

STATE OF NEW HAMPSHIRE
Before the

DEPARTMENT OF ENERGY

PUBLIC UTILITIES COMMISSION

RUL 22-001

DRM 22-023

**UTILITY POLE ATTACHMENT
RULES**

**UTILITY POLE ATTACHMENT
RULES READOPTION AND
AMENDMENT**

Comments of Crown Castle Fiber LLC

Crown Castle Fiber LLC (“Crown Castle”) commends the Department of Energy (“Department”) for its efforts to bring New Hampshire into the company of over thirty other states, including neighboring Maine and Vermont, that have adopted and are enjoying the advantages of one-touch make-ready (“OTMR”) processes established by the Federal Communications Commission (“FCC”) or modeled on the FCC rules. However, the Department should go beyond the narrow, legislatively-mandated implementation of OTMR. Likewise, the Public Utilities Commission (“Commission”) should do more than reconfigure its rules to reflect the Commission/Department reorganization. Both agencies have an opportunity to encourage and facilitate the deployment of telecommunications facilities in New Hampshire by adopting additional reforms like those implemented by the FCC and several other states.

I. Summary.

The Department’s proposal, with one exception, capably implements the Legislature’s mandate in SB 88 to “adopt rules . . . implementing the provisions of One Touch Make Ready (OTMR) as adopted by the Federal Communications Commission in 47 CFR 1.1411(j).” While

the Department's proposal is a good first step, both the Department and the Commission should do more. To further enhance the speed and ease with which providers can deploy broadband in New Hampshire, the Department and Commission should consider and adopt additional changes to their rules.

Beyond OTMR, the Department should implement further reforms, including:

- Impose a time frame for all make-ready work in the electrical space.
 - Make the current deadline for wireless attachments above the communications space applicable to all electrical space work.
- Tighten make-ready time frames in the communications space to 30 days rather than 60 days.
- Clarify that not all make-ready on a pole with wireless facilities attached is deemed "complex."
- Expand the self-help remedy to include work anywhere on the pole.
- Facilitate more extensive use of contractors.
- Reduce restrictions on the use of boxing and extension arms.

Among the further reforms the Commission should implement are:

- Adopt an expedited dispute resolution process.
- Clarify the extent to which pole replacement costs should be borne by new attachers.

The Commission and the Department should not view their respective rulemakings narrowly. Instead, each should take the opportunity to enact additional reforms contained in or modeled on the FCC rules. Doing so will allow New Hampshire to enjoy the benefits of those reforms in parity with the majority of other states. Failure to do so will result in New Hampshire being left behind other states, including two adjacent states, in the ability to attract broadband investment to serve the needs of its citizens.

In the hope of assisting the Department and Commission, Crown Castle is submitting a redlined markup of the proposed En 1300 rules (Attachment 1) and proposed amendments to the Puc 1300 rules (Attachment 2) reflecting Crown Castle's proposals for reform.

II. Background.

A. Crown Castle.

Crown Castle is at the forefront of our nation's communications revolution, deploying fiber optic and wireless infrastructure that will serve as the backbone for next-generation communications. Crown Castle has more than twenty-five years of experience building and operating network infrastructure. With more than 40,000 towers, 115,000 small wireless facilities constructed or under contract, and more than 80,000 route miles of fiber, Crown Castle is the country's largest independent owner and operator of shared infrastructure. From its more than 100 offices around the nation, Crown Castle partners with wireless carriers, technology companies, municipalities, and utilities to design and deliver unique end-to-end infrastructure solutions that bring new innovations, opportunities, and possibilities to people and businesses around the country.

As an owner, operator, and/or manager of a wide range of telecommunications assets, Crown Castle interacts daily with state and local jurisdictions and utilities regarding a variety of deployment issues, including permitting and regulatory issues related to towers, small wireless facilities, and fiber. In its efforts to site tens of thousands of small wireless facilities and fiber optic lines across the country, Crown Castle regularly engages with investor-owned utilities and other pole owners in New Hampshire and other states to gain access to existing utility poles, streetlights, and other infrastructure for the deployment of telecommunications facilities. Accordingly, Crown Castle has gained extensive experience and expertise that allow it to identify

issues that frequently arise in the context of deploying communications facilities and to offer solutions that will usher positive deployment outcomes in New Hampshire.

B. The Importance of Broadband Deployment.

The past several years have shown that broadband is a critical tool necessary to participate in today's society. Broadband is critical infrastructure for education, healthcare, commerce, entertainment, and employment. Indeed, broadband has been instrumental in mitigating the effects of a global pandemic.¹ The fourth quarter of 2020 saw a 51% increase of broadband traffic over the same quarter the year before, with an increase in upstream usage of 63%.² Unfortunately, the benefits of broadband have not been available to all. The Brookings Institution recently reported, "When schools switched to distance learning in March 2020, around 15 million students [in the United States] found themselves without broadband internet, worsening a 'homework gap' between school age children with and without high-speed internet at home."³ Conversely, broadband access can "improve health and life outcomes, offering access to remote healthcare providers, online social networks, and educational opportunities."⁴

In short, broadband access is a primary factor to ensure full participation in today's society and economy. To meet the increased demand for connectivity, particularly in residential areas where demand has not been met, and to foster competition in the provision of this critical service, it is imperative to create conditions to facilitate construction of broadband infrastructure.

¹ Paul Katz and Juan Jung, The Economic Impact of Broadband and digitization through the COVID-19 Pandemic, Econometric Modeling, ITU Publications (June 2021).

² O'Shea, D. (April 1, 2021). Pandemic Drove Upstream Broadband Traffic Boom: OpenVault. Fierce Telecom. <https://www.fiercetelecom.com/telecom/pandemic-drove-upstream-broadband-traffic-boom-openvault>.

³ Campbell, S., Ruiz Castro, J., and Wessel, D. (2021, August 18, updated November 9). The Benefits and Costs of Broadband Expansion. Brookings. <https://www.brookings.edu/blog/up-front/2021/08/18/the-benefits-and-costs-of-broadband-expansion>.

⁴ *Id.*

Adopting OTMR procedures is one way to facilitate broadband deployment. But the Department and Commission should not stop there, and instead should adopt further measures to bring this important resource to the people of the Granite State.

C. The Majority of States Already Enjoy the Additional Reforms Crown Castle Advocates Here.

The FCC significantly reformed its pole attachment rules in August 2018. *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Dkt. No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, 33 FCC Rcd 7705 (Aug. 3, 2018) (“FCC OTMR Order”).⁵ Among the improvements adopted by the FCC were OTMR, expansion of the self-help remedy to make-ready outside the communications space, and expanded use of contractors. The FCC rules are directly applicable in twenty-seven states throughout the country, including, in New England, Rhode Island. *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, DA 20-302 (March 19, 2020).⁶ In August 2020, the United States Court of Appeals for the Ninth Circuit upheld the August 2018 rules in their entirety. *City of Portland v. United States*, 969 F.3d 1020, 1049-53 (9th Cir. 2020).⁷

In other states that have assumed jurisdiction over pole attachments as has New Hampshire, there is a recent trend toward adopting pole attachment rules modeled on the FCC’s 2018 rules, including OTMR procedures and self-help outside the communications space. Among other advantages, the trend toward largely uniform adoption of the FCC rules helps provide regulatory

⁵ https://docs.fcc.gov/public/attachments/FCC-18-111A1_Rcd.pdf.

⁶ https://ecfsapi.fcc.gov/file/031903600081/DA-20-302A1_Rcd.pdf. States that have not adopted their own regulations are subject to the FCC’s rules.

⁷ [City of Portland v. US, 969 F. 3d 1020 - Court of Appeals, 9th Circuit 2020 - Google Scholar](#).

consistency for providers deploying broadband facilities across state lines. In January 2020, the Vermont Public Utility Commission amended its rules to adopt OTMR and self-help provisions similar to the FCC's. *See* VT Rule 3.708 Amendments.⁸ Similarly, the West Virginia Public Service Commission assumed jurisdiction by adopting rules, effective February 2, 2020, very similar, if not identical, to the FCC's.⁹ Pennsylvania also assumed jurisdiction and adopted rules, effective March 18, 2020, incorporating by reference the entirety of the FCC rules.¹⁰ New Hampshire's neighbor to the east, Maine, adopted rules largely based on the FCC rules effective April 2021.¹¹ And, just last month, Connecticut adopted various reforms based on the FCC rules, including OTMR and make-ready timelines resembling the FCC's.¹² Adding these five states, including three in New England, to the twenty-seven where the FCC rules directly apply means that just under two-thirds of the states employ FCC-like OTMR, timelines, and self-help procedures.

⁸ *Petition of Vermont Department of Public Service for Rulemaking to Amend Public Utility Commission Rule 3.708*, Case No. 19-0252, Adopted Rule 3.700, Pole Attachments (Jan. 24, 2020) (<https://epuc.vermont.gov/?q=downloadfile/396153/138010>) ("VT Rules").

