THE PATH TO MUNICIPAL GAIN AND THE ROLE OF THE SINGLE POLE ADMINISTRATOR FUNCTION IN CONNECTICUT

Challenges and Opportunities for Expanding Telecommunication Services

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WESTERN CONNECTICUT COUNCIL OF GOVERNMENTS
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Introduction

Connecticut municipalities have the right to place fiber optic cable on public utility poles or in underground conduit as a matter of right. This right does not exist in all states and is an important economic development and land use planning tool that can play an important role in expanding a wide range of services that are becoming increasingly important to everyday activities in the modern world. Remote learning, remote work, telehealth, telemedicine, autonomous vehicles, emergency preparedness and online shopping are just a few examples of the services and functions that are enabled by a digitally enabled world.

As a follow-up to our *Land Use Planning for Wireless Telecommunications Task Force* report issued in September 2020, this memo discusses some of the challenges that municipalities will face in attempting to exercise the use of the municipal gain function to expand telecommunication services. To understand the challenges, it is important to understand that all requests to install fiber optic cable on utility poles must be routed through the state's single pole administrators – Eversource (149 municipalities) and United Illuminating (17 municipalities). The activation of municipal gain requires 1) a commitment to familiarizing municipal staff to the legal agreements, regulatory standards and third party agreements that enable this opportunity; 2) the training and skills that are associated with municipal involvement in the provision of telecommunication services; 3) and the business case assessments and assessments of need for service upon which financial analyses must be made. These issues are the focus of this memo.

Municipal Gain Requires Standard Form Agreement

To access the municipal gain function, Eversource requires municipalities to sign an agreement that addresses several important requirements including: 1) training on the use of Alden1, a software system that manages all municipal gain applications, 2) the procedures for completing applications and requirements for design, inspection, make-ready work, construction, and post-construction inspections and licensing; 3) insurance requirements to cover liability due to injury or death or property damage; 4) termination procedures in the event that a municipality fails to meets its obligations, 5) permit procedures; 6) fees for make-ready work; 7) timetables for processing applications and 8) technical standards for regulating pole attachments and/or overlashing onto existing cable. While Eversource would prefer to have municipalities sign the standard form in the interest of reducing delay, this is not a good idea. The standard form does not reflect the Connecticut Superior Court's recent decision that municipalities can use their municipal gain for any purpose they deem appropriate. Since the standard form was issued many years ago, it does not address this issue. Moreover, other provisions, including the assignment of rights, compliance with applicable laws, notification procedures, permits and consents all need to be updated to reflect recent case law.

The Need for Education, Training and Technical Competencies

To initiate a municipal gain application requires some sophisticated technical legal, financial, engineering and land use support to enable a successful use of this right. One of the easiest ways to achieve municipal competence in the use of municipal gain is to contract with firms with this technical expertise that can complement the in-house expertise in land use, and engineering issues. Eversource provides training for those municipalities that intend to exercise their municipal gain rights. However, before training can be offered, chief elected officials must decide that there is a public value to entering

into an agreement with the single pole administrator – which in the case of municipalities in Western Connecticut is Eversource. The staff of the Western Connecticut Council of Governments are not authorized to use the Alden1 system since it is restricted to municipal employees. However, Eversource has indicated that if all eighteen municipalities were to establish agreements for the use of their municipal gain, Westcog could be given access to Alden1 to facilitate a regional approach to the development of the municipal gain function.

Compliance with Public Utility Regulatory Authority Dockets

There are ten significant PURA docket final decisions that municipalities must understand before considering the costs and benefits of the municipal gain function (see Appendix A). These ten docket orders establish 1) the rights and responsibilities for the use of the municipal gain function, 2) fee schedules, 3) the use of the municipal right of way, 4) utility pole make-ready procedures, 5) appeal procedures to PURA in the case of dispute resolutions, 6) third party pole attachment procedures, 7) jurisdictional issues over utility siting decisions, 8) the roles and responsibilities of the single pole administrator, 9) guidance on overlashing procedures and 10) penalties for violating PURA and Eversource requirements. These docket orders must be reviewed and understood to ensure a due diligence review is made before entering into an agreement with Eversource to activate the right to the municipal gain.

