FINAL PROPOSED RULE # 19-P82

Administrative Procedures – Final Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

/s/ Anthony Z. Roisman (signature) — 4/16/2020 (date)

Printed Name and Title:
Anthony Z. Roisman, Esq.
Chair, Vermont Public Utility Commission

RECEIVED BY: _____

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Minutes
- ☐ Copy of Comments
- ☐ Responsiveness Summary

RECEIVED
APR 17 2020
BY: .....

Final Proposed Coversheet

1. TITLE OF RULE FILING: Rule 3.700, Pole Attachments

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
   19P-082

3. ADOPTING AGENCY:
   Vermont Public Utility Commission

4. PRIMARY CONTACT PERSON:
   (A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).
   Name: John C. Gerhard, Esq.
   Agency: Vermont Public Utility Commission
   Mailing Address: 112 State Street, Montpelier, VT 05620-2701
   Telephone: 802 828 - 2358 Fax: 802 828 - 3351
   E-Mail: john.gerhard@vermont.gov
   Web URL *(WHERE THE RULE WILL BE POSTED)*: https://puc.vermont.gov/about-us/statutes-and-rules

5. SECONDARY CONTACT PERSON:
   (A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).
   Name: Micah Howe, Esq.
   Agency: Vermont Public Utility Commission
   Mailing Address: 112 State Street, Montpelier, VT 05620-2701
   Telephone: 802 828 - 2358 Fax: 802 828 - 3351
   E-Mail: micah.howe@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:
   (DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No
   IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

   PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

Public Act 79 §§ 19, 20 (2019 Vt. Bien. Sess.); 30 V.S.A. §§ 203, 209.

EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

30 V.S.A. § 209 grants the Vermont Public Utility Commission ("Commission") authority to adopt rules necessary to its jurisdiction over "any plant, line, or property" belonging to a company subject to Commission supervision.

Section 19 of Act 79 of 2019 requires the Commission to revise Rule 3.706(D)(1) and to file a final proposed rule with the Secretary of State and with the Legislative Committee on Administrative Rules by no later than June 1, 2020.

8.

9. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (**150 WORDS OR LESS**):

The amended rule changes how rental rates are calculated for entities seeking to attach equipment to utility poles in Vermont. The current rule charges different rates depending on the type of service an attaching entity provides. The amended rule will

charge a single rate for all attachers, no matter what type of service they provide.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The proposed amendments are required by Sections 19 and 20 of Act 79 of 2019. Further, the Commission was petitioned by a group of companies that claim the current rule is unfair and seek to have changes made to it.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

Before filing this rulemaking, Commission staff worked for several years with interested stakeholders to explore different ways by which to improve Rule 3.706(D)(1). This work included the filing of many rounds of comments and reply comments by entities such as the Vermont Department of Public Service, Vermont pole-owning utilities, and attaching entities, such as telecommunications companies and cable companies.

The Commission gave careful consideration to the many comments submitted by stakeholders. Additionally, the Commission has requested more comments from stakeholders during the formal public comment period.

All of these efforts should ensure the rule is not arbitrary.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Amended Rule 3.706(D)(1) will affect:

(1) utilities that own utility poles in Vermont and their ratepayers and

(2) entities that attach equipment to utility poles in Vermont and their customers.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The overall economic impact of amended Rule 3.706(D)(1) is

projected to be an increase of less than $776,973 annually in costs to public utilities. Pole-attachment fees for attachers (telecommunications and cable companies) will be reduced, which will reduce revenues to pole owners (Vermont utility companies and their ratepayers).

19. A HEARING WAS HELD.

20. HEARING INFORMATION
(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 1/10/2020

Time: 09:30 AM

Street Address: Susan M. Hudson Hearing Room, Third Floor, People's United Bank Building, 112 State Street, Montpelier, VT

Zip Code: 05620-2701

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):
1/20/2020

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

pole attachments

pole attachment rates

pole attachment rental

utility poles

pole rental rates

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING: Rule 3.700, Pole Attachments

2. ADOPTING AGENCY:
   Vermont Public Utility Commission

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

   - **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
   - **NEW RULE** - A rule that did not previously exist even under a different name.
   - **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

   This filing is **AN AMENDMENT OF AN EXISTING RULE**

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

   September 1, 2001; July 14, 2008; December 2017 [agency name change from Public Service Board; rule renumbered from 30 000 007]; February 1, 2020 Secretary of State Rule Log #20-003.

State of Vermont
Agency of Administration
109 State Street
Montpelier, VT 05609-0201
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Office of the Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: November 13, 2019, Pavilion Building, 5th floor conference room, 109 State Street, Montpelier, VT 05609
Members Present: Steve Knudson (serving as chair), Dirk Anderson, Shayla Livingston, John Kessler, Matt Langham, and Jennifer Mojo (via phone)
Members Absent: Brad Ferland, Diane Bothfeld, Ashley Berliner and Clare O'Shaughnessy
Minutes By: Melissa Mazza-Paquette

- 2:03 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the October 14, 2019 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-6 to follow.
    1. Rule 3.700, Pole Attachments, Public Utility Commission, page 2
    1. Business Name Registration Rules, Office of the Secretary of State, page 3
    2. Central Filing System Rules, Office of the Secretary of State, page 4
    3. Rule Governing Outage Reporting Requirements for Originating Carriers and Electric Power Companies, Vermont Enhanced 911 Board, page 5
    4. Ambulatory Surgical Center Licensing Rule, Department of Health, page 6
- Next scheduled meeting is December 9, 2019 at 2:00 p.m.
- 3:12 p.m. meeting adjourned.

Proposed Rule: Rule 3.700, Pole Attachments, Public Utility Commission
Presented by John Gerhard and Micah Howe

Motion made to accept the rule by Dirk Anderson, seconded by John Kessler, and passed unanimously with the following recommendations:

1. Proposed Rule Filing, page 1: Add title/rule name.
2. Proposed Rule Coversheet, pages 4-5, #13-15: Update to include at least one public hearing.
3. Adopting Page, page 1, #4: Verify information and update if necessary. Confirm with the Secretary of State's office that this won't overwrite the other rule currently in process.
4. Public Input, page 1, #3: Complete and include steps such as hosting a public meeting, posting on website, and reaching out to interested parties.
5. Clean copy of text: Check with the Secretary of State's office regarding their thoughts about including the other rule version currently in process.

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING: Rule 3.709, Pole Attachments

2. ADOPTING AGENCY:

   Vermont Public Utility Commission

3. CATEGORY OF AFFECTED PARTIES:

   LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

   Vermont public utilities (electric and telephone) and their ratepayers, cable companies and their customers, and telecommunications companies and their customers.

4. IMPACT ON SCHOOLS:

   INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The amended rule will result in an increase in rates of less than $776,973 to ratepayers of Vermont's 17 regulated electric distribution companies and Vermont's 10 regulated telephone companies. The increase will be spread unevenly across the regulated entities depending on the number of utility poles each entity owns and how many attachments per pole are present.

Insofar as public schools are customers of electric and telephone companies that own utility poles, they will see a small increase in rates as a result of the amended rule. The Commission considers these increases as de minimis.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

It is not possible to reduce the costs to local school districts while still achieving the objective of the rule. However, it is possible that, insofar as a school is a customer of an attaching entity (i.e., a cable or telecommunications provider), the school may see a reduction in the cost of cable or telecommunications service if the cable or telecommunications company chooses to pass its savings to its customers.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The amended rule will result in an increase in rates of less than $776,973 annually to ratepayers of Vermont's 17 regulated electric distribution companies and Vermont's 10 regulated telephone companies. The

increase will be spread unevenly across the regulated entities depending on the number of utility poles each entity owns and how many attachments per pole are present.

Insofar as small businesses are customers of electric and telephone companies that own utility poles, they will see a small increase in rates as a result of the amended rule. The Commission considers these increases as de minimis.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

It is not possible to reduce the costs to small businesses while still achieving the objective of the rule. However, it is possible that, insofar as a small business is a customer of an attaching entity (i.e., a cable or telecommunications provider), the small business may see a reduction in the cost of cable or telecommunications service, if the cable or telecommunications company chooses to pass its savings to its customers.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

Section 19 of Public Act 79 (2019 Vt. Bien. Session) requires the Commission to revise Rule 3.706(D)(1). Having no rule change is not an option, and the change does not impose requirements on small businesses.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

The economic analysis conforms with the requirements of 3 V.S.A. § 838(b).

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING: Rule 3.700, Pole Attachments

2. ADOPTING AGENCY:

   Vermont Public Utility Commission

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
   The amended rule will have no impact on the emission of
4. greenhouse gasses.
5. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
   The amended rule will have no impact on water.
6. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
   The amended rule will have no impact on land.
7. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
   The amended rule will have no impact on recreation.

8. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
   The amended rule will have no impact on climate.

9. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
   The amended rule will have no impact on other aspects of Vermont's environment.

10. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*
    The amended rule will only affect the rates that attaching entities pay to attach their equipment to a utility pole. The amended rule does not affect any of the physical mechanics of attachment and, therefore, will have no effect on Vermont's environment.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING: Rule 3.700, Pole Attachments

2. ADOPTING AGENCY:

   Vermont Public Utility Commission

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

   ICAR instructed the Commission to update this form with information about our public hearing and the comment period associated with that public hearing.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

   Before filing this proposed rule, the Public Utility Commission worked with stakeholders for approximately three years to develop the amendments. This work included: (1) multiple rounds of comments and replies from June 13, 2016, to July 17, 2018; (2) a workshop; (3) the issuance of proposed rule language on July 17, 2018; (4) another series of comments and replies from August 2018 through November 2018; and (5) the issuance of the current proposed rule.

   On December 6, 2019, the Commission noticed a public hearing on this proposed rule to be held on January

10, 2020. That notice also opened a public comment period that will end on January 20, 2020. This notice was sent to a service list for this case and was published on the Commission's website.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The following 30 entities have been actively involved in the rulemaking process thus far:

- AT&T Corporation
- Bay Ring Communications
- Biddeford Internet Corporation
- CenturyLink Operating Companies
- City of Burlington Electric Department
- Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont
- LLCDuncan Cable TV Service
- East Central Vermont Telecommunications District
- Eight Vermont Incumbent Local Exchange Carriers
- FairPoint Communications
- FairPoint Vermont, Inc.
- FirstLight
- Green Mountain Power Corporation
- Helicon Group
- Northfield Telephone Company
- Otelco, Inc.
- OTT Communications
- Perkinsville Telephone Company, Inc.
- segTEL, Inc.
- Stowe Electric Department
- Teleport Communications America, LLC
- Topsham Telephone Company

Public Input

- TVC Albany, Inc.
- ValleyNet, LLC
- Vermont Department of Public Service
- Vermont Electric Cooperative
- Vermont Public Power Supply Authority
- Vermont Telephone Company, Inc.
- Waitsfield-Fayston Telephone Company, Inc.
- Washington Electric Cooperative

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State of Vermont
Public Utility Commission

RULE 3.706(D)(1) POLE ATTACHMENT RULEMAKING

Responsiveness Summary

4/15/2020

I. INTRODUCTION

This proceeding concerns proposed amendments to Vermont Public Utility Commission ("Commission") Rule 3.706(D)(1) (the "Rule"), which establishes the rate for attaching certain equipment to utility-owned poles. The amendments, as proposed, would change the Rule so that it contains a single, rebuttable presumption that equipment attached to a utility pole occupies 1.25 feet of space. This proposed presumption would replace our current practice of presuming that an attachment occupies either 1 foot or 2 feet of space, depending on the type of service offered by the entity requesting the attachment.

During the public comment period for the Rule, the Commission received several comments, a summary of which are included in this filing, from:

- the Vermont Department of Public Service ("Department");
- the CenturyLink Operating Companies, including CenturyLink Communications, LLC; Level 3 Communications, LLC; Broadwing Communications, LLC; TelCove Operations, LLC; WilTel Communications, LLC; Global Crossing Telecommunications, Inc.; Global Crossing Local Services, Inc.; and Level 3 Telecom Data Services, LLC (collectively, "CenturyLink");
- Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, and the Helicon Group, L.P. (jointly "Comcast and Charter");
- FirstLight Fiber ("FirstLight");
- the Burlington Electric Department ("Burlington Electric"); and
- ValleyNet, Inc.

Provided below is a summary of the comments and the Commission's responses. The discussion is organized by commenter.

II. COMMENTS AND RESPONSES

A. Department

Comments:

The Department attended a workshop in this proceeding on January 10, 2020, and filed its comments on the Rule on January 21, 2020 ("Department Comments").

The Department supports the Commission's Rule, stating that the 1.25-foot presumption for all attachments "strikes the proper balance between the various competing policy objectives between pole owners and attaching entities."[1] The Department also lists several beneficial features of the Rule: it "better reflects the state of modern telecommunications networks and service in the state;"[2] it "has the potential to reduce billing disputes between pole owners and attaching entities as well as reduce any inequitable treatment between competing entities;"[3] it "provides regulatory certainty (at both the federal and state level) as to how to treat [Voice Over Internet Protocol] providers;"[4] it "is unlikely to impose an unfair burden on any attaching entity or pole owner, including administrative challenges;"[5] and, "[f]inally, the rule is consistent with Sections 19 and 20 of Act 79 and will continue to support the deployment of broadband infrastructure pursuant to 30 V.S.A. § 202c."[6]

Commission Response:

We agree with the Department's comments.

B. FirstLight Fiber

Comments:

On January 10, 2020, FirstLight attended a workshop in this proceeding, and on January 21, 2020, FirstLight submitted comments in this proceeding ("FirstLight Fiber Comments").

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[1] Department Comments at 2.
[2] *Id.* at 1.
[3] *Id.* at 1-2.
[4] *Id.* at 2.
[5] *Id.*
[6] *Id.*

"FirstLight Fiber supports the Commission's proposed adoption of a single presumption for the amount of usable space occupied by an attachment without regard for the service(s) provided by the attaching entity."[7] However, "FirstLight Fiber respectfully disagrees … with adoption of the proposed 1.25 feet space occupied presumption" and "urges the Commission to adopt a single 1 foot of usable space occupied presumption."[8] FirstLight Fiber argues that:

- There is extensive evidence and regulatory precedent supporting the adoption of a rebuttable presumption of one foot of usable space occupied, including federal laws and decisions and the Public Utility Commission's past pole attachment rulemaking.
- No party presented evidence and no credible, empirical support exists in the record for the adoption of a rebuttable presumption of 1.25 feet of usable space occupied by an attachment.
- The Commission's tentative adoption of 1.25 feet for usable space occupied by an attachment is based on a mistaken characterization of a one-foot rate as an incremental cost based rate when, in fact, it is a fully allocated cost-based rate under which attaching entities that the Commission has proposed a single, rebuttable presumption 1.25 feet of usable space occupied by an attachment contribute toward the capital, operating, and maintenance and administrative costs of the pole in proportion to the share of usable space that their attachments occupy.
- The Commission's tentative adoption of a 1.25 foot presumption for usable space occupied by an attachment would be a radical departure from the Commission's longstanding principles that (1) rates should be based upon cost and ratepayers should bear the costs that they cause and (2) rates should not be based upon subjective judgments about the value of pole attachment rights.
- Adoption of a one foot of usable space occupied as a rebuttable presumption fairly balances the interests of pole owners, attaching entities, and their customers.
- Adoption of one foot of usable space occupied as a rebuttable presumption better promotes the expansion of broadband and improves the sustainability of broadband deployments.[9]

[7] FirstLight Fiber Comments at 2; Tr. 1/10/2020 at 5:9-16 (Lackey).
[8] FirstLight Fiber Comments at 2.
[9] FirstLight Fiber Comments at 2-3; Tr. 1/10/2020 at 5-6 (Lackey).

Commission Response:

We have reviewed FirstLight's arguments regarding the attachment rate and are not persuaded to alter our selection of a 1.25-foot presumption.

We disagree with FirstLight's assessment of the 1.25-foot presumption. FirstLight argues that there is extensive evidence – federal and otherwise – for adopting a one-foot presumption and none for adopting a 1.25-foot presumption; that we have mischaracterized the one-foot rate as an incremental cost-based rate when, in fact, it is a fully allocated cost-based rate; and that we are "radically departing" from our own longstanding principles.[10] Essentially, FirstLight argues that our choice of a 1.25-foot presumption is not sufficiently precise or well-founded. FirstLight's allegations do not present a full picture of how pole-attachment rates are formulated.

FirstLight presents the one-foot presumption as the only reasonable presumption because it reflects the actual space taken up by cable attachments and, therefore, when inserted into the Rental Charge Formula contained in Rule 3.706(C), produces a rate that reflects the actual costs that cable attachers cause when attaching to a pole. We do not agree with this interpretation of the presumption.

To understand why we disagree with FirstLight on this point, we must investigate the inner workings of the Rental Charge Formula:

$$\begin{bmatrix}\text{Annual}\\ \text{Rental}\\ \text{perPole}\end{bmatrix} = \left[\frac{\text{SpaceOccupiedbyAttachment}}{\text{TotalUsableSpace}}\right] \times \begin{bmatrix}\text{Net}\\ \text{Investment}\\ \text{perPole}\end{bmatrix} \times \begin{bmatrix}\text{Carrying}\\ \text{Cost}\\ \text{Ratio}\end{bmatrix}$$

The pertinent section of the formula for our purposes falls immediately to the right of the formula's equal sign, where the Space Occupied by an Attachment is divided by the Total Usable Space on the pole.[11] Pursuant to our Policy Statement and the current Rule, the Total Usable

[10] FirstLight Fiber Comments at 2-3; Tr. 1/10/2020 at 5-6.

[11] Rule 3.706(D)(2)(a) defines Total Useable Space as:

> If the Pole-Owning Utility has conducted a study of its average pole height, total usable space means the Pole-Owning Utility's average pole height less the unusable space on the pole. Any study may be based upon plant records or field inspections. Poles not suitable for bearing an Attaching Entity's attachments

Space excludes a substantial portion of a pole (so called "Unusable Space") for purposes of calculating the rate at which an attacher must pay the owner.[12] By omitting Unusable Space from the formula, which we did for a variety of policy reasons, attachers do not pay for the cost of a full pole but for only the usable portion of it. Thus, FirstLight's claim that it is paying on a fully allocated cost basis is not accurate because its reasoning does not cost does not include all pole costs.

At a one-foot presumption in the Rental Charge Formula, attachers with one-foot attachments pay for the space they occupy but contribute nothing to the costs of unusable space. We may just as reasonably have included a contribution for unusable space in the Rental Charge Formula and calculated higher attachment rates, as the Federal Communications Commission ("FCC") has done in 47 C.F.R. § 1.1406 for telecommunications carriers.[13] In the interest of maintaining the existing formula in our Rule, however, we have adjusted rates for unusable space through the occupied space presumption.

Additionally, in contrast to FirstLight's claims, we are not radically departing from the past practice of the Commission. Developing pole-attachment rates poses challenges in dealing with resources that are shared among various entities. We noted this difficulty in our 2001 Policy Statement when we said:

> [A]t bottom there is no single right solution or "objective" best answer. Setting pole attachment rates requires allocating the costs of facilities that are used in common by two or more utilities. This is but an application of the general problem that there is no single universally accepted way to allocate common costs.
>
> [I]t would be economically improper for a [Commission] rule to require a pole owner to either subsidize a new attacher or vice-versa. However, there is a very wide range of possible rates between these extremes. While all of these possible rates are economically valid, some are more or less attractive for other policy reasons.[14]

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shall be excluded. The 40-inch safe space below the electric attachments, as required by the National Electrical Safety Code, shall be counted as usable space.

[12] Rule 3.706(D)(2)(b) defines unusable space as:

"Unusable space" shall mean the 6 feet buried in the ground plus the first 18 feet above ground and below the first attachment, unless the Pole-Owning Utility has conducted a study of the actual average amount buried or the clearance above ground below the first attachment.

[13] The rates attachers pay in Vermont under the 1.25-foot occupied space presumption will be comparable to those produced by the FCC's 1-foot presumption.

[14] *PSB Rule 3.700 – Pole Attachments – Policy Explanation and Summary of Comments*, issued on 5/16/2001, at 4 *("Policy Statement")*.

Thus, while we do not want rates that arbitrarily subsidize attachers or pole owners at one another's expense, there are certain situations in ratemaking – such as here, where we are attempting to allocate costs for a shared resource – where mathematical certainty is not possible.

Where a precise, mathematical division of cost-causation is not possible, the Commission will allow for some potential cross-subsidization. Additionally, we may allow for some cross-subsidization where legitimate policy reasons call for it.[15]

In this instance, the Commission made an informed decision to set the presumption at 1.25 feet. We made this decision because it falls within the FCC's zone of reasonableness, because we want a uniform rate, because we want to prevent litigious activity, and because we want all attachers to contribute to the overall cost of poles. Further, we chose 1.25 feet to moderate the financial impact on utilities and their ratepayers from this rule change.

C. CenturyLink

Comments:

CenturyLink filed comments with the Commission on January 21, 2020 ("CenturyLink Comments"). Attached to the CenturyLink Comments was a copy of comments filed by Level 3 with the Commission on August 19, 2016.[16] Because these August 19, 2016, comments already have been considered by the Commission in earlier orders, we will not consider them again in this memorandum.[17]

"CenturyLink in general supports the Commission's proposed Rule as to use of a unified attachment rate."[18] CenturyLink asks the Commission to make two changes. First, CenturyLink "maintain[s] that use of one-foot of occupied space in the formula calculation for pole attachments is more consistent with the aim of expanding services to underserved communities

[15] For example, Vermont Statutes Annotated Title 30, Section 218(e), gives the Commission authority to establish rates to assist low-income ratepayers and clearly contemplates that the funds to do so might come from other rate classes (i.e., cost-shifting).

[16] On August 19, 2016, Level 3 was comprised of Level 3 Communications, LLC; Broadwing Communications, LLC; Global Crossing Telecommunications, Inc.; Global Crossing Local Services, Inc.; TelCove Operations, LLC; and WilTel Communications, LLC.

[17] *See Petition of the CLEC Association of Northern New England to Amend Board Rule 3.706(D)(1) Regarding the Rental Calculation for Pole Attachments*, Docket No. 3.706, Order of 7/17/2018; *Proposed Vermont Public Utility Commission Rule 3.706(D)(1) Pole Attachment Rental Calculation*, Case No. 19-3603-Rule, Order of 10/24/2019 ("October 24th Order").

[18] CenturyLink Comments at 1.

in Vermont"[19] because, according to CenturyLink, the "1-foot presumption better encourages competitive entities to expand or start operations in such underserved areas of Vermont."[20]

Next, CenturyLink contends that,

> if the Commission determines to use a presumption in excess of the one foot of occupied space, then it is critical for a regulation to contain an explicit provision that neutralizes the bargaining strengths of pole owners in Vermont. The proposed Rule already recognizes that the single pole-attachment rate presumption would not apply in situations controlled by contract. *See*, Proposed Rule 3.706(D)(1). The proposed Rule also explicitly allows pole owners to charge tariff amounts in excess of the Rule's single rate if the pole owner has conducted a study of the space actually occupied by a particular type of attachment on the pole. Whether by contract or tariff, a pole owner's ability to exert bargaining power remains unchecked and without any counter-balancing component set forth in the proposed regulation.

Commission Response:

Regarding CenturyLink's comments about setting the presumption at one foot, we believe we have satisfactorily addressed CenturyLink's concerns under our response to FirstLight.

Regarding CenturyLink's concerns about pole-owners exerting unchecked bargaining power, we find those arguments unpersuasive and take no action on CenturyLink's recommendation.

We observe that pole-attachment contracts are governed by Rule 3.704, which provides:

> The Commission may investigate the terms and rental rate of any proposed or existing contract between Attaching Entities and Pole-Owning Utilities. Where the public interest so requires, the Commission may order that terms or rates be modified.

We find that the availability of Commission oversight of contract-based rates will serve to prevent pole-owners from exercising undue bargaining power. If an attacher feels aggrieved by a pole-owner's bargaining activity and the resulting rates, it may petition the Commission for redress under Rule 3.704. We find this to be a satisfactory balance to undue bargaining power.

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[19] CenturyLink Comments at 2.
[20] *Id.*

D. Comcast and Charter

Comments:

Comcast and Charter attended a workshop in this proceeding on January 10, 2020, and filed comments on the Rule on January 21, 2020 ("Comcast & Charter Comments").

"Comcast and Charter strongly support the proposed amendment establishing a uniform 1.25-foot presumption as opposed to the rule currently in place."[21] Comcast and Charter, like the Department, note several benefits of the Rule, including that "a uniform 1.25-foot rate presumption is a reasonable compromise," that the rate "will substantially achieve the Commission's objectives," and that the Rule will "reduce unnecessary disputes between pole owners and attachers and align more closely with the approaches in neighboring states that use a uniform presumption."[22]

Next, Comcast and Charter note that the best result would be for the Commission to "base the rate on space actually occupied [1 foot], what's actually happening in the field, that's conceptually, theoretically, engineering-wise the right result," but that they prefer the unified 1.25 rate to the previous bifurcated 1.0-foot and 2.0-foot rate.[23]

Finally, Comcast and Charter note that the Rule does not currently contain an effective date, and they recommend April 1, 2020, as a proper effective date to add into the Rule.

Commission Response:

We appreciate Comcast and Charter's comments and agree with many of them.

Additionally, while we recognize Comcast & Charter's preference for a 1-foot presumption, as we discussed in our October 24 Order, we find that pole-attaching entities should share in some of the ongoing costs of maintaining poles to which they attach. As also noted in our October 24 Order, courts and the FCC have supported such presumptions in the past. Therefore, we are not persuaded to replace the 1.25-foot presumption with a 1-foot presumption.

Finally, we agree that the Rule needs an effective date. To allow sufficient time for stakeholders to prepare, we choose July 1, 2020, as an appropriate date.

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[21] Comcast & Charter Comments at 1.
[22] *Id.* at 2.
[23] Tr. 1/10/2020 at 9 (White).

E. Burlington Electric Department

Comments:

On January 21, 2020, Burlington Electric submitted comments to the Commission in this proceeding ("Burlington Electric Comments").

Burlington Electric stated that the:

> [a]pplication of the proposed single 1.25-foot rate to Burlington Electric's most recent pole attachment rentals will result in an estimated 31% loss in pole attachment rental revenue, or $17,225.87 over six months, and $34,451.74 annually."[24]

Burlington Electric added:

> the pole attachment revenue losses that result from the new 1.25-foot single rate will create costs to Burlington Electric ratepayers who will not receive the benefit of improved cable and telecommunications services, and in effect, this change will in all likelihood result in increased revenues to the existing providers of services in Burlington.[25]

Commission Response:

The Commission acknowledges that Burlington Electric will lose some revenue as a result of this rule change, which may increase costs to ratepayers. However, as we noted in our October 24 Order, this increase "would be minimal and consistent with general ratemaking principles."[26]

F. ValleyNet, Inc.

Comments:

On January 21, 2020, ValleyNet submitted comments in this proceeding ("ValleyNet Comments").

ValleyNet expressed "general support for the rule"[27] but argued that "[w]e believe the proper rate is a presumptive 1 foot rate for all attaching entities,"[28] that there is "no technical

[24] Burlington Electric Comments at 1.
[25] *Id.* at 1-2.
[26] October 24 Order at 5.
[27] ValleyNet Comments at 1.
[28] *Id.*

basis for the 1.25 foot proposed decision,"[29] and that they "urge the Commission to adopt a 1 foot presumptive rate."[30] Further, ValleyNet stated that:

> [t]he proposed 1.25-foot rate is a vast improvement over current status, and will save our customers significantly, and if the Commission believes the 1-foot rate is not achievable at this time, we support the 1.25-foot rate to move this issue forward with the opportunity for us to also challenge the presumptive rate.[31]

Commission Response:

We have reviewed ValleyNet's Comments and find no new arguments in them that have not already been expressed in this proceeding. Our October 24 Order lays out our rationale for selecting a 1.25-foot presumption, and ValleyNet's Comments do not persuade us to change that presumption.

[29] ValleyNet Comments at 1.
[30] *Id.* at 2.
[31] *Id.* at 1.

January 20, 2020

Judith C. Whitney, Clerk
Vermont Public Utility Commission
112 State Street
Montpelier, VT 05620-2701

Re: Case No. 19-3603-RULE- Proposed Revisions to PUC Rule 3.706 (D)(1) Pole Attachment Rates

Dear Ms. Whitney,

In response to the December 9, 2019 Public Utility Commission ("PUC") memorandum providing notice of its proposed Rule 3.706(D)(1) filing with the Vermont Secretary of State, Burlington Electric Department ("BED") submits the following comments.

