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

In the Matter of the Petition of CRC Communications, LLC d/b/a GoNetspeed for a Rulemaking Proceeding to Amend 220 CMR 45.00: Pole attachment, duct, conduit and right-of-way complaint and enforcement procedures	D.T.C._____ D.P.U._____

PETITION FOR RULEMAKING

Pursuant to M.G.L.A. 30A, § 4, 220 CMR 2.02, and 207 CMR 2.01, CRC Communications, LLC d/b/a GoNetspeed ("GoNetspeed") hereby petitions the Department of Telecommunications and Cable ("DTC") and the Department of Public Utilities ("DPU") (jointly, "the Departments") to initiate a rulemaking to amend Title 220 CMR 45.00 ("Part 45") to codify regulations that will ensure that all broadband providers, including Massachusetts Broadband Equity and Deployment ("BEAD") subgrantees, have timely and non-discriminatory access to Massachusetts poles, ducts, conduits, and rights-of-way. In Massachusetts today, it takes four years from when a pole attachment application is filed until an attachment can be made, compared to a matter of months in neighboring states, including Connecticut, Maine, and New York. Massachusetts make-ready costs also dwarf those of other northeast states. These delays and cost-overruns are thwarting the state's policy interests in ensuring high quality, affordable broadband and threaten to derail the Commonwealth's once-in-a-generation opportunity to use $147 million in federal BEAD funding to close the state's digital divide. GoNetspeed urges the Departments to adopt its attached proposed Part 45 amendments, which are based on rules used successfully in nearby certified states, where private and publicly funded broadband providers are able to leverage existing utility infrastructure to provide superior broadband connectivity at competitive prices.

I. INTRODUCTION

As long recognized by courts, legislators, and regulators, communications companies require access to utility poles to construct their networks.[1] To this end, in 1978, Congress established Section 224 of the Communications Act,[2] directing the Federal Communications Commission ("FCC") to regulate the attachment of cable television facilities to utility poles in states that had not themselves certified to effectively regulate pole attachment rates, terms and conditions. That same year, Massachusetts adopted G.L. c. 166, § 25A ("Section 25A"), directing the then Department of Public Utilities ("MDPU") to, *inter alia*, "determine and enforce reasonable rates, terms and conditions of use of poles or of communication ducts or conduits of a utility for attachments of a licensee in any case in which the utility and licensee fail to agree."

Rather than adopt rules delimiting specific terms and conditions of access, the MDPU, like the FCC at the time, chose to regulate pole attachments pursuant to Part 45's complaint procedures. Since then, however, the Departments (and their predecessor agencies), *unlike the FCC*, have addressed only a handful of fact-specific pole attachment complaints. While early complaint cases established important precedents for ensuring that pole attachment rental rates do not exceed reasonable, cost based amounts, nearly 50 years after Section 25A was adopted, Massachusetts still lacks effective regulations governing the non-rate terms and conditions of access.

This complaint-driven regulatory approach has been particularly ineffective since the Departments inherited shared jurisdiction over pole attachments in 2007. The Departments'

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[1] *See Nat'l Cable & Telecomms. Ass'n v. Gulf Power Co.*, 534 U.S. 327 (2002) (recognizing poles as essential to communications network deployment) ("*NCTA*"); *see also Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, 26 FCC Rcd. 5240, 5377-78 (2011) ("**Utility poles are essential to providing broadband service**, wired and wireless, because that's where communications companies string cables and, increasingly, place wireless antennas.") (emphasis added) (hereinafter "*FCC 2011 Order*").

[2] 47 U.S.C. § 224 ("Section 224").

Memorandum of Agreement governing their shared regulation of pole attachments established a process for adjudicating complaints that assigns one department as decision maker, while the other is free to intervene in the case as an advocate. Not surprisingly, given the Departments' inherently different regulatory charges, this process has resulted in the DPU (primarily as an advocate) espousing entirely different pole attachment policies than the DTC (primarily as adjudicator), creating a void in effective regulation and leaving pole owners to act with impunity. Today, Massachusetts pole owners refuse to commit to pole access timelines, to consider time saving attachment methods used successfully in neighboring states, or to work cooperatively with attachers to facilitate cost-effective deployments. As a result, it is not currently possible to deploy green-field broadband deployments in Massachusetts.

As detailed by GoNetspeed in numerous pleadings submitted in DTC Docket 22-4 to the Departments over the last several years, it currently takes years to deploy broadband in Massachusetts, while it takes only months in neighboring states that have adopted effective pole attachment regulations, including Connecticut, Maine, and New York, or in states governed by the FCC's rules, such as Rhode Island. Additionally, the lack of reasonable limitations on make-ready charges has resulted in sky high make-ready costs, creating further pole access delays as would-be attaching entities are forced to chase down elusive pole owner pricing detail so they can consider less costly alternatives, which the Commonwealth's pole owners then refuse to allow. The lack of effective regulation has left Massachusetts residents, businesses, and institutions with limited options (in some case none) for reliable and affordable high speed broadband and imperils the use of BEAD funding, thereby undermining Massachusetts policy goals for broadband across the Commonwealth.

Indeed, as recognized by the Commonwealth's BEAD administrator, the Massachusetts Broadband Institute ("MBI"), "Massachusetts is at a pivotal moment with a unique opportunity to drive transformative change in digital equity."[3] However, MBI also recognized that BEAD subgrantees may have trouble meeting BEAD's grant condition to commence serving customers within four years of receiving funding because of delays in the pole attachment permitting and make-ready processes.[4] At the same time, MBI has encouraged BEAD applicants to use existing utility poles and conduit "to lower the overall cost and requested funding of deployment projects."[5]

In addition to using BEAD funding to eliminate broadband coverage gaps, MBI also seeks to improve broadband quality and adoption rates. According to MBI, high internet subscription costs are the largest barrier to in-home internet adoption.[6] Reduced deployment costs that facilitate competitive FTTH deployments will ensure that lower priced alternatives are available. Massachusetts has consistently promoted the development of efficient competition in the telecommunications markets in Massachusetts as a means of keeping services affordable for consumers.[7] It is time to renew that commitment.

GoNetspeed urges the Departments to open a rulemaking for the purpose of amending Part 45 to include specific terms and conditions of pole attachment that are currently in place in

[3] MBI BEAD Initial Proposal Vol. II at 4.

[4] *Id.* at 31 ("All subgrantees that receive funding from the BEAD Program must complete the planned broadband network and begin providing services to customers within four years of receiving the subgrant from MBI. MBI recognizes the timeframe for project completion will be dependent on acquisitions of permits and make-ready licenses, the timing of which is partially beyond control of the applicant.").

[5] *Id.* at 74.

[6] *Id.* at 6.

[7] *See Verizon New England, Inc.*, No. D.T.E. 01-31, 2002 WL 1969381 (May 8, 2002) (examining whether Verizon faced sufficient competition to ensure that, in the absence of regulation, it would keep rates to just and reasonable levels).

neighboring northeastern states. To this end, GoNetspeed has proposed rules, set forth in Exhibit A ("Proposed Rules") that would, *inter alia*:

- Establish defined timelines for processing pole attachment applications and performing field surveys, engineering and make-ready work;
- Enable attachers to supervise qualified contractors to perform surveys, engineering and make-ready work when pole owners lack the resources to conform to established timelines;
- Facilitate the use of time saving attachment techniques that may be used to avoid premature pole replacements as well as the use of temporary attachments;
- Adopt One-Touch Make-Ready rules that enable attachers to simultaneously perform field surveys and make-work in the communications space provided they can do so without damaging the existing facilities or causing a service outage;
- Adopt streamlined pole access processes for overlashing and service drops;
- Impose limits on the charges that pole owners may assess to attachers for survey and make-ready work; and
- Include other benefits, such as information sharing, clearer transfer timelines and tagging requirements that will benefit all pole owners and attachers alike.

Unless the Departments take action to amend and supplement the Commonwealth's pole attachment regulations, the current pole access delays will only worsen as BEAD fund recipients place increasing demands on pole access. The time for action is now. If Massachusetts is to reach its goals of ubiquitous, high quality, affordable broadband, Part 45 must be amended to adopt rules ensuring timely, affordable pole access.

II. Background of Pole Attachment Regulation in Massachusetts

1. In 1978, following the enactment of Section 25A, Massachusetts became one of the first states to certify its authority to regulate pole attachments to the FCC.[8] Six years later, in

[8] *See* Letter from Paul F. Levy, Chairman, Massachusetts Department of Public Utilities, to James M. Talens, General Attorney, Federal Communications Commission, at 1 (Sept. 1, 1978); Letter from John F. Nestor, III, Director, Telecommunications Division, Massachusetts Department of Public Utilities, to

response to a petition by the New England Cable and Television Association, Inc. to adopt rules governing pole attachment rates, terms, and conditions, the MDPU adopted procedures pursuant to which cable operators could challenge a utility's rates, terms, or conditions as unreasonable through a complaint proceeding.[9]

2. In the 1990s, in two separate complaint proceedings, the MDPU and its successor agency, the DTE, established the Commonwealth's conduit rate formula, which was ultimately adopted by the FCC,[10] and the Commonwealth's formula for setting pole attachment rates, which is still in use today.[11] At that time poles were less crowded and the primary attacher concern was simply the amount of recurring rental rates, an issue better suited to adjudications handled by a single department. Times have since changed.

