following additional concerns with specific provisions of the Proposed Rules. Each of these issues also has the potential to create significant practical problems for attachers seeking to deploy or upgrade their networks in Massachusetts. The Departments should address each of these issues in the final regulations to ensure that the regulatory framework is workable and does not create unnecessary barriers to deployment.

Deemed Complete Provision. The Proposed Rules do not include a "deemed complete" provision in the event the utility fails to respond within the completeness review period.

NECTA's proposed edits to the Proposed Rules would streamline the completeness review process. Under the Proposed Rules, the utility may not know whether an application is part of a large order for up to 60 days.[79] Utilities should not need to wait 60 days to begin reviewing applications for completeness.[80] Instead, completeness should be an objective administrative issue that can be determined promptly, regardless of the number of poles involved, within a much shorter time period. Under the FCC's rules, if a utility does not timely respond to an initial application, the application is deemed complete.[81] Similarly, resubmissions are deemed complete within five business days unless the utility identifies remaining deficiencies.[82] This backstop provision is a critical element of the FCC's framework because it prevents utilities from passively delaying the process by simply failing to act with no consequence for its inaction. The applicant would have no recourse other than to wait—or to file a formal complaint, which, under the Proposed Rules, itself can take 180 to 360 days.

The absence of this backstop in the proposal gives utilities no incentive to complete their review within the prescribed timeframe and leaves applicants with no remedy if the utility simply fails to act. The Departments should adopt a deemed-complete provision, providing that an application is deemed complete if the utility does not identify deficiencies within the applicable completeness review period.

Self-Help for Estimates. The Proposed Rules do not provide a self-help remedy for make-ready cost estimates. Under the FCC's rules, if a utility fails to meet the estimate deadline, the new attacher may prepare its own estimate using an approved contractor, and the utility must

[79] *See* Order, Att. B at 11, 220 CMR 45.06(1).

[80] *See id.* Att. B at 12, 15-16, 220 CMR 45.07(1)(a), 45.08(2)(d).

[81] 47 C.F.R. §1.1411(d)(i).

[82] *Id.* § 1.1411(d)(ii).

review and provide a written decision on the self-help estimate within 14 days.[83] This self-help estimate provision ensures that the utility's failure to provide a timely estimate does not indefinitely stall the deployment process. The Departments' lack of a comparable provision in the Proposed Rules is a significant gap in the proposed self-help protections. While the Proposed Rules do include self-help provisions for make-ready work itself (in proposed 220 CMR 45.08(6)),[84] the absence of a self-help remedy for estimates means that a utility can delay the process by simply failing to provide the estimate—a step that occurs before make-ready work begins and that is a prerequisite to the applicant's payment and the commencement of the make-ready shot clock. NECTA recommends that the Departments adopt a self-help estimate provision like the FCC's.

OTMR Limitations. The Proposed Rules limit the availability of one-touch make-ready ("OTMR") to small, regular, and mid-sized orders.[85] Under the OTMR process, the new licensee performs simple make-ready in the communications space in a single trip, significantly reducing the time and coordination required for make-ready. However, order size is irrelevant to whether the work can safely and efficiently be completed through OTMR. The number of poles in an application should not preclude the use of OTMR where otherwise possible. The FCC's rules allow OTMR for all order sizes, including large orders, recognizing that OTMR is an efficient and effective mechanism for completing simple make-ready regardless of the number of poles involved.[86] The exclusion of large orders from OTMR eligibility in the Proposed Rules is an

[83] *Id.* § 1.1411(j).

[84] *See* Order, Att. B at 25-26, 220 CMR 45.08(6).

[85] *Id.* at 30, 220 CMR 45.09(1)(b).

[86] 47 C.F.R. § 1.1411(k); *see FCC Third Report and Order* ¶¶ 16-22 (explaining the benefits of the availability of an OTMR regime to all new attachers).

unnecessary limitation that will require large projects to proceed through the more complex and time-consuming non-OTMR process even when the make-ready involved is simple. The Departments have not identified any reason why OTMR would be less safe or less effective for large orders than for mid-sized orders. NECTA recommends that the Departments extend OTMR eligibility to large orders, consistent with the FCC's framework, to facilitate more efficient deployment for larger projects.

Application Voiding Provisions. The Proposed Rules include several provisions under which an application may be voided, including for failure to pay the survey estimate within 30 days and for failure to make full payment of the make-ready estimate within 60 days.[87] NECTA is not aware of any attacher practices today that these proposals are seeking to remedy, let alone with this much rigidity and harshness. NECTA's proposed redlines would modify these provisions based on concerns about the timing requirements. For example, 10 business days may be insufficient time for the new licensee to request, process, and issue checks, and not nearly sufficient time if there is any back-and-forth communication regarding the estimate, which is occurring more and more.[88] NECTA recommends allowing the new licensee to 'accept' the estimate. This has no impact on the utility because subsequent steps are triggered from the time of payment. Similarly, regarding the 15-business-day resubmission review period, there is no need for 15 business days to determine if a resubmission—which, by definition, is limited to the issues that were allegedly incomplete initially—is complete. While NECTA recognizes that utilities should not be required to keep applications open indefinitely, these voiding provisions are harsh and pose a significant risk to applicants. The unilateral voiding of an application

[87] *See, e.g.*, Order Att. B at 13, 17, 20, 220 CMR 45.07(1)(c)(3), 45.08(2)(e)(2), (3)(c)(3).

[88] *Id.* at 19-20, 220 CMR 45.08(3)(c)(1)-(2).

means the applicant loses all time, effort, and expense invested in the application, survey, and review process and must start over from the beginning. This is a disproportionate consequence, particularly in cases where payment delays may be attributable to disputes over the accuracy of the estimate rather than to the applicant's unwillingness to pay. For example, an applicant that receives a make-ready estimate that it believes is unreasonably high may need time to review the estimate, request supporting documentation, and engage the utility in discussions about the charges. Under the Proposed Rules, this entirely reasonable process could result in the voiding of the application if it is not completed within 60 days. For simplicity, NECTA recommends that the Departments omit these proposals from the final regulations. At the very least, the Department should include a cure period (*e.g.*, 30 additional days after notice of intent to void) and a rapid dispute resolution mechanism before an application may be voided for non-payment, to ensure that applicants are not penalized for engaging in good-faith disputes over the accuracy and reasonableness of cost estimates.

Annual Informational Filings. Proposed 220 CMR 45.17 would require pole owners to submit annual informational filings to the Departments by July 1 of each year, including detailed data on applications received, processing timelines, and other metrics.[89] NECTA supports transparency in the pole attachment process and agrees that data collection could be a tool for the Departments to monitor compliance with the regulations and to identify areas where the regulatory framework may need adjustment. However, NECTA also believes more frequent reporting to better ensure that the reporting requirement serves as an important accountability mechanism, providing the Departments and stakeholders with the information needed to assess whether utilities are meeting their obligations under the regulations. To that end, NECTA

[89] *Id.* Att. B at 54, 220 CMR 45.17(1).

proposes filings be submitted twice annually, once on or before April 1 (covering the time period up to December 31st of the prior year) and the other on October 1 (covering the year-to-date through June 30th).

