**STATE OF CONNECTICUT**

**DEPARTMENT OF PUBLIC UTILITY CONTROL**

DPUC INVESTIGATION INTO THE APPOINTMENT : DOCKET NO. 11-03-07

OF A THIRD PARTY STATEWIDE UTILITY :

TELEPHONE POLE ADMINISTRATOR FOR THE :

STATE OF CONNECTICUT : JUNE 16, 2011

**REPLY COMMENTS OF FIBER TECHNOLOGIES NETWORKS, L.L.C.**

**BACKGROUND**

On May 17, 2011, Fiber Technologies Networks, L.L.C. (“Fibertech” or “Company”) and several dozen other participants filed comments with the Connecticut Department of Public Utility Control (the “Department”) in response to a Notice of Request for Written Comments issued in the above-referenced docket. The participants expressed their views and concerns about the adequacy of the existing utility pole licensing process and the need for the appointment of a statewide third party utility pole administrator (the “Administrator”) to oversee the attachment of facilities to utility poles in the public rights of way. Subsequently, the Department requested reply comments including information concerning the “statutory authority under which the Department may (or may not) authorize the appointment of a statewide third party utility pole administrator”. Notice of Request for Reply Written Comments, at 1.

These Reply Comments will discuss the extensive authority under federal law, state statutes, and Department precedent for the Department to oversee utility poles and appoint an Administrator. In addition, Fibertech will review the arguments presented by AT&T Connecticut (“AT&T”), United Illuminating (“UI”), Connecticut Light & Power Company (“CL&P”), and Verizon Connecticut (“Verizon” and collectively with AT&T, UI and CL&P, the “Pole Owners”) in their comments. The Pole Owners assert they have done an excellent job administering third party attachments to pole, and suggest that the Department’s empowerment of an Administrator to oversee their activities would only lead to duplication, delay, and interference with core operation of the utilities.

The Department recognized in an April 30, 2008 Decision issued in Docket No. 07-02-13, DPUC Review of the State’s Public Service Company Utility Pole Make-Ready Procedures, (“Pole Decision”), that substantial improvements were needed in the utility pole attachment process. In the Pole Decision, the Department provided the Pole Owners with an opportunity to improve their make-ready practices and licensing performance through frequent consultation and negotiation with a working group of attachers and the Department’s pole mediation team (the “Working Group”). Pole Decision, at 17-19.

Fibertech will reiterate in these Reply Comments the results of its recent study of the Pole Owners’ performance on licensing applications submitted in 2010. This study demonstrates that despite the Working Group’s efforts, missed deadlines and delays remain a frequent occurrence and violate the Company’s right as a competitive provider to install telecommunications facilities in the public rights-of-way with equal access to the poles controlled by its ILEC competitors and other Pole Owners.

**COMMENTS**

1. **Federal Law, State Statutes, and Prior Department Rulings Confirm the Department’s Authority to Oversee Pole Owners’ Practices and Appoint an Administrator.**
2. **Federal Requirements**

The federal government has adopted strong public policies favoring competition and access to key infrastructure in the provision of telecommunication services. The fundamental purposes of the Telecommunications Act of 1996 (the “Act”) were to promote competition, secure lower prices and higher quality telecommunications services for American consumers, and encourage the rapid deployment of new telecommunications technologies. 47 U.S.C. §251-710. More recently, in 2009, Congress directed the Federal Communications Commission (“FCC”) to develop a National Broadband Plan to ensure that every American has access to broadband services. Section 251(b) (4) of the Act supports these goals by requiring AT&T, Verizon, and other pole owners to “afford access to its poles” to “competing providers of telecommunication services.” Section 224 of the Act further obligates “utilities” to “provide a cable television system or any telecommunications carrier with non-discriminatory access to any pole, duct, conduit, or right of way” that it owns or controls. 47 U.S.C. §224 & 251.

In accordance with Section 224(c)(1) of the Act and FCC Rules, a state may certify to the FCC that it has decided to self-regulate the rates, terms and conditions for access to pole attachments. Connecticut is one of 20 states and the District of Columbia that regulate pole matters pursuant to this “reverse preemption” provision[[1]](#footnote-1). The FCC has encouraged Connecticut and other States to use this authority to experiment with timelines and fair access rules and determine “what works and what does not work to achieve policy goals.” FCC Broadband Order, at 4.

