

To House Energy & Technology Committee

Comments on the “Omnibus Telecom Bill” (19-1206), Draft 1.3

by Irv Thomae, Chair  
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I have been a Norwich resident since 1975, and (supposedly) retired in 2006. I have been a member of the ECFiber Governing Board since it first convened in April of 2008, board Chair since December 2012, and District Chair since its formation in 2015.

I am pleased to support many aspects of the current draft, especially the Broadband Development Loan Fund. While it does seem appropriate for the Loan Fund to be administered by VEDA, I would suggest a somewhat stronger role for the PSD in helping evaluate project proposals than simply certifying that numerical targets are met. That's another good reason to support adding personnel to the Department who will be involved in broadband-deployment issues.

However, my principal focus today will be on Sections 19 and 20 of Draft 1.3, which deal with pole-attachment and makeready issues. Federal and state law entitle bonafide communications providers to apply for and rent space for their cables on existing utility poles. Although nominally governed by the Public Utility Commission's Rule 3.700, that process currently lacks transparency, accountability, and timeliness. Those deficiencies have been a major impediment to rapid deployment of modern broadband here in Vermont.

In response to a petition from the Public Service Dept, the PUC has recently opened a “rule-making proceeding” for review and revision of Rule 3.700. Sections 19 and 20 of the Committee bill would, if passed, provide significant support to that urgently needed revision process.

As background, it may be helpful to begin with a quick review of the basic procedures by which a new provider gains access to the poles:

Step 1: After designing a route, an 'attaching entity' submits to the “Pole-Ownning Utility” sequential lists of the needed poles within a specified town, organized by logically related main and side roads and grouped into one or more 'pole applications' covering as many as 200 poles each. Each application is accompanied by a standard per-pole fee.

Step 2 a: The pole owner(s) schedule a Pole Survey, typically involving technical

personnel from the applicant as well as the pole owner(s), to determine what work needs to be done on which poles. (Typically, a large majority of poles will need no work at all. Existing cables may have to be moved on between 20 and 25% of poles, and a small number of poles may need replacement to create sufficient vertical space.)

Step 2b: For each surveyed pole application, an invoice for the proposed work is sent to the applicant.

Step 3: After receiving payment, the pole owner(s) and other attachees already present on the poles are supposed to carry out the specified makeready work within certain time limits. (See below, with noted exception.) Upon completion, a “pole license” is issued, signifying that the applicant may now attach its cables to those poles. Note that as a practical reality, since cable must be strung sequentially, the applicant must wait until all the poles covered by an application have been licensed.

The time periods currently allowed for steps 2 and 3 depend on what percentage of a pole owner's total poles within Vermont are being applied for, as follows:

# of Poles	Survey & Quote	Makeready Work*	Total elapsed time
<.5% of company's total poles	60 days	120 days	6 months
more than .5% but < 3%	90 days	180 days	9 months
More than 3% of total poles	Negotiated	Negotiated	??

\*Notes:1. Pole owners have not always started this interval immediately upon receiving payment.

2. If the pole owner(s) must first obtain AOT or railroad permits, the interval for make-ready completion does not begin until those permits have been obtained.

3. Although each and every pole must be surveyed, in ECFiber's experience fewer than 25% of poles require any work at all, and a much smaller number need replacement. Even in building 250 to 300 miles in one year, poles needing actual make-ready work within the same timeframe have not added up to .5% of either company's total Vermont poles.

In actual fact, because the current “system” has not enforcement provisions, make-ready projects frequently languish for many months beyond the nominal 120 days from payment. Some 14% of the poles needed for ECFiber's 2017 build were late by 240 days or more, meaning that at least one full year passed between that make-ready payment and pole access. The very last group of 177 Thetford poles was licensed 370 days late, or 16 months after payment. Among other things, such delays in effect constitute forced, interest-free, loans by the applicant to the pole owners.

The Department (in its filing with the PUC), and this Committee bill, would offer applicants a legitimate “end run” around such problems by empowering them to engage qualified third-party contractors when appropriate. We are therefore very pleased that Section 19(a) of the Committee bill calls upon the PUC to consider a number of badly

needed improvements, beginning with “one-touch make-ready policies,” but the current draft does not actually define that term. As my colleague Carole Monroe will explain, that term has three slightly different meanings, each useful and valid in its own context, and each appears in the Department's proposed revisions.. Given that complexity, perhaps it would be appropriate to insert some words along the lines of “as defined in the Dept of Public Service's Jan. 24 Petition for Rule-Making”.

We also commend the Committee for requiring, in 19(b), that the PUC file its final proposed revised Rule by Sept. 1 of 2019. This is especially prudent in view of the fact that a proceeding for revision of the related rule governing rental fees that pole owners may charge to attachees has not yet been fully completed some 2 ½ years after first being opened in the summer of 2016.

The current rules, and even the Department's proposed revisions, use the term “Pole-Ownning Utility” in the singular. However, at least in ECFiber's member towns, a very large majority of the poles are jointly owned by an electric company and a phone company, typically GMP and CCI, respectively. As joint owners, it is their current practice to require separate but parallel applications and payments for each group of poles. After a jointly conducted pole survey, each co-owner issues its own make-ready quote, accepts separate payment, and (so far as we know) applies separately for any necessary permits. Worse, there have been numerous occasions in the past when a joint owner has completed all work on a batch of poles except for replacing one or two poles without which the co-owner cannot proceed. In some cases, the second owner has then claimed that its 120-day completion period did not begin with our payment but with the first owner's replacing those poles. Both transparency and accountability have been sorely lacking, and that's why a provision such as Section 20 (2)(A) is so badly needed: timely broadband deployment requires that joint owners must be held jointly responsible for timely completion.

To avoid any possible ambiguity, we would like to see a slight rewording of Section 20(2)(A), as follows: “The applicable make-ready completion period shall not depend on whether a pole is singly or jointly owned.”

Section 20(2)(B) empowers the applicant to engage a third-party contractor if make-ready has not been completed on time. That provision, if enacted, would strongly encourage improved transparency. For example, pole owners would find it beneficial to document for applicants the dates on which their pre-payments were received, the dates when any necessary AOT or railroad permits were applied for and received, and the schedule for any needed pole replacements.

Thank you.