3. Following enactment of the Telecommunications Act of 1996, in 2000, the DTE amended Part 45 to incorporate changes to Section 224, including by expanding its rules to cover telecommunications carriers, creating a non-discriminatory right of access, and establishing basic cost-causation principles for non-recurring pole attachment charges, but otherwise retained its complaint-driven regulatory model.[12] Despite the Commonwealth's commitment to encouraging

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Margaret Wood, Esq., Federal Communications Commission (filed Jan. 10, 1985); *Petition of New England Cable Television Association, Inc. requesting adoption of regulations in order to provide CATV services, the CATV operators install wires, cables and other equipment upon poles, and in communications ducts and conduits owned or controlled by utilities,* D.P.U. 930, Order (July 18, 1984).

[9] *See* D.P.U. 930 at 12.

[10] *Greater Media, Inc. v. New England and Telegraph Company,* D.P.U. 91-218, 1992 WL 159931 (Mass. D.P.U.), 133 P.U.R.4th 14, at *20 (Apr. 17, 1992), *aff'd, Greater Media, Inc. v. Dep't of Pub. Utils.*, 415 Mass. 409, 421, 614 N.E.2d 632, 639 (1993); *Amendment of Rules and Policies Governing Pole Attachments,* Report and Order, 15 FCC Rcd. 6453 ¶ 80 (2000) (adopting conduit half-duct presumption).

[11] *In re Cablevision of Bos., Inc.*, No. D.P.U. 97-82, 1998 WL 35235111 (Apr. 15, 1998) (The DTE's methodology was based on the federal approach used by the FCC. The DTE further developed its pole attachment rate formula in DTE Docket 98-52, *A-R Cable Serv. Inc. et al. v. Mass. Elec. Co.*).

[12] *Order Establishing Complaint and Enforcement Procedures to Ensure That Telecommunications Carriers and Cable System Operators Have Non-Discriminatory Access to Utility Poles, Ducts, Conduits, and Rights-Of-Way and to Enhance Consumer Access to Telecommunications Services,* D.T.E. 98-36-A,

"efficient competition in all telecommunications markets in Massachusetts,"[13] the widely anticipated proliferation of competitive local exchange carriers ("CLECs") did not come to pass, in part due to CLECs' inability to recover massive capital investments in building fiber networks. As such, Part 45 remained untested as a means of effectively managing the state's pole attachment needs.

4. In 2008, following the division of the DTE into two separate regulatory bodies the prior year, the Departments entered into a Memorandum of Agreement ("MOA"), which established their "shared" jurisdiction over pole attachments.[14] However, each Department remained primarily responsible for consumers of services subject to their separate jurisdictions – electric rate payers for the DPU, and cable and telecommunications consumers for the DTC. Since then, in terms of regulating pole attachments, the Departments have mostly been at loggerheads, achieving, at best, a regulatory static equilibrium, despite the DTC's having publicly supported the FCC's five-stage pole access timelines in 2010,[15] and its later recognition of the "public interest

2000 Mass. PUC LEXIS 21, at *1 (July 24, 2000) (hereinafter "*Complaint and Enforcement Procedures Order*"). *See also In re Oxford Networks—Request for Commission Investigation into Verizon's Practices and Acts Regarding Access to Utility Poles*, Dkt. No. 2005-486, 2006 WL 4091227, Order at 9 (Oct. 26, 2006) (hereinafter "*Oxford Order*").

[13] *In re Verizon New England, Inc.*, No. D.T.E. 01-31, 2002 WL 1969381 (May 8, 2002).

[14] Memorandum of Agreement between the Department of Public Utilities and Department of Telecommunications and Cable regarding the regulation of attachments to utility poles, duct, and conduit pursuant to G.L. c. 166, § 25, and double poles pursuant to G.L. c. 164, § 34B, available at the following link: Memorandum of Agreement. . *See also* Pole Attachment Memorandum of Agreement – 8th Extension. In 2010, the DTC updated Massachusetts certification to regulate pole attachments with the FCC. *See* Letter from Kajal K. Chattopadhyay, General Counsel, Massachusetts Department of Telecommunications and Cable to Marlene H. Dortch, Office of the Secretary of the Federal Communications Commission, at 1 (Aug. 25, 2010).

[15] *See* DTC Comments in WC Docket No. 07-245, *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 11864, 11880-87 (2010).

in ***increased access to poles***,"[16] and, most recently, Massachusetts' recognition of the key role of utility infrastructure in achieving ubiquitous broadband.[17]

5. Indeed, even after the COVID-19 pandemic made broadband essential for accessing basic human needs, including telehealth, remote work, and distance learning, in 2021 the Departments chose to forgo adoption of much needed changes to their pole attachment regulations,[18] despite calls by the Commonwealth's then-largest telecommunications carriers, including Verizon,[19] to adopt a one-touch make-ready ("OTMR") solution and other pole access timelines and self-help remedies,[20] and the Commonwealth's adoption of ARPA COVID recovery legislation (codified as Chapter 102 of the Acts of 2021),[21] which created a $50 million fund to help bridge the Commonwealth's digital divide by facilitating broadband and internet access.

6. In recognition of the critical need to facilitate access to broadband services, in 2022, Michael Owens, a former Braintree Town Councilor observed:

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[16] Final Order, *CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.*, DTC Docket 22-4 (Oct. 11, 2022) ("Phase I Final Order") at 20 (emphasis added).

[17] MBI BEAD Initial Proposal Volume II at 74 ("MBI encourages applicants to use existing infrastructure to lower the overall cost and requested funding of deployment projects. The scoring criteria for Minimal BEAD Program Outlay incentivizes the reduced cost of deployment, which among other factors, can be achieved by leveraging existing infrastructure where possible.").

[18] *Joint Investigation by the Dep't of Pub. Utilities & the Dep't of Telecommunications & Cable, on Their Own Motions, Instituting A Rulemaking Pursuant to Exec. Ord. No. 562 to Reduce Unnecessary Regul. Burden*, G.L. C. 30a, S 2, 220 CMR 2.00, & 207 CMR 2.00, to Amend 220 CMR 45.00, DTC 19-4-A, DPU 19-76-A, 2021 WL 5865483, at *1 n.1 (Dec. 7, 2021) (hereinafter "*Joint Investigation*").

[19] Reply Comments of Verizon New England Inc., *Joint Rulemaking Pursuant to Executive Order No. 562 to Reduce Unnecessary Regulatory Burden to Amend 220 CMR 45.00*, DTC 10-4, DPU 19-76 (2019) (urging Departments to adopt FCC rules for OTMR, access timelines, use of contractors and overlashing).

[20] *Joint Investigation* at *17-*25 (reviewing comments filed by Verizon New England, Inc., The New England Cable & Telecommunications Association, Inc. ("NECTA"), CenturyLink Communications, LLC, Broadwing Communications, LLC, CenturyLink Public Communications, Inc., Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., Level 3 Communications, LLC, Level 3 Telecom Data Services, LLC, and WilTel Communications, LLC, and ExteNet Systems, Inc. "ExteNet")).

[21] https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter102 .

> Our existing infrastructure for providing internet is the utility poles that already physically connect remote homes and businesses to the broader grid. ***The most efficient way to get a community online is for broadband hardware to be attached to these utility poles***. This is where the hurdle to universal access exists.… ***[T]here is no functional, consistent process governing access to poles***.[22]

7. Even when provided an opportunity to address the Commonwealth's unacceptable pole access delays and extremely high make-ready costs in a complaint proceeding filed by GoNetspeed, the Departments took diametrically opposed positions, thereby preventing GoNetspeed from deploying hundreds of miles of planned FTTH network to western parts of Massachusetts.

8. In the meantime, Massachusetts' certified neighboring states have all embraced a form of the FCC's OTMR rules as well as the FCC's timelines and self-help remedies including Maine,[23] Connecticut,[24] New Hampshire, [25] Vermont,[26] New York[27] and Pennsylvania.[28] Pole access in Rhode Island is governed by the FCC, including OTMR and other pole access timelines, self-help remedies and make-ready cost limitations.

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[22] https://commonwealthbeacon.org/opinion/utility-poles-key-to-internet-access/ (emphasis added).

[23] *See* 65-407 C.M.R. ch. 880, § 2 (setting forth reasonable terms and conditions for access to utility poles)

[24] *See* PURA Investigation of Developments in third-Party Pole Attachment Process – Make-ready, Docket No. 19-01-52RE01, Decision (May 11, 2022).

[25] N.H. Code Admin. R. En 1303.01 – 1303.13 Access to Poles.

[26] 10-3 Vt. Code R. § 3.700 Pole Attachments

[27] *Case 22-M-0101 - Proceeding to Review Certain Pole Attachment Rules*, Order Adopting Modifications to the 2004 Policy Statement on Pole Attachments and Related Proceedings (NY PSC July 22, 2024) (https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=22-M-0101) (hereinafter "*NY PSC 2024 Revision of 2004 Policy Statement*").

[28] Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission, L-2018-3002672, Final Rulemaking Order (entered Sept. 3, 2019).

9. As a result, Massachusetts has fallen far behind its northeastern neighbors, the vast majority of which have updated their pole attachment regulations in the last several years, putting the Commonwealth at a competitive disadvantage.[29]

10. Unless the Departments act cooperatively to amend Part 45 by adopting clear access timelines and make-ready cost controls, including the promotion of cost and time-saving construction techniques, investor-backed broadband providers will necessarily reconsider investing in building competitive FTTH networks in Massachusetts and millions of dollars in federal funding earmarked for broadband deployments will be put at risk.