1. **Connecticut Statutes**

The authority of the Department to regulate the attachment of facilities to utility poles in the public rights of way through the adoption of regulatory requirements or the appointment of an Administrator is grounded initially in the regulatory goals set forth in Public Act 94-83. Public Act 94-83 was passed by the state legislature to deregulate telecommunications services and stimulate competitors for the ILECs. Section 16-247f states that “the Department shall regulate the provision of telecommunications services in the state in a manner designed to force competition and protect the public interest.” C.G.S. § 16-247f. The Department was specifically instructed to: (1) promote the development of effective competition as a means to provide customers with the widest possible choice of services; (2) facilitate the efficient development and deployment of an advanced telecommunications infrastructure, including open networks of maximum interoperability and interconnectivity; and (3) encourage shared use of system facilities, and the cooperative development of new facilities where legally possible, and technically and economically feasible. C.G.S. § 16-247a. The Department was further directed to implement many of its statutory responsibilities “in accordance with these goals.” Id.

The applicability of these policy goals to specific regulatory issues was examined by the Connecticut Supreme Court in the case of The Southern New England Telephone Company v. Department of Public Utility Control, 261 Conn. 1 (2002) (the “SNET Decision”). The court confirmed that “our state scheme contains a broad grant of authority to the Department to protect the public interest similar to that afforded to the FCC under the 1996 Federal Act.” Id at 5. In addition, the court determined that the purposes clauses of Public Act 94-83 set forth in Section 16-247 do not necessarily establish the Department’s authority to act on every matter that falls within its jurisdiction. That authority must be authorized by a particular statutory provision. Id. at 4 n.2.

In this case, the Department has served for years as a regulator of public service companies, including the plant and equipment owned by such companies. It also has general jurisdiction over the subjects of pole attachments, installations in the public right of way, and the manner in which pole owners operate their infrastructure. More important, the Department has ample statutory directives which provide it with the authority to act and to direct the Pole Owners to change their practices as required to implement the purposes and goals of applicable state laws. Fibertech believes the Department is statutorily authorized to appoint an Administrator pursuant to the clear mandates of Sections 16-11, 16-247h, 16-243 and 16-19e of the Connecticut General Statutes. As the Court noted in the SNET Decision, “the legislature’s broad grant of power may be interpreted to include the conferral of such lesser included powers as are necessary to fulfill a legislative mandate.”[[2]](#footnote-2)

1. **Section 16-11**

One provision empowering the Department to act is Section 16-11 of the Connecticut General Statutes. Under this section, the Department is obligated to remain informed as to the operations of public service companies including the Pole Owners. The section states:

The Department of Public Utility Control shall, so far as it is practicable, keep fully informed as to the condition of the plant, equipment and manner of operation of all public service companies in respect to their adequacy and suitability to accomplish the duties imposed upon such companies by law and in respect to their relation to the safety of the public and employees of such company. The department may order such reasonable improvements, repairs or alterations in such plant or equipment, or such changes in the manner of operation, as may reasonably be necessary in the public interest. The general purpose of this section. . . .[is] to assure to the state of Connecticut its full powers to regulate its public service companies, to increase the powers of the Department of Public Utility Control and to promote local control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes.

C.G.S. § 16-11 (emphasis supplied).

The Department has acted pursuant to its authority under Section 16-11 on many prior occasions. In a docket involving the controversial installation of VRAD boxes statewide by AT&T, the Department exercised its authority to condition AT&T’s installation of VRAD boxes on its own poles upon the satisfaction of detailed notification, reporting and negotiation requirements with the Department, municipalities and certain adjoining property owners. AT&T was ordered to coordinate its installations with a representative from each affected municipality and to explore alternatives to the VRAD boxes[[3]](#footnote-3). In a second controversy involving SNET’s facilities practices in Fairfield for outside plant conduction, bonding and grounding work, and the installation of new powering cables, the Department ordered SNET and Cablevision to correct safety violations throughout their purchase areas and to mediate future disputes, and ordered SNET to remove powering cable from its utility poles[[4]](#footnote-4). As the result of a third investigation into the siting of certain other utility facilities and utility plants, the Department directed the pole owners to adopt procedures to minimize disturbances caused by pole construction and to coordinate their installations with local agencies[[5]](#footnote-5).

