

**State of New Hampshire
Before the New Hampshire Public Utilities Commission**

DRM 08-004

Proposed Rulemaking (Puc 1300/Utility Pole Attachments) – Regular Rules

SUPPLEMENTAL COMMENTS ON THE FINAL STAFF PROPOSAL

Submitted by

EIGHT INCUMBENT TELEPHONE COMPANY MEMBERS

of the

NEW HAMPSHIRE TELEPHONE ASSOCIATION

December 5, 2008

Submitted on behalf of:

BRETTON WOODS TELEPHONE COMPANY, INC.

DIXVILLE TELEPHONE COMPANY

DUNBARTON TELEPHONE COMPANY, INC.

GRANITE STATE TELEPHONE, INC.

TDS TELECOM/HOLLIS TELEPHONE COMPANY, INC.

TDS TELECOM/KEARSARGE TELEPHONE COMPANY

TDS TELECOM/MERRIMACK COUNTY TELEPHONE

TDS TELECOM/WILTON TELEPHONE COMPANY, INC.

**State of New Hampshire
Before the New Hampshire Public Utilities Commission**

DRM 08-004

Proposed Rulemaking (Puc 1300/Utility Pole Attachments) – Regular Rules

SUPPLEMENTAL COMMENTS OF EIGHT ILEC NHTA MEMBERS

Eight independent New Hampshire incumbent local exchange carriers who are members of the New Hampshire Telephone Association (the "Eight NHTA ILECs" or "NHTA"),¹ by and through the undersigned counsel and pursuant to RSA 541-A:11, I & VIII, offer the following supplemental comments to the New Hampshire Public Utilities Commission ("PUC") concerning the Final Staff Proposals of Chapter Puc 1300 (Utility Pole Attachments) that were circulated for public comment on October 31, 2008 and November 3, 2008.

The NHTA submitted comments to prior drafts of Proposed Chapter Puc 1300 on March 5, 2008, and June 24, 2008. The NHTA reaffirms its earlier comments here and incorporates them herein in their entirety. The following Supplemental Comments are directed at the new revisions that appeared in the October and November Final Proposals. In addition to these written comments, the NHTA provided oral comments to the Staff at the Technical Session held on November 21, 2008.

The NHTA's Supplemental Comments address the following aspects of the Final Staff Proposal: (1) clarifying who has the right to attach to utility poles (Proposed Rule Puc 1301.02); (2) opposing the inclusion of the new sections on various space-saving techniques (Proposed Rules Puc 1303.09-1303.11); (3) proposing additional language concerning Make-Ready

¹ The Eight NHTA ILECs are: Bretton Woods Telephone Company, Inc.; Dixville Telephone Company; Dunbarton Telephone Company, Inc.; Granite State Telephone, Inc.; TDS Telecom/Hollis Telephone Company, Inc.; TDS Telecom/Kearsarge Telephone Company; TDS Telecom/ Merrimack County Telephone Company; and TDS Telecom/Wilton Telephone Company, Inc.

Timeframes (Proposed Rule Puc 1303.12); (4) proposing new language concerning the calculation of pole attachment rates (Proposed Rule Puc 1304.05); (5) opposing further changes to the section on "Burden of Proof" (Proposed Rule Puc 1304.06); and (6) proposing several miscellaneous amendments intended to clarify the operation of the Proposed Rule. As the following discussion makes clear, the NHTA has recommended amendments to the Proposed Rule based on language presently found in the analogous Pole Attachment Rule of the Vermont Public Service Board (the "Vermont PSB Rule").² NHTA has appended the Vermont PSB Rule hereto to facilitate the Staff's consideration of these Supplemental Comments.

I. DISCUSSION

A. Applicability (Proposed Rule 1301.02)

The Eight NHTA ILECs remain concerned that the Final Proposal leaves significant ambiguity on the question of who will be eligible to attach facilities to utility poles under the new Rule. As the Final Proposal is presently drafted, the Rule will apply to "public utilities" (as that term is used in Proposed Rule Puc 1301.02(a)) and to "other persons with facilities attached to [utility] poles, or seeking to attach facilities to [utility] poles" (Proposed Rule Puc 1301.02(b)). The "other persons" subsection of Puc 1301.02(b) is separate and distinct from the "public utilities" subsection, so it is clear that "other persons" are not "public utilities," but there is no further limitation or qualification given to the term "other persons." As was discussed at the November 21st Technical Session, a fair reading of the Final Proposed Rule would entitle anyone who desires to attach facilities to utility poles to request such attachment, and if the request is denied or disputed, the applicant would be entitled to pursue a remedy before the Commission in accordance with the Rule.