III. Part 45 Must be Updated to Address the Pressing Demands of Broadband Deployment in Massachusetts

11. It is no longer sufficient for the Departments to rely upon Part 45's complaint-driven process for regulating pole attachments. The Departments, which have independent mandates to protect the needs of different constituents, have been unable to reach consensus on critical pole access matters since assuming shared regulatory responsibility in 2008.[30] In the last several complaint cases brought to the DTC, the DPU has intervened as a party to advocate ***against*** the positions being advanced by the state's broadband providers.[31] Most recently, the DPU, after

[29] *See infra* at 70 (discussing recent pole attachment changes by Maine, Vermont, New Hampshire, Connecticut, New York and Pennsylvania). Legislation has been introduced to rectify the Departments failure to act, but is still in early stages of consideration. *See* Massachusetts House Bill No. 3208, presented by Angelo J. Puppulo, Jr., and companion Senate Bill No. 2133, presented by Adam Gomez.

[30] While the Departments agreed to extend the scope of Part 45 to include wireless providers, *seeOrder Establishing Complaint and Enforcement Procedures to Ensure that Telecommunications Carriers and Cable System Operators have Non-Discriminatory Access to Utility Poles, Ducts, Conduits, and Rights-of-Way and to Enhance Consumer Access to Telecommunications Services,* D.T.E. 98-36A, at 20-24 (July 1, 2001), and municipal lighting companies, and to clarify the applicability of its rental rate formulas to municipal lighting authorities, s*ee Comcast of Massachusetts III, Inc. v. Peabody Municipal Light Plant,* D.T.C. 14-2, at 1, 14 (Sept. 3, 2014), they have not established effective rules governing terms and conditions of attachment.

[31] *See, e.g.*, DPU Notices of Intervention in DTC Docket 22-4 (June 10, 2022) and DTC Docket 18-3 (June 3, 2022).

agreeing that the DTC should preside over a pole attachment complaint filed in DTC 22-4 and intervening in the case as a party, questioned the DTC's competency to make decisions regarding pole access due to its "limited expertise" and threatened to terminate the parties' MOA if the DTC did not submit to the DPU's demands.[32]

12. GoNetspeed, which has invested millions in efforts to deploy broadband to Western Massachusetts, has been told it must reapply to attach to thousands of poles because data collected in the joint pole owners' two sets of surveys had become stale during the pendency of the case – a case that would never have been necessary but for the pole owner's misrepresentations concerning their allowance of boxing. National Grid, apparently emboldened by the DPU's backing, even refused to provide the itemized make-ready cost detail ordered by the DTC. Part 45's single case approach has pitted the Departments against each other to the detriment of the Commonwealth's broader policy interests, highlighting the inherent problems of adjudications relative to rulemakings.[33] Four years have passed during which time privately funded, competitive networks could have been built in Massachusetts but for the lack of effective regulation.

13. Clearly, the Part 45 complaint-driven process is inadequate to address the scope of changes needed to promote the Commonwealth's important policy-driven goals of providing ubiquitous high quality, affordable broadband and closing the digital divide. The Departments

[32] DPU Post-Order Letter Brief to S. Green from K. Phillips, D.T.C. Docket 22-4 (June 7, 2024), at 8. (The DPU argued "[i]n light of the DTC's limited jurisdiction and subject matter expertise relating to the electric distribution network and its findings [allowing opposite side construction] in this matter to date in contravention of the DPU's recommendations, the DTC : . . cannot appropriately address or consider the interests of electric ratepayers. . . ." In closing, the DPU states it "anticipates revisiting the terms of the MOA, which is set to expire next February, necessitating joint adjudication of pole attachment complaints going forward.").

[33] Jeffry J. Rachlinski, *Rulemaking Versus Adjudication: A Psychological Perspective*, 32 Fla. St. U. L. Rev. 529 (2005) (explaining that "a single-case perspective … might blind the decisionmaker to the broader policy implications" and that "[f]actors that should not affect broader policy might influence the outcome of an individual case ... perhaps leading to excessive attributions of responsibility to individuals rather than circumstances beyond individuals' control").

should act quickly to codify rules establishing reasonable terms and conditions for accessing poles in Massachusetts, including enforceable timelines, guidelines for the use of alternative attachment techniques, and rules limiting make-ready and other non-recurring charges. To this end, GoNetspeed's Exhibit A includes Proposed Regulations that would amend Part 45 to incorporate rules adopted by neighboring certified states and the FCC, for the Departments' consideration.

A. Part 45 Should Be Amended to Include Enforceable Pole Access Timelines, Self-Help Remedies, OTMR for Simple Make-Ready Work, Rules Governing Temporary Attachments and Streamlined Processes for Overlashing and Service Drops

14. Timely pole access is critical to deployment of economically sustainable broadband networks. The time it takes a broadband company to deploy network is a key factor in the company's long-term viability. As recognized by NTIA, "longer build times increase costs and delay revenue generation."[34] In addition, BEAD funding is conditioned on meeting deployment milestones and **providing broadband services** within **four years** of the date funds are dispersed.[35]

15. Currently, Massachusetts pole attachment regulations include only a single requirement with regard to timing of access – "[i]f access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day."[36] Despite direction from the DTE in its 2000 Order that "utilities must respond to all requests for access

[34] *See* Economics of Broadband Networks, NTIA, at 2 (Mar. 2022).

[35] *See* NAT'L TELECOMMS. & INFO ADMIN., *Notice of Funding Opportunity – Broadband Equity, Access, and Deployment Program*, at 18 (May 12, 2022) ("As established in Section 60102(h)(4)(C) of the Infrastructure Act, subgrantees that receive BEAD Program funds for network deployment must deploy the planned broadband network and begin providing services to each customer that desires broadband service within the project area not later than four years after the date on which the subgrantee receives the subgrant from the Eligible Entity.").

[36] 220 CMR § 45.03(2).

within 45 days,"[37] Massachusetts pole owners have interpreted this rule to mean they must only *deny* access in 45 days, and that there are no additional timelines with which they must comply.[38]

16. While pole owners are free to adopt access timelines, the Commonwealth's largest utilities have not. Instead, these utilities have established long, drawn-out pole attachment processes, which require would-be attachers to file separate applications with each joint-pole owner, pay each joint pole owner to separately survey and engineer the same pole, wait months for the pole owners to reconcile their separate survey and engineering results and years for make-ready work to be performed. As a result, in Massachusetts today, it takes over a year to obtain survey and engineering results, and approximately **four years** before make-ready work is complete and attachments can be finalized.

17. By comparison, GoNetspeed was able to build 1,500 route miles to provide service to approximately 140,000 residents in Connecticut in 24 months. Similarly, GoNetspeed built its network in Maine, consisting of 1,000 route miles passing 90,000 homes, in 24 months. Not surprisingly, the key difference in these states is the ability to expeditiously access poles upon just and reasonable terms and conditions.

18. The FCC first adopted self-help remedies for surveys and communications space make-ready work in 2011.[39] It later expanded its self-help remedies to include work in the power supply space and adopted the OTMR regime in 2018.[40] Since that time, all of Massachusetts'

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[37] *Complaint and Enforcement Procedures Order*, 2000 Mass. PUC LEXIS 21, at *65.

[38] *See* DTC Docket 22-4, National Grid Reply Brief at 14 (June 14, 2024) ("Massachusetts pole attachment regulations do not impose an obligation on pole owners to conduct surveys and other make-ready related determinations according to a fixed time timeline.").

[39] *See FCC 2011 Order*, 26 FCC Rcd. 5240 (2011).

[40] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705 ¶¶ 13-139 (rel. Aug. 3, 2018) ("*Third Report and Order*").

certified state neighbors have adopted a variation of the FCC's pole access timelines, self-help remedies and/or OTMR.[41]

19. Massachusetts regulations not only lack pole access timelines, they fail to provide any redress for attachers to remedy the delays in access, as they lack an OTMR process, self-help remedies, expedited deployment processes for overlashing and service drops, or effective guidance concerning time and cost saving attachment techniques or temporary attachments.

20. Enforceable timelines, coupled with attacher driven remedies for delays, like OTMR, self-help and temporary attachments, are long overdue. Without such rules, an attacher seeking to challenge a pole owner's failure to provide timely pole access has no choice but to engage in time consuming and costly litigation, and bear the burden of proving the unreasonableness of delays. Thus, any savings in time or money won in litigation can be easily wiped out by the time and costs expended in the litigation, leaving an attacher with no ability to access poles in a reasonable time for a reasonable cost.

21. This effective denial of access not only violates Section 25A, it leaves Massachusetts residents, businesses and institutions without access to the competitively priced, superior internet connectivity options they deserve.

22. The time is now to rectify these deficiencies. GoNetspeed urges the Departments to promptly institute a rulemaking to update its pole attachment regulations with these processes.

(1) The Departments Should Amend Part 45 to Include Enforceable Access Timelines

23. The FCC recognized the benefits of a fixed timeline for pole access over a decade ago, stating that the lack of consistency in access to poles creates a risk of unforeseen delays and

[41] *See infra* at notes 50, 55, 56 and 70.

uncertainty that deters investment.[42] The FCC chose to codify its five-stage access timeline in part because an attacher may otherwise have limited redress for a pole owner's failure to provide timely access, and may decide not to pursue enforcement actions, due to time constraints, cost or desire to maintain a working relationship with the pole owner.[43] The same holds true today. Standard, fixed access timelines not only ensure prompt pole access and provide prospective attachers a degree of certainty in deployment planning, they also discourage disparate and discriminatory treatment of attachers in gaining pole access. This, in turn, reduces the need for litigation between attachers and pole owners, thereby avoiding a complaint proceeding that positions the Departments against each other.

