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July 5, 2022

Holly R. Anderson, Clerk  
Vermont Public Utility Commission  
112 State Street, 4<sup>th</sup> Floor  
Montpelier, Vermont 05620-2701

Re: Proposed Revision to Vermont Public Utility Commission Rule 2  
Docket No. 20-2369-RULE

Dear Ms. Anderson,

Comcast respectfully provides brief comments on the Public Utility Commission's proposed amendments to Rule 2 filed with the Vermont Secretary of State on May 18, 2022.<sup>1</sup> Comcast also provides a redline reflecting Comcast's suggested amendments to sections of Rule 2 that will serve to assist the Commission in ensuring that all parties with interests at stake in a proceeding receive notice of the initiation of the proceeding, including to approve a tariff amendment.<sup>2</sup>

One of the Commission's stated goals in this proceeding is to facilitate public participation. Comcast's Reply Comments dated October 8, 2021,<sup>3</sup> focused on changes to sections of Rule 2 that impact how interested parties are identified by the initiating party or Commission, are placed on the service list and receive notice that a proceeding that will impact them has been initiated. Simply put, intervention rights cannot be exercised unless there is notice. Comcast very much appreciates the Commission's consideration of our comments on this issue, and its proposal to add language to Rule 2.204(A) to address Comcast's concerns.<sup>4</sup> As described below, Comcast and other attaching entities on utility poles, have a strong, well-known interest in any changes to pole tariffs by pole owning utilities that affect not only pole attachment

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<sup>1</sup> See Memo of Holly R. Anderson, Clerk of the Commission dated May 25, 2022, To: #20-2369-RULE - Proposed revisions to Vermont Public Utility Commission Rule 2.000Re: Filing with the Secretary of State.

<sup>2</sup> Comcast participated in the public hearing on June 27, 2022, during which Kyle Landis-Marinello, General Counsel, suggested that Comcast provide the Commission with a redline of its suggested changes. Public Hearing Transcript at 11.

<sup>3</sup> Comcast participated in the workshops on December 18, 2020, and January 21, 2021, and filed comments on December 4, 2020, and October 8, 2021.

<sup>4</sup> Order Responding to Participants' Comments at 4.

rates, but also pole access that can have a significant impact on the construction and operation of critically important broadband networks. A time consuming, expensive amendment to 3.709(A) should not be required for attaching entities to receive notice of all tariff filings by pole owning utilities<sup>5</sup> where the issue can be expeditiously resolved in the instant proceeding.

Currently, unless the Commission directs notice for changes in tariff rates, pole owning utilities can file for and obtain approval for amendments to pole tariffs from the Commission without attaching entities receiving notice of the filing from the pole owner or the Commission.<sup>6</sup> In short, a tariff proceeding can commence and conclude with the change being approved by the Commission, *before the pole owner provides the attaching entity notice of the approved rate or condition and before providing the 60 days' notice required under Rule 3.709(A)(2)*. Therefore, attachers are unable to challenge the reasonableness of a tariff rate or condition prior to its approval, as they have not been notified of the proceeding. If pole owners are able to provide notice to attachers post tariff proceeding, there is no greater burden providing the notice before action is taken. This simple step will better serve both the need of ensuring that all those potentially impacted have the opportunity to be heard and the Commission's stated goal of facilitating public participation. The letter of the New England Cable and Telecommunications Association's letter to the Commission on April 8, 2021<sup>7</sup> describes the situation in greater detail (attached).

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<sup>5</sup> Tariffs of Pole-Ownning Utilities cover more than just pole attachment rates; they cover critical terms and conditions of service. In Vermont tariffs are substitutes for negotiated pole attachment agreements, which is why notice of a change in an existing tariff is so important. Just as a contract or a pole attachment agreement (prevalent in states other than Vermont) cannot be unilaterally amended, a tariff of a Pole-Ownning Utility should not be allowed to be modified or amended without notice to Attaching Entities thereby affording them a reasonable opportunity to assess the proposal, and to intervene and offer comments and recommendations if necessary.

