STATE OF NEW HAMPSHIRE

BEFORE

THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DRM 08-004

RULEMAKING, PUC 1300 POLE ATTACHMENTS, REGULAR RULES

COMMENTS OF segTEL, INC.

June 25, 2008

In recognition of Commission Staff's request not to simply reiterate its prior comments, segTEL submits these updated comments to the draft final rules proposed and distributed on June 16, 2008, and requests that its earlier comments be considered incorporated herein. segTEL appreciates the work that went into developing these final rules, and looks forward to continuing to work with the Commission and other interested parties as these rules go forward.

In July, 2007, the legislature enacted SB 123, an act relative to pole attachments as RSA Chapter 340, which required that (a) the Commission expeditiously promulgate rules to carry out the provisions of the RSA, and (b) the rules "be consistent with the regulations adopted by the Federal Communications Commission under 47 USC § 224, including the formulae used to determine maximum just and reasonable rates" for a period of at least two years.

Unfortunately, despite efforts over the past year, the proposed rules still do not address segTEL's primary objection: the rules as proposed are <u>not</u> consistent with "the regulations adopted by the Federal Communications Commission under 47 USC § 224", and are therefore invalid.

The authority to promulgate rules is not unfettered. Rather, the NH Supreme Court has said:

> "It is well settled in this State that the legislature may delegate to administrative agencies the power to promulgate rules necessary for the proper execution of the laws. Ferretti v. Jackson, 88 N.H. at 298, 188 A. at 476; Smith Insurance Inc. v. Grievance Committee, 120 N.H. 856, 861, 424 A.2d 816, 819 (1980); Petition of Boston & Maine Corp., 109 N.H. 324, 326, 251 A.2d 332, 335 (1969). But the legislature may not, of course, delegate unlimited rulemaking authority to administrative agencies. Smith Insurance Inc. v. Grievance Committee, supra 120 N.H. at 861, 424 A.2d at 819. Rather, the legislature must declare a general policy and prescribe standards for administrative action. Ferretti v. Jackson, 88 N.H. at 303, 188 A. at 479.
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> "Accordingly, the rulemaking authority which may be delegated by the legislature is limited. The administrative agency's authority allows it to "fill in details to effectuate the purpose of the statute," Kimball v. N. H. Bd. of Accountancy, 118 N.H. 567, 568, 391 A.2d 888, 889 (1978);

> Reno v. Hopkinton, 115 N.H. 706, 707, 349 A.2d 585, 586 (1975), and administrative rules which go beyond the filling in of details are invalid. Kimball v. N. H. Bd. of Accountancy, supra 118 N.H. at 568, 391 A.2d at 889; see Reno v. Hopkinton, supra 115 N.H. at 708, 349 A.2d at 586. "Rules adopted by State boards and agencies may not add to, detract from, or in any way modify statutory law." Kimball v. N. H. Bd. of Accountancy, supra 118 N.H. at 568, 391 A.2d at 889. Traditionally it has been the responsibility of this court to insure that the administrative agency does not substitute its will for that of the legislature. Id. at 569, 391 A.2d at 889." (*Opinion of the Justices*, 121 N.H. 552, 431 A.2d 783, N.H., 1981.)

segTEL contends that the will of the legislature is expressly stated in the authorizing statement that provides for the promulgation of rules **consistent** with Section 224 of the Telecommunications Act of 1996 and the FCC's interpretations thereof, and that the statute as written is consistent with the legislature's intent. While the requirement that the rules be consistent with FCC regulations was not written into the statute, it is nonetheless a mandate that the Commission is bound to follow, in order to ensure that the Commission "does not substitute its will for that of the legislature." (Ibid.)

Consistency with the FCC rules is not only necessary because the legislature required it, but because the Commission is preempted from promulgating rules that might prohibit or have the effect of prohibiting the ability of a CLEC to provide interstate or intrastate service. 47 USC 253(a) is explicit on this point: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Commission rules are state regulations and as a result this rulemaking must not run afoul of Section 253(a).