These decisions and others establish that when it has been necessary and in the public interest, the Department has exercised the authority granted by Section 16-11 to order specific improvements in the equipment and poles of public service companies and to involve third parties in their manner of operation. In Docket No. 00-03-09, the Department ordered utility providers to develop and submit an emergency response plan and training plan, consult with other state agencies and municipalities, obtain the consent of adjoining landowners, and comply with periodic reporting requirements on installations of generators.[[6]](#footnote-6) In Docket No. 95-03-18, the Department mandated changes in Verizon’s repair work practices in Greenwich and directed it to improve coordination with a joint pole owner.[[7]](#footnote-7)

The public interest mandates open competition for the provision of telecommunications services to the residents and businesses of Connecticut. The appointment of an Administrator would lessen the impact of the existing structural impediments to such competition, furthering the public interest. The Pole Owners fall within the definition of “public service company” and are thus subject to the Department’s jurisdiction under Section 16-11. This statute further grants the Department the affirmative power to act and order changes in the manner of operations of their plant and equipment, including poles and attachments, and to establish an Administrator. The last sentence of Section 16-11 confirms the legislature’s intent behind this section and the nature of the broad authority the statute was intended to confer upon the Department. The Connecticut Supreme Court has noted that this language “evidences a legislative intent to rely on the DPUC to regulate and supervise public utilities.”[[8]](#footnote-8)

1. **Section 16-247h**

Section 16-247h of the Connecticut General Statutes governs the use of public rights-of-way for the provision of telecommunications services. It grants the Department the power to authorize any certified telecommunications provider to attach facilities and to operate and manage the poles. In this section, the Department is directed to:

…authorize any certified telecommunications provider to install, maintain, operate, manage or control poles, wires, conduits or other fixtures under or over any public highway or street for the provision of telecommunications service authorized by 16-247c, if such installation, maintenance, operation, management or control is in the public interest, which includes, but is not limited to, facilitating the efficient development and deployment of an advanced telecommunications infrastructure, facilitating maximum network interoperability and interconnectivity, and encouraging shared use of existing facilities and cooperative development of new facilities where legally possible and technically and economically feasible.

The statute also authorizes the Department to adopt regulations which it has done.

Regulations of Connecticut State Agencies § 16-247c-5.

The language of Section 16-247h grants the Department control over attachments to utility poles, along with the authority to grant competitive telecommunications providers direct access to the poles. The Department has acted pursuant to this section to remedy problems in pole management in the past. In its investigation into the problem of double poles, the Department exercised its authority to require remedial action after finding that such poles were being managed by the Pole Owners in a way contrary to the public interest. The Department directed the Pole Owners to remove existing bare poles and double poles, provide lists of double pole situations, and proactively remove double poles in the future.[[9]](#footnote-9) They were also required to work with municipalities, the DOT, and telecommunication providers on this issue, and to increase the personnel and time devoted to these removal efforts. Id. at 16. The Department also acted pursuant to the authority granted to it by Section 16-247h in the CoxCom Decision discussed above.

In the Department’s review of public service companies’ make-ready procedures and licensing activities which led to the Pole Decision, the Department relied in part upon its authority under Section 16-247h to order comprehensive reforms. These reforms included authorizing third parties to take over limited aspects of the make-ready process. The Department concluded that the existing protocol for bonding work on the poles was “inefficient, time consuming and require[d] streamlining.” The Department found that allowing a third party to do such work would be more efficient and timely, and directed the Pole Owners to allow attachers such as Fibertech or approved contractors to perform the work on a trial basis.

Equally important, the Department exercised its authority over poles under Section 16-247h to order the Pole Owners to resolve all common issues between Pole Owners and attachers through collaboration with the Working Group and the Department’s Mediation Team. As approved by the Department at a recent technical meeting held in Docket No. 07-02-13 PH02, Fibertech is currently working with the Pole Owners and the Department’s Pole Attachment Mediation Team (the “Mediation Team”) to negotiate the content of a temporary pole attachment guide and resolve other differences regarding the use of temporary attachments on utility poles. Fibertech has welcomed the Department’s willingness to allow the parties to collaborate and resolve some problems, but would emphasize that the Department’s authority to order remedial action is not limited by its past, present or future use of this alternative dispute resolution process.

As evidenced by these prior decisions, the Department has recognized the value of allowing third parties to coordinate and to participate in work on the Pole Owners’ poles in the past. Similar to those rulings, the appointment of an Administrator would further the “development and deployment of an advanced telecommunications infrastructure” and encourage “shared use of existing facilities and cooperative development of new facilities.” The Department’s appointment of a third party administrator would thereby be consistent with its express authority to act under Section 16-247h of the Connecticut General Statutes.

