

**STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION
Docket No. DRM 17-139**

**Rulemaking – N.H. Code Admin. Rules Puc 1300
Utility Pole Attachment Rules Readoption and Amendment**

**CENTURYLINK'S REPLY COMMENTS
ON PROPOSED POLE ATTACHMENT RULES**

CenturyLink Communications, LLC, Level 3 Communications, LLC, Broadwing Communications, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc., Global Crossing Local Services, Inc., TelCove Operations, LLC, and Level 3 Telecom Data Services, LLC (“CenturyLink Operating Companies”) submit these reply comments on the Draft Final Proposal for the Utility Pole Attachment Rules Readoption with Amendments submitted by the Commission Staff on March 15, 2018 (“Draft Final Proposal”).

CenturyLink operates in 500 markets in all 50 states, including New Hampshire. In New Hampshire, the CenturyLink Operating Companies have invested more than \$8.7 million in their networks and have more than 190 fiber route miles that enable the companies to provide advanced broadband and telecommunications services to customers. Building out network to directly connect our customers requires us to attach our fiber to many poles owned by electric utilities and other telecommunications utilities in the state, including Eversource and Fairpoint (Consolidated Communications), and pay monthly recurring charges in addition to make-ready costs, under pole attachment agreements we currently have in place.

CenturyLink owns over 2 million poles across the country and is a major attacher, having facilities attached to over 5 million poles, including poles in New Hampshire. Our perspective on pole attachments, including the time frames for completing make-ready work, is balanced by our competing concerns in having attachments completed in a timely manner and meeting those same

time frames we are proposing when we are the pole owner. We will continue to build infrastructure in New Hampshire which will require timely access to pole attachments at reasonable terms and conditions, which is why we applaud the New Hampshire Draft Final Proposal that includes additional guidance to ensure pole attachments are not a source of delay in building broadband networks.

Despite the laments from New Hampshire pole owners that the rules are making major changes without any “evidence” that the existing rules are causing problems, the modest changes to the rules indicate that New Hampshire is willing to embrace best practices implemented in other states and at the FCC to drive out delays and streamline the process for pole attachments. New Hampshire does not need to wait until attachers bring a plethora of complaints about the process for attaching before the Commission can reform its pole attachment rules. Nor should “good enough” be an embraced standard as seemed to be encouraged by various parties at the Technical Session. As we explained in our initial comments, there is a national focus on pole attachment issues right now, and the FCC and other New England states are revisiting their rules to shorten the time frames for attaching, improving the pole attachment process by eliminating cumbersome processes and taking measures to ensure that costs are fair and reasonable. The Draft Final Proposal still allows for deviation from the streamlined process when delays are unavoidable or additional time is required due to processes and procedures beyond the control of the pole owner. CenturyLink, as both an attacher and pole owner, supports this measured and flexible approach.

A. The Draft Final Proposal Reflects a Flexible Balanced Approach to Streamlining Time-Frames and Processes from Submission of the Application through Completion of Make-Ready Work.

The Initial Proposed Rules only had two timeframes specifically identified – (1) the 45-day response required once an application is submitted¹ and (2) the 150-day window to complete make-ready work once payment is received,² establishing at least 195 days to release a pole attachment permit. In our initial comments, CenturyLink explained that the FCC's four-stage timeline results in a maximum of 148 days for all four stages, which could be shortened even further as a result of the FCC's open proceeding.³ We also explained that surrounding states have streamlined processes: New York requires owners to complete make-ready work within 45 days of receiving payment from the attacher;⁴ Maine's recently revised rules sets the date for completion of make-ready work for not later than 90 days after notification is sent to attaching entities;⁵ and Connecticut has determined that a 90-day time interval should be the objective for the pole attachment process, which includes the 45 days for the survey and estimate a 45-day period to complete the make-ready work.⁶

¹ See Puc 1303.04.

² See Puc 1303.12.