The open-ended nature of these entitlements runs counter to the limited scope of the enabling statute, RSA 374:34-a, on which the Commission has relied for its rulemaking

² Vermont Public Service Board Rule 3.700 (Pole Attachments).

authority. While the NHTA has recommended that the Commission base the rulemaking on a broader statutory authority, beyond the limited authority of RSA 374:34-a, the NHTA does not believe that the Commission should grant open access to any person who wishes to attach facilities to poles. Even if the Commission were to use contested-case proceedings to refine or narrow the broad reading of Rule Puc 1301.02(b), the resulting litigation will be costly and time-consuming.

The Commission should avoid this result by narrowing the applicability of the Rule at the outset. Specifically, the Commission should draw a clear connection between the "Applicability" provision (Rule Puc 1301.02) and the definition of "Attaching entity" (Rule Puc 1302.01). The NHTA recommends that Rule Puc 1301.02 be amended, as follows:³

Puc 1301.02 Applicability. Puc 1300 shall apply to:

(a) Public utilities within the meaning of RSA 362, including rural electric cooperatives for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution.

(b) ~~Other persons~~ Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

NHTA further recommends that Puc 1302.01 be amended as follows:

Puc 1302.01 "Attaching entity" means a natural person or an entity ~~that attaches or seeks~~ with a statutory or contractual right to attach a facility of any type to a pole, including but not limited to telecommunications providers, cable television service providers, incumbent local exchange carriers, competitive local exchange carriers, electric utilities, and governmental entities.

The amendment attempts to narrow the class of attaching entities to those persons who are authorized to attach by statute or who have entered into pole-attachment agreements. Those with statutory authorization include public utilities and governmental entities, and those with pole-attachment agreements include persons who have reached arm's length agreements with pole

³ Provisions shown in strikeout signify recommended deletions; provisions shown in underlined italics signify recommended additions.

owners to attach facilities to poles. In either case, the attaching entity must have first satisfied a prior statutory or contractual requirement before applying to attach to poles.

B. Space-Saving Techniques (Proposed Rules Puc 1303.09-1303.11)

The Staff's Proposal adds three new sections – Rules Puc 1303.09 (Location of Attachments), Puc 1303.10 (Boxing of Poles) and 1303.11 (Use of Extension Arms) – that were not included in earlier Drafts. The new sections purport to authorize attachers to use additional space on existing poles as a means of forestalling the pole owner's need to set replacement polls. The NHTA opposes the inclusion of these new sections, however, on the ground that the Draft Rules would change longstanding industry practice and place all New Hampshire utilities in the middle of an unsettled regulatory dispute still underway in the State of Maine. In addition, the emergence of these new sections so late in the preliminary stage of this rulemaking leaves the parties with little opportunity to comment on these substantive regulatory changes before the formal phase of the rulemaking begins.

The three new sections are based on a 2006 order from the Maine Public Utilities Commission (the "*Oxford* Order") in a case involving one Maine utility's complaint against another's pole-attachment practices.⁴ As a two-party order resolving a contractual dispute, the *Oxford* Order is not a ruling of general applicability in the State of Maine.⁵ At the November 21st Technical Session, representatives from Northern New England Telephone Operations, LLC d/b/a FairPoint-NNE ("FairPoint"), which is the successor-in-interest to Verizon in Maine, New Hampshire and Vermont, explained that the *Oxford* Order applies only in areas in Maine served by Oxford Networks and does not apply to pole attachments by any other attaching entities in Maine. The Maine Commission recognized that the expanded authority it was granting to the

⁴ *In re: Oxford Networks vs. Verizon New England, Inc.*, Docket No. 2005-486, Order (Maine Puc. Utils. Comm'n, Oct. 26, 2006) (the "*Oxford* Order"). See particularly *id.*, Section C2, at 12-14 ("Lowest Pole Position"), Section C3, at 14-17 ("Boxing of Poles") and Section C4, at 17-18 ("Extensions Arms").

