

Before The  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION  
Albany, New York 12223-1350

Proceeding to Review Certain Pole  
Attachment Rules

Case 22-M-0101

**COMMENTS OF OTTC ON STAFF WHITE PAPER**

Ontario Telephone Company, Inc., Trumansburg Telephone Company, Inc., Fingerlakes Communications Group, Inc. d/b/a Upstate Fiber Networks, and NetSpeed Management, Inc. d/b/a GoNetspeed (collectively, “OTTC”) commend the Commission and Staff for their efforts to bring New York into the company of over thirty other states that have adopted and are enjoying the advantages of one-touch make-ready (“OTMR”) processes established by the Federal Communications Commission (“FCC”) some five and a half years ago, or modeled on those FCC rules. 47 C.F.R § 1.1411(j);<sup>1</sup> see *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Dkt. No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, 33 FCC Rcd 7705, ¶ 22 (Aug. 3, 2018) (“FCC OTMR Order”).<sup>2</sup>

The Commission should not stop there, however. Instead, it should go beyond the narrow implementation of OTMR and adopt additional reforms implemented by the

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<sup>1</sup> [eCFR :: 47 CFR 1.1411 -- Timeline for access to utility poles.](#)

<sup>2</sup> [https://docs.fcc.gov/public/attachments/FCC-18-111A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/FCC-18-111A1_Rcd.pdf).

FCC and multiple other states to facilitate and hasten the deployment of critically-needed broadband networks in the Empire State. These include such modern improvements as self-help, both within and outside the communications space, and use of qualified contractors.

In addition, the Commission should proceed with the Staff's recommendation to adopt an accelerated dispute resolution mechanism, but, like other states, with a definite and substantially shorter decisionmaking deadline than the aspirational 90-day time frame the Staff suggests.

Adopting these reforms will allow New York to enjoy their benefits in parity with the majority of other states. Failure to do so will result in the state's being left behind other states, including several nearby states, in the ability to attract broadband investment to serve the needs of its citizens.

## **I. OTTC**

OTTC (including its affiliates) is a high-speed fiber internet provider serving residential and business customers in Maine, Alabama, Connecticut, Massachusetts, Missouri, New York, Pennsylvania, Vermont, and West Virginia. Adding thousands of new service areas every year, OTTC is one of the largest independent internet providers in the east.

In the process of these deployments, OTTC has implemented or expects to implement thousands of pole attachments, using the full range of pole attachment methodologies — conventional make-ready by the pole owner, self-help, and one touch make-ready (OTMR).

## II. THE MAJORITY OF STATES ENJOY THE FCC REFORMS

The FCC significantly reformed its pole attachment rules five and one-half years ago in the August 2018 OTMR Order. Among the improvements adopted by the FCC were OTMR, extension of the self-help remedy to make-ready outside the communications space, and expanded use of contractors. The FCC rules are directly applicable in twenty-six states throughout the country. *States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 10-101, Public Notice, DA 22-630 (June 13, 2022)<sup>3</sup> (states that have not adopted their own regulations are subject to the FCC's rules).

Even among the states that have assumed jurisdiction over pole attachments, the trend is toward adopting pole attachment rules modeled on the FCC 2018 rules, including OTMR procedures, self-help both within and outside the communications space, use of contractors, and other reforms. By modeling their rules on the FCC rules and practices, such states (1) conform their regulations to the state of the art across the country and (2) promote regulatory consistency for providers deploying broadband facilities in multiple states, with corresponding improvements in efficiency.

For example, just to the east, in January 2020, the Vermont Public Utility Commission amended its rules to adopt OTMR and self-help provisions similar to the FCC's. See VT Rule 3.708 Amendments.<sup>4</sup> Similarly, the West Virginia Public Service Commission assumed jurisdiction by adopting rules, effective in February 2020, very

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<sup>3</sup> <https://docs.fcc.gov/public/attachments/DA-22-630A1.pdf>.