⁹ <http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=52879&Format=PDF>

¹⁰ *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Dkt. No. L-2018-3002672, Final Rulemaking Order (Aug. 29, 2019) (<http://www.puc.pa.gov/pcdocs/1634454.docx>). Because Pennsylvania incorporated the FCC rules by reference, in these comments, a separate citation to the Pennsylvania rules often will not be provided.

¹¹ *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, Docket No. 2020-00281, Order Amending Rule and Statement of Factual and Policy Basis (Apr. 8, 2021) (<https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=110171&CaseNumber=2020-00281>). The Chapter 880 rules, effective as of April 26, 2021, are available at <https://www.maine.gov/sos/cec/rules/65/407/407c880.docx>.

¹² *PURA Investigation of Developments in the Third-Party Pole Attachment Process – Make-Ready*, Docket No. 19-01-52RE01, Decision (May 11, 2022) ("CT Order"), [http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/4d4b047910a0304d8525883f005a9cb/\\$FILE/190152RE01-051122.pdf](http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/4d4b047910a0304d8525883f005a9cb/$FILE/190152RE01-051122.pdf).

In considering what rules to adopt, the Department and the Commission should be mindful that nationwide, significant investment is flowing into building the superior fiber networks society needs. If New Hampshire adopts rules that are less favorable to the deployment of fiber networks than other states, it will deter investment from flowing into the state. If it is slower, more complicated, and more expensive to build here, New Hampshire may be passed over for broadband investment. Conversely, if it is easier, quicker, and cheaper to deploy networks here, the state will attract investment. Thirty-two states are operating under the FCC pole attachment rules or equivalents. The FCC rules are the state of the art for facilitating deployment of new networks and are the standard against which investors will assess the attractiveness of investing in New Hampshire. The Department and Commission should adopt rules that make it at least as desirable to invest here as in those FCC states. Crown Castle respectfully urges the Commission and Department to join these thirty-two other states and adopt similar reforms, as set forth below.

D. The Question of “Controversy.”

At an earlier stage of the Department’s pre-rulemaking inquiry, certain stakeholders suggested going no further than narrow adoption of the OTMR process, lest there be “controversy.” It is hard to understand how rules and procedures largely applicable in two-thirds of the states could be controversial. Such widespread adoption makes the rules mainstream. Stakeholders that operate in different states or regions would welcome the efficiency and predictability that such uniformity brings. The FCC rules are not controversial. At this point they are conventional.

III. One Touch Make-Ready.

The Department's adoption of the FCC's OTMR provision pursuant to SB 88's requirement will be a significant enhancement to the process for expanding broadband availability to New Hampshire's citizens. Crown Castle supports it with one caveat.

As the FCC described, "OTMR speeds broadband deployment by better aligning incentives than the current multi-party process. It puts the parties most interested in efficient broadband deployment—new attachers—in a position to control the survey and make-ready processes." FCC OTMR Order ¶ 22. The Ninth Circuit, in affirming the FCC OTMR rules, stated, "In adopting the One-Touch Make-Ready Order, the FCC intended to make it faster and cheaper for broadband providers to attach to already-existing utility poles." *City of Portland*, 969 F.3d at 1049-50.

Because it is a more efficient and cost-effective process, Crown Castle expects that it will utilize OTMR as a matter of course. The FCC concurs that OTMR will become, when applicable, the routine make-ready method: "[B]ecause this option will apply to the substantial majority of pole attachment projects, it will speed broadband deployment." FCC OTMR Order ¶ 17.

There is an inadvertent flaw in the Department's proposal, however. The proposed definition of "complex make-ready" — which is ineligible for OTMR pursuant to proposed En 1303.13 — is as follows:

"Complex make-ready" means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communications attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are considered complex.

Proposed En 1302.05. The second sentence, particularly the phrase "any and all wireless activities," is ambiguous and complicating. Make-ready work should not automatically be considered complex whenever a pole has wireless equipment attached. For example, a backhaul

cable from a pole-mounted antenna is no different than a cable carrying land-based telecommunications traffic. To automatically classify the wireless backhaul cable as complex will discourage wireless facilities and discriminate on the basis of technology, with no countervailing benefit in terms of safety and reliability. Make-ready work on a pole containing a wireless facility should only be deemed complex if it actually requires relocation of the wireless antennas and associated transmitters. That restriction is already set forth at the end of the first sentence. The second sentence creates ambiguity and confusion.

Crown Castle suggests that some additional clarifying language would reduce the ambiguity and result in a more workable definition. The Connecticut Public Utilities Regulatory Authority (PURA) recently considered this precise issue and added language at the end of the definition to clarify when wireless work is considered complex (additions in bold italics):

“Complex make-ready” means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communications attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are considered complex. ***A utility pole that has wireless facilities does not automatically classify any make-ready work done on that pole as meeting the above definition of “complex make-ready.” Wireless attacher’s work on its wireline backhaul facilities may be no different than wireline work done by other attachers, and where appropriate, may be considered simple make-ready work according to that definition.***

CT Order, Appx. A, p. 1, § 6.

Crown Castle submits that the PURA modification is a sensible clarification that balances encouraging OTMR and self-help with preserving the interests of safety and reliability associated with truly “complex” work. Crown Castle respectfully urges the Department to adopt the PURA’s clarifying language. See Crown Castle’s suggested revision to proposed En 1302.05.

IV. Additional FCC Reforms the Department Should Adopt.

The Department should not be content with merely complying with the narrow mandate of SB 88 to adopt 47 C.F.R. § 1.1411(j). SB 88 does not set the outer limits of permissible reform. The Department can and should do more by adopting additional reforms that have been present in the FCC rules since 2018, which two-thirds of the states around the country enjoy. These include enhanced use of contractors, tightening and clarification of make-ready timelines, and expansion of the self-help remedy to areas outside the communication space. Some of these are necessary for OTMR to achieve its full benefits; others will facilitate fuller and more rapid broadband deployment.

B. Contractors.

1. Additions to Contractor List.

The Department’s proposal, identical to existing rules, requires pole owners to maintain “a list of not less than 3 contractors” authorized to perform surveys and make-ready on its poles. Proposed En 1303.12(i). To ensure a sufficient supply of contractors, the rules should permit requesting parties to propose additional qualified contractors for inclusion on the list. The FCC, West Virginia, Pennsylvania, Maine, and Connecticut rules contain this sensible requirement. 47 C.F.R. § 1.1412(a); WV Rule 11.1; Maine Rules § 2(A)(10)(c); CT Order, Appx. B, p. 9, § C(1).¹³ As the FCC explained, “We adopt this requirement so that a utility that maintains a list does not have the ability to prevent deployment progress, which would be contrary to our goal in adopting OTMR.” FCC OTMR Order ¶ 38.

¹³ Vermont takes a slightly different approach. It requires both pole owners and attachers to file lists of contractors with the Commission and Public Service Department. Generally, contractors must be chosen from those lists. VT Rule 3.708(K)(1)-(3).

To ensure that safety and quality of work are not compromised, the rules also should prescribe certain minimum qualifications that contractors must possess for inclusion on the list. These include agreement to abide by applicable rules, regulations, and safety guidelines and maintain adequate insurance. All of the FCC, Vermont, West Virginia, Pennsylvania, Maine, and Connecticut regulations impose these minimum requirements upon contractors permitted to perform make-ready work. 47 C.F.R. § 1.1412(a); VT Rule 3.708(K)(5); WV Rule 11.3.1; Maine Rules § 2(A)(10)(f); CT Order, Appx. B, p. 9-10, § C(2). As the FCC explained, “These requirements collectively will materially reduce safety and reliability risks, as well as delays in the completion of pole attachments, by allowing one qualified contractor to perform all necessary make-ready work instead of having multiple contractors make multiple trips to the pole to perform this work.” FCC OTMR Order ¶ 39.

Crown Castle’s recommended language to effectuate the addition of contractors to the list, which reflects the FCC rule in 47 C.F.R. § 1.1412(a), is contained in a new sentence added to proposed En 1303.12(i). New provisions governing contractor qualifications, like those in the enacted FCC, Vermont, West Virginia, Pennsylvania, Maine, and Connecticut rules, are contained in a new proposed section 1303.12(j).

2. Use of Contractors Not on the List Under Certain Circumstances

Cases may arise where work is delayed because the pole owner’s approved contractor list is inadequate or there is no contractor on the list available to do the work in timely manner. In such cases involving simple make-ready (including OTMR), requesting parties should be permitted to use contractors that are not on the list. Under the FCC, West Virginia, Pennsylvania, Maine, and Connecticut rules, use of unlisted but qualified contractors is permitted both for OTMR and simple self-help in the communications space. To ensure safety and reliability of the work,

requesting parties who use unlisted contractors must certify that such contractors meet the same minimum qualifications as for contractors proposed for inclusion on the list. The pole owner may disqualify any contractor not on its list, but may only do so for reasons of safety or reliability. If the owner does so, it must identify at least one available contractor. 47 C.F.R. § 1.1412(b)(1); WV Rule 11.2; Maine Rules § 2(A)(10)(d)-(e); CT Order, CT Order, Appx. B, p. 9, § C(1); *see* FCC OTMR Order ¶¶ 40, 104.