24. The Proposed Regulations would amend and supplement Part 45 to establish time frames for processing pole attachments, from the submission of the initial application through the post-construction inspection of the completed attachment, that are substantially similar to Maine's pole attachment regulations, which also mirror many aspects of the FCC rules.[44] Field surveys would be conducted in 45-60 days, depending on the number of poles, followed 14 days later by make-ready estimates.[45] Once the scope of make-ready is agreed upon, make-ready work would be completed between 30 and 150 days, again depending upon the number of poles but also dependent on whether work is required in the power supply space.[46] Deviations from the timelines are available for force majeure events.[47]

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[42] *See 2011 FCC Order,* 26 FCC Rcd. at 5241.

[43] *Id.*

[44] *See Appendix A*, Proposed Regulations, 220 CMR 45.04(1)(g) (special provision is made depending on the number of poles in an application and exceptions for deviation from such time periods for good cause).

[45] *Id*. at 220 CMR 45.04(1)(b) and (c).

[46] *Id*. at 220 CMR 45.04(1)(d).

[47] *Id*. at 220 CMR 45.04(1)(g).

25. The FCC's multistage timeline,[48] supported by the DTC in comments filed in the FCC's rulemaking leading to the adoption of pole access timelines,[49] is a time tested and proven efficient method of facilitating pole access on a reasonable schedule.[50] Its use in the FCC regulated states, as well as the northeastern states that have adopted it or a reasonable facsimile thereof, demonstrates its successful track record in facilitating broadband deployment.[51] The Departments should follow the lead of these other regulators and adopt definitive timelines for pole access in the pole attachment regulations.

(2) The Departments Should Amend Part 45 to Include Self-Help

26. Self-help refers to the ability of an attaching entity to utilize a qualified contractor, typically approved by the pole owner, to perform pre-attachment surveys and other make-ready work, in the event a pole owner is unwilling or unable to abide by the established timelines for pole access. Rules enabling attachers to supervise qualified contractors to perform work when pole owners lack the resources to do so themselves – with appropriate limitations to ensure compliance with governing safety codes and specifications – provide an essential recourse when access is delayed, as evinced by their successful use in FCC and other certified states.

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[48] *See FCC 2011 Order,* 26 FCC Rcd. at 5244 ("The Order establishes a four-stage timeline for attachment to poles, with a maximum timeframe of up to 148 days for completion of all four stages: survey (45 days), estimate (14 days), attacher acceptance (14 days), and make-ready (60-75 days).").

[49] *See* DTC Comments in WC Docket No. 07-245, *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd. 11864, 11880 (2010) at 2-3.

[50] The FCC Rules require completion of make-ready work between 30 and 135 days, depending on whether the work is in or above the communications space on the pole and the size of the job. 47 C.F.R. § 1.1411(e)(1)(ii) and (e)(2)(ii). The utility may extend that period by 15 days, or for a longer period for "good and sufficient" cause that renders adherence to the timelines "infeasible," but must "resume make-ready without discrimination when it returns to routine operations." 47 C.F.R. § 1.1411(e)(2)(iv) and (h)(2).

[51] Maine, Ohio, Pennsylvania, and West Virginia have all adopted the FCC timelines. Others states, like New York, have adopted their own timelines. *See Order Adopting Policy Statement on Pole Attachments*, Case 03-M-0432 (Aug. 6, 2004) ("NY 2004 Policy Statement") at 3 (adopting 45-day deadline for completion of pre-construction survey from application filing date).

27. As found by the FCC, self-help remedies "speed deployment by providing a strong incentive for utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when deadlines are not met."[52] The FCC's self-help remedies aid in expediting broadband deployments by allowing new attachers to employ qualified contractors to perform necessary work if pole owners fail to meet deadlines for surveys or make-ready work.[53]

28. In Maine, self-help remedies are available for more types of work and if utilities repeatedly miss deadlines, attachers can take on not only simple adjustments but also more complex pole attachments.[54] Vermont similarly allows self-help in the power supply space.[55] And, while Maine permits utilities to maintain a list of contractors it authorizes to perform surveys and make-ready in and above the communications space, it does not require attachers to hire a contractor from the utility's list.[56]

29. GoNetspeed's Proposed Regulations include self-help remedies that would enable an attaching entity to supervise a qualified contractor, typically approved by the pole owner, in the performance of surveys or make-ready work, when the pole owner fails to meet the required timelines that are primarily based on the successful processes adopted by the FCC and Maine. Specifically, under the Proposed Regulations, the pole owner has the ability to offer a list of approved contractors and approve contractors offered by an attacher. If the pole owner does not

[52] *Third Report and Order*, 33 FCC Rcd. at 7743 ¶ 87.

[53] *Id*. at 7712-13 ¶ 14, 7743 ¶ 77 (citing 47 C.F.R. § 1.1411(i)(2)).

[54] 65-407 C.M.R. ch. 880, § 2(A)(9)-(10).

[55] Vermont P.S.B. Rule 3.708(L)(2).

[56] 65-407 C.M.R. ch. 880, § 2(A)(10).

maintain such a list an attacher may use a qualified contractor but must certify to the utility that its contractor meets minimum qualifications set forth in the rules.[57]

30. In addition, GoNetspeed has proposed a modification to the Maine rules based on a proposal currently under consideration by the FCC in its ongoing pole attachment rulemaking, to require the pole owner to notify an attacher earlier in the pole access process whether it will be able to meet the timelines so the attacher can elect self-help before too much time has passed and resources have been spent using the utility's workforce or contractors.[58] Specifically, under GoNetspeed's proposed self-help rules, within 15 calendar days of receiving a complete application, the pole owner would be required to either commit to meeting the timelines for survey completion or allow the attacher to hire a contractor to complete the survey work.[59] Similarly, within 15 days of reaching agreement with a requesting party concerning the scope of required make-ready work, the pole owners would be required to commit to meeting the applicable make-ready timelines or allow the attacher to hire a contractor to complete the make-ready work.[60] In the event a pole owner misses timelines it commits to perform, resulting in additional costs to the requesting party, it would be responsible for the requesting party's cost overruns or, in the case of missed make-ready timelines, allowing the attacher to make temporary attachments. This equitable modification protects an attacher from having to pay a pole owner for make-ready charges upfront – something all of Massachusetts pole owners require – only to learn months later

[57] *See Appendix A*, Proposed Regulations, 220 CMR 45.04 (1)(i).

[58] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 2023 WL 8803833, at *21 ¶ 56 ("*Fourth Report and Order*") (FCC Dec. 15, 2023).

[59] *See Appendix A*, Proposed Regulations, 220 CMR 45.04(1)(h)1.

[60] *Id.* at 220 CMR 45.04(1)(h)2.

that the pole owner cannot meet established timelines, forcing the attacher to identify and pay a contractor to perform all of the remaining work, all while pursuing refunds from the pole owner.

31. Both the FCC's and Maine's self-help options mitigate undue delays by pole owners while maintaining safety and compliance with NESC standards.[61] GoNetspeed urges the Departments to adopt similar self-help remedies to speed the Massachusetts deployment process, which is currently several years longer than in other jurisdictions that employ these practices.

(3) The Departments Should Amend Part 45 to Include One-Touch Make-Ready

32. OTMR provides streamlined procedures for broadband providers to efficiently manage the pole attachment process where the only work required to accommodate an attachment is "simple make-ready work" i.e., work in the communications space that is not likely to cause a service outage or involve wireless equipment. OTMR not only helps to expedite deployments, it lessens the burdens on the pole owner and other attached entities by utilizing a single qualified contractor to perform surveys and make-ready work for all "simple" make-ready– itself – in approximately 30 days start to finish.[62] As advocated by Verizon to the Departments in 2019, "OTMR reduces barriers to access, which leads to increased deployment, decreased cost for consumers, and increased service speeds, in large part by better aligning incentives than the current multi-party make-ready process."[63]

[61] *E.g.*, *Third Report and Order*, 33 FCC Rcd. at 7706 ¶ 2, 7725 ¶¶ 36, 38, 7728 ¶ 43, 7735-36 ¶ 62, 7744 ¶ 79; 47 C.F.R. § 1.1411(e)(4).

[62] 47 C.F.R. § 1.1411(j).

[63] Reply Comments of Verizon New England Inc., *Joint Rulemaking Pursuant to Executive Order No. 562 to Reduce Unnecessary Regulatory Burden to Amend 220 CMR 45.00*, DTC 10-4, DPU 19-76 (2019).

33. GoNetspeed's Proposed Regulations propose to amend Part 45 to add an OTMR process that closely adheres to the regulations adopted by Maine and the FCC.[64]

34. Under the proposed OTMR rules, after providing notice to the pole owner and impacted communications attacher, as long as the pole owner does not disagree that the work is "simple," the new attacher may opt to use qualified contractors to perform the survey and any simple make-ready work needed to prepare a pole for a new attachment in a single pole visit, thereby streamlining broadband deployment.[65] In adopting OTMR, the FCC aimed to reduce delays and encourage faster broadband expansion, particularly in underserved areas.[66] Since then, numerous certified states have followed suit, including all the Commonwealth's certified state neighbors.[67] The Departments should likewise adopt the proposed OTMR procedures to speed deployments.

(4) The Departments Should Amend Part 45 to Provide Streamlined Processes for Overlashing and Service Drops

35. Overlashing is the practice of lashing new fiber optic or coaxial cable to existing wireline attachments to extend services without constructing additional pole attachments and taking up more pole space. Communications service drops are overhead communications lines extending from a utility pole to the customer's premises. Both are needed to efficiently and promptly extend services to new customers and, in the case of overlashing, to upgrade plant.