<sup>4</sup> *Petition of Vermont Department of Public Service for Rulemaking to Amend Public Utility Commission Rule 3.708*, Case No. 19-0252, Adopted Rule 3.700, Pole Attachments (Jan. 24, 2020) (<https://epuc.vermont.gov/?q=downloadfile/396153/138010>) ("VT Rules").

similar, if not identical, to the FCC's.<sup>5</sup> Neighboring Pennsylvania also assumed jurisdiction and adopted rules, effective March 18, 2020, incorporating by reference the entirety of the FCC rules.<sup>6</sup> Maine, effective in April 2021, adopted make-ready, OTMR, self-help, and contractor rules largely based on the FCC rules.<sup>7</sup> Connecticut adopted in essence the FCC OTMR provisions, along with self-help and contractor procedures, in May 2022.<sup>8</sup> In addition, as of December 1, 2022, New Hampshire added OTMR provisions substantively identical to the FCC's to its own existing rules, which already featured FCC-like self-help and contractor rules.<sup>9</sup> Adding these six states to the twenty-six where the FCC rules directly apply means that at least thirty-two states employ FCC-like OTMR and other procedures.

In considering what rules to adopt, the Department should be mindful that nationwide, significant investment is flowing into building the superior fiber networks society needs. If New York adopts rules that are less favorable to the deployment of fiber networks than other states, it will deter investment from flowing into the state. If it

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<sup>5</sup> <http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=52879&Format=PDF>

<sup>6</sup> *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Dkt. No. L-2018-3002672, Final Rulemaking Order (Aug. 29, 2019) (<http://www.puc.pa.gov/pcdocs/1634454.docx>).

<sup>7</sup> *Amendments to Chapter 880 of the Commission's Rules – Attachments to Joint Use Utility Poles; Determination and Allocation of Costs; Procedure*, Docket No. 2020-00281, Order Amending Rule and Statement of Factual and Policy Basis (Apr. 8, 2021) (<https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=110171&CaseNumber=2020-00281>). Maine's Chapter 880 rules, effective as of April 26, 2021, are available at <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=110352&CaseNumber=2020-00281>.

<sup>8</sup> PURA Investigation of Developments in the Third-Party Pole Attachment Process — Make-Ready, Dkt. No. 19-01-52RE01, Decision (May 11, 2022) ("CT PURA 2022 Order"), [https://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/4d4b047910a0304d8525883f0055a9cb/\\$FILE/190152RE01-051122.pdf](https://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/4d4b047910a0304d8525883f0055a9cb/$FILE/190152RE01-051122.pdf).

<sup>9</sup> N.H. Department of Energy Rules, En 1303.12(g)-(k), 1303.13, [https://gencourt.state.nh.us/rules/state\\_agencies/en1300.html](https://gencourt.state.nh.us/rules/state_agencies/en1300.html).

is slower, more complicated, and more expensive to build here, New York may be passed over for broadband investment. Conversely, if it is easier, quicker, and cheaper to deploy networks here, the state will attract investment. At least thirty-two states are operating under the FCC pole attachment rules or equivalents. The FCC rules are the state of the art for facilitating deployment of new networks and are the standard against which investors will assess the attractiveness of investing in New York. The Commission should adopt rules that make it at least as desirable to invest here as in those FCC states. OTTC respectfully urges the Commission to join the majority of states and adopt similar reforms, as set forth below.