Allowing use of unlisted contractors for OTMR and simple make-ready when the pole owner's list does not produce a contractor who can perform the work in timely manner will prevent any inadequacy in the list from delaying broadband deployment. Accordingly, Crown Castle has proposed additional language reflecting the FCC rule set forth in 47 C.F.R. § 1.1412(b)(1) & (2) for inclusion in new paragraphs (1) and (2) in renumbered En 1303.13(k) (currently En 1303.12(j)).¹⁴

C. Self-help.

The Department can remove a major obstacle and source of delay to broadband deployment by following the example of the FCC, Vermont, West Virginia, Pennsylvania, and Maine and expanding the self-help remedy to include complex self-help, including in the electrical space. The availability of self-help at any place on the pole will allow requesting parties to get the work done when delays occur, or will provide an incentive for entities who insist on doing the work themselves to get it done on time. Either way, broadband deployment will be expedited and the citizens of New Hampshire will benefit correspondingly.

¹⁴ To be clear, consistent with the FCC rules, Crown Castle's proposed addition would only permit use of unlisted contractors for simple make-ready (including OTMR and simple self-help). For complex make-ready, whether in or outside the communications space, only contractors on the list (including new additions to the list proposed by the requesting party) may be used.

In its OTMR Order, the FCC explained that it originally confined the self-help remedy to the communications space, but changing circumstances necessitated an update to the rule. The FCC noted that without self-help, the only remedy for nonperformance or delay that a new attacher has at its disposal is a complaint. That, however, is an “insufficient tool for encouraging compliance with our deadlines and speeding broadband deployment. We expect the availability of self-help above the communications space will strongly encourage utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when they do not.” FCC OTMR Order ¶ 98.

The FCC acknowledged that work in the electrical space is different than in the communications space, but noted that its rules included safeguards to ensure the safe and proper performance of make-ready outside the communications space. Such safeguards included maintaining the longer deadlines associated with complex make-ready work, so the self-help remedy would not be triggered prematurely; requiring use only of owner-approved contractors; and the ability of pole owners to do the work themselves (on time) and thereby make use of the self-help remedy unnecessary. *Id.* ¶ 99.

Expansion of the self-help remedy beyond the communications space to all other areas of the pole was one of the rulings in the FCC OTMR Order that was specifically challenged before the United States Court of Appeals. The Court had no trouble upholding the FCC’s decision:

Prior to the One-Touch Make-Ready Order, attachers could hire contractors to perform preparatory work only on the lower portion of a pole. The self-help rule lets the utility-approved contractors prepare the entire pole for attachment. *Id.* [FCC OTMR Order] ¶¶ 97–99. Petitioners argue that this expansion is contrary to Section 224(f)(2) because permitting attachers to hire contractors to work on the upper portion of poles jeopardizes safety. Yet, the rule has a number of provisions designed to mitigate any increased safety risks. For example, the rule gives a utility a ninety-day window to complete the preattachment work itself (thereby circumventing the rule’s contractor provisions entirely). *Id.* ¶ 99. The rule also requires new attachers to use a utility-approved contractor to perform the self-help

work, and it requires the attacher to give the utility advanced notice of when the self-help work will occur so that the utility can be present if it wishes. *Id.* ¶¶ 99–106.

The rule represents a change from earlier rules on what self-help measures an attacher could perform, and the FCC explained that use of approved contractors would improve efficiency. *Id.* ¶ 97. A complaint process in the old self-help rule allowed new attachers to file complaints when a utility was not preparing the pole in a timely fashion. This did not encourage efficiency. It was an “insufficient tool for encouraging [a utility’s] compliance with [the FCC’s] deadlines.” *Id.* ¶ 98. The FCC reasonably views the deployment of new 5G technology to be a matter of “national importance,” justifying extension of the self-help rule to promote timely installations. *Id.* ¶ 97. The self-help rule is thus not arbitrary or capricious.

City of Portland v. United States, 969 F.3d at 1051.

West Virginia Rule 10.9.2 and Pennsylvania’s adoption of the FCC rules also extend the self-help remedy outside the communications space.

The Vermont PUC regulations enacted in January 2020 also permit self-help outside the communications space. Rule 3.708(L)(2) provides that if the pole owner does not complete “Make-Ready work” within the specified time frame,¹⁵ the new attaching entity may hire a contractor from the approved list to complete the “Make-Ready.” Under the Vermont rules, “Make-Ready” is a defined term that includes both Simple and Complex (*i.e.*, work outside the communications space) Make-Ready. VT Rule 3.702(I).

Maine similarly permits self-help “if make ready is not complete within the time period specified in Sections 2(A)(5) through (7) of this Chapter”—which encompass make ready both in the communications space and outside it. Maine Rules § 2(A)(9)(b).

Crown Castle has proposed language to amend En 1303.12(c)(2) and 1303.12(h) to include make-ready outside the communications space within the scope of the self-help remedy. First,

¹⁵ Vermont imposes a uniform, 60-day deadline (extendable for large projects) for both simple and complex make-ready. Rule 3.708(D).

Crown Castle proposes amending En 1303.12(h) in two places to specify that the self-help remedy may be invoked for noncompliance with the time periods in En 1303.12(c)(1) *and* (2)—that is, all make-ready including work outside the communications space. In addition, the restriction of self-help availability to a requesting party requesting attachment “in the communications space” should be deleted.

In addition, as described below, Crown Castle proposes to amend En 1303.12(c)(2) and 1303.12(d) to make clear that the notice requirement and time frames for make ready in that section include *all* make ready outside the communications space, not just for wireless attachments. Also, Crown Castle proposes to add a new subsection mirroring En 1303.12(c)(1)(g), requiring that the make-ready notice issued by the pole owner state that the requesting party may perform the work if the make-ready is not completed on time.

D. Make-Ready Timelines.

1. In the Communications Space.

Proposed En 1303.12(c)(1)(c) contains a requirement that make-ready work in the communications space shall be completed within 60 days, extendable in the case of larger orders. The Department should tighten that time frame to 30 days (75 for larger orders).

Thirty days is the standard in the FCC rules, in neighboring Maine, and in Connecticut. 47 C.F.R. § 1.1411(e)(1)(2); Maine Rules, § 2(A)(5)(a)(ii); CT Order, Appx. B, P. 6, § B(3)(i)(B). New Hampshire should not disadvantage itself vis-à-vis other states by subjecting its citizens to longer make-ready timelines. The Department should revise En 1303.12(c)(1)(c) to require a 30-day deadline (75 for larger orders) for make-ready in the communications space.

2. Outside the Communications Space.

The Department's proposed rules regarding make-ready work outside the communications space only provide a timeline for work involving wireless attachments. En 1303.12(c)(2). For other work, including pole replacements,¹⁶ the rules are silent. This significant gap in the rule impedes the progress of broadband deployment in New Hampshire. The pole owner is under no deadline to complete or ensure the completion of make-ready outside the communications space and Crown Castle often experiences undue delay in completing this work and building its networks. Second, the lack of a deadline for make-ready completion means there is no trigger for any self-help remedy.

The consequences for New Hampshire are serious. As noted previously, the Department should be acting to facilitate expansion of broadband networks to improve the economic, health, educational, and social opportunities for its citizens. The Department also should foster broadband investment and reduce disincentives for such investment.

Thus, the Department should take this opportunity to remove this roadblock. The FCC rules, as well as those of Vermont and Maine, impose a deadline on the pole owner to complete make-ready, or ensure that existing attachers complete it, within set time frames. 47 C.F.R. § 1.1411(5)(2); Vermont Rule 3.708(D); Maine Rules § 2(A)(5)(b). New Hampshire risks falling behind if it does not impose similar deadlines, including a deadline that triggers the new attacher's self-help remedy.

To remedy this deficiency, Crown Castle recommends removing the restrictions in En 1303.12(c)(2) and 1302.12(d) limiting those provisions to wireless attachments, thereby making

¹⁶ Pole replacements are a component of make-ready under En 1302.08: "Make-ready' means all work, including but not limited to . . . replacement of a pole"

the provision applicable to all work outside the communications space. This will establish specific deadlines of 90 days (or 135 for larger orders) and permit the attacher to utilize the self-help remedy if work remains incomplete after that time. In addition, as noted above, the Department should include under 1303.12(c)(2) a provision mirroring 1303.12(c)(1)(g), giving notice that if work outside the communications space is not completed within the deadlines, the new attacher may invoke self-help to get it done.

E. Other Improvements Based on the FCC Rules the Department Should Implement.

Crown Castle suggests a few more improvements that further incorporate existing FCC rules.

Contents of Make-Ready Application. Proposed En 1303.04(a) requires that an attachment application provide the information necessary under the pole owner's procedures. But there is no requirement that the pole owner specify in advance what information is necessary. This potentially leads to a game of "hide the ball" with shifting standards for application review.

Crown Castle urges adoption of qualifying language that requires the pole owner to state up front exactly what information is required. The FCC rules impose such a requirement on the pole owner by requiring the owner to specify the necessary information in documents publicly available at the time the application is submitted. 47 C.F.R. § 1.1411(c)(1). Crown Castle has proposed language adopted from the FCC rule under En 1303.04(a). Including such a requirement will increase transparency and lessen delays resulting from disputes over what information was or should have been included in the application.

