

Before the
NEW HAMPSHIRE DEPARTMENT OF ENERGY
COMMENTS OF CTIA
REGARDING AMENDMENTS TO PUC 1300 (UTILITY POLE ATTACHMENTS)

CTIA¹ appreciates the opportunity to comment on the Department of Energy’s (“Department’s”) September 23, 2021 Request for Advance Public Comment on Subject Matter of Possible Rulemaking (“Request”).

The Request seeks comment on potential amendments to the Department’s rules at Puc 1300 *et seq.*, governing pole attachments. As noted in the Request, the Department is required by Senate Bill 88 (2021) to “adopt rules under 541-A implementing the provisions of One Touch Make Ready (“OTMR”) as adopted by the Federal Communications Commission [“FCC”] in 47 CFR 1.1411(j).”²

CTIA supports the implementation of OTMR in New Hampshire. The approach mandated by the Legislature is prudent and will help streamline and facilitate infrastructure deployment in the State to the benefit of New Hampshire’s consumers and economy.

Because this is an opportune time to consider them, the Department should also propose (and allow stakeholders to discuss) other steps to streamline deployment alongside the implementation of OTMR, including reasonable deadlines for determination of an application’s

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 Request at 6(a).

completeness, self-help remedies outside the communications space, and expanded use of qualified third-party contractors for survey and make-ready. These concrete steps to more efficient deployment, which have all been successfully implemented by the FCC, will further help to drive industry investment in New Hampshire.

I. ONE-TOUCH MAKE-READY WILL HELP STREAMLINE AND FACILITATE INFRASTRUCTURE DEVELOPMENT IN NEW HAMPSHIRE

CTIA is encouraged to see the Legislature and Department work to streamline and facilitate infrastructure deployment, promoting industry investment and the expansion of broadband service in New Hampshire.

The wireless industry continues to invest in and deploy advanced networks to communities throughout America, and in 2020 invested nearly \$30 billion in networks, a five year high.³ Over the past two years alone, wireless providers have deployed over 67,000 cell sites, more than the previous seven years combined.⁴ In New Hampshire alone, CTIA research estimates a \$5.3 billion growth in state GDP and nearly 14,000 new jobs created over the next decade as a result of 5G wireless deployment.⁵

The FCC's OTMR rules have promoted efficient broadband deployment, while proving fair and effective at balancing the needs of pole owners and pole attachers. One of the most significant benefits of OTMR is that it unburdens the pole owner, allowing the most motivated parties (the attachers) to expedite deployment should they choose to do so, while still promoting

³ See CTIA.org, "2021 Annual Survey Highlights" (Jul. 27, 2021), available at <https://www.ctia.org/news/2021-annual-survey-highlights> (last accessed Nov. 12, 2021).

⁴ *Id.*

⁵ See CTIA.org, "5G Economy Map," available at <https://www.ctia.org/the-wireless-industry/the-5g-economy/map/states/New%20Hampshire/overall> (last accessed Nov. 12, 2021).

safe attachment practices.⁶ Not only has the FCC adopted OTMR rules, applicable to the 28 states in which it has jurisdiction over pole attachments, but a number of other states have done so independently as well.⁷ This demonstrates that OTMR is a widely accepted step towards promoting timely deployment.

II. THE DEPARTMENT SHOULD PROPOSE RULES INCORPORATING THE FCC'S ONE-TOUCH MAKE-READY RULES INTO ITS OWN

CTIA encourages the Department to meet its legislative mandate to implement the FCC's OTMR provisions simply by proposing rules incorporating the FCC's existing rules into its own. There is no need for the Department to "reinvent the wheel" by crafting new rules to implement a regulatory system that already has them. To that end, both the FCC and other states have compiled a significant record on the issues that the Department can consult in its forthcoming rulemaking.

In addition to efficiency, adopting the FCC rules promotes consistency, helping encourage investment in New Hampshire by ensuring that attachers do not have to familiarize themselves with a differing set of rules to avail themselves of OTMR in the state.

⁶ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) ("2018 FCC OTMR Order").