NECTA also urges the Departments to ensure that the semi-annual filings include data that would allow the Departments to identify patterns of unreasonable delay by utilities and to take appropriate corrective action. In particular, the filings should include data on the average time from application submission to make-ready completion, the frequency and duration of deviations from make-ready timelines, the frequency of application voiding events, and the outcomes of any disputes or complaints. The Departments should also consider making the semi-annual filings publicly available, so that attachers and other stakeholders can use the data to inform their own deployment planning and to identify potential issues before they become formal disputes. Absent this public scrutiny, the reports may have limited utility.

Joint-Use Database Requirements. The Proposed Rules require both utilities and attachers to update the NJUNS joint-use database (or any successor database) within five business days of work performed. NECTA has several concerns regarding the proposed use of NJUNS throughout the draft rules.[90] First, it is not clear that NJUNS has all of the capabilities that the Proposed Rules appear to assume it has. Second, the Departments should reconsider the five-business-day update requirement. Third, it is not proper for the Departments to effectively pick a single software product among many in the market and demand that it be used.

NECTA supports the use of *a* joint-use database to maintain accurate records of pole attachments and to facilitate coordination among parties and appreciates that NJUNS is intended to serve as a singular point of information. However, NJUNS, in particular, may not be capable

[90] *See, e.g*, *id.* at 8, 18, 23, 27, 220 CMR 45.04(3), 45.08(2)(f)(2)(1), (5)(b)(6), (6)(b)(6).

of a number of the actions the Departments appear to propose, and the Departments have no control over its functionality. Moreover, the Proposed Rules should clarify the consequences of a utility's failure to maintain or update the database, and should ensure that the database is accessible to all parties that need it—including prospective new attachers who need to identify existing attachments on poles they seek to access. NECTA supports the proposal that all licenses be required to participate in a joint utility electronic notification database and the Departments should ensure to the best of their ability that the regulations otherwise support such participation.

Additionally, the Departments should consider whether the five-business-day update requirement is practical for large deployment projects involving hundreds or thousands of poles, where work may be performed on different poles on different days over an extended period.[91] A requirement to update the database on a weekly or batch basis, rather than within five business days of each individual work event, might be more practical and equally effective in ensuring that the database remains current.

Finally, given that NJUNS appears to be one of several software databases in the market, NECTA recommends that the Departments replace the references to NJUNS with technology-neutral references to a joint use database or equivalent system that satisfies specified functional requirements. The rules should identify the information that must be maintained, the parties entitled to access that information, and the timing for updates, without mandating a specific vendor or platform.

Itemized Invoices. NECTA supports the Departments' proposals to require utilities to provide detailed, itemized make-ready cost estimates and final invoices on a pole-by-pole basis,

[91] *See, e.g.*, *id.* at 8, 23, 27.

as set forth in proposed 220 CMR 45.08(3)(a) and (d).[92] NECTA, however, urges the Departments to go further and extend this requirement to all invoices issued under its proposed rules. Some NECTA members have been presented with invoices in other jurisdictions for pre-existing violations that fail to clearly identify the specific violation at issue or explain why the attacher—whether a new attacher or the existing attacher responsible for the condition—should bear the associated costs. Requiring detailed, pole-by-pole itemization for all invoices would promote transparency, enable meaningful review of charges, and reduce delays or disputes by ensuring that charges could be reviewed by the parties and costs are properly allocated.

VII. NECTA SUPPORTS A SINGLE VISIT TRANSFER PROGRAM TO REDUCE DOUBLES

NECTA strongly supports the suggestion of the Massachusetts Executive Office of Economic Development and Executive Office of Energy and Environmental Affairs that Massachusetts adopt a single visit transfer ("SVT") process for reducing the number of double poles in Massachusetts.[93] NECTA was a proponent of the SVT process that has been extremely successful in Connecticut where NECTA hosts monthly meetings of the EDC pole owners (Eversource and United Illuminating), Frontier/Verizon, attachers, and participants from municipalities, the Office of Consumer Counsel, and the Office of Education, Outreach and Enforcement at the Connecticut Public Utilities Regulatory Authority ("PURA").

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[92] *Id.* at 18, 20, 220 CMR 45.08(3)(a), (d).

[93] *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, Comments of the Massachusetts Executive Office of Economic Development and Executive Office of Energy and Environmental Affairs at 3 (Mar. 19, 2025).

Although proposed § 45.04(3) is described as a "Single Visit Transfer Process,"[94] the SVT process for double poles in Connecticut is something different under which a single qualified contractor, agreed on by the communications attachers, shifts all communications attachments to the replacement poles in a given municipality in a single visit. The SVT process is geographically focused, with the contractor accomplishing all transfers in a municipality(ies) selected by the EDCs before moving on. The SVT contractor performs both "simple" and "complex" transfers and removes the old poles after it completes the transfers. The SVT process eliminates the time that otherwise would be required for sequential transfers of communications attachments, highest to lowest, by individual attachers. In that vein, the SVT process also reduces costs. Instead of requiring truck rolls by each attacher, transfers of all communications attachments are accomplished in one visit and police details and other costs are significantly reduced. The SVT contractor notifies each attacher when transfers of its facilities are completed and the attacher updates the status in AldenOne (a pole database used in Connecticut—if SVT were adopted in Massachusetts, attachers would similarly update the chosen database). The SVT contractor has a separate business arrangement with each attacher and invoices each attacher for transfers of their attachments and a share of the costs of police details and other apportionable expenses. PURA is not involved and the program does not impose any costs on pole owners beyond those they would otherwise incur.

NECTA encourages the Department to adopt a similar approach in Massachusetts, which will help expedite the removal of double poles.

[94] Order at 23-24.

VIII. NECTA SUPPORTS CREATION OF A DOUBLE POLE WORKING GROUP

The SVT process identified above offers a clear pathway to reducing the backlog of double poles. To that end, NECTA and its members recommend the Departments establish a dedicated working group, including all operations personnel from relevant stakeholders, to meet on a regularly scheduled basis to improve coordination among pole owners and attachers, reduce delays and bottlenecks, and improve access to and use of shared data systems (such as NJUNS). There is a direct line from the working group that NECTA leads in Connecticut to the mitigation of double poles in that state. New Hampshire has recently embarked on a similar path, and NECTA is an active participant in that group.[95] NECTA and its members stand ready to participate in, or even lead, such working groups as directed by the Departments and would welcome the opportunity to bring these successful best practices from other states to Massachusetts.

IX. CONCLUSION

The proposed pole attachment regulations represent a significant and welcome step toward modernizing the Commonwealth's regulatory framework for broadband deployment. NECTA appreciates the Departments' efforts to address long-standing gaps in 220 CMR 45.00 and recognizes the considerable work that has gone into this rulemaking proceeding. The goals that the Departments have articulated—facilitating broadband deployment, supporting the energy transition, and promoting infrastructure modernization—are goals that NECTA and its members share and have long advocated.