As of January 1, 2020, BED collects revenue on 8,840 pole attachments from various service providers under an approved tariff rate of $10.97 per foot per year, with 1570 attachments billed as the one-foot rate and 7270 attachments billed at the two-foot rate, and with prorated rates for poles with partial BED ownership. BED billed a total of $55,281.22 for pole attachment rental revenue under this rate structure between July 1, 2019 and December 31, 2019.

In its October 24, 2019 order, the PUC determined, "we find it in the best interest of Vermont to adopt a single pole-attachment presumption of 1.25 feet for all companies attaching to utility poles in Vermont, even though this does not necessarily result in revenue neutrality," and, "although this may increase costs to ratepayers, any increase would be minimal and consistent with general ratemaking principles."

Application of the proposed single 1.25-foot rate to BED's most recent pole attachment rentals will result in an estimated 31% loss in pole attachment rental revenue, or $17,225.87 over six months, and $34,451.74 annually. The PUC indicates that a consideration in setting the 1.25-foot rate was to, "encourage and support the expansion of cable and telecommunications services throughout Vermont, particularly to those areas of Vermont that continue to be underserved." However, that consideration is not applicable within BED's service territory. Based on the Department of Public

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585 Pine Street Burlington, VT 05401
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Phone 802.658.0300

Service's December 31, 2019 Feasibility Study of Electric Companies Offering Broadband in Vermont, there are zero underserved properties located in BED's territory.[1] Instead, the pole attachment revenue losses that result from the new 1.25-foot single rate will create costs to BED ratepayers who will not receive the benefit of improved cable and telecommunications services, and in effect, this change will in all likelihood result in increased revenues to the existing providers of services in Burlington.

We appreciate the opportunity to submit these comments. Should you have any questions or concerns, please feel free to contact us at any time.

Sincerely,

Amber Widmayer
Regulatory Specialist
Burlington Electric Department
(802) 735-6918

[1] Vermont Department of Public Service, "Feasibility Study of Electric Companies Offering Broadband in Vermont," https://legislature.vermont.gov/assets/Legislative-Reports/Feasibility-Study-of-Electric-Companies-Offering-Broadband-in-Vermont.pdf, Table 1, p.

CenturyLink™

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January 20, 2020

VIA Email for Electronic Filing: puc.clerk@vermont.gov

Judith C. Whitney
Clerk of Commission
112 State Street
Montpelier, VT 05620-2701

Re: Cause No. 19-3603-RULE – Proposed Revisions to Vermont Public Utility Commission Rule 3.706(D)(1)

Dear Ms. Whitney:

On behalf of the CenturyLink Operating Companies, enclosed please find the above-referenced Additional Comments for filing with the Commission.

Please acknowledge receipt and acceptance of this filing. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

Pamela Sherwood
Assistant General Counsel

Enc.

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Proposed Revisions to Vermont Public Utility Commission Rule 3.706(D)(1)	)))	Cause No. 19-3603-RULE

COMMENTS OF CENTURYLINK RESPONDING TO DECEMBER 9, 2019 REQUEST FOR ADDITIONAL COMMENTS

CenturyLink Communications, LLC, Level 3 Communications, LLC, Broadwing Communications, LLC, TelCove Operations, LLC, WilTel Communications, LLC, Global Crossing Telecommunications, Inc., Global Crossing Local Services, Inc., and Level 3 Telecom Data Services, LLC (jointly referred to hereafter as "CenturyLink") submit these comments in response to the December 6, 2019 proposed Rule of the Vermont Department of Public Service ("Commission"). Except as otherwise controlled by contract, the proposed Rule establishes a single "pole-attachment presumption of 1.25 feet" for all entities attaching equipment to utility poles in Vermont.

CenturyLink in Vermont has been an active commentator on the issue of pole attachment rates and processes. CenturyLink thanks the Commission for the opportunity to submit additional comments regarding the Commission's proposed Rule.

CenturyLink applauds the Commission's approach to redress this important issue via a rulemaking. CenturyLink in general supports the Commission's proposed Rule as to use of a unified attachment rate. As the Commission correctly recognized, a unified pole-attachment rate – in lieu of the current structure of bifurcated pole attachment rates – is expensive and consumes time and effort that could be better spent expanding services to underserved communities in Vermont. *Proposed Vermont Public Utility Commission Rule 3.706(D)(1) pole attachment rental calculation*, Case No. 19-3603-RULE, Order at page 10.

If the Commission truly seeks to set a rule for pole attachment rates that promote the expansion of services to underserved communities in Vermont, then CenturyLink respectfully recommends two further modifications to the proposed Rule. First, CenturyLink continues to maintain that use of one-foot of occupied space in the formula calculation for pole attachments is more consistent with the aim of expanding services to underserved communities in Vermont. While the proposed Rule's single pole-attachment presumption of 1.25 feet is a step in the right direction, entities seeking to attach to utility poles seek competitively attractive pole rates and use of a 1-foot presumption better encourages competitive entities to expand or start operations in such underserved areas of Vermont. The one-foot presumption has been found just and reasonable, remains fully compensatory, and should be adopted by the Commission.[1]

Second, if the Commission determines to use a presumption in excess of the one-foot of occupied space, then it is critical for a regulation to contain an explicit provision that neutralizes the bargaining strengths of pole owners in Vermont. The proposed Rule already recognizes that the single pole-attachment rate presumption would not apply in situations controlled by contract. *See*, Proposed Rule 3.706(D)(1). The proposed Rule also explicitly allows pole owners to charge tariff amounts in excess of the Rule's single rate if the pole owner has conducted a study of the space actually occupied by a particular type of attachment on the pole. *See*, Proposed Rule 3.706(D(1)(a). Whether by contract or tariff, a pole owner's ability to exert bargaining power remains unchecked and without any counter-balancing component set forth in the proposed regulation. In sum, the proposed Rule asymmetrically favors pole owners.

[1] See Level 3 Comments filed on August 18, 2016 in Petition of the CLEC Association of Northern New England to Amend Board Rule 3.706(D)(1) Regarding the Rental Calculation for Pole Attachments, a copy of which is attached hereto.

Accordingly, CenturyLink respectfully submits that the proposed Rule should make clear that the Rule's presumption is rebuttable by the entity seeking to attach to a utility pole. By allowing the entity seeking to attach to utility poles the ability rebut the pole owner's occupied space presumption, the regulation operates in a symmetrical fashion and distempers the inherent bargaining strengths of the pole owner. Moreover, a rebuttable presumption for occupied space in the regulation will foster a reliable and equalized process for both pole owners and attachers alike and, therefore, will encourage the expansion of services to underserved communities in Vermont.

CenturyLink appreciates the opportunity to provide feedback to improve the proposed Rule. The foregoing recommendations to the proposed Rule will minimize delays and provide additional tools for both pole owners and attachers to work cooperatively together to further aid in the timely deployment of broadband network throughout Vermont.

January 20, 2020

Respectfully submitted,

/s/ Pamela Sherwood
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Gregory M. Kennan
Of Counsel
(Adm. MA)

August 18, 2016

By Federal Express

Ms. Judith C. Whitney, Clerk
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Re: *Petition of the CLEC Association of Northern New England to Amend Board Rule 3.706(D)(1) Regarding the Rental Calculation for Pole Attachments*

Dear Ms. Whitney:

Enclosed for filing are the original and six copies of Level 3's Initial Comments in Support of Rulemaking on the Amendment of Rule 3.706(d)(1).

Please feel free to contact me if you have any questions.

Sincerely,

Gregory M. Kennan

Gregory M. Kennan

cc: Service List
Paul J. Phillips, Esq.

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STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of the CLEC Association of Northern New England to Amend Board Rule 3.706(D)(1) Regarding the Rental Calculation for Pole Attachments

LEVEL 3's INITIAL COMMENTS IN SUPPORT OF RULEMAKING ON THE AMENDMENT OF RULE 3.706(D)(1)

Level 3 Communications, LLC, Broadwing Communications, LLC, Global Crossing Telecommunications, Inc., Global Crossing Local Services, Inc., TelCove Operations, LLC, and WilTel Communications, LLC (jointly referred to hereafter as "Level 3") submit these comments in support of the Vermont Public Service Board ("Board") opening a rulemaking to consider amending Board Rule 3.706(D)(1). As explained below, the proposed amendment is necessary to eliminate the unequal playing field created by the existing rule, which imposes different rates on attachers based solely on whether their attachments carry cable or telecom services without any regard to the reality that those attachments occupy the same amount of usable space on the pole, place an identical burden on the pole, and impose identical costs on the pole owner.

The Board's Opening of The Rulemaking was Proper and There Have Been No Procedural or Due Process Violations

As we explained in our July 27, 2016, letter, the Nine ILECs' arguments in opposition to any change in the existing Board Rule 3.706(D) primarily go to the substance of the proceeding; they argue that no changes to the rule are necessary or appropriate. But that argument does not justify dismissing or deferring the proceeding. To the contrary, the Board may weigh the policy

choice of leaving the rule in its current form at the same time it considers changing the rule as CANNE, Level 3, Comcast, and Charter have suggested.

Relatedly, the Nine ILECs' complaints about lack of notice have no merit. They have the Board's Order Opening Rulemaking of July 15, 2016, responded to it as early as July 19th (two business days after the order was issued), and obviously are aware of the issues specified in it. The Board has ruled that adjudicatory procedures do not apply here, specifically stating that rulemakings are not contested-case proceedings.[1] The Nine ILECs have had ample opportunity to voice concerns, having filed several documents already (although they did not serve their filings on the entire service list developed by the Board and attached to its July 15th order). The rulemaking workshop was delayed from the date specified in the July 15th order to allow the Nine ILECs' counsel to attend and there will be opportunity to discuss relevant issues. There have been no due process violations. The Board should proceed without delay to consider the issues raised by CANNE and echoed by Level 3 and others.

Pole Attachment Rates Impact Investment and the Deployment of Broadband Services

Poles, ducts and conduits are an essential part of the modern information-age infrastructure. The Level 3 operating companies listed above provide advanced broadband and telecommunications services, and to do so, they deploy fiber optics and other facilities within the State. Of necessity, Level 3 attaches these facilities to a large number of poles owned by electric utilities and other telecommunications utilities in the State, and pays substantial charges, including monthly recurring charges, to pole owners under tariffs and agreements subject to regulation under PSB Rule 3.700. These facilities are then used to provide broadband services, voice, unified

[1] Order Opening Rulemaking and Notice of Workshop (7/15/2016).

communications solutions and a comprehensive portfolio of data, security and video services to enterprise customers, carriers, and government customers in Vermont and then used to connect those customers to our global network.

The rates established pursuant to the Board's rules, and in particular through the operation of Rule 3.706(D)(1)(b), directly affect Level 3's cost of doing business in Vermont, in terms of both its ongoing operations and its decisions to invest in and deploy new fiber and broadband facilities in the State. The National Broadband Plan (issued over six years ago) recognized that pole attachments play a vital role in the effective deployment of wireless and wired broadband networks.[2] A key recommendation in the National Broadband Plan was that the FCC establish pole attachment rental rates that "as low and close to uniform as possible" to eliminate the disparity between pole attachment rates applied to cable operators and the higher rates paid by telecommunications attachers under the FCC's old formulas.[3] The FCC did so in 2015, revising its pole attachment formula to create parity by using the lower cable attachment rate, explaining that bringing parity to pole attachment rates would further broadband deployment and competition.[4]

Of course, the FCC formula is not directly applicable in Vermont, so it is up to the Board to implement this crucial policy. Level 3 agrees with and supports the petition of the CANNE

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[2] Connecting America: The National Broadband Plan, Federal Communications Commission, March 17, 2010 ("National Broadband Plan"), Executive Summary, pp. xii, https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf ("Infrastructure such as poles, conduits, rooftops and rights-of-way play an important role in the economics of broadband networks. Ensuring service providers can access these resources efficiently and at fair prices can drive upgrades and facilitate competitive entry.")

[3] National Broadband Plan, p. 110 (Recommendation 6.1: The FCC should establish rental rates for pole attachments that are as low and close to uniform as possible, consistent with Section 224 of the Communications Act of 1934, to promote broadband deployment.")

[4] *In the Matter of Implementation of Section 224 of the Act A National Broadband Plan for Our Future,* WC Docket No. 07-245, GN Docket No. 09-51, Order on Reconsideration (11/24/15) (Reconsideration Order on National Broadband Plan), https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-151A1.pdf.

CLECs[5] for a narrow rulemaking proceeding, the objective of which is to amend Rule 3.706(D)(1)(b) so as to eliminate the current artificial, arbitrary, and harmful disparity that is similar to the disparity in the FCC's old, discarded formula. Vermont should take steps similar to those undertaken at the FCC to eliminate the disparity in its rule, by revising the presumptive "space occupied by attachment" — and, therefore, rates paid — as between competitive telecommunications providers and cable providers. Eliminating the current doubling of the rate that CLECs must pay will reduce telecom providers' cost of doing business, promote competition, and benefit consumers in Vermont and establish parity of rates paid among providers without arbitrary distinguishing between the types of service provided over the attachment.

Significant Changes Warrant This Limited Rule Revision

As CANNE CLECs explain in their Petition for a Rulemaking, changes in technology and in the telecommunications marketplace warrant revision of the rule to establish a simplified, uniform occupancy presumption of one foot of space (consistent with the FCC's space presumptions for ALL attachments) for CLECs and cable operators alike. Contrary to the implication made by the Nine ILECs[6] that the Board denial of Comcast's petition to amend the rule in April 2014 was based a substantive decision that nothing has changed in the marketplace and that the same conclusion is warranted here, the Nine ILECs' characterization is wrong and irrelevant. That rulemaking petition was dismissed due to defects in the filing and because the

[5] Sovernet Fiber Corp. ("Sovernet"), TVC Albany, Inc. d/b/a FirstLight Fiber along with segTEL, Inc. d/b/a FirstLight Fiber ("FirstLight") individually and as members, along with the other competitive local exchange carrier members, of the CLEC Association of Northern New England, Inc. ("CANNE").

[6] The Nine ILECs claim in their July 28, 2016 letter opposing the opening of the rulemaking that "The costs and other administrative burdens of conducting a rulemaking can be avoided if such comments demonstrate that the rulemaking is not needed. Such was the case in April 2014 when the Board denied Comcast's petition to amend Board Rule 3.700." However, that rulemaking petition was dismissed on procedural grounds.

Board interpreted it as requesting a declaratory ruling on the treatment of VOIP attachments and therefore not procedurally proper. The Board went on to state:

> [t]he adoption of unified rates has the potential to significantly impact the expansion of broadband service in Vermont as well as the ratepayers of Vermont. While the Board has rejected Comcast's specific proposal at this time, the Board believes that further investigation of this issue is warranted and the Board plans to conduct such proceedings as necessary prior to instituting a formal rulemaking to amend Board Rule 3.700.[7]

The Board has now undertaken that formal rulemaking to unify rates. The CANNE CLECs' Petition for a Rulemaking is procedurally proper and does set forth factual and legal grounds for the proposed modification to the rule. Those factors include significant changes to the marketplace and a realignment of regulatory rules to incent broadband deployment.

1. When Distinctions Based on Types of Services are Blurred, Disputes Arise.

Changes in the telecommunications marketplace have blurred what was once a clear distinction between cable, broadband, and telecommunications service. States that have adopted a single rate formula have concluded that having a single rate reduces the confusion and potential for litigation over which rate to apply: cable, telecom, broadband, or information services. For example, the California Public Service Commission stated that application of a uniform rate to all attachments would "avoid potential disputes over whether our adopted rules apply to a particular service offered over an attachment used to provide multiple services. By applying our rules in this manner, we seek to minimize potential litigation which may threaten to impede the growth of the local exchange competitive infrastructure."[8]

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[7] April 9, 2014 letter from Chairman Volz responding to the Comcast request to initiate a rulemaking served on Rule 3.700 Service List.

[8] Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Services, et. al, Docket No. R95-04-043, Decision No. 98-10-058 (Cal. PUC 10-22-98), 1998 Cal. PUC LEXIS 879 *37; 82 CPUC2d 510 (Cal. Pole Attachment Order).

This is the exact type of confusion that resulted in a dispute that culminated in Docket 8470 about whether the cable or telecom pole attachment rate should apply to attachments that carry interconnected voice over internet protocol services (VOIP). The particular issues among the parties to that docket were resolved in two special contracts approved by the Board in April 2016.[9] Parties to those special contracts now have different — and secret — cost structures than similarly situated providers and the underlying dispute regarding the application of the rate has not been resolved for non-parties to the contracts. Indeed, differential treatment has increased, in that different rates now apply as between parties and non-parties to those contracts as well as between telecom and cable attachers.[10] The disparate treatment is easily remedied, however, by developing a single rate uniform space occupied presumption of one foot for all attachments (focusing on the burden the attachment imposes on the pole) instead of focusing on the type of service provided over the attachment.[11] The Board should modify its current rule to remove the arbitrary allotment of twice the space for telecom attachments.

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[9] *Complaint of Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, for Relief to Recover Unpaid Charges for Pole Attachments under FairPoint's PSB VT Tariff No. 26,* Docket No. 8470, Order dismissing complaint, 4/7/2016; *Special Contract Approval,* S.C. #1010, at 2 (Apr. 7, 2011); *Special Contract Approval,* S.C. #1011, at 1 (Apr. 7, 2011).

[10] Likely for that reason, both special contracts expressly contemplate that they could be superseded by a change in law such that all attachers, regardless of their classification or service offerings, pay the same rate. *See Special Contract Approval,* S.C. #1010, at 2 (Apr. 7, 2011); *Special Contract Approval,* S.C. #1011, at 1 (Apr. 7, 2011).

[11] The Nine ILECs claim that CANNE Petition fails to refute the sound policies that are embodied in the Board's present pole attachment rate provisions. To the contrary, CANNE's Petition in pages 5-16 explained in compelling detail why the adoption of a single one foot presumption for "space occupied" should apply to all attachments regardless of the nature of service provided. The Nine ILECs fail to justify why in the current telecommunications marketplace it makes sound economic sense to charge a higher rate to one provider just because of type of service offered by allotting twice as much space to its attachments when the attachment places no greater burden on the actual pole to which it is attached than a cable attachment would.

2. When Rate Structures Differ Between States and Types of Providers, Broadband Investment Decisions are Influenced.

The FCC recognized the changing technology and marketplace and took steps to shift the focus away from the regulatory distinctions based on the identity of the provider to a similar rate structure for all attachers. The FCC's pole attachment rule was revised in 2011 and further clarified and revised in 2015 to eliminate the cable/telecom disparity for states where the FCC regulates the rates, terms, and conditions for pole attachments. The FCC explained in its 2015 order its goal to keep pole attachment rates **unified and low** to address its concern that differential rates results in discouraging investment in states.

> 4. We additionally act to support incentives for deployment of broadband facilities, particularly in rural areas, and to *harmonize regulatory treatment* between states where the Commission regulates the rates, terms, and conditions for pole attachments and states where such matters are regulated by the state. Subjecting cable operators to higher pole attachment rates merely because they also provide telecommunications services, such as broadband Internet access, could deter investment in states subject to Commission pole regulation, which would undermine the Commission's broadband deployment policy. *By keeping pole attachment rates unified and low, we further our overarching goal to accelerate deployment of broadband by removing barriers to infrastructure investment and promoting competition.* [12]

In that order, the also FCC explained that the different rates can impose a disincentive to investment in states where the telecom rate is higher than the cable rate. The FCC stated:

> 22. We also are concerned that unless we close what one commenter refers to as the "telecom formula loophole," the resulting *rate disparity* would, more broadly, frustrate the Commission's policy goals by *artificially and incrementally deterring investment in states subject to Commission pole regulation in favor of investment in areas with more favorable state-regulated pole attachment regimes*. As the Commission previously has observed, "[c]ommenters report that *many [states that have elected to exercise jurisdiction over pole attachments in lieu of the Commission] apply a uniform rate for all attachments used to provide cable and telecommunications services, and have done so by establishing a rate identical or*

[12]In the Matter of Implementation of Section 224 of the Act A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, Order on Reconsideration, ¶ 4 (11/24/15) (Reconsideration Order on National Broadband Plan), https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-151A1.pdf (emphasis added).

> *similar to the Commission's cable rate formula.*" Thus, if the Commission's telecom rate frequently yielded rates materially above the cable rate, *telecommunications service providers that operate in multiple states or are deciding where to enter the marketplace, would have an artificial disincentive to invest in states governed by the Commission's 2011 telecom rate rule relative to states that established a uniform rate identical or similar to the Commission's cable rate formula.* Although our action in this Order will not guarantee complete state-to-state uniformity, seeking to address artificial marketplace distortions in the manner that we do here, rather than via a higher telecom rate, accords with our broadband mandate and our overall policy balancing in this context.[13]

The Board should take similar steps to now address the disparate treatment that Rule 3.706(D) creates for companies that are making critical broadband investment in the state.

3. Other States Have Moved to a Unified Rate for Pole Attachments, to Avoid Unreasonable Rate Discrimination and Provide for Parity Among Providers.

As the FCC specifically pointed out, most states have already implemented a single rate at or near the lower cable rate. Of the states exercising their reverse preemption right and prescribing specific rate formulas, the following have adopted a uniform rate: Alaska,[14] California,[15]

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[13] *Id.*, ¶ 22 (emphasis added).

[14] *See e.g.*, Alaska Admin Code Title 3, Section 52.900 *et seq,*, http://www.legis.state.ak.us/basis/aac.asp#3.52.900. 3 AAC 52.920(a)(1) provides the presumption for occupied space for telecommunications attachments is one foot); *See Also In the Matter of the Consideration of Rules Governing Joint Use of Utility Facilities and Amending Joint-Use Regulations,* 3 AAC 52.940, Docket No. R-00-5, Order No. 4, at 6-7 (RCA, 10-2-02), http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=61196740-74AD-4D50-A5CF-8BBC62A292C4, ("We conclude that the CATV formula is reasonable and should be the default formula for calculating pole attachment rates [for all attachers] if the pole owner and the attachers cannot negotiate their own agreement.").

[15] Cal. Pub. Util. Code Section 767.5 (http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=4.&article=3.) and Cal. Pole Attachment Order, *182-183 ("Requiring telecommunications carriers and cable operators that provide telecommunications services to pay more for pole and conduit attachments than cable operators that do not provide telecommunications services when their attachments are made in the identical manner and occupy the same amount of space would subject such carriers and cable operators to prejudice and disadvantage, would deter innovation and efficient use of scarce resources, and would harm the development of competition in California's telecommunications markets.")

Delaware,[16] Illinois,[17] New Jersey,[18] New York,[19] Oregon,[20] Utah,[21] and Ohio.[22] And as the CANNE CLECs explained in their petition, a number of states have explicitly declined to impose higher pole attachment costs on broadband providers: Oregon, Connecticut, California, Alaska, New York, and New Hampshire.[23]

States have also found that a single rate avoids unreasonable rate discrimination. For instance, Kentucky's Public Service Commission found pole attachments provided to a telecommunications carrier is "a like service under the same or substantially the same conditions" as attachments provided to a cable system.[24] Accordingly, that Commission concluded it would be a violation of its non-discrimination statute for the utility to charge for attachments based on a

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[16] Del. Admin. Code, Title 26, Section 1004 (known as "PSC Pole Attachment Regulation"), Section 7.2 (pole attachment rates for any entity attachment must be 'just and reasonable' based on the formula set forth in Section 7.2.2) (http://regulations.delaware.gov/AdminCode/title26/1000/1004.shtml#TopOfPage).

[17] Ill. Admin. Code Title 83, Section 315.20, http://www.ilga.gov/commission/jcar/admincode/083/08300315sections.html

[18] N. J. Admin Code Section 14:18-2.9 (sets forth one foot presumption for occupied space for cable and third party attachers) (http://www.lexisnexis.com/hottopics/njcode).

[19] *See* Proceeding on Motion of Commission as to New York State Electric & Gas Corporation's Proposed Tariff Filing to Establish Pole Attachment Rental Rate, Case 01-E00026, p. 5 (N.Y. PSC July 16, 2002) ("Currently there is one pole attachment rate, which applies to all attachments regardless of the type of company.") http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=01-00026&submit=Search+by+Case+Number

[20] Or. Admin. R. Section 860-028-0000, et seq,;, see § 860-028-0110(2) (default rates apply to any entity requiring pole attachments to serve customers). http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_028.html,

[21] Utah Admin. Code Section 746-345, et. seq.;, R746-345-2(A) provides that attaching entities include cable and communications companies and R746-345-5 sets forth a rate formula for just and reasonable rates, which includes a presumption that telecommunications and cable television pole attachments each occupy 1.0 foot. (http://www.rules.utah.gov/publicat/code/r746/r746-345.htm).

[22] Ohio Admin. Code Section 4901:1-3-04, 3 (adopting the default FCC formula as revised to provide for parity in telecom and cable rates) (http://codes.ohio.gov/oac/4901%3A1).

[23] See CANNE CLECs Petition, pp.14-15.

[24] *Ballard Rural Telephone Cooperative vs. Jackson Purchase Energy Corp.*, Case No. 2004-00036 (Ky. PSC 8-2-2007). KRS 278-170(1) prohibits a utility from giving any "unreasonable preference or advantage" or making any "unreasonable difference" as to rates among customers who received a "like and contemporaneous service under the same or substantially the same conditions." http://psc.ky.gov/pscscf/2004%20cases/2004-00036/PSC_Final%20Order_080207.pdf.

different method that it uses to calculate the rate charged to cable customer attachments. California followed the same approach, applying a single pole attachment formula, to ensure that telecom providers, including those not affiliated with a cable operator, were assured access to poles under nondiscriminatory rates, terms and conditions.[25]

Just as other states have been pursuing similar reforms to eliminate disparities between cable and telecom providers, especially given the technology and market changes where historic cable companies now offer telecom services over the same attachments, Vermont should pursue similar reforms. The Board should expeditiously remove the discriminatory rate application between different pole attachment customers.

4. A Single Rate Based on the Cable Rate Formula is Just and Reasonable and Has Been Found to be Compensatory.

The states have also concluded that a single rate based on the cable rate formula appropriately allocates the benefit of attachments provided to telecommunications carriers and cable systems. State laws authorizing state regulation of pole attachment rates generally require that pole attachment rates be "just and reasonable."[26] To achieve this outcome, state commissions have generally mandated that pole owners follow the cable rate formula, because it most appropriately allocates the costs between the pole owners and attachers. Michigan's regulatory commission stated the principle most clearly:

> The Commission finds that [the cable formula] is a more reasonable approach to allocation than those proposed by the utilities because it achieves a better

[25] Cal. Pole Attachment Order at *182-183.

[26] *See e.g.* Del. Admin. Code. Title 26, Section 1004, Pole Attachment Regulation Section 7.1.3, providing that "Such [pole attachment] rates, terms and conditions: (7.1.3.1.) shall be just and reasonable; (7.1.3.2) shall not, with respect to common use purpose, be unduly preferential or unjustly discriminatory..."); *see also* Utah Admin. Code Section 746-345-1(A)(2) ("Pursuant to these rules, a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.")

approximation of the benefit that each user of a pole receives relative to the other users.[27]

The Regulatory Commission of Alaska similarly held that, "We are not convinced from the record that alternative formulas before us are any more accurate and reasonable than the existing CATV formula."[28] Oregon's PUC also provided explicit comment on the fairness of the cable rate formula, concluding that "the cable formula has been found to fairly compensate pole owners for use of space on the pole."[29] The Connecticut Department of Utility Control (now the Public Utility Regulatory Authority) concluded that: "the record is far from clear as to whether the price differential between the cable and telecommunication attachment fee is due to any real reflection of increased costs to [the electric company] and its ratepayers. . . . [The electric company's] expert witness Kowalski testified that there is no additional cost burden."[30] The California Commission explained that, "There is generally no difference in the physical connection to the poles or conduits attributable to the particular service involved."[31]

The Ohio Commission agreed, and took steps to advance broadband deployment by updating and unifying its pole attachments rules, adopting a single, unified pole attachment rate formula based on the FCC's cable rate formula. The Ohio Commission noted that "the cost incurred by the pole owner to provide attachment space is not affected by the services being

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[27] *Consumers Power Co, et al.,* Case No. U-10741; Case No. U-10816; Case No. U-10831, 1997 Mich. PSC LEXIS 26, 36 (Mich PUC 2-11-97), affirming establishment of single statewide rate as "just and reasonable" 1998 Mich. App. Lexis 832 (MI Ct. App. 11/24/98), aff'd 461 Mich. 853, 602 N.W.2d 386 (1999 Mich. LEXIS 3252 (MI S.Ct. 1999).

[28] *See In the Matter of the Consideration of Rules Governing Joint Use of Utility Facilities and Amending Joint-Use Regulations,* 3 AAC 52.940, Docket No. R-00-5, Order No. 4, at 6-7 (RCA, 10-2-02).