⁵ See Restatement (Second) of Judgments § 34(3) (1982) ("A person who is not a party to an action is not bound by or entitled to the benefits of the rules of *res judicata* . . .").

attacher in the *Oxford* Order was untested and would require monitoring. In the words of the Maine Commission:

Consistent with our obligation to promote public policy, we will carefully monitor Verizon's compliance with this Order, as well as any problems that might arise from Oxford's attachment techniques, and will quickly take corrective action if necessary. Moreover, to ensure that the intent of this Order is implemented without due delay, we put into place an expedited dispute resolution mechanism in which pole attachment disputes are delegated to our Director of Technical Analysis.⁶

The special monitoring and dispute-resolution mechanisms reflect the Maine Commission's understanding that the "attachment techniques" authorized in the *Oxford* Order are experimental in nature and could produce problems and disputes that were not foreseen during the litigation.

By contrast, the New Hampshire Staff's Final Proposal adopts the techniques from the *Oxford* Order without considering any evidence whatsoever about the appropriateness or advisability of using these techniques in New Hampshire. Instead, the Proposal relies on the evidence adduced in the 2-party litigation from Maine, without regard to any facts or arguments that other parties, whether in Maine or in New Hampshire, might have raised in a contested-case proceeding to consider such techniques. Nor does the Staff's Final Proposal contemplate any special monitoring or expedited dispute resolution process such as the Maine Commission determined to be necessary to implement the *Oxford* Order. Instead, the Staff Proposal simply adopts the *Oxford* techniques as new statewide policies for New Hampshire and leaves parties to follow the general contested-case procedures before the Commission whenever disputes arise.

The NHTA is particularly concerned that the new sections (Rules Puc 1303.09, Puc 1303.10 and Puc 1303.11) have emerged so late in the preliminary stages of this rulemaking, and that these sections, if adopted, will fundamentally alter longstanding make-ready and pole-usage practices in New Hampshire. Moreover, the Staff made clear at the November 21st Technical Session that it does not intend to take full written comments on these sections, but wants the

⁶ *Oxford* Order, at 20-21.

parties simply to propose amending language without extensive analysis. Parties will not have an opportunity to respond to each other's comments, nor will Staff respond to the parties' comments, prior to the Staff's formal submission of the Proposed Rule to the Commission. In NHTA's view, these new sections should be subject to preliminary fact-finding to determine how the Staff's proposed changes will affect current practices in New Hampshire. As NHTA noted at the November 21st Technical Session, NHTA believes it is particularly necessary for the Staff to evaluate how the new techniques authorized in the *Oxford* Order are working on the ground in Maine. If there are frequent or significant problems that have arisen in Maine in the wake of the *Oxford* Order, the Commission should have the benefit of that real experience before incorporating such significant changes into its statewide regulations.

In the event the Staff does not agree that further fact-finding is necessary, the NHTA believes the Proposed Rule should maintain a reasonable balance between current industry practices and standards and the Staff's desire to grant Attaching Entities the same benefits that pole owners now gain from the use of certain space-saving techniques. The NHTA believes the analogous rule adopted by the Vermont Public Service Board⁷ may provide useful guidance in this regard. The Vermont PSB Rule includes the following provisions that are analogous to Proposed Rules Puc 1303.09 through 1303.11:

3.708 Applications for Attachment and Make-ready Work

* * *

(F) Least Cost Methods. In completing Make-ready work, a Pole-Ownning Utility shall pursue reasonable least-cost alternatives, including space saving techniques currently relied upon by that utility; however, it shall at all times maintain compliance with the National Electrical Safety Code, state and local laws and regulations, and Pole-Ownning Utility constructions standards.

* * *

⁷ See Vermont PSB Rule 3.700 (Pole Attachments), attached hereto.