However, as detailed throughout these comments, the Proposed Rules as currently drafted would create a regulatory regime that is unduly complex, ambiguous, and likely to result in

[95] N.H. RSA 374:34-b.

deployment timelines that are significantly longer than those under the FCC's rules or the rules of neighboring states. The cumulative effect of the numerous procedural additions, overbroad deviation provisions, unclear meet-and-confer requirements, and problematic complaint procedures would be to impede rather than advance the very broadband deployment that this rulemaking is intended to facilitate. At a time when the Commonwealth faces urgent pressure to close the digital divide and when federal funding programs impose strict deployment milestones, regulatory delay is not merely inconvenient—it is potentially fatal to the Commonwealth's broadband ambitions.

NECTA urges the Departments to streamline and clarify the Proposed Rules to align more closely with the FCC's proven framework and those adopted in neighboring states and to provide the certainty and predictability that broadband providers need to meet federal and state deployment commitments. In particular, the Departments should reduce the length and complexity of the proposed timelines, narrow the deviation provisions to include only exhaustive, specifically defined grounds, eliminate the duplicative meet-and-confer requirements and the inclusion of government authorities in those meetings, remove the requirement for a new or amended pole attachment agreement as a prerequisite to the make-ready shot clock, and adopt a more streamlined complaint resolution process that prioritizes expeditious resolution of disputes. The Departments should also address the additional concerns identified in Section VI, including the absence of a deemed complete provision, the lack of self-help for estimates and above the communications zone, the unnecessary limitations on OTMR, and the ambiguities surrounding the joint-use database requirements. The adoption of the FCC's rules can effectively accomplish all of the above.

NECTA and its members remain committed to working constructively with the Departments and other stakeholders to develop a regulatory framework that serves the interests of all parties and, most importantly, the residents and businesses of the Commonwealth who depend on reliable, high-speed broadband service. NECTA sincerely thanks the Departments for their consideration of these comments and for their continued hard work on this important issue.

Respectfully Submitted

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May 12, 2026

Exhibit A

Phase	FCC Framework for mid-size and large orders	Departments' Proposed Framework for mid-size and large
Order Size	Cumulative applications within a 30-day period Mid-Size = lesser of 301 – 3,000 or 5% Large = lesser of 3,001 – 6,000 or 10%	Cumulative Applications within a 60-day period Mid-Size = lesser of 301 – 3,000 or 5% Large = lesser of 3,001 – 5,000 or 10%
Advance Notice and Meet and Confer	**15 days** prior for mid-sized order that are part of a single-network deployment (**60 days** for all large orders) with a requirement to meet and confer with pole owner within **30 days** of advance notice only for large orders. *47 C.F.R. § 1.1411(c)(1), (3).*	**45 days** prior to application + meet and confer with pole owner, existing licensees, and relevant government authorities within **30 days** of notice) (**90 days/60 days** for large orders). *220 CMR 45.07(1)*.
Review of Application for Completeness	Utility has **10 business days** to determine completeness (deemed complete if no timely determination). *47 C.F.R. § 1.1411(d)(1).*	Utility has **15 business days** to determine completeness (**30 days** for large orders). Utility also presents survey estimate, which attacher may accept and pay within **30 days** or estimate is void. *220 CMR 45.08(2)(d)(2), (e)(2)*.
Review of Application on the Merits; Grant or Deny Access; Complete Survey	Utility has **60 days** from complete application for merits review *and* complete survey (**90 days** for large orders). *47 C.F.R. § 1.1411(d)(2), (3).*	Utility has **60 days** from complete application for merits review (**90 days** for large and negotiated for very large). *220 CMR 45.08(2)(f)(1).*
Make-Ready Estimate	Utility must provide an estimate of the make-ready charges within **14 days (29 days** for large orders)** of receiving survey results. *47 C.F.R. § 1.1411(e).*	Utility must provide estimate of the make-ready charges within **10 business days** of approval. *220 CMR 45.08(3)(a)*.
Attacher Acceptance	Attacher has the later of **14 days or until a utility withdraws** to accept the estimate. *47 C.F.R. § 1.1411(e)(1)-(2).*	Utility may withdraw if payment is not submitted within **10 days.** *220 CMR 45.08(3)(c)*. Attacher must pay in full due within **60 days** of the original estimate or the contract may be voided by the utility.
Make-Ready Completion	**Communications space** make-ready must be complete within **75 days** (**120 days** for larger orders) after make-ready estimate payment. **Above the communications space** make-ready must be complete **within 135 days** (**180 days** for larger orders) after make-ready estimate payment. *47 C.F.R. § 1.1411(f)(1)(ii), (2)(ii).* Utility may take **15 additional days** after the make-ready period to complete make-ready itself for work outside the communications space. *47 C.F.R. § 1.1411(g).*	Within **30 days** of ***full*** make-ready payment **(60 days** for large orders), utility must submit necessary permit or approval applications to local governments (if necessary, if no government approval is required then utility must notify attacher within **10 business days** and make-ready timelines "will begin to toll at the end of the ten-day period). *220 CMR 45.08(4)(a)(1).* ***[within a commercially reasonable time after gov't approval]*** Utility must issue make-ready notice, including a request to meet and confer with same parties as above within **30 days** of notice (**60 days** for large orders). *220 CMR 45.08(5)(a), (5)(a)(3).* Complete all simple make-ready within **75 days** of gov't approval (**120 days** large orders); all complex make-ready within **135 days** (**180 days** for large orders). *220 CMR 45.08(5)(b)(7)(1), (b)(8)(2).* Attacher must update NJUNS within **5 business days** after each instance of make-ready work. *220 CMR 45.04(6)(b)(6)*.
TOTAL BEST-CASE TIMEFRAME	• Comm space (*including* local permits) **mid-size 178 days; large 313 days** • Electric Space (*including* local permits) - **mid-size 238 days; large 373 days**	• Simple/Comm - **mid-size 245 days +** time for local permits**; large 404 days +** time for local permits. • Complex/electric - **mid-size 305 days +** time for local permits; **large 464 days +** time for local permits.

Exhibit B

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

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,~~for complaint~~,~~ and enforcement procedures ~~that:~~to (1) ~~ensure~~ensuring 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~~on rates, terms and conditions that are just and reasonable; ~~and (2) consider~~considering the interests of both consumers of utility services and subscribers of telecommunications and cable television services~~.~~ in the safety, reliability and affordability of those services, and (2) providing procedures for hearing and resolving complaints concerning such access, rates, terms and conditions. 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 – Overlashing Wires in the Communications Space, and 220 CMR 45.17: ~~Annual~~ Informational Filings and Website Postings.

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 as defined by the NESC.