Additionally, segTEL requests that the Commission consider the legislature's intent when using the term "consistent" as opposed to other weaker instructions such as "not conflicting". The plain language definition of the word "consistent" can be found within Merriam Webster's dictionary: "Consistent: marked by harmony, regularity, or steady continuity : free from variation or contradiction." To the extent that RSA Chapter 340 and RSA 374:34-a conflict, there are two tests to determine which one shall be given precedence. First is that the later statute will take precedence, which doesn't apply here since both were enacted at the same time. Second is that the more specific statute takes precedence. segTEL believes that the language of RSA 374:34-a, *i.e.*, "This authority shall include but not be limited to the state regulatory authority referenced in 47 U.S.C. section 224 (c)." is less specific that of RSA Chapter 340: "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 USC section 224, including the formulae used to determine maximum just and reasonable rates."

segTEL believes that RSA Chapter 340 and the plain language of the statute are sufficient to ensure rules that are consistent with the FCC regulations. segTEL points out, however, that the legislative history and the understanding of the industry players involved in supporting the legislation would also show that the intent was to create a local forum for the interpretation and enforcement of pole attachment regulations **in accordance with the precedents set by the FCC**, at least for the first two years. Adding or subtracting rights, privileges or obligations that create a variation from the policy mandate of the US Congress and the Federal Communications Commission is inconsistent with the RSA Chapter 340 and should be avoided.

Accordingly, segTEL submits the following comments, in an attempt to carve a path that creates rules that are consistent with RSA 374:34-a, RSA Chapter 340, 47 USC § 224 and the rules and regulations of the FCC. In those instances where these various documents diverge, segTEL suggests that the appropriate order of relevance, until July, 2009, is: RSA Chapter 340, 47 USC § 224, FCC regulations, RSA 374:34-a, because RSA Chapter 340 is the overarching authority for RSA 374:34-a, and proscribes the bounds of the RSA for the first two years as consistency with FCC regulations, which derive from 47 USC § 224.

Comment A – Purpose and Standards of Review

> Puc 1301.01 Purpose. The purpose of Puc 1300, pursuant to the mandate of RSA 374:34-a, is to provide for rates, charges, terms and conditions for pole attachments that are just, reasonable and in the public interest.
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> Puc 1304.04 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct an adjudicative proceeding pursuant to Puc 203 to consider and rule on the petition. Where the public interest so requires, the commission may order that rates, charges, terms or conditions for pole attachments be modified.

segTEL recommends that the phrase "and in the public interest" *be removed from Puc 1301.01.*

segTEL recommends the following wording for Puc 1304.04.

Puc 1304.04 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct an adjudicative proceeding pursuant to Puc 203 to consider and rule on the petition. For attaching carriers, where the balance of the interests of the subscribers and users of the services offered via such attachments and the interests of the consumers of any pole owner providing such attachments so requires, and consistent with the precedents established by the FCC in its regulation of pole attachments prior to the establishment of these rules, the commission may order that rates, charges, terms or conditions for pole attachments be modified. For attaching entities, where the public interest so requires, the commission may establish commercial rates, charges, terms or conditions for pole attachments.

Rationale: All of the proposed rules closely track RSA 374:34-a in most respects, but in these two instances the phrase "public interest" has been included, although it is not consistent with FCC regulations and was not included in the text of RSA 374:34-a. RSA 374:34-a does not contemplate such a bar. Rather, in addition to the just and reasonable standard, the statute contemplates that the Commission shall consider "the interests of the subscribers and users of the services offered via such attachments, as well as the interests of the consumers of any pole owner providing such attachments"-- a mandate that envisions a balancing of interests between the consumers of both entities.

Comment B – Definitions of Attaching Entity and Facilities

> Puc 1302.01 "Attaching entity" means a natural person or an entity that has attached or seeks 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.

segTEL recommends that the rules recognize two definitions of entities that may seek to attach, in order to ensure that the rules both track the enabling statute and are consistent with current FCC regulations as well as 47 USC § 224:

Puc 1302.0x "Attaching carrier" means a CLEC or CATV provider that has attached or seeks to attach to a pole.