### **III. ONE TOUCH MAKE-READY**

The Staff correctly recommends that the Commission adopt one touch make-ready procedures. OTMR will be a significant enhancement to the process for expanding broadband availability to New York's citizens. As the FCC described, "OTMR speeds broadband deployment by better aligning incentives than the current multi-party process. It puts the parties most interested in efficient broadband deployment — new attachers — in a position to control the survey and make-ready processes." FCC OTMR Order, ¶ 22. The Ninth Circuit, in affirming the FCC OTMR rules in their entirety, stated, "In adopting the One-Touch Make-Ready Order, the FCC intended to make it faster and cheaper for broadband providers to attach to already-existing utility poles." *City of Portland v. U.S.*, 969 F.3d 1020, 1049-50 (9<sup>th</sup> Cir. 2020).<sup>10</sup> The Staff concurs: "OTMR is expected to speed-up and reduce the cost of broadband deployment by

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<sup>10</sup> [City of Portland v. US, 969 F. 3d 1020 - Court of Appeals, 9th Circuit 2020 - Google Scholar.](#)

allowing the new attacher to prepare the pole more quickly by performing all of the work itself, rather than spreading the work across multiple attachers.” White Paper at 45.

Because it is a more efficient and cost-effective process, OTTC expects that it, and other providers, will utilize OTMR as a matter of course. The FCC concurs that OTMR will become, when applicable, the routine make-ready method, and a way to facilitate and expedite broadband projects: “[B]ecause this option will apply to the substantial majority of pole attachment projects, it will speed broadband deployment.” FCC OTMR Order, ¶ 17.

As the Staff recommends, the Commission should proceed to adopt OTMR modeled on the FCC rules as soon as practicable.

#### **IV. SELF-HELP**

The Commission can remove a major obstacle and source of delay to broadband deployment by following the example of the FCC, Vermont, West Virginia, Pennsylvania, and Maine and adopting a self-help remedy that includes both simple and complex make-ready, including in and above the electrical space. The availability of self-help at any place on the pole will allow requesting parties to get the work done when delays occur, or will provide an incentive for entities who insist on doing the work themselves to get it done on time. Either way, broadband deployment will be expedited and the citizens of New York will benefit correspondingly.

In its 2018 OTMR order, the FCC explained that it had previously confined the self-help remedy to the communications space, but it was time to change. The FCC noted that without self-help, the only remedy for nonperformance or delay that a new attacher has at its disposal is a complaint. That, however, is an “insufficient tool for

encouraging compliance with our deadlines and speeding broadband deployment. We expect the availability of self-help above the communications space will strongly encourage utilities and existing attachers to meet their make-ready deadlines and give new attachers the tools to deploy quickly when they do not.” FCC OTMR Order, ¶ 98.

The FCC acknowledged that work in the electrical space is different than in the communications space, but noted that its rules included safeguards to ensure the safe and proper performance of make-ready in the electrical space. These included maintaining the longer deadlines associated with complex make-ready work, so the self-help remedy would not be triggered prematurely; requiring use only of utility-approved contractors; and the ability of utilities to do the work themselves (on time) and thereby make use of the self-help remedy unnecessary. *Id.* ¶ 99.

Expansion of the self-help remedy beyond the communications space was one of the rulings in the FCC OTMR Order that was specifically challenged before the United States Court of Appeals. The Court had no trouble upholding the FCC’s decision:

Prior to the One-Touch Make-Ready Order, attachers could hire contractors to perform preparatory work only on the lower portion of a pole. The self-help rule lets the utility-approved contractors prepare the entire pole for attachment. *Id.* [FCC OTMR Order] ¶¶ 97–99. Petitioners argue that this expansion is contrary to Section 224(f)(2) because permitting attachers to hire contractors to work on the upper portion of poles jeopardizes safety. Yet, the rule has a number of provisions designed to mitigate any increased safety risks. For example, the rule gives a utility a ninety-day window to complete the preattachment work itself (thereby circumventing the rule’s contractor provisions entirely). *Id.* ¶ 99. The rule also requires new attachers to use a utility-approved contractor to perform the self-help work, and it requires the attacher to give the utility advanced notice of when the self-help work will occur so that the utility can be present if it wishes. *Id.* ¶¶ 99–106.