(J) Lowest Attachment Point. No Attaching Entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility. If the owner of the lowest attached facility wishes to relocate its existing facilities to a lower allowable point of attachment so that the new Attaching Entity will be above all existing facilities, the owner of such existing facilities shall pay one-half of the cost of moving its facilities.⁸

In NHTA's opinion, the language of Vermont PSB Rule 3.708(F), which references "reasonable least-cost alternatives, including space saving techniques currently relied upon by [the pole owner]," is preferable to the Staff's language in Proposed Puc 1303.10 and 1303.11, which specifically references "boxing" and "extension arms". Besides being more flexible (and thereby allowing consideration of a wider range of possible solutions), the Vermont PSB Rule requires the pole owner to "pursue reasonable least-cost alternatives," in contrast to the New Hampshire Staff's Proposed Rule, which requires the pole owner to "permit attaching entities to box poles" (Puc 1303.10) and to "permit limited reasonable use of extension arms by attaching entities" (Puc 1303.11). The Vermont rule strikes a better balance between the ownership rights of the pole owner and the public policies being advanced by the New Hampshire Staff.

The NHTA notes that the language of Vermont PSB Rule 3.708(J) ("Lowest Attachment Point") is nearly identical to the language of Proposed Puc 1303.09 ("Location of Attachments"), the only material difference being that, for situations where the lowest attacher wishes to maintain its attachment position on a pole, the Vermont PSB Rule requires the lowest attacher to pay 50% of the cost of moving its facilities, while the Staff's Proposed Rule would require the lowest attacher to pay 100% of such cost. At the November 21st Technical Session, the Staff explained that a cost-allocation mechanism, such as is used in the Vermont PSB Rule, was not feasible in New Hampshire in the absence of a mechanism for establishing the applicable costs.⁹

In NHTA's view, the lack of a cost-definition mechanism in the Proposed Rule is not a sufficient basis to make the lowest attacher bear the full cost of repositioning its facilities to

⁸ Vermont PSB Rule 3.708(F),(J).

⁹ In Vermont, the applicable costs are established by Pole Attachment tariff, which every Pole Owning Utility is required to file with the Public Service Board. See Vermont PSB Rule 3.703 ("Tariff Required").

maintain its position on the pole. The Vermont PSB Rule again strikes the proper balance in cost allocation. As a practical matter, the pole owner and the attaching entity discuss and agree on the scope of the make-ready work at the time of the rideout, and typically agree on the respective cost elements involved in the make-ready. Those cost elements do not need to be defined by Rule in order to be used and understood by the parties in allocating make-ready costs. The Staff's Final Proposal does not establish a mechanism for determining any other make-ready costs, and so there is no rational basis for presuming that, as part of make-ready, the owner and attacher will be unable to establish the cost of repositioning the lowest attachment to make room for the new attaching entity's facilities.

Nevertheless, to address the Staff's concerns about cost-definition, the NHTA recommends that the Commission adopt the 50% allocation rule as is used in Vermont (see Vermont PSB Rule 3.708(J)), but with the following boldfaced word added to the new language:

Puc 1303.09 Location of Attachments

No attaching entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility. If the owner of the lowest facility chooses to relocate its existing facilities to a lower allowable point of attachment so that the new attaching entity will be above all existing facilities, ~~it shall do so at its own expense~~ *the owner of such existing facilities shall pay one-half of the **actual** cost of moving its facilities.*

The addition of the word "actual" makes clear that the costs are not subject to mark-up and are limited to the actual time and expense of moving the facilities in question.

C. Make-Ready Timeframes (Proposed Rule Puc 1303.12)

There was significant discussion, at the November 21st Technical Session, concerning the timeframes contemplated in Proposed Rule Puc 1303.12 for completing make-ready work. The NHTA does not need to review the various proposals offered by parties at that session. In general, the NHTA favors the approach used in the Vermont PSB Rule (attached hereto), which uses a 3-tier timeframe for completion of make-ready based on the size of the job or jobs

involved (calculated as a percentage of the pole owner's poles).¹⁰ However, the NHTA does not object to the Staff's proposed 2-tier timeframe, so long as the tiers involve a bright-line distinction between make-ready work that involves no pole replacements and make-ready work where pole-replacement is required. (This change is reflected in the NHTA's proposed amendment to Rule Puc 1303.12, offered below.)