1. **Section 16-243**

Section 16-243 of the Connecticut General Statutes provides the Department with another legal basis for considering the appointment of an administrator. This statute reads:

The Department of Public Utility Control shall have exclusive jurisdiction and direction over the method of construction or reconstruction in whole or in part of each system used for the transmission or distribution of electricity, with the kind, quality and finish of all materials, wires, poles, conductors and fixtures to be used in the construction and operation thereof, and the method of their use, including all plants and apparatus used for generating electricity located upon private property upon which there are conductors capable of transmitting electricity to other premises in such manner as to endanger any person or property. The department may make any order necessary to the exercise of such power and direction, which order shall be in writing and entered in the records of the Department….

C.G.S. § 16-243 (emphasis added).

The Connecticut Superior Court has interpreted this section to vest broad discretion in the Department to regulate all aspects of transmission lines in recognition of the fact that utility poles routinely contain telecommunications equipment as well as electrical lines.[[10]](#footnote-10) In the Manchester Decision, the court determined that the Department’s authority under Section 16-243 to make any necessary orders had to be read in connection with its authority to oversee the municipal gain under Section 16-233. These two statutory sections were confirmed as authorizing the Department to order the town to pay make-ready costs for its private telecommunications project on the utility companies’ poles. The Department also relied on Section 16-243 in its investigation into the role of the Department and local wetlands committees in the process of siting certain utility facilities in docket 95-08-34.[[11]](#footnote-11) The Department ordered all public service companies which were constructing new facilities, conducting significant maintenance activities or alternations to existing facilities, or conducting routine maintenance activities involving specified disturbances of soil, water or vegetation, to consult with certain state agencies and municipalities about their activities.

The adequacy of the pole licensing system at issue here directly relates to the method of use of utility poles. Section 16-243 grants the Department authority over this issue and thereby empowers it to issue orders to exercise such power by appointing an Administrator.

1. **Section 16-18**

Another statutory provision that supports Department action on pole attachment issues in Section 16-18 of the Connecticut General Statutes. That section provides:

The Department of Public Utility Control shall have power, after notice to the companies interested and public hearing, to require any public service company or certified telecommunications provider maintaining a line or lines of poles and wires in this state to change the location of such poles and wires in the public highways whenever public convenience or necessity requires such change and, if two or more companies, persons, firms or corporations are using or maintaining lines of poles or wires in the same street, to require the wires of such companies, persons, firms and corporations to be strung upon one or more lines of poles to be owned and maintained by the companies, persons, firms or corporations using the same as said department determines.

This section grants the Department authority to control the manner in which the electric utilities, the ILECs, and Fibertech are locating, maintain and using poles and wires in the public rights-of-way. The Department relied on this provision in part to make changes in the way the Pole Owners install various types of facilities and operate their poles in two decisions previously discussed here. VRAD Decision, at 1; CoxCom Decision, at 23.

1. **Section 16-19e**

The Department has also acted to control activity on utility poles pursuant to its authority under Section 16-19e of the Connecticut General Statutes.[[12]](#footnote-12) In addition to Section 16-11, the Department relied upon 16-19e in its review of a complaint against SNET discussed above[[13]](#footnote-13), where the Department ordered SNET to correct safety violations and to remove a new powering cable which it had installed on its poles.

These many prior decisions illustrate that the agency has the authority to maintain a comprehensive level of control over facilities in the public rights-of-way including the activities of the Pole Owners on their own poles and the manner in which equipment is to be installed thereon. Fibertech and other attachers have asserted in this docket that the current pole management system is not serving the public’s interest. Fibertech respectfully urges the Department to act to remedy this problem, as it has in the past, pursuant to its authority under Sections 16-11, 16-19e, 16-243 and 16-247h. It may proceed under these statutes as well as under Section 16-1-116 of its Regulations which confirm the Department’s authority to investigate and review the activities of any public service company.[[14]](#footnote-14)