~~Complainant. A licensee or a utility that~~Complainant. An Applicant, Licensee, including a New Licensee or Existing Licensee, a Utility, or an association of such entities, that files a complaint pursuant to 220 CMR 45.15: Formal Complaint Procedure.

Commented [ML1]: Expanded to reflect that a complaint may be filed by an association of licensees

Complaint. A petition with supporting documentation filed by ~~either a licensee or a utility~~Complainant 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).

Conduit. A structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

Commented [ML2]: 47 CFR 1.1402(i).

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.

Duct. A single enclosed raceway for conductors, cable and/or wire

Electronic Notification Software System. An electronic software system (e.g., NJUNS, AldenOne, etc.) that processes, coordinates, and/or consolidates Utility pole-related data that may include data related to the ownership, geographic location, size, class, and communications and electric facilities on Utility poles to facilitate notifications regarding the placement, replacement, or removal of a Utility pole and the placement, replacement, or removal of Attachments to Utility poles.

EVSE. Electric vehicle supply equipment.

Licensee. Any person, firm, or corporation, ~~inclu sive~~including a federal or state agency, a municipality, a municipal lighting plant, and a provider of wireless ~~providers, other than a utility,~~ service that is authorized to ~~construct lines or cables,~~ install attachments, including EVSE attachments, ~~upon, along, under, and across the public rights~~ on any pole or in any duct or conduit or right of~~-~~ way~~.~~ owned or controlled, in whole or in part, by one or more utilities. For the purposes of 220 CMR 45.~~02:~~00 et seq.,: the term 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.~~Any Licensee with authorized installed attachment(s) or that is in the process of installing authorized attachments.

New Licensee. Any person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility, requesting authorization to install a new or upgraded attachments upon any pole or in any duct or conduit or right of way owned or controlled,

Commented [ML3]: 47 CFR 1.1402(k).

Commented [ML4]: NECTA suggests this definition to remove specific NJUNS references. This definition tracks the ME definition but substitutes the ME wording of"joint-use" and "joint-use utility pole" with "Electronic Notification" and "Utility pole" to fit the MA definitions.

Commented [ML5]: Delete "other than a utility." A utilty could be required to obtain a license to attach to a pole solely owned by another utility or to an out of footprint pole.

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.~~additional facilities on the utility pole.

Complex Make-Ready. Transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility 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, or necessitates a pole replacement~~, or involves wireless telecommunications attachments generally~~.

Simple Make-Ready. Make-ready where attachments in the communications space of a pole could be 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, or 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, as authorized by 220 CMR 45.09.

Commented [ML6]: 47 CFR 1.1402(o). Remove phrase describing the types of attachments that could cause the make ready - unnecessarily restrictive.

Commented [ML7]: The term "involvement of wireless activities" is vague and there could be wireless strand mounted devices that are not considered "complex" work.

Commented [ML8]: NECTA suggests referring to an Electronic Notification Software System, as proposed above, instead of specifically identifying NJUNS as the system all parties are required to use. This removes the improper endorsement from the Department of using a specific software system, allows the parties to mutually agree on an electronic notification platform that best fits their needs, and eliminates the need for future, formal, rule changes if a new system is adopted.
A generic term would be more appropriate. ME PUC uses the generic term "Joint Use Software System. Chapter 880 Pole Rules, Sec. 1(o).

Respondent. A ~~licensee~~Licensee or a ~~utility~~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~~The total space which can be used for the attachment of wires, cables and associated equipment and includes space occupied by the utility 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.~~

(b) within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications or cable services, and which includes capacity occupied by the utility.

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.

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

Commented [ML9]: 47 CFR §1.1402(c)

Commented [ML10]: "responsible for wireless activities" is very vague and ambiguous and could include fiber optic lines that provide backhaul to wireless facilities.

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) 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 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 joint utility electronic notification database such as NJUNS~~the Electronic Notification Software System 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 Electronic Notification Software System 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 ~~NJUNS~~the Electronic Notification Software System 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~~the Electronic Notification Software System, 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.~~the time set forth in 220 CMR 45.08. For make-ready in the communications space, 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).

(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

Commented [ML11]: GL 166-25A does not give the Departments authority to require local permits, and the regulations cannot require a local permit where none is required by the local government.

Commented [ML12]: As noted, the Departments should not endorse a specific product.

Commented [ML13]: This language appears to create an inconsistent requirement with 45.08

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.

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~~.~~ but upon denial of access for reasons of inadequate capacity, the utility shall, at the expense of the wireless provider, expand the capacity of its poles, ducts, conduits, or rights-of-way to allow access by the wireless provider where such capacity may be reasonably expanded by rearrangement or replacement.

Commented [ML14]: Per GL Ch. 166 sec 25A

~~(1)~~(2) 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)~~(3) 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 made in ~~an adequately descriptive~~ writing or via links and directed to the ~~appropriate named recipient~~utility contacts 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)~~(4) 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.

~~(4)~~(5) (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(s) or termination of any service to ~~that~~those attachment~~,~~(s), 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~~ along with the utility's calculation of the new rate, the utility's FERC Form 1 or FCC Report 43-03 the ARMIS Annual Summary Report Form, and supporting documentation for other entries in the calculation such as pole equivalents, and average pole height.
3. any modification of facilities by the utility 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~~,~~ or 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.

Commented [ML15]: 47 CFR 1.1403(c) requires 60 days notice prior to removal. Less than 60 days is only allowed for modification Remove word "change" which refers to changing the (a)(2) above.

Also this deletes the added situations for which the licensee already would receive notice. The added language is the opposite of the FCC's rule.

(e) When a utility provides an existing licensee with less than 60 days' written notice, ~~the~~of the utility's removal or modification of a licensee's attachments or facilities or termination of service, utility shall make reasonable efforts to provide the licensee with as much notice as practicable under the circumstances prior to modifying the attachments, and provide prompt written notice after the modification.

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-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.~~calendar month as a single request if and to the extent that the requests are part of a single, unified network project.

(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 5,000 poles or 10.0 percent of the utility's poles in Massachusetts.

(e) Very Large Orders. Attachment requests greater than the lesser of 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, shall be based on the size of the application to the ~~municipal lighting plant.~~telephone utility

Commented [ML16]: This formulation is ambiguous and difficult to implement. In theory, it could also lead to poles being double or triple counted as part of a rolling 60-day period. Using a calendar month is more realistic for administration and tracking.

Commented [ML17]: As discussed in NECTA's comments, including smaller or unrelated deployments will make the requirements in the proposed rules unworkable.

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 appropriate government authority~~ which would be affected by or require action relating to the anticipated work. Such notice shall be provided at least ~~45~~15 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 [ML18]: If an application will be under OTMR, there is no point in the pre-application meet and confer because the entire point is that the Licensee will handle all make-ready

Commented [ML19]: New attachers do not have definitive information about who existing licensees may be or contact information for sending them notifications. Also, providing an existing licensee notice of an application by a competitor is problematic. An existing licensee does not need notice until the applicant has made the make ready payment and some action will be required on the existing licensee's part. In some instances, no make ready is required for the applicant to attach. Therefore, the existing licensee does not need notice.
Providing a competitor with the information in (b)(4) would be especially problematic but also (b)(2) and (b)(4).

