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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

June 18, 2009 - 9:17 a.m.
Concord, New Hampshire

NHPUC JUN29'09 PM 3:28

RE: DRM 08-004
RULEMAKING:
Puc 1300 Pole Attachments - Regular Rules.

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Graham J. Morrison
Commissioner Clifton C. Below

Sandy Deno, Clerk

APPEARANCES: (No appearances taken)

Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G S

1
2 CHAIRMAN GETZ: Okay. Good morning,
3 everyone. We'll open the public hearing in the ratemaking
4 docket DRM 08-004. On May 1, 2009, the Commission voted,
5 pursuant to RSA 541-A, to initiate a rulemaking for New
6 Hampshire Code of Administrative Rules, Chapter Puc 1300
7 concerning utility pole attachments. The Initial Proposal
8 consists of a readoption, with amendment, to the existing
9 interim rule. The proposed rule sets forth procedures and
10 standards to resolve disputes concerning rates, charges,
11 terms and conditions of pole attachments that may arise
12 between public utilities that own or co-own utility poles
13 and entities, such as telecommunication providers,
14 electric service providers, cable television providers,
15 and municipalities that have facilities attached to such
16 poles or that seek such attachments. A rulemaking notice
17 was filed with the Office of Legislative Services on May
18 12th. The notice set today for a public hearing and set a
19 deadline of June 25 for written comments. And, an order
20 of notice was also issued on May 15 providing notice of
21 the hearing today.

22 I'll note for the record that the
23 hearing is held pursuant to RSA 541-A:11 under the State
24 Administrative Procedures Act. The purpose of the hearing

1 is to take public comment on the proposed rules. And,
2 also note for the record that all three Commissioners are
3 present satisfying the quorum requirement for a public
4 hearing on rulemaking.

5 I have some sign-up sheets indicating
6 individuals who would like to speak this morning. So, I'm
7 just going to go through the sheet in the order that the
8 names have been set out. And, the first person indicating
9 they would like to speak is William Durand.

10 MR. DURAND: Thank you, Mr. Chairman.
11 My name is Bill Durand. I'm the Executive Vice President
12 and Chief Counsel for the New England Cable
13 Telecommunications Association. Unusual to be first, and
14 I was the last guy drafted in my town, so not used to
15 going first.

16 We welcome the opportunity to present
17 the public statement. I think it's very clear to the
18 Commission, if you followed our comments throughout this
19 process, and even in the legislative process, that we have
20 issues with the proposed rules relative to the rate
21 charged. Essentially, the proposed rules adopt the
22 existing FCC rules, which result in essentially the
23 highest pole rates in New England by far. We have
24 proposed in our comments, and in our written comments

1 we'll clarify in great detail why this is negative to many
2 of the public policies being advanced right now in the
3 broadband era.

4 In June 2008, the Department of
5 Resources and Economic Development, DRED, and the
6 Telecommunications Advisory Board issued a Broadband
7 Access Plan that highlighted the needs for improvement in
8 utility pole access, and the consistent and competitive
9 attachment fees so that they do not hinder further
10 deployment of broadband.

11 You know, when I came up here today, I
12 drove through Massachusetts. And, I saw the pole line
13 continue into Nashua. The pole line in Massachusetts,
14 you're paying \$10; as soon as you get to New Hampshire, it
15 could be as high as 30. If you think in a mathematical
16 equation of how that would affect broadband deployment,
17 it's obvious. It's not a deal-breaker. But, in a
18 marginal situation, when you're making a decision to go
19 into the rural areas and deploy broadband and other
20 advanced services, it becomes problematic.

21 Other states that have looked at pole
22 attachment rates: Vermont reduced their rates in the last
23 four or five years. In Connecticut, I got a call from a
24 utility that said "we found out that you're providing

1 Internet service over your lines. We want to increase
2 your rate from 5.83 four-fold. We did a process at the
3 PUC, and the PUC basically said: "Well, listen", in oral
4 argument, they said "how does it matter that that same
5 line, how does it burden the pole further by carrying a
6 Red Sox game or a telephone call?" And, in that decision,
7 what the PUC says, "we're not convinced this has any
8 impact on the utility whatsoever." And, I'll cite that
9 case in my written comments.

10 As far as makeready goes, the makeready
11 issue for us, one of the most glaring problems for us is
12 in the 60 day notice that's required to overlash. This
13 would be probably the only state that would have something
14 like that. We think that's problematic and it ought to be
15 looked at. The industry practice at the FCC and in other
16 states is that overlash is encouraged and there are no
17 problems. They know we're out there doing it. It doesn't
18 create any problems for the utility for us to overlash.