The NHTA is concerned, however, that the entire obligation for meeting the contemplated timeframes falls solely on the pole owner, even though one or more Attaching Entities may be involved in completing make-ready work on a pole. Under the Staff's Proposal, the pole owner would bear the full liability for missing the 90- or 180-day make-ready timeframe even if other Attaching Entities on the pole have consumed most or all of that time before the pole owner can begin completing its own portion of the make-ready work. For this reason, NHTA wants to make clear in the Rule that the responsibility for completing make-ready within the designated timeframes falls equally on all parties with existing attachments, as follows:

Puc 1303.12 Make-Ready Timeframes.

Pole owners and attaching entities with facilities already attached to the pole shall complete make-ready work within 90 days where the work includes ~~limited or~~ no pole replacements. If pole replacement is required, pole owners and attaching entities with facilities already attached to the pole shall complete make-ready work within 180 days.

The NHTA notes that the foregoing amendment tracks the analogous language of Vermont PSB Rule 3.708(E), attached hereto.

D. Rate Review Standards (Proposed Rule Puc 1304.05)

The Staff's Final Proposal establishes a 2-tiered method of establishing just and reasonable rates for pole attachments. Proposed Rule Puc 1304.05(a) establishes one standard for determining just and reasonable rates for the attachments of competitive LECs and cable

¹⁰ See Vermont PSB Rules 3.708(C) (Timeframes for Initial Action and Survey) and 3.708(E) (Time to Complete Make-Ready).

television (CATV) providers to poles owned by incumbent LECs and electric companies,¹¹ and Proposed Rule Puc 1304.05(b) establishes a different standard for determining just and reasonable rates "for all other attachments under this chapter." The difference is that, for rates determined under Puc 1304.05(a), the Commission "shall consider ... [t]he formulae adopted by the FCC in 47 CFR § 1.1409c) through (f) in effect on July 16, 2007."¹² For rates determined under Puc 1304.05(b), the Commission is not required to consider those FCC formulae.

The difference results from the enabling legislation, RSA 374:34-a, which included, in an uncodified section of the legislative enactment, the following requirement: "For a period of at least 2 years after the effective date of this act, the rules shall be consistent with the regulations adopted by the Federal Communications Commission under 47 U.S.C. section 224, including the formulae used to determine maximum just and reasonable rates."¹³ The FCC's rate formulae create a distinction between attachments by CLEC and CATV providers, on the one hand, and other types of attachments, on the other. As noted, however, the New Hampshire General Assembly required the Commission to track the FCC's rate formulae only "[f]or a period of at least 2 years after the effective date of this act," meaning until at least July 16, 2009. Thereafter, the Commission may determine just and reasonable rates for pole attachments by other standards, even if those standards deviate from the FCC's formulae.

In the NHTA's view, the Commission should acknowledge the upcoming end of the 2-year rate-formula limitation in the Proposed Rule by defining the rate standards it intends to use after July 16, 2009. It is conceivable that the Rule established through this rulemaking will not receive final adoption until after July 16, 2009, in which case the Commission would need to amend the Rule immediately if no accommodation had yet been made for the statutory change in the Commission's authority over pole attachment rates triggered by the passing of the 2-year

¹¹ The Staff indicated that electric companies were inadvertently omitted from the language of Puc 1304.05(a). It was agreed that the error would be corrected in the submission of the Final Rule to the Commission. This correction is therefore reflected in the NHTA's proposed amendment to Rule Puc 1304.05, offered below.

¹² See Proposed Rule Puc 1304.05(a)(3).

¹³ See 2007 N.H. Laws 340:2 (July 16, 2007).

deadline. Even if the Rule receives final adoption prior to July 16, 2009, the 2-year deadline is fast approaching, and principles of administrative efficiency suggest that the Commission should use the present proceeding to reflect the pending change in its authority over pole-rental rates.