The rule represents a change from earlier rules on what self-help measures an attacher could perform, and the FCC explained that use of approved contractors would improve efficiency. *Id.* ¶ 97. A complaint

process in the old self-help rule allowed new attachers to file complaints when a utility was not preparing the pole in a timely fashion. This did not encourage efficiency. It was an “insufficient tool for encouraging [a utility’s] compliance with [the FCC’s] deadlines.” *Id.* ¶ 98. The FCC reasonably views the deployment of new 5G technology to be a matter of “national importance,” justifying extension of the self-help rule to promote timely installations. *Id.* ¶ 97. The self-help rule is thus not arbitrary or capricious.

*City of Portland v. United States*, 969 F.3d at 1051.

The Vermont PUC regulations enacted in January 2020 also permit self-help above the communications space. Rule 3.708(L)(2) provides that if the pole owner does not complete “Make-Ready work” within the specified time frame,<sup>11</sup> the new attaching entity may hire a contractor from the approved list to complete the “Make-Ready.” Under the Vermont rules, “Make-Ready” is a defined term that includes both Simple and Complex (*i.e.*, work in the electrical space) Make-Ready. VT Rule 3.702(I).

Likewise, West Virginia Rule 10.9.2, Pennsylvania’s adoption of the FCC rules, and Maine Ch. 880, § 2(A)(9), also permit the self-help remedy in both the communications and electrical spaces.

Self-help is an important tool that broadband providers should have available (and do have available in other states) when the standard make-ready processes fail. The Commission should proceed to adopt self-help provisions modeled after the FCC’s, Maine’s, Pennsylvania’s, and Vermont’s, permitting self-help both in and above the communications space.

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<sup>11</sup> Vermont imposes a uniform, 60-day deadline (extendable for large projects) for both simple and complex make-ready. Rule 3.708(D).

## V. CONTRACTORS

OTMR and self-help necessarily involve the use of contractors. The FCC's and most states' rules contain explicit provisions allowing use of contractors. However, these rules also govern the use of such contractors so as to protect the safety of the public and other personnel who work on the poles. Typically, these rules require that pole owners maintain lists of pre-approved contractors that may be used, impose qualifications upon those contractors, and require such contractors to adhere to applicable codes and safety practices. See, e.g., 47 C.F.R. 1.1412;<sup>12</sup> Maine Ch. 880, § 2(A)(10); VT Rule 3.708(K). As the Ninth Circuit recognized in *City of Portland*, these requirements are designed to mitigate risks, if any, that might arise from attachers performing make-ready work. 969 F.3d at 1051.

Along with the FCC's OTMR and self-help rules, the Commission also should adopt rules like the FCC's and those of many other states permitting use of contractors in OTMR, self-help, and other applicable make-ready situations.

## V. COLLECTIVE BARGAINING AGREEMENTS

What the Staff proposes to give with one hand, OTMR, it proposes to take away with the other, in its accompanying restriction of OTMR's use "only where the use of OTMR is consistent with existing collective bargaining agreements between the pole owners and CWA or another entity." White Paper at 45; see *id.* at 3, 45.<sup>13</sup>

The Staff's recommendations present a number of problems. First, the Staff's apparent concern is entirely speculative. There is no evidence in the record that any

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<sup>12</sup> [eCFR :: 47 CFR 1.1412 -- Contractors for survey and make-ready.](#)

<sup>13</sup> It is possible the Staff would raise the same concern if self-help were on the table.

collective bargaining agreement would prohibit the use of contractors by *non-Verizon* parties. By definition, under OTMR, the attaching party — not the utility — is doing the work. Likewise under a self-help scenario: there, the utility has failed to do the work and the attaching entity has taken over.