[29] *Rulemaking to Amend and Adopt Rules in OAR 860*, Docket Nos AR 506, AR 510, Order No. 07-137 (Or. PUC 4-10-07) http://apps.puc.state.or.us/orders/2007ords/07-137.pdf.

[30] *See Petition of the United Illuminating Company for a Declaratory Ruling Regarding the Availability of Cable Tariff Rate for Pole Attachments,* Docket No. 05-06-01 (Conn. DPUC 12-14-05).

[31] Cal. Pole Attachment Order at 53.

provided by the attaching entity."[32] The Ohio Commission further found that the FCC's cable rate formula "has been deemed compensatory by the courts" and adopted the presumptive inputs into the formula, including the occupancy of one foot of space for all providers. Id.

The objections from the Nine ILECs likely mirror the objections raised by Ohio electric utilities who argued that electric users would be "cross subsidizing" attaching entities by electricity users. That assertion did not persuade the Ohio Commission. Instead, the Ohio modified its rule, ordered the regulated pole owners to submit pole attachment tariffs and rates in compliance with its revised pole attachment formula and reviewed those tariffs for approval.

The time has come for Vermont to do the same by establishing a standard uniform presumption of one foot of "space occupied" for all attachments.

[32] Case No. 13-579-AU-ORD (http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=77536568-5068-44dc-bac6-6519b49a8f10).

Conclusion

As proposed by CANNE and seconded by Level 3 and others, the Board should proceed immediately to consider the straightforward amendment to Rule 3.706(D)(1) that would eliminate the disparate presumption in pole space occupied — and, therefore, rates paid — as between cable and telecom providers by establishing a uniform, one-foot presumption for telecom and cable operators alike.

August 18, 2016

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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Proposed Vermont Public Utility Commission Rule 3.706(D)(1) pole attachment rental calculation	)))	Case No. 19-3603-RULE

COMMENTS OF COMAST AND CHARTER

Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC ("Comcast") and The Helicon Group ("Charter"), through counsel, respectfully submit these comments in response to the Order Re Proposed Rule 3.706(D)(1) ("Rate Order") issued by the Public Service Commission ("Commission") on October 24, 2019. The Rate Order proposes to eliminate the existing 1-foot and 2-foot occupied space presumption in Rule 3.706(D)(1) ("Rule") and replace it with a uniform 1.25-foot presumption applicable to all pole attachers, regardless of the services offered.[1]

Comcast and Charter commend the Commission for its work to resolve this critically important issue and improve the Vermont pole attachment formula. As recognized by the Commission, the existence of two substantially different rates for attachments to the same utility poles based upon the services offered by a particular attacher has been tremendously disruptive and counterproductive to Vermont's efforts to promote network deployment and competition.

Comcast and Charter strongly support the proposed amendment establishing a uniform 1.25-foot presumption as opposed to the rule currently in place. CANNE's rulemaking petition proposes a uniform 1-foot presumption consistent with the Federal Communications Commission's cable television rate

[1] In June 2016, CANNE filed a petition to amend the Rule to establish a uniform 1-foot presumption for all pole attachments regardless of services offered. The Commission was subsequently directed by the Vermont General Assembly to submit a final proposed rule in response to the CANNE petition to the Secretary of State and with the Legislative Committee on Administrative Rules on or before June 1, 2020. Public Act No. 79, § 19 (2018 Vt. Adj. Sess.).

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formula ("FCC Cable Rate") and most other certified states. While there are very strong legal and policy reasons for the Commission to adopt a 1-foot rate presumption,[2] Comcast and Charter believe that a uniform 1.25-foot rate presumption is a reasonable compromise that will substantially achieve the Commission's objectives, reduce unnecessary disputes between pole owners and attachers and align more closely with the approaches in neighboring states that use a uniform presumption, albeit at the 1-foot rate. The proposed amendment is immeasurably superior to the rejected "revenue-neutral" approach, which the Commission recognized was simply unworkable due to missing, skewed and disputed data inputs and unresolvable administrative complexity.[3] Significantly, the Commission determined that any revenue loss to pole owners arising from a potential difference between revenue-neutral rates and rates under the 1.25-foot presumption would be "minimal and consistent with general ratemaking principles."[4]

One issue that is not addressed in the Rate Order involves the effective date for the amendment implementing the uniform 1.25-foot presumption. Comcast and Charter support expeditious adoption of the amendment. Given the time required for the Commission to review comments and for LCAR to complete its review process, Comcast and Charter propose that the Commission insert into the amendment an effective date of April 1, 2020, the beginning of the next calendar quarter. This will minimize administrative disruption and potential disputes that may arise under other alternatives.[5] Prompt

[2] It should be noted that the Commission's characterization of a 1-foot rate presumption as being an "incremental approach" (Rate Order at 9) does not recognize that the FCC's Cable Rate is a fully allocated cost approach that compensates pole owners substantially more than the owner's incremental costs (which are virtually all recovered through separate "make-ready" payments made by attachers). Similarly, the Commission's observation that a higher pole rate is justified to compensate pole owners for right-of-way access rights "which pole Attachers enjoy as a result of their attachments" (Rate Order at 9) does not reflect the fact that cable operators already have an independent right to access the public ROW and private easements under the federal Cable Act and pay a franchise fee for such access. 47 U.S.C. §§ 541(a)(2); 542. The FCC has previously concluded that the FCC Cable Rate already captures appropriate ROW access costs. *See* Consolidated Partial Order on Reconsideration, 16 FCC Rcd. 12103, ¶ 123 (2001).

[3] Even if revenue-neutral numbers could be determined for each utility (which they cannot), achieving revenue neutrality for each individual pole owner would require different formula inputs for virtually all utilities thereby eliminating all the advantages and efficiencies intended by having a pole attachment rate formula in the first place.

[4] Rate Order at 5.

[5] Absent an effective date in the text of a rule or its adopting page, a rule becomes effective 15 days after adoption. 3 V.S.A §845(d).

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effectiveness as of April 1, 2020 also will avoid the revival of disputes over the applicable pole rates between Comcast and Charter and pole owners that might occur with a later effective date.[6]

For the foregoing reasons, the Commission should amend the Rule, as proposed, to establish a uniform 1.25-foot presumption of occupied space for all attachers effective on April 1, 2020.

Dated at Montpelier, Vermont, this 21st day of January, 2020.

COMCAST AND CHARTER

BY: Gerald R. Tarrant

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[6] In this regard, Comcast is party to a rate agreement involving its attachments on former FairPoint poles, which resolved the rate dispute referenced in the Rate Order. Rate Order at 10 and note 40 (citing Complaint of Telephone Operating Company of Vermont, LLC, d/b/a FairPoint Communications, Docket 8470). On April 7, 2016, the Commission approved Special Contract #1010, which established a uniform rate for Comcast's attachments on FairPoint poles for four years – through April 6, 2020. Special Contract Approval, S.C. #1010 (dated April 7, 2016). If the effective date of the amendment is after April 6, 2020, unless the Special Contract is extended until the date that the 1.25-foot presumption becomes effective, Comcast could be subject to claims from FairPoint's successors (e.g. Consolidated Communications, Green Mountain Power) that the 2-foot rate again applies. This could revive the very dispute sought to be eliminated by the Rate Order. Comcast believes the 1-foot rate would apply to its attachments on former FairPoint poles after the Special Contract expires and until the 1.25-foot presumption takes effect. Charter came to a similar settlement with FairPoint with a later expiration date. Special Contract Approval, S.C. #1011 (dated April 7, 2016).

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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-3603-RULE

Proposed revisions to Vermont Public Utility Commission Rule 3.706 (D)(1) Pole Attachment Rates)

DEPARTMENT OF PUBLIC SERVICE COMMENTS REGARDING INITIAL PROPOSED RULE

On December 9, 2019, the Public Utility Commission ("Commission") issued a Memorandum notifying interested parties that on December 6, 2019, a proposed Commission Rule 3.706(D)(1) regarding pole attachment rental calculations was filed with the Vermont Secretary of State. The Memorandum indicated that written comments on the proposed rule are due January 20, 2020.[1] On January 10, 2020, the Department of Public Service ("Department") attended a public hearing at which representatives from FirstLight, Comcast, Consolidated Communications, Burlington Electric Company and Green Mountain Power were present. Those parties that spoke were largely in support of the Commission's proposed pole attachment rental calculation based on a presumption of 1.25 feet of occupied space.

The Department has reviewed the final proposed rule and finds that, given the widespread deployment of Voice over Internet Protocol ("VoIP") and broadband service in Vermont, a single, rebuttable presumption that any equipment attached to a utility pole occupies 1.25 feet of space better reflects the state of modern telecommunications networks and service in the state. A single presumption for occupied space on a utility pole has the potential to reduce billing disputes between pole owners and attaching entities as well as reduce any inequitable treatment

[1] Pursuant to V.R.C.P. 6(a)(1)(C), the last day for filing comments in this proceeding falls on January 21, 2020.

between competing entities. Furthermore, it provides regulatory certainty (at both the federal and state level) as to how to treat VoIP providers in particular, leading to more certainty in the implementation of Rule 3.706(D)(1) overall.

The Department posits that the proposed rule strikes the proper balance between the various competing policy objectives between pole owners and attaching entities and therefore, it is a relatively fair allocation that solves many of the problems that were associated with the prior bifurcated formula of 1.0 and 2.0 foot rates. Furthermore, a single presumption for occupied space on a utility pole is unlikely to impose an unfair burden on any attaching entity or pole owner, including administrative challenges. Finally, the rule is consistent with Sections 19 and 20 of Act 79 and will continue to support the deployment of broadband infrastructure pursuant to 30 V.S.A. § 202c.

DATED at Montpelier, Vermont this 21st day of January, 2020.

VERMONT DEPARTMENT OF PUBLIC SERVICE

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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-3603-RULE

Proposed Vermont Public Utility Commission Rule 3.706(D) (1) pole attachment rental calculation

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COMMENTS OF FIRSTLIGHT FIBER REGARDING PROPOSED RULE 3.706(D)(1)

I. INTRODUCTION AND SUMMARY

A. Background

On June 13, 2016, CANNE petitioned the Commission to amend its existing pole attachment rate formula under Rule 3.706(D) (1) by adopting a single rebuttable presumption that all attachments occupy 1 foot of usable space. CANNE's proposed amendment replaced the portion of the existing rate formula, under which cable attachments are presumed to occupy 1 foot of usable space and other attachments are presumed to occupy 2 feet of usable space.

On October 24, 2019, the Commission proposed to amend Rule 3.706(D) (1) to establish a single presumption of the minimum space occupied by an attachment of 1.25 feet, irrespective of the type of service provided by the attaching entity. The amended rate formula would replace that portion of the existing rate formula under which cable attachments are presumed to occupy 1 foot of usable space and other attachments are presumed to occupy 2 feet of usable space. *Order re Proposed Rule 3.706(D) (1)* (October 24, 2019) ("Order" at 5).[1]

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[1] FirstLight Fiber notes that on the initial page of its *Order*, the Commission refers to a single, rebuttable presumption of 1 foot of usable space occupied. However, the *Order* makes it clear

Pursuant to the Commission's December 9, 2019 Memorandum in the above matter, FirstLight Fiber[2] submits its Comments regarding the Commission's proposed amendment of the pole attachment rate formula under Rule 3.706(D)(1).

B. Summary of FirstLight Fiber's Comments

FirstLight Fiber supports the Commission's proposed adoption of a single presumption for the amount of usable space occupied by an attachment without regard for the service(s) provided by the attaching entity. (Order at 7-10). This action is long overdue. It will eliminate a system under which CLECs have been forced to pay double the pole attachment rate applicable to cable operators, notwithstanding the fact that the pole attachments of CLECs and cable operators occupy and use the same amount of vertical space on utility poles. FirstLight Fiber commends the Commission for taking this very important step, consistent with CANNE's proposal.

FirstLight Fiber respectfully disagrees, however, with adoption of the proposed 1.25 feet space occupied presumption. It urges the Commission to adopt a single 1 foot of usable space occupied presumption:

- There is extensive evidence and regulatory precedent supporting the adoption of a rebuttable presumption of 1 foot of usable space occupied, including federal laws and decisions and the Public Service Board's past pole attachment rulemaking;
- No party presented evidence and no credible, empirical support exists in the record for the adoption of a rebuttable presumption of 1.25 feet usable space occupied by an attachment;
- The Commission's tentative adoption of a 1.25 feet for usable space occupied by an attachment is based on a mistaken characterization of a 1 foot rate as an incremental cost-based rate when, in fact, it is a fully allocated cost-based rate under which attaching entities

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that the Commission has proposed a single, rebuttable presumption 1.25 feet of usable space occupied by an attachment.

[2] Sovernet Fiber Corp., TVC Albany, Inc., segTEL, Inc, and BayRing Communications, which at the time of CANNE's Petition were members of CANNE, have since been consolidated into FirstLight Fiber, Inc.

contribute toward the capital, operating and maintenance and administrative costs of the pole in proportion to the share of usable space that their attachments occupy;

- The Commission's tentative adoption of a 1.25 feet presumption for usable space occupied by an attachment would be a radical departure from the Commission's longstanding principles that (1) rates should be based upon cost and ratepayers should bear the costs that they cause and (2) rates should not be based upon subjective judgments about the value of pole attachment rights;

- Adoption of a 1 foot of usable space occupied as a rebuttable presumption fairly balances the interests of pole owners, attaching entities and their customers; and

- Adoption of 1 foot of usable space occupied as a rebuttable presumption better promotes the expansion of broadband and improves the sustainability of broadband deployments

Adoption of CANNE's proposed amendment a single presumption of 1 foot of usable space occupied by attachments regardless of the services being provided, is the proper action for the Commission to take.

In the alternative, FirstLight Fiber recognizes that a single 1.25 feet of usable space occupied presumption is a far better outcome than its being saddled with the 2 foot rate and continuing to suffer a competitive disadvantage. In the event that the Commission adopts a rebuttable presumption of 1.25 feet of usable space occupied, attaching entities, not just pole owners, should be allowed an opportunity to rebut the presumption and establish that the amount of usable space actually occupied is lesser or greater than 1.25 feet.

II. DISCUSSION

A. There is extensive evidence and regulatory precedent supporting the adoption of a rebuttable presumption of 1 foot of usable space occupied, including federal laws and decisions and the Public Service Board's past pole attachment rulemaking

CANNE's Petition and the previous comments submitted by CANNE, CenturyLink, Comcast, Charter and other parties demonstrated that a 1 foot of usable space occupied presumption is supported by (1) empirical information on the amount of space actually occupied

by cable and CLEC attachments; (2) federal law; (3) past actions of the Commissions; and (4) past actions of numerous state public utilities commissions that exercise authority over pole attachment rates. *See, e.g., CANNE Petition* at 5, 6, 14-16; Comcast/Charter Comments dated Nov. 5, 2018; Comcast/Charter Motion to Alter or Amend dated August 14, 2018 and Appendix A thereto (list of regulatory precedents).

1. Empirical Information

Applicable design and safety codes do not require more than 1 foot of vertical clearance between communications cables attached to utility poles within the communications space, and 1 foot of separation is the normal design specification upon which positions of attachments are settled among pole owners and attaching entities during the survey of poles to accommodate additional attachments. *CANNE Petition* at 4-6; Statement of Lawrence Lackey (January 10, 2020) at Tr. 5, 6.

2. Federal Law

In *Adoption of Rules for the Regulation of Cable Television Pole Attachments,* CC Docket No. 78-144 (72 FCC 2d 590(1979), the FCC stated that a just and reasonable pole attachment rate under 47 USC §224(d) (1) is determined by 'multiplying the percentage of the total usable space...which is occupied by the pole attachment... by the sum of operating expenses and actual capital costs of the utility attributable to the entire pole....' (*quoting* 47 USC §224(d)(1). "The example given in the legislative history contemplates that CATV would be assigned only one foot of usable space...." 72 FCC 2d 59 at ¶24. Further, in *Memorandum Opinion and Order,* CC Docket No. 78-144(1980) (76 FCC 2d 187), the FCC stated: "Indeed, the example offered by the Senate Committee leaves no doubt that Congress intended CATV companies to be responsible for a total of only 12 inches of space on a pole. Thus, intended it states, *'[b]y what is virtually a*

uniform practice throughout the United States cable television is assigned 1 foot [of the] usable space.' Senate Report at 20. (*emphasis added*).

3. Past Action by the Commission

When the Public Service Board reviewed its 1984 pole attachment regulations and considered changes in 2001, it adopted 1 foot of usable space occupied by cable attachments as appropriate and reflective of the usable space actually occupied by these attachments. The use of one foot for usable space occupied maintains consistency between this component of the pole attachment rate formula and the total amount of usable space available for attachments, which is based on physical pole heights characteristic of utility poles in Vermont. *Policy Paper and Comment Summary on PSB Rule 3.700* at 10. The use of 1 foot as a presumption for usable space occupied by an attachment has been widely accepted. *CANNE Petition* at 14-16.

B. The proposed rebuttable presumption of 1.25 feet for usable space occupied is not based upon the amount of usable space actually occupied by an attachment and its neither supported by the Commission nor justified based upon any credible, empirical support in the record

The Commission previously suggested that a value for presumed usable space occupied by an attachment might be based on a weighted average of the varying prices then paid by attaching entities. It rejected that approach because a revenue neutral presumption "is too administratively complex based on the data we received." The information provided was so flawed that the Commission found it "problematic" and "skewed." (*October 24, 2019 Order* at 4, 5).

However, rather than propose a single usable space occupied presumption based upon the amount of usable space actually occupied by an attachment (as it did when it established the existing 1 foot cable rate), the Commission has clung to its belief that a presumption for usable space occupied by an attachment can and should be set at more than 1 foot. It states that the 1.25

foot presumption will bring "...us close to a revenue-neutral rate." *Order* at 5. Its rationale is not based upon any empirical support that the amount of usable space occupied by an attachment is 1.25 feet.

Nowhere in its Order does the Commission refer to any credible data or information which supports the tentative adoption of 1.25 feet for usable space occupied by an attachment.[3] The proposed presumption of 1.25 feet of usable space occupied does not correspond to space actually occupied by attachments. The Commission has not cited and has not relied upon any empirical foundation for its selection of 1.25 feet.

Instead, it justifies the 1.25 foot rate, in part, as follows: "all attachers should contribute equally to the upkeep of the poles; (3) the 1.25-foot presumption is just and reasonable..." *Order* at 5. The Commission elaborated at page 9 of its *Order:*

> "...we also believe that it is important for Attachers to contribute something to the ongoing cost of supporting a pole, which is why we have not chosen a flat 1-foot rate. Attachers enjoy valuable rights as part of their ability to attach to a pole [referring to use of rights of way]. Given this we find it appropriate for attachers to provided something more than the incremental cost caused by the attachment, and we find it appropriate to set the attachment presumption at 1.25 feet. This rate falls well below the higher Telecom Rate but is still above the Cable Rate's incremental approach." *Order* at 9.

The justifications relied upon by the Commission are not based upon usable space actually occupied by a pole attachment. The flaws in these justifications are discussed below.

C. The Commission's Proposal is Based upon an Incorrect Belief that a 1 Foot Rate is an Incremental Cost-Based Rate and a 1.25 Foot Rate is Needed to Assure that Attaching Entities Contribute a Portion of the Cost to Upkeep Poles

The Commission's proposal of a 1.25 feet rebuttable presumption is based upon errors of fact and law. The Commission reasons that a presumption above 1 foot of usable space occupied is

[3] Pole owners may rebut this presumption based on empirical evidence that more than 1 foot of usable space is occupied by an attachment. Rule 3.706(D)(1)(a) (use of a study of the space *actually occupied*).

needed in order to produce a pole attachment rate that is above incremental cost. The Commission is incorrect in its belief that a 1 foot rate would result in an incremental cost-based rate when, in fact, it results in a fully allocated cost-based rate. (Order at 9).[4] The FCC, the courts and virtually all state commissions (including the Public Service Board in adopting the 1 foot cable rate) have found that a 1 foot rate used to allocate the costs of poles to attaching entities is a fully allocated cost-based rate.

Indeed, the Commission's Order quotes the federal statute and FCC order that point this out. United States Code, Chapter 47, Section 224 ("Section 224"), which is the federal law governing pole-attachment rates, requires the FCC to establish just and reasonable pole attachment rates. These rates can range from a statutory *minimum based on the additional costs of providing pole attachments* to a statutory maximum based on the fully allocated costs of the pole. (Order at 5. emphasis added). The Commission's Order adds:

> At the lower end of the zone of reasonableness, FCC rules exclude most capital costs and only allow for the recovery of the incremental costs of attaching to the pole (only those additional costs created by the attachment). At the upper end of the just and reasonable range, the FCC allows Owners to recapture fully-allocated costs – that is, the Owner may recover the proportional capital and operating expenses attributable to *that portion of the pole the attachment occupies.* (Order at 6) (*emphasis added*)

The Commission, inexplicably, concludes that 1 foot is the appropriate presumption for the lower end (e.g., incremental costs). However, under the FCC's construct, the upper end of the "zone of reasonableness" would be achieved by applying a presumption of 1-foot of usable space occupied in order to recover from attaching entities their proportional share of capital and operating costs. And the lower end of this zone of reasonableness would be calculated by excluding all capital costs

[4] *See, PSB Rule 3.700-Pole Attachments Policy Explanation and Summary of Comments* at 8(rejecting incremental cost-based rate and adopting fully allocated cost based rate).

and presuming 1 foot occupied. In other words, what makes a rate incremental vs fully allocated cost based is the costs that are recovered through the rate, not the usable space occupied by the attachment. The usable space occupied by the attachment functions as a numerator divided by a total usable space denominator to determine the proportion of the fully allocated pole costs recovered through the pole attachment rate.

Contrary to the Commission's conclusions, a usable space occupied presumption of 1 foot results in a fully allocated cost based pole attachment rate under which attaching entities contribute equally to the upkeep of poles. A 1.25 foot usable space occupied presumption results in attaching entities paying pole attachment rates *greater* than a fully allocated cost-based rate, which would exceed the range the FCC considers to be the zone of reasonableness.

When the FCC established the pole attachment rate formula on which Vermont's pole attachment rates were modeled, it stated that it was essential to ascertain "...three factors in order to determine whether a pole attachment rate exceeds the lawful, fully allocated cost maximum, namely (1) the total usable space; (2) the portion of this space 'occupied' by the CATV operator; and (3) the fully allocated cost to the utility of providing the pole." *Adoption of Rules for the Regulation of Cable Television Pole Attachments,* CC Docket No. 78-144 (72 FCC 2d 590(1979) at ¶18. The amount of usable space and the amount of usable space occupied are not costs, but are rather the rate formula parameters are used to allocate a portion of the pole owner's fully allocated costs based on the actual use of the pole by the attaching entity. The attaching entity's share of these fully allocated costs is determined on the basis of its percentage occupancy of usable space on poles. Its percentage use is 1 foot, not 1.25 feet.

The Commission's own pole attachment rate formula makes it abundantly clear that under a 1 foot rate, attaching entities pay for a proportionate share of the pole owners fully-allocated cost

of maintaining poles. Rule 3.706 (D) provides the general rate formula that includes the above fully allocated costs through the carrying charge ratio (cost of capital, depreciation, operating and maintenance expenses, administrative expenses, property taxes). The Commission's pole attachment rate formula-with 1 foot of usable space occupied- assures that attaching entities "...contribute something to the ongoing cost of supporting a pole...."

Since no cross subsidy existed when the 1 foot rate was made available to cable operators, no cross subsidy is created by adopting a 1 foot rate for all attaching entities. See, *CANNE Petition* at 14-16; *CANNE Comments* dated November 2, 2018 at 13, note 20, and comments cited. *PSB Rule 3.700 Policy Explanation and Summary of Comments* at 6.

D. The Commission's Proposal is a Radical Departure from its Well-Settled Ratemaking Principles

The proposed adoption of a usable space occupied presumption of 1.25 feet represents a radical departure from the Commission's well-settled ratemaking principles. First, as explained above, the adoption of a 1 foot rate assures that pole owners receive a proportionate share of their fully allocated costs of poles based on the actual amount of usable space occupied by attaching entities. This conclusion was accepted when the Public Service Board adopted the 1 foot usable space occupied presumption for cable attachments and it remains equally valid today. The Commission's adoption of a 1.25 foot usable space occupied presumption would allocate to attaching entities pole costs in excess of their share of fully allocated costs.

The Public Service Board previously found that a 1 foot rate requires the attaching entity to pay a pole attachment rate based on fully allocated costs.[5] The 1.25 foot presumption is unreasonable in that it requires attaching entities to pay a fee that is well above fully allocated

[5] *See, PSB Rule 3.700-Pole Attachments Policy Explanation and Summary of Comments* at 5-8.

costs. Such a rate exceeds the bounds of reasonableness under 47 USC §224(d) (1) and the related FCC rate formula which has utilized one foot of space occupied. It also runs contrary to the Commission's long-held principle that ratepayers pay for the costs that they cause, not rates in excess of fully allocated costs. *Policy Paper and Comment Summary on PSB Rule 3.700 at 10.*

Second, the Commission has improperly justified its proposed amendment based upon the value of attachment space to attaching entities. *Order* at 9. The Commission has previously rejected value of service as a basis for setting rates, including pole attachment rates: "The Board historically has not set rates based upon the inherent value of a service or product to the user." *Policy Paper and Comment Summary on PSB Rule 3.700 at 10.* There is no basis for singling out pole attachment rates for value of service pricing. Moreover, there are other sound policy reasons, discussed in Section II-F, *infra,* to base pole attachment rates, like other rates, on cost, and not on perceived value of service.

The Commission is urged to reconsider its proposed amendment in light of the erroneous underpinnings set forth in its October 24, 2019 Order. If it does so, the only credible option is Commission adoption of a rebuttable presumption of one foot of usable space occupied by an attachment.

E. Adoption of a 1 foot of usable space occupied as a rebuttable presumption fairly balances the interests of pole owners, attaching entities and their customers

FirstLight Fiber recognizes that in applying the pole attachment rate formula, the Commission must take into account the interests of pole owners as their ratepayers, as well as the interests of attaching entities and their customers (Rule 3.701(A)). *Policy Paper and Comments Summary on PSB Rule 3.700* at 9, 10 (impact of rate reduction on pole owners very small in relation to total pole owner revenues). In this proceeding, see *CANNE Comments*, November 2, 2018 at 13-17.

Attachment fees are a significant cost component for attaching entities, but a very minor percentage of pole owner revenues. The Commission has stated in its Economic Impact Analysis that overall pole revenues for pole owners would decline by less than $776,973 if the 1.25 foot rate is adopted;[6] Comcast and Charter estimated that the 1 foot rate would result in a decline of $776,973- this amount is only .07% of 2017 total revenues of $1,040,070,225. Similarly, based on company revenue for 2018, CANNE calculated that pole revenues were less than 1% of revenue for all but one pole-owning entity. Green Mountain Power and Consolidated, at that time, owned the largest number of poles in Vermont. For Consolidated (Telephone Operating Company of Vermont), recurring pole attachment fees comprised just 0.56% of overall revenue, and for Green Mountain Power, 0.26%.[7] Adoption of the 1 foot rebuttable presumption would offer meaningful relief to attaching entities (especially smaller attaching entities), but have a *de minimus* effect upon pole owners and their ratepayers.

F. Adoption of 1 foot of usable space occupied as a rebuttable presumption better promotes the expansion of broadband and improves the sustainability of broadband deployments

The adoption of a usable space occupied presumption of 1 foot would better advance Vermont's broadband goals. The State of Vermont's goals for universal availability for broadband and mobile telecommunications services are articulated in statute. Those goals include:

> (1) access to affordable broadband service to all residences and businesses in all regions of the State, to be achieved in a manner that is consistent with the State Telecommunications Plan;

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[6] In the October 24, 2019 *Order* at 5, the Commission cited prior comments in support of the 1 foot rate reducing pole owner revenues by this same figure.

[7] See Comments of CANNE, dated 11/2/2018, in *Petition of the CLEC Association of Northern New England, Inc. to Amend Rule 3.706(D)(1) Regarding the Rental Calculation for Pole Attachments at 14-17.*

(2) universal availability of mobile telecommunication services, including voice and high-speed data along roadways, and near universal availability statewide;

(3) investment in telecommunications infrastructure in the State that creates or completes the network for service providers to create last-mile connection to the home or business and supports the best available and economically feasible service capabilities;

(4) the continuous upgrading of telecommunications and broadband infrastructure in all areas of the State to reflect the rapid evolution in the capabilities of available broadband and mobile telecommunications technologies, the capabilities of broadband and mobile telecommunications services needed by persons, businesses, and institutions in the State;[8]

The State of Vermont's Broadband Deployment Act[9] further finds that:

"As Vermont is a rural state with many geographically remote locations, broadband is essential for supporting economic and educational activities, strengthening health and public safety networks, and reinforcing freedom of expression and democratic, social, and civic engagement."