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[64] *See Appendix A*, Proposed Regulations, 220 C.M.R. § 45.04 (1)(l), One Touch Make-Ready Option for Simple Make-Ready.

[65] *See Third Report and Order*, 33 FCC Rcd. at 7729 ¶ 45.

[66] *See id.* at 7722 ¶ 30 ("[W]e find that the significant benefits of faster, cheaper, more efficient broadband deployment from this new OTMR process outweigh any costs that remain for most pole attachments.").

[67] Several states have adopted the FCC's rules either wholesale, with minimal changes, or in part including New Hampshire, Vermont, Maine, and Connecticut. *See* N.H. Rev. Stat. Ann. § 374:34-a (adopting FCC OTMR rules); 18-1 Vt. Code R. § 8:3.708(M); 65-407 C.M.R. ch. 880; CT PURA Order 2022, App'x B § A. New York likewise adopted its own OTMR process. *See NY PSC 2024 Revision of 2004 Policy Statement* at 40-43.

36. The Departments have not established terms and conditions governing overlashing or service drops. As a result, in Massachusetts today, there is no consistency in the terms and conditions governing overlashing, which range from providing simple notifications prior to and following completion of overlashing, to terms potentially requiring an attacher to go through entire pole attachment permitting process, or service drops, which are not always addressed in the pole attachment agreements. This lack of clear rules and resulting inconsistency can also lead to confusion and disparate treatment of attachers.[68]

37. The FCC, recognizing the benefits of expedient placement of both overlashing and service drops,[69] has long prohibited pole owners from requiring pre-approval for either, but allows a pre-notification option for overlashing to enable pole owners to address possible safety concerns.[70] With regard to overlashing, the FCC recognized, "the ability to overlash often 'marks the difference between being able to serve a customer's broadband needs within weeks versus six or more months when delivery of service is dependent on a new attachment.'"[71] The FCC also determined that a utility may not charge overlashers for inspections, loading studies, or to review

[68] The only mention of service drops in Verizon's agreement is to require licensee to perform any required tree-trimming on the customer's premises to clear licensee's cable drop. Verizon Pole Attachment Agreement at 7.1.9.

[69] *See Third Report and Order*, 33 FCC Rcd. at 7729 ¶ 116 (The FCC sought to promote faster, less costly broadband deployment while addressing safety concerns relating to overlashing by providing the utility up to 15 days advance notice of such overlashing work, affording the utility the opportunity to determine, through their own engineering analysis, whether there is sufficient capacity for the requested overlash.).

[70] *See id.*; *see also* 47 C.F.R. § 1.1416; *see also Salsgiver Communications, Inc. v. N. Pittsburgh Tel. Co.*, 22 FCC Rcd. 20536, 20544, ¶¶ 24-25 (2007) (The Media Bureau previously stated that attachments to drop poles [service drops] are "adjuncts to attachments that are approved in the normal application process, and thus a utility may require notice, but not prior approval.") (citing *Mile Hi Cable Partners, L.P. v. Public Serv. Co. of Colo., Order*, 15 FCC Rcd. 11450, 11460 ¶ 19 (Cable Serv. Bur. 2000), *aff'd on review*, 17 FCC Rcd. 6268 (2002), *review denied sub nom. Public Serv. Co. of Colo. v. FCC*, 328 F.3d 675 (D.C. Cir. 2003)).

[71] *Third Report and Order*, 33 FCC Rcd. at 7761-62 ¶ 115.

a proposed overlash,[72] and may not require attachers to include equipment specifications in pre-overlashing advanced notice. [73]

38. The FCC similarly found the 30-day advanced application requirement for service drops was unreasonable, explaining that would force the company to impose a 30-day waiting period on new service requests, which may be inconsistent with franchise obligations.[74] Other New England states have likewise promoted approval-free overlashing and service drops.

39. Maine does not allow pole owners to require prior approval for overlashing or service drops, rather, an attacher must provide written post-overlash notice within 10 calendar days, allowing a pole owner 30 days to inspect construction.[75] In Connecticut, Pole owners are required to issue "overlashing authorization for up to 40 poles within 5 days of receipt [of notice,] and one working day [will be] added for each additional 15 poles requested."[76] If safety issues are identified, pole owners must correct those issues within14 additional days and issue overlashing authorization no later than 19 working days subsequent to an attacher's overlash notification (dependent upon the number of overlashing requests).[77] Like the FCC, these states prohibit prior

[72] *Id.* at 7762-63 ¶ 116 ("[A] utility may not charge a fee to the party seeking to overlash for the utility's review of the proposed overlash, as such fees will increase the costs of deployment.").

[73] *Id.* ("If after receiving this advance notice, a utility determines, through its own engineering analysis, that there is insufficient capacity on the pole for a noticed overlash, the noticed overlash would be inconsistent with generally applicable engineering practices, or the noticed overlash would compromise the pole's safety or reliability, the utility must provide specific documentation demonstrating that the overlash creates a capacity, safety, reliability, or engineering issue within the 15 day advance notice period and the overlasher must address any identified issues—either by modifying its proposal or by explaining why, in the overlasher's view, a modification is unnecessary—before continuing with the overlash.").

[74] *Salsgiver Communications*, 22 FCC Rcd. 20536 at 20544 ¶ 25.

[75] 65-407 C.M.R. Ch. 880, § 2(A)(1).

[76] *PURA Investigation into the Appointment of a Third Party Statewide Utility Telephone Pole Administrator for the State of Connecticut – Overlash Approval*, Decision, Docket No. 11-03-07RE01 (May 30, 2018).

[77] *See id.*

approval of overlashing and allow for pre or post-construction inspection of facilities to ensure NESC compliance in a reasonable time period.

40. GoNetspeed's Proposed Regulations, modeled after Maine's promotion of expedient overlashing and service drop placement, establish post-notification processes for both overlashing (within 10 days) and service drops (within 45 days).[78] A pole owner is then afforded 30 days to inspect overlashing to determine compliance.[79]

41. GoNetspeed's Proposed Regulations equitably balance the need for faster deployment of services with any possible safety concerns associated with the minimal loading incurred by overlashing facilities. The FCC explains that overlashing promotes faster deployment of services without undue interference from the pole owner and is encouraged under FCC rules to support efficient and cost-effective infrastructure deployment.[80] The Commonwealth should promote a notification-only model for overlashing and service drop placements as well in order to accelerate the deployment of broadband.

(5) The Departments Should Amend Part 45 to Facilitate Use of Temporary Attachments

42. The term "temporary attachment" describes the process of affixing facilities to a pole in a temporary location or using a temporary attachment method in advance of make-ready work, where such attachment can be made without imperiling safety. Widely accepted temporary attachment methods – all of which avoid putting a new hole in the pole – include using a messenger clamp, lag bolts or J-Hooks in accordance with Telcordia Blue Book – Manual of Construction Procedures SR-14-21. Temporary attachments are, as the name implies, intended for use on a

[78] *Appendix A*, Proposed Regulations, 220 CMR 45.04(1)(a)3; *see* 65-407 C.M.R. Ch. 880, § 2(A)(1).

[79] *Id.*

[80] *E.g.*, *Third Report and Order*, 33 FCC Rcd. at 7706 ¶ 3 ("'overlashing,' . . . helps maximize the usable space on the pole").

temporary basis and promptly should be made permanent after any required make-ready is completed.

43. Temporary attachments may be used to mitigate pole access delays, by allowing an attacher to construct its attachments prior to the completion of make-ready work, if it can do so in a safe manner that is consistent with NESC mandates. Temporary attachments have been used effectively in Connecticut and other northeast states to deploy competitive broadband networks.

44. GoNetspeed's Proposed Regulations, much like the rules in place in New York[81] and Connecticut,[82] provide attachers with the option of using temporary attachments to mitigate extended delays in the completion of make-ready work.[83] The Proposed Regulations include strict specifications, including compliance with NESC rules governing separation of communications and power facilities, and timelines for construction.[84] Additionally, the Proposed Regulations provide that temporary attachments must meet the requirements of the Telcordia Blue Book – Manual of Construction Procedures, if specified by the pole owning utility.[85]

45. The Proposed Regulations further provide that temporary attachments shall be replaced with permanent attachments (through-bolt construction at the pole owner designated

[81] The NY PSC is required to consider "new, less expensive pole attachment methods" and subsequently issued rules requiring pole owners to consider alternative attachment methods to facilitate the expansion of high-speed broadband including but not limited to pole-top attachments, strand-mounted attachments, overlashing, boxing and bracketing, extension arms, and *temporary attachments*. *See NY PSC 2024 Revision of 2004 Policy Statement* at 29 (citing N.Y. Pub. Serv. Law § 119-a(4)).

[82] Connecticut's Revised Temporary Pole Attachment (TPA) guidelines allow for temporary attachments to utility poles by third parties in the event that the pole owners cannot comply with the make-ready timeframes. PURA ordered all pole owners to adopt the TPA guidelines that PURA approved as a settlement in its Decision in Docket 18-04-20RE01, *Application of NetSpeed, LLC for Approval of Installation of Facilities Under and Over Certain Public Rights-of-Way – Pole Attachment Dispute* (Oct. 30, 2019).

[83] *Appendix A*, Proposed Regulations, 220 CMR 45.04(1)(n)1.

[84] *Id.* at 220 CMR 45.04(1)(n)2.