The only information in the record about collective bargaining agreements, so far as OTTC can tell, were several statements in the CWA’s April 7, 2022 comments. At *most*, these statements suggest that in 1974 then-New York Telephone “believe[d]” that company employees “normally” should do aerial work. Obviously, that was before the advent of telephone competition, when other parties attaching to poles was a non-issue. CWA also cites two MOAs between Verizon and CWA that “the Company” will not contract out work to non-union employees. Of course, that is not what is happening here; Verizon is not doing any work that it possibly could contract out. Furthermore, according to CWA’s comments, such MOAs expired in 2018 — around the time the FCC’s OTMR rules went into effect.<sup>14</sup>

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<sup>14</sup> There are very good reasons why those MOAs expired in 2018. In other state proceedings around that time, Verizon unequivocally advocated on the record in favor of the adoption of OTMR, self-help, and other FCC reforms. In Massachusetts, Verizon said: “Verizon MA agrees . . . that the Departments should adopt the FCC’s one-touch make-ready rules, including the rules governing the timeline for access to utility poles, *use of contractors*, and overlashing (47 C.F.R. §§ 1.1411, 1.1412 and 1.1415)” *Joint Rulemaking Pursuant to Executive Order No. 562 to Reduce Unnecessary Regulatory Burden to Amend 220 CMR 45.00*, Dkts. D.P.U. 19-76, D.T.C. 19-4, Reply Comments of Verizon New England, at 1 (Sept. 24, 2019) (emphasis added), <https://www.mass.gov/doc/dtc-19-4-verizon-new-england-inc-reply-comments/download>.

In Pennsylvania, Verizon was even more emphatic. “The simple truth is that the delay and regulatory uncertainty that would result from any course of action **other** than a straight adoption of the FCC rules would undermine the entire purpose of the Commission involving itself in this issue and would harm Pennsylvania’s interests in the race for broadband investment and 5G technology.” *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Dkt. No. L-2018-3002672, Comments of the Verizon Companies, at 9 (Oct. 29, 2018) (emphasis in original), [1591723.pdf \(pa.gov\)](https://www.fcc.gov/record/document/1591723.pdf).

Whether or not collective bargaining agreements affect the ability of non-utility attachers to perform work should not be determined on unsupported, conclusory assertions that the agreements say this or that. If the applicability or substance of the agreements is in question, then the relevant parties should provide those agreements for the Commission and interested parties to probe and examine. The Commission also always is free to obtain those agreements through its information-gathering authority.

Finally, it is surprising to see the Staff so eager to delegate the Commission's regulatory authority to nongovernmental entities in this way. Basically, the Staff's recommendation would cede the authority of elected officials (through their regulatory delegates) to entities that do not necessarily have the public interest at heart, and give such entities the uncontrolled ability to vitiate any OTMR or self-help remedy whenever they decided it was beneficial to their labor relations (whether legitimately or as a convenient excuse). The Commission should take a very hard look at any such recommendation.

## **VII. ALTERNATIVE POLE ATTACHMENT METHODS**

The Commission sensibly decided years ago that alternative pole attachment methods such as boxing and temporary attachments may be used to facilitate and accelerate broadband projects. *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Case 03-M-0432, Order Adopting Policy Statement on Pole Attachments at 5-6, and Policy Statement on Pole Attachments (Appendix A), at 6 (Aug. 6, 2004). The Commission should continue to permit such techniques, but should update them as recommended by the Staff and as respectfully suggested below.

OTTC concurs with the White Paper's statement:

DPS Staff does not support blanket restrictions on any of the pole attachment methods listed below. The pole attachment methods should comply with all industry standards and the NESC as a minimum. . . . Pole owners may not deny access to a pole based solely on the attachment method and must provide a rationale for such denial citing specific safety, reliability and code compliance issues. . . . Potentially acceptable pole attachment methods include, but are not limited to the following:

- Pole-top attachments;
- Strand-mounted attachments and Overlashing;
- Use of Boxing & Bracketing;
- Extension arms; and
- Temporary attachments.

White Paper at 45.

The proof is in the pudding, however. How the “no blanket restrictions” mandate is implemented must be crafted carefully, so that exceptions do not swallow the rule.