Financial Advantages of the Municipal Gain

While there may be a significant learning curve to become familiar with the legal and technical aspects of exercising the municipal gain, the Connecticut General Statutes and recent case law, gives municipalities a clear financial edge over telecommunications and cable television companies seeking to place their conduit on utility poles in western Connecticut. Municipalities are not required to pay pole attachment license fees, third party overlash fees, application fees and drastically reduced fees for additional poles submitted in each application. In contrast, telecommunication and cable television companies must pay annual fees for pole attachments, and third party overlashing their conduit onto existing conduit. These annual fees, over time, become a significant financial cost to private sector communication companies that, makes the right to municipal gain an important business advantage. For example, if a municipality were to activate its right to municipal gain by placing fiber optic cable on utility poles using the overlash technique, the cost savings on a per mile basis would be about $2,500 less than the costs incurred by telecommunication and cable television providers. Since most of the fees charged by Eversource are recurring costs, the real economic advantage of the municipal gain are best understood when evaluating capital and operating costs using the hypothetical case for a ten mile fiber optic system evaluated over a twenty year business case period. Appendix B presents the economic costs of the municipal gain compared to those incurred by telecommunication providers and cable television providers for the hypothetical example. As can be seen in the table, municipalities save between $238,000 to $264,000 – depending on whether the project is an urban or non-urban area and whether it is compared to the costs incurred by a telecommunications or cable TV provider. The analysis assumes a twenty year business case period under this hypothetical case. It also does not include the cost for purchase or installation of fiber optic cable since those costs do not have any bearing on the financial benefits of the municipal gain function compared to private sector telecommunication providers.

Legal Consideration with Third Party Licensing

Municipalities will be required to serve as the official owners of the municipal gain but this right does not preclude licensing this right to a private sector service provider as long as the legal responsibility for this function remains with the municipality. To address this issue, a municipality will require a license agreement with a service provider capable of meeting municipal needs. For example, a comprehensive license agreement should address the licensee's responsibility to install, operate and service the wired or wireless broadband services to be provided within its jurisdiction. If the municipality chooses to provide some services in-house, then the license agreement will need to reflect those decisions. Regardless of the services that are contracted out or provided in-house, a license agreement must address the bilateral responsibilities of both parties and must be consistent with any agreement established with Eversource.

Managing Delays

Eversource is experiencing an enormous volume of requests to place fiber optic cable and other types of telecommunications wiring on its utility poles. According to Eversource representatives there is a six to nine month backlog in processing applications to use utility poles – attributable to 370% year over year increase in applications. Municipalities that have an interest in activating the municipal gain will need to recognize the importance of developing well designed municipal gain applications that minimize delays caused by incomplete or incorrect submissions. Perhaps, more importantly, Eversource cannot prohibit a municipality from accessing its utility poles. However, it has the right to require make-ready improvements for utility poles that are structurally incapable of carrying the additional fiber optic cable that might be requested by a municipality.

Conclusions

Activating a municipality's right to municipal gain function on utility poles requires a commitment to develop the appropriate level of in-house expertise to manage the wide range of legal, technical, financial and administrative responsibilities required to access this valuable public asset. While municipalities do not need to be directly involved in the provision of telecommunication services to expand public access to high speed internet to their residents and businesses, they must have sufficient technical expertise to administer the use of the municipal gain. Licensing the use of the municipal gain to private sector providers is one means of expanding high speed internet services within western Connecticut without taking on the burdens associated with becoming an internet service provider. Those municipalities that choose this path, must be mindful that the standard legal agreement entered into with Eversource to access the municipal gain precludes municipal licensing options even though this has been upheld by a recent court decision as a valid municipal right. For this reason, municipalities must become thoroughly familiar with their legal rights, understand Public Utility Regulatory Authority docket decisions that govern how municipal gain is administered and update the standard legal agreement to reflect their right to license the municipal gain.

Appendix A: Public Utility Regulatory Authority Docket Orders: Single Pole Administrator and Municipal Gain Rights: November 16, 2020

1. PURA Docket 11-03-07: DPUC Investigation into the Appointment of a Third Party Statewide Utility Telephone Pole Administrator for the State of Connecticut

http://www.dpuc.state.ct.us/dockhistpost2000.nsf/8e6fc37a54110e3e852576190052b64d/6c03866a8be3eb9b8525829c0076a777/$FILE/FINAL110307.docx

2. PURA Docket 11-03-07RE01: PURA Investigation into the Appointment of a Third Party Statewide Utility Telephone Pole Administrator for the State of Connecticut – Overlash Requirements

http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/e602d74e1b7b18d58525829e004f069a/$FILE/110307RE01-053018.doc

3. PURA Docket 03-03-07: DPUC Review of Public Utility Structures and Poles within Municipal Rights of Way

http://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/a42a00f38e6fb090852582c700687d9f/$FILE/030307-092904.doc

4. PURA Docket 03-03-07RE01: DPUC Review of Public Utility Structures and Poles within Municipal Rights of Way – Compliance Review

http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/b97ed9ad4b8c76f5852583930070c42e/$FILE/030307RE01-081716.docx

5. PURA Docket 03-03-07RE01 NOV: DPUC Review of Public Utility Structures and Poles within Municipal Rights of Way – Compliance Review

http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/3cd0bbfc1f811f778525842b004e7bd9/$FILE/030307re01%20NOV.docx

6. PURA Docket Number 07-02-13: DPUC Review of the State's Public Service Company Utility Pole Make Ready Procedures

http://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/78293d7a684f1dd1852582cc00618296/$FILE/070213-043008.doc