Commented [ML20]: 90 days is unreasonably long time; all applications sizes should be the same. We propose 15 days for midsized and 60 for large, which parallel's FCC and others.

Commented [ML21]: This emphasizes the administrative difficulty of the rolling 60-day method of counting poles and applications.

Commented [ML22]: There is no reason to delay the initial meet and confer based on the project size. Mid-size should be exempt from meet and confer

(c) Failure to Provide Advance Notice.

1. If a new licensee files an attachment application for a mid-sized, large, or very large order 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 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.~~

~~0. 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.~~

~~(3)~~(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~~notice for large and very large orders, the new licensee~~,~~ and 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~~

Commented [ML23]: Unreasonably harsh

Commented [ML24]: Changed to be consistent with change above

Commented [ML25]: The application should be treated as filed; no need to add extra steps

Commented [ML26]: This is an unreasonably harsh outcome

Commented [ML27]: Meet and confer only for large orders

Commented [ML28]: Given that the schedule is in no small part dictated by the timelines in the rules, it is unclear what the outcome of the meet and confer must be—or if there is a required outcome.

~~practicable by the new licensee to each appropriate government authority that received notice~~

(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.

Commented [ML29]: NECTA respectfully submits that it is not necessary or appropriate to include local governments in the meet and confer. This is essentially creating a mandatory pre-permitting process for local permits that is not within the Departments' authority to mandate. In addition, the government authorities do not need to be part of a practical discussion of pole attachment issues.

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~~ 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, then a~~A new licensee shall concurrently submit pole attachment applications to each utility that shares ownership of the poles identified in the application~~. 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.~~ via a single application process or separately to each utility.

(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.

(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

Commented [ML30]: Complex make-ready should not exempt large orders

Commented [ML31]: It is often impossible to determine whether there are multiple owners. Applications should only go to a single owner. If there are joint owners, they should decide among themselves who will manage applications.

Commented [ML32]: First, this is requiring the applicant to tell the joint owners of a pole who at the other owner to contact. That is information the joint owners should know.

Second, this assumes that applications are submitted via hard copy with the possibility of a "cover letter" – many pole owners may use electronic submission. Such specific format should not be dictated

Commented [ML33]: The regulations should not be so granular. A utility can evaluate completeness and review the merits at the same time so long as any notice alleging noncompleteness is sent timely

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 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 of its determination. As part of its notification, ~~I~~if a utility determines that the application is incomplete, it must specify the reasoning for its determination in the notification. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete.

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~~5 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.
   (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

Commented [ML34]: These conditions do not work as a practical matter. Whether an application is part of a large order won't be known by the utility for up to 60 days. The utility should not be allowed to wait 60 days to begin reviewing for completeness.

Completeness should be an objective, administrative issue that can be completed promptly regardless of the number of poles involved over the course of 30 or 60 days.

Commented [ML35]: The rule should make clear that the application is complete if the utility does not timely notify otherwise. Consistent with 47 CFR 1.1411(d)(1)

Commented [ML36]: There is no need for 15 business days to determine if a resubmission – which by definition is limited to the issues that were allegedly incomplete initially-- is complete.

identified by the utility. For each resubmission, the utility shall have ~~15~~5 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.

(e) Survey Estimate and Payment.

1. ~~When~~Unless already addressed in a pole attachment agreement between the new licensee and the utility or through an existing practice of the utility for payment of survey costs at the time of application, 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 accept an estimate and make payment within 30 days after receipt of an estimate, otherwise the contract 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~~.~~, unless the new licensee has challenged the survey fee.
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 initial estimates.

(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,

Commented [ML37]: Same comment. Also, if the utility gets 15 business days each time, the 60 days for multiple resubmission is effectively limited to 1 or 2 resubmissions.

Commented [ML38]: Although NECTA does not object generally, this adds an unnecessary step. Currently, attaching entities obtain access and pay for make-ready surveys without the need for an estimate. Most utilities impose flat fees that are paid with the application.

This proposal threatens to upend a process that is currently working and add unnecessary delay

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 safety issue or impacts the structural integrity of the pole.~~. In any instance where a preexisting violation is identified by the utility, it shall update ~~NJUNS~~the Electronic Notification Software System or any successor database on the details of the violation and notify the jointly-owning utility of the violation. The utility shall also notify any existing licensee responsible for the violation, identifying the location of the pole, describing the violation, and ~~requesting details from the existing licensee on how and when the violation will be resolved.~~require the violator to promptly correct safety violations and correct non-safety violations within 30 days. If the violator does not take timely corrective action, the utility may elect to

correct the violation and provide the violator an invoice for the cost of correcting the preexisting violation.

(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 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.

Commented [ML39]: This allows preexisting violations to stymie a new attacher's deployment. Any make-ready required to cure the preexisting violation, including pole replacement, should be performed at the cost of the preexisting violator within the same timeframes as all other make-ready under the rules.

2. After requesting and receiving copies of the requested pole inspection reports, a new licensee may amend an attachment application within five 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.

(c) Withdrawn Estimate.

1. If the new licensee fails to ~~submit payment to the utility for~~ accept the make-ready cost estimate 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), 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 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~~or a partial payment allowed under the pole agreement or agreed on by the parties, within 60 days of receiving the estimate, unless the licensee has sought additional information or support for the

Commented [ML40]: The utility of providing the cyclical pole inspection reports AFTER a survey is performed and a make-ready estimate is created is very questionable. The point of allowing the new attacher access to the reports is to allow them to potentially adjust their proposed pole use BEFORE the time and cost of application/survey/estimate

Commented [ML41]: 10 business days is insufficient time for the new licensee to issue checks to pay, and not nearly sufficient time if there is any communication regarding the estimate. NECTA recommends allowing the new licensee to "accept" the estimate. This has no impact on the utility because subsequent steps are triggered from the time of payment. The acceptance just prevents the utility from withdrawing the estimate

estimate, 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 it proposes to void the application provide the applicant thirty days for the applicant to make payment 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. The final invoice must be provided no later than 60-days after the completion of the make-ready and may not exceed the make-ready estimate by more than 15% without prior approval of the Licensee.

(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.

Commented [ML42]: There is potential ambiguity between this provision and subsection (1) which addresses payment within 10 days.

Commented [ML43]: The survey has already been performed by the time the utility presents the make ready estimate.

Commented [ML44R43]: If the Departments' intent by voiding the survey work is to claim that survey work is useless, then NECTA would disagree.