Puc 1302.0x "Attaching entity" means a natural person or an entity that has attached or seeks to attach to a pole, including but not limited to incumbent local exchange carriers, electric utilities, and governmental entities.

Rationale: First, segTEL recommends that the rules more explicitly make the distinction between parties that ***may*** *be an attaching entity and those entities (CLECs and CATV) that have been granted explicit rights to attach by virtue of 47 USC § 224. CLECs and CATV are granted competitively neutral and nondiscriminatory access at cost-based rates because poles are a bottleneck facility that represent a barrier to Federally-mandated competition. Granting similar access to any "natural person" or entity serves to diminish legitimate access to scarce resources. To the extent that access to poles may be made actually or effectively unavailable to a CLEC or CATV provider as a result of such unfettered access, the proposed rules fall afoul of 47 USC § 253.*

The FCC rules track the language of 47 USC § 224 closely, defining pole attachments *as those made by CLECs and CATV and defining* attaching entities *separately. The Code and the CFRs make the distinction segTEL is recommending here: regulated pole attachments are those attachments made by providers of cable television and providers of telecom services (the same term is used to describe those who must make contributions to universal service, but the Code and Rules specifically exclude incumbent utilities from this section) whereas an attaching entity can be anyone with a physical attachment to the pole. The former are granted cost-based pricing and nondiscriminatory access, whereas the latter are granted the opportunity to seek to attach on commercial terms.*

Second, RSA 374:34-a limits attachments to "the types of attachments regulated under 47 USC § 224", but Puc 1302.01 uses the term "a facility of any type" which is entirely undefined. Neither the statutes of the State nor the rules of the Commission define what a "facility" is, nor is there an industry standard definition of the term. segTEL recommends eliminating that phrase from the rule in order to avoid confusion about what is meant by it.

Comment C – Access to Competitive Facilities

> Puc 1302.04 "Pole" means "pole" as defined in RSA 374:34-a, namely "any pole, duct, conduit or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57."

segTEL wishes to point out that the New Hampshire statute grants broader access than that granted by 47 USC § 224 *by requiring competitive providers to allow access to their facilities -- access that the FCC has expressly rejected. Competitive facilities represent "green field" investments which the FCC has*

sought to protect in order to prevent disincentives to new investment. The FCC's interpretation has been upheld by, for example, the US District Court of Nebraska, which stated, "In light of the Act's purpose (to promote competition) and structure (imposing numerous duties on incumbent LECs to facilitate market entry), the FCC's interpretation that "no incumbent LEC may seek access to the facilities or rights-of-way of a LEC or any utility under either section 224 or section 251(b)(4)" is based on a permissible construction of the statutes and does not conflict with the plain meaning of the Act. Therefore, I should defer to the FCC's interpretation of the Act and its regulations contained in ¶ 1231, making the portion of the interconnection agreement that requires AT & T to provide U S WEST with access to AT & T's poles, ducts, conduits, and rights-of-way violative of the Act and its implementing regulations. See Hamilton, 224 F.3d 1049." See *AT&T Communications of Midwest, Inc. v. U.S. West 143 F.Supp.2d 1155 D.Neb.,2001.*

In this instance, RSA Chapter 340 as enacted and RSA 374-34-a are inconsistent with one another. When such ambiguity arises, the statute must be construed according to legislative intent. Since the intent is for the rules to be consistent with FCC regulations for two years, it appears to be an oversight that "pole" was defined more broadly than intended.

segTEL recommends that the words "an incumbent" be inserted to modify "public utility."