<sup>6</sup> Section 225(a) of Title 30 requires advanced notice to Attaching Entities of a tariff filing by a Pole-Ownning Utility. This statute ("Rate schedules") requires "such notice to parties affected by such schedules as the Commission shall direct." See Order Opening Investigation and Notice of Prehearing Conference, Vermont Electric Cooperative, Inc., Pole Attachment rate change filing to be effective with bills rendered January 1, 2019, August 8, 2018 at 2. Citing 30 V.S.A. §225(a), the Commission directed VEC to notify attaching entities of a proposed rate change. However, the Commission's order came only after attaching entities petitioned to intervene (having inadvertently learned about the tariff filing). VEC had opposed the interventions stating that "Rule 3.709 requires that notice be provided to attachers 60 days prior to increasing pole attachment rates. Filing the tariff in itself does not increase pole attachment rates, so notice is not required until the Commission has acted to approve the rate increase. Nothing in Rule 3.700 contemplates that attaching entities are entitled to prior notice or opportunity to be heard" (footnote omitted). Comcast submits that under 30 V.S.A. §225(a), the Commission should require service of notice of tariff rate filings on attaching entities – particularly when attaching entities have requested it - but is not confident pole owners are in agreement.

<sup>7</sup> The NECTA letter is not dated but was sent on April 8, 2021. As indicated by their titles, both dockets involved amendments to pole owner tariffs providing discounts on upfront pole make ready costs to extend broadband to unserved areas. Comcast has strong interest in these types of programs but did not receive notice of the filings and thus had no opportunity to intervene. Case No. 21-0544-TF, Tariff Filing of Green Mountain Power for Approval of a Temporary Unserved Location Broadband Deployment Rider pursuant to 30 V.S.A. §§ 225-227. Green Mountain's response letter dated April 9, 2021, in the docket indicated that a Proposed Telecommunication Provider Customer Notice was sent after the tariff was approved. Green Mountain's response also stated "The notice approach proactively went beyond PUC rule requirements for notice related to pole attachment tariff changes, which only require notice under Rule 3.709 for tariff changes that *increase* attachment rates. Case No. 21-2807-TF, Tariff Filing of Vermont Electric Company for Approval of a Temporary, Unserved Location, Broadband Deployment Rider pursuant to 30 V.S.A. §§ 225-227. Vermont Electric Company's response letter dated April 8, 2021, to NECTA's letter filed in Case No. 21-2807-TF stated "First, as a practical matter, no party was prejudiced by not

Comcast respectfully requests that the Commission amend Rule 2 to include language ensuring, for every type of Commission proceeding, notice of the proceeding will be provided to persons and entities with known, significant interests that may be affected. The Commission should add a new definition for “Order of Notice” in Rule 1.102 and amend Rules 2.205(A) and 2.204(A) to require the initiating party to identify parties with such known interests that will be impacted and file a proposed Order of Notice.

Specifically, the language in current Rule 2.205(A) should be retained<sup>8</sup> and the filing of proposed Order of Notice should be required that would be sent to the identified persons or entities (such as those whose joinder would be required under Rule 2.210 or those who would be entitled to intervene as of right under Rule 2.209(A)).<sup>9</sup> Comcast’s redline of recommended language changes is attached.

Further, with respect to proposed tariff amendments, Pole-Owning Utilities should be required to notify all Attaching Entities of the filings or identify them so that the Commission can place them on the service list.<sup>10</sup>

In addition, Comcast recommends changes to ePUC allowing a subscriber to elect to receive notice of filings by industry, including Petitions to initiate new proceedings. This change would afford better public notice of all new proceedings initiated by the PUC. For example, in Connecticut and Maine, a person can subscribe to receive all filings (including filings initiating a proceeding), filings by industry or filings in a specific docket. The Vermont ePUC does not have this functionality. In Vermont, an interested person must first know about the docket *before* they can subscribe to receive filings. Changes to ePUC functionality which would allow

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receiving advance notice” and later continued “we reviewed the notice requirements of PUC Rule 3.709... none of those circumstances exist here”. Respectfully, pole owners are not the ones to determine whether attaching entities are prejudiced by lack of notice. For another example of lack of notice of a tariff filing, See Comcast letter dated May 24, 2019 in Case No.19-1169, Green Mountain Power Corporation Tariff Filing to Amend Pole Attachment Tariff to be Effective June 8, 2019 noting lack of notice p. 2.