"The accessibility and quality of communications networks in Vermont, specifically broadband, is critical to our State's future."[10]

All of the wire-based communications service providers now operating in Vermont, as well as those that aspire to operate, including the existing and nascent communications districts, must attach to utility poles in order to reach customers. Theoretically, they could obtain their own right of way, or build entirely underground. But neither alternative is commercially viable. Utility poles are, in economic terms, essential bottleneck facilities. Access to these poles should be set based on cost, rather than value, in order to facilitate provision of affordable broadband access throughout the state.

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[8] 30 VSA Section 202e, https://legislature.vermont.gov/statutes/section/30/005/00202e.

[9] 30 VSA Section 202e(b)(6)

[10] "Broadband Action Plan, Vermont Department of Public Service, April 26, 2019, at page 1. ("Broadband Action Plan.")"

The most severely underserved regions of the state are rural. Reaching these customers requires longer runs of fiber and therefore more pole attachments per customer than in the more densely settled areas that tend to have access to better services. Reasonable, meaning lower, pole attachment fees are therefore particularly important in ensuring the commercial viability and the maximum extension of advanced networks in Vermont.

This is the case not only for last-mile service providers, but also for middle-mile carriers that build over long distances to provide high-capacity back-haul service to mobile service providers and internet connectivity and data transport services to rural enterprises community anchor institutions.

At a time when the Legislature and Administration recognize the public good associated with improved communications services, and are finding the financial resources to do so are very limited, here is an opportunity to the Commission to advance the cause. All it needs to do is amend Rule 3.700 to correct the long-standing over-pricing of pole attachment fees, by implementing a rate formula that ensure attaching entities are not charged rates that exceed a proportionate share of fully-allocated costs.

G. If the Commission adopts 1.25 feet as the presumed amount of usable space occupied by attachments, it should afford attaching entities-not just pole owners-an opportunity to rebut the presumption.

Rule 3.3701(D)(1) currently allows a Pole-Owning Utility to set the occupied space value based on a "study of the space actually occupied by a particular type of attachment". The rule, however, does not give pole-attaching entities the same right. In the event that the Commission adopts a 1.25 feet of usable space occupied presumption, that presumption should be rebuttable by both pole owners and attaching entities. When usable space occupied is set at one foot, there is no reason for attaching entities to have a right to rebut. The value used is based on actual experience

of pole owners and attaching entities and a long history of regulatory acceptance. However, if the Commission adopts a space occupied presumption which is not based on usable space actually occupied, attaching entities should be afforded the same right as a pole owner to rebut this presumption. The underlying principle, that attaching entities should pay a pole attachment rate based on the usable space that they occupy, must be applied evenly. Since both a pole owner and an attaching entity have the right to rebut the usable space presumption, both parties should have the same right as to a usable space occupied presumption that is not based on usable space actually occupied. To decide otherwise would expose attaching entities to future increases in the space occupied presumption based on changing policy considerations, which as shown in this proceeding, may be misplaced.

III. CONCLUSION

For the reasons above, FirstLight Fiber urges the Commission to adopt a single rebuttable presumption of 1 foot of usable space occupied by an attachment.

Respectfully submitted,

FirstLight Fiber

By its attorneys,

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Dated: January 20, 2020

ValleyNet
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January 20. 2020

Judith Whitney
Clerk of the Commission
Vermont PUC
112 State Street, 4th Floor
Montpelier, Vermont 05620-2701

RE: **Case No. 19-3603-RULE Proposed Vermont PUC Rule 3.706(D) (1) pole attachment rental**

COMMENTS OF VALLEYNET REGARDING PROPOSED RULE 3.706(D)(1)

On December 6, 2019, the Vermont Public Utility Commission ("Commission"), pursuant to 3 V.S.A. § 838, filed a proposed rule and filing documents with the Vermont Secretary of State regarding pole attachment rates and fees.

We write to express our general support for the rule, and appreciate the Commission's efforts to resolve this long-standing issue. As you know, this issue has been pending for quite some time, and appreciate the Commission's efforts to evolve in the conversation from what started as an attempt to be revenue neutral to one of fairness to attaching entities based on actual costs and value.

ValleyNet is the operating company of ECFiber and is working with other CUD's in Vermont and elsewhere to advance high speed internet through fiber to the home. We have paid and continue to pay tens of thousands of dollars per year to pole owing utilities to rent space on poles in support of our 4200 customers with over 1000 miles of fiber. We note we also pay for pole replacements and movement of other attaching entities where that is necessary to accommodate our attachment.

We believe the proper rate is a presumptive 1 foot rate for all attaching entities. There is no basis for going more than that, but for the continued desire to have this rule be as revenue neutral as possible. The proposed 1.25 foot rate is a vast improvement over current status, and will save our customers significantly, and if the Commission believes the 1 foot rate is not achievable at this time, we support the 1.25 foot rate to move this issue forward with the opportunity for us to also challenge the presumptive rate. Nevertheless, we reiterate that no attaching entity needs more than 1 foot, and there is no technical basis for the 1.25 foot proposed decision, so if the Commission finds it can go with the presumptive 1 foot rate, no opportunity for us to challenge that decision is necessary.

We urge the Commission to adopt a 1 foot presumptive rate for all, and to bring an end to this long-standing issue.

Thank you for the opportunity to comment.

Respectfully submitted,

Christopher Recchia
Managing Director
ValleyNet, Inc.
415 Waterman Road
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Annotated Text

3.700 POLE ATTACHMENTS

3.701 Applicability and General Provisions

(A) This Rule governs the attachment of lines, wires, cables, or other facilities by any Attaching Entity seeking to attach to a pole owned by a Pole-Owning Utility, at rates, terms, and conditions that are just and reasonable. This Rule applies to poles used in the distribution system used to serve customers, and not to poles used as part of a company's transmission system. In applying this Rule, the Commission shall consider the interests of entities seeking or having attachments, Pole-Owning Utilities, and the customers of each.

(B) Except as specifically provided herein, nothing in this Rule shall be construed to confer a right upon any Attaching Entity to alter, move, or otherwise perform work upon facilities owned by another Attaching Entity or by a Pole-Owning Utility.

(C) Except as specifically provided, nothing in this Rule shall be construed to supersede, overrule, or replace any applicable safety code (including the National Electrical Safety Code (NESC) or safety rules, VOSHA regulations, any other law or regulation, tariffs, and protocols approved by the Commission, nor the reasonable engineering standards and good-faith work practices of any Attaching Entity or Pole-Owning Utility.

3.702 Definitions

(A) Access means physical access to poles and rights-of-way necessary and sufficient to allow connection of cables and other appurtenances by an Attaching Entity, and to inspect, maintain, and repair such cables and other appurtenances.

(B) Attaching Entity means an entity holding a certificate of public good from the Commission, or a Broadband Service Provider, that seeks to attach a facility (or has attached a facility) of any type to a pole or right-of-way for the purpose of providing service to one or more customers, including but not limited to telecommunications providers, cable television service providers, incumbent local exchange carriers, competitive local exchange carriers, electric utilities, and governmental entities.

(C) Broadband Service Provider means an entity authorized to do business in the state of Vermont that seeks to attach facilities that ultimately will be used to offer Internet access to the public. Wireless Broadband Service Providers must hold an FCC license or use equipment that complies with applicable FCC requirements[1]. A Broadband Service Provider that does not hold a certificate of public good from the Commission must, before availing itself of the provisions of this Rule, file with the Commission and with any affected Pole-Owning Utility an affidavit that sets forth the Provider's name, form of legal entity, contact information, agent for service of process, proposed general area of service, proof of insurance, and a representation

[1] See 47 C.F.R. Part 15.

that the Provider will abide by the terms and conditions of this Rule and any applicable pole attachment tariffs, including any protocols filed pursuant to Section 3.708(P) of this Rule and Orders issued by the Commission.

(D) Communications Space means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

(F) Core Services means the original regulated business of a utility company. For example, the Core Service of an electric utility is the provision of electric service, but not the provision of telephone or cable television service.

(G) Dual Utility Pole means the existence of at least two (2) utility poles in a single right-of-way where a new utility pole has been installed to replace an existing utility pole and the transfer of all cables and equipment to the new utility pole has been completed but the existing pole has not been removed.

(H) Jointly Owned Utility Pole means a utility pole that is controlled or owned by two entities.

(I) Make-Ready means work necessary to make a pole available for attachment of additional facilities, 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.

(1) Simple Make-Ready means Make-Ready 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 does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

(2) Complex Make-Ready means any work in the electrical space, as well as 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 communication 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 to be considered complex. Utility pole replacements are also considered to be complex.

(J) Pole Attachment or Attachment means an attachment or addition by an Attaching Entity to a pole or right-of-way.

(K) Pole-Owning Utility means a company, as defined in 30 V.S.A. § 201, that is subject to regulation by the Commission, and that has an ownership interest in utility poles or rights-of-way.

3.703 Tariff Required

(A) Each Pole-Owning Utility shall file a pole-attachment tariff with the Commission. The tariff shall include rates, terms, and conditions governing attachment to poles

and rights-of-way in which the Pole-Owning Utility has an ownership interest.

(B) The tariff may incorporate a standard contract or license for attachments, so long as it is available to any Attaching Entity within the scope of this Rule and its provisions are not contrary to the provisions of this Rule.

(C) The tariff may include terms that are just and reasonable subject to approval by the Commission, and it may include limitations on liability, indemnification, insurance requirements, and restrictions on access to Pole-Owning Utility facilities.

(D) Tariff provisions filed under this section shall not supersede the terms of any applicable contract.

3.704 Contracts for Cost, Maintenance, and Use of Poles

(A) Contracts Authorized. Pole-Owning Utilities and Attaching Entities may enter contracts concerning the cost, maintenance, and use of poles.

(1) Any contract purporting to take effect after the effective date of this Rule shall be submitted to the Commission for review pursuant to 30 V.S.A. § 229.

(2) Unexpired contracts on the effective date of this Rule between Attaching Entities and Pole-Owning Utilities shall remain in effect until they expire according to their terms.

(B) Investigations. The Commission may investigate the terms and rental rate of any proposed or existing contract between Attaching Entities and Pole-Owning Utilities. Where the public interest so requires, the Commission may order that terms or rates be modified.

(C) Expiring Contracts. When a pole-attachment contract has expired or is about to expire, and an Attaching Entity cannot reach agreement on a rental rate with the Pole-Owning Utility, any party may petition the Commission to set an attachment rate. In reaching a decision the Commission may consider the terms and conditions of previous contracts between the parties and the rental calculation in section 3.706.

(D) Public Records. A pole-attachment contract in the possession of the Commission is a public record unless the Commission orders otherwise, for good cause shown.

3.705 Joint Ownership of Poles

(A) Joint Ownership. Two or more utilities may own poles jointly. The cost, maintenance, and use of such poles may be controlled by a contract under Section 3.704 and shall be reviewed as required under that section.

(B) Shared Revenue. Unless otherwise provided by contract, each owner of a jointly-owned pole shall receive rental payment from each Attaching Entity in accordance with its ownership interest.

3.706 Rental Calculation

(A) Scope. This section establishes pole-attachment rates for inclusion in the tariffs of Pole-Owning Utilities.

(1) Unless the Commission rules to the contrary in a particular case, rates under this section do not apply where the rights of the Attaching Entity and the Pole-Owning Utility are defined by a contract (including a Joint Ownership Agreement or Joint Use Agreement).

(2) Where an electric utility or an incumbent local exchange carrier cannot reach agreement on a rental rate with the Pole Owner, either party may petition the Commission to set a rate. The Commission may consider the terms and conditions of any previous attachment or joint-use contracts between the parties in setting a rate not inconsistent with the principles of this Rule.

(B) Single Rate. Each Pole-Owning Utility shall calculate a single pole rental rate and shall include that rate in its pole-attachment tariff.

(C) Rental Charge Formula. The annual rental rate per pole shall be calculated using the following formula:

$$\begin{bmatrix}\text{Annual}\\ \text{Rental}\\ \text{perPole}\end{bmatrix} = \left[\frac{\text{SpaceOccupied byAttachme nt}}{\text{TotalUsabl eSpace}}\right] \times \begin{bmatrix}\text{Net}\\ \text{Investment}\\ \text{perPole}\end{bmatrix} \times \begin{bmatrix}\text{Carrying}\\ \text{Cost}\\ \text{Ratio}\end{bmatrix}$$

(D) Definitions.

(1) Except where otherwise controlled by contract, "Space Occupied by Attachment" is defined as follows:

(a) If the Pole-Owning Utility has conducted a study of the space actually occupied by a particular type of attachment (including safety space) on the Pole-Owning Utility's poles, then an amount defined in a tariff, but in no event less than the amounts specified in paragraph (b) below.

(b) Otherwise, "Space Occupied by Attachment" equals 1.25 feet ~~the following quantities:~~

~~(i) 1.0 foot for Attaching Entities that are cable television operators and that do not provide local exchange telephone service; and~~

~~(ii) 2.0 feet for all other Attaching Entities except incumbent local exchange carriers and electric utilities.~~

(2) "Total Usable Space" is defined as follows:

(a) If the Pole-Owning Utility has conducted a study of its average pole height, total usable space means the Pole-Owning Utility's average pole height less the unusable space on the pole. Any study may be based upon plant records or field inspections. Poles not suitable for bearing an Attaching Entity's attachments shall be excluded. The 40-inch safe space below the electric attachments, as required by the National Electrical Safety Code, shall be

counted as usable space.

(b) "Unusable space" shall mean the 6 feet buried in the ground plus the first 18 feet above ground and below the first attachment, unless the Pole-Owning Utility has conducted a study of the actual average amount buried or the clearance above ground below the first attachment.

(c) Otherwise, total usable space shall be 16 feet, which is based upon a presumed pole height of 40 feet, less 24 feet presumed unusable space.

(3) "Net Investment per Pole" is that part of the pole account attributable to poles physically located in Vermont, and adjusted for depreciation and deferred taxes. This net amount is then divided by the number of poles owned by the Pole-Owning Utility in Vermont.

(4) "Carrying Cost Ratio" is the allowable revenue for each dollar of net pole investment, taking into account annual maintenance expense, depreciation, administrative expense, taxes, and return on net investment.

(E) Associated Companies. A Pole-Owning Utility that also engages in the provision of another utility service or cable service shall impute to its costs of providing such other services (and charge any affiliate, subsidiary, or associated company engaged in the provision of such other services) an amount equal to the pole-attachment rate for which a company providing such other service would be liable under this section if it were not the pole owner.

3.707 Non-Exclusive Right of Access

(A) Right of Access. A Pole-Owning Utility shall provide all Attaching Entities non-discriminatory access to any pole, support structure, or right-of-way in which it has an ownership interest.

(1) A Pole-Owning Utility may deny access for reasons of safety, reliability, or generally applicable and accepted engineering standards.

(2) A Pole-Owning Utility may deny access on a non-discriminatory basis where there is insufficient capacity. Insufficient capacity shall not be legitimate grounds for denial of access where Make-Ready work can be used to increase or create capacity.

(3) A Pole-Owning Utility may not favor itself over any Attaching Entity, nor deny access based on a reservation of space for its own use. However, a Pole-Owning Utility may favor itself when it has a need for space on a pole or poles in order to provide its core service and when it also has a bona fide development plan that shows a need for additional attachments to the poles in question within three years of the date of adoption of the plan, provided that the Pole-Owning Utility may not so favor itself for more than three years in any ten-year period.

(4) Broadband Service Providers and wireless telephone providers shall be authorized to have antennas installed within or above the electric supply space. All such installations of Broadband Service Provider and wireless telephone

provider facilities on utility poles must conform to the most recent edition of the NESC as well as the other rules and practices in 3.701(C). Installation and maintenance work in this area shall be done only by the electric utility or Outside Contractors as provided in 3.708(L).

(5) Termination demarcation. An Attaching Entity may designate one or more utility poles as its customer interface location for purposes of utility service delivery to the Attaching Entity.

(B) Exclusive Access Prohibited. No utility, cable television system, or telecommunications carrier subject to the Commission's jurisdiction may enter into a contract with a property owner that provides exclusive access to poles or rights-of-way inside or upon commercial or residential buildings.

(C) Burden. In any proceeding before the Commission or a court concerning a denial of access to a pole or right-of-way, the party contending that access is not available shall have the burden of making a *prima facie* case.

3.708 Applications for Attachment and Make-Ready Work

(A) Application. Applications for attachment by an Attaching Entity to a Pole-Owning Utility shall be submitted in writing and must provide the Pole-Owning Utility with the information necessary under the Pole-Owning Utility's procedures, as specified in requirements that are made available in writing by the Pole-Owning Utility, to begin to survey the facility to which attachment is sought.

(1) A Pole-Owning Utility shall determine within 10 business days after receipt of an application whether the application is complete and notify the new Attaching Entity of that decision. If the Pole-Owning Utility does not respond within 10 business days after receipt of the application, or if the Pole-Owning Utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the Pole-Owning Utility timely notifies the new Attaching Entity 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-Owning Utility's reasons for finding the application incomplete and shall be deemed complete within five business days after its resubmission, unless the Pole-Owning Utility specifies to the new Attaching Entity which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons.

(B) Initial Action and Survey.

(1) A Pole-Owning Utility shall complete a Make-Ready survey within 45 days (or within 60 days in the case of larger orders as described in paragraph (E) of this section) from the date the completed application is received, unless otherwise agreed to by the parties. If a Pole-Owning Utility intends to deny access to poles under 3.707(A)(1), (2), or (3), it shall state with specificity the grounds for the denial.

(2) Where the new Attaching Entity has conducted a survey subject to paragraph (M)(2) of this section, a Pole-Owning Utility can elect to satisfy its survey obligations in this paragraph (B) and retain control over the Make-Ready process by notifying existing Attaching Entities of its intent to use the survey conducted by the new Attaching Entity and by providing a copy of the survey to the existing Attaching Entities within the time period set in paragraph (B)(1) of this section. A Pole-Owning Utility relying only on a survey conducted by the new Attaching Entity to satisfy all its obligations under this paragraph (B), and is not performing any additional survey work of its own, shall have 15 days to make such a notification to existing Attaching Entities rather than a 45-day survey period.

(3) The Pole-Owning Utility's tariff may require prepayment, or other reasonable assurance of credit worthiness, before performing a Make-Ready survey.

(C) Estimate, New Attaching Entity's Authorization and Payment.

(1) A Pole-Owning Utility shall present to a new Attaching Entity a detailed estimate of charges to perform all necessary Make-Ready work within 60 days (or within 75 days in the case of larger orders as described in paragraph (E) of this section) of the date the completed application is received, unless otherwise agreed to by the parties. In the case where a new Attaching Entity has performed a survey, the Pole-Owning Entity shall present the estimate within 21 days of receipt unless otherwise agreed to by the parties. Upon request from the new Attaching Entity, the estimate shall itemize the work on a pole-by-pole basis and identify the necessary Make-Ready work as Simple or Complex. The estimate should also identify any permits that are required in connection with the Make-Ready work.

(a) A Pole-Owning Utility may withdraw an outstanding estimate of charges to perform Make-Ready work beginning 14 days after the estimate is presented unless otherwise agreed by the parties.

(b) A new Attaching Entity shall accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

(2) The costs of a Make-Ready survey shall be payable even if the entity decides not to go forward with construction of its attachments.

(D) Make-Ready. Upon receipt of payment specified in paragraph (C)(1)(b) of this section, a Pole-Owning Utility shall notify within 5 business days and in writing all known Attaching Entities that may be affected by the Make-Ready.

(1) The notice shall:

(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 60 days after notification is sent (or up to 105 days in the case of larger orders as described in paragraph (E) of this section).

(c) State that any Attaching 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 if Make-Ready work is not completed by the completion date set by the Pole-Owning Utility in paragraph (D)(1)(b) in this section, the new Attaching Entity may complete the Make-Ready work specified pursuant to paragraph (L)(2)(b) of this section.

(e) State the name, telephone number, and email address of a person to contact for more information about the Make-Ready procedure.

(2) Once a Pole-Owning Utility provides the notices described in this section, it then must provide the new Attaching Entity with a copy of the notices and the existing Attaching Entities' contact information and address(es) where the Pole-Owning Utility sent the notices. The Pole-Owning Utility shall also notify the new Attaching Entity when applications for any required permits have been submitted and when those permits are received. The new Attaching Entity shall be responsible for coordinating with existing Attaching Entities to encourage their completion of Make-Ready work by the dates set forth by the Pole-Owning Utility in paragraph (D)(1)(b) of this section.

(3) A Pole-Owning Utility shall complete its Make-Ready work by the same dates set for existing Attaching Entities in paragraph (D)(1)(b) of this section.

(E) Time to Complete Make-Ready. For purposes of compliance with the time periods in this section:

(1) A Pole-Owning Utility shall apply the time periods described in paragraphs (B) through (D) of this section to surveys and Make-Ready work on the lesser of 300 poles or 0.5 percent of the Pole-Owning Utility's poles in Vermont.

(2) A Pole-Owning Utility may add 15 days to the survey period described in paragraph (B) of this section to larger orders up to the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.

(3) A Pole-Owning Utility may add 45 days to the Make-Ready periods described in paragraph (D) of this section if Make-Ready work is needed on the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.

(4) A Pole-Owning Utility shall in good faith negotiate the Make-Ready period if the number of poles requiring Make-Ready work exceeds the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.

(5) A Pole-Owning Utility may treat multiple requests from a single new Attaching Entity as one request when the requests are filed within 30 days of one another.

(6) All time periods stated above may be modified by agreement between the Pole-Owning Utility and the new Attaching Entity.

(7) The applicable time periods shall not be extended solely because a pole is jointly owned.

(F) Dual Utility Poles.

(1) In the event Make-Ready work requires a replacement utility pole to be installed, the Pole-Owning Utility shall have 90 days from the date of installation of the new utility pole to remove the obsolete pole.

(2) If an existing Attaching Entity does not complete Make-Ready work in the time specified in paragraphs (D) or (E) of this section, the Pole-Owning Utility or the new Attaching Entity may utilize the Self-Help Remedy specified in paragraph (L) of this section to move the existing attachment from the existing pole to the new pole. Costs associated with moving the existing attachment under these circumstances shall be paid by the existing Attaching Entity.

(3) Except as provided in paragraph (I)(1), if the Make-Ready work for a new Attaching Entity requires replacing poles, all costs associated with the removal of the existing utility pole shall be paid by the new Attaching Entity.

(4) If removal of the existing utility pole is shown to be infeasible for good and sufficient cause, a Pole-Owning Utility shall have six months from the date of installation of the new utility pole and the transfer of all cables and equipment to the new utility pole to remove the existing utility pole.

(G) Deviation from Time to Complete Make-Ready.

(1) A Pole-Owning Utility may deviate from the time limits specified in this section during performance of Make-Ready for good and sufficient cause that renders it infeasible for the utility to complete Make-Ready within the time limits specified in this section. A Pole-Owning Utility that so deviates shall immediately notify, in writing, the new Attaching Entity and affected existing Attaching Entity and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The Pole-Owning Utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete Make-Ready on the affected poles and shall resume Make-Ready without discrimination when it returns to routine operations. A Pole-Owning Utility cannot delay completion of Make-Ready because of a preexisting violation on an affected pole not caused by the new Attaching Entity.

(2) An existing Attaching Entity may deviate from the time limits specified in this section during performance of complex Make-Ready for reasons of safety or service interruption that renders it infeasible for the existing Attaching Entity to complete Complex Make-Ready within the time limits specified in this section. An existing Attaching Entity that so deviates shall immediately notify, in writing, the new Attaching Entity and other affected existing Attaching Entities and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 90 days from the date the notices described in paragraph (D) of this

section are sent by the utility (or up to 120 days in the case of larger orders described in paragraph (E) of this section). The existing Attaching Entity shall not deviate from the time limits specified in this section for a period longer than necessary to complete Make-Ready on the affected poles.

(H) Least Cost Methods. In completing Make-Ready work, a Pole-Owning Utility shall pursue reasonable least-cost alternatives, including space-saving techniques currently relied upon by that utility; however, it shall at all times maintain compliance with the National Electrical Safety Code, state and local laws and regulations, and Pole-Owning Utility construction standards.

(I) Payments. After completion of Make-Ready work, the new Attaching Entity shall pay the cost of all Make-Ready work actually required for the attachment that has not been pre-paid, or shall be refunded any excess of the pre-payment not actually required.

(1) The new Attaching Entity shall not be responsible for any portion of the Make-Ready expense that is attributable to the correction of pre-existing violations, unless the new Attaching Entity has caused a portion of the violation.

(2) The costs of any modification that is also specifically used by other existing Attaching Entities shall be apportioned accordingly.

(3) Where a Pole-Owning Utility currently relies upon one or more techniques referenced in this paragraph (I) as part of its normal operating procedures but refuses to utilize such techniques for the benefit of the new Attaching Entity, that entity shall only be responsible for the cost that would have been incurred had such techniques been utilized (provided such use would have been in accordance with generally accepted engineering practices).

(4) Where Make-Ready work has not been completed consistent with paragraphs (B) through (E) of this section, within 30 days of the expiration of the applicable timeline, the Pole-Owning Utility and any existing Attaching Entities shall refund to the new Attaching Entity any portion of payment received for the applicable Make-Ready work to the new Attaching Entity for any work not yet completed.

(J) Lowest Attachment Point. No Attaching Entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility. If the owner of the lowest facility wishes to relocate its existing facilities to a lower allowable point of attachment so that the new Attaching Entity will be above all existing facilities, the owner of such existing facilities shall pay one-half of the cost of moving its facilities.

(K) Outside Contractors.

(1) All Pole-Owning Utilities and Attaching Entities shall maintain and keep up-to-date a reasonably sufficient list of contractors they authorize to perform Make-Ready surveys and work, or other specified tasks upon their equipment ("Outside Contractor List"). The list shall identify the contractors that are authorized to

perform complex Make-Ready work.

(2) Within one month of adoption of this Rule for entities already holding a Certificate of Public Good or within one month of receiving a Certificate of Public Good to operate in the state, a Pole-Owning Utility or Attaching Entity shall submit its Outside Contractor List to the Commission and the Department, preferably in ePUC, as directed by the Commission. This list shall be updated as needed to maintain current contractor information. Upon request, the Commission or Department will provide the applicable Outside Contractor List to an Attaching Entity.

(3) If an entity requesting attachment hires a contractor for purposes specified in this paragraph (K), the requesting entity shall choose from the authorized contractors on the Outside Contractor List.

(a) If a Pole-Owning Utility does not provide a list of authorized contractors or no contractor on the Outside Contractor List is available within a reasonable time period, the new Attaching Entity may choose its own qualified contractor that meets the requirements in paragraph (K)(5) of this section. When choosing a contractor that is not on the Outside Contractor List, the new Attaching Entity must certify to the Pole-Owning Utility that its contractor meets the minimum qualifications described in paragraph (K)(5) of this section when providing notices required by paragraph (L) and (M) of this section.

(b) The Pole-Owning Utility may disqualify any contractor chosen by the new Attaching Entity that is not on the applicable Outside Contractor 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 (K)(5) of this section or to meet the Pole-Owning Utility's publicly available and commercially reasonable safety or reliability standards. The Pole-Owning Utility must provide notice of its objection in compliance with the notice requirements of paragraph (L) and (M) of this section.

(4) If the Pole-Owning Utility is not an electric utility and there are electric lines on the pole, the Pole-Owning Utility shall provide the operator of the electric lines with advance notice of the work to be done and shall allow the electric utility to join or take over the supervision and control of the work of the outside contractor in the electrical space. Pole-Owning Utilities and existing Attaching Entities shall refund amounts collected from Attaching Entities for work subsequently completed by outside contractors.

(5) Pole-Owning Utilities and Attaching Entities must ensure that the Outside Contractor List meets the following minimum requirements:

(a) The contractor must follow National Electrical Safety Code (NESC) guidelines;

(b) The contractor acknowledges that it knows how to read and follow licensed-engineered pole designs for Make-Ready, as required;

(c) The contractor must follow all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the Requirements of the Occupational and Safety Health Administration (OSHA) rules;

(d) The contractor must follow any procedures, standards, codes, and regulations that the Pole-Owning Utility requires of its own contractors;

(e) The contractor must meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the Pole-Owning Utility; and

(f) 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 Attaching Entities.

(L) Self-Help Remedy.

(1) If a Pole-Owning Utility does not complete survey work in the time specified in paragraph (B) of this section, the new Attaching Entity may hire a contractor from the Outside Contractor List.

(a) A new Attaching Entity shall permit the affected Pole-Owning Utility and existing Attaching Entities to be present for any field inspection conducted as part of the new Attaching Entity's survey.