³ *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Red 3266, 3268-70 ¶¶ 7-12 (2017) (survey – 45 days; estimate of make-ready – 14 days; attacher acceptance – 14 days; and completion of make-ready work – 60-75 days). CenturyLink has urged the FCC to streamline the make-ready process even more by consolidating the survey and estimate into a single 45-day period, and allowing attaching entities to engage outside contractors at the outset of the process to facilitate make-ready work among attachers.

⁴ New York Public Service Commission *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Case 03-M-0432, Order Adopting Polity Statement on Pole Attachments at 3 (Aug. 6, 2004).

⁵ Maine Public Utilities Commission, Chapter 880, Section 5, available at: <https://mpuc-cms.maine.gov/COM.Public.WebUI/Common/CaseMaster.aspx?CaseNumber=2017-00247> (last visited Jan. 30, 2018).

⁶ Connecticut Public Utilities Regulatory Authority, *DPUC Review of the State's Public Service Company Utility Pole Make-Ready Procedures – Phase 1*, Docket No. 07-02-13, Decision at 1 (April 30, 2008).

The Draft Final Proposal substantially incorporates the FCC's survey and make-ready work timelines and use of contractors, modifying New Hampshire's existing rules would allow at least 195 days and instead incorporating processes that achieve some improvement in a process that could now take up to 148 days. Consolidated Communications ("Consolidated") presented its view of how much time is needed for attachments at a Technical Session on April 2, 2018. Consolidated acknowledges that it could meet the time frames outlined in the Draft Final Proposal, at least for attachments that do not require a pole replacement. It agreed that attachments can be moved in 25-75 days when no pole replacements are required, based on its assumption that each attacher will take 5-15 days to move attachments. If attachers agree to use the same contractor, however, a contractor could move attachments for several attachers simultaneously, compressing the time frames even more.

The main grievance that Consolidated appears to have with the time frames in Staff's Draft Final Proposal stem from its concerns about its need to replace poles as part of the make-ready work to make space for new attachers. At the Technical Session, Consolidated asserted that it would take 80 to 200 days for a pole replacement and movement of attachments to the new pole. While CenturyLink, as a pole owner, appreciates Consolidated's concern, it does not mandate a change to the Draft Final Proposal. There is flexibility in the processes and timelines set forth in Rule Puc 1302.12(e) to allow the pole owner additional time when pole setting work is required. It also allows for flexibility should non-routine or emergency work require deviation from the scheduled make-ready work. CenturyLink supports the modifications and amendments made to the Puc 1303.12 and urges the Commission to incorporate their proposed revisions to its pole attachment rules to better streamline the processes for attachment.

B. The Inclusion of Provisions Allowing for Use of Approved Contractors Can Resolve Issues with Attachers Not Moving Facilities Timely.

We also support the incorporation into the Draft Final Proposal of an important safeguard that allows an attacher to use utility-approved contractors to perform make-ready work when the utility is unable to complete the work in the applicable time frame. Comments made at the technical session on April 2, 2018 by Consolidated indicate that some additional clarification might be needed on who is responsible for completing the make-ready work, and what happens in the event there is not cooperation from various attachers.

The provisions allowing an attacher to complete the make-ready work by using approved contractors is a “self-help” type remedy to achieve completion on the make-ready work in a timely fashion. Hence, if the pole owner is unable to complete the make-ready work because its work force is diverted to other emergency repairs or because one or more attacher(s) is not completing their share of the work, the new attacher can “take matters into its own hands” and complete the make-ready work by using an approved contractor. This provision should mitigate the concerns that pole owners have about meeting the streamlined timeframes for make-ready costs by allowing the new attacher, with notice to the parties, to take on the completion of the make-ready work, using contractors that have been fully vetted and approved by the pole owner.