Crown Castle notes that similar language requiring the owner to specify in advance what information the application must contain appears in the FCC's OTMR provisions governing applications as well as in the Department's proposal adopting those OTMR provision. 47 C.F.R.

§ 1.1411(j)(1)(ii); En 1303.13(b). It makes sense for the Department's rules to impose parallel requirements on owners in the non-OTMR context as well.

Application Review for Completeness. The Department should include a review-for-completeness process for non-OTMR make ready like that proposed for its OTMR process.

Under the FCC rules, the pole owner reviews the attachment application for completeness before reviewing it on the merits. If the owner finds an application incomplete, it must notify the applicant of deficiencies. The applicant then responds, addressing only the identified deficiencies. Specified timelines govern each step. Failure of the owner to respond within the specified timeline results in the application being deemed complete. *See* 47 C.F.R. § 1.1411(c)(1). That process protects both parties by ensuring that the right information is in the owner's possession, but within reasonable time frames.

Crown Castle proposes that the Department adopt a similar procedure. Suggested language is included in our redline as proposed En 1303.04(a)(1) & (2).

As above, this review-for-completeness process is included in the OTMR portion of the Department's proposal. Proposed En 1303.13(b); *see* 47 C.F.R. §§ 1.1411(j)(1)(ii)(A) & (B). There is no reason not to include a similar process, modeled, as is the OTMR example, on the FCC rules, in the non-OTMR application process as well.

No Denial for Preexisting Violations. Crown Castle suggests that the Department include a specific provision that the grounds for denying an application may not include preexisting violations not caused by the requesting applicant. New applicants should not be penalized for the failure of the pole owner or existing attachers to maintain facilities that comply with rules and standards. The FCC rules contain such an explicit prohibition in § 1.1411(c)(2). Crown Castle's

redline includes suggested language in a new subsection En 1303.04(d) that is copied verbatim from this FCC rule.

V. The Department Should Amend Certain of its Rules Governing Construction Techniques.

To facilitate more rapid and widespread deployment of broadband networks, the Department should liberalize use of boxing and extension arms. The Department also should eliminate the unnecessary imposition of extra costs on a new attacher when an existing attacher wants, for its own purposes, to maintain the lowest position on the pole.

A. Boxing and Extension Arms.

The Department's proposed En 1303.10, based on the existing rule, severely restricts a sensible, time-tested tool to reduce the costs of building broadband networks. Field-side attachments, or "boxing," where an attachment utilizes available space on the entire length of the field-side of the pole line, as opposed to "weaving," where the same attachment line weaves between the road-side of one pole in a pole line and then on the field-side of another pole line in the same pole line, has been a long recognized regulatory position and industry standard that facilitates the deployment of advanced broadband efficiently, and in a National Electrical Safety Code ("NESC") compliant manner.

Boxing is permitted by the NESC, and the practice is set forth in the BellCore Blue Book (i.e., the standards used by ILECs for their attachments in the communications space on a pole). Boxing makes use of diagonal measurement to achieve the recommended 12-inch separation between facilities. *See* NESC Rule 235H(1). Boxing is especially attractive because poles often have numerous existing facilities on the street side of the pole, but few if any on the field side. Because available NESC-compliant space can be used on the field side, boxing dramatically

reduces or eliminates the amount of work required to make space for new attachments (“make-ready work”). This creates a “greenfield” opportunity on the field side. Importantly, by effectively doubling the useable communications space on a given pole, boxing dramatically reduces the need for costly pole replacements.

Nearby states have taken strong steps to promote the pro-competition and pro-broadband policy of boxing. For example, Maine’s rules state: “A prohibition on boxing poles (i.e., placing cables on both the road side and the field side of a pole) which can be safely accessed by emergency equipment and bucket trucks or ladders provided that such technique complies with the requirements of applicable codes” is presumptively unreasonable. Maine Rules, § 2(B)(1).

Similarly, use of extension arms may allow the placement of facilities on poles that otherwise would have to be replaced at much greater cost. Any asserted safety concerns should be alleviated by the general requirement that all attachments must be compliant with the NESC, Blue Book, and other applicable codes and regulations. En 1303.07(a).

Accordingly, Crown Castle has suggested amendments to proposed En 1303.10 and 1303.11 reflecting the Maine rules that make prohibitions on the use of boxing and extension arms presumptively unreasonable, and require the owner to overcome the presumption only by clear and convincing evidence that unique circumstances exist.

B. Lowest Pole Position.

Proposed En 1303.09(b), based on an existing rule, requires that when the only space to accommodate a new attacher is the lowest position on the pole, and the lowest existing attacher “chooses” to relocate its facilities downward to maintain the lowest position, the new attacher must pay 40% of the cost of such relocation.

The anticompetitive effects of this rule are obvious. The only entity likely to invoke this provision is the incumbent LEC. The ILEC is in actual or potential competition with new broadband providers, and the existing provision allows the ILEC to capriciously “choose” to relocate its facilities. Driving up new entrants’ costs serves incumbents’ interests without any corresponding increase in safety or reliability.

Crown Castle has proposed changes to proposed En 1303.09(b) that eliminate the requirement that new attachers pay for the ILEC’s preference to relocate its facilities downward. In addition, to prevent such relocation from being used to delay a new entrant’s deployment, Crown Castle also proposes to add language specifying that such relocation is part of make-ready and must be done within the same time frames as other make-ready under proposed En 1303.12(c).

C. “Blanket Bans” on Pole Attachment Position.

In Crown Castle’s experience, pole owners often impose ad hoc, unilateral bans on the attachment of particular equipment to utility poles or attachment to particular sectors of a pole without providing clear safety or engineering rationale. The Department’s existing rules require the pole owner to produce pole-specific evidence when denying a particular attachment: “The pole owner’s denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information represent grounds for denial as specified in En 1303.01.” En 1303.04(c). The FCC rule is essentially the same: “The utility’s denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.” 47 C.F.R. § 1.1403(b).

Despite that clear and unambiguous mandate, Crown Castle has found that, in practice, utilities still deny attachment applications based on categorical prohibitions. For example, certain utilities ban attachment of equipment in the “unusable” space of their poles, but themselves attach facilities in the same “unusable” space. Others restrict where antennas may be placed on the pole, which policies will undoubtedly impact the deployment of next generation 5G antennas. Crown Castle has encountered utilities that ban antenna attachments in certain segments of the communications space on a blanket basis, rather than addressing any antenna-related issues on a pole-by-pole basis. Because certain pole owners and attachers offer competing services, restrictions of this nature should be scrutinized closely due to the potential for anticompetitive practices and the ability to saddle certain classes of attachers with additional, unnecessary costs.

Crucially, there is no justifiable safety rationale for blanket prohibitions. While the NESC may impose additional requirements to address regional specific concerns (e.g., ice loading in colder regions), the NESC contains no blanket prohibitions on attaching to any specific type of pole or in any particular location.

The FCC, which has had a similar rule in place requiring that utilities provide a pole-specific justification for denial for many years, nonetheless saw fit to issue an order in 2020 reaffirming that such “blanket bans” on attachments to any portion of a utility pole are impermissible under the provision of its rules that a “denial of access . . . be specific” to a particular request. *See In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, DA 20-796, 35 FCC Rcd. 7936, ¶ 3 (2020)¹⁷ (citing 47 C.F.R. § 1.1403(b)).

¹⁷ <https://docs.fcc.gov/public/attachments/DA-20-796A1.pdf>.

To ensure that there is no question that blanket bans are impermissible, the Department should make a prohibition on such blanket bans explicit in its rules. The Department also should explicitly require that any denial must state the precise concerns regarding the particular attachment(s) and the particular pole(s) at issue. *See id.*, ¶ 8. To effectuate this, Crown Castle has proposed additional language based on paragraphs 3 and 8 of the FCC Declaratory Ruling for inclusion in En 1303.04(c).

VI. Incorporation of Rules into Agreements.

The Department’s proposed and existing rules favor agreements between owners and attachers. *See* En 1303.02-.03. While agreements facilitate the day-to-day interactions between owners and attachers, they can impede change, including adopting the kind of reforms the Department contemplates here. Some existing pole agreements are old and may contain provisions that do not reflect current national and state policies. Negotiating new agreements to incorporate policy changes involves significant transaction costs. As the FCC has recognized, bargaining power between owners and attachers is unequal.¹⁸

The Department should consider how the changes adopted in this rulemaking (and other changes in law, regulation, and policy) should be incorporated into the relationship between owners and attachers. En 1303.02 and current regulations provide that pole owners “shall negotiate in good faith with respect to the terms and conditions of attachment.” Further, SB 88 contains an express mandate that parties implement timelines established by Department rules for negotiating and implementing pole attachments:

¹⁸ *See FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987); *Selkirk Communications, Inc. v. Florida Power & Light Co.*, 8 FCC Rcd. 387, 389 (Jan. 14, 1993) (stating that “[d]ue to the inherently superior bargaining position of the utility over the cable operator in negotiating the rates, terms and conditions for pole attachments, pole attachment rates cannot be held reasonable simply because they have been agreed to by a cable company”).