In the NHTA's view, the Commission should use the passing of the 2-year deadline to bring all communications attachments (i.e., CATV attachments and attachments by both competitive and incumbent LECs) within the formulae established by the FCC. The FCC's formulae are long-settled, well-known and clearly-defined and would be an efficient basis for determining just and reasonable rates for all communications attachments in New Hampshire, including those of ILECs, as well as CLECs and CATV providers. Accordingly, the NHTA proposes to amend Puc 1304.05(a) (with the amendment to take effect after July 16, 2009), as follows:

Puc 1304.05 Rate Review Standards.

(a) In determining just and reasonable rates for the attachments of ~~competitive~~ local exchange carriers and cable television service providers to poles owned by incumbent local exchange carriers or electric companies under this chapter, the commission shall consider:

- (1) The interests of the subscribers and users of the services offered via such attachments;
- (2) The interests of the consumers of any pole owner providing such attachments; and
- (3) The formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007.

The provisions of Proposed Rule Puc 1304.05(b) would remain unchanged.

E. Burden of Proof (Proposed Rule Puc 1304.06)

At the November 21st Technical Session, there was some discussion of the provision on "Burden of Proof" in Proposed Rule Puc 1304.06. As presently drafted, Proposed Rule Puc 1304.06 creates two presumptions, one that applies to pole attachment agreements executed before the Rule takes effect, and another that applies to pole attachment agreements executed

after the Rule takes effect. Signed agreements entered into before the new Rule takes effect are "presumed to have been entered into voluntarily" (Puc 1304.06(a)), while agreements entered into voluntarily "under this part" (i.e., after the Rule takes effect) are "presumed to be just, reasonable and nondiscriminatory for purposes of adjudication before the commission" (Puc 1304.06(b)). While these provisions may present some ambiguities in how the Rule will apply to substantive provisions of particular agreements, the Rule as drafted at least has the clear advantage of creating a bright-line test of time between agreements executed before the Rule takes effect and those executed after the Rule takes effect.

A party at the Technical Session, however, proposed eliminating even this bright-line test in the Rule. That party suggested adding the words "under this part" to the phrase, "A signed pole attachment agreement," of subparagraph (b) of Puc 1304.06. The amendment would have the effect of making both subparagraphs (a) and (b) of Puc 1304.06 apply to agreements executed after the Rule takes effect. There would then be no provision addressing agreements executed before the Rule takes effect.¹⁴ Moreover, because the presumptions established in subparagraphs (a) and (b) would apply to the same pole attachment agreement, the Rule would now create clear conflicts between the two applicable presumptions, as well as between the two burdens of proof needed to rebut those two presumptions.

For example, on its face, the amendment would create a distinction between a signed pole attachment agreement and a pole attachment agreement entered into voluntarily. As should be immediately obvious, these two types of agreements are not mutually exclusive. So, if a signed pole attachment agreement is also entered into voluntarily, then which presumption – (a) or (b) – would apply to the agreement under the proposed amendment? Assuming that both presumptions would apply, an attaching entity could challenge both presumptions. If the

¹⁴ The party that offered the amendment suggested at the Technical Session that the Rule could include a new subparagraph that would establish, for existing Pole Agreements in force before the Rule takes effect, a presumption that such agreements are "contracts of adhesion" entered into involuntarily. The party did not offer specific amending language, nor did the party provide citations to any legal authorities on which its comments were based. On the face of the party's oral representation, NHTA would oppose such an amendment, but reserves its right to respond in writing to any written proposals submitted by other parties.

attaching entity lost one challenge but prevailed on the other, would the agreement be void? Is an agreement that is held to be just, reasonable and nondiscriminatory still valid if it is also determined to have been entered into involuntarily? These are merely the most simple questions that arise from the proposed amendment. Other issues that are even more convoluted and confusing could quickly arise from the simultaneous application of conflicting and overlapping presumptions to the same pole attachment agreement.

The NHTA opposes any amendment that would add the words "under this part" to agreements described in Puc 1304.06(b). The provisions of that Rule are intended to apply to agreements entered into before (and not after) the Rule takes effect. The NHTA sees no reason to confuse the only clear distinction that now exists in Puc 1304.06 as drafted.

F. Miscellaneous Comments

The NHTA offers the following miscellaneous amendments in the interest of clarifying and improving the Staff's Final Proposal.