(b) A new Attaching Entity shall use commercially reasonable efforts to provide the affected Pole-Owning Utility and existing Attaching Entities with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new Attaching Entity.

(2) If a Pole-Owning Utility does not complete Make-Ready work in the time specified in paragraph (D) of this section, the new Attaching Entity may hire a contractor from the Outside Contractor List to complete the Make-Ready.

(a) A new Attaching Entity shall permit the Pole-Owning Utility and existing Attaching Entities to be present for any Make-Ready work. A new Attaching Entity shall use commercially reasonable efforts to provide the affected utility and existing Attaching Entities with advance notice of not less than 5 days of the impending Make-Ready. The notice shall include the date and time of the Make-Ready, a description of the work involved, and the name of the contractor being used by the new Attaching Entity.

(b) Self-Help Post Make-Ready Timeline. A new Attaching Entity shall notify the affected Pole-Owning Utility and existing Attaching Entities within 15 days after completion of self-help Make-Ready work for a particular application. The notice shall provide the affected Pole-Owning Utility and

existing Attaching Entities at least 90 days from receipt in which to inspect the Make-Ready. The affected Pole-Owning Utility and existing Attaching Entities have 14 days after completion of their inspection to notify the Attaching Entity of any damage or code violation caused by Make-Ready conducted by the Attaching Entity on their equipment. If the Pole-Owning Utility or existing Attaching Entity notifies the Attaching Entity of such damage or code violations, then the Pole-Owning Utility or existing Attaching Entity shall provide adequate documentation of the damage or the code violations. The Pole-Owning Utility or existing Attaching Entity may either complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage or code violations or require the new Attaching Entity to fix the damage or code violations at its expense within 14 days following notice from the Pole-Owning Utility or existing Attaching Entity.

(M) One-Touch Make-Ready Option. For attachments involving Simple Make-Ready, new Attaching Entities may elect to proceed with the process described in this paragraph instead of the attachment process described in paragraphs (B) through (E) of this section. It is the responsibility of the new Attaching Entity to ensure that its contractor determines whether the Make-Ready requested in an attachment application is Simple Make-Ready.

(1) Attachment Application.

(a) An application for attachment shall be submitted in writing and must provide the Pole-Owning Utility with the information necessary under its procedures to grant or deny the application.

(b) A new Attaching Entity electing the one-touch Make-Ready process must indicate that it intends to perform one-touch Make-Ready in its attachment application and must identify the Simple Make-Ready it will perform.

(c) A Pole-Owning Utility shall complete review of an attachment application and grant or deny a new Attaching Entity's application within 15 days of receipt of the application (or within 30 days, in the case of larger orders as described in paragraph (E) of this section). Within its review and response period, the Pole-Owning Utility may object to the designation by the new Attaching Entity that the attachment only requires Simple Make-Ready work. The Pole-Owning Utility's objection must be specific, in writing, and include all relevant information and evidence supporting its good-faith conclusion.

(2) Surveys. The new Attaching Entity is responsible for all surveys required as part of the one-touch Make-Ready process and shall use a contractor as specified in paragraph (K) of this section.

(a) A new Attaching Entity may need to perform a survey to determine whether Make-Ready work is simple or complex before filing an application for one-touch Make-Ready.

(b) The new Attaching Entity shall permit the Pole-Owning Utility 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-Owning Utility and affected existing Attaching Entities with advance 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.

(3) Make-Ready. If the new Attaching Entity's attachment application is approved and if it has provided 15 days' prior written notice of the Make-Ready to the affected Pole-Owning Utility and existing Attaching Entities, the new Attaching Entity may proceed with Make-Ready using a contractor in the manner specified in paragraph (K) of this section.

(a) Prior written notice shall include the date and time of the Make-Ready, 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-Owning Utility and existing Attaching Entities a reasonable opportunity to be present for any Make-Ready.

(b) The new Attaching Entity shall immediately notify an affected Pole-Owning Utility or existing Attaching Entity if Make-Ready damages the equipment of a Pole-Owning Utility or an existing Attaching Entity or causes an outage that is reasonably likely to interrupt the service of a Pole-Owning Utility or existing Attaching Entity. Upon receiving notice from the new Attaching Entity, the Pole-Owning Utility or existing Attaching Entity may either:

(i) Complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage; or
(ii) Require the new Attaching Entity to fix the damage at its expense immediately following notice from the Pole-Owning Utility or existing Attaching Entity.

(c) In performing Make-Ready, if the Attaching Entity or Pole-Owning Utility determines that Make-Ready classified as Simple Make-Ready is actually Complex Make-Ready, then that specific Make-Ready must be halted and the determining party must provide immediate notice to the other parties of its determination and the affected poles. The affected Make-Ready shall then be governed by paragraphs (B) through (E) of this section, and the Pole-Owning Utility shall provide notice required by paragraph (D) of this section as soon as reasonably practicable.

(4) Post-Make-Ready Timeline. A new Attaching Entity shall notify the affected Pole-Owning Utility and existing Attaching Entities within 15 days after completion of Make-Ready work for a particular application. The notice shall provide the affected Pole-Owning Utility and existing Attaching Entities at least

90 days from receipt in which to inspect the Make-Ready. The affected Pole-Owning Utility and existing Attaching Entities have 14 days after completion of their inspection to notify the new Attaching Entity of any damage or code violation caused by Make-Ready conducted by the new Attaching Entity on their equipment. If the Pole-Owning Utility or existing Attaching Entity notifies the new Attaching Entity of such damage or code violations, then the Pole-Owning Utility or existing Attaching Entity shall provide adequate documentation of the damage or the code violations. The Pole-Owning Utility or existing Attaching Entity may either complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage or code violations or require the new Attaching Entity to fix the damage or code violations at its expense within 14 days following notice from the Pole-Owning Utility or existing Attaching Entity.

(N) Jointly Owned Utility Poles. Pole-Owning Utilities that jointly own utility poles shall coordinate and cooperate with each other. When a complete application is received, the joint Pole-Owning Utilities shall inform new Attaching Entities which joint owner is responsible for completing Make-Ready work consistent with paragraphs (B) through (E) and (K) of this section. Joint Pole-Owning Utilities shall provide any received applications to the responsible pole owner.

(O) Overlashing. Any overlashing must be done in accordance with generally accepted engineering standards. The Attaching Entity shall give ten days' notice to the Pole-Owning Utility before beginning such overlashing.

(1) No additional application or payment is required for an Attaching Entity to overlash more of its facilities to its existing attached facilities, unless it necessitates additional costs such as guying or additional pole strength, occupies additional attachment space on the pole, or provides a different utility service than the existing facilities.

(2) If the new facilities deliver a utility service that ought to pay a higher rental under this Rule, the Attaching Entity shall begin paying the higher rate.

(3) If the new facilities are owned by someone other than the existing Attaching Entity, then both shall pay rental, each at the rate designated by this Rule.

(P) Attachment Protocol. Each Pole-Owning Utility shall include in its pole-attachment tariff required by Section 3.703 a reasonable protocol under which it will allow attachments by Broadband Service Providers or wireless telephone providers in areas of its poles that are not ordinarily used for attachments or for equipment that is unusually large. Such protocol may include the provision of a separate pole for the attachment of this equipment if:

(1) the proposed attachment cannot be made to the existing pole consistent with 3.701(C);

(2) the separate pole is requested by the Attaching Entity; or

(3) the provision of the separate pole is less expensive than the proposed attachment to the existing pole.

3.709 Notices from Pole-Owning Utility

(A) A Pole-Owning Utility shall provide each Attaching Entity 60 days' written notice prior to:

(1) removing facilities or terminating service to those facilities, where that action arises out of a rate, term, or condition of the pole-attachment agreement; or

(2) increasing pole-attachment rates by contract or tariff.

(B) Unless otherwise agreed, a Pole-Owning Utility shall provide an Attaching Entity 30 days' written notice before modifying any of the Attaching Entity's facilities. Less than 30 days' notice may be provided for routine maintenance, modification in response to emergencies, or modifications that are beyond the reasonable control of the Pole-Owning Utility, provided that the notice is reasonable under the circumstances and as prompt as practicable.

3.710 Complaint Procedures

(A) A party aggrieved by a violation of these rules may file a complaint or petition with the Commission. The Commission shall take final action within 30 days after the filing of the complaint or petition.

(1) Prior to filing a complaint or petition, the aggrieved party shall call the contact for the party with whom there is a dispute and give notice that they are planning to file a complaint with the Commission.

(2) A complaint or petition shall contain sufficient information to indicate:

(a) the facts underlying the complaint or petition;

(b) the harm that is resulting or could result to the aggrieved party due to the situation;

(c) a description of the steps that the parties have taken to resolve the situation prior to the filing of the complaint or petition; and

(d) the times that both parties will be available for a conference call within 10 days of the date the complaint or petition is filed.

(B) An Attaching Entity aggrieved by a proposed change to a Pole-Owning Utility's tariff may intervene in any rate case following such a tariff filing.

3.711 Effective Date

This rule shall take effect on February 1, 2020.

Clean Text

3.700 POLE ATTACHMENTS

3.701 Applicability and General Provisions

(A) This Rule governs the attachment of lines, wires, cables, or other facilities by any Attaching Entity seeking to attach to a pole owned by a Pole-Owning Utility, at rates, terms, and conditions that are just and reasonable. This Rule applies to poles used in the distribution system used to serve customers, and not to poles used as part of a company's transmission system. In applying this Rule, the Commission shall consider the interests of entities seeking or having attachments, Pole-Owning Utilities, and the customers of each.

(B) Except as specifically provided herein, nothing in this Rule shall be construed to confer a right upon any Attaching Entity to alter, move, or otherwise perform work upon facilities owned by another Attaching Entity or by a Pole-Owning Utility.

(C) Except as specifically provided, nothing in this Rule shall be construed to supersede, overrule, or replace any applicable safety code (including the National Electrical Safety Code (NESC) or safety rules, VOSHA regulations, any other law or regulation, tariffs, and protocols approved by the Commission, nor the reasonable engineering standards and good-faith work practices of any Attaching Entity or Pole-Owning Utility.

3.702 Definitions

(A) Access means physical access to poles and rights-of-way necessary and sufficient to allow connection of cables and other appurtenances by an Attaching Entity, and to inspect, maintain, and repair such cables and other appurtenances.

(B) Attaching Entity means an entity holding a certificate of public good from the Commission, or a Broadband Service Provider, that seeks to attach a facility (or has attached a facility) of any type to a pole or right-of-way for the purpose of providing service to one or more customers, including but not limited to telecommunications providers, cable television service providers, incumbent local exchange carriers, competitive local exchange carriers, electric utilities, and governmental entities.

(C) Broadband Service Provider means an entity authorized to do business in the state of Vermont that seeks to attach facilities that ultimately will be used to offer Internet access to the public. Wireless Broadband Service Providers must hold an FCC license or use equipment that complies with applicable FCC requirements[1]. A Broadband Service Provider that does not hold a certificate of public good from the Commission must, before availing itself of the provisions of this Rule, file with the Commission and with any affected Pole-Owning Utility an affidavit that sets forth the Provider's name, form of legal entity, contact information, agent for service of process, proposed general area of service, proof of insurance, and a representation

[1] See 47 C.F.R. Part 15.

that the Provider will abide by the terms and conditions of this Rule and any applicable pole attachment tariffs, including any protocols filed pursuant to Section 3.708(P) of this Rule and Orders issued by the Commission.

(D) Communications Space means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

(F) Core Services means the original regulated business of a utility company. For example, the Core Service of an electric utility is the provision of electric service, but not the provision of telephone or cable television service.

(G) Dual Utility Pole means the existence of at least two (2) utility poles in a single right-of-way where a new utility pole has been installed to replace an existing utility pole and the transfer of all cables and equipment to the new utility pole has been completed but the existing pole has not been removed.

(H) Jointly Owned Utility Pole means a utility pole that is controlled or owned by two entities.

(I) Make-Ready means work necessary to make a pole available for attachment of additional facilities, 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.

(1) Simple Make-Ready means Make-Ready 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 does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

(2) Complex Make-Ready means any work in the electrical space, as well as 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 communication 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 to be considered complex. Utility pole replacements are also considered to be complex.

(J) Pole Attachment or Attachment means an attachment or addition by an Attaching Entity to a pole or right-of-way.

(K) Pole-Owning Utility means a company, as defined in 30 V.S.A. § 201, that is subject to regulation by the Commission, and that has an ownership interest in utility poles or rights-of-way.

3.703 Tariff Required

(A) Each Pole-Owning Utility shall file a pole-attachment tariff with the Commission. The tariff shall include rates, terms, and conditions governing attachment to poles

and rights-of-way in which the Pole-Owning Utility has an ownership interest.

(B) The tariff may incorporate a standard contract or license for attachments, so long as it is available to any Attaching Entity within the scope of this Rule and its provisions are not contrary to the provisions of this Rule.

(C) The tariff may include terms that are just and reasonable subject to approval by the Commission, and it may include limitations on liability, indemnification, insurance requirements, and restrictions on access to Pole-Owning Utility facilities.

(D) Tariff provisions filed under this section shall not supersede the terms of any applicable contract.

3.704 Contracts for Cost, Maintenance, and Use of Poles

(A) Contracts Authorized. Pole-Owning Utilities and Attaching Entities may enter contracts concerning the cost, maintenance, and use of poles.

(1) Any contract purporting to take effect after the effective date of this Rule shall be submitted to the Commission for review pursuant to 30 V.S.A. § 229.

(2) Unexpired contracts on the effective date of this Rule between Attaching Entities and Pole-Owning Utilities shall remain in effect until they expire according to their terms.

(B) Investigations. The Commission may investigate the terms and rental rate of any proposed or existing contract between Attaching Entities and Pole-Owning Utilities. Where the public interest so requires, the Commission may order that terms or rates be modified.

(C) Expiring Contracts. When a pole-attachment contract has expired or is about to expire, and an Attaching Entity cannot reach agreement on a rental rate with the Pole-Owning Utility, any party may petition the Commission to set an attachment rate. In reaching a decision the Commission may consider the terms and conditions of previous contracts between the parties and the rental calculation in section 3.706.

(D) Public Records. A pole-attachment contract in the possession of the Commission is a public record unless the Commission orders otherwise, for good cause shown.

3.705 Joint Ownership of Poles

(A) Joint Ownership. Two or more utilities may own poles jointly. The cost, maintenance, and use of such poles may be controlled by a contract under Section 3.704 and shall be reviewed as required under that section.

(B) Shared Revenue. Unless otherwise provided by contract, each owner of a jointly-owned pole shall receive rental payment from each Attaching Entity in accordance with its ownership interest.

3.706 Rental Calculation

(A) Scope. This section establishes pole-attachment rates for inclusion in the tariffs of Pole-Owning Utilities.

(1) Unless the Commission rules to the contrary in a particular case, rates under this section do not apply where the rights of the Attaching Entity and the Pole-Owning Utility are defined by a contract (including a Joint Ownership Agreement or Joint Use Agreement).

(2) Where an electric utility or an incumbent local exchange carrier cannot reach agreement on a rental rate with the Pole Owner, either party may petition the Commission to set a rate. The Commission may consider the terms and conditions of any previous attachment or joint-use contracts between the parties in setting a rate not inconsistent with the principles of this Rule.

(B) Single Rate. Each Pole-Owning Utility shall calculate a single pole rental rate and shall include that rate in its pole-attachment tariff.

(C) Rental Charge Formula. The annual rental rate per pole shall be calculated using the following formula:

$$\begin{bmatrix}\text{Annual}\\ \text{Rental}\\ \text{perPole}\end{bmatrix} = \left[\frac{\text{SpaceOccupied byAttachme nt}}{\text{TotalUsabl eSpace}}\right] \times \begin{bmatrix}\text{Net}\\ \text{Investment}\\ \text{perPole}\end{bmatrix} \times \begin{bmatrix}\text{Carrying}\\ \text{Cost}\\ \text{Ratio}\end{bmatrix}$$

(D) Definitions.

(1) Except where otherwise controlled by contract, "Space Occupied by Attachment" is defined as follows:

(a) If the Pole-Owning Utility has conducted a study of the space actually occupied by a particular type of attachment (including safety space) on the Pole-Owning Utility's poles, then an amount defined in a tariff, but in no event less than the amounts specified in paragraph (b) below.

(b) Otherwise, "Space Occupied by Attachment" equals 1.25 feet.

(2) "Total Usable Space" is defined as follows:

(a) If the Pole-Owning Utility has conducted a study of its average pole height, total usable space means the Pole-Owning Utility's average pole height less the unusable space on the pole. Any study may be based upon plant records or field inspections. Poles not suitable for bearing an Attaching Entity's attachments shall be excluded. The 40-inch safe space below the electric attachments, as required by the National Electrical Safety Code, shall be counted as usable space.

(b) "Unusable space" shall mean the 6 feet buried in the ground plus the first 18 feet above ground and below the first attachment, unless the Pole-Owning Utility has conducted a study of the actual average amount buried or the clearance above ground below the first attachment.

(c) Otherwise, total usable space shall be 16 feet, which is based upon a presumed pole height of 40 feet, less 24 feet presumed unusable space.

(3) "Net Investment per Pole" is that part of the pole account attributable to poles physically located in Vermont, and adjusted for depreciation and deferred taxes. This net amount is then divided by the number of poles owned by the Pole-Owning Utility in Vermont.

(4) "Carrying Cost Ratio" is the allowable revenue for each dollar of net pole investment, taking into account annual maintenance expense, depreciation, administrative expense, taxes, and return on net investment.

(E) Associated Companies. A Pole-Owning Utility that also engages in the provision of another utility service or cable service shall impute to its costs of providing such other services (and charge any affiliate, subsidiary, or associated company engaged in the provision of such other services) an amount equal to the pole-attachment rate for which a company providing such other service would be liable under this section if it were not the pole owner.

3.707 Non-Exclusive Right of Access

(A) Right of Access. A Pole-Owning Utility shall provide all Attaching Entities non-discriminatory access to any pole, support structure, or right-of-way in which it has an ownership interest.

(1) A Pole-Owning Utility may deny access for reasons of safety, reliability, or generally applicable and accepted engineering standards.

(2) A Pole-Owning Utility may deny access on a non-discriminatory basis where there is insufficient capacity. Insufficient capacity shall not be legitimate grounds for denial of access where Make-Ready work can be used to increase or create capacity.

(3) A Pole-Owning Utility may not favor itself over any Attaching Entity, nor deny access based on a reservation of space for its own use. However, a Pole-Owning Utility may favor itself when it has a need for space on a pole or poles in order to provide its core service and when it also has a bona fide development plan that shows a need for additional attachments to the poles in question within three years of the date of adoption of the plan, provided that the Pole-Owning Utility may not so favor itself for more than three years in any ten-year period.

(4) Broadband Service Providers and wireless telephone providers shall be authorized to have antennas installed within or above the electric supply space. All such installations of Broadband Service Provider and wireless telephone provider facilities on utility poles must conform to the most recent edition of the NESC as well as the other rules and practices in 3.701(C). Installation and maintenance work in this area shall be done only by the electric utility or Outside Contractors as provided in 3.708(L).

(5) Termination demarcation. An Attaching Entity may designate one or more

utility poles as its customer interface location for purposes of utility service delivery to the Attaching Entity.

(B) Exclusive Access Prohibited. No utility, cable television system, or telecommunications carrier subject to the Commission's jurisdiction may enter into a contract with a property owner that provides exclusive access to poles or rights-of-way inside or upon commercial or residential buildings.

(C) Burden. In any proceeding before the Commission or a court concerning a denial of access to a pole or right-of-way, the party contending that access is not available shall have the burden of making a *prima facie* case.

3.708 Applications for Attachment and Make-Ready Work

(A) Application. Applications for attachment by an Attaching Entity to a Pole-Owning Utility shall be submitted in writing and must provide the Pole-Owning Utility with the information necessary under the Pole-Owning Utility's procedures, as specified in requirements that are made available in writing by the Pole-Owning Utility, to begin to survey the facility to which attachment is sought.

(1) A Pole-Owning Utility shall determine within 10 business days after receipt of an application whether the application is complete and notify the new Attaching Entity of that decision. If the Pole-Owning Utility does not respond within 10 business days after receipt of the application, or if the Pole-Owning Utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the Pole-Owning Utility timely notifies the new Attaching Entity 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-Owning Utility's reasons for finding the application incomplete and shall be deemed complete within five business days after its resubmission, unless the Pole-Owning Utility specifies to the new Attaching Entity which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons.

(B) Initial Action and Survey.

(1) A Pole-Owning Utility shall complete a Make-Ready survey within 45 days (or within 60 days in the case of larger orders as described in paragraph (E) of this section) from the date the completed application is received, unless otherwise agreed to by the parties. If a Pole-Owning Utility intends to deny access to poles under 3.707(A)(1), (2), or (3), it shall state with specificity the grounds for the denial.

(2) Where the new Attaching Entity has conducted a survey subject to paragraph (M)(2) of this section, a Pole-Owning Utility can elect to satisfy its survey obligations in this paragraph (B) and retain control over the Make-Ready process by notifying existing Attaching Entities of its intent to use the survey conducted by the new Attaching Entity and by providing a copy of the survey to the existing Attaching Entities within the time period set in paragraph (B)(1) of this section. A Pole-Owning Utility relying only on a survey conducted by the new Attaching Entity to satisfy all its obligations under this paragraph (B), and is not performing any additional survey work of its own, shall have 15 days to make such a notification to existing Attaching Entities rather than a 45-day survey period.

(3) The Pole-Owning Utility's tariff may require prepayment, or other reasonable assurance of credit worthiness, before performing a Make-Ready survey.

(C) Estimate, New Attaching Entity's Authorization and Payment.

(1) A Pole-Owning Utility shall present to a new Attaching Entity a detailed estimate of charges to perform all necessary Make-Ready work within 60 days (or within 75 days in the case of larger orders as described in paragraph (E) of this section) of the date the completed application is received, unless otherwise agreed to by the parties. In the case where a new Attaching Entity has performed a survey, the Pole-Owning Entity shall present the estimate within 21 days of receipt unless otherwise agreed to by the parties. Upon request from the new Attaching Entity, the estimate shall itemize the work on a pole-by-pole basis and identify the necessary Make-Ready work as Simple or Complex. The estimate should also identify any permits that are required in connection with the Make-Ready work.

(a) A Pole-Owning Utility may withdraw an outstanding estimate of charges to perform Make-Ready work beginning 14 days after the estimate is presented unless otherwise agreed by the parties.

(b) A new Attaching Entity shall accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

(2) The costs of a Make-Ready survey shall be payable even if the entity decides not to go forward with construction of its attachments.

(D) Make-Ready. Upon receipt of payment specified in paragraph (C)(1)(b) of this section, a Pole-Owning Utility shall notify within 5 business days and in writing all known Attaching Entities that may be affected by the Make-Ready.

(1) The notice shall:

(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 60 days after notification is sent (or up to 105 days in the case of larger orders as described in paragraph (E) of this section).

(c) State that any Attaching 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 if Make-Ready work is not completed by the completion date set by the Pole-Owning Utility in paragraph (D)(1)(b) in this section, the new Attaching Entity may complete the Make-Ready work specified pursuant to paragraph (L)(2)(b) of this section.

(e) State the name, telephone number, and email address of a person to contact for more information about the Make-Ready procedure.

(2) Once a Pole-Owning Utility provides the notices described in this section, it then must provide the new Attaching Entity with a copy of the notices and the existing Attaching Entities' contact information and address(es) where the Pole-Owning Utility sent the notices. The Pole-Owning Utility shall also notify the new Attaching Entity when applications for any required permits have been submitted and when those permits are received. The new Attaching Entity shall be responsible for coordinating with existing Attaching Entities to encourage their completion of Make-Ready work by the dates set forth by the Pole-Owning Utility in paragraph (D)(1)(b) of this section.

(3) A Pole-Owning Utility shall complete its Make-Ready work by the same dates set for existing Attaching Entities in paragraph (D)(1)(b) of this section.

(E) Time to Complete Make-Ready. For purposes of compliance with the time periods in this section:

(1) A Pole-Owning Utility shall apply the time periods described in paragraphs (B) through (D) of this section to surveys and Make-Ready work on the lesser of 300 poles or 0.5 percent of the Pole-Owning Utility's poles in Vermont.

(2) A Pole-Owning Utility may add 15 days to the survey period described in paragraph (B) of this section to larger orders up to the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.

(3) A Pole-Owning Utility may add 45 days to the Make-Ready periods described in paragraph (D) of this section if Make-Ready work is needed on the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.

(4) A Pole-Owning Utility shall in good faith negotiate the Make-Ready period if the number of poles requiring Make-Ready work exceeds the lesser of 3,000 poles or 5 percent of the Pole-Owning Utility's poles in Vermont.

(5) A Pole-Owning Utility may treat multiple requests from a single new Attaching Entity as one request when the requests are filed within 30 days of one another.

(6) All time periods stated above may be modified by agreement between the Pole-Owning Utility and the new Attaching Entity.

(7) The applicable time periods shall not be extended solely because a pole is jointly owned.

(F) Dual Utility Poles.

(1) In the event Make-Ready work requires a replacement utility pole to be installed, the Pole-Owning Utility shall have 90 days from the date of installation of the new utility pole to remove the obsolete pole.

(2) If an existing Attaching Entity does not complete Make-Ready work in the time specified in paragraphs (D) or (E) of this section, the Pole-Owning Utility or the new Attaching Entity may utilize the Self-Help Remedy specified in paragraph (L) of this section to move the existing attachment from the existing pole to the new pole. Costs associated with moving the existing attachment under these circumstances shall be paid by the existing Attaching Entity.

(3) Except as provided in paragraph (I)(1), if the Make-Ready work for a new Attaching Entity requires replacing poles, all costs associated with the removal of the existing utility pole shall be paid by the new Attaching Entity.

(4) If removal of the existing utility pole is shown to be infeasible for good and sufficient cause, a Pole-Owning Utility shall have six months from the date of installation of the new utility pole and the transfer of all cables and equipment to the new utility pole to remove the existing utility pole.

(G) Deviation from Time to Complete Make-Ready.

(1) A Pole-Owning Utility may deviate from the time limits specified in this section during performance of Make-Ready for good and sufficient cause that renders it infeasible for the utility to complete Make-Ready within the time limits specified in this section. A Pole-Owning Utility that so deviates shall immediately notify, in writing, the new Attaching Entity and affected existing Attaching Entity and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The Pole-Owning Utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete Make-Ready on the affected poles and shall resume Make-Ready without discrimination when it returns to routine operations. A Pole-Owning Utility cannot delay completion of Make-Ready because of a preexisting violation on an affected pole not caused by the new Attaching Entity.

(2) An existing Attaching Entity may deviate from the time limits specified in this section during performance of complex Make-Ready for reasons of safety or service interruption that renders it infeasible for the existing Attaching Entity to complete Complex Make-Ready within the time limits specified in this section. An existing Attaching Entity that so deviates shall immediately notify, in writing, the new Attaching Entity and other affected existing Attaching Entities and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 90 days from the date the notices described in paragraph (D) of this

section are sent by the utility (or up to 120 days in the case of larger orders described in paragraph (E) of this section). The existing Attaching Entity shall not deviate from the time limits specified in this section for a period longer than necessary to complete Make-Ready on the affected poles.

(H) Least Cost Methods. In completing Make-Ready work, a Pole-Owning Utility shall pursue reasonable least-cost alternatives, including space-saving techniques currently relied upon by that utility; however, it shall at all times maintain compliance with the National Electrical Safety Code, state and local laws and regulations, and Pole-Owning Utility construction standards.

(I) Payments. After completion of Make-Ready work, the new Attaching Entity shall pay the cost of all Make-Ready work actually required for the attachment that has not been pre-paid, or shall be refunded any excess of the pre-payment not actually required.

(1) The new Attaching Entity shall not be responsible for any portion of the Make-Ready expense that is attributable to the correction of pre-existing violations, unless the new Attaching Entity has caused a portion of the violation.

(2) The costs of any modification that is also specifically used by other existing Attaching Entities shall be apportioned accordingly.

(3) Where a Pole-Owning Utility currently relies upon one or more techniques referenced in this paragraph (I) as part of its normal operating procedures but refuses to utilize such techniques for the benefit of the new Attaching Entity, that entity shall only be responsible for the cost that would have been incurred had such techniques been utilized (provided such use would have been in accordance with generally accepted engineering practices).

(4) Where Make-Ready work has not been completed consistent with paragraphs (B) through (E) of this section, within 30 days of the expiration of the applicable timeline, the Pole-Owning Utility and any existing Attaching Entities shall refund to the new Attaching Entity any portion of payment received for the applicable Make-Ready work to the new Attaching Entity for any work not yet completed.