Comment D – Access Standard

> Puc 1303.01 Access Standard. The owner or owners of a pole shall provide access to such pole on terms that are just, reasonable and nondiscriminatory. Notwithstanding this obligation, the owner or owners of a pole may deny a request for attachment to such pole when there is insufficient capacity on the pole or for reasons of safety, reliability or generally applicable engineering purposes.

segTEL recommends that this rule be revised to read:

Puc 1303.01 Access Standard. The owner or owners of a pole shall provide:
a) competitively neutral and nondiscriminatory access to attaching carriers at cost-based rates that are, at a maximum, based upon the formulae specified by the FCC; and
b) commercially reasonable access to attaching entities.
c) Notwithstanding this obligation, an electric utility may deny a request for attachment to such pole when there is insufficient capacity on the pole or for reasons of safety, reliability or generally applicable engineering purposes.
d) In assessing denial of access complaints, the commission shall consider the precedents established by the FCC in its regulation of pole attachments prior to the establishment of these rules.

*Rationale: 47 USC 224(f) regarding nondiscriminatory access reads: "**(1)** A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. **(2)** Notwithstanding paragraph (1), a utility **providing electric service** may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and*

for reasons of safety, reliability and generally applicable engineering purposes." [emphasis added] The proposed rule impermissibly expands an incumbent's ability to deny service.

The FCC has ruled repeatedly and consistently on denial of access with the effect that the only reasons an incumbent utility can deny competitive attachments made by telecom or CATV providers are (1) the attachments are unsafe or will create an unsafe situation or (2) they will interfere with the facility owner's ability to meet its obligations of universal service. The FCC described its interpretation in this way:

> In the Local Competition Order, we recognized that a utility may deny access on a non-discriminatory basis "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." That a utility could ultimately find that it cannot grant an access request based on capacity and safety concerns does not exempt it from the overall access requirement of section 224(f). When a utility denies access, as an exception to the access requirement of section 224, it must be able to establish a prima facie case for the denial in the context of an access complaint. As we stated in the Local Competition Order, a utility that denies access to, for example, a 40 foot pole due to lack of capacity should be able to demonstrate why there is no capacity and enumerate the specific reasons for declining to replace the pole with a 45 foot pole.
>
> It is worth noting in this regard, that utilities subject to pole attachment regulation have been expected, since the beginning of pole attachment regulation to take steps to rearrange or change out existing facilities at the expense of attaching parties in order to facilitate access. The legislative history of the 1978 law that first included direct pole attachment regulation within the Communications Act makes specific reference to the fact that "it may be necessary for the utility to replace an existing pole with a larger facility in order to accommodate the CATV user" and discusses the rate treatment to be given these "change-out" replacement costs.[FN126] This capacity expansion process then became a critical part of the Commission's regulatory practice and there is no indication the legislative changes adopted in 1996, designed to expand the scope of pole attachment access, reflected any intention to withdraw this existing process. See *In The Matter Of Implementation Of The Local Competition Provisions in the Telecommunications Act of 1996*, 18 Communications Reg. (P&F) 376 CC Docket No. 96-98, October 26, 1999

Therefore, the access standard used by the FCC in the enforcement of its regulations also includes a specific obligation for the utility to reasonably modify its facilities to allow for attachments. This includes reorganization of existing attachments and replacement of existing poles. Further, the FCC has determined that utilities cannot reserve space for themselves except for current projects. If it adopts the language of the FCC rule without deference to the interpretation provided by FCC orders, the Commission could find itself burdened by complaints from attaching entities as pole owners avail themselves of the literal wording of the rule, and attempt to turn back the clock on access standards that attaching carriers have been entitled to since 2002.

Comment E – Obligations to Negotiate

> Puc 1303.02 Owner Obligation to Negotiate. The owner or owners of a pole shall, upon the request of a person seeking a pole attachment, negotiate in good faith with respect to the terms and conditions for such attachment.
>
> Puc 1303.03 Requestor Obligation to Negotiate. A person seeking a pole attachment shall contact the owner or owners of the pole and make a reasonable effort to negotiate an agreement for such attachment.
>
> Puc 1303.04 Request for Access and Response Requirements. Requests for access to a utility's poles shall be in writing. If access is not granted within 45 days of receiving a request for access, the owner must confirm the denial in writing by the 45th day. The owner's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to the grounds in Puc 1303.01 for such denial.

segTEL recommends that these rules be revised to read:

Puc 1303.02 Requests for Access.
(a) Requests for access to a utility's poles by an attaching carrier must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.
(b) Requests for access to a utility's pole by any third party that is not an attaching carrier must be made in writing. Incumbent utilities may grant access to third parties at commercial terms provided that such terms are in no event preferential to those granted to attaching carriers.