First, it should be explicit that the foregoing methods are presumed acceptable subject only to narrow, specific exceptions. If the pole owner wishes to deny an attachment that uses these methods, such denial must be made on a case-by-case, individual pole basis and must cite, in the words of the Staff, the “specific safety, reliability and code compliance issues” that the owner claims justify the denial. The burden of overcoming the presumption in favor of the use of alternative attachment methods must be on the owner.

Moreover, unjustified restrictions in the Commission’s existing rules must be eliminated. For example, restrictions on the use of such techniques to only situations where the cost of conventional attachments is “exorbitant” or where the utility itself uses such techniques, must be eliminated. See Order Adopting Policy Statement on Pole Attachments at 5-6, and Policy Statement on Pole Attachments (Appendix A), at 6. In addition, the existing language in the White Paper (p. 45) to the effect that alternative

methods may be used “when deemed necessary and have been reviewed and approved by the pole owners” is self-contradictory to the Staff’s recommendation that denial may be based only on specific safety, reliability, and code compliance concerns. This language in the White paper should not be followed.

The Maine Public Utilities Commission’s Pole attachment rules approach this issue in a way the Commission should consider and adopt. In Maine, the following are presumed unreasonable:

- A prohibition on boxing poles which can be safely accessed by emergency equipment and bucket trucks or ladders provided that such technique complies with the requirements of applicable codes.
- A prohibition on using extension arms to clear obstacles, improve alignment, or provide space that would not otherwise be available without a replacement pole, to the extent that the installation of extension arms complies with applicable codes.
- A prohibition against attachments below existing attachments, to the extent that space is not available above existing attachments along the proposed route (or most of the route) of the additional attachments.
- A prohibition against pole top attachments and the use of space above the primary or secondary power for wireless attachments, to the extent such proposed pole top installations comply with the NESC.

Maine PUC Regulations, Ch. 880, § 2(B).<sup>15</sup>

Importantly, the presumption may only be overcome by “clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable or unsafe result.” *Id.*, § 2(C). The Maine rules, therefore, require an individualized determination that “unique” circumstances exist, and place the burden on the owner (the party seeking to overcome the

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<sup>15</sup> [https://www.maine.gov/mpuc/sites/maine.gov/mpuc/files/inline-files/Ch%20880%20Order%20Adopting%20and%20Dated%20Rule\\_1.pdf](https://www.maine.gov/mpuc/sites/maine.gov/mpuc/files/inline-files/Ch%20880%20Order%20Adopting%20and%20Dated%20Rule_1.pdf).

presumption) to show that such unique circumstances lead to an unreasonable or unsafe result. This construct appears consistent with the Staff's recommendation on p. 45 of the White Paper, and the Commission should adopt it.

Finally, the Commission should always keep in mind that, in general, boxing, extension arms, and other alternative attachment techniques are permitted by the NESC. The useable communications space on a given pole is expanded by the use of techniques such as boxing and extension arms by efficiently using existing space.<sup>16</sup> Even where there is a pre-existing technical violation of standards, by using boxing or extension arms, a new attacher may place facilities on a pole consistent with the NESC. If a new attachment may be made that is, in itself, compliant with the NESC, the NESC does not require immediate correction of the noncompliance before attachment under most circumstances. NESC Rule 013B(4) provides:

[I]f adding a new item, or replacing or rearranging existing items would not, in itself, either (1) create a structural, clearance, or grounding nonconformance, or (2) worsen an existing non-conformance, then the addition, replacement, or alteration may be performed prior to correcting existing non-compliance items.

Accordingly, if there is compliant open space on a pole, but one or more facilities are out of compliance, the new facility may be placed, and the NESC does not require the new attacher, or prior attachers, or the pole owners, to pay to immediately bring the pole into compliance.<sup>17</sup> This allows the pole owners to correct existing violations in the ordinary course of business without delaying deployment of critical broadband infrastructure. Accordingly, this Commission should adopt rules encouraging alternative

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<sup>16</sup> See NYS Public Service Commission, Case 22-M-0101, Comments of OTTC in Response to Notice of Seeking Comments, filed 4/7/22 at 8-14.