[85] *Id.* at 220 CMR 45.04(1)(n)3.iii.

location on the pole) within 90 days after notification that all make ready work has been completed.[86] In the event the attacher fails to remove or otherwise make permanent its temporary attachments within 90 days, such attacher loses its privilege to make additional temporary attachments until all delinquent attachments are remedied.[87] If multiple or repeated delinquent attachments are not promptly remedied then such attacher shall lose its privilege to make additional temporary attachments.[88]

46. In sum, GoNetspeed's Proposed Regulations provide a balanced approach to permitting temporary attachments, allowing attachers much needed relief from the extensive delays in performing make-ready work that currently plague the Commonwealth, thereby accelerating the deployment of services to its citizens. The proposed temporary attachment regulations are consistent with the NESC, as well as the mandates of both Section 25A and Part 45, and are rooted in a proven record for speeding deployments in Connecticut.

B. Part 45 Should Be Amended to Encourage the Use of Time and Cost Saving Attachment Methods

47. Just as the use of timelines and self-help remedies have helped to accelerate broadband deployment, the use of widely accepted alternative attachment methods may be used to avoid the most time consuming and costly make-ready work – namely, pole replacements. These methods include: (a) opposite side construction (sometimes referred to as "boxing"), a widely accepted, efficient, and cost effective construction method that utilizes the side of the pole opposite the side on which existing communications facilities are located to obtain NESC-required

[86] *Id.* at 220 CMR 45.04(1)(n)3.iv.

[87] *Id.* at 220 CMR 45.04(1)(n)3.v.

[88] *Id.*

separations between attachments;[89] (b) use of extension arms to obtain NESC-required separations between attachments; and, (c) attaching on the lowest position on the pole, when there is sufficient ground clearance below the lowest existing attachment, to avoid the need to rearrange existing facilities on the pole.

48. Lack of clear guidance on the need for pole owners to consider the use of time and cost saving attachment methods in Massachusetts resulted in GoNetspeed having to file a complaint to overcome factually inaccurate claims of Verizon and National Grid that they never allow boxing, a practice they erroneously claimed to violate the NESC.[90] After a 180-day proceeding, in which OTELCO provided scores of examples of boxing in Massachusetts and the virtues of boxing were extensively debated, the DTC reminded the parties that "there is a public interest in increased access to poles" and instructed the pole owners to allow boxing unless they could demonstrate a pole-specific, non-discriminatory basis based on generally applicable specifications that boxing could not be safely allowed.[91]

49. Despite the DTC's Order, the pole owners later effectively precluded OTELCO's use of boxing of any poles by requiring it to pay to resurvey all of the poles in its applications due to claims that the extensive survey data collected by both poles owners had become stale during

[89] Boxing is consistent with NESC standards and can be employed to meet separation requirements on poles sufficiently able to support additional load. Boxing is likewise consistent with industry practice provided in the Telcordia Blue Book. *See* Telcordia Blue Book – Manual of Construction Procedures at Figure 3-1. (2017).

[90] *See* DTC Docket 22-4, Initial Brief of CRC Communications LLC d/b/a OTELCO at 19, 29, 30 (Aug. 18, 2022).

[91] Phase I Final Order at 14-15, 20, DTC Docket 22-4 (The DTC found that boxing under the guidance of the Final Order was not inherently "inconsistent with the safety standards of the NESC" and "there is no dispute that there are in fact boxed poles in Massachusetts."); *see id*. at 15-16 (citing Verizon's admission that boxing can be done consistent with the NESC).

the pendency of the adjudication.[92] That Order is currently on appeal to the Massachusetts Supreme Judicial Court.[93]

50. In the same proceeding, OTELCO sought the ability to attach its facilities below the lowest communications attachment, where space permitted. While the DTC declined to require Verizon to allow attachments below its own,[94] the DTC did not full accept Verizon's reasoning as to why it attaches in certain circumstances above both the NESC standard and even its own heavy storm loading clearance requirements and thus encouraged Verizon to consistently attach no higher than is required by applicable clearance standards.[95]

51. Despite a lengthy complaint proceeding, the directives of the DTC have yet to result in pole owners allowing GoNetspeed to box a single pole, thereby avoiding the lengthy delay and costs resulting from replacing an otherwise perfectly adequate pole. Nor has Verizon indicated that it has re-evaluated its policy of attaching higher than necessary. Unless and until there are codified regulations in place encouraging the use of cost and time saving construction methods, and penalties for unreasonably disallowing these practices, the costs of deployment in Massachusetts will remain unreasonably and prohibitively high.

(1) The Departments Should Codify DTC's Decision in 22-4 to Allow Boxing and Establish Presumptions that Disallowance of Certain Attachment Methods is Unreasonable

52. GoNetspeed encourages the Departments to not only codify a utility's obligation to evaluate boxing under reasonable, generally applicable standards, adopt requirements to allow the

[92] *See* DTC Docket 22-4, OTELCO's Motion for Enforcement of the Final Order in DTC 22-4 (Feb. 21, 2023) (OTELCO's requests for relief in its Motion for Enforcement were ultimately denied by the DTC in its Phase II Final Order. OTELCO is currently appealing the Phase II Final Order to the Supreme Judicial Court of Massachusetts). *See* Phase II Final Order, DTC Docket 22-4 (Aug. 12, 2024).

[93] *CRC Communications LLC v. Dep't of Telecommunications and Cable*, SJ-2024-0320, OTELCO's Petition for Appeal (Sept. 3, 2024).

[94] Phase I Final Order at 26, DTC Docket 22-4.

[95] *Id.* at 29.

use of extension arms where appropriate, and allow communications attachers to utilize the lowest position on the pole, where available, they should also establish ***presumptions*** against disallowance of boxing and the use of extension arms, to ensure such requests are not unreasonably rejected, and to adopt a requirement that pole owners, on a going forward basis, are prohibited from attaching below applicable NESC clearance standards, and cannot shift any costs related to their placement of attachments higher than NESC requirements. Accordingly, GoNetspeed's Proposed Regulations, like those of Maine and New York, which seek to promote cost and time saving construction methods, include the presumption that blanket prohibitions against the use of boxing, extension arms, attachment at the lowest available position on the pole, and pole top attachments are unreasonable.[96]

53. As discussed, the DTC's Phase I Final Order in Docket 22-4 provides a reasonable and balanced approach to permitting opposite side construction of pole attachments, but it has proven to be ineffective. Due to the refusal of pole owners to reasonably evaluate boxing requests, additional action is needed to promote this cost and time saving construction technique.

54. The use of opposite side construction is a safe, efficient and cost effective construction method that speeds deployments and prevents the premature replacement of utility poles that have yet to reach the end of their useful lives. This is not only of benefit to attachers, it is a benefit to electric rate payers as well, as it will reduce unnecessary pole replacement charge that they ultimately pay for, and will ultimately provide all consumers greater access to broadband services and greater choice in providers.

55. The Department should look to the long term successful experiences of Connecticut, where broadband typically is built using opposite-side construction, and the Maine

[96] *Appendix A*, Proposed Regulations, 220 CMR 45.04(2)(a)-(c).

Public Utilities Commission, which, nearly fifteen years ago, permitted the use of opposite side construction in an adjudicatory proceeding, just as the DTC did in Docket 22-4, and also permitted the use of extension arms and the lowest pole position.

(2) The Departments Should Also Establish a Presumption in Favor of Extension Arms and Use of Lowest Available Pole Position

56. The use of extension arms (sometimes referred to as "bracketing") is the practice of placing communications attachments on metal brackets that extend from the pole to support messenger cables at the same level as existing lines attached to the pole, providing additional separation between existing attached facilities. The use of extension arms is a safe and effective means for increasing spacing between attachments to comply with NESC separation requirements, thereby avoiding costly and time consuming premature pole replacements.

57. Attaching at the lowest available pole position is another accepted method to expedite pole attachments by avoiding costly and time consuming rearrangements of existing attachments to accommodate an attachment higher on the pole. The lowest attachment on a pole is required to maintain sufficient ground clearance from the surface below (i.e., roads, farmland, water). In GoNetspeed's experience, Verizon typically occupies the lowest position on the pole, but its facilities are often placed above the minimum applicable ground clearance, leaving space for additional NESC compliant attachments to be placed below them without the need for time consuming, costly make-ready work to lower Verizon's facilities.

58. The Maine Public Utility Commission, after an evidentiary hearing and "based on a complete review and weighing of the evidence presented[ ], with substantial consideration given to the objective requirements and restrictions (or the of lack applicable restrictions) of the NESC and the Blue Book," concluded

> that several of Verizon's third-party attachment policies and requirements constitute unjust and unreasonable acts, practices and service. These involve

> Verizon's policies and requirements regarding the lowest position on the pole, the boxing of poles, the use of extension arms, and the attachment timeframes. We also find that Verizon's policies and requirements regarding boxing to be discriminatory.

As a result, the Maine Commission directed Verizon to allow the complaining attacher to affix its facilities below those of Verizon, to box poles, and to use extension arms.[97] The Maine Commission later codified the directives of this decision.[98]

59. The NY PSC rules require consideration of alternative attachment methods to facilitate the expansion of high-speed broadband,[99] "includ[ing] but are not limited to . . . boxing and bracketing, [and] extension arms . . . ."[100] Blanket prohibitions of such attachment techniques are not permitted, and denials must include a detailed rationale, citing the specific provision (including subsection) of the NESC or other safety code that is violated, and an adequate description of the specific safety, reliability, or code issue as it relates to the pole(s) at issue.[101]

60. The Department should follow the same course here. The DTC already demonstrated support of the use of opposite side construction where it can be done consistent with governing specifications. Although the DTC accepted Verizon's policy that it be the lowest

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[97] *Oxford Networks*, Request for Commission Investigation into Verizon's Practices and Acts Regarding Access to Utility Poles Investigation, No. 2005-486, Order, at 12-17 (Me. P.U.C. Oct. 26, 2006) 2006 WL 4091227, at 12-17 ("Oxford Order") (https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=22648&CaseNumber=2005-00486); *id.*, Order on Reconsideration (Me. P.U.C. Feb. 28, 2007) ("Oxford Reconsideration Order") (https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=22654&CaseNumber=2005-00486).