(J) Lowest Attachment Point. No Attaching Entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility. If the owner of the lowest facility wishes to relocate its existing facilities to a lower allowable point of attachment so that the new Attaching Entity will be above all existing facilities, the owner of such existing facilities shall pay one-half of the cost of moving its facilities.

(K) Outside Contractors.

(1) All Pole-Owning Utilities and Attaching Entities shall maintain and keep up-to-date a reasonably sufficient list of contractors they authorize to perform Make-Ready surveys and work, or other specified tasks upon their equipment ("Outside Contractor List"). The list shall identify the contractors that are authorized to

perform complex Make-Ready work.

(2) Within one month of adoption of this Rule for entities already holding a Certificate of Public Good or within one month of receiving a Certificate of Public Good to operate in the state, a Pole-Owning Utility or Attaching Entity shall submit its Outside Contractor List to the Commission and the Department, preferably in ePUC, as directed by the Commission. This list shall be updated as needed to maintain current contractor information. Upon request, the Commission or Department will provide the applicable Outside Contractor List to an Attaching Entity.

(3) If an entity requesting attachment hires a contractor for purposes specified in this paragraph (K), the requesting entity shall choose from the authorized contractors on the Outside Contractor List.

(a) If a Pole-Owning Utility does not provide a list of authorized contractors or no contractor on the Outside Contractor List is available within a reasonable time period, the new Attaching Entity may choose its own qualified contractor that meets the requirements in paragraph (K)(5) of this section. When choosing a contractor that is not on the Outside Contractor List, the new Attaching Entity must certify to the Pole-Owning Utility that its contractor meets the minimum qualifications described in paragraph (K)(5) of this section when providing notices required by paragraph (L) and (M) of this section.

(b) The Pole-Owning Utility may disqualify any contractor chosen by the new Attaching Entity that is not on the applicable Outside Contractor 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 (K)(5) of this section or to meet the Pole-Owning Utility's publicly available and commercially reasonable safety or reliability standards. The Pole-Owning Utility must provide notice of its objection in compliance with the notice requirements of paragraph (L) and (M) of this section.

(4) If the Pole-Owning Utility is not an electric utility and there are electric lines on the pole, the Pole-Owning Utility shall provide the operator of the electric lines with advance notice of the work to be done and shall allow the electric utility to join or take over the supervision and control of the work of the outside contractor in the electrical space. Pole-Owning Utilities and existing Attaching Entities shall refund amounts collected from Attaching Entities for work subsequently completed by outside contractors.

(5) Pole-Owning Utilities and Attaching Entities must ensure that the Outside Contractor List meets the following minimum requirements:

(a) The contractor must follow National Electrical Safety Code (NESC) guidelines;

(b) The contractor acknowledges that it knows how to read and follow licensed-engineered pole designs for Make-Ready, as required;

(c) The contractor must follow all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the Requirements of the Occupational and Safety Health Administration (OSHA) rules;

(d) The contractor must follow any procedures, standards, codes, and regulations that the Pole-Owning Utility requires of its own contractors;

(e) The contractor must meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the Pole-Owning Utility; and

(f) 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 Attaching Entities.

(L) Self-Help Remedy.

(1) If a Pole-Owning Utility does not complete survey work in the time specified in paragraph (B) of this section, the new Attaching Entity may hire a contractor from the Outside Contractor List.

(a) A new Attaching Entity shall permit the affected Pole-Owning Utility and existing Attaching Entities to be present for any field inspection conducted as part of the new Attaching Entity's survey.

(b) A new Attaching Entity shall use commercially reasonable efforts to provide the affected Pole-Owning Utility and existing Attaching Entities with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new Attaching Entity.

(2) If a Pole-Owning Utility does not complete Make-Ready work in the time specified in paragraph (D) of this section, the new Attaching Entity may hire a contractor from the Outside Contractor List to complete the Make-Ready.

(a) A new Attaching Entity shall permit the Pole-Owning Utility and existing Attaching Entities to be present for any Make-Ready work. A new Attaching Entity shall use commercially reasonable efforts to provide the affected utility and existing Attaching Entities with advance notice of not less than 5 days of the impending Make-Ready. The notice shall include the date and time of the Make-Ready, a description of the work involved, and the name of the contractor being used by the new Attaching Entity.

(b) Self-Help Post Make-Ready Timeline. A new Attaching Entity shall notify the affected Pole-Owning Utility and existing Attaching Entities within 15 days after completion of self-help Make-Ready work for a particular application. The notice shall provide the affected Pole-Owning Utility and

existing Attaching Entities at least 90 days from receipt in which to inspect the Make-Ready. The affected Pole-Owning Utility and existing Attaching Entities have 14 days after completion of their inspection to notify the Attaching Entity of any damage or code violation caused by Make-Ready conducted by the Attaching Entity on their equipment. If the Pole-Owning Utility or existing Attaching Entity notifies the Attaching Entity of such damage or code violations, then the Pole-Owning Utility or existing Attaching Entity shall provide adequate documentation of the damage or the code violations. The Pole-Owning Utility or existing Attaching Entity may either complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage or code violations or require the new Attaching Entity to fix the damage or code violations at its expense within 14 days following notice from the Pole-Owning Utility or existing Attaching Entity.

(M) One-Touch Make-Ready Option. For attachments involving Simple Make-Ready, new Attaching Entities may elect to proceed with the process described in this paragraph instead of the attachment process described in paragraphs (B) through (E) of this section. It is the responsibility of the new Attaching Entity to ensure that its contractor determines whether the Make-Ready requested in an attachment application is Simple Make-Ready.

(1) Attachment Application.

(a) An application for attachment shall be submitted in writing and must provide the Pole-Owning Utility with the information necessary under its procedures to grant or deny the application.

(b) A new Attaching Entity electing the one-touch Make-Ready process must indicate that it intends to perform one-touch Make-Ready in its attachment application and must identify the Simple Make-Ready it will perform.

(c) A Pole-Owning Utility shall complete review of an attachment application and grant or deny a new Attaching Entity's application within 15 days of receipt of the application (or within 30 days, in the case of larger orders as described in paragraph (E) of this section). Within its review and response period, the Pole-Owning Utility may object to the designation by the new Attaching Entity that the attachment only requires Simple Make-Ready work. The Pole-Owning Utility's objection must be specific, in writing, and include all relevant information and evidence supporting its good-faith conclusion.

(2) Surveys. The new Attaching Entity is responsible for all surveys required as part of the one-touch Make-Ready process and shall use a contractor as specified in paragraph (K) of this section.

(a) A new Attaching Entity may need to perform a survey to determine whether Make-Ready work is simple or complex before filing an application for one-touch Make-Ready.

(b) The new Attaching Entity shall permit the Pole-Owning Utility 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-Owning Utility and affected existing Attaching Entities with advance 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.

(3) Make-Ready. If the new Attaching Entity's attachment application is approved and if it has provided 15 days' prior written notice of the Make-Ready to the affected Pole-Owning Utility and existing Attaching Entities, the new Attaching Entity may proceed with Make-Ready using a contractor in the manner specified in paragraph (K) of this section.

(a) Prior written notice shall include the date and time of the Make-Ready, 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-Owning Utility and existing Attaching Entities a reasonable opportunity to be present for any Make-Ready.

(b) The new Attaching Entity shall immediately notify an affected Pole-Owning Utility or existing Attaching Entity if Make-Ready damages the equipment of a Pole-Owning Utility or an existing Attaching Entity or causes an outage that is reasonably likely to interrupt the service of a Pole-Owning Utility or existing Attaching Entity. Upon receiving notice from the new Attaching Entity, the Pole-Owning Utility or existing Attaching Entity may either:

(i) Complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage; or
(ii) Require the new Attaching Entity to fix the damage at its expense immediately following notice from the Pole-Owning Utility or existing Attaching Entity.

(c) In performing Make-Ready, if the Attaching Entity or Pole-Owning Utility determines that Make-Ready classified as Simple Make-Ready is actually Complex Make-Ready, then that specific Make-Ready must be halted and the determining party must provide immediate notice to the other parties of its determination and the affected poles. The affected Make-Ready shall then be governed by paragraphs (B) through (E) of this section, and the Pole-Owning Utility shall provide notice required by paragraph (D) of this section as soon as reasonably practicable.

(4) Post-Make-Ready Timeline. A new Attaching Entity shall notify the affected Pole-Owning Utility and existing Attaching Entities within 15 days after completion of Make-Ready work for a particular application. The notice shall provide the affected Pole-Owning Utility and existing Attaching Entities at least

90 days from receipt in which to inspect the Make-Ready. The affected Pole-Owning Utility and existing Attaching Entities have 14 days after completion of their inspection to notify the new Attaching Entity of any damage or code violation caused by Make-Ready conducted by the new Attaching Entity on their equipment. If the Pole-Owning Utility or existing Attaching Entity notifies the new Attaching Entity of such damage or code violations, then the Pole-Owning Utility or existing Attaching Entity shall provide adequate documentation of the damage or the code violations. The Pole-Owning Utility or existing Attaching Entity may either complete any necessary remedial work and bill the new Attaching Entity for the reasonable costs related to fixing the damage or code violations or require the new Attaching Entity to fix the damage or code violations at its expense within 14 days following notice from the Pole-Owning Utility or existing Attaching Entity.

(N) Jointly Owned Utility Poles. Pole-Owning Utilities that jointly own utility poles shall coordinate and cooperate with each other. When a complete application is received, the joint Pole-Owning Utilities shall inform new Attaching Entities which joint owner is responsible for completing Make-Ready work consistent with paragraphs (B) through (E) and (K) of this section. Joint Pole-Owning Utilities shall provide any received applications to the responsible pole owner.

(O) Overlashing. Any overlashing must be done in accordance with generally accepted engineering standards. The Attaching Entity shall give ten days' notice to the Pole-Owning Utility before beginning such overlashing.

(1) No additional application or payment is required for an Attaching Entity to overlash more of its facilities to its existing attached facilities, unless it necessitates additional costs such as guying or additional pole strength, occupies additional attachment space on the pole, or provides a different utility service than the existing facilities.

(2) If the new facilities deliver a utility service that ought to pay a higher rental under this Rule, the Attaching Entity shall begin paying the higher rate.

(3) If the new facilities are owned by someone other than the existing Attaching Entity, then both shall pay rental, each at the rate designated by this Rule.

(P) Attachment Protocol. Each Pole-Owning Utility shall include in its pole-attachment tariff required by Section 3.703 a reasonable protocol under which it will allow attachments by Broadband Service Providers or wireless telephone providers in areas of its poles that are not ordinarily used for attachments or for equipment that is unusually large. Such protocol may include the provision of a separate pole for the attachment of this equipment if:

(1) the proposed attachment cannot be made to the existing pole consistent with 3.701(C);

(2) the separate pole is requested by the Attaching Entity; or

(3) the provision of the separate pole is less expensive than the proposed attachment to the existing pole.

3.709 Notices from Pole-Owning Utility

(A) A Pole-Owning Utility shall provide each Attaching Entity 60 days' written notice prior to:

(1) removing facilities or terminating service to those facilities, where that action arises out of a rate, term, or condition of the pole-attachment agreement; or

(2) increasing pole-attachment rates by contract or tariff.

(B) Unless otherwise agreed, a Pole-Owning Utility shall provide an Attaching Entity 30 days' written notice before modifying any of the Attaching Entity's facilities. Less than 30 days' notice may be provided for routine maintenance, modification in response to emergencies, or modifications that are beyond the reasonable control of the Pole-Owning Utility, provided that the notice is reasonable under the circumstances and as prompt as practicable.

3.710 Complaint Procedures

(A) A party aggrieved by a violation of these rules may file a complaint or petition with the Commission. The Commission shall take final action within 30 days after the filing of the complaint or petition.

(1) Prior to filing a complaint or petition, the aggrieved party shall call the contact for the party with whom there is a dispute and give notice that they are planning to file a complaint with the Commission.

(2) A complaint or petition shall contain sufficient information to indicate:

(a) the facts underlying the complaint or petition;

(b) the harm that is resulting or could result to the aggrieved party due to the situation;

(c) a description of the steps that the parties have taken to resolve the situation prior to the filing of the complaint or petition; and

(d) the times that both parties will be available for a conference call within 10 days of the date the complaint or petition is filed.

(B) An Attaching Entity aggrieved by a proposed change to a Pole-Owning Utility's tariff may intervene in any rate case following such a tariff filing.

3.711 Effective Date

This rule shall take effect on February 1, 2020.

No. 79. An act relating to broadband deployment throughout Vermont.

(H.513)

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Legislative Findings * * *

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Department of Public Service data indicates that seven percent of Vermont addresses do not have access to the most basic high-speed Internet access, which is 4 Mbps download and 1 Mbps upload. Nearly 20 percent of Vermont addresses lack access to modern Internet speeds of 10 Mbps download and 1 Mbps upload. The Federal Communications Commission (FCC) defines broadband as a minimum of 25 Mbps download and 3 Mbps upload. Approximately 27 percent of Vermont addresses lack access to this level of service.

(2) As Vermont is a rural state with many geographically remote locations, broadband is essential for supporting economic and educational activities, strengthening health and public safety networks, and reinforcing freedom of expression and democratic, social, and civic engagement.

(3) The accessibility and quality of communications networks in Vermont, specifically broadband, is critical to our State's future.

(4) The FCC anticipates that a "light-touch" regulatory approach under Title I of the Communications Act of 1934, rather than "utility-style"

regulation under Title II, will further advance the Congressional goals of promoting broadband deployment and infrastructure investment.

(5) The FCC's regulatory approach is unlikely to achieve the intended results in Vermont. The policy does little, if anything, to overcome the financial challenges of bringing broadband service to hard-to-reach locations with low population density. However, it may result in degraded broadband quality of service. The State has a compelling interest in preserving and protecting consumer access to high quality broadband service.

(6) Reaching the last mile will require a grassroots approach that is founded on input from and support of local communities, whose residents are best situated to decide which broadband solution fits their needs. By developing a toolkit that encompasses numerous innovative approaches to achieving successful broadband buildout and by investing in programs and personnel that can provide local communities with much-needed resources and technical assistance, the State can facilitate and support community efforts to design and implement broadband solutions.

(7) Existing Internet service providers are not providing adequate service to many rural areas where fewer potential customers reduce the profitability necessary to justify system expansion.

(8) Multiple communities have attempted to implement their own unique solutions outside of traditional delivery methods but have been hampered by a lack of access to capital. Existing broadband grant programs do

not offer the scale to solve this problem, and banks and investors typically shy away from start-up businesses with limited revenue history and little equity or collateral.

(9) Community broadband solutions may mean either partnering with a new business that must design and build a network or with an established Internet service provider, which is followed by a 12- to 24-month process of initial customer acquisition.

(10) A growing challenge is the isolation that may result from increased reliance on the Internet and online communities. In rural settings, the physical and psychological draw into isolation is much greater simply as a result of limited chances for interaction with neighbors and community members. As we expand our access and reliance on the Internet, we need to be intentional in supporting our rural communities and town centers.

* * * VUSF; Rate Increase; Connectivity Fund; Specialist * * *

Sec. 2. 30 V.S.A. § 7523 is amended to read:

§ 7523. RATE OF CHARGE

(a) Beginning on July 1, 2014, the rate of charge shall be two percent of retail telecommunications service.

(b) Beginning on July 1, 2019, the rate of charge established under subsection (a) of this section shall be increased by four-tenths of one percent of retail telecommunications service, and the monies collected from this increase shall be transferred to the Connectivity Fund established under section 7516 of this title.

(c) Universal Service Charges imposed and collected by the fiscal agent under this subchapter shall not be transferred to any other fund or used to support the cost of any activity other than in the manner authorized by this section and section 7511 of this title.

Sec. 3. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

(a) There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before September 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative.

(b) Of the money transferred to the Connectivity Fund pursuant to subsection 7523(b) of this title, up to $120,000.00 shall be appropriated annually to the Department of Public Service to fund a Rural Broadband Technical Assistance Specialist whose duties shall include providing outreach,

technical assistance, and other support services to communications union districts established pursuant to chapter 82 of this title and other units of government, nonprofit organizations, cooperatives, and for-profit businesses for the purpose of expanding broadband service to unserved and underserved locations. Support services also may include providing business model templates for various approaches, including formation of or partnership with a cooperative, a communications union district, a rural economic development infrastructure district, an electric utility, or a new or existing Internet service provider as operator of the network. Any remaining funds shall be used to support the Connectivity Initiative established under section 7515b of this title.

* * * High-Cost Program; Connectivity Initiative;

Speed Requirements * * *

Sec. 4. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST PROGRAM

(a) The Universal Service Charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this State, thereby maintaining universal service, and as a means of supporting access to broadband service in all parts of the State.

* * *

(g) Except as provided in subsection (h) of this section, a VETC shall provide broadband Internet access at speeds no lower than ~~4 Mbps download and 1 Mbps upload~~ 25 Mbps download and 3 Mbps upload in each high-cost area it serves within five years of designation. A VETC need not provide broadband service to a location that has service available from another service provider, as determined by the Department of Public Service.

* * *

Sec. 5. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The purpose of the Connectivity Initiative is to provide each service location in Vermont access to Internet service that is capable of speeds of at least ~~10 Mbps download and 1 Mbps upload~~ 25 Mbps download and 3 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. As used in this section, "unserved" means a location having access to only satellite or dial-up Internet service and "underserved" means a location having access to Internet service with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps download and 1 Mbps upload. Any new services funded in whole or in part by monies from this Initiative shall be capable of being

continuously upgraded to reflect the best available, most economically feasible service capabilities.

* * *

* * * VUSF; Prepaid Wireless; Point of Sale * * *

Sec. 6. 30 V.S.A. § 7521(d) is amended to read:

(d)~~(1) Notwithstanding any other provision of law to the contrary, beginning on September 1, 2014, in the case of prepaid wireless telecommunications service, the Universal Service Charge shall be imposed as follows:~~

~~(A) If the provider sells directly to a consumer in a retail transaction, the provider may collect the Charge from the customer at the rate specified in section 7523 of this title; or~~

~~(B) if the provider does not sell directly to the consumer, or if the provider sells directly to the customer in a retail transaction but elects not to collect the Charge from the customer, the Charge shall be imposed on the provider at the rate determined in subdivision (2) of this subsection (d).~~

~~(2) The Public Utility Commission shall establish a formula to ensure the Universal Service Charge rate imposed on prepaid wireless telecommunications service providers under subdivision (1)(B) of this subsection reflects two percent of retail prepaid wireless telecommunications service in Vermont.~~

~~(3) As used in this subsection, "prepaid wireless telecommunications service" means a telecommunications service as defined in subdivision 203(5) of this title that a consumer pays for in advance and that is sold in predetermined units or dollars that decline with use.~~ [Repealed.]

Sec. 7. 30 V.S.A. § 7521(e) is added to read:

(e)(1) Notwithstanding any other provision of law to the contrary, beginning on January 1, 2020, the Universal Service Charge shall be imposed on all retail sales of prepaid wireless telecommunications service subject to the sales and use tax imposed under 32 V.S.A. chapter 233. The charges shall be collected by sellers and remitted to the Department of Taxes in the manner provided under 32 V.S.A. chapter 233. Upon receipt of the charges, the Department of Taxes shall have 30 days to remit the funds to the fiscal agent selected under section 7503 of this chapter. The Commissioner of Taxes shall establish registration and payment procedures applicable to the Universal Service Charge imposed under this subsection consistent with the registration and payment procedures that apply to the sales tax imposed on such services and also consistent with the administrative provisions of 32 V.S.A. chapter 151, including any enforcement or collection action available for taxes owed pursuant to that chapter.

(2) If a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, nonitemized price, then the seller may elect not to apply the Universal Service Charge to such transaction.

(3) As used in this subsection:

(A) "Minimal amount" means an amount of service denominated as not more than 10 minutes or not more than $5.00.

(B) "Prepaid wireless telecommunications service" means a telecommunications service as defined in subdivision 203(5) of this title that a consumer pays for in advance and that is sold in predetermined units or dollars that decline with use.

(C) "Seller" means a person who sells prepaid wireless telecommunications service to a consumer.

* * * One-Time Transfer and Appropriation; Broadband Innovation Grant Program; Federal RUS Grants and Loans * * *

Sec. 8. FISCAL YEAR 2020 ONE-TIME GENERAL FUND TRANSFER

(a) From the General Fund to the Connectivity Fund established pursuant to 30 V.S.A. § 7516: $955,000.00 to be allocated as follows:

(1) $700,000.00 to fund grants through the Broadband Innovation Grant Program established in Sec. 10 of this act.

(2) $205,000.00 to fund grants through the Connectivity Initiative as provided in 30 V.S.A. § 7515b(b).

(3) $50,000.00 to the Department of Public Service to assess the feasibility of providing broadband service using electric utility infrastructure, pursuant to Sec. 11 of this act.

(b) These monies shall not be subject to the distribution requirements of 30 V.S.A. § 7511(a)(1)(A)–(D).

Sec. 9. FISCAL YEAR 2020 ONE-TIME GENERAL FUND APPROPRIATION

To the ThinkVermont Innovation Initiative established in 2018 Acts and Resolves No. 197, Sec. 2, $45,000.00 is appropriated for the purpose of funding technical assistance grants to Vermont municipalities planning broadband projects.

Sec. 10. DEPARTMENT OF PUBLIC SERVICE; BROADBAND INNOVATION GRANT PROGRAM

(a) There is established the Broadband Innovation Grant Program to be administered by the Commissioner of Public Service. The purpose of the Program is to fund feasibility studies related to the deployment of broadband in rural unserved and underserved areas of Vermont. The following conditions shall apply to the Program:

(1) In awarding grants under this section, the Commissioner shall give preference to feasibility studies that contemplate the provision of broadband service that is symmetrical.

(2) Eligible grant applicants shall include communications union districts and other units of government, nonprofit organizations, cooperatives, and for-profit businesses.

(3) Grantees shall produce an actionable business plan for a potential broadband solution, which may include formation of or partnership with a cooperative, communications union district, rural economic development infrastructure district, municipal communications plant, or utility. The business plan required by this subdivision shall include engineering and design plans, financing models, estimated construction costs, and ideal operational models.

(4) A grant award may not exceed $60,000.00.

(5) Not more than 2.5 percent of a grant may be used for grant management.

(6) Not more than two electric distribution utilities shall be awarded a grant under the Program for the purpose of determining the market feasibility of providing broadband service using electric company infrastructure. Awards to distribution utilities shall be made pursuant to a competitive bidding process initiated not sooner than January 1, 2020, or upon submission of the report required by Sec. 11 of this act, whichever is sooner, and shall be consistent with the recommendations contained in that report.

(7) Studies funded through the Program shall conclude within six months of receipt of the award; distribution utility studies shall conclude within 12 months of receipt of the award.

(8) The Commissioner shall retain 50 percent of the grant award until he or she determines that the study has been completed consistent with the terms of the grant.

(9) Grant recipients shall report their findings and recommendations to the Commissioner of Public Service within 30 days following the completion of a study funded under the Program.

(b) To the extent such information is available, the Commissioner of Public Service shall aggregate the information submitted under subdivision (a)(9) of this section and shall report his or her findings and recommendations to the House Committee on Energy and Technology and the Senate Committee on Finance on or before January 15, 2020, and annually thereafter until all of the funds in the Program have been expended.

Sec. 11. STUDY; FEASIBILITY OF ELECTRIC COMPANIES OFFERING BROADBAND SERVICE IN VERMONT

(a) The Commissioner of Public Service shall study the feasibility of Vermont electric companies providing broadband service using electric distribution and transmission infrastructure. Among other things, a feasibility determination shall address potential advantages of serving utilities' internal data needs and expanding fiber for providing broadband service, the compatibility of broadband service with existing electric service, the financial investment necessary to undertake the provision of broadband service, identification of the unserved and underserved areas of the State where the

provision of broadband service by an electric company appears feasible; the impact on electric rates, the financial risk to electric companies, and any differences that may exist between electric companies. The Commissioner also shall address any financial consequences and any technical or safety issues resulting from attaching communications facilities in the electric safety space as opposed to the communications space of distribution infrastructure.

(b) In performing the feasibility study required by this section, the Commissioner, in consultation with the Public Utility Commission, shall consider regulatory barriers to the provision of broadband service by electric companies, and shall develop legislative proposals to address those barriers. In addition, the Commissioner, in collaboration with representatives from each electric company, shall evaluate whether it is in the public interest and also in the interest of electric companies for electric companies to:

(1) make improvements to the distribution grid in furtherance of providing broadband service in conjunction with electric distribution grid transformation projects;

(2) operate a network using electric distribution and transmission infrastructure to provide broadband service at speeds of at least 25 Mbps download and 3 Mbps upload; and

(3) permit a communications union district or other unit of government, nonprofit organization, cooperative, or for-profit business to lease excess

utility capacity to provide broadband service to unserved and underserved areas of the State.

(c) Any electric distribution or transmission company subject to the jurisdiction of the Public Utility Commission shall aid in the development of information and analysis as requested by the Commissioner to complete the report required by this section.

(d) The Commissioner shall report the feasibility findings and recommendations required by this section to the Senate Committee on Finance and to the House Committee on Energy and Technology on or before January 1, 2020.

Sec. 12. 30 V.S.A. § 3047 is amended to read:

§ 3047. COST ALLOCATIONS; SUBSIDIZATION PROHIBITED

In carrying out the purposes of this chapter, the electric revenues received from regulated activities of a cooperative shall not subsidize any nonelectric activities of the cooperative. A cooperative shall adopt cost allocation procedures to ensure that the electrical distribution revenues received from regulated activities of a cooperative do not subsidize any of the nonelectric activities and that costs attributable to any nonelectric activities are not included in the cooperative's rates for electric service. A copy of the cost allocation procedures shall be available to the public upon request.

~~Nonelectric activities of the cooperative shall not be financed by loans or~~

~~grants from the Rural Utilities Service of the U.S. Department of Agriculture or any successor federal agency.~~

* * * Municipalities; Communications Plants; Public-Private Partnership; Study of General Obligation Bonding Authority * * *

Sec. 13. 24 V.S.A. § 1913 is amended to read:

§ 1913. COMMUNICATIONS PLANT; OPERATION AND REGULATION

(a) A municipality shall operate its communications plant in accordance with the applicable State and federal law and regulation, and chapter 53 of this title, relating to municipal indebtedness, with regard to the financing, improvements, expansion, and disposal of the municipal communications plant and its operations. However, the powers conferred by such provisions of law shall be supplemental to, construed in harmony with, and not in restriction of, the powers conferred in this chapter.

(b) A municipality's operation of any communications plant shall be supported solely by the revenues derived from the operation of such communications plant, except that portion which is used for its own municipal purposes.

(c) A municipality may finance any capital improvement related to its operation of such communications plant for the benefit of the people of the municipality in accordance with the provisions of chapter 53 of this title, provided that revenue-backed bonds shall be paid from net revenues derived from the operation of the communications plant.

(d) Any restriction regarding the maximum outstanding debt that may be issued in the form of general obligation bonds shall not restrict the issuance of any bonds issued by a municipality and payable out of the net revenues from the operation of a public utility project under chapter 53, subchapter 2 ~~of chapter 53~~ of this title.

(e) To the extent that a municipality constructs communication infrastructure with the intent of providing communications services, whether wholesale or retail, the municipality shall ensure that any and all losses from these businesses, or in the event these businesses are abandoned or curtailed, any and all costs associated with the investment in communications infrastructure, are not borne by the municipality's taxpayers.

(f) Notwithstanding any other provision of law to the contrary, a municipality may enter into a public-private partnership for the purpose of exercising its authority under this subchapter regarding the provision of communications services. A municipality may contract with a private entity to operate and manage a communications plant owned by the municipality or may contract with a private entity to co-own, operate, or manage a communications plant. A communications plant that is the subject of a public-private partnership authorized by this subsection may be financed in whole or in part pursuant to this chapter and chapter 53, subchapter 2 of this title, provided the municipality first issues a request for proposals seeking an Internet service provider to serve or to assist with serving unserved and underserved locations

targeted by the issuing municipality. The terms of such a partnership shall specify that the owner or owners of the communications plant, as applicable, shall be responsible for debt service.

Sec. 14. RECOMMENDATION; GENERAL OBLIGATION BONDS FOR MUNICIPAL COMMUNICATIONS PLANTS

The Secretary of Administration or designee, in collaboration with the State Treasurer or designee and the Executive Director of the Vermont Municipal Bond Bank or designee, shall investigate the use of general obligation bonds by a municipality to finance capital improvements related to the operation of a communications plant. On or before December 1, 2019, the Secretary shall report his or her findings and recommendations to the House Committee on Energy and Technology and the Senate Committee on Finance.

