

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DRM 08-004 (Regular PUC 1300 Rules Re Utility Pole Attachments)
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**Comments of FairPoint Communications on
Proposed Final PUC 1300 Rules**

Pursuant to the Commission’s Order of Notice of May 15, 2009 in this proceeding, Northern New England Telephone Operations LLC, d/b/a FairPoint-NNE (hereinafter “FairPoint”) hereby submits its comments on the proposed final PUC 1300 pole attachment rules (“Rules”).

While FairPoint has minor comments with certain of the Rules (which are addressed in Attachment A), its major concerns are with Rules 1303.09, 1303.10, and 1303.11. These three rule sections deal respectively with Location of Attachments, “Boxing” of Poles, and the use of Extension Arms.

Prior to addressing the specific concerns of these three Rule sections, FairPoint believes that some general comments are warranted. It is important to keep in mind that FairPoint and the electric companies are the pole owners and have the financial and legal responsibility to build and maintain poles and pole lines. Other attachees are renting space on assets that the joint owners paid for and own. As owners of the poles, FairPoint and the electric companies have certain obligations but also have certain rights. Paramount among those rights should be the right to direct renters (attachees) where and in what manner to

attach so that the pole owners can best maintain the pole lines and keep them in safe working condition. That said, FairPoint welcomes guidelines that are safe, reasonable and non-discriminatory and commits to administering the Rules in a non-discriminatory manner.

Rule 1303.09 (Location of Attachments)

This section should be removed. It is essential that attachments to poles with FairPoint facilities be placed above FairPoint facilities. This is not a matter of tradition or convention, but of sound engineering. Attachments are engineered to place lightest to heaviest down the pole with heaviest facilities placed on the bottom. The simple truth is that FairPoint's cable is the heaviest cable with the greatest amount of sag. The engineering of lightest down to heaviest is in compliance with the Telcordia Bluebook Section 3.21 which also calls for the lighter fiber facilities to be in the top position. It would be an inefficient use of space if FairPoint's cable were not in the lowest position. The need to attach FairPoint's facilities, with its greater sag potential, high enough (or, the lighter attachee low enough) to ensure those facilities do not sag onto the attachee would cause an excessive use of pole space if FairPoint's facilities were not on the bottom.

In addition, allowing the placement of lighter facilities below FairPoint's heavier facilities could cause unnecessary damage to both FairPoint's and the attachee's facilities. Our experience has shown that facilities placed below FairPoint's inevitably rub against our copper cables causing cable deterioration and service outages.

The separation between facilities is a requirement pursuant Telcordia Bluebook industry standards to avoid this very situation. Placing guards or cable protection is not a feasible option. Both companies would need to protect their facilities placing a hardship on

FairPoint as it is creating a situation that goes against build practices. Guards are placed as a last resort when an obstruction such as a tree rub cannot be avoided.

The failure to place FairPoint's cables at the lowest point will also generate additional work and expense. If FairPoint is removing the pole, it would require two dispatches – one to remove our facilities or transfer our facilities to a new pole and one to remove the old pole after the other attachees have removed their facilities. If adequate clearance cannot be achieved, a taller pole will need to be set or, even worse it will create incentives for dual poles.

If this section is not removed it should at least be amended to state that attachee locations must be 12 inches above the highest FairPoint facility if there is space. Alternatively, the field survey required by the pole owner will determine exactly where the new entity should attach. Suggested language would be: "Pole owner(s) shall specify the point of attachment on each utility pole to be occupied by the attaching entity."

Rule 1303.10 (Boxing of Poles)

FairPoint recommends that Rule 1303.10 be removed. Boxing, which is the placement of lines or cables on both the road side and field side of a pole, causes severe operational and safety issues. Boxing makes pole removals and associated cable transfers more complicated. In an emergency situation, boxed poles impact public safety due to the increased time required to transfer the attachments. In addition, boxing, if done properly, does not create additional space on the pole as clearances at the pole and the space between facilities at mid-span must remain consistent with industry standards.