In entering into pole attachment agreements, all parties shall abide by the timelines established by the department in rules adopted pursuant to RSA 541-A, for negotiating and implementing pole attachments. The failure of any party to do so may be considered a lack of good faith negotiation, unless each party agrees to following alternate timelines.

SB 88, Part II, § 1, amending RSA 374:34-a, V.

Thus, the will of the Legislature is that the Department rules should be incorporated into pole attachment agreements by default; failure to do so is not negotiating in good faith. The pole owner's obligation to negotiate terms and conditions necessarily includes the owner's ensuring compliance with all effective regulations and incorporating them into existing and future agreements. If pole owners are not required to promptly and efficiently modify the many existing agreements to incorporate rule changes, this rulemaking effort will be of little use. The existing language in the rules to this point may be sufficient, but it remains somewhat vague.

To further clarify the existing rules and reduce the potential for future dispute, the Department should specify that the pole owner's duty to negotiate the terms and conditions of attachment includes, by default, incorporation of current Department regulations including OTMR and whatever else results from this and any future rulemaking. While parties may be willing to agree to something else, in the absence of free agreement *by both parties*, the Department's rules should apply.

In addition, SB 88 expressly authorizes the Department to specify "timelines . . . for negotiating and implementing pole attachments." The Department, therefore, may and should specify both (1) deadlines for amending agreements to incorporate Department-specified rules and timelines and (2) timelines for performing OTMR, other make-ready activities, and otherwise implementing the attachment process itself. Because of the clear legislative mandate, Crown

Castle believes that incorporating rule amendments into agreements should be straightforward. The task can and should be accomplished within thirty days after a request by either party.

Crown Castle has suggested revisions to En 1303.02 and 1303.03 designed to accomplish these goals.

VII. The Commission Should Adopt an Expedited Timeline for Resolution of Pole Attachment Disputes.

Time is the critical factor in allowing attachers to serve new customers. Yet, delays are still too common. One of the most important streamlining actions the Commission can take is to establish a standard, reasonable timeline for dispute resolution by the Commission. Even if the Department and Commission adopt numerous substantive rules intended to support the deployment of broadband, without a procedure for prompt and meaningful recourse, such rules will not help attaching parties overcome utility behavior.

The Commission's current proposal states only that disputes will be resolved under the regular adjudicatory procedures in Puc 203. Proposed Puc 1303.03(c). The Puc 203 procedures are open-ended, with no specific deadline or even a target timeline for a decision.

Unfortunately, disputes are inevitable in any process. Prolonged disputes are costly for attachers and can delay the provision of service to consumers. An adjudication process that takes six, nine, twelve, or more months is not a meaningful avenue to cure, for example, a pole owner's failure to perform within a 30 to 60-day make-ready timeframe or its refusal to accept more than a limited number of poles per application. If disputes are not resolved quickly, the resulting delays can be costly and impede the deployment of broadband. Without an efficient enforcement mechanism, pole owners and other attachers can sidestep the rules with impunity, creating prolonged delays.

An efficient dispute resolution process is a necessary component of streamlining the pole attachment process. Accordingly, the Commission should adopt an accelerated timeline for resolving disputes related to pole attachment applications and associated make-ready work.¹⁹

There is ample precedent for a reasonable but short time frame to resolve pole attachment disputes. New Hampshire's neighbor, Maine, has adopted a procedure under which the Commission's "Rapid Response Team" considers the dispute under a deadline of seven business days for decision. Maine Chapter 880 Rules, § 8 & Appendix A. Given that pole attachment disputes may stop projects in their tracks, a decision timetable like Maine's has the greatest potential to maintain the smooth flow of projects and the most rapid deployment of broadband networks to consumers.

Vermont also has implemented an expedited procedure with a time limit of 30 days for the resolution of pole attachment complaints. VT PUC Rule 3.710(A).

Another approach would be to adopt processes like the FCC's Accelerated Docket, which includes a 60-day review timeline. Disputes that are not resolved within 60 days should be deemed resolved in favor of the new attacher. A 60-day timeline would prevent significant delays and ensure that pole owners comply with the Commission's and Department's rules throughout the application and make-ready process. This timeline would be similar to the FCC's timeline for disputes that impact pole access. In 2017, the FCC adopted a 180-day timeline for reviewing pole attachment complaints involving denial of access, but also created the potential option to place

¹⁹ Disputes over issues such as annual rental rates and other matters that do not involve pole attachment applications, make-ready work, and other specific deployment issues that do not have the potential to halt or delay projects may be suitable for resolution under the normal Puc 203 procedures.

disputes on the “Accelerated Docket.”²⁰ The FCC is now considering taking the additional step of favoring the placement of some pole attachment complaints on the Accelerated Docket.²¹

The majority of pole attachment disputes can be quickly resolved by the Commission, and the establishment of a reasonable timeline could prevent disputes from occurring in the first place as pole owners making illegal demands of communications attachers would no longer have time on their side. In addition, adopting a timeline similar to that of Maine’s or Vermont’s would mitigate any competitive disadvantage to New Hampshire from an open-ended, indefinite-duration dispute procedure.

VIII. The Commission Should Clarify What Pole Replacement Costs Are to Be Paid by a New Attacher.

When an owner undertakes a pole replacement as part of make-ready, the owner typically seeks to impose some or all of the cost of the pole replacement on that new attacher as part of make-ready. Pole replacement costs can add substantially to the cost of make-ready. The Commission should clarify the scope of the new attacher’s responsibility for pole replacement costs.

At a minimum, the Commission should follow the FCC’s lead and declare that pole owners may not impose the entire cost of a pole replacement on a requesting attacher when the attacher

²⁰ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, FCC 17-154, 32 FCC Rcd. 11128, ¶ 10 (2017) (<https://docs.fcc.gov/public/attachments/FCC-17-154A1.pdf>); 47 C.F.R. § 1.1414; see also *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, FCC 18-96, 33 FCC Rcd. 7178, ¶ 19 (2018) (extending accelerated docket to pole attachment complaints) (<https://docs.fcc.gov/public/attachments/FCC-18-96A1.pdf>); 47 C.F.R. § 1.736.

²¹ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC 22-20, Second Further Notice of Proposed Rulemaking, ¶ 36 (Mar. 18, 2022) (<https://docs.fcc.gov/public/attachments/FCC-22-20A1.pdf>).

was not the sole cause of the pole replacement. *See In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, DA 21-78, 36 FCC Rcd 776, ¶ 3 (rel. Jan. 19, 2021).²² The FCC clarified in its ruling that utilities may not require requesting attachers to pay the entire cost of pole replacements that are not necessitated solely by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing pole replacements until new attachment requests are submitted. *Id.*, ¶ 6. The Commission should adopt an equivalent rule.

Further, the Commission should take into account that when a pole is replaced in connection with a new attachment request, others beside the new attacher benefit. In particular, the pole owner obtains a new, undeteriorated pole. Further, the new pole undoubtedly is taller than is necessary solely to accommodate the new attacher. For example, a 35-foot pole would not be replaced with a 36-foot pole to accommodate the one additional foot of space necessitated by the new attacher; the pole unquestionably would be replaced with a 40 or 45-foot pole. The owner potentially benefits from several additional pole rentals and subsequent new attachers receive the benefit of escaping pole replacement costs (and additional make-ready delays). Thus, the Commission should require that pole replacement costs should be shared equitably among attachers and owners.

To accomplish this, the Commission should require that should a requesting third-party attacher precipitate the need for a pole replacement, that new attacher would be responsible only for (i) the difference, if any, between the cost of the replacement utility pole necessary to accommodate the third-party attacher's attachment, and the cost for a new utility pole of the type

²² <https://docs.fcc.gov/public/attachments/DA-21-78A1.pdf>.

and height the utility would have installed in the same location in the absence of the attachment, plus (ii) a reasonable estimate of the net book value of the pole and supporting equipment, if any, which has been replaced. Further, if more than one attacher benefits from the replacement, the replacement cost attributable to attachers should be shared proportionately. A variation on such a formula is contained in Section 5(C) of the Maine pole attachment rules.²³ Crown Castle has included in its suggested revisions to the Puc 1300 rules provisions to effectuate these principles.

IX. Conclusion.

The need to remove barriers to the expeditious deployment of broadband infrastructure has never been more acute than at the present time. Incorporation of the FCC OTMR provisions is a good start. But it is only a start; more is needed to ensure New Hampshire captures the next generation of broadband investment. Crown Castle respectfully urges the Commission and the Department to take the additional steps outlined above. Adopting expanded self-help, specific timelines for make-ready outside the communications space and for pole replacements, and other

²³ Maine Section 5(C) states:

C. Excess Height

1. Solely Assigned; Excess Height. When an existing or a proposed attaching entity requires additional space which is not available on that joint-use utility pole, and the joint-use utility pole must be replaced by a taller joint-use utility pole, the existing or proposed attaching entity causing the need for replacement must pay for (i) the difference between the cost for the taller joint-use utility pole and supporting equipment such as guys and anchors and the cost for a new 35-foot joint-use utility pole and supporting equipment in the same location, plus (ii) a reasonable estimate of the net book value of the joint-use utility pole and supporting equipment, if any, which has been replaced.