7. PURA Docket Number 19-01-52: PURA Investigation of Developments in the Third Party Pole Attachment Process (Interim Decision)

http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/bd59e843914d7e5f852584f00066cdc1/$FILE/190152-011520.pdf

8. PURA Docket Number 20-03-14 NOV: PURA Investigation of Utility Pole Owners' Compliance with Orders related to Pole Attachments

http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/cdb8980049d74532852585ed006d0fbe/$FILE/NOV_Docket%20No.%2020-03-14.docx

9. PURA Docket Number 99-03-25RE01: Application of the Southern New England Telephone Company for a Declaratory Ruling Regarding Municipal Use of Poles and Conduits - Municipal Gain

http://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/94b875d4b234b230852582b8005eabf6/$FILE/990325RE01.doc

10. PURA Docket Number 95-08-34: DPUC Investigation of the Process of and Jurisdiction over Siting Certain Utility Company Facilities and Plant in Connecticut

http://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/4f81fa40e00638cd8525829c00624967/$FILE/9508341096.PDF

Appendix B: Economics of Municipal Gain:
Pole Attachment Tariffs for Municipalities, Cable and Telecoms: 2020

Eversource Annual Pole Attachment Tariffs	Telecom	Cable	Municipality
Per Pole Tariff Costs			
Pole Attachment License Fee Urban Areas	$16.48	$14.86	$0.00
Pole Attachment License Fee Non-Urban Areas	$16.57	$14.86	$0.00
Third Pay Overlash Fee Urban Areas	$16.48	$14.86	$0.00
Third Pay Overlash Fee Non-Urban Areas	$16.57	$14.86	$0.00
Agreement Establishment Fee	$0.00	$0.00	$0.00
Application Fee Per Application	$150.00	$150.00	$0.00
Application Fee for each additional Pole	$50.00	$50.00	$25.00
Make Ready Work Charges per pole[1]	$500	$500	$500
Per Mile Pole Tariff Cost (assumes 38 poles per mile)			
Annual Pole Attachment License Fee Urban Areas	$626.24	$564.68	$0.00
Annual Pole Attachment License Fee Non-Urban Areas	$629.66	$564.68	$0.00
Annual Third Pay Overlash Fee Urban Areas	$626.24	$564.68	$0.00
Annual Third Pay Overlash Fee Non-Urban Areas	$629.66	$564.68	$0.00
Agreement Establishment Fee	$150.00	$150.00	$0.00
Application Fee Per Application	$150.00	$150.00	$0.00
Application Fee for each additional Pole	$1,850.00	$1,850.00	$925.00
Make Ready Work Charges (T&M = Time & Materials)	$19,000	$19,000	$19,000
Total Cost Per Mile Year 1 for Pole Tariffs			
Total Cost per Mile Urban Areas Year 1	**$22,402**	**$22,279**	**$19,925**
Total Cost per Mile Non-Urban Areas Year 1	**$22,409**	**$22,279**	**$19,925**
Total Cost Per Mile for Pole Tariffs Every Subsequent Year			
Total Cost Per Mile Urban Area Subsequent Years	**$1,252.48**	**$1,129.36**	**$0.00**
Total Cost Per Mile Non- Urban Area Subsequent Years	**$1,259.32**	**$1,129.36**	**$0.00**
Cost/Mile for Pole Tariffs - Business Case Period (Yrs.)		**20**	
Total Project Cost Per Mile for Urban Areas	**$46,199.60**	**$43,737.20**	**$19,925.00**
Total Project Cost Per Mile for Non- Urban Areas	**$46,336.40**	**$43,737.20**	**$19,925.00**

Eversource Annual Pole Attachment Tariffs	Telecom	Cable	Municipality
Cost for 10 Mile System: Business Case Period (Yrs.)		**20**	
Total Project Cost Per Mile Urban Areas	$461,996.00	$437,372.00	$199,250.00
Total Project Cost Per Mile Non- Urban Areas	$463,364.00	$437,372.00	$199,250.00
Cost Advantage of Municipal Gain for 10 Mile Network over Cable in Urban Areas			**$238,122.00**
Cost Advantage of Municipal Gain for 10 Mile Network over Telecom in Urban Areas			**$262,746.00**
Cost Advantage of Municipal Gain for 10 Mile Network over Cable in Non-Urban Areas			**$238,122.00**
Cost Advantage of Municipal Gain for 10 Mile Network over Telecom in Non-Urban Areas			**$264,114.00**
Number of Utility poles per mile	**38**		
Business Case Analysis Period	**20**		
Note: Source for Make Ready cost estimate, Gigabit Communities, p. 16.			

Sources: The Connecticut Light and Power Company, DBA Eversource Energy, Wire-Based Telecom Pole Attachment Tariff, January 1, 2020; The Connecticut Light and Power Company, DBA Eversource Energy, Wire-Based CATV Pole Attachment Tariff, January 1, 2020; The Connecticut Light and Power Company, DBA Eversource Energy, Wire-Based Municipal Pole Attachment Tariff, January 1, 2020