* * * VEDA; Broadband Expansion Loan Program * * *

Sec. 15. 10 V.S.A. chapter 12, subchapter 14 is added to read:

Subchapter 14. Broadband Expansion Loan Program

§ 280ee. BROADBAND EXPANSION LOAN PROGRAM

(a) Creation. There is established within the Authority the Vermont Broadband Expansion Loan Program (the Program), the purpose of which is to enable the Authority to make loans that expand broadband service to unserved and underserved Vermonters.

(b) Intent. It is understood that loans under the Program may be high-risk loans to likely start-up businesses and therefore losses in the Program may be

higher than the Authority's historical loss rate. Loans shall be underwritten by the Authority utilizing underwriting parameters that acknowledge the higher risk nature of these loans. The Authority shall not make a loan unless the Authority has a reasonable expectation of the long-term viability of the business.

(c)(1) Requirements. The Authority shall make loans for start-up and expansion that enable the Internet service providers to expand broadband availability in unserved and underserved locations.

(2) The Authority shall establish policies and procedures for the Program necessary to ensure the expansion of broadband availability to the largest number of Vermont addresses as possible. The policies shall specify that:

(A) loans may be made in an amount of up to $4,000,000.00;

(B) eligible borrowers include communications union districts and other units of government, nonprofit organizations, cooperatives, and for-profit businesses;

(C) a loan shall not exceed 90 percent of project costs;

(D) interest and principal may be deferred up to two years;

(E) a maximum of $10,800,000.00 in Authority loans may be made under the Program commencing on the effective date of this act; and

(F) the provider shall offer to all customers broadband service that is capable of speeds of at least 100 Mbps symmetrical.

(3) To ensure the limited funding available through the Program supports the highest-quality broadband available to the most Vermonters and prioritizes delivering services to the unserved and underserved, the Authority shall consult with the Department of Public Service.

(d) On or before January 1, 2020, and annually thereafter, the Authority shall submit a report of its activities pursuant to this section to the Senate Committee on Finance and the House Committees on Commerce and Economic Development and on Energy and Technology. Each report shall include operating and financial statements for the two most recently concluded State fiscal years. In addition, each report shall include information on the Program portfolio, including the number of projects financed; the amount, terms, and repayment status of each loan; and a description of the broadband projects financed in whole or in part by the Program.

§ 280ff. FUNDING

(a) The State Treasurer, in consultation with the Secretary of Administration, shall negotiate an agreement with the Authority incorporating the provisions of this section and consistent with the requirements of this subchapter.

(b) Repayment from or appropriation to the Authority in years 2021 and until the Program terminates is based on the Authority's contributions to loan loss reserves for the Program in accordance with generally accepted accounting principles. Any difference between the actual loan losses incurred

by the Authority in fiscal year 2020 through Program termination shall be adjusted in the following year's appropriation.

(1) The Program shall terminate when all borrowers enrolled in the Program have repaid in full or loans have been charged-off against the reserves of the Authority.

(2) Upon termination of the Program, any remaining funds held by the Authority and not used for the Program shall be repaid to the State.

(3) The accumulated total of the appropriation shall not exceed $8,500,000.00 over the life of the Program.

(4) The Authority shall absorb its historical loan loss reserve rate before any State funds are expended.

(5) Additionally, the Authority shall absorb up to $3,000,000.00 in Program losses shared with the State on a pro rata basis.

Sec. 16. FISCAL YEAR 2020 ONE-TIME GENERAL FUND APPROPRIATION

To the Vermont Economic Development Authority, $540,000.00 is appropriated to serve as loan reserves to administer the Broadband Expansion Loan Program established in Sec. 15 of this act.

Sec. 17. 10 V.S.A. § 219(d) is amended to read:

(d) In order to ensure the maintenance of the debt service reserve requirement in each debt service reserve fund established by the Authority, there may be appropriated annually and paid to the Authority for deposit in

each such fund, such sum as shall be certified by the Chair of the Authority, to the Governor, the President of the Senate, and the Speaker of the House, as is necessary to restore each such debt service reserve fund to an amount equal to the debt service reserve requirement for such fund. The Chair shall annually, on or about February 1, make, execute, and deliver to the Governor, the President of the Senate, and the Speaker of the House, a certificate stating the sum required to restore each such debt service reserve fund to the amount aforesaid, and the sum so certified may be appropriated, and if appropriated, shall be paid to the Authority during the then current State fiscal year. The principal amount of bonds or notes outstanding at any one time and secured in whole or in part by a debt service reserve fund to which State funds may be appropriated pursuant to this subsection shall not exceed ~~$175,000,000.00~~ $181,000,000.00, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the Authority in contravention of the Constitution of the United States.

Sec. 18. 30 V.S.A. § 8064(a)(1) is amended to read:

(a)(1) The Authority may issue its negotiable notes and bonds in such principal amount as the Authority determines to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the Authority, establishment of reserves to secure the notes and bonds including the reserve funds created under section 8065 of this title, and all other expenditures of the Authority

incident to and necessary or convenient to carry out its corporate purposes and powers. However, the bonds or notes of the Authority outstanding at any one time shall not exceed ~~$40,000,000.00~~ $34,000,000.00. No bonds shall be issued under this section without the prior approval of the Governor and the State Treasurer or their respective designees. In addition, before the Authority may initially exercise its bonding authority granted by this section, it shall submit to the Emergency Board of the State a current business plan, including an explanation of the bond issue or issues initially proposed.

* * * Pole Attachments * * *

Sec. 19. POLE ATTACHMENTS; PUBLIC UTILITY COMMISSION RULES

(a) The Public Utility Commission shall revise Rule 3.700 to implement the following:

(1) One-touch make-ready policies for pole attachments in the communications space. The Commission shall consider measures requiring pole-owning utilities to complete any needed pole replacements, and related electrical work, in sufficient time to make it reasonably possible for existing attaching entities in the communications space to comply with make-ready deadlines and shall also consider whether a pole-owning utility whose delays prevent timely make-ready completion by the attaching entities in the communications space should pay interest to the applicant.

(2) Measures designed to minimize delays and costs and promote fair and reasonable rates and the rapid resolution of disputes.

(3) Specifications for when a make-ready completion period commences and ends, including a process for extending the make-ready completion period in limited circumstances as defined by the Commission.

(4) Any other revisions deemed relevant by the Commission.

(b) The Commission shall file a final proposed rule with the Secretary of State and with the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 841 on or before December 1, 2019.

(c) On July 15, 2016, the Commission opened a rulemaking proceeding to consider amending Commissioner Rule 3.706(D)(1) regarding the rental calculation for pole attachments. The Commission shall complete this proceeding and file a final proposed rule with the Secretary of State and with the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 841 on or before June 1, 2020.

Sec. 20. 30 V.S.A. § 209(i) is amended to read:

(i)(1) Pole attachments; broadband. For the purposes of Commission rules on attachments to poles owned by companies subject to regulation under this title, broadband service providers shall be considered "attaching entities" with equivalent rights to attach facilities as those provided to "attaching entities" in the rules, regardless of whether such broadband providers offer a service subject to the jurisdiction of the Commission. The Commission shall adopt

rules in accordance with 3 V.S.A. chapter 25 to further implement this section. The rules shall be aimed at furthering the State's interest in ubiquitous deployment of mobile telecommunications and broadband services within the State.

(2) The rules adopted pursuant to this subsection shall specify that:

(A) The applicable make-ready completion period shall not be extended solely because a utility pole is jointly owned.

(B) At the time of an initial pole make-ready survey application, when a pole is jointly owned, the joint owners shall inform the applicant which owner is responsible for all subsequent stages and timely completion of the make-ready process.

(C) If the make-ready work is not completed within the applicable make-ready completion period, the pole owner, within 30 days of the expiration of the make-ready completion period, shall refund the portion of the payment received for make-ready work that is not yet completed, and the attaching entity may hire a qualified contractor to complete the make-ready work. All pole owners and attaching entities shall submit to the Commission a list of contractors whom they allow to perform make-ready surveys, make-ready installation or maintenance, or other specified tasks upon their equipment. The Commission shall provide the appropriate list to an attaching entity, upon request.

Sec. 20a. LEGISLATIVE INTENT; POLE ATTACHMENTS

Sections 19 and 20 of this act, concerning revisions to Vermont's pole attachment rules, shall not be construed to endorse a particular generation of communications technology, be it wired or wireless. The revisions are intended to clarify the terms and conditions of pole attachments, in general, and to promote greater transparency and certainty for attaching entities and for pole owners and to do so in a manner that furthers Vermont's interest in achieving ubiquitous deployment of mobile telecommunications and broadband services within the State.

* * * Department of Public Service; Rural Broadband Technical Assistance Specialist * * *

Sec. 21. RURAL BROADBAND TECHNICAL ASSISTANCE SPECIALIST

One new classified position, Rural Broadband Technical Assistance Specialist, is authorized to be established within the Department of Public Service in fiscal year 2020. Beginning in fiscal year 2020, this position shall be funded as provided under 30 V.S.A. § 7516(b).

* * * State Telecommunications Plan * * *

Sec. 22. 30 V.S.A. § 202d is amended to read:

§ 202d. TELECOMMUNICATIONS PLAN

(a) The Department of Public Service shall constitute the responsible planning agency of the State for the purpose of obtaining for all consumers in the State stable and predictable rates and a technologically advanced

telecommunications network serving all service areas in the State. The Department shall be responsible for the provision of plans for meeting emerging trends related to telecommunications technology, markets, financing, and competition.

(b) The Department shall prepare the Telecommunications Plan for the State. The ~~Department of Innovation and Information~~ Agency of Digital Services, the Agency of Commerce and Community Development, and the Agency of Transportation shall assist the Department in preparing the Plan. The Plan shall be for a 10-year period and shall serve as a basis for State telecommunications policy. Prior to preparing the Plan, the Department shall prepare:

(1) An overview, looking 10 years ahead, of ~~future requirements for telecommunications services, considering services needed for economic development, technological advances, and other trends and factors which, as determined by the Department of Public Service, will significantly affect State telecommunications policy and programs~~ statewide growth and development as they relate to future requirements for telecommunications services, including patterns of urban expansion, statewide and service area economic growth, shifts in transportation modes, economic development, technological advances, and other trends and factors that will significantly affect State telecommunications policy and programs. The overview shall include an

economic and demographic forecast sufficient to determine infrastructure investment goals and objectives.

(2) One or more surveys of Vermont residents and businesses, conducted in cooperation with the Agency of Commerce and Community Development to determine what telecommunications services are needed now and in the succeeding 10 years, generally, and with respect to the following specific sectors in Vermont;

(A) the educational sector, with input from the Secretary of Education;

(B) the health care and human services sectors, with input from the Commissioner of Health and the Secretary of Human Services;

(C) the public safety sector, with input from the Commissioner of Public Safety and the Executive Director of the Enhanced 911 Board; and

(D) the workforce training and development sectors, with input from the Commissioner of Labor.

(3) An assessment of the current state of telecommunications infrastructure.

(4) An assessment, conducted in cooperation with the ~~Department of Innovation and Information and the Agency of Transportation, of the current State telecommunications system and evaluation of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government~~ Agency of Digital Services and the Agency of

Transportation, of State-owned and managed telecommunications systems and related infrastructure and an evaluation, with specific goals and objectives, of alternative proposals for upgrading the systems to provide the best available and affordable technology for use by State and local government, public safety, educational institutions, community media, nonprofit organizations performing governmental functions, and other community anchor institutions.

(5) ~~An~~ A geographically specific assessment of the ~~state~~ status, coverage, and capacity of telecommunications networks and services ~~in~~ available throughout Vermont, a comparison of available services relative to other states, including price and broadband speed comparisons for key services and comparisons of the ~~state~~ status of technology deployment.

(6) An assessment of opportunities for shared infrastructure, open access, and neutral host wireless facilities that is sufficiently specific to guide the Public Utility Commission, the Department, State and local governments, and telecommunications service companies in the deployment of new technology.

(7) An analysis of available options to support the State's access media organizations.

(8) With respect to emergency communications, an analysis of all federal initiatives and requirements, including the Department of Commerce FirstNet initiative and the Department of Homeland Security Statewide Communication Interoperability Plan, and how these activities can best be

integrated with strategies to advance the State's interest in achieving ubiquitous deployment of mobile telecommunications and broadband services within Vermont.

(9) An analysis of alternative strategies to leverage the State's ownership and management of the public rights-of-way to create opportunities for accelerating the buildout of fiber-optic broadband and for increasing network resiliency capacity.

(c) In developing the Plan, the Department shall ~~take into account~~ address each of the State telecommunications policies and goals of section 202c of this title, and shall assess initiatives designed to advance and make measurable progress with respect to each of those policies and goals. The assessment shall include identification of the resources required and potential sources of funding for Plan implementation.

(d) The Department shall establish a participatory planning process that includes effective provisions for increased public participation. In establishing plans, public hearings shall be held and the Department shall consult with members of the public, representatives of telecommunications utilities with a certificate of public good, other providers, including the Vermont Electric Power Co., Inc. (VELCO) and communications union districts, and other interested State agencies, particularly the Agency of Commerce and Community Development, the Agency of Transportation, and the ~~Department of Innovation and Information~~ Agency of Digital Services, whose views shall

be considered in preparation of the Plan. To the extent necessary, the Department shall include in the Plan surveys to determine existing, needed, and desirable plant improvements and extensions, access and coordination between telecommunications providers, methods of operations, and any change that will produce better service or reduce costs. To this end, the Department may require the submission of data by each company subject to supervision by the Public Utility Commission.

(e) Before adopting the Plan, the Department shall first prepare and publish a preliminary draft and solicit public comment. The Department's procedures for soliciting public comment shall include a method for submitting comments electronically. After review and consideration of the comments received, the Department shall prepare a final draft. This final draft shall either incorporate public comments received with respect to the preliminary draft or shall include a detailed explanation as to why specific individual comments were not incorporated. The Department shall conduct at least four public hearings across the State on ~~a~~ the final draft and shall consider the testimony presented at such hearings ~~in~~ when preparing the ~~final~~ Plan. The Department shall coordinate with Vermont's access media organizations when planning the public hearings required by this subsection. At least one public hearing shall be held jointly with committees of the General Assembly designated by the General Assembly for this purpose. ~~The Plan shall be adopted by September 1,~~

~~2014, and then reviewed and updated as provided in subsection (f) of this section.~~

(f) The Department~~, from time to time, but in no event less than every three years, shall institute proceedings to review the Plan and make revisions, where necessary. The three-year major review shall be made according to the procedures established in this section for initial adoption of the Plan~~ shall adopt a new Plan every three years pursuant to the procedures established in subsection (e) of this section. The Plan shall outline significant deviations from the prior Plan. For good cause or upon request by a joint resolution passed by the General Assembly, an interim review and revision of any section of the Plan may be made after conducting public hearings on the interim revision. At least one hearing shall be held jointly with committees of the General Assembly designated by the General Assembly for this purpose.

~~(g) The Department shall review and update the minimum technical service characteristic objectives not less than every three years beginning in 2017. In the event such review is conducted separately from an update of the Plan, the Department shall issue revised minimum technical service characteristic objectives as an amendment to the Plan.~~

Sec. 23. TELECOMMUNICATIONS PLAN ADOPTION SCHEDULE; RESOURCES

(a) It is the intent of the General Assembly that, regardless of when the 2017 Telecommunications Plan is adopted, a new Plan shall be adopted on or

before December 1, 2020 in accordance with the procedures established in 30 V.S.A. § 202d(e). The next Plan after that shall be adopted on or before December 1, 2023, and so on.

(b) If at any time it becomes apparent to the Commissioner of Public Service that the Department lacks the time or the resources to comply with the requirements of 30 V.S.A. § 202d or of this section, the Commissioner shall submit a report to the General Assembly on what additional resources or time are necessary. The report shall be submitted prior to the adoption date and with sufficient time to allow for any needed legislative action prior to the adoption date. The report may include a proposal for contracting with an outside entity to prepare the Plan, or a portion thereof, and, if so, shall include a suggested funding amount and source.

* * * Radio Frequency Emissions; Report * * *

Sec. 24. WIRELESS TECHNOLOGIES; PUBLIC HEALTH REPORT

(a) On or before January 1, 2020, the Commissioner of Health shall submit to the Senate Committees on Health and Welfare and on Finance and the House Committees on Health Care and on Energy and Technology a report on the possible health consequences from exposure to the radio frequency fields produced by wireless technologies, including cellular telephones and FCC-regulated transmitters. The report shall include a summary of available scientific data as well as a comparison of various emissions standards and guidelines.

(b) The purpose of this report is to provide policymakers and the general public information deemed significant by many Vermonters. It is not intended that the information gathered in the report be used to form the basis of policies that are inconsistent with federal law.

* * * E-911 Service; Power Outages; Reporting * * *

Sec. 25. OUTAGES AFFECTING E-911 SERVICE; REPORTING; RULE; E-911 BOARD

The E-911 Board shall adopt a rule establishing protocols for the E-911 Board to obtain or be apprised of, in a timely manner, system outages applicable to wireless service providers, providers of facilities-based, fixed voice service that is not line-powered and to electric companies for the purpose of enabling the E-911 Board to assess 911 service availability during such outages. An outage for purposes of this section includes any loss of E-911 calling capacity, whether caused by lack of function of the telecommunications subscriber's backup-power equipment, lack of function within a telecommunications provider's system, or an outage in the electric power system. The E-911 Board shall file a final proposed rule with the Secretary of State and with the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 841 on or before February 1, 2020.

* * * Backup Power; E-911 Service; Report * * *

Sec. 26. E-911 SERVICE; BACKUP POWER REQUIREMENTS; WORKSHOP; REPORT

(a) Findings. As many telecommunications networks transition away from copper-based, line-powered technology, many consumers remain unaware that they must take action to ensure the availability of a dial tone in the event of a commercial power outage. As a result, this transition has the potential to create a widespread public safety issue if Vermonters are unable to access E-911 services during a power outage. In recognition of this issue, the FCC adopted rules placing backup-power obligations on providers of "facilities-based fixed, residential voice services that are not line-powered" (covered services). See Ensuring Continuity of 911 Communications, Report and Order, 30 FCC Rcd 8677 (2015), 47 C.F.R. § 12.5. The FCC rules mandate performance requirements and disclosure obligations on providers of covered services. After receiving concerns by Vermonters regarding provider compliance with the FCC's backup-power obligations, the Department of Public Service filed a request with the Public Utility Commission to initiate a workshop on the matter. The Commission authorized the workshop on March 21, 2019, Case No. 19-0705-PET.

(b) Report. Given the critical public safety issues at stake, on or before December 15, 2019, the Public Utility Commission shall report to the General Assembly its findings regarding provider compliance with backup-power

obligations and shall recommend best practices for minimizing disruptions to E-911 services during power outages through:

(1) consumer education and community outreach;

(2) technical and financial assistance to consumers and communities;

(3) cost-effective and technologically efficient ways in which providers or alternative entities can provide such information and assistance; and

(4) ongoing monitoring of provider compliance with backup-power obligations.

* * * PEG Access; Joint Information Technology Oversight Committee * * *

Sec. 27. PEG ACCESS STUDY COMMITTEE

(a) Creation. There is created a PEG Access Study Committee. The Committee shall consider changes to the State's cable franchising authority and develop for legislative consideration alternative regulatory and funding mechanisms to support public, educational, and government (PEG) access channels and services to communities across Vermont.

(b) Members. The Committee shall be composed of the following members:

(1) a member of the Senate Committee on Finance appointed by the Committee on Committees;

(2) a member of the House Committee on Energy and Technology appointed by the Speaker of the House;

(3) the Commissioner of Public Service or designee;

(4) a member of the Public Utility Commission or designee;

(5) a representative from the Vermont Access Network, selected by its Board of Directors;

(6) a representative from a Vermont cable company, selected by the Governor; and

(7) the Executive Director of the Vermont League of Cities and Towns or designee.

(c) Powers and Duties. The Committee shall consider changes in federal and State law and policy, market trends, and any other matters that have an affect on the availability of or funding for PEG access channels and services in Vermont. The Committee shall hold at least one public hearing on the value of PEG access television to Vermont communities; the costs of such programming and services; and funding options. The Committee shall solicit input from regulators, communications providers, access management organizations, and any other organizations or individuals it deems appropriate.

(d) Assistance. The Committee shall be entitled to staff services of the Department of Public Service, the Office of the Legislative Council, and the Joint Fiscal Office.

(e) Report. The Committee shall submit its findings and recommendations in the form of draft legislation to the Senate Committee on Finance and the

House Committee on Energy and Technology on or before November 15, 2019.

(f) Meetings. The Commissioner of Public Service shall call the first meeting of the Committee to occur on or before July 1, 2019. The Committee shall select a chair and vice chair from among its members at the first meeting. A majority of the membership shall constitute a quorum. A member's physical presence is required in order to count toward a quorum and to vote. The Committee is authorized to meet up to six times and shall cease to exist on December 15, 2019.

(g) Compensation and reimbursement. Legislative members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406. Except for members employed by the State, other members of the Committee shall be entitled to per diem compensation as provided under 32 V.S.A. § 1010(a) and mileage reimbursement as provided under 32 V.S.A. § 1267.

* * * State-owned 2G Microcells; Municipal Use * * *

Sec. 27a. 2G MICROCELLS; MUNICIPALITIES; EMERGENCY SERVICES

(a) The Commissioner of Public Service is authorized to spend up to $100,000.00 for contractual services to provide resources and technical assistance to municipalities seeking to acquire or use State-owned 2G microcells for the purpose of providing emergency communications in areas

that otherwise would not have access to mobile wireless E-911 service, consistent with the objectives of prior State investments in microcell network infrastructure. Technical assistance shall include a cost-benefit analysis, which shall include consideration of rates and charges related to electric, backhaul, and geolocation services, pole rental fees, backup-power requirements, co-location requirements, the use of radio spectrum, and the negotiation of roaming agreements with national wireless providers.

(b) The Commissioner of Public Service is authorized to provide financial assistance to municipalities for capital costs associated with the acquisition or installation of 2G microcells pursuant to this section. The Commissioner shall establish uniform standards and procedures applicable to the financial assistance provided pursuant to this subsection and those standards and procedures shall be consistent with the objectives of prior State investments in microcell network infrastructure. The standards shall specify that the municipality is responsible for operational costs of any microcell it acquires under this section and, in addition, the standards shall require that such microcells become fully operational within a reasonable period of time.

(c) Notwithstanding any other provision of law to the contrary, a municipality may use funds generated by its taxing or assessment power for the limited purpose of paying costs related to the operation of microcells pursuant to this section.

(d) Contracts and financial assistance authorized by this section shall be funded with the $900,000.00 capital appropriation to the Department of Public Service for a VTA wireless network pursuant to 2018 Acts and Resolves No. 190, Sec. 14.

Sec. 27b. 2017 Acts and Resolves No. 84, Sec. 16c, as amended by 2018 Acts and Resolves No. 190, Sec. 14 is further amended to read:

Sec. 16c. PUBLIC SERVICE

(a) The following sums are appropriated in FY 2019 to the Department of Public Service:

(1) VTA wireless network, projects and technical assistance: $900,000.00

* * *

* * * Effective Dates * * *

Sec. 28. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 6 (repeal of prepaid wireless revenue surcharge) shall take effect on January 1, 2020.

Date Governor signed bill: June 20, 2019

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 30 : Public Service

Chapter 005 : State Policy; Plans; Jurisdiction And Regulatory Authority Of Commission A Department

Subchapter 001 : General Powers

(Cite as: 30 V.S.A. § 203)

§ 203. Jurisdiction of certain public utilities

The Public Utility Commission and the Department of Public Service shall have jurisdiction over the following described companies within the State, their directors, receivers, trustees, lessees, or other persons or companies owning or operating such companies and of all plants, lines, exchanges, and equipment of such companies used in or about the business carried on by them in this State as covered and included herein. Such jurisdiction shall be exercised by the Commission and the Department so far as may be necessary to enable them to perform the duties and exercise the powers conferred upon them by law. The Commission and the Department may, when they deem the public good requires, examine the plants, equipment, lines, exchanges, stations, and property of the companies subject to their jurisdiction under this chapter.

(1) A company engaged in the manufacture, transmission, distribution, or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating, or power and so far as relates to their use or occupancy of the public highways.

(2) That part of the business of a company that consists of the manufacture, transmission, distribution, or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating, or power and so far as relates to their use or occupancy of the public highways.

(3) A company other than a municipality or a water system exempted under the provisions of 10 V.S.A. § 1675a engaged in the collecting, sale, and distribution of water for domestic, industrial, business, or fire protection purposes.

(4) A company engaged in the construction and maintenance of dams and storage reservoirs whether for the purpose of prevention of damage by flood, or for the purpose of power to be developed, or for the benefit of waterpower, developed or undeveloped, so situated as to be affected by such reservoirs and dams.

(5) A person or company offering telecommunications service to the public on a common carrier basis. "Telecommunications service" means the transmission of any

interactive two-way electromagnetic communications, including voice, image, data, and information. Transmission of electromagnetic communications includes the use of any media such as wires, cables, television cables, microwaves, radio waves, light waves, or any combination of those or similar media. Telecommunications service does not include value-added nonvoice services in which computer processing applications are used to act on the form, content, code, and protocol of the information to be transmitted unless those services are provided under tariff approved by the Public Utility Commission.

(6) A company or that part of a company, other than a municipality, which has obtained a direct or indirect discharge permit issued by the Agency of Natural Resources and is engaged in the collection or disposal of wastewater or domestic sewage or any combination of these activities, except companies solely involved in the hauling of septage or sludge. This subdivision shall only apply to companies which, together with any affiliates, service 750 or more household or dwelling units.

(7) Notwithstanding subdivisions (1) and (2) of this section, the Commission and Department shall not have jurisdiction over persons otherwise not regulated by the Commission that are engaged in the siting, construction, ownership, operation, or control of a facility that sells or supplies electricity to the public exclusively for charging a plug-in electric vehicle, as defined in 23 V.S.A. § 4(85). These persons may charge by the kWh for owned or operated electric vehicle supply equipment, as defined in section 201 of this title, but shall not be treated as an electric distribution utility just because electric vehicle supply equipment charges by the kWh. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 267, § 1, eff. Aug. 1, 1961; 1979, No. 204 (Adj. Sess.), § 22, eff. Feb. 1, 1981; 1985, No. 224 (Adj. Sess.), § 8; 1987, No. 87, § 5; 1993, No. 21, § 19, eff. May 12, 1993; 1993, No. 120 (Adj. Sess.), § 1; 2007, No. 156 (Adj. Sess.), § 2; 2019, No. 59, § 39, eff. June 14, 2019.)

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 30 : Public Service

Chapter 005 : State Policy; Plans; Jurisdiction And Regulatory Authority Of Commission A Department

Subchapter 001 : General Powers

(Cite as: 30 V.S.A. § 209)

§ 209. Jurisdiction; general scope

(a) General jurisdiction. On due notice, the Commission shall have jurisdiction to hear, determine, render judgment, and make orders and decrees in all matters provided for in the charter or articles of any corporation owning or operating any plant, line, or property subject to supervision under this chapter, and shall have like jurisdiction in all matters respecting:

(1) the purity, quantity, or quality of any product furnished or sold by any company subject to supervision under this chapter, and may prescribe the equipment for and standard of measurement, pressure, or initial voltage of such product;

(2) the providing for each kind of business subject to supervision under this chapter, suitable and convenient standard commercial units of product or service, which standards shall be lawful for the purposes of this chapter;

(3) the manner of operating and conducting any business subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience, and accommodation of the public;

(4) the price, toll, rate, or rental charged by any company subject to supervision under this chapter, when unreasonable or in violation of law;

(5) the sufficiency and maintenance of proper systems, plants, conduits, appliances, wires, and exchanges, and when the public safety and welfare require the location of such wires or any portion thereof underground;

(6) to restrain any company subject to supervision under this chapter from violations of law, unjust discriminations, usurpation, or extortion;

(7) the issue of stock, mortgages, bonds, or other securities as provided in section 108 of this title;

(8) the sale to electric companies of electricity generated by facilities:

(A) that produce electric energy solely by the use of biomass, waste, renewable

resources, cogeneration, or any combination thereof; and

(B) that are owned by a person not primarily engaged in the generation or sale of electric power, excluding power derived from facilities described in subdivision (A) of this subdivision (8); and

(C) that have a power production capacity that, together with any other facilities located at the same site, is not greater than 80 megawatts; and

(9) the issuance of qualified cost mitigation charge orders pertaining to facilities described in subdivision (8) of this subsection, subject to the terms and conditions of section 209a of this title.