19 And, finally, there's another provision
20 in here of concern, and that's in Section 1304.06, and
21 that requires an attacher to prove that the signature on a
22 pole attachment agreement was not voluntary and
23 specifically creates a rebuttable presumption of
24 voluntariness. With the FCC, we've always been able to

1 sign an agreement, and then later go back if there's a
2 problem. These contracts are not something that are
3 really negotiated. They're known in the industry as
4 "contracts of adhesion". It's take it or leave it. If
5 you want to get on the pole, you sign the contract.

6 We think having an impediment, and I
7 understand the judicial economy of avoiding people coming
8 in here all the time and creating dockets, I don't want
9 that either, because that hits my budget. But, at the end
10 of the day, you can sign a contract, and later on down the
11 road a problem can arise, and we ought to have, if we're
12 going to be here at the PUC, we ought to have the ability
13 to come in and have our conflicts adjudicated.

14 With that, I'd be happy to take
15 questions. But I will be filing comments next week. And,
16 I appreciate the opportunity to speak. Thank you, Mr.
17 Chairman.

18 CHAIRMAN GETZ: Thank you, Mr. Durand.
19 Paul Phillips.

20 MR. PHILLIPS: Thank you, Mr. Chairman
21 and members of the Commission. I'm Paul Phillips. I'm an
22 attorney with the law firm of Primmer, Piper, Eggleston &
23 Cramer. I'm here today representing eight incumbent local
24 exchange carriers who are members of the New Hampshire

1 Telephone Association. They're Bretton Woods Telephone
2 Company, Dixville Telephone Company, Dunbarton Telephone
3 Company, Granite State Telephone, and the four TDS Telecom
4 Companies of Hollis Telephone, Kearsarge Telephone,
5 Merrimack County Telephone, and the Wilton Telephone
6 Company. We also have filed several iterations of
7 comments during the Staff development of the rule. And,
8 so, we will be filing written comments as well to this
9 version.

10 We are generally pleased with the work
11 that the Staff has done in sorting through the various
12 arguments that have been raised and in producing a draft
13 for the Commission, which we can offer some conditional
14 support to. We're pleased with many of the decisions that
15 have been made. We still have a few areas of concern.
16 I'm not going to cover all of them today, but I do want to
17 hit the big ones. And, they generally have to do with
18 some of the new terms that have come in in the Initial
19 Proposal of May the 1st. I'm looking specifically at the
20 definition of "facility" in Puc 1302.05, where the phrase
21 "digital information services" has come in at the end of
22 that section. We're concerned about the meaning of that
23 phrase. It's not a term that has been expressly defined
24 in the rule. It's not a term that has an express

1 definition elsewhere in the Commission's rules or anywhere
2 in the Revised Statutes Annotated. And, so, it is a term
3 that could cause some mischief. And, I guess that's our
4 concern, is where the Commission might go with that in the
5 future as disputes arise that need to be adjudicated. We
6 also note in that definition that there is no inclusion
7 expressly of cable television facilities. And, so, we
8 would hope that the Commission would add the word "cable
9 television" to that list. We note in the rulemaking
10 notice form that the Commission specifically said that the
11 quote "the proposed revisions codify specific issues and
12 procedures related to the attachment of electric,
13 telecommunications, and cable facilities to utility
14 poles." So, we would hope to have "cable television"
15 defined as a "facility" in the rule. And, we'll have some
16 further comments about that particular definition.

17 With respect to the definition of
18 "makeready work", we had offered a fairly simple
19 definition last December when we filed comments, that said
20 simply "makeready" means "work necessary to make a pole
21 available for attachment of additional facilities." The
22 Commission, in the proposed Rule 1302.07 has gone in a
23 slightly different direction and has focused on the
24 movement of cables and the replacement of poles. In our

1 view, that definition is just a little too narrow. There
2 are other elements of work that are involved in makeready
3 beyond just the replacement of poles and the movement of
4 cables. And, so, we have some --

5 CMSR. BELOW: Could you give some
6 examples of those?

7 MR. PHILLIPS: Sure. Well, there's
8 engineering work. There's preparation work. There's,
9 obviously, there's overlashing. There's some inspection
10 work that happens. All of which comes into the makeready
11 cost estimate. But, when you define "makeready" simply as
12 "movement of cables and replacement of poles", then,
13 arguably, those pieces don't get defined as "makeready",
14 which they should be.