⁷ See Public Notice, *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101 (Mar. 19, 2020). The states not listed on the Notice are subject to federal jurisdiction, but additionally, a number of states that have reverse-preempted the FCC's pole attachment authority have nonetheless adopted pole attachment rules identical or substantially similar to the FCC's. See, e.g. Public Service Commission of West Virginia, *Commission Order*, General Order No. 261 (Dec. 5, 2019), as codified at 150 C.S.R. 38 *et seq.*; Pennsylvania Public Utility Commission, *Final Rulemaking Order*, L-2018-3002672 (Sep. 3, 2019), as codified at 52 Pa. Code §77.1 *et seq.* Other states with their own pole attachment rules have nonetheless adopted (or are presently considering) one-touch make-ready provisions substantially similar to the FCC's. See, e.g. 807 Ky. Admin. Regs. 5:015(4)(10) (Kentucky rules allowing for one-touch make-ready); Maine Pub. Util. Comm'n, Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2020-00281 (Apr. 8, 2021) (adopting one-touch make-ready provisions in Maine); Vermont Pub. Util. Comm'n, Rule 3.708 (L) and (M) *as amended* Feb. 1, 2020 (implementing one-touch make-ready provisions in Vermont). There are other states, such as Illinois, that have partial jurisdiction over pole attachments. Illinois's jurisdiction over pole attachments, for instance, does not include jurisdiction over wireless attachments.

CTIA notes that for the sake of clarity, adopting the provisions of 47 CFR §1.1411(j) will require the Department to adopt a few additional FCC provisions that are found outside that section itself. In particular, the terms “make ready,” “simple make-ready,” and “complex make-ready” all appear in Section 1.1411(j), but are defined in 47 CFR § 1.1402. The Department should therefore amend Puc 1302 to incorporate those definitions.

III. THE DEPARTMENT SHOULD CONSIDER OTHER STEPS TO STREAMLINE DEPLOYMENT CONSISTENT WITH FCC REFORMS

At the Department’s October 20th workshop in this proceeding, parties discussed the scope of the future rulemaking. While the Legislature has required the Department to implement the FCC’s OTMR provisions, this certainly does not limit the Department from considering other steps within its authority to promote and streamline infrastructure deployment. Indeed, because the Department *must* propose amendments to implement OTMR in the forthcoming rulemaking, this would be an opportune time for the Department to look holistically at Puc 1301-1303 and make changes at the same time rather than piecemeal.

CTIA recommends that as the Department considers proposed rules to implement OTMR, it should also propose, for stakeholder feedback, related amendments to streamline deployment. In particular, it should consider the following steps already taken by the FCC:

First, the Department should propose expanding the self-help remedies in Puc 1303.12 (g) and (h) to include work above the communications space on a pole.⁸ The FCC took this step in 2018, determining that complaints were insufficient as a remedy for missed deadlines for work above the communications space. The FCC “expect[ed] the availability of self-help above the communications space [would] strongly encourage utilities and existing attachers to meet their

⁸ Additionally, to the extent that the Department incorporates the FCC’s dichotomy for simple vs. complex make-ready – as CTIA suggests it should – self-help should be available for both.

make-ready deadlines and give new attachers the tools to deploy quickly when they do not.”⁹

This expansion should be accompanied by a requirement for utilities to maintain a list of approved third-party contractors for complex make-ready and make-ready above the communications space, such as in the FCC’s rules at 47 C.F.R. §1.1412(a).

Second, the Department should propose reasonable timelines within which utilities must determine whether an application is complete, such as the timelines found in 47 C.F.R. §1.1411(c). The FCC’s rules require a utility to determine the completeness of an application within ten days (five days for resubmitted applications addressing a rejection). While Puc 1303.04(b) implements the same 45/60 day “shot clocks” for application review and survey as the FCC, those clocks begin after a completed application is submitted – but Puc 1301 *et seq.* does not presently lay out standards for completeness or a timeline for application completeness to be determined.

Third, the Department should propose allowing attachers to use qualified third-party contractors for surveys and simple make-ready. Currently, Puc 1303.12 allows for the use of utility-approved third-party contractors for survey and make-ready, but only when a pole owner has failed to meet its prescribed deadlines. In contrast, the FCC’s rules allow for the use of qualified third-party contractors for all surveys and make-ready. As noted above, utilities are required to maintain a list of approved third-party contractors for complex make-ready and make-ready above the communications space, but a utility is also allowed the option of keeping a list of approved third-party contractors for surveys and simple make-ready.¹⁰ Under the FCC’s rules attachers are allowed to request that qualified contractors be added to the utility’s list, or

⁹ 2018 FCC OTMR Order at paras. 97-99. The FCC had already implemented self-help remedies for work within the communications space in 2011.

¹⁰ *See* 47 C.F.R. §1.1412(b).