1. **Pole Owners’ Challenges to the Department’s Authority**

Fibertech welcomes the Department’s request for comments concerning its authority and believes it has confirmed the solid statutory foundation for this docket through the preceding legal argument. The Pole Owners have attempted on prior occasions to suggest that the appointment of an Administrator would exceed the Department’s authority. In taking this position, however, they ignore rulings made in other contexts in the past of a similar nature. For example, telephone numbers and the assignment of them to competitors was once the sole province of the ILEC in Connecticut. In its July 8, 1998 ruling on the subject, the Department “assumed the role of a conservator in matters of telephone number resources to ensure reasonable nondiscriminatory access to the Telco’s and BA-NY’s equipment, facilities and services for all present and prospective services providers…”[[15]](#footnote-15) The Department later worked with a neutral, third-party administrator appointed by the FCC, NeuStar, Inc., to implement local number portability and other conservation measures in Connecticut.[[16]](#footnote-16)

The Pole Owners may also infer that the Department should not appoint an independent pole administrator in Connecticut since the FCC has not recommended such action in the FCC Broadband Order. AT&T Comments, at 4-5. In fact, however, the FCC emphasized that “joint ownership or control of poles should not create or justify a confusing or onerous process for attachers …[such as] requiring attachers to undergo a duplicative permitting or payment process …” FCC Broadband Order, § 82. While not mandating joint pole owners to consolidate pole authority in one managing utility, the FCC recognized the potential benefits of a “single administrative contact point.” Id. at § 84. The FCC noted that the Commission’s decision not to require a managing utility was due to the burden such a responsibility would create for the managing utility and the fact that a majority of poles would not be subject to pole attachment requests in the near future or at all. Id.

Other ILECs have argued in a variety of contexts over the years that federal and state regulation of their poles and other facilities constituted an unconstitutional taking of property without just compensation. In some instances, these types of constitutional claims have been rejected on the grounds that the regulation of an ILEC’s space or equipment did not constitute a “physical taking”.[[17]](#footnote-17) In a case challenging the mandatory pole access provisions of the Telecommunications Act of 1996, the Federal Court of Appeals for the 11th Circuit determined that even though the Act authorized competitors to physically occupy the ILEC’s property and created a taking under the Fifth Amendment, the FCC had provided an adequate process for the pole owners to obtain just compensation as required by the Fifth Amendment.[[18]](#footnote-18) The appointment of an Administrator to oversee or direct the portion of the Pole Owners’ pole activities concerning telecommunications or cable television attachment requests by third parties and the ILECs would be much less intrusive then the directives involved in these cases and others which have withstood constitutional scrutiny.

1. **The Pole Owners’ Comments Ignore their Frequent Non-Compliance with the Department’s Time Frames for Licensing Attachments.**

This Department investigation initially asked the question of whether there is a need for an Administrator or other additional measures to improve the pole attachment process. The general response of the Pole Owners in their comments was to claim that there was no need for an Administrator since the Working Group and other procedures have provided an adequate forum to improve pole administration and the Pole Owners have been processing attachment applications in a timely manner. Verizon Comments, at 2; AT&T Comments, at 1; CL&P Comments, at 3; UI Comments, at 1. The New England Cable and Telecommunications Association (“NECTA”) stated that it was not aware of any persuasive evidence of a systematic failure of the licensing process. NECTA Comments, at 1.

Fibertech rejects the assertion that Pole Owners have complied with the time intervals of the Pole Decision. Fibertech filed comments and made a supplemental filing on June 1, 2011 containing data on all 2010 license applications governed by the 90 day time frame set forth in the Pole Decision. This report establishes there are serious and widespread deficiencies in the Pole Owners’ licensing performance. Fibertech Comments, at 8-10 & Exhibit A; Fibertech Supplemental Comments dated June 1, 2011 (the “Fibertech Study”). The results show that 66 of the 195 license applications (34%) submitted by Fibertech during 2010 to all of the various Pole Owners which did not require pole replacements, were approved and issued late. Fibertech Study. In addition, 22 of those 195 applications took more than 120 days to complete.

This performance is particularly disappointing when you consider the amount of make-ready work involved in many of those applications. Approximately 90 of the 195 licenses issued concerned applications which required no make-ready work on any poles. Out of the 100 applications that required some make-ready work, 66% were issued late. Fibertech Study. There is no credible way for the Pole Owners to argue a failure rate of 66% or 34% is acceptable performance.[[19]](#footnote-19) As noted in Fibertech’s prior comments, the Third Progress Report filed by the Working Group in September 2009 included the Pole Owners’ claim of close to 90% compliance with the 90 day deadline. From the perspective of attachers, the unpredictability of receiving an individual license in a timely manner demonstrates that additional reforms and enforcement measures such as an Administrator are needed.