2. Mutual Assignment. When a joint-use utility pole taller than 35 feet is required to provide minimum clearances, or when more space for attachments than is available on a 35-foot joint-use utility pole is required by two or more attaching entities, the cost (i) of the additional height of the excess height joint-use utility pole and supporting equipment and (ii) the reasonable estimate of the net book value of replaced joint-use utility pole and supporting equipment, if any, must be shared equally among the users requiring the replacement.

reforms like those in the FCC regulations, plus an expedited dispute resolution process and clarified rules regarding pole replacement costs will put New Hampshire on equal footing with the majority of American states in facilitating needed broadband expansion and deployment. By so doing, the health, welfare, and prosperity of New Hampshire and its citizens will benefit.

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Adopt En 1300 to read as follows:

CHAPTER En 1300 UTILITY POLE ATTACHMENTS

PART En 1301 PURPOSE AND APPLICABILITY

En 1301.01 Purpose. The purpose of En 1300, pursuant to the mandate of RSA 374:34-a, is to ensure that that terms, and conditions for pole attachments are nondiscriminatory, just, and reasonable. Nothing in this rule shall be construed to supersede, overrule, or replace any other law, rule, or regulation, including municipal and state authority over public highways pursuant to RSA 231:159, et seq. Rules regarding the resolution of disputes and the setting of rates for pole attachments under specific circumstances are set forth in chapter Puc 1300 adopted by the public utilities commission.

En 1301.02 Applicability. En 1300 shall apply to:

(a) Public utilities within the meaning of RSA 362:2, including rural electric cooperatives for which a certificate of deregulation is on file pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution;

(b) Providers of “VoIP service” or “IP-enabled service,” as such terms are defined in RSA 362:7, I, to the extent provided in RSA 362:7, II and III(d) and (e); and

(c) Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

PART En 1302 DEFINITIONS

En 1302.01 “Attaching entity” means a natural person or an entity with a statutory or contract right to attach a facility of any type to a pole, including, but not limited to, telecommunications providers, cable television service providers, incumbent local exchange carriers, excepted local exchange carriers, wireless service providers, information service providers, electric utilities, and governmental entities.

En 1302.02 “Boxing” means the placement of lines or cables on both the road side and the field side of a pole.

En 1302.03 “Commission” means the New Hampshire public utilities commission.

En 1302.04 “Communications space” means the lower usable space on a pole, which typically is reserved for low-voltage communications equipment.

En 1302.05 “Complex make-ready” means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communications attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are considered complex. A utility pole that has wireless facilities does not automatically classify any make-ready work done on that pole as meeting the above definition of “complex make-ready.” A wireless attacher’s work on its wireline backhaul facilities may be no different than wireline work done by other attachers, and where appropriate, may be considered simple make-ready work according to that definition.

En 1302.06 “Excepted local exchange carrier” means “excepted local exchange carrier” as defined in RSA 362:7, I (c), namely “(1) An incumbent local exchange carrier providing telephone services to 25,000 or more lines; or (2) An incumbent local exchange carrier providing service to less than 25,000 lines that elects

to be excepted, upon the filing with the commission of a written notice advising of said election; or (3) Any provider of telecommunications services that is not an incumbent local exchange carrier.”

En 1302.07 “Extension arm(s)” means a bracket attached to a pole to provide support for cables or wires at a distance from the pole.

En 1302.08 “Facility” means the lines, cables, wireless antennas, and any accompanying appurtenances attached to a pole for the transmission of electricity, information, telecommunications, or video programming for the public or for public safety purposes.

En 1302.09 “Federal Communications Commission (FCC)” means the U.S. government agency established by the Communications Act of 1934 and charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

En 1302.10 “Make-ready work” means all work, including, but not limited to, rearrangement or transfer of existing facilities, replacement of a pole, complete removal of any pole replaced, or any other changes required to accommodate the attachment of the facilities of the party requesting attachment to the pole.

En 1302.11 “Overlash” means the tying or lashing of an attaching entity’s additional fiber optic cables, or similar incidental equipment such as fiber-splice closures, to the attaching entity’s own existing communications wires, cable, or supporting strand already attached to poles.

En 1302.12 “Pole” means “pole” as defined in RSA 374:34-a, I, namely “any pole, duct, conduit, or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.”

En 1302.13 “Simple make-ready” means make-ready work where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage, and which does not require splicing of any existing communications attachment or relocation of any existing wireless attachment.

En 1302.14 “Usable space” means the space on a pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the pole owner or owners, and, with respect to any conduit, the term means capacity 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 pole owner or owners.

En 1302.15 “Utility” means a “public utility” as defined in RSA 362:2, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.

PART En 1303 ACCESS TO POLES

En 1303.01 Access Standard.

(a) Except as otherwise provided in (b) and (c) below, the owner or owners of a pole shall provide attaching entities access to such pole on terms that are just, reasonable, and nondiscriminatory. Such access shall include wireless facility attachments, including those above the communications space on the pole.

(b) Notwithstanding the obligation set forth in (a) above, the owner or owners of a pole may deny a request for attachment to such pole:

- (1) If there is insufficient capacity on the pole;
- (2) For reasons of safety, reliability, or generally applicable engineering purposes; or
- (3) If the pole owner(s) does not possess the authority to allow the proposed attachment.

(c) The owner or owners of the pole shall not deny a requested attachment under subsection (b)(1) or (b)(2) above if other make-ready work or another alternative can be identified that would accommodate the additional attachment.

En 1303.02 Owner Obligation to Negotiate. The owner or owners of a pole shall, upon the request of a person entitled to access under these rules seeking a pole attachment, negotiate in good faith with respect to the terms and conditions for such attachment, including but not limited to incorporation of these rules into existing agreements by default. Such negotiations shall be concluded within thirty days after request by a new or an existing attacher for an agreement or amendment.

En 1303.03 Requestor Obligation to Negotiate. A person entitled to access under these rules seeking a pole attachment shall contact the owner or owners of the pole and negotiate in good faith and execute an agreement for such attachment, which agreement by default shall incorporate these rules unless specifically agreed otherwise. A prospective attaching entity may submit a request for access to a utility's poles pursuant to En 1303.04 prior to negotiating and executing a pole attachment agreement with the pole owner or owners.

En 1303.04 Request for Access and Response Requirements.

(a) Requests for access to a utility's poles, whether made before or after negotiation and execution of a pole attachment agreement, shall be in writing and include information necessary under the pole owner's procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to schedule a survey of the poles.

(1) The pole owner shall determine within 10 business days after receipt of a new attacher's attachment application whether the application is complete and notify the attacher of that decision. If the pole owner does not respond within 10 business days after receipt of the application, or if the pole owner rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the pole owner timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

(2) Any resubmitted application need only address the pole owner's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the pole owner specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the pole owner, and in each case the deadline set forth in this paragraph shall apply to the pole owner's review.

(b) Absent circumstances beyond the pole owner's control, such as *force majeure*, a survey of poles shall be completed and the results communicated to the applicant seeking to attach within 45 days, or within 60 days, in the case of larger orders as described in En 1303.12(e), of receiving a completed application and survey fee.

(c) Pole owners shall grant or deny access in writing within the number of days allowed for completion of the survey, as specified in (b) above. The pole owner's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information represent grounds for denial as specified in En 1303.01. The denial must state the precise concerns regarding the particular attachments and the particular poles at issue. Blanket bans on attachments to any portion of a pole are prohibited.

(d) The pole owner may not deny the new attacher's application based on a preexisting violation not caused by any prior attachments of the new attacher.

En 1303.05 Authorization Required. No person shall attach facilities to a pole without a license or similar authorization in writing from the pole owner or owners prior to attaching such facilities. No person shall perform any make ready-work in connection with any request for access to a pole without having executed an agreement for such attachment, in accordance with En 1303.03.

En 1303.06 Notification.

(a) The owner or owners of a pole shall provide written notice to an attaching entity not less than 60 days prior to:

- (1) Removing any of that person's facilities;
- (2) Increasing any annual or recurring fees or rates applicable to the pole attachment; or
- (3) Modifying the facilities other than as part of routine maintenance or in response to an emergency.

(b) Except as otherwise provided in En 1303.04 and En 1303.12 with respect to access and make-ready work, attaching entities shall provide written notice to the owner or owners of a pole not less than 60 days prior to:

- (1) Modifying an existing attachment other than as part of routine maintenance, in response to an emergency, or to install a customer drop line;
- (2) Increasing the load or weight on a pole by adding to an existing attachment, other than:
 - a. As part of routine maintenance;
 - b. In response to an emergency;
 - c. To install an overlash; or
 - d. To install a customer drop line; or
- (3) Changing the purpose for which an existing attachment is used.

