

**Before the
VERMONT PUBLIC UTILITY COMMISSION**

Petition of Vermont Department of Public)	
Service for rulemaking to amend Public)	Case No. 19-0252-RULE
Utility Commission Rule 3.708)	
)	

COMMENTS OF CTIA

CTIA¹ respectfully submits its comments in response to the Vermont Public Utility Commission’s (“Commission’s”) Order Opening Rulemaking Proceeding (“Order”) entered February 7, 2019 in the above-captioned docket.

CTIA appreciates the Commission granting the Petition of the Department of Public Service for a Rulemaking to Amend Commission Rule 3.708 of the Commission’s Pole Attachment and Make-ready Rules, filed January 24, 2019 (the “Petition”). In its Petition, the Department of Public Service (“DPS”) requested that the Commission consider amending Rule 3.700 to revise the procedures for pole-attachment applications and make-ready work.² The Commission’s work to update, streamline, and improve its pole attachment rules will promote network deployment as consumer demand for wireless data continues to grow at a rapid pace, and the DPS should be commended for taking a proactive approach to removing barriers to effective deployment.

The Commission has long supported wireless deployment. Nevertheless, revisiting its pole attachment rules to ensure they are fair to all parties while facilitating wireless deployment

¹ CTIA – The Wireless Association (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² See Petition at 1.

is appropriate as the wireless industry is presently engaged in deploying advanced 4G and 5G networks. Small cells are being deployed across the nation today to support these networks, and access to infrastructure, such as utility poles, is essential to such deployments. Accenture research projects that small cell deployments will escalate rapidly from a nationwide cumulative deployment of roughly 52,000 in 2017 to over 800,000 nationwide by 2026.³ Accenture also projects that this investment will lead to \$500 billion in national GDP growth, three million jobs created, and over \$275 billion invested in 5G wireless infrastructure nationwide, but only if wireless infrastructure can be deployed efficiently.⁴

The wireless industry is a driver of Vermont's economy. There are over 6,700 wireless-related jobs in Vermont and the wireless industry is responsible for a \$495 million annual contribution to Vermont's GDP.⁵ Deployment of 5G networks will only enhance the wireless industry's contribution to Vermont's economy. In Burlington, 5G deployment will lead to an estimated 394 new jobs and \$64 million in new GDP; in Montpelier, 5G deployment will lead to an estimated 70 new jobs and \$11 million in new GDP; and in St. Johnsbury, 5G deployment will lead to an estimated 58 new jobs and \$9 million in new GDP.⁶ Benefits like these will be felt across Vermont wherever 5G networks are deployed. The Commission can help ensure that these benefits are realized fully and promptly by modifying its rules to better facilitate attachment of wireless antennas to utility poles.

³ See *accenturestrategy*, "Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities" (February 2017) at 11, available at <https://api.ctia.org/wp-content/uploads/2017/02/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf> ("Smart Cities Report").

⁴ See *accenturestrategy*, "Impact of Federal Regulatory Review on Small Cell Deployment" (March 12, 2018) at 3, available at https://api.ctia.org/docs/default-source/default-document-library/small-cell-deployment-regulatory-review-costs_3-12-2018.pdf.

⁵ See Smart Cities Report; see also <https://www.ctia.org/positions/infrastructure>.

⁶ See *id.*

CTIA largely supports the DPS’s proposed rule changes,⁷ which would help streamline the pole attachment process to the benefit of attachers and consumers and meet the DPS’s stated goal of “advanc[ing] Vermont’s interest in deployment of broadband services and further[ing] state telecommunications policy and planning goals pursuant to 30 V.S.A. §202c(b).”⁸ In particular, CTIA supports the DPS’s proposed timelines and self-help remedies for failure to meet make-ready deadlines,⁹ as well as the proposed allowances for safe attachments above the communications space, which is important space for efficient deployment.¹⁰

Under the Commission’s regulatory oversight, the utility pole attachment process in Vermont has been efficient. Nevertheless, as improvements to pole attachment processes have been implemented in the thirty states subject to federal jurisdiction over utility pole attachments, it is wise for the Commission to examine its rules and processes to ensure they are well-aligned with those applicable in federally-regulated states. In particular, the Commission should apply reasonable limitations on use and implementation of the one touch make-ready (“OTMR”) system in the Proposed Rules to create a balanced approach that promotes broadband and wireless deployment while ensuring the safety and reliability of electric and telecommunications infrastructure.