Commented [ML45]: NECTA's members have encountered utilities that send "true-up" invoices months or even years later and that vastly exceed the estimate

(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 requests for information from a utility to respond to government authority inquiries relating to the permitting and approval applications. If a government authority denies rejects or requests modification to any make-ready identified in a permitting or approval application, then the new licensee, utility, and any jointly-owning utility shall 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 business days of the make-ready payment. The make-ready timelines identified in

Commented [ML46]: To the extent that this step will be included, the utility must promptly submit for the permits. 15 business days is approximately 21 calendar days which is sufficient time

Commented [ML47]: An applicant should be allowed to appeal local ruling.

220 CMR 45.08(5) will begin ~~to toll at the end of that ten-day period~~upon payment of the make-ready estimates.

(5) Make-Ready Notifications and Timelines.

(a) After receipt of payment in full for make-ready cost estimates~~, entry into a 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~~,~~ and 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. The notices 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.~~2. ~~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.~~3. 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.~~4. 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

Commented [ML48]: 1.Lack of local permitting requirement is not grounds to give a 10 business day extension of the make-ready deadlines.
2.Even if there is a ten-day period before the timelines start, "being to toll" is not the correct terminology. "begin to toll" would mean that the timelines are stopped (i.e. "tolled").
3.Ultimately, entire (b) should be deleted

Commented [ML49]: A new pole agreement is not required, reasonable, or appropriate for every application and would entirely stymie the process.

Commented [ML50]: The timelines for performing make-ready include time to obtain local permits for the make-ready work, which are minimal

Commented [ML51]: This is unnecessarily complicated and administratively difficult. It also provides no meaningfully helpful information.

Commented [ML52]: No need for this second meet and confer if there is one at the beginning when the application is submitted.

approval to the new licensee and any utilities that own the affected poles within ten business days of the make-ready notice;

~~6.~~5. remind existing licensees that they must update ~~NJUNS~~the Electronic Notification Software System (or any successor database) within five business days of completing any make-ready on the poles identified for make-ready;

~~7.~~6. for areas requiring only simple make-ready:

(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 ~~receipt of government authority approvals~~the notice for poles identified in small and regular orders ~~originally submitted by the new licensee~~, 75 days after ~~receipt of government authority approvals~~the notice for poles identified in mid-sized orders ~~originally submitted by the new licensee~~, or 120 days after ~~receipt of government authority approvals~~the notice 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 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.~~7. for areas requiring complex make-ready:

(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 the utility and all existing licensees that is no later than 90 days after ~~receipt of government authority approvals~~the notice for poles identified in small and regular orders ~~originally submitted by the new licensee~~, 135 days after ~~receipt of government authority approvals~~the notice for poles identified in mid-sized orders ~~originally submitted by the new licensee~~, or 180 days after ~~receipt of government authority approvals~~the notice for poles identified in large orders ~~originally submitted by the new licensee; and~~

~~(0) explain that the utilities and existing licensees may deviate from the timelines consistent with 220 CMR 45.10: Deviation from Timelines.~~

~~10.~~8. 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~~;

~~11.~~9. 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~~performed required make-ready on their attachments but no later than date set for completion; and

~~12.~~10. 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.

~~(b) Meet-and-Confer Requirement.~~

~~14. 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~~

Commented [ML53]: No need to state deviations if they are set forth in the regulations

Commented [ML54]: How does this differ from the requirements above?

~~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.~~

11. ~~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.~~

Commented [ML55]: As noted above, there is no need for a meet and confer at this point if there was a meet and confer after application submission; alternatively, eliminate the meet and confer after application submission and only have meet and confer to coordinate make-ready.

(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 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.

~~(b)~~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 Estimates. If the utility fails to present an estimate to the new licensee by the date specified in 220 CMR 45.08_____, then a new licensee may prepare the estimate in accordance with the requirements applicable to utility-prepared estimates. If a new licensee exercises its self-help option to prepare an estimate for utility review, the new licensee shall (1) wait until the utility's deadline has expired before exercising the self-help remedy; (2) provide notice to the utility that it is exercising its self-help remedy for an estimate; (3)

use an approved contractor to prepare the estimate; and (4) allow utilities the ability to review and approve the self-help estimate at the new licensee's expense, but expenses must be reasonable and based only on the actual costs incurred by the utility in reviewing the estimate. The new licensee cannot use self-help for estimates of pole replacements. The utility must provide the new attacher with a written decision on the self-help estimate within 14 days of receiving the estimate from the new licensee or before it is withdrawn by the new licensee, whichever is later. If the estimate is accepted by the utility, then it is subject to the reconciliation process set forth in 220 CMR 45.08(3)(d). If the estimate is not accepted by the utility, then the utility must detail in writing the reasons for non-acceptance. The new licensee then has the ability to submit a revised estimate to the utility without starting the pole attachment timeline from the beginning.

(c) 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 utility, any jointly-owning electric utility, and the applicable existing licensees in writing within five business days of its decision to pursue self-help.
2. A new licensee shall permit the telephone utility, any jointly--owning electric utility, and existing licensees to be present for any make-ready.
3. A new licensee shall use commercially reasonable efforts to provide the telephone utility, any jointly-owning electric utility, and 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.

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 of the changed circumstances from the make-ready plan and utilities' surveys. The new licensee and utilities shall confer and coordinate on resolving the make-ready on the affected pole(s) within a commercially reasonable timeframe.
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~~the Electronic Notification Software System (or any successor 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 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.

(d) 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.

Commented [ML56]: Self-help should be allowed in the electric space as well consistent with FCC and other states' rules and experience.

(7) New Licensee Obligations.

~~A new licensee shall install its new and upgraded attachments identified in its application only after it has received authorization from the applicable authorized government authorities.~~

§

~~(b)~~(a) 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 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. ~~The new licensee may forfeit its~~

Commented [ML57]: Conflicts with GL Ch. 166 sec. 25A and exceeds the Departments' authority.

Commented [ML58]: Requiring completion is a problem particularly in New England where there are winter moratoriums. Pole work tends to stop or is greatly reduced from Thanksgiving to end of February. If a completion requirement is retained, then need a good cause exception. Order size should not matter.

~~designated space on the utilities' poles to other licensees in the utilities' queue for failure to meet these timelines.~~

~~(c)~~(b) A new licensee shall be responsible for the cost of removing an existing pole only when the existing pole is replaced with a new pole as part of make-ready necessitated solely by the new licensee's application. 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~~.~~; or
6. If the utility requires pole replacement for any reason other than as a result of lack of capacity to accommodate the new licensee new attachment.

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.

Commented [ML59]: This is unreasonable harsh penalty particularly given the unreasonably short times. Such penalties are not imposed on others in this process

Commented [ML60]: This suggests that a utility can allocate pole replacement costs to existing attachers even if the pole is red tagged or is in violation of standards, or if the replacement is for utility purposes. An existing attacher is not responsible for violations it has not caused.

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 order;~~

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

~~(d)~~(c) the need for complex make-ready is not identified during the survey process; and

~~(e)~~(d) the new licensee expressly elects to proceed with the OTMR process identified in 220 CMR 45.09 in its initial application to the utility.

(2) Application Process.