If additional clarification is needed, CenturyLink suggests a simple addition (in bold, underline and all caps) in Puc 1303.12(b) that says:

Upon receipt of payment specified in (a)(2) above, a pole owner shall notify immediately in writing all known entities with existing attachment that may be affected by the make-ready work, **AND ALL ATTACHING ENTITIES ARE OBLIGATED TO PERFORM THEIR MAKE-READY WORK IN ACCORDANCE WITH THE NOTICE, WHICH SHALL PROVIDE** as follows:

This should provide additional clarification, in addition to contractual requirements set forth in every agreement between a pole owner and attacher, that attachers must either move their facilities in accordance with the make-ready instructions, or the pole owner or attaching entity requesting access will complete the required make-ready work, which may involve moving another attaching entity's attachments.

C. Revisions to Clarify the Timelines for Notice of Overlashing are Needed.

The Draft Final Proposal adds a definition for overlashing for fiber and associated incidental equipment to an attaching entity's own attachments and clarifies that an overlash is not a separate attachment, and hence does not need to follow the same process of application, survey, and make-ready. However, the Draft Final Proposal imposes in Puc 1303.06(b)(2) a 60-day advance written notice requirement when installing an overlash *that increases the weight or load on a pole.*⁷ That lengthy, pre-overlashing, written notice requirement may be needed when overlashing heavy equipment, such as antennas, routers, radios, electronic cross-connect equipment, power supplies, batteries, and other heavy or RF-Emitting equipment, that might warrant rigorous pre-overlashing review to assess the impact on load. A 60-day prior notice is unnecessary when the overlashing falls within the definition in Puc 1302.09, which pertains only to fiber cables, fiber splice closures and similar incidental equipment to existing facilities, where any additional weight is de minimis.

As we explained in our initial comments, CenturyLink allows parties to overlash wire-to-wire cable and incidental equipment to their own attachments on CenturyLink poles, subject to a

⁷ The revision might have been intended to reflect that 60-days' advance notice is only required when an overlash increases the load or weight on a pole, and wire-to-wire overlash does not, such that no advance notice is needed. However, pole owners during the hearing argued that any overlash adds weight and therefore, would read this provision as mandating 60 days' notice prior to overlashing. Therefore, we suggest clarifying language.

requirement that the overlashing party provide appropriate notice within 10 days of overlashing. After receiving notice, CenturyLink typically conducts a post-inspection of the overlashed facilities to ensure they comply with CenturyLink's standards and applicable safety and electric codes and do not pose loading concerns. If the inspection reveals violations, overlashing parties are responsible for any make-ready and associated costs required to remedy the deficiencies or overloading.

Maine recently adopted rules that followed this approach. Under its rules addressing the process for requesting to attach to a pole, the rules state:

“2.A.1. Request. ... A request to attach facilities to a joint-use utility pole [defined as a utility pole that has attachments] shall be in writing and must provide the pole owner with the information necessary under its procedures to begin to survey the poles to which attachment is sought. Notwithstanding the foregoing, a joint-use entity [defined as a public utility, telecom or information provider]... need not submit a request to overlash to existing facilities, so long as the joint-use entity provides written notice of the overlash within 10 days after making it. The pole owner then has 30 days in which to inspect the overlash and determine compliance.”⁸

We recommend that the New Hampshire pole attachment rules be clarified to follow a process similar to Maine's process, by clarifying that when the overlash falls within the definition set forth in Puc 1302.09, only post-overlash notice is required since any additional load or weight on the pole is minuscule. Should a post-overlash inspection reveal a violation of electrical or safety code or that the overlash facility itself put the pole in an overloaded condition, then the entity that overlashed must remedy the violation. Our suggestion is as follows:⁹

⁸ Maine Public Utilities Commission, Chapter 880, available at <https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/CaseMaster.aspx?CaseNumber=2017-00247> (last visited Apr. 4, 2018).

⁹ Proposed additional language is reflected in BOLD, UNDERLINE AND ALL CAPS. Proposed deletions is reflected with double strike through.