<sup>17</sup> NESC Rule 214A(5).

“new, less expensive pole attachment methods” to reduce the burden and delay of pole replacements and other make-ready work, to the benefit of all parties.

### **VIII. EXPEDITED DISPUTE RESOLUTION**

The Staff is absolutely correct to recommend an expedited dispute resolution procedure for pole attachment disputes. Stopping a broadband deployment in its tracks while the parties argue does not serve the interests of the people of the state, in that it slows or prevents their access to and enjoyment of critical broadband services.

However, OTTC respectfully suggests that while a 90-day aspirational time frame for resolving disputes is better than the indeterminate, open-ended period that currently exists, the Commission can and should do better. Ninety days carries the risks of additional delays; for example, a dispute that arises at the height of the construction season in August might not be resolved by the time the snow flies and the ground freezes.

Other Commissions have developed procedures with shorter time frames. This past December, the FCC enacted expedited procedures involving initial review by “a Commission intra-agency rapid response team—called the Rapid Broadband Assessment Team (RBAT)—to provide coordinated review and assessment of such disputes.”

The RBAT will be charged with expediting the resolution of these disputes by swiftly engaging key stakeholders, gathering relevant information, distilling issues in dispute, and recommending to the parties, where appropriate, an abbreviated mediation process, placement of a complaint (or portion of a complaint) on the Accelerated Docket based on consideration of specified criteria, and/or any other action that the RBAT determines will help the parties resolve their dispute.

*In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, FCC 23-109, ¶¶ 8-9 (rel. Dec. 15, 2023).<sup>18</sup> A matter placed on the FCC’s Accelerated Docket must be concluded within 60 days. 47 C.F.R. § 1.736.<sup>19</sup> Connecticut similarly has an expedited process featuring a 60-day decisionmaking clock. CT PURA 2022 Decision, Appendix C, § 5.

Other states, however, take much less time to decide. The neighboring state of Vermont’s pole attachment regulations require that its “Commission shall take final action within 30 days after the filing of the complaint or petition.” VT Rule 3.710.<sup>20</sup>

Maine has had in place for over a decade an expedited pole attachment complaint process involving a Commission Rapid Response Team dedicated to that purpose. The Rapid Response Team will issue a final written decision within 7 business days of the filing of the complaint. Maine PUC Rules, Ch. 880, § 8 and Attachment A.<sup>21</sup>

Time is of the essence when pole attachment disputes need to be resolved. Equipment and crews may be stalled and money may be wasted — money that could better be used to bring broadband to the citizens of the State. OTTC respectfully suggests that the Staff’s salutary proposal to initiate an expedited dispute resolution process be improved by establishing as short a decisionmaking period as possible, but

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<sup>18</sup> <https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf>.

<sup>19</sup> [eCFR :: 47 CFR 1.736 -- Accelerated Docket Proceedings.](#)

<sup>20</sup> [Rule-3.700-pole-attachment.pdf \(vermont.gov\).](#)

<sup>21</sup> [https://www.maine.gov/mpuc/sites/maine.gov/mpuc/files/inline-files/Ch%20880%20Order%20Adopting%20and%20Dated%20Rule\\_1.pdf](https://www.maine.gov/mpuc/sites/maine.gov/mpuc/files/inline-files/Ch%20880%20Order%20Adopting%20and%20Dated%20Rule_1.pdf).

in any event substantially less than the aspirational 90-day period as proposed in the White Paper.

## **CONCLUSION**

The White Paper commendably makes useful and valuable suggestions on how to expedite broadband deployment to New York's citizens. The Commission should go further, however, and add additional reforms already enjoyed by millions across the country.

OTTC appreciates the opportunity to comment and looks forward to continuing to work with the Commission on these important issues.

Respectfully Submitted,

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