(a) If no single application process exists between utilities that jointly own poles, then a new licensee shall concurrently submit pole attachment applications 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 overlashing in connection with the work described in a 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 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.

Commented [ML61]: Order size is irrelevant. It should not be an impediment to the use of OTMR where possible

(e) Application Completeness.

1. The utility shall review the 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 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.
    (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.

(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 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 contractor included on the telephone utility list or added to the utility list in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready.

(2) If the new licensee fails to conduct and submit to the utilities copies of the requisite surveys within 30 business days of its notification of application completeness, 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 or impacts the structural integrity of the pole. In any instance where a preexisting violation is identified by the utility, it shall update ~~NJUNS~~the Electronic Notification Software System or any successor database on the details of the violation and notify the jointly-owning utility of the violation. The utility shall also notify the existing licensee(s) responsible for the violation by identifying the location of the pole, describing the violation, and request details from the existing licensee on how and when the violation will be resolved. In such an instance, 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.

(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 ~~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, 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, 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 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) (3) Unplanned and unannounced 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, but in no case longer than 90-days and shall resume make-ready without discrimination when it returns to routine operations and is able to proceed with the work. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher

Commented [ML62]: This could be every summer thunderstorm that causes a power outage. To justify a deviation, the event must be entirely unforeseeable and out of the ordinary

(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 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.

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~~on poles it solely or jointly owns.

(2) Licensee Selection of Authorized Contractors. ~~When selecting a contractor for~~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~~the relevant utility with ownership of the affected pole(s~~) 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~~a utility's 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 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.

(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 telephone utility may reject a request made by a licensee to add a contractor to ~~any of~~ the utility's ~~preauthorized~~authorized contractor lists, ~~provided, however, that~~but the grounds for such a rejection ~~shall~~must be ~~limited to~~based only on 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~~licensees, 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~~rules;

(d) the contractor ~~meets~~has agreed to meet or ~~exceeds~~exceed 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, 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.

45.12: Utility Poles – Overlashing Wires in the Communications Space

(1) Applicability. The overlashing requirements and limitations identified in 220 CMR 45.12 shall only apply to the overlashing 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 Overlashing.

(a) A utility shall not require prior approval by the utility for an existing licensee to overlash 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 overlash 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 shall provide documentation of any approvals obtained from existing licensees.

1. The overlashing approvals ~~provided in the application shall be provided on the existing attacher's letterhead,~~shall identify with specificity the wires and poles on which overlashing 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~~Electronic Notification Software System and any successor databases, as well as future work to be performed on the poles and associated attachments proposed to be overlashed by the new licensee, the overlashing approvals from the existing licensees shall identify whether the new or existing licensee will be responsible for shifting the overlashed wires upon any future request by the utility or other licensees.

(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.

Commented [ML63]: Need to allow for other forms of approval. Don't assume it will be on "letterhead"

~~(c) A licensee may not overlash to the lowest telephone utility lines on a pole.~~

~~(d)~~(c) 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)~~(d) 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 prevent an existing licensee from overlashing because another existing licensee has not fixed a preexisting violation and may not require an existing licensee ~~that overlashes~~overlashing its existing wires on a pole to fix preexisting violations caused by another existing licensee.

(b) A utility may prohibit overlashing to an existing licensee's wires by a new licensee on a pole-by-pole basis if the existing wires have preexisting violations that cannot be resolved during the make-ready process.

(5) 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 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.

Commented [ML64]: This blanket prohibition is unfounded. A Licensee should be able to Overlash its lines even if it is the lowest attacher on the pole. Moreover, it is unlikely that a 3rd party Licensee would be overlashing to another Licensee or Utility's telephone lines."

The concern is twofold: (1) Verizon may not be the lowest attacher on a pole, a comms attacher might be, and that should not prevent the comms attacher from overlashing its own lines - simply because it is in the lowest pole position; and (2) it is unlikely that there would be overlashing on a third party's lines (e.g., 3rd party comms attacher overlashing to Verizon lines)

Commented [ML65]: 47 CFR 1.1416(b).

(6) Post-Overlashing Review. An overlashing licensee shall notify the affected utility and existing licensee(s) within 15 business days of completion of the overlash 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 overlash. The utility and existing licensees(s) each have 15 ~~business~~ days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash. If the affected utility chooses to perform an inspection, the cost of the inspection will be paid by the affected utility. If the utility or any existing licensee(s) discovers damage or code violations caused by the overlash on equipment belonging to the utility or the existing license the utility or existing licensee shall inform the overlashing party and provide adequate documentation of the damage or code violations. ~~Depending on the owner of the facility damaged, the~~The utility ~~or existing licensee~~ may either:

(a) complete any necessary remedial work and bill the overlashing licensee with an itemized invoice of the costs ~~related to~~of fixing the damage ~~and~~ or code violation with documentation ~~that is sufficient to determine~~identifying the specific code violation and basis of all charges, including ~~any material, internal and external labor~~ but not limited to the costs~~, gas mileage, costs related to loss of service to customers, and other related costs that form the basis~~ of ~~the invoice;~~materials, labor and transportation. or

(b) notify the overlashing licensee of the specific code violations and require the overlashing licensee to fix the damage or code violations at its expense within 15 ~~business~~ days following notice from the utility.

Commented [ML66]: Using business days is confusing and significantly extends the process. Stick with regular days.

Commented [ML67]: Consistent with FCC and other states, the inspection is not required and therefore should be the utility's cost if it chooses to perform it.

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: Overlashing 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.

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 in a notice received pursuant to 220 CMR 45.05(4)(a) ~~within 15 business days of receipt of such notice~~. 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).

(2) Alternative Dispute Resolution. 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 informal process established by the Department of Public Utilities and the Department of Telecommunications and Cable and outlined in any Memorandum of Agreement between the two agencies.

Commented [ML68]: Not a reasonable time to prepare such a petition

45.15: Formal Complaint Procedure

(1) 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: Formal Complaint Procedure. Each agency will assign a separate docket number to the filing, and any procedural requirements, rulings, and orders will be jointly issued by both agencies.

(2) 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 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

Commented [ML69]: 220 CMR 1.04(1)(b) and shall be accompanied by: (1) a cover letter describing the filing

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;
    (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;
    (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.

(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.

~~(1)~~(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.

(3) Expedited Dispute Resolution. The Departments will adjudicate any disputes regarding alleging denial of access to a pole or poles or a violation of the deadlines for action in accordance with the following expedited dispute resolution process.

(a) Activities Prior to Filing a Complaint -- Complainant must call the contact for the party with whom there is a dispute and give notice that they are planning to file a complaint with the Rapid Response Team (RRPT) the next business day.

(b) Filing Complaints

1. Complainant files Complaint electronically to the RRPT and the responding party contact. The filing must contain the appropriate caption for the Complaint (name of company and date of filing), and the actual Complaint must be a document attached to the email.
2. A Complaint must contain sufficient information to indicate:
   (1) the facts underlying the Complaint;
   (2) the harm which is resulting or could result to the Complainant due to the situation;
   (3) a description of the steps which the parties have taken to resolve the situation prior to the filing of the Complaint; and
   (4) whether or not Complainant is requesting a preliminary finding. The Complainant must also indicate the times both parties will be available for a conference call within 2 business days after the Complaint is filed.