[98] In re Amendment to Chapter 880 – Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure, No. 2017-00247, Order Amending Rule and Factual and Policy Basis, at 25-26 (Me. P.U.C. Jan. 12, 2018) (https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=96507&CaseNumber=2017-00247).

[99] *NY PSC 2024 Revision of 2004 Policy Statement* at 29 (citing N.Y. Pub. Serv. Law § 119-a(4)).

[100] *Id.*

[101] *Id.* at 34-36.

attacher on a pole, GoNetspeed encourages the Departments to revisit this issue in light of the crucial need to accelerate broadband deployments and to lower the associated costs. The DTC should also codify a requirement encouraging pole owners moving forward to consistently attach no higher than is required by applicable clearance standards.[102] As the DTC reasoned, this will provide consistency and ensure this practice does not have a discriminatory impact on third-party attachers and will promote the Commonwealth's policy "in favor of competition and consumer choice in telecommunications" by maximizing space on poles for new attachments.[103]

C. Part 45 Should be Amended to Establish Limitations on Charges that Pole Owners May Impose on Attaching Entities

61. While timely pole access is essential to successful broadband deployments, affordable access is equally so. As recognized by the FCC, "to the extent that access to poles is more burdensome or expensive than necessary, it creates a significant obstacle to making service available and affordable."[104] NTIA has recognized the benefit of using existing pole infrastructure for the purpose of managing broadband deployment costs.[105] Similarly, MBI recently recognized the importance of leveraging existing utility infrastructure in part to "lower the overall cost and request funding of deployment projects."[106] However, Massachusetts current pole attachment rules do not adequately limit survey or make-ready charges to the reasonable costs of such work.

62. Today, the Commonwealth's pole owners have no incentive to limit their employed-contractors to reasonable bids for survey or make-ready work (or to even utilize a

[102] *See* Phase I Final Order at 29, DTC Docket 22-4.

[103] *Id.*

[104] *FCC 2011 Order*, 26 FCC Rcd at ¶ 6.

[105] https://broadbandusa.ntia.doc.gov/sites/default/files/2022-03/Economics%20of%20Broadband%20Networks%20PDF.pdf

[106] MBI BEAD Initial Proposal Vol. II at 74.

bidding process at all), or to limit themselves to reasonable costs for work associated with permit processing, as they are not paying these costs. Due to the lack of guidance regarding the reasonableness of make-ready costs in general, pole owners have improperly shifted pole replacement costs to third party attachers – often for pre-existing noncompliance on poles and for pole replacements required well before an attacher requests access.

63. As a result, GoNetspeed's make-ready costs in Massachusetts are more than twice GoNetspeed's average make-ready costs in Connecticut and Maine.[107] The lack of regulations have produced unpredictable and shockingly high deployment costs which have effectively prevented GoNetspeed from implementing its planned fiber network deployments in Western Massachusetts.

64. To plan network expansions and ensure that deployment projects do not exceed budgeted forecasts, broadband providers must be able to reasonably predict and understand the basis of estimated and actual make-ready charges. Without itemized make-ready cost information, providers are left guessing as to whether the imposed chargers are necessary, inappropriately inflated, more appropriately assessed to a different entity, or could be easily avoided. And, the lack of effective cost regulation has resulted in bill-shock, as Massachusetts pole owner make-ready invoices far exceed their initial estimates, by as much as three times and to the tune of hundreds of thousands of dollars in GoNetspeed's recent experience.

65. The imposition of make-ready costs without reasonable limitations, coupled with a failure to provide itemized breakdowns of all charges, have created unjust and unreasonable barriers to pole access, stifling broadband deployment in Western Massachusetts. This year Massachusetts fell to 38th place in NBC's annual ranking of the best states to do business in due in

[107] *See* DTC Docket 22-4, OTELCO's Initial Br. at 9-10 (Aug. 18, 2022).

substantial part to the state's inhospitable approach to competition.[108] If the Commonwealth's business climate is to improve, it must adopt regulations promoting broadband to entice private investment and ensure robust competition.

(1) The Departments Should Adopt Reasonable Limitations on Make-Ready Costs, and Guidance on Proper Allocation of Costs

66. GoNetspeed's Proposed Regulations would also amend and supplement Part 45 to specify that allowable make-ready costs are limited to the reasonable, actual, incremental costs of the new attachment, and provide specific guidance on what costs may or may not be allocated to the new attacher.[109] The Proposed Regulations also make it presumptively unreasonable for joint pole owners to require separate field surveys and engineering of a single jointly owned pole.[110]

67. GoNetspeed urges the Departments to look to the FCC's recent extensive work to clarify its cost-causation policies to ensure that make-ready costs are reasonable. The FCC has long required that make-ready costs reflect reasonable, actual expenses associated with preparing poles for new attachments.[111] In 2018, the FCC amended the federal rules to make clear that pole owners may not shift the cost of correcting pre-existing noncompliance to new attachers.[112] The FCC recently clarified that utilities may not charge communications attachers for pole replacement costs when a pole already requires replacement for any reason other than a lack of capacity to accommodate the new attachment by expanding the definition of a "red-tagged pole" to best

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[108] *See* Christopher Anderson, Jay Ash, and Jim Stergios, *Viewpoint: Competition key to getting Mass. economy back on track*, BOSTON BUSINESS JOURNAL ("[P]eople are leaving Mass. in droves to states where many believe they have a better chance to prosper.").

[109] *Appendix A*, Proposed Regulations, 220 CMR 45.03(3)(c)(1-3).

[110] *Id.* at 220 CMR 45.04(2)(e).

[111] 47 C.F.R. § 1.1411(d)(3).

[112] 47 C.F.R. § 1.1411(d)(4).

accommodate the cost causation and cost allocation policies as they related to pole replacements, while still preserving the utility's right to deny a new request for a lack of capacity on a pole.[113]

68. The FCC also further clarified that attachers may not be required to pay make-ready costs that are not "necessitated solely"[114] by an attachment, such that the utility must share in the cost of a pole replacement unless it is necessitated solely to accommodate a new attachment. In doing so, the FCC provided the following non-exhaustive list of examples of circumstances where a pole replacement is *not* "necessitated solely" by an attachment if, at the time of the attachment requests: 1) a pole replacement is required pursuant to applicable law; 2) the current pole fails applicable engineering standards, such as those contained in the NESC; 3) a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole; 4) the pole is required to be replaced due to road expansions or moves, property development, in connection with storm hardening, 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.[115] Like the FCC, New York[116] and New Hampshire provide reasonable limitations on make-ready costs, as they relate to pole replacement costs and pre-existing noncompliance.[117]

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[113] *Fourth Report and Order*, 2023 WL 8803833, at *15-16 ¶¶ 39-44.

[114] 47 C.F.R. § 1.1408(b).

[115] *Fourth Report and Order*, 2023 WL 8803833, at *17-18 ¶¶ 45-48.

[116] In New York, pole owners cannot "avoid responsibility for pole replacement costs by unreasonably postponing replacement until receiving a new attachment request, " or "require a requesting attacher to pay the entire cost of such pole replacement or for bringing a pole or third-party equipment into compliance with current safety and construction standards when replacement or compliance upgrades are not necessitated solely by the new attacher." New York also requires that when a "pole owner performs a pole replacement to accommodate an attachment request, the pole owner may not require the attacher, or any existing attacher, to pay any portion of the cost of such replacement, except where there is insufficient capacity, clearance or loading to accommodate the request." N.Y. Pub. Serv. Law § 119-a(2) and (3).

[117] New Hampshire requires that "[i]f a pole or existing attachment is not in compliance with applicable standards and codes and is required to be brought into compliance before a new attachment can be added,

(2) The Departments Should Codify the DTC's Requirement Regarding Itemized Make-Ready Invoices

69. The Departments should also codify and make generally applicable the DTC's Phase I Final Order in DTC Docket 22-4, which required National Grid to provide itemized cost breakdowns on a task-specific and pole-specific level, if requested by an attacher.[118] This ruling is similar to the FCC's rule requiring itemized cost details for make-ready estimates and final invoices.[119]

70. The codification of the DTC's Phase I Final Order would provide clear notice to pole owners of this obligation, which should encourage compliance and provide attaching entities important information needed to evaluate the reasonableness and allocation of the proposed Make-Ready charges and determine the most cost-effective deployment plan possible.

71. GoNetspeed's Proposed Regulations include a requirement that utilities, upon request, provide an estimate of make-ready costs with sufficient detail and supporting documentation to determine the basis for all charges in accordance with the DTC's decision in Docket 22-4.[120]

(3) The Departments Should Require Binding Make-Ready Estimates

72. Accurate, transparent make-ready estimates are essential to enabling providers to plan broadband buildouts. If a pole owner is not in any way bound to honor its estimated costs, it has no incentive to control its contractors' charges. Coupled with a lack of timelines for the performance of estimated make-ready work, the lack of limits on make-ready charges leads to

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the cost of bringing that pole or existing attachment into compliance shall not be assessed to or imposed on the entity seeking to add a new attachment." N.H. Code Admin. R. § En 1303.07(c).