1. Reservation of Law Clause. At the November 21st Technical Session, there was extensive discussion of how to recognize pre-existing legal authority within the Proposed Rule. The subject arose with respect to the authority of municipalities, under non-utility provisions of the Revised Statutes Annotated, to attach to poles; and with respect to the ability of private landowners to assert their property rights with respect to deeded easements for utility lines. The NHTA takes no position with respect to either authority, other than to state its belief that the Proposed Rule is not intended to effect a change in any provision of non-utility law in New Hampshire. Accordingly, to the extent the Staff believes it is necessary to clarify the Rule's intentions with respect to non-utility law, the NHTA recommends that the following sentence be included at the end of Proposed Rule 1301.01 (Purpose):¹⁵ "Nothing in this Rule shall be

¹⁵ In Comments previously submitted on March 5, 2008 and June 24, 2008, the NHTA recommended that the legal authority invoked by the Commission in Puc 1301.01 should be broader than RSA 374:34-a. The NHTA continues to advance that recommendation.

construed to supersede, overrule, or replace any other law or regulation." The language is similar to language found in Vermont PSB Rule 3.701(c), attached hereto.

2. **Definition of "Make-Ready"**. There was discussion at the Technical Session of whether to include a definition of "make-ready" in the Rule. The NHTA supports the inclusion of such a definition and offers the definition used in Vermont PSB Rule 3.702(E), attached hereto: "Make-ready means work necessary to make a pole available for attachment of additional facilities."

3. **Obligations to Negotiate.** There was discussion at the Technical Session concerning the different standards that are now used in the Proposed Rule to establish the "obligation to negotiate" on the parts of the pole owner and the applicant/requestor. As presently drafted, Puc 1303.02 requires a pole owner to "negotiate in good faith," while Puc 1303.03 requires a requestor to "make a reasonable effort to negotiate an agreement." The NHTA supports an amendment to make the same standard applicable in both provisions and agrees that it should be the "good faith" standard.

4. **Notification.** The NHTA supports the following amendments to Puc 1303.06, as agreed to by the parties and Staff at the Technical Session:

Puc 1303.06 Notification.

(a) A pole owner shall provide a person with facilities attached to a pole no less than 60 days' written notice prior to:

- (1) Removing any of ~~the~~ that person's facilities,
- ~~(2) Terminating any service to the facilities,~~
- ~~(3)~~ (2) Increasing any annual or recurring rates applicable to the pole attachment, or
- ~~(4)~~ (3) Modifying the facilities other than as part of routine maintenance or a response to an emergency.

5. **Unauthorized Attachments.** NHTA supports the deletion of Proposed Rule 1304.03 (Unauthorized Attachments) and the renumbering of the subsequent sections, as needed, all as discussed and agreed to at the Technical Session.

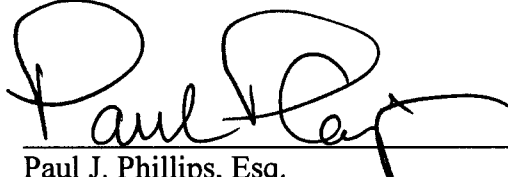
The Eight NHTA ILECs are grateful to the Staff and the Commission for providing this opportunity to offer the foregoing Supplemental Comments to the Final Proposed Puc 1300.

DATED at Plymouth, New Hampshire, this 5th day of December, 2008.

Respectfully submitted,

BRETTON WOODS TELEPHONE COMPANY, INC.; DIXVILLE TELEPHONE COMPANY; DUNBARTON TELEPHONE COMPANY, INC.; GRANITE STATE TELEPHONE, INC.; TDS TELECOM/HOLLIS TELEPHONE COMPANY, INC.; TDS TELECOM/KEARSARGE TELEPHONE COMPANY; TDS TELECOM/ MERRIMACK COUNTY TELEPHONE COMPANY; and TDS TELECOM/WILTON TELEPHONE COMPANY, INC.

By: PRIMER PIPER EGGLESTON & CRAMER PC

By: 
Paul J. Phillips, Esq.
Primmer Piper Eggleston & Cramer PC
100 East State Street, P.O. Box 1309
Montpelier, VT 05601-1309
Tel: (802) 223-2102
E-mail: pphillips@ppeclaw.com