(c) Response to Complaint

1. Respondent acknowledges the by email. The acknowledgement and any response must be emailed to the RRPT and the Complainant. The Respondent may:
   (1) respond to the factual issues in the Complaint;
   (2) argue the Complaint should be dismissed or is otherwise not ripe for review; or

2. The RRPT will schedule a time for the Preliminary Conference Call within 2 business days of the date when the Complaint is filed.

(d) Preliminary Conference Call and Intermediate Dispute Resolution Process

1. Preliminary Conference Call: The following may occur:

(1) Respondent may provide oral response to Complaint;

(2) Deadline established for written response, if appropriate;

(3) RRPT may request additional information from each party and set a schedule for its production;

(4) RRPT may schedule follow-up telephone conference among the parties;

(5) RRPT may issue a Preliminary Finding or dismiss the complaint; either party may appeal to the Commission an adverse Preliminary Finding or dismissal;

(6) The issue may be resolved to the satisfaction of both parties.

2. Follow-up conference calls will be held at a time determined by RRPT and the following may occur:

(1) Parties will update RRPT on progress since last call;

(2) Parties will discuss information provided in response to any RRPT requests;

(3) RRPT may issue a Preliminary Finding or dismiss the Complaint; either party may appeal to the Commission an adverse Preliminary Finding or dismissal;

(4) The issue may be resolved to the satisfaction of both parties; or

(5) RRPT may request written comments and/or schedule a Notice of Decision Call.

(e) Notice of Decision and Final Order

1. If required by RRPT, a final conference call is held and the following may occur:

(1) RRPT hears closing argument from parties and issues oral decision.

(2) RRPT hears closing argument from parties and schedules time for written decision.

2. Within 7 business days of the filing of the Complaint, the RRPT will issue a final written decision (Final Order). Unless stayed by RRPT, the Final Order remains in effect pending appeal.

3. Within 5 business days after written decision is issued, a party may:

(1) Appeal the Final Order to full Commission.

(2) Request a stay of the Final Order by the Commission pending appeal.

~~(3)~~(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.

~~(4) 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 such presiding officer~~

Commented [ML70]: This language would allow any complaint to be transformed into a rulemaking, thereby depriving the complaining attacher of an ability to obtain prompt relief, which will often mean preventing timely deployment of networks and services.

~~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.~~

~~(5)~~(4) 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.

~~(6)~~(5) 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.

~~(7)~~(6) 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.

~~(8)~~(7) 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.

Commented [ML71]: This language would allow any complaint to be transformed into a rulemaking, thereby depriving the complaining attacher of an ability to obtain prompt relief, which will often mean preventing timely deployment of networks and services.

Commented [ML72]: The rules should avoid turning every pole complaint into a broad public proceeding which will deprive the complaining attacher of an ability to obtain prompt relief, which will often mean preventing timely deployment of networks and services

~~(9)~~(8) 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.

~~(10)~~(9) 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.

(11) 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 but only in extraordinary circumstances 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 or existing licensee shall not be subject to these time limits.

Commented [ML73]: Time limits should not be limited to new attachers. Action must also be timely on complaints by an existing attacher

(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.

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

Commented [ML74]: 47 CFR 1.1408(a).

A utility that engages in the provision of telecommunications services or cable ~~television~~ services as defined in 47 U.S.C. §522(6) 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.

45.17: ~~Annual~~ Informational Filings and Website Postings

(1) In a docket designated by each agency, Utilities shall semi-annually submit ~~an~~ informational ~~filing~~filings with both the Department of Public Utilities and the Department of Telecommunications and Cable on or before ~~July~~April 1 ~~in a docket designated by each agency~~for the prior six-month period of July – December, and on or before October 1 for the prior six-month period January – June.

(a) Content. The informational ~~filing~~filings 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;
   (4) ~~as of December 31 of the preceding calendar year:~~identification of the web address(es) that provides with access to the information required pursuant to 220 CMR 45.17(2).
2. For the applicable six-month period:
   (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 any changes to the list during that period; and
   (2) a list of the annual sole- and jointly-owned pole, duct, and conduit attachment rates charged by the ~~utility~~Utility for telecommunications, wireless, cable television, and, if applicable, EVSE attachments, the Utility's pole application fee(s) and per pole survey fees and Unit Cost schedule of fees for pole related work, and any changes to the rates or fees during that period;
3. for the preceding calendar year through December 31, a spreadsheet that identifies:

Commented [ML75]: For reference see CT PURA Decision in 19-01-52 RE01, Orders 8, 12.

(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~~For each application ~~received, categorized~~, grouped by application size, a spreadsheet that identifies:

(a) the date the application was received by the ~~utility;~~ Utility and the ~~date on which all work included~~number of poles in the application ~~was~~;

(b) the category of attachments (i.e., wireline telecommunications, wireless telecommunications, cable television, municipal, EVSE and Other) associated with the application;

~~(a)~~(c) the number of poles surveyed and the date(s) on which the Utility (i) completed ~~or is expected to be~~its survey, (ii) completed preparation of any make ready estimate, and (iii) reached concurrence with a joint-owning Utility on the scope of make ready work;

~~(b)~~(d) ~~the amount of time that elapsed between receipt of the application by the utility and the date~~the dates on which ~~all work included in the application was~~the Utility started and completed make ready work, if applicable;

~~(c)~~ the ~~total~~ number of poles ~~included in the application;~~

~~(d)~~(e) ~~the number of poles surveyed by the utility~~with requiring simple versus complex make-ready;

~~(e)~~(f) whether the ~~licensee~~applicant elected OTMR and whether the ~~utility~~Utility approved the OTMR; and

~~(f) the number of poles with completed simple versus complex make-ready;~~

(g) the number of poles requiring replacement and replaced as a result of the request~~, and the number of double poles remaining; and~~.

(h) the number and type of attachments (i.e., wireline telecommunications, wireless telecommunications, cable television, and municipal) associated with the request; and

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) Contacts at the utility where Licensees may obtain information concerning access to poles, conduits and rights of way and links to application forms or copies thereof.

~~(a)~~(b) a current list of approved contractors identified in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready;

~~(b)~~(c) 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;~~EVSE attachments if applicable, the application fees for poles and conduit, per pole survey fees and Unit Cost schedule for make ready work.

~~(c)~~(d) a current list of, and links to pole, duct, and conduit attachment agreement templates utilized by the utility, as well as any associated instructional and informational guides~~, if available~~ related to the templates;

~~(d)~~(e) links or details on relevant safety and operational guidelines of the utility applicable to pole attachment and conduit access applications; and

~~(e)~~(f) appropriate recipient and contact information at the utility for pole attachment and conduit access application submittals and questions.

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.

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