Rationale: The proposed rules are inconsistent with the FCC regulations. As stated above, the FCC has ruled repeatedly and consistently on denial of access with the effect that the only reasons an incumbent utility can deny competitive attachments made by CLECs or CATV providers are (1) the attachments are unsafe or will create an unsafe situation or (2) they will interfere with the facility owner's ability to meet its obligations of universal service. The FCC has also determined that utilities cannot reserve space for themselves except for current funded projects. Furthermore, the US Congress and FCC have not provided for an affirmative entitlement for any other party to seek or receive access to poles.

segTEL believes that any rule that has the effect of entitling other parties to attach on the same terms and conditions as telecom and cable TV providers is inconsistent with 47 USC 224, FCC regulations, and FCC orders. Further, segTEL recommends that any proposed deviation from the FCC rules after the initial two year period should be preceded by a fact specific investigation.

Comment F –Complaints

> Puc 1304.01 Lack of Agreement. An attaching entity unable to reach agreement with the owner or owners of a pole or poles subject to this chapter may petition the commission pursuant to Puc 203 for an order establishing the rates, charges, terms and conditions for the pole attachment or attachments. Such a petition shall include the information required for complaints to the FCC made pursuant to the terms of 47 CFR § 1.1404(d) through (m) in effect on July 16, 2007.

segTEL recommends that this rule be revised to read:

Puc 1304.01 Complaints to the Commission. An attaching carrier may petition the commission pursuant to Puc 203 regarding denial of access or any rate, term or condition that is unjust or unreasonable. Such a petition shall include all of the information described in the terms of 47 CFR § 1.1404(d) through (m) in effect on July 16, 2007.

Rationale: Under 47 CFR § 1.1404(d) through (m) only CLEC and CATV may file complaints. Those complaints are not limited to agreements with pole owners.

Comment G – Rate Review

> Puc 1304.05 Rate Review Standards.
> (a) In determining just and reasonable rates under this chapter, the commission shall consider:
> (1) The interests of the subscribers and prospective 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 rights of attaching entities and congressional mandate of the 1996 Telecommunications Act
> (4) Generally accepted principles of nondiscrimination.
> (5) The formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007.
> (b) For petitions filed on or before July 15, 2009, the Commission shall use the formulae referenced in (a)(3) above to determine just and reasonable rates under this chapter.

segTEL recommends that this rule be revised to read:

Puc 1304.05 Rate Review Standards. In determining cost-based rates under this chapter, the commission shall use the formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007.

Under FCC regulations, CLECs and CATV attachments are made at cost-based rates and the FCC has established the maximum rates that may be charged to these parties. Cost-based rates are not applicable to attachments that are not made pursuant to the market-opening provisions of the Telecommunications Act. The Commission's rules, in order to be consistent with FCC regulations, must reflect that attachments other than those made by cable TV and telecom providers are reasonably and legitimately priced at commercial rates. Rate review for CATV and CLEC attachments, in accordance with FCC regulations, would be undertaken with a non-discriminatory, cost-based analysis, whereas rate review for other attaching entities would be undertaken according to the standards of commercial rate-setting.

Comment H – Presumptive Nature of Voluntary Agreements

> Puc 1304.06 Burden of Proof.
> (a) A pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory for purposes of adjudication before the commission. An attaching entity filing a petition under this part shall have the burden of proving that an agreement entered into voluntarily is not just, reasonable and nondiscriminatory.