<sup>8</sup> Without our added language, the proposed amendment to Rule 2.205(A) eliminates the requirement for an initiating party to file a statement identifying each party or other person to whom the Commission is required to give notice thus potentially leaving the Commission without critical information.

<sup>9</sup> Under the proposed amendment to Rule 2.205, the Commission would have the discretion over whether there would be an Order of Notice.

<sup>10</sup> The NECTA letter requested that pole owners provide notice to attaching entities of all pole attachment tariff filings, and Comcast repeats that request here. Pole-Owning Utilities are in the best position to identify and provide notice to all Attaching Entities. The Commission often requires notice to parties with known interests in proceedings and should do the same for pole tariff filings. E.g., Order Opening Proceeding and Request for Comments, November 25, 2019, in Case No. 19-4625-INV, Investigation concerning matters related to Vermont Public Utility Commission Rule 8.313 and the line extension policies and tariffs of cable operators in Vermont (notice of proceeding posted on Commission website and provided to cable operators); Order Opening Investigation and Notice of Hearing, Docket No. 5903, Investigation into Service Quality Standards, Privacy Protections, and other Consumer Safeguards for Retail Telecommunications Service, July 31, 1996 (all companies authorized to provide basic local exchange telephone service shall become parties); Order Initiating a Workshop Process and Notice of Workshop Regarding Service Provider Backup Power Obligations, April 3, 2019, Case No. 19-0705-PET, Request of Vermont Department of Public Service for a workshop regarding service provider backup power obligations (Commission develops broad service list).

any person to request notification any tariff filing (a subcase type) in ePUC would be extremely helpful.<sup>11</sup>

In conclusion, participation in Commission proceedings will be fostered if parties initiating proceedings must identify other parties that will be impacted.

Please let me know if you or the Commission have any questions. Comcast will attempt to respond quickly.

Very truly yours,

  
Gerald R. Tarrant

cc: Parties via ePUC only

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<sup>11</sup> This would include tariff filings that are not docketed or assigned case numbers in ePUC.

## **2.102 Definitions**

[Comcast proposes new definition of Order of Notice].

Order of Notice: A Commission order directing the party initiating a proceeding to provide notice of the proceeding to parties identified by the initiating party or the Commission as having rights or interests that will be affected or determined in the proceeding.

## **2.204 Pleadings and Other Filings; Service, Filing, Form and Amendment**

(A) Service, when required. In addition to any other requirement imposed by law, every filing ~~must shall~~, on the same day on which it is filed, be served by the party filing the same ~~upon on~~ every other party who has filed a notice of appearance, ~~unless the~~ **and on every party that is entitled to notice by state, rule, Commission order or Order of Notice** ~~for good cause otherwise directs.~~

## **2.205 Notice to other Persons or Parties**

(A) Statement regarding persons entitled to notice. At the commencement of any proceeding, the party initiating the same shall file a statement identifying by name and address each person, party or other entity **whose rights or interests may be affected or determined in the** ~~to whom or to which the Commission or the Clerk is required to give notice of such proceeding.~~

(B) Orders of notice. **In proceedings in which the required joinder of parties under Rule 2.210 or in which parties that would be entitled to intervene as of right under Rule 2.209(A) is applicable,** ~~the~~ **the Commission shall require a proposed order of notice and in other proceedings** may require any party who seeks the granting or denial of any form of relief to file a proposed order of notice



New England Cable & Telecommunications Association, Inc.

**New England Cable & Telecommunications Association, Inc.**  
121 Loring Ave • Suite 340 • Salem, MA 01970  
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Holly Anderson, Clerk of the Commission  
Vermont Public Utility Commission  
112 State Street  
Montpelier, VT 05620-2701

Re: Lack of Notice of Pole related Tariff filing to NECTA members/attachers

Dear Clerk Anderson:

I am writing on behalf of members of the New England Cable and Telecommunications Association ("NECTA"). NECTA is a five-state regional trade association representing substantially all private telecommunications companies in Vermont, Connecticut, Massachusetts, New Hampshire and Rhode Island. In Vermont our member companies include Comcast, and Charter. NECTA members serve 185 Vermont municipalities with broadband, video, voice and home security and automation services. NECTA members provide high-speed broadband to 155,000 homes and businesses and attach to tens of thousands of utility poles across all areas of Vermont. NECTA members consistently invest in the upgrade, enhancement and maintenance of their networks, investing over \$200 million in Vermont in the past 10 years. NECTA members actively participated in the Vermont Department of Public Service's ("DPS") Connectivity Initiative Program and the Line Extension Customer Assistance Program and have responded to DPS Commissioner Tierney's Call to Action to further deploy broadband service to Vermonters. In addition, our members continue to assist Vermonters in connecting to broadband during this difficult time through adoption initiatives such as Comcast's Internet Essentials and Charter Communications' Spectrum Internet Assist. In short, NECTA members have an extensive and well-established record of working to enhance access to high-speed internet as well as broadband connectivity for all Vermonters.

It is for this reason that I write to express our serious concern about the lack of notice provided to NECTA and our members, cable broadband attachers, of tariffs recently filed by two Vermont utilities— Green Mountain Power and Vermont Electric Coop. Furthermore, we expressly request that the Public Utility Commission ("Commission") on a going forward basis direct pole owners to provide affirmative notice to all attachers at the time proposed tariff changes are filed that affect rates, terms and conditions of attachment pursuant to pole tariffs.

In this matter, on March 12, 2021, the Commission approved tariffs by the two pole owners that offer discounts to broadband providers for the costs of utility pole “make-ready” for new facilities to provide service to customers that lack access to broadband service with a speed of at least 4/1 Mbps.<sup>1</sup> These discounts are meant to incentivize broadband operators to reach unserved areas. NECTA members were only made aware of the tariff filings and associated dockets during an unrelated workshop regarding line extensions during which NECTA members were asked by the Hearing Officer if they participated in those dockets. Members learned during the workshop, and upon subsequent review of the docket filings, that the pole owners notified only a subset of broadband providers consisting of various telephone providers and Communications Union Districts (“CUDs”), but the pole owners’ outreach did not include NECTA members. NECTA members were not notified of Commission proceedings on the two tariffs or placed on a service list by the Hearing Officer or the Department as interested parties, despite NECTA members’ active participation in a number of pole related matters in recent years.

These developments are of particular concern because the tariffed discounts are available only to the first provider applying to reach an unserved location<sup>2</sup>. Therefore, the failure by the pole owners, Commission or Department to notify NECTA members about the filing of tariffs, dockets and Orders, while at the same time notifying the CUDs and other broadband providers, puts NECTA members at a clear disadvantage. The lack of notice is surprising, particularly since NECTA members were fully engaged on the amendments to the Commission’s pole attachment rules last year, ongoing broadband expansion and adoption efforts, and the Commission currently has another open rulemaking underway with the goal to increase public participation in its proceedings.

To be clear, NECTA does not object with the policy objectives of the two tariffs and in fact continues to support any concepts that encourage broadband deployment in unserved areas. However, NECTA takes serious issue with what appears to be selective notice of the tariff filings and discounts, resulting in a broadband policy that gives an unfair competitive advantage to some broadband providers over others.

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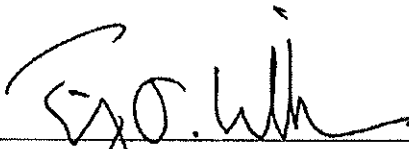
<sup>1</sup> While NECTA members monitor the ePUC activity, in order to monitor a specific docket and sign up to receive all filings, members must first be aware the docket exists.

<sup>2</sup> It is also questionable how a discount that is available on a first-come basis can be applied retroactively.

On behalf of its members, as stated above, NECTA respectfully requests that the Vermont Public Utilities Commission on a going forward basis direct pole owners to provide affirmative notice to all attachers at the time proposed tariff changes are filed that affect rates, terms and conditions of attachment pursuant to pole tariffs.

On behalf of our members and their customers, I would like to thank you for your continued work on these issues.

Respectfully,

By: \_\_\_\_\_

Timothy O. Wilkerson, President

New England Cable and Telecommunications Association, Inc.

CC:

Victoria Brown

Geoffrey Hand

Dan Burke