1. **The Pole Owners’ Concerns about the Effectiveness of a Third Party Administrator are Misplaced.**

In recognition that an Administrator could perform a wide variety of functions to improve the pole licensing and make-ready process, Fibertech suggested two possible models ranging from problem solving to full operational management of the licensing process. The first approach would require the Department to designate an Administrator ombudsman who would initiate and coordinate regular communications between applicants and Pole Owners, keep track of the status of all license applications pending with each of the Pole Owners and establish priorities, investigate delays in licensing and make-ready completion, and authorize the expedited processing of selected applications that need to be completed on a fast track. An alternative approach would be to empower the Administrator fully to supervise and oversee directly all of the third party and ILEC applications to attach equipment to the Pole Owners’ poles. Fibertech Comments, at 13-14.

The Pole Owners do not support an Administrator in any form or even concede that serious defects have undermined the pole administration process and institutionalized a priority position for ILEC attachers. Their principal concern seems to be that the appointment of an Administrator would create an additional level of bureaucracy and increase the cost of the pole administration process rather than simplify it. AT&T Comments, at 1-2; Verizon Comments, at 1-4. They take the position that attachers would still need to sign pole attachment agreements with each Pole Owner, obtain licenses from each Pole Owner, and remain obligated to participate in pole surveys, attachment rearrangements, and make-ready efforts in coordination with the Pole Owners’ employees. Verizon Comments, at 5. Meanwhile, CL&P claimed its employees could have an adverse reaction to the addition of another level of bureaucracy and possible outside interference with their existing pole duties. CL&P Comments, at 8. Essentially, the Pole Owners believe that they are in the best position to manage their own poles and have the greatest incentive to do so effectively and efficiently. AT&T Comments, at 3.

Fibertech has several observations concerning the Pole Owners’ concerns. First, these objections are very similar to the ones that were raised back in 2007 when the Department began the investigation which led to the Pole Decision. During that proceeding, representatives of CL&P and AT&T argued that merely allowing Fibertech or independent contractors to perform the simple act of bonding fiber installations and other attachments on the poles would unduly complicate the licensing process and compromise the safety and integrity of the pole infrastructure. Just as those concerns were unfounded then, their concerns about the appointment of an Administrator lack substance now. The appointment of an independent Administrator with technical and practical experience concerning utility infrastructure could simplify the duplicative and burdensome processes which each of the utilities have set up to handle attachments. Left to their own devices for the past two years, the Pole Owners have managed to eliminate a single point of contact for any of the 800,000 poles in the State, set up a licensing system which requires municipalities and third party attachers to enter into as many as four separate pole attachment agreements in order to conduct business, and failed to dedicate adequate personnel and resources to licensing and make-ready process. When this situation is viewed in the context of the declining and failing performance of the Pole Owners in meeting the Department’s required time frames, the need for reform is clear.

As a result of the continuing inequities and system problems with the pole attachment process, Fibertech believes that strong consideration should be given to the use of an Administrator to protect the rights of competitive telecommunications providers to nondiscriminatory access to the poles and public access to competitive services. At the least, the Department should strengthen protections for attachers by adopting further reforms to streamline the pole attachment process and eliminate inherent biases. Fibertech has made several suggestions which the Department may also want to consider as alternatives or in addition to an Administrator.

One option which the Department should consider is to utilize its regulatory authority over poles in the State to require everyone including ILECs to obtain a license from at least one of the Pole Owners in order to proceed with installations on utility poles. A second reform that would improve and streamline the system would be for the Department to ensure that meaningful progress is made by the Working Group in establishing a guide for the use of temporary attachments on poles. A third approach for the Department to consider would be to use its authority under Section 16-247h to order specific installation dates on particular installation applications. This would further emphasize the importance of the 90 day deadline and allow for faster performance in cases of urgent customer need for installation and service.

**IV. Conclusion.**

In conclusion, Fibertech urges the Department to continue its proactive involvement in reforming the pole attachment process and to consider the appointment of an Administrator to ensure fair and equal access to poles for competitive telecommunications providers and others.

Respectfully submitted,

FIBER TECHNOLOGIES NETWORKS, L.L.C.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Fiber Technologies Networks, L.L.C. has been mailed, postage prepaid, or sent via email, to all of the parties and participants on the Department’s Service List this 16th day of June, 2011.

s/Glenn T. Carberry

Glenn T. Carberry, Esq.