[118] Phase I Final Order at 46, DTC Docket 22-4.

[119] 47 C.F.R. § 1.1411(d).

[120] *Appendix A*, Proposed Regulations, 220 CMR 45.04 (1)(c).

exorbitant true-up of make-ready charges. As word of such "bill shock" spreads, broadband providers will reconsider investing in other states with more broadband friendly regulations.

73. In New York, make-ready estimates must be detailed and subject to discussion as to reasonableness of what make-ready work is necessary.[121] While pole owners may change make-ready charges (which shall be posted on their website), make-ready estimates **are binding** for the work identified and any additional work that changes the original estimate must be reviewed by the attacher, who has the right to determine whether or not to proceed with the work.[122]

74. New York's binding make-ready estimate requirement provides the certainty required for successful broadband deployments. The ability to accurately budget for builds is essential to providers seeking to obtain private capital or avail themselves of government funding to extend their services to unserved and underserved communities. As recognized by the DTC in Docket 22-4, "a buyer should be entitled to be aware of what, exactly, it is paying for."[123] By the same token, the buyer should be entitled to know exactly how much they are paying for it.

(4) The Departments Should Amend Part 45 in Other Ways to Further Reduce Deployment Costs

75. Over a decade ago the DTC recognized that "coordinating with joint pole owners can significantly increase the logistical burden on potential pole attachers."[124] To address these difficulties, the DTC supported what it believed to be the pole owners' then current practice of designating a "Managing Owner" to deal with all attachment requests for a particular pole.[125]

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[121] *NY 2004 Policy Statement* at 3-4 (Aug. 6, 2004).

[122] *Id.* at 4-5.

[123] Phase I Final Order at 43, DTC Docket 22-4.

[124] DTC Comments, WC Docket No. 07-245(Aug. 16, 2010) at 3.

[125] *Id.* Although the DTC further comments that designation of a "Managing Utility" was the current practice in Massachusetts, in GoNetspeed's experience, attachment requests for jointly owned poles are not

76. Yet in Massachusetts today, joint pole owners require would-be attachers to submit entirely separate applications for jointly-owned poles to each pole owner, which in turn hires its own contractor to survey and engineer the pole – all at the cost of the attacher. What's more, they refuse to retain or make available extensive existing pole inspection data that would be extremely helpful to broadband companies in planning their deployments.

77. GoNetspeed's Proposed Regulations include a rule making it presumptive unreasonable for joint pole owners to require separate surveys of single joint owned pole is unreasonable.[126] When confronted with a similar situation in West Virginia, the Public Service Commission Staff (Staff) issued a Show Cause Petition requesting Frontier West Virginia, Inc. be required to show cause why the Commission should not prohibit Frontier from requiring duplicative pole attachment applications, timelines and fees for pole access to jointly owned poles.[127]

78. GoNetspeed further urges the Departments to follow the FCC's lead, recently followed by Pennsylvania, of requiring pole owners to share existing pole inspection data upon the request of would-be attachers that have submitted pole attachment permit applications for such poles.[128] Public utilities already must maintain this information under Department rules.[129] Thus, records of pole attachment permits and pole replacements should be indexed and readily available.

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handled by a single managing utility, but rather, a duplicative application and survey process are mandated for each jointly owned pole.

[126] *See Appendix A,* Proposed Regulations, 220 CMR 45.04(2)(e).

[127] *See Order, Frontier West Virginia, Inc. and Monongahela Power Company and The Potomac Edison Company, Petition to the Commission to require Frontier West Virginia, Inc. to show cause why the Commission should not prohibit Frontier from requiring duplicative pole attachment applications, timelines and fees,* Case No. 22-0885-T-E-SC (June 21, 2023).

[128] *See* 47 C.F.R. 1.1411(c)(4); *Adoption of Federal Communications Commission Regulations Pursuant to 52 Pa. Code § 77.4,* Docket No. L-2018-3002672, 2024 WL 4494038, at *1, *3 (Pa. P.U.C.) (Oct. 8, 2024).

[129] Public utilities are currently required to maintain records of permits and applications granted to others for use of its plant for six years after expiration or cancellation *See* 220 CMR 75.05 Records Retention

79. As public utilities already are required to maintain permits and applications, and to be able to readily produce them for inspection, any additional burden in producing pole condition records for attachers is negligible, but the value of such information to attachers is substantial. Permit and pole condition information will undoubtedly benefit prospective attachers, enabling them to re-evaluate their deployment plans based on the most current records and potentially avoid unnecessary costs and reducing the overall deployment price tag.

D. GoNetspeed's Proposed Regulations Balance Need for Accelerated Broadband Deployment with Safety and Reliability Concerns

80. The Proposed Regulations include additional provisions that clarify the scope and application of the regulations, and serve to balance the shared goal of maintaining the safety and reliability of the Commonwealth's electrical grid.

81. For example, the Proposed Regulations offer amendments and supplements to the Part 45 definitions to clarify that the complaint proceeding regulations apply to telecommunications service providers, wireless providers and utilities alike by adding definitions for telecommunications service "regardless of the technology used" and telecommunications service provider (thereby eliminating the need to call out wireless providers separately) and modifying the definition of licensee, to eliminate limitation on pole ownership in recognition of the fact that today's broadband providers may own some poles.[130] Moreover, as some

Schedule. Ledgers of utility plant accounts are required to be preserved for 50 years, and the authorization for expenditures for additions to utility plant, including memoranda showing the detailed estimates of cost and the bases therefor, must be kept for ten years after clearance to the plant account, provided continuing plant inventory records are maintained), or six years after plant is retired. *Id.* at (30)(a) and (31)(b). All such retained records required to be preserved shall be so arranged, filed, and currently indexed that they may be identified readily and made available to representatives of the DPU. 220 CMR 75.03(13).

[130] *See Appendix A,* Proposed Regulations 220 C.M.R 45.02 amendments, which include added definitions of Telecommunications Service and Telecommunications Service Provider, and a modified definition of Licensee. Broadband providers may acquire poles abandoned by utilities or in connection with mergers with or acquisitions of independent telephone companies.

telecommunications providers may also own or control poles, ducts conduits or rights-of-way, the Proposed Regulations remove the limitation on pole ownership from the definition of licensee.

82. The Proposed Regulations would also establish a more clearly defined process for transferring existing attachments to newly replaced poles, to facilitate easier access for new entrants as well as the timely removal of double poles.[131] While Massachusetts rules currently require utilities and telephone companies to remove old poles within 90 days of setting a replacement pole,[132] GoNetspeed's proposal provides necessary additional guidance concerning the transfer process and ensures that all attached entities transfer their facilities in a reasonable time period, thereby supporting the Commonwealth's efforts to prevent the accumulation of double poles.

83. Additionally, the Proposed Regulations require attaching entities to affix legible identification tags to each attachment that includes the joint-use entity name and a contact telephone number from the effective date of the regulation, and to place such tags on existing facilities within seven years of the effective date of the regulation.[133]

84. The Proposed Regulations also include provisions regarding the qualifications and use of approved contractors which provide pole owners and attachers a measure of control over the selection of qualified contractors for completion of surveys and make-ready work.[134]

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[131] *Id.* at 220 C.M.R. 45.04(1)(m), governing Replaced and Abandoned Joint Use Utility Poles.

[132] *See* M.G.L. c. § 34B (Distribution and telephone companies are required to complete transfer of their wires, all repairs and removal of the existing pole within 90 days from the date of installation of the new pole; except for any approved commercial or industrial construction project which is expected to take over a year to complete, in which case pole removal must occur within 6 months from installation of the new pole. The pole owner shall notify all other users of the starting date of such removal and installation work at least 48 hours prior to the commencement of such work, and said owner shall require all other users to remove their wiring and other attachments from the poles in a timely manner.)

[133] *See Appendix A,* Proposed Regulations 220 C.M.R. § 45.04(1)(d)1.iv.

[134] *Id*. at 220 C.M.R. 45.04(1)(i)(6).

85. The rules also include provisions requiring an attacher to immediately notify a pole owner of any unsafe conditions on the poles or any damage they cause in the process of exercising self-help.[135]

IV. Conclusion

The time is ripe for establishing effective pole attachment regulations to promote the Commonwealth's goals of extending broadband to unserved and underserved communities and providing choices in telecommunications providers. Unless the Departments amend Part 45 to provide effective rules governing the terms and conditions of pole access, privately backed fiber providers will choose to invest in states with more favorable rules and the BEAD funds set aside for Massachusetts will likely go unused or returned, as it will be difficult, if not impossible, to meet the fund's construction benchmarks. Several jurisdictions and the FCC have established effective pole access timelines, successfully promoted the use of time and cost saving construction techniques, and limited the costs that pole owners may impose on attachers to those solely necessitated by an attachment. These regulations – though relatively young – already have accelerated the dissemination of broadband in those states and reduced the need for related litigation. Massachusetts should do the same.

To this end, GoNetspeed respectfully requests the Commission to initiate a rulemaking to adopt much needed updates to Massachusetts pole attachment regulations using GoNetspeed's Proposed Regulations to launch the proceeding. The Proposed Regulations are a compilation of rules adopted by regulators in neighboring states after proceedings taking into account the interests of all stakeholders – including pole owners and attachers –that have resulted in timely, affordable

[135] *Id*. at 220 C.M.R. 45.04(1)(i)(3) and (n)(viii).

pole access while balancing the need for safety and service reliability, and are consistent with Massachusetts law and the Commonwealth's goal of high quality affordable broadband for all.

Respectfully submitted,

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Date submitted: November 14, 2024