

**NEW HAMPSHIRE DEPARTMENT OF ENERGY
UTILITY POLE ATTACHMENT RULES**

**COMMENTS OF
NEW ENGLAND CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC.**

NOW COMES New England Cable and Telecommunications Association, Inc. (“NECTA”), by and through its undersigned attorneys, and respectfully submits these written comments to supplement the oral comments provided on behalf of NECTA at the public comment hearing held jointly by the New Hampshire Public Utilities Commission (“the Commission” or “NH PUC”) and the New Hampshire Department of Energy (“NH DOE”) on June 10, 2022. NECTA notes that it will submit written comments to the Commission separately on its proposed pole attachment rules.

I. Introduction

NECTA appreciates the opportunity to provide these comments regarding the NH DOE’s proposed pole attachment rules. NECTA is a non-profit corporation and regional trade association that represents the interests of most cable television and broadband internet providers in New Hampshire, including affiliates of Breezeline, Charter Communications and Comcast, and their competitive local exchange company affiliates.

NECTA Members are “attaching entities” within the meaning of proposed rule Env 1302.01. They attach their facilities to poles as defined in RSA 374:34-a, I, and proposed rule Env 1302.12, to deploy broadband and other advanced communications services to business and residential customers in New Hampshire. Given the recent announcement that New Hampshire

will be receiving \$50 million in federal aid¹ for increasing access to high-speed affordable internet service, it is of utmost importance to broadband providers that rules are in place to promote nondiscriminatory and efficient pole attachment processes, and just and reasonable pole attachment rates.

NECTA believes that when the pole attachment rules were last amended in 2018, they adequately balanced the interests of attaching entities and pole owners. Since that time, however, the world has changed. The COVID 19 pandemic has changed the way that we work, learn and communicate with one another. Increased distance learning, remote work environments and videoconferencing during in the past two years, have necessitated more broadband deployment to meet these needs. Therefore, the rules that govern facility attachments that deliver essential broadband services must be fair and clear, and must ensure that pole attachment rates are just and reasonable. For the reasons discussed below, the existing pole attachment rules must be updated to keep pace with a changing environment that demands expeditious broadband deployment. As indicated above, NECTA will be submitting comments to the Commission regarding that agency's proposed rules relating to dispute resolution and pole attachment rates. Therefore, the comments below are focused only on NH DOE's proposed rules relating to processes for accessing and attaching facilities to poles.

II. One Touch Make Ready

NECTA notes that Senate Bill 88 enacted last year, directed the NH DOE to adopt rules implementing provisions of the One Touch Make Ready ("OTMR") rules "as adopted by the Federal Communications Commission in 47 CFR 1.1411 (j)." *See* RSA 374:34-a, III. These

¹ [https://www.concordmonitor.com/Four-states-receive-first-allocations-of-\\$10B-broadband-fund-46712280](https://www.concordmonitor.com/Four-states-receive-first-allocations-of-$10B-broadband-fund-46712280)

OTMR rules apply in the 27 states that default to the FCC’s pole attachment regulations, and have been upheld by 9th Circuit Court of Appeals.² The 9th Circuit found that the FCC’s OTMR rules are intended to make it faster and less expensive for broadband providers to attach to already-existing utility poles.³ Thus, OTMR is an important step in assisting broadband providers to meet the existing needs of their customers, and will facilitate the deployment of broadband for upcoming projects that will be funded with the newly-available federal monies mentioned above.

NECTA commends the NH DOE for drafting an initial rules proposal that closely follows the language of FCC’s OTMR rules. However, there is one area where the NH DOE deviated from the federal rules. The proposed NH DOE rules at En 1303.13 (c) and 1303.13(c)(2) do not include the definition of “larger orders” contained in the FCC’s One Touch Make Ready rules. Instead, those proposed rules reference the definition of “larger orders” that appears in existing NH PUC pole attachment rules that the NH DOE proposes to adopt as rule Env 1303.12 (e).

The correct definition of “larger orders” is important as it sets the threshold for allowing a pole owner to add 15 more days to the time period for reviewing the merits of a complete OTMR application. Under the FCC’s OTMR rules, at 47 CFR §1.1411(j)(2), the pole owner must review the merits of a complete application requesting OTMR and respond to the new attacher (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 47 CFR § 1.1411 (g)**) (emphasis added). Section (g) of 47 CFR §1.1411 describes “larger orders” as “up to the lesser of 3000 poles or 5 percent of the utility’s poles in a state.”

² *City of Portland v US*, 969 F.3d 1020 (9th Cir. 2020).

³ *City of Portland v US*, 969 F.3d 1020, 1050 (9th Cir. 2020).

Although the proposed NH DOE OTMR rules at En 1303.13 (c) and (c)(2) contain the same review and denial requirements as the FCC's OTMR rules, the proposed rules refer to "larger orders as described in En 1303.12(e)." Proposed rules En 1303.12 (e)(2), (3) and (4) refer to "larger orders" as being "up to the lesser of 2,000 poles or 4 percent of the pole owner's poles in the state" (which is the same threshold that applies to non-OTMR or complex make-ready). Thus, under the proposed rules, the threshold for triggering a 15 day delay in reviewing the merits of a complete OTMR application is lower than under the FCC's rules.

NECTA respectfully submits in order to be consistent with the FCC's OTMR rules, which Senate Bill 88 mandates, the definition of larger orders contained in the FCC's OTMR rules is the appropriate definition that should be included in proposed rules En 1303.13 (c) and 1303.13 (c)(2). Therefore, NECTA recommends that the NH DOE revise proposed rule En 1303.13 (c) as follows:

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)~~, ***i.e., those up to the lesser of 3000 poles or 5 percent of the pole owner's poles in the state***). 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)~~, ***i.e., those up to the lesser of 3000 poles or 5 percent of the pole owner's poles in the state***), 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.

III. Conclusion

NECTA appreciates the opportunity to provide these comments and respectfully requests that the NH DOE adopt the above suggestions in developing its final rules proposal.

Respectfully submitted,

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TELECOMMUNICATIONS ASSOCIATION,
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By its attorneys,
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Certificate of Service

I hereby certify that on the date set forth above a copy of the within Comments was sent by electronic mail to persons listed on Attorney Wiesner's 4/6//22 electronic mail message regarding this matter.



Susan S. Geiger