Commissioner of the Superior Court

1. In the Matter of Implementation of Section 224 of the Act: A National Broadband Plan for Our Future, WC Docket No. 07-245, Report and Order and Order on Reconsideration, 2011 FCC LEXIS 1362 (F.C.C. Apr. 2011) (“FCC Broadband Order”) [↑](#footnote-ref-1)
2. 261 Conn. 19, citing Nelseco Navigation Co. v. Dept. of Public Utility Control, 226 Conn. 418, 424 (1993). [↑](#footnote-ref-2)
3. Decision, Docket No. 07-03-34, Application of the Cities of Bridgeport, Danbury, and Stamford for a Declaratory Ruling regarding the safety of VRAD boxes, (September 29, 2008) (the “VRAD Decision”). [↑](#footnote-ref-3)
4. Decision, Docket No. 96-11-20, DPUC Review of Southern New England Telephone Installation of Facilities in Fairfield County, (May 21, 1997). [↑](#footnote-ref-4)
5. Decision, Docket No. 95-08-34, DPUC Investigation of the Process of and Jurisdiction over Siting Certain Utility Company Facilities and Plant in Connecticut, (October 30, 1996). [↑](#footnote-ref-5)
6. Decision, Docket No. 00-03-09, DPUC Investigation into CoxCom, Inc. d/b/a Cox Communications Connecticut’s Installation of Ground-Mounted Back-Up Generators, (February 7, 2001) (the “CoxCom Decision”). [↑](#footnote-ref-6)
7. Decision, Docket No. 95-03-18, Department of Public Utility Control Investigation of the Condition of Utility Lines and Poles in the Town of Greenwich, (January 24, 1996). [↑](#footnote-ref-7)
8. Decision, Town of Greenwich et al. v. Department of Public Utility Control, et al, 219 Conn. 121, 126 (1991). [↑](#footnote-ref-8)
9. Decision, Docket No. 03-03-07. DPUC Review of Public Utility Structures and Poles Within Municipal Rights of Way, (September 29, 2004) (The Department continues to monitor the Pole Owners’ success or lack of success in remedying this problem pursuant to this ruling, and all of the Pole Owners recently filed updated status reports with the Department). [↑](#footnote-ref-9)
10. Town of Manchester v. State of Connecticut, 2001 WL 590033 (Conn.Super.) (the “Manchester Decision”). [↑](#footnote-ref-10)
11. Decision, Docket No. 95-08-34. DPUC Investigation of the Process of and Jurisdiction over Siting Certain Utility Company Facilities and Plant in Connecticut, (October 30, 1996). [↑](#footnote-ref-11)
12. 16-19e reads in relevant part: “(a) In the exercise of its powers under the provisions of this title, the Department of Public Utility Control shall examine and regulate…the expansion of the plant and equipment of existing public service [and] the internal workings of public service companies…in accordance with the following principals: (1) That there is a clear public need for the service being provided; (2) that the public service company shall be fully competent to provide efficient and adequate service to the public in that such company is technically, financially and managerially expert and efficient;…” [↑](#footnote-ref-12)
13. Decision, Docket No. 96-11-20. DPUC’s Review of Southern New England Telephone Installation of Facilities in Fairfield County, (May 21, 1999). [↑](#footnote-ref-13)
14. Regulations of Connecticut State Agencies §16-1-116. [↑](#footnote-ref-14)
15. Decision, Docket No. 96-11-10, DPUC Review of the Management of Telephone Numbering Resources in Connecticut, at 4. (July 8, 1998). [↑](#footnote-ref-15)
16. Decision, Docket No. 96-11-10RE09, DPUC Review of the Management of Telephone Numbering Resources in Connecticut – Conservation Measures, (December 27, 2000). [↑](#footnote-ref-16)
17. See e.g. Qwest Communications Corporation v. United States, 48 Fed. Cl. 672 (2001). [↑](#footnote-ref-17)
18. Gulf Power Company, et al. v. United States Federal Communications Commission, 187 F.3d 1324 (11th Cir. 1999). [↑](#footnote-ref-18)
19. Fibertech anticipates that the electric utility pole owners may assert that their records establish more frequent compliance by individual companies with the 90 day time frame. However, as a result of the system established by all of the pole owners for jointly owned poles, Fibertech needs license approval from both owners in order to proceed with its work. The fact that one owner may meet the 90 day requirement on a particular application is meaningless if the other owner does not issue its license in a timely manner. [↑](#footnote-ref-19)