Puc 1303.05 Authorization Required. No person may attach facilities to a pole without authorization in writing from the pole owner or owners prior to attaching such facilities, in accordance with Puc 1303.04. **NOTWITHSTANDING THE FORGOING, AN ATTACHING ENTITY MAY OVERLASH AS DEFINED IN PUC 1302.09 SO LONG AS WRITTEN NOTICE OF OVERLASH IS PROVIDED WITHIN 10 DAYS AFTER MAKING THE OVERLASH. THE POLE OWNER HAS 30 DAYS POST-NOTICE TO CONDUCT AN INSPECTION, AND IF POST ATTACHMENT INSPECTION BY THE POLE OWNER DETERMINES THE OVERLASH RESULTED IN A SAFETY OR ELECTRICAL VIOLATION OR THE OVERLASH ITSELF CAUSED OVERLOADING OF THE POLE, THE OVERLASHING ENTITY IS RESPONSIBLE FOR THE COSTS OF CORRECTIVE MEASURES.** ... [rest of section continues with language regarding website posting of agreements]

Puc 1303.06 Notification

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

(2) Increasing the load or weight of a pole by installing an overlash OF EQUIPMENT OR FACILITIES OUTSIDE OF THOSE DEFINED IN PUC 1302.09 or otherwise adding to an existing attachment, other than as part of routine maintenance, ~~or~~ in response to an emergency, or to install a customer drop line; or

This language allows a balancing of interest that protects pole owners from having to bear costs associated with poles that are overloaded by overlashing while allowing existing attachers to overlash wire-to-wire to their own facilities under a streamlined process. It also clarifies that other types of overlashing of facilities or devices that are not-incidental raise additional risks that were not present or could have been considered when the host facilities were attached and may warrant pre-overlashing review that can be conducted under the advance 60-day notice time frame set forth in Puc 1303.06(b).

Conclusion

The Draft Final Proposal contains important modifications to bring the Commission's pole attachment rules up-to-date with current industry practices by including key provisions that:

- address the rights of various types of entities that seek to attach facilities;
- clarify the terms and conditions under which overlashing is permitted;
- establish processes to ensure that there is transparency through the ability to review agreements with other attachers;
- update the reference to the FCC's rate formula as one factor the Commission will review in determining just and reasonable rates should a complaint be brought; and
- most importantly, establish standards, timelines and processes for pole attachment applications and completion of make-ready work and addressing overlashing procedures.

CenturyLink appreciates the opportunity to provide insight and recommendations to the Commission on reforms to its pole attachment rules. As both a significant pole owner as well as a larger attacher nationwide, CenturyLink takes a balanced approach to ensure ease of access to poles without burdensome processes for pole owners. The Draft Final Proposal submitted by the

Staff achieves that balanced approach. With a few modifications, as set forth above, CenturyLink urges the New Hampshire Commission to approve the amendments to the pole attachment rules.

Respectfully Submitted,

CenturyLink Communications, LLC
Level 3 Communications, LLC
Broadwing Communications, LLC
WilTel Communications, LLC
Global Crossing Telecommunications, Inc.
Global Crossing Local Services, Inc.
TelCove Operations, LLC
Level 3 Telecom Data Services, LLC

/s/ Pamela H. Hollick

By its Attorney
Pamela H. Hollick
Associate General Counsel
CenturyLink
4625 W. 86th Street
Suite 500
Indianapolis IN 46037
317-713-8977
Pamela.hollick@centurylink.com
Indiana Bar #17552-53

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Certificate of Service

I hereby certify that on this 5th day of April, 2018 a copy of the foregoing was either sent by electronic mail or first-class mail, postage prepaid, to persons listed on the Service List.

/s/ Pamela H. Hollick
Pamela H. Hollick, Esq.
Associate General Counsel
CenturyLink
4625 W. 86th Street
Suite 500
Indianapolis IN 46037
317-713-8977
Pamela.hollick@centurylink.com
Indiana Bar #17552-53