(b) A signed pole attachment agreement shall be presumed to have been entered into voluntarily. An attaching entity may rebut the presumption of voluntariness by demonstrating that signing the agreement, regardless of its terms, was reasonably necessary to avoid significant delay or business interruption. Being signed prior to the adoption of these rules under the prior FCC regime shall be deemed sufficient to meet this burden of proof.

(c) When the presumption of voluntariness has been successfully rebutted pursuant to (b) above, the burden of proving that the agreement is just, reasonable and nondiscriminatory shall shift to the pole owner.

segTEL recommends that this rule be revised to read as follows in order to ensure consistency with FCC regulations.

Puc 1304.06 Agreements.
(a) No pole attachment agreement with an incumbent utility prior to the adoption of these rules shall be presumed to be just, reasonable, or nondiscriminatory. (b) For any agreement entered into after the effective date of these rules the following Burden of Proof shall apply:

(1) A pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory for purposes of adjudication before the commission. An attaching entity filing a petition under this part shall have the burden of proving that an agreement entered into voluntarily is not just, reasonable and nondiscriminatory.

(2) A signed pole attachment agreement shall be presumed to have been entered into voluntarily. An attaching entity may rebut the presumption of voluntariness by demonstrating that signing the agreement, regardless of its terms, was reasonably necessary to avoid significant delay or business interruption. .

(3) When the presumption of voluntariness has been successfully rebutted pursuant to (b) above, the burden of proving that the agreement is just, reasonable and nondiscriminatory shall shift to the pole owner.

Comment I – Make Ready Rules

There are no provisions in these rules for make ready rates, time frames, or other requirements. Please see segTEL's comments of March 5 for a discussion on the necessity of make ready rules.

APPENDIX I: SB 123, 2007 Session Laws, Ch. 340

NEW HAMPSHIRE 2007 SESSION LAWS

2007 REGULAR SESSION

Ch. 340 - S.B. 123

PUBLIC UTILITIES--RULES AND REGULATIONS--POLE ATTACHMENTS

AN ACT relative to pole attachments.

Be it Enacted by the Senate and House of Representatives in General Court convened:

340:1 New Subdivision; Pole Attachments. Amend RSA 374 by inserting after section 34 the following new subdivision:

Pole Attachments

374:34-a Pole Attachments.

I. In this subdivision, a "pole" means any pole, duct, conduit, or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.

II. Whenever a pole owner is unable to reach agreement with a party seeking pole attachments, the commission shall regulate and enforce rates, charges, terms, and conditions for such pole attachments, with regard to the types of attachments regulated under 47 USC section 224, to provide that such rates, charges, terms, and conditions are just and reasonable. This authority shall include but not be limited to the state regulatory authority referenced in 47 USC section 224(c).

III. The commission shall adopt rules under RSA 541-A to carry out the provisions of this section, including appropriate formula or formulae for apportioning costs.

IV. In exercising its authority under this subdivision, the commission shall consider the interests of the subscribers and users of the services offered via such attachments, as well as the interests of the consumers of any pole owner providing such attachments.

V. Nothing in this subdivision shall prevent parties from entering into pole attachment agreements voluntarily, without commission approval.

VI. Any pole owner shall provide nondiscriminatory access to its poles for the types of attachments regulated under this subdivision. A pole owner may deny access to its poles on a nondiscriminatory basis where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

VII. The commission shall have the authority to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.

340:2 Adoption of Rules. The public utilities commission shall expeditiously adopt interim rules and then final rules to carry out the provisions of RSA 374:34-a. 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 USC section 224, including the formulae used to determine maximum just and reasonable rates. The public utilities commission may incorporate into its rules, by reference, applicable regulations of the Federal Communications Commission. Notwithstanding RSA 541-A:19, X, the interim rules may be effective for up to 2 years. Once the interim rules are adopted, pole attachments shall become subject to RSA 374:34-a and the rules of the public utilities commission.

340:3 Effective Date. This act shall take effect upon its passage.

(Approved: July 16, 2007) (Effective Date: July 16, 2007) NH LEGIS 340 (2007)