(c) An existing attaching entity shall provide written notice to the pole owner or owners of its intent to overlash a minimum of 5 days prior to installing an overlash. An existing attaching entity shall provide written notice of an overlash to the pole owner or owners within 10 days after installing the overlash.

(d) Separate and additional attachments are subject to pole attachment application and licensing processes.

En 1303.07 Installation and Maintenance.

(a) All attachments shall be installed in accordance with the National Electrical Safety Code, 2017 edition, available as specified in Appendix B, the National Electrical Code as adopted in RSA 155-A:1, IV, and the SR-1421 *Blue Book – Manual of Construction Procedures, Issue 6, Telcordia Technologies, Inc., an Ericsson company (2017)*, available as specified in Appendix B, and in accordance with such other applicable standards and requirements specified in the pole attachment agreement.

(b) Any attachment shall be installed and maintained to prevent interference with service furnished by the pole owner or owners and any other attaching entity.

(c) If 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, 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.

(d) Neither the cost to remove a duplicate pole that was not removed when a pole was replaced earlier, nor the cost to complete other work started before the make-ready work, shall be assessed to or imposed on the entity seeking to add a new attachment.

(e) An overlash shall not be deemed an attachment and an attaching entity shall have the right to install an overlash subject to the notification provisions of En 1303.06(c).

En 1303.08 Labeling of Attachments. Attaching entities shall clearly label their attachments with owner identification.

En 1303.09 Location of Attachments.

(a) No attaching entity shall be denied attachment solely because a wireless facility is to be located above the communications space on a pole. No attaching entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility.

(b) If the owner of the lowest facility chooses to relocate its existing facilities to a lower allowable point of attachment so that a new attachment will be located above that owner's existing facilities, that owner shall bear the cost of relocation and ~~such relocation will be performed within the time limits specified in En 1303.12(c).~~

En 1303.10 Boxing of Poles.

(a) ~~A prohibition on boxing poles (i.e., placing cables on both the road side and the field side of a pole) which can be safely accessed by emergency equipment and bucket trucks or ladders provided that such technique complies with the requirements of applicable codes, is presumptively unreasonable.~~

(b) ~~A pole owner may overcome the presumption in paragraph (a) above only by clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable or unsafe result. An owner's denial of the use of boxing shall be specific, shall include all relevant information supporting its denial, and shall explain how such information supports denial.~~

En 1303.11 Use of Extension Arms.

(a) ~~A prohibition on using extension arms to clear obstacles, improve alignment, or provide space that would not otherwise be available without a replacement pole, to the extent that the installation of extension arms complies with applicable codes, is presumptively unreasonable.~~

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Deleted: the new attaching entity shall bear the remaining 40 percent of the cost of relocation, except if and to the extent that En 1303.07(c) is applicable...

Deleted: A pole owner may restrict the practice of boxing poles, consistent with the restrictions it places on its own practice of boxing poles as defined in the company's written methods and procedures or as actually implemented by the company in the normal course of its business. Such boxing shall be safely accessible by bucket trucks, ladders, or emergency equipment and otherwise consistent with the requirements of applicable codes, including the National Electrical Safety Code.¶

Deleted: Boxing shall be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use boxing, in writing, within the same time period as required for the survey for an attachment or within 30 days of receiving a request not made in connection with an application for attachment. At the request of the attaching entity, a...

Deleted: A pole owner shall allow limited, reasonable use of extension arms by attaching entities for purposes of clearing obstacles or improving alignment of attachment facilities, consistent with the restrictions it places on its own practice of using extension arms as defined in the company's written methods and procedures or as actually implemented by the company in the normal course of its business. Under no circumstances shall extension arms be used to avoid tree trimming requirements. Any use of extension arms shall be consistent with the requirements of applicable codes, including the National Electrical Safety Code.¶

(b) A pole owner may overcome the presumption in paragraph (a) above only by clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable or unsafe result. An owner's denial of use of extension arms shall be specific, shall include all relevant information supporting its denial, and shall explain how such information supports denial.

En 1303.12 Make-Ready Work Timelines.

(a) If a request for access is granted, the pole owner shall present to the prospective attaching entity an estimate of charges to perform all necessary make-ready work within 14 days of completing the survey required by En 1303.04, or in the case where a prospective attaching entity's contractor has performed a survey, within 14 days of receipt by the pole owner of such survey.

(b) Upon presentation of the estimate of charges to perform make-ready work:

- (1) A pole owner may withdraw an outstanding estimate beginning 14 days after the estimate is presented; and
- (2) An attaching entity may accept an outstanding estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

(c) Upon receipt of payment specified in (b)(2) above, a pole owner shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready work, as follows:

(1) For attachments in the communications space, the notice shall:

- a. Specify where and what make-ready work will be performed;
- b. Specify the order in which existing attaching entities must perform their make-ready work;
- c. Set a date for completion of make-ready work that is no later than 30 days after notification is sent, or 75 days in the case of larger orders, as described in En 1303.12(e) below, subject to extension by 30 days as specified in d. below;
- d. For an application involving more than 100 poles where 30% or more of the affected poles are required to be replaced, the pole owner may extend the completion date by an additional 30 days;
- e. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion;
- f. State that the pole owner may assert its right to 15 additional days to complete any outstanding make-ready work, provided that the delay in completion of that make-ready work was caused by the actions or inactions of a third party attaching entity who had received timely notice that its make-ready work could be performed;
- g. State that if make-ready work is not completed by the completion date set by the pole owner, or if the pole owner has asserted its 15-day right of control, 15 days later, the attaching entity requesting access may complete the specified make-ready work; and
- h. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work procedure; and

Deleted: Extension arms shall be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use extension arms, in writing, within the same time period as required for the survey for an attachment or within 30 days of receiving a request not made in connection with an application for attachment. At the request of the attaching entity, a t the request of the attaching entity, a

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(2) For make-ready work, including wireless attachments, outside the communications space, the notice shall:

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- a. Specify where and what make-ready work will be performed;
- b. Set a date for completion of make-ready work that is no later than 90 days after notification is sent, or 135 days in the case of larger orders, as described in En 1303.12(e) below;
- c. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion;
- d. State that the pole owner may assert its right to 15 additional days to complete any outstanding make-ready work, provided that the delay in completion of that make-ready work was caused by the actions or inactions of a third party attaching entity who had received timely notice that its make-ready work could be performed;
- e. State that if make-ready work is not completed by the completion date set by the pole owner, or if the pole owner has asserted its 15-day right of control, 15 days later, the attaching entity requesting access may complete the specified make-ready work; and
- f. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work procedure.

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(d) For attachments in the communications space, a pole owner shall ensure that make-ready work is completed by the date set by the pole owner in (c)(1)c above, or if the pole owner has asserted its 15-day right of control, 15 days later. For make-ready work outside the communications space, a pole owner shall ensure that make-ready work is completed by the date set by the pole owner in (c)(2)b above, or if the pole owner has asserted its 15-day right of control, 15 days later.

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(e) For the purposes of compliance with the time periods in this section:

- (1) A pole owner shall apply the timeline described in En 1303.04 and in (a) through (c) above to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the pole owner's poles in a state;
- (2) A pole owner may add 15 days to the survey period described in En 1303.04 to larger orders up to the lesser of 2,000 poles or 4 percent of the pole owner's poles in the state;
- (3) A pole owner may add 45 days to the make-ready work periods described in (c) above to larger orders up to the lesser of 2,000 poles or 4 percent of the pole owner's poles in the state;
- (4) A pole owner shall negotiate in good faith the timing of all requests for pole attachments larger than the lesser of 2,000 poles or 4 percent of the pole owner's poles in a state; and
- (5) A pole owner may treat multiple requests from a single attaching entity as one request when the requests are filed within 30 days of one another.

(f) A pole owner may deviate from the time limits specified in this section:

- (1) Before offering an estimate of charges if the parties have not yet entered into an agreement pursuant to En 1303.03 specifying the rates, terms, and conditions of attachment; or

(2) During performance of make-ready work for good and sufficient cause that renders it infeasible for the pole owner to complete the make-ready work within the prescribed time frame, provided that:

a. A pole owner that so deviates shall immediately notify, in writing, the attaching entity requesting attachment and other affected entities with existing attachments, stating the reason for and the date and duration of the deviation; and

b. The pole owner shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready work performance without discrimination when it returns to routine operations.

(g) If a pole owner fails to respond as specified in En 1303.04, an attaching entity requesting attachment in the communications space may, as specified in (i) through (l) below, hire a contractor to complete a survey.

(h) If make-ready work is not completed by the pole owner or an existing attaching entity by the date specified in (c)(1)-(2) above, an attaching entity requesting attachment may, as specified in (i) through (m) below, hire a contractor to complete the outstanding make-ready work, and written notice of such contractor engagement shall be provided to the pole owner and each affected attaching entity, as of the time specified below:

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(1) Immediately, if the pole owner has failed to assert its right to perform outstanding make-ready work by notifying the attaching entity requesting attachment that the pole owner will do so; or

(2) After 15 days if the pole owner has asserted its right to complete outstanding make-ready work by the date specified in (c)(1)c above and has failed to complete all such make-ready work.