Rule 1303.11 (Extension Arms)

This section should also be removed as it also creates substantial operational and safety issues. Extension arms are extremely difficult for technicians to climb or move around on, impacting their safety. In cases where a lower extension arm is placed, FairPoint is extremely limited as to how it can access its facilities with lower arms. In many cases it will make it impossible to use buckets and ladders and limits the technicians to gaffs or climbers. Extension arms also limit FairPoint's ability to add new stand or cable to the particular pole line. In situations where an attachee is located below FairPoint and is using an extension arm, FairPoint would not be able to gain access to the stand, cable terminal or drops. As a result, lashing or adding a new stand would be virtually impossible.

It should also be noted that FairPoint's concerns about location of attachments, boxing and extension arms, should be given great weight because it is FairPoint, and not the attachees, who responds to call-outs and emergency after-hours situations. It has become increasingly difficult for FairPoint to get other attachees, including cable companies, to respond to our operational needs, particularly in emergency situations. Accordingly, if past experience continues, and FairPoint has no expectation that it will change, it is important that, as the owner and principal maintainer of the poles, its views on the operational requirements for attachments be given substantial deference.

Respectfully submitted,

Kevin M. Shea

ATTACHMENT A

Rule 1301.02(b): Language should be added requiring attaching entities to be properly licensed so that not just anyone can attach facilities.

Rule 1302.01: (Numbered 1301.01 incorrectly) “facility of any type” should be consistent with Rule 1302.05 which further defines facility.

Rule 1303.01: The language should read “authorized and licensed attaching entities”.

Rule 1303.04: Pole attachment agreement needs to be added to the items that must be completed and received for an application to be complete.

Rule 1303.04: Needs to be more specific on responsibilities and timeframes for application process:

A pre-construction survey is required for each pole and anchor for which an attachment is requested to determine the adequacy of the pole and anchor to accommodate Attaching Entity’s attachments and facilities. The pre-construction survey will be performed jointly by the Owner, Joint Owner and/or Joint User, and Attaching Entity unless otherwise agreed to by all parties. Within forty-five (45) days of receipt of written notification in the form of a complete license application and the correct survey fee payment, Owner shall perform or have performed a pre-construction survey and present the survey results. The survey results will contain one of the following statements:

If no make-ready work is required, a license shall be issued for the attachment.

If Owner determines that the pole or anchor to which Attaching Entity desires to make attachments is inadequate or otherwise needs rearrangement of the existing facilities thereon to accommodate the Attaching Entity facilities, Owner will provide Attaching Entity with an itemized invoice for such anticipated make-ready work. The make-ready work will be performed following receipt by Owner of advance payment, but not before a pole attachment agreement has been fully executed by both the Attaching Entity and Owner. Upon receipt of the advance payment, Owner will provide the Attaching Entity with the estimated start and estimated construction completion date of the Make-ready Work.

If Owner determines that the pole may not be reasonably rearranged or replaced to accommodate Attaching Entity's facilities for reasons of capacity, safety, reliability or engineering, the Owner may refuse to grant a license for attachment. Owner shall provide the specific reason(s) for such denial. Owner shall not unreasonably exercise the right reserved hereunder.

Rule 1303.05: Add the language "written authorization."

Rule 1303.06(a): Recommend changing "person with facilities attached to a pole" to "the attaching entity."

Rule 1303.06(a)(3): Recommend adding "Modifying facilities or Utility Poles (such as pole replacement or relocation) ..."

Rule 1303.06(b)(1): Recommend adding "Modifying existing attachment, including Overlashing"

Rule 1304.03: Recommend adding, "If any of the attaching entity facilities are attached to the owner's poles without proper written authorization, the pole owner may recover fees equal to five times the current applicable annual attachment fee and require the attaching entity to submit in writing, within thirty (30) days after receipt of written notification from the pole owner of the unauthorized attachment, a pole attachment application. If such application is not received within the specified time period, attaching entity shall remove its unauthorized attachments within thirty (30) days of the final date for submitting the required application or pole owner may remove attaching entity's facilities without liability at the attaching entity's expense."