

THE STATE OF NEW HAMPSHIRE

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October 9, 2012

Ms. Debra Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit St., Suite 10  
Concord, NH 03301



Re: DT 12-246, Review of Utility Pole Access Issues  
Staff Recommendation and Report of Stakeholder Meeting

Dear Ms. Howland:

Pursuant to the order of notice in the above-captioned docket, Staff and interested stakeholders held a meeting on August 29, 2012, to develop a scope of issues to be considered and analyzed as well as a process for the conduct of the proceeding. Representatives of FairPoint, TDS, the New Hampshire Telephone Association, PSNH, Unutil, Liberty Utilities, National Grid, New Hampshire Electric Cooperative, Comcast, Time Warner, New England Cable and Telecommunications Association, BayRing, segTEL, G4, Lighttower, Waveguide, NHOS, Teljet, Sidera Networks, UNH, Concord Fire, NHDOT, DRED, OCA and Staff participated.

Some stakeholders argued this docket is not necessary. In their opinion, they have managed third party attachments for years without Commission intervention and would prefer not to expend resources in a lengthy, contentious proceeding whose outcome is not likely to be helpful. Other stakeholders argued existing rules do not address third party attachments, and as a result, there is no fair or effective way for a new entrant to attach to poles if competitive third party attachers delay or block the new entrant's ability to attach. Another view expressed by participants was to wait for the outcome of DT 12-107, and to use the factual background developed in that proceeding to determine if this proceeding is necessary.

There was general agreement that existing rules do not address third party attachments. The pole owners also generally concurred that they have no obligation to facilitate third party attachments, other than the work required to license third party attachers and perform make-ready required on their own facilities in a non-discriminatory manner. According to the pole owners, they do not have the resources to do the physical work required to move other utility facilities, do not want to become fact finders to resolve disputes between third parties and should not be expected to incur the liability of moving another utility's working facilities.

Some stakeholders advocated for development of additional Commission rules. According to one proponent, FCC rules specify information which is to be provided in order to have a dispute resolved. Others advocated for Commission rules to establish timelines for third party make-ready with consequences when facilities are not moved within a specified time.

Several stakeholders raised various viewpoints regarding the Commission's jurisdiction over third party make ready matters. One pole owner took the position that RSA 374:34-a only applies to pole owners. Another questioned the Commission's authority to implement rules which would require pole owners to facilitate all make-ready work necessary when a new attachment is licensed.

The stakeholders discussed whether a uniform pole attachment agreement should be developed. The pole owners generally believe there is no need for and perhaps no authority for Commission involvement in standardizing pole attachment agreements. Some argued businesses can and should negotiate their own business agreements, while others asserted the pole attachment agreements are fairly standard, have been used for decades, and do not require adjustment. One stakeholder argued that it should not be difficult to ensure the agreements are uniform because they seem to be very similar. Another stakeholder pointed out it may be premature to discuss changes to existing pole attachment agreements until requirements are established which differ from existing agreements.

It was noted at the meeting that some utilities use an automated system to coordinate with and notify other utilities on the status of work requiring sequential facility moves by multiple providers. Several utilities use the National Joint Utilities Notification System (NJUNS). This shared system allows different pole attachers to coordinate work on joint ventures for pole transfers, or other projects. Some utilities use internal tracking software while others do not use either system.

Finally, a discussion ensued about how to proceed. Staff suggested it would summarize the discussion and provide a recommendation to the Commission, and that stakeholders be given an opportunity to comment on the staff report before the Commission issues further direction.

#### Staff Analysis and Recommendation

There are currently no requirements for coordination of sequential work by multiple attachers, which is often necessary when a new attachment is authorized on a utility pole. It is not clear whose responsibility it is to notify each of the attachers in order to get the work done. The lack of a defined process can lead to confusion, delay and disputes. There are no rules to define delay or how disputes should be resolved.

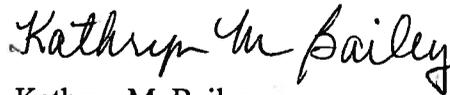
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Staff recommends the proceeding should be used to develop Commission rules to establish timing and coordination of third party make-ready when a new competitor is licensed to attach to a utility pole, as well as dispute resolution options. Staff further recommends that the rulemaking address the general practice of requiring new attachments to be located 40 inches below the neutral and whether a more efficient method can be established. Finally, Staff recommends the Commission allow two weeks for comment on this proposal to allow stakeholders an opportunity to respond.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn M. Bailey".

Kathryn M. Bailey  
Director, Telecommunications

Cc: service list  
Stakeholders