(b) Required rules. The provisions of section 218 of this title notwithstanding, the Public Utility Commission shall, under 3 V.S.A. §§ 803-804, adopt rules applicable to companies subject to this chapter that:

(1) regulate or prescribe terms and conditions of extension of utility service to customers or applicants for service including:

(A) the conditions under which a deposit may be required, if any;

(B) the extension of service lines;

(C) the terms of payment of any required deposit; and

(D) the return of any deposit;

(2) regulate or prescribe the grounds upon which the companies may disconnect or refuse to reconnect service to customers; and

(3) regulate and prescribe reasonable procedures used by companies in disconnecting or reconnecting services and billing customers in regard thereto.

(c) Uninterrupted service; reasonable terms. Rules adopted under subsection (b) of this section shall be aimed at protection of the health and safety of utility customers so that uninterrupted utility service may be continued on reasonable terms for the utility and its customers. Such rules shall also ensure that a reasonable rate of interest, adjusted for variations in market interest rates, be set on security deposits held by utility companies.

(d) Energy efficiency.

(1) Programs and measures. The Department of Public Service, any entity appointed by the Commission under subdivision (2) of this subsection, all gas and electric utility companies, and the Commission upon its own motion are encouraged to propose, develop, solicit, and monitor energy efficiency and conservation programs and measures, including appropriate combined heat and power systems that result in the conservation and efficient use of energy and meet the applicable air quality standards of the Agency of Natural

Resources. Such programs and measures, and their implementation, may be approved by the Commission if it determines they will be beneficial to the ratepayers of the companies after such notice and hearings as the Commission may require by order or by rule. The Department of Public Service shall investigate the feasibility of enhancing and expanding the efficiency programs of gas utilities and shall make any appropriate proposals to the Commission.

(2) Appointment of independent efficiency entities.

(A) Electricity and natural gas. In place of utility-specific programs developed pursuant to this section and section 218c of this title, the Commission shall, after notice and opportunity for hearing, provide for the development, implementation, and monitoring of gas and electric energy efficiency and conservation programs and measures, including programs and measures delivered in multiple service territories, by one or more entities appointed by the Commission for these purposes. The Commission may include appropriate combined heat and power systems that result in the conservation and efficient use of energy and meet the applicable air quality standards of the Agency of Natural Resources. Except with regard to a transmission company, the Commission may specify that the appointment of an energy efficiency utility to deliver services within an electric utility's service territory satisfies that electric utility's corresponding obligations, in whole or in part, under section 218c of this title and under any prior orders of the Commission.

(B) Thermal energy and process-fuel customers. The Commission shall provide for the coordinated development, implementation, and monitoring of cost-effective efficiency and conservation programs to thermal energy and process-fuel customers on a whole buildings basis by one or more entities appointed by the Commission for this purpose.

(i) In this section, "thermal energy" means the use of fuels to control the temperature of space within buildings and to heat water.

(ii) Periodically on a schedule directed by the Commission, the appointed entity or entities shall propose to the Commission a plan to implement this subdivision (d)(2)(B). The proposed plan shall comply with subsections (e)-(g) of this section and shall be subject to the Commission's approval. The Commission shall not conduct the review of the proposed plan as a contested case under 3 V.S.A. chapter 25 but shall provide notice and an opportunity for written and oral comments to the public and affected parties and State agencies.

(3) Energy efficiency charge; regulated fuels. In addition to its existing authority, the Commission may establish by order or rule a volumetric charge to customers for the support of energy efficiency programs that meet the requirements of section 218c of this title, with due consideration to the State's energy policy under section 202a of this title and to its energy and economic policy interests under section 218e of this title to maintain and enhance the State's economic vitality. The charge shall be known as the energy efficiency charge, shall be shown separately on each customer's bill, and shall be paid to a fund

administrator appointed by the Commission and deposited into the Electric Efficiency Fund. When such a charge is shown, notice as to how to obtain information about energy efficiency programs approved under this section shall be provided in a manner directed by the Commission. This notice shall include, at a minimum, a toll-free telephone number, and to the extent feasible shall be on the customer's bill and near the energy efficiency charge.

(A) Balances in the Electric Efficiency Fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the Fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the State. Interest earned shall remain in the Fund. The Commission will annually provide the General Assembly with a report detailing the revenues collected and the expenditures made for energy efficiency programs under this section. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection (d).

(B) The charge established by the Commission pursuant to this subdivision (3) shall be in an amount determined by the Commission by rule or order that is consistent with the principles of least-cost integrated planning as defined in section 218c of this title. As circumstances and programs evolve, the amount of the charge shall be reviewed for unrealized energy efficiency potential and shall be adjusted as necessary in order to realize all reasonably available, cost-effective energy efficiency savings. In setting the amount of the charge and its allocation, the Commission shall determine an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the State's transmission and distribution infrastructure; minimizing the costs of electricity; reducing Vermont's total energy demand, consumption, and expenditures; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and targeting efficiency and conservation efforts to locations, markets, or customers where they may provide the greatest value. The Commission, by rule or order, shall establish a process by which a customer who pays an average annual energy efficiency charge under this subdivision (3) of at least $5,000.00 may apply to the Commission to self-administer energy efficiency through the use of an energy savings account which shall contain a percentage of the customer's energy efficiency charge payments as determined by the Commission. The remaining portion of the charge shall be used for systemwide energy benefits. The Commission in its rules or order shall establish criteria for approval of these applications.

(C) The Commission may authorize the use of funds raised through an energy efficiency charge on electric ratepayers to reduce the use of fossil fuels for space heating by supporting electric technologies that may increase electric consumption, such as air source or geothermal heat pumps if, after investigation, it finds that deployment of the technology:

(i) will be beneficial to electric ratepayers as a whole;

(ii) will result in cost-effective energy savings to the end-user and to the State as a whole;

(iii) will result in a net reduction in State energy consumption and greenhouse gas emissions on a life-cycle basis and will not have a detrimental impact on the environment through other means such as release of refrigerants or disposal. In making a finding under this subdivision, the Commission shall consider the use of the technology at all times of year and any likely new electricity demand created by such use;

(iv) will be part of a comprehensive energy efficiency and conservation program that meets the requirements of subsections (d)-(g) of this section and that makes support for the technology contingent on the energy performance of the building in which the technology is to be installed. The building's energy performance shall achieve or shall be improved to achieve an energy performance level that is approved by the Commission and that is consistent with meeting or exceeding the goals of 10 V.S.A. § 581 (building efficiency);

(v) among the product models of the technology that are suitable for use in Vermont, will employ the product models that are the most efficient available;

(vi) will be promoted in conjunction with demand management strategies offered by the customer's distribution utility to address any increase in peak electric consumption that may be caused by the deployment;

(vii) will be coordinated between the energy efficiency and distribution utilities, consistent with subdivision (f)(5) of this section; and

(viii) will be supported by an appropriate allocation of funds among the funding sources described in this subsection (d) and subsection (e) of this section. In the case of measures used to increase the energy performance of a building in which the technology is to be installed, the Commission shall assume installation of the technology in the building and then determine the allocation according to the proportion of the benefits provided to the regulated fuel and unregulated fuel sectors. In this subdivision (viii), "regulated fuel" and "unregulated fuel" shall have the same meaning as under subsection (e) of this section.

(4) Contract or order of appointment. Appointment of an entity under subdivision (2) of this subsection may be by contract or by an order of appointment. An appointment, whether by order of appointment or by contract, may only be issued after notice and opportunity for hearing. An order of appointment shall be for a limited duration not to exceed 12 years, although an entity may be reappointed by order or contract. An order of appointment may include any conditions and requirements that the Commission deems appropriate to promote the public good. For good cause, after notice and opportunity for hearing, the Commission may amend or revoke an order of appointment.

(5) Appointed entity; supervision. Any entity appointed by order of appointment under subdivisions (2) and (4) of this subsection that is not an electric or gas utility already regulated under this title shall not be considered to be a company as defined under section 201 of this title, but shall be subject to the provisions of sections 18-21, 30-32, 205-208, subsection 209(a), sections 219, 221, and subsection 231(b) of this title, to the same extent as a company as defined under section 201 of this title. The Commission and the Department of Public Service shall have jurisdiction under those sections over the entity, its directors, receivers, trustees, lessees, or other persons or companies owning or operating the entity and of all plants, equipment, and property of that entity used in or about the business carried on by it in this State as covered and included in this section. This jurisdiction shall be exercised by the Commission and the Department so far as may be necessary to enable them to perform the duties and exercise the powers conferred upon them by law. The Commission and the Department each may, when they deem the public good requires, examine the plants, equipment, and property of any entity appointed by order of appointment under subdivisions (2) and (4) of this subsection.

(e) Thermal energy and process fuel efficiency funding.

(1) Each of the following shall be used to deliver thermal energy and process fuel energy efficiency services in accordance with this section for unregulated fuels to Vermont consumers of such fuels. In addition, the Commission may authorize an entity appointed to deliver such services under subdivision (d)(2)(B) of this section to use monies subject to this subsection for the engineering, design, and construction of facilities for the conversion of thermal energy customers using fossil fuels to district heat if the majority of the district's energy is from biomass sources, the district's distribution system is highly energy efficient, and such conversion is cost effective.

(A) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2)(A) of this subsection (e) that are not transferred to the State PACE Reserve Fund under 24 V.S.A. § 3270(c). These revenues shall be deposited into the Electric Efficiency Fund established by this section. In delivering services with respect to heating systems using the revenues subject to this subdivision (A), the entity shall give priority to incentives for the installation of high efficiency biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. Provision of an incentive under this subdivision (A) for a biomass heating system shall not be contingent on the making of other energy efficiency improvements at the property on which the system will be installed.

(B) Net revenues above costs from the sale of carbon credits under the cap and trade program established under section 255 of this title, which shall be deposited into the Electric Efficiency Fund established by this section.

(C) Any other monies that are appropriated to or deposited in the Electric Efficiency Fund for the delivery of thermal energy and process fuel energy efficiency services.

(2) If a program combines regulated fuel efficiency services with unregulated fuel efficiency services supported by funds under this section, the Commission shall allocate the costs of the program among the funding sources for the regulated and unregulated fuel sectors in proportion to the benefits provided to each sector.

(3) In this subsection:

(A) "Biomass" means organic nonfossil material constituting a source of renewable energy within the meaning of section 8002 of this title.

(B) "District heat" means a system through which steam or hot water from a central plant is piped into buildings to be used as a source of thermal energy.

(C) "Efficiency services" includes the establishment of a statewide information clearinghouse under subsection (g) of this section.

(D) "Fossil fuel" means an energy source formed in the earth's crust from decayed organic material. The common fossil fuels are petroleum, coal, and natural gas. A fossil fuel may be a regulated or unregulated fuel.

(E) "Regulated fuels" means electricity and natural gas delivered by a regulated utility.

(F) "Unregulated fuels" means fuels used by thermal energy and process fuel customers other than electricity and natural gas delivered by a regulated utility.

(f) Goals and criteria; all energy efficiency programs. With respect to all energy efficiency programs approved under this section, the Commission shall:

(1) Ensure that all retail consumers, regardless of retail electricity, gas, or heating or process fuel provider, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation.

(2) Require that continued or improved efficiencies be made in the production, delivery, and use of energy efficiency services, including the use of compensation mechanisms for any energy efficiency entity appointed under subdivision (d)(2) of this section that are based upon verified savings in energy usage and demand, and other performance targets specified by the Commission. The linkage between compensation and verified savings in energy usage and demand (and other performance targets) shall be reviewed and adjusted not less than triennially by the Commission.

(3) Build on the energy efficiency expertise and capabilities that have developed or may develop in the State.

(4) Promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation, including those who do not own their place of residence.

(5) Promote and ensure coordinated program delivery, including coordination with low-income weatherization programs, entities that fund and support affordable housing, regional and local efficiency entities within the State, other efficiency programs, and utility programs.

(6) Consider innovative approaches to delivering energy efficiency, including strategies to encourage third party financing and customer contributions to the cost of efficiency measures.

(7) Provide a reasonably stable multiyear budget and planning cycle in order to promote program improvement, program stability, enhanced access to capital and personnel, improved integration of program designs with the budgets of regulated companies providing energy services, and maturation of programs and delivery resources.

(8) Approve programs, measures, and delivery mechanisms that reasonably reflect current and projected market conditions, technological options, and environmental benefits.

(9) Provide for delivery of these programs as rapidly as possible, taking into consideration the need for these services, and cost-effective delivery mechanisms.

(10) Provide for the independent evaluation of programs delivered under subsection (d) of this section.

(11) Require that any entity appointed by the Commission under subsection (d) of this section deliver Commission-approved programs in an effective, efficient, timely, and competent manner and meet standards that are consistent with those in section 218c of this title, the Board's orders in Public Service Board docket 5270, and any relevant Board orders in subsequent energy efficiency proceedings.

(12) Require verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the Commission to deliver energy efficiency programs under subdivision (d)(2) of this section.

(13) Ensure that any energy efficiency program approved by the Commission shall be reasonable and cost-effective.

(14) Consider the impact on retail electric rates and bills of programs delivered under subsection (d) of this section and the impact on fuel prices and bills.

(15) Ensure that the energy efficiency programs implemented under this section are designed to make continuous and proportional progress toward attaining the overall State building efficiency goals established by 10 V.S.A. § 581, by promoting all forms of energy end-use efficiency and comprehensive sustainable building design.

(g) Thermal energy and process fuel efficiency programs; additional criteria. With respect to energy efficiency programs delivered under this section to thermal energy and process fuel customers, the Commission shall:

(1) Ensure that programs are delivered on a whole-buildings basis to help meet the State's building efficiency goals established by 10 V.S.A. § 581 and to reduce greenhouse gas emissions from thermal energy and process fuel use in Vermont.

(2) Require the establishment of a statewide information clearinghouse to enable effective access for customers to and effective coordination across programs. The clearinghouse shall serve as a portal for customers to access thermal energy and process fuel efficiency services and for coordination among State, regional, and local entities involved in the planning or delivery of such services, making referrals as appropriate to service providers and to entities having information on associated environmental issues such as the presence of asbestos in existing insulation.

(3) In consultation with the Agency of Natural Resources, establish annual interim goals starting in 2014 to meet the 2017 and 2020 goals for improving the energy fitness of housing stock stated in 10 V.S.A. § 581(1).

(4) Ensure the monitoring of the State's progress in meeting the goals of 10 V.S.A. § 581(1). This monitoring shall be performed according to a standard methodology and on a periodic basis that is not less than annual.

(h) Electricity labeling. The Public Utility Commission may prescribe, by rule or order, standards for the labeling of electricity delivered or intended for delivery to ultimate consumers as to price, terms, sources, and objective environmental impacts, along with such procedures as it deems necessary for verification of information contained in such labels. The Public Utility Commission may prescribe, by rule or by order, standards and criteria for the substantiation of such labeling or of any claims regarding the price, terms, sources, and environmental impacts of electricity delivered or intended for delivery to ultimate consumers in Vermont, along with enforcement procedures and penalties. When establishing standards for the labeling of electricity, the Commission shall weigh the cost, as well as the benefits, of compliance with such standards. With respect to companies distributing electricity to ultimate consumers, the Commission may order disclosure and publication, not to occur more than once each year, of any labeling required pursuant to the standards established by this subsection. Standards established under this subsection may include provisions for:

(1) the form of labels;

(2) information on retail and wholesale price;

(3) terms and conditions of service;

(4) types of generation resources in a seller's mix and percentage of power produced

from each source;

(5) disclosure of the environmental effects of each energy source; and

(6) a description of other services, including energy services or energy efficiency opportunities.

(i)(1) Pole attachments; broadband. For the purposes of Commission rules on attachments to poles owned by companies subject to regulation under this title, broadband service providers shall be considered "attaching entities" with equivalent rights to attach facilities as those provided to "attaching entities" in the rules, regardless of whether such broadband providers offer a service subject to the jurisdiction of the Commission. The Commission shall adopt rules in accordance with 3 V.S.A. chapter 25 to further implement this section. The rules shall be aimed at furthering the State's interest in ubiquitous deployment of mobile telecommunications and broadband services within the State.

(2) The rules adopted pursuant to this subsection shall specify that:

(A) The applicable make-ready completion period shall not be extended solely because a utility pole is jointly owned.

(B) At the time of an initial pole make-ready survey application, when a pole is jointly owned, the joint owners shall inform the applicant which owner is responsible for all subsequent stages and timely completion of the make-ready process.

(C) If the make-ready work is not completed within the applicable make-ready completion period, the pole owner, within 30 days of the expiration of the make-ready completion period, shall refund the portion of the payment received for make-ready work that is not yet completed, and the attaching entity may hire a qualified contractor to complete the make-ready work. All pole owners and attaching entities shall submit to the Commission a list of contractors whom they allow to perform make-ready surveys, make-ready installation or maintenance, or other specified tasks upon their equipment. The Commission shall provide the appropriate list to an attaching entity, upon request.

(j) Self-managed energy efficiency programs.

(1) There shall be a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only.

(2) The Commission, by order, shall enact this class of programs.

(3) Entities approved to participate in the self-managed energy efficiency program class shall be exempt from all statewide charges under subdivision (d)(3) of this section that support energy efficiency programs performed by or on behalf of Vermont electric utilities. If an electric ratepayer approved to participate in this program class also is a customer of a natural gas utility, the ratepayer shall be exempt from all charges under subdivision (d)(3) of this section or contained within the rates charged by the natural gas utility to the ratepayer

that support energy efficiency programs performed by or on behalf of that utility, provided that the ratepayer complies with this subsection.

(4) All of the following shall apply to a class of programs under this subsection:

(A) A member of the transmission or industrial electric rate class shall be eligible to apply to participate in the self-managed energy efficiency program class if the charges to the applicant, or to its predecessor in interest at the served property, under subdivision (d)(3) of this section were a minimum of:

(i) $1.5 million during calendar year 2008; or

(ii) $1.5 million during calendar year 2017.

(B) A cost-based fee to be determined by the Commission shall be charged to the applicant to cover the administrative costs, including savings verification, incurred by the Commission and Department. The Commission shall determine procedures for savings verification. Such procedures shall be consistent with savings verification procedures established for entities appointed under subdivision (d)(2) of this section and, when determined to be cost-effective under subdivision (L) of this subdivision (4), with the requirements of ISO-New England for the forward capacity market (FCM) program.

(C) An applicant shall demonstrate to the Commission that it has a comprehensive energy management program with annual objectives. Achievement of certification of ISO standard 14001 shall be eligible to satisfy the requirements of having a comprehensive program.

(D) An applicant eligible pursuant to subdivision (A)(i) of this subdivision (j)(4) shall commit to an annual average investment in energy efficiency and energy productivity programs and measures during each three-year period that the applicant participates in the program of not less than $1 million. An applicant eligible pursuant to subdivision (A)(ii) of this subdivision (j)(4) shall commit to an annual average investment in energy efficiency and energy productivity programs and measures during each three-year period that the applicant participates in the program of not less than $500,000.00. To achieve the exemption from energy efficiency charges related to natural gas under subdivision (3) of this subsection (j), an applicant shall make an additional annual energy efficiency investment in an amount not less than $55,000.00. As used in this subsection (j), "energy productivity programs and measures" means investments that reduce the amount of energy required to produce a unit of product below baseline energy use. Baseline energy use shall be calculated as the average amount of energy required to make one unit of the same product in the two years preceding implementation of the program or measure.

(E) Participation in the self-managed program includes efficiency and productivity programs and measures applicable to electric and other forms of energy. A participant may balance investments in such programs and measures across all types of energy or fuels

without limitations.

(F) A participant shall provide to the Commission and Department annually an accounting of investments in energy efficiency and energy productivity programs and measures and the resultant energy savings in the form prescribed by the Commission, which may conduct reasonable audits to ensure the accuracy of the data provided.

(G) The Commission shall report to the General Assembly annually on or before April 30 concerning the prior calendar year's class of self-managed energy efficiency programs. The report shall include identification of participants, their annual investments and resulting savings, and any actions taken to exclude entities from the program.

(H) Upon approval of an application by the Commission, the applicant shall be able to participate in the class of self-managed energy efficiency programs.

(I) On a determination that, for a given three-year period, a participant in the self-managed efficiency program class did not meet or has not met the commitment required by subdivision (D) of this subdivision (j)(4), the Commission shall terminate the participant's eligibility for the self-managed program class.

(i) On such termination, the former participant will be subject fully to the then existing charges applicable to its rate class without exemption under subdivision (3) of this subsection (j), and within 90 days after such termination shall pay:

(I) the difference between the investment it made pursuant to the self-managed energy efficiency program during the three-year period of noncompliance and the full amount of the charges and rates related to energy efficiency it would have incurred during that period absent exemption under subdivision (3) of this subsection (j); and

(II) the difference between the investment it made pursuant to the program within the current three-year period, if different from the period of noncompliance, and the full amount of the charges and rates related to energy efficiency it would have incurred during the current period absent exemption under subdivision (3) of this subsection (j).

(ii) Payments under subdivision (i) of this subdivision (4)(I) shall be made to the entities to which the full amount of charges and rates would have been paid absent exemption under subdivision (3) of this subsection (j).

(iii) A former participant may not reapply for membership in the self-managed program after termination under this subdivision (4)(I).

(J) A participant in the self-managed program class may request confidentiality of data it reports to the Commission if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If such confidentiality is requested, the Commission shall disclose the data only in accordance with a protective agreement approved by the Commission and signed by the recipient of the data, unless a court orders otherwise.

(K) Any data not subject to a confidentiality request under subdivision (J) of this subdivision (4) will be a public record.

(L) A participant in the self-managed program class shall work with the Department of Public Service to determine whether it is cost-effective to submit projects to ISO-New England for payments under the FCM program.

(i) As used in this subdivision (L), "cost-effective" requires that the estimated payments from the FCM program exceed the incremental cost of savings verification necessary for submission to that program.

(ii) If the Department determines the submission to be cost-effective, then an entity appointed to deliver electric energy efficiency services under subdivision (d)(2) of this section shall submit the project to the FCM program for payment and any resulting payments shall be remitted to the Electric Efficiency Fund for use in accordance with subdivision (e)(1)(A) of this section.

(M) A participant in the self-managed program class may receive funding from an energy program administered by a government or other entity that is not the participant and may count such funds received as part of the annual commitment to its self-managed energy efficiency program.

(N) If, at the end of every third year after an applicant's approval to participate in the self-managed efficiency program (the three-year period), the applicant has not met the commitment required by subdivision (4)(D) of this subsection, the applicant shall pay the difference between the investment the applicant made while in the self-managed energy efficiency program and the full amount of charges and rates that the applicant would have incurred absent the exemption under subdivision (3) of this subsection. This payment shall be made no later than 90 days after the end of the three-year period to the entities to which the full amount of those charges and rates would have been paid absent the exemption.

(5) This subdivision applies to a transferee of all or substantially all of the assets at the served property of an entity approved to participate in the self-managed energy efficiency program. The Commission shall allow the transferee to continue as a participant in the self-managed energy efficiency program class in the same manner and under the same terms and conditions that the transferor participant was authorized to participate, provided:

(A) the transferor participant met the requirements of subdivision (4)(A) of this subsection (j) and the transferee otherwise meets the requirements of this subsection; and

(B) the transferee assumes the obligation to fulfill any outstanding commitment of the transferor participant under subdivision (4)(D) of this subsection. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 183, § 5; 1975, No. 56, § 1; 1979, No. 147 (Adj. Sess.), § 2; 1981, No. 245 (Adj. Sess.), § 2; 1989, No. 112, § 6, eff. June 22, 1989; 1995, No. 182 (Adj. Sess.), § 27a, eff. May 22, 1996; 1999, No. 60, § 1, eff. June 1, 1999; 1999, No. 143

(Adj. Sess.), § 28; 2001, No. 145 (Adj. Sess.), §§ 1, 2; 2005, No. 61, § 6; 2005, No. 208 (Adj. Sess.), § 10; 2007, No. 79, § 6, eff. June 9, 2007; 2007, No. 92 (Adj. Sess.), § 12; 2007, No. 190 (Adj. Sess.), §§ 52, 53, eff. June 6, 2008; 2009, No. 45, §§ 14, 14a, eff. May 27, 2009; 2009, No. 54, § 104, eff. June 1, 2009; 2009, No. 1 (Sp. Sess.), § E.235.1, eff. June 2, 2009; 2011, No. 47, §§ 3, 20b, eff. May 25, 2011; 2011, No. 170 (Adj. Sess.), § 16; 2013, No. 89, §§ 2, 3; 2013, No. 142 (Adj. Sess.), § 49; 2013, No. 184 (Adj. Sess.), § 1; 2015, No. 56, §§ 15, 15a; 2017, No. 77, § 6; 2017, No. 102 (Adj. Sess.), § 1; 2017, No. 150 (Adj. Sess.), § 1; 2019, No. 31, § 14; 2019, No. 79, § 20, eff. June 20, 2019.)

VERMONT

Proposed Rules Postings
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Deadline For Public Comment

Deadline: Jan 20, 2020

Please submit comments to the agency or primary contact person listed below, before the deadline.

Rule Details

Rule Number:	19P082
Title:	Rule 3.700 Pole Attachments.
Type:	Standard
Status:	Proposed
Agency:	Vermont Public Utility Commission
Legal Authority:	Sections 19, and 20 of Act No. 79 of 2019; and 30 V.S.A. §§ 203 and 209.
Summary:	The amended rule changes how rental rates are calculated for entities seeking to attach equipment to utility poles in Vermont. The current rule charges different rates depending on

	the type of service an attaching entity provides. The amended rule will charge a single rate for all attachers, no matter what type of service they provide.
Persons Affected:	Amended Rule 3.706(D)(1) will affect: (1) utilities that own utility poles in Vermont and their ratepayers and (2) entities that attach equipment to utility poles in Vermont and their customers.
Economic Impact:	The overall economic impact of amended Rule 3.706(D)(1) is projected to be an increase of less than $776,973 annually in costs to public utilities. Pole-attachment fees for attachers (telecommunications and cable companies) will be reduced, which will reduce revenues to pole owners (Vermont utility companies and their ratepayers).
Posting date:	Dec 11,2019

Hearing Information

Information for Hearing # 1

Hearing date:	01-10-2020 09:30 AM ADD TO YOUR CALENDAR
Location:	Susan M. Hudson Hearing Room, 3rd Floor People's United Bank Builidng
Address:	112 State Street
City:	Montpelier
State:	VT
Zip:	05620-2701
Hearing Notes:	

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

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Website Address: https://puc.vermont.gov/about-us/statutes-and-rules
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Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.

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SEND A COMMENT

Keyword Information

Keywords:

Pole attachments
Pole attachment rates
Pole attachment rental
Utility poles
Pole rental
Pole rates

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	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: Louise Corliss, APA Clerk **Date of Fax:** December 11, 2019

RE: The "Proposed State Rules " ad copy to run on **December 19, 2019**

PAGES INCLUDING THIS COVER MEMO: **2**

NOTE **8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact Louise Corliss at 802-828-2863, or E-Mail louise.corliss@vermont.gov, Thanks.

PROPOSED STATE RULES

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By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at https://secure.vermont.gov/SOS/rules/ . The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Rule Governing Outage Reporting Requirements for Originating Carriers and Electric Power Companies.

Vermont Proposed Rule: 19P081

AGENCY: Vermont Enhanced 9-1-1 Board

CONCISE SUMMARY: This rule established to meet the requirements of VT Act 79, § 25 (2019). The information collected through the protocols established in this rule is necessary for the 911 Board to assess the impact of the various types of service outages on the ability of Vermonters to reach 911.

FOR FURTHER INFORMATION, CONTACT: Barbara Neal, Vermont Enhanced 911 Board 100 State Street, 4th Floor, Montpelier, VT 05602-6501 Tel: 802-828-4911 Fax: 802-828-4109 Email: barbara.neal@vermont.gov. URL: https://e911.vermont.gov.

FOR COPIES: Soni Johnson, Vermont Enhanced 911 Board 100 State Street, 4th Floor, Montpelier, VT 05602-6501 Tel: 802-828-4911 Fax: 802-828-4109 Email: soni.johnson@vermont.gov.

Rule 3.700, Pole Attachments.

Vermont Proposed Rule: 19P082

AGENCY: Public Utility Commission

CONCISE SUMMARY: The amended rule changes how rental rates are calculated for entities seeking to attach equipment to utility poles in Vermont. The current rule charges different rates depending on the type of service an attaching entity provides. The amended rule will charge a single rate for all attachers, no matter what type of service they provide.

FOR FURTHER INFORMATION, CONTACT: John C. Gerhard, Esq. Vermont Public Utility Commission 112 State Street, Montpelier, VT 05620-2701 Tel: 802-828-2358 Fax: 802-828-3351 Email: john.gerhard@vermont.gov URL: https://puc.vermont.gov/about-us/statutes-and-rules.

FOR COPIES: Micah Howe, Esq. Vermont Public Utility Commission 112 State Street, Montpelier, VT 05620-2701 Tel: 802-828-2358 Fax: 802-828-3351 Email: micah.howe@vermont.gov.