To that end, CTIA suggests that the Proposed Rules incorporate the distinction between “simple” and “complex” make-ready as a threshold for one-touch make-ready work, as codified in the Federal Communications Commission’s (“FCC’s”) August 2018 Order in WC Docket 17-84, and limit one touch make-ready to “simple” make-ready only.¹¹ The FCC OTMR Order

⁷ Petition at Attachment 1 (the “Proposed Rules”).

⁸ Petition at 1.

⁹ See Proposed Rules at Rule 3.708(E), (J).

¹⁰ See Proposed Rules at Rule 3.708(D), (J)(3).

¹¹ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket No. 17-84 and WT Docket No. 17-79, FCC 18-11 (rel. Aug. 3, 2018) (the “FCC OTMR Order”).

divided make-ready work into “simple” and “complex” make-ready, defining simple make-ready as 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.”¹² Importantly, the FCC OTMR Order allows one-touch make-ready only for simple make-ready, not for complex make-ready work nor for work above the communications space. The FCC OTMR Order defines complex make-ready as “[t]ransfers 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.”¹³ It also clarifies that all work involving wireless attachments, apart from work on a wireless attachment’s wireline backhaul facilities, are complex make-ready, as are all pole replacements.¹⁴

In the FCC OTMR Order, the FCC indicated that a properly structured OTMR regime will enable “new attachers [to] save considerable time in gaining access to poles ... and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments. A better aligning of incentives for quicker and less expensive attachments will serve the public interest through greater broadband deployment and competitive entry.”¹⁵ The FCC also found that OTMR will speed both 5G and broadband deployment, accomplishing these goals, in large part, by putting “the parties most interested in efficient broadband deployment – new attachers – in a position to control the survey and make-ready process ... [while t]he current

¹² See FCC OTMR Order at para 17.

¹³ FCC OTMR Order at para. 18.

¹⁴ See *id.*

¹⁵ FCC OTMR Order at para. 16.

process often results in delay ... and high costs for new attachers.”¹⁶ The FCC also concluded that with appropriate protections in place, OTMR would not detract from safety of workers or the public.¹⁷ The OTMR process adopted by the FCC for “simple” make-ready effectively reconciles the goals of facilitating broadband and wireless deployment and ensuring the safety and reliability of existing electric and communications infrastructure, and therefore a substantially comparable process should be adopted by the Commission.

CTIA also suggests that the DPS’s new definition of “Communications Space”¹⁸ should be amended either by striking the parenthetical within the definition, or, preferably, by adopting the FCC’s definition: “The term *communications space* means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.”¹⁹

CTIA urges the Commission to amend its pole attachment rules, with the refinements described herein, to help ensure that attachers can realize the benefits of OTMR for simple make-ready, while still ensuring worker and public safety and protecting the reliability of existing electric and communications infrastructure – a priority for the wireless industry when dealing with pole attachments. To assist the Commission, CTIA has attached a suggested redline of changes to the Proposed Rules. CTIA looks forward to continuing to work with the Commission and DPS to achieve their laudable goal of making infrastructure deployment more efficient in Vermont.

Respectfully submitted,

By: /s/ Phillip S. Bixby

Phillip S. Bixby, Esq.
Vermont Bar No. 3423

¹⁶ FCC OTMR Order at paras. 21-22.

¹⁷ See FCC OTMR Order at paras 26-27.

¹⁸ See Proposed Rules at Rule 3.702 (D).

¹⁹ 47 C.F.R. § 1.1402(r) (emphasis in original).

Geoffrey G. Why
Verrill Dana, LLP
One Portland Square
Portland, ME 04101-4054
(207) 253-4518
pbixby@verrilldana.com

Benjamin Aron
Matthew DeTura
CTIA
1400 16th Street NW
Suite 600
Washington, D.C. 20036
(202) 736-3683

March 8, 2019