(i) A pole owner shall make available, and keep up-to-date, a list of not less than 3 contractors that such pole owner, and any joint pole owner, authorizes to perform surveys and make-ready work on its poles in cases where the pole owner or an existing attaching entity has failed to meet the deadlines specified in En 1303.04 and in (a) through (h) above or pursuant to En 1303.13. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in (j) below and the pole owner may not unreasonably withhold its consent.

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(j) Contractor minimum qualification requirements. Pole owners must ensure that contractors on an owner-provided list, and new attachers must ensure that contractors they select pursuant to Puc 1303.12(g)-(h) and 1303.13, meet the following minimum requirements:

(1) The contractor has agreed to follow published safety and operational guidelines of the pole owner, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(2) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the pole owner;

(3) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;

(4) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the pole owner, if made available; and

(5) 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 facilities owned by existing attachers.

(k) If an attaching entity hires a contractor for purposes specified in (g) or (h) above or pursuant to En 1303.13, it shall choose from among the pole owners' list of authorized contractors.

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(1) For simple make-ready work, including One-Touch Make Ready under Puc 1303.13, if the pole owner does not provide a list of approved contractors for surveys or simple make-ready or no pole owner-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in Puc 1303.12(j) when providing notices required by Puc 1303.12(g) and (h), and 1303.13(c) and (d).

(2) The utility may disqualify any contractor chosen by the new attacher under (1) above that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in Puc 1303.12(g) and (h), and 1303.13(c) and (d) and in its objection must identify at least one available qualified contractor.

(l) An attaching entity that hires a contractor for purposes specified in (g) or (h) above or pursuant to En 1303.13 shall provide a pole owner with a reasonable opportunity for its representative to accompany and consult with the authorized contractor and the attaching entity.

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(m) For purposes of survey, the electric utility pole owner's representative may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

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En 1303.13 One-Touch Make-Ready Option. For attachments involving simple make-ready, new attaching entities may elect to proceed with the process described in this section in lieu of the attachment process described in subsections (c) through (f) of En 1303.12:

(a) A new attaching entity electing the one-touch make-ready work process shall elect the one-touch make-ready work process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attaching entity to ensure that its contractor determines whether the make-ready work requested in an attachment application is simple make-ready.

(b) The pole owner shall review the new attaching entity's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the pole owner with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application. With respect to any such application:

(1) A pole owner shall have 10 business days after receipt of a new attaching entity's attachment application in which to determine whether the application is complete and notify the attaching entity of that decision. If the pole owner does not respond within 10 business days after receipt of the application, or if the pole owner rejects the application as incomplete but fails to specify any reasons in the application, then the application shall be deemed complete; and

(2) If the pole owner timely notifies the new attaching entity that its attachment application is not complete, then the pole owner shall specify all reasons for finding it incomplete. Any resubmitted application need only address the pole owner's specified reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the pole owner specifies to the new attaching entity which reasons were not addressed and how the resubmitted application did not sufficiently address those reasons. The applicant may follow the resubmission procedure in this subsection (2) as many times as it chooses, provided that, in each case, it makes a bona fide attempt to correct the reasons identified by the pole owner, and in each case the deadline set forth in this subsection (2) shall apply to the pole owner's review.

(c) The pole owner shall review on the merits a complete application requesting one-touch make-ready and respond to the new attaching entity either granting or denying the application within 15 days of the pole owner's receipt of a complete application (or within 30 days in the case of larger orders as described in En 1303.12(e)). With respect to any such complete application:

(1) If the pole owner denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards; and

(2) Within the 15-day application review period (or within 30 days in the case of larger orders as described in En 1303.12(e)), a pole owner may object to the designation by the new attaching entity's contractor that certain make-ready work is simple make-ready. If the pole owner objects to the contractor's determination that make-ready work is simple make-ready, then it shall be deemed to be complex make-ready. The pole owner's objection shall be final and determinative, provided that 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 make-ready work is not simple make-ready.

(d) The new attaching entity shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in En 1303.12(i)-(k). The new attaching entity shall permit the pole owner and any existing attaching entities on the affected poles to be present for any field inspection conducted as part of the new attaching entity's surveys. The new attaching entity shall use commercially reasonable efforts to provide the pole owner and affected existing attaching entities with prior notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys and the name of the contractor performing the surveys.

(e) If the new attaching entity's attachment application is approved and if it has provided 15 days prior written notice of the make-ready work to the affected pole owner and existing attaching entities, the new attaching entity may proceed with make-ready work using a contractor in the manner as specified in En 1303.12(i)-(k). With respect to any such make-ready work:

(1) The prior written notice shall include the date and time of the make-ready work, a description of the work involved, and the name of the contractor being used by the new attaching entity, and shall provide the affected pole owner and existing attaching entities a reasonable opportunity to be present for any make-ready work;

(2) The new attaching entity shall notify an affected pole owner or existing attaching entity immediately if make-ready work damages the equipment of the pole owner or existing attaching entity or causes an outage that is reasonably likely to interrupt the service of the pole owner or existing attaching entity, upon receipt of which notice the affected pole owner or existing attaching entity may either:

a. Complete any necessary remedial work and bill the new attaching entity for the reasonable costs related to fixing the damage; or

b. Require the new attaching entity to fix the damage at its expense immediately following notice from the affected pole owner or existing attaching entity; and

(3) In performing make-ready work, if the new attaching entity or the pole owner determines that make-ready work classified as simple is complex, then that specific make-ready work shall be halted and the determining party shall provide immediate notice to the other party of its determination and the affected poles, in which case the affected make-ready work shall then be governed by En 1303.12(a) through (f) and the pole owner shall provide the notice required by En 1303.12(c) as soon as reasonably practicable.

(f) A new attaching entity shall notify the affected pole owner and existing attaching entities within 15 days after completion of make-ready work on a particular pole, which notice shall provide the affected pole owner and existing attaching entities at least 90 days from receipt in which to inspect the make-ready work. The affected pole owner and existing attaching entities shall have 14 days after completion of their inspection to notify the new attaching entity of any damage or code violations caused by make-ready work conducted by the new attaching entity on their equipment. If the affected pole owner or an existing attaching entity notifies the new attaching entity of any such damage or code violations, then the pole owner or existing attaching entity shall provide detailed and specific documentation describing the damage or code violations. With respect to any such damage or code violations, the affected pole owner or existing attaching entity may either:

(1) Complete any necessary remedial work and bill the new attaching entity for the reasonable costs related to fixing the damage or code violations; or

(2) Require the new attaching entity to fix the damage or code violations at its expense within 14 days following notice from the affected pole owner or existing attaching entity.

APPENDIX A

| Rule | Statute |
|---------------|--------------------------------|
| En 1300 | RSA 374:3; RSA 374:34-a |
| En 1301.01 | RSA 374:3; RSA 374:34-a |
| En 1301.02(a) | RSA 374:3; RSA 374:34-a |
| En 1301.02(b) | RSA 362:7, I-III; RSA 374:34-a |
| En 1301.02(c) | RSA 374:3; RSA 374:34-a |
| En 1302 | RSA 374:3; RSA 374:34-a |
| En 1303 | RSA 374:3; RSA 374:34-a |

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

| Rule | Title (date) | Source |
|---------------|--|---|
| En 1303.07(a) | National Electrical Safety Code, 2017 Edition | National Fire Protection Agency 1 Batterymarch Park Quincy, Massachusetts USA 02169-7471 Available for \$210.00 at: http://www.nfpa.org/ |
| En 1303.07(a) | SR-1421 "Blue Book – Manual of Construction Procedures, Issue 6," Telcordia Technologies, Inc., an Ericsson company, 2017 Edition | Telcordia Technologies Ericsson Inc. One Ericsson Drive Piscataway, NJ 08854-4156 USA Available for (Click at bottom of page to request price quote) at: http://telecom-info.telcordia.com/site-cgi/ido/docs.cgi?ID=SEARCH&DOCUMENT=SR-1421& |

Crown Castle Proposed Revisions to Puc 1300

Puc 1303.05 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct an adjudicative proceeding pursuant to Puc 203 to consider and rule on the petition, and shall provide notice to affected municipalities to the extent required by RSA 541-A:39. Except for general proceedings to determine just and reasonable rates under Puc 1303.06(a) or (b), all disputes arising under this part shall be decided within 60 days of filing of the petition.

Puc 1303.06 Rate Review Standards.

[Insert new subsection (c) as follows:]

(c) Pole Replacement.

(1) Pole owners may not impose the entire cost of a pole replacement on a requesting attacher when the attacher was not the sole cause of the pole replacement.

(2) A requesting attacher that precipitates the need for a pole replacement shall be responsible only for:

(i) the difference, if any, between the cost of the replacement utility pole necessary to accommodate the new attacher's attachment, and the cost for a new utility pole of the type and height the pole owner would have installed in the same location in the absence of the attachment, plus

(ii) a reasonable estimate of the net book value of the pole and supporting equipment, if any, which has been replaced.

(3) If more than one attacher benefits from the replacement, the replacement cost attributable to attachers should be shared proportionately.