15 And, we had pointed to -- actually, what
16 I should point out, with regard to that is, that there is
17 a Section 1303.12 later in the rule, which is the
18 makeready timeframes section, where the Commission says
19 "unless otherwise agreed by the parties to a pole
20 attachment agreement, makeready work shall be deemed to
21 include all work", so there the focus is on the work,
22 "including, but not limited to, rearrangement and/or
23 transfer of existing facilities, replacement of a pole, or
24 any other changes required to accommodate the attachment

1 of the facilities of the party requesting attachment to
2 the pole." So, we think the focus there is the proper
3 one. It focuses on the work and it focuses on the work
4 that's required. So, I think those would be, if the
5 Commission could adopt that language, rather than the
6 definitional language they have used, I think it would be
7 helpful for our purposes.

8 I want to talk about a couple of other
9 new pieces of language that have come in. In 1304.01, the
10 section governing the lack of agreement, there is a new
11 term that's used there in the first sentence,
12 "demonstrable exhaustion of reasonable good faith
13 negotiation efforts". We're concerned about that, because
14 we think it suggests that what the Commission wants is
15 essentially an evidentiary proceeding or an evidentiary
16 showing by a party that they have exhausted reasonable and
17 good faith negotiation efforts. We think that's going to
18 create, first of all, more process, where, just to get in
19 the door with a pole dispute, a party has to then present
20 evidence that they have exhausted their negotiation
21 efforts. We think that the Commission ought to reconsider
22 that provision and include a certification requirement,
23 rather than an evidentiary showing. And, so, we'll put in
24 our comments, but what we have in mind is language that

1 would say "an attaching entity, upon certifying to the
2 Commission that it is unable to reach agreement with the
3 owner". So, it would simply be a certification, which the
4 Commission could then challenge, if it wishes. But there
5 wouldn't need to be an evidentiary showing. And, our
6 intent there is simply to get these disputes before the
7 Commission with the fewest number of obstacles, so that
8 they can be resolved as expeditiously as possible.

9 And, finally, we have a couple of issues
10 with some of the financial terms in 1303.09, there's a
11 section on "Location of Attachments". We had previously
12 commented on this. The proposed rule requires that an
13 attaching entity, which has the lowest attached facility
14 on the pole, and that wishes to maintain that position,
15 when another attaching entity comes along, if that lowest
16 attacher wants to keep its position so it has to move
17 lower on the pole, it has to bear the entire expense of
18 that. And, we had proposed in the Staff phase of the rule
19 that there be a 50/50 split based on cost causation. In
20 other words, the lowest attacher isn't causing the need to
21 move. The new attacher is. We recognize that the lowest
22 attacher has some, you know, has a wish to be the lowest,
23 and so it should bear some cost for that. But we think it
24 should be a 50/50 split. And, we pointed out that, in the

1 analogous Vermont rule, that's exactly what the Vermont
2 Public Service Board has codified. So, we'd like to see a
3 recognition of some cost causation in that provision.
4 And, I will point out that, in most cases, the industry
5 standard is that the incumbent LEC is the lowest position
6 on the pole. And, so, in essence, what the Commission is
7 doing is causing the ILECs to have to pay those costs in
8 full. And, we think that's essentially an unfair expense
9 for us to have to pay.

10 And, finally, I would like to talk a
11 little bit about the rate formulas. We have provided some
12 extensive comments about this previously, and as have
13 others, and I think the Commission has had many, many
14 comments about this rule already. We proposed some
15 changes last time, which the Staff saw fit to adopt, but
16 not all of them. We would like, essentially, to get away
17 from a two-tiered process here, where some attachers get
18 to use the FCC formulas and some attachers don't. We
19 would like to have everybody under the same methodology.
20 What we proposed previously was that everybody use the FCC
21 formula. But I think the overall message that we want to
22 have is that everybody should be under the same
23 methodology. There's not a need for a split here. And, I
24 note in that regard that the deadline or the sunset in the

1 statute is now approaching, it's July 16 of '09, when the
2 Legislature will allow the Commission to use a methodology
3 that differs from the FCC formula. So, we have been at
4 this quite a while, obviously, and two years have now
5 passed since the statute was enacted. And, that gives the
6 Commission the opportunity, if it so desires, to deviate
7 from that FCC methodology. So, we would ask you to
8 consider that at this point, given the time that we have.

9 That's all that I have. If you have any
10 questions, I'd be happy to answer them?

11 CHAIRMAN GETZ: Yes. I have one
12 question about the 1304.01, the "Lack of Agreement", and
13 the "demonstrable exhaustion of reasonable good faith
14 negotiation efforts".

15 MR. PHILLIPS: Yes.

16 CHAIRMAN GETZ: So, you're suggesting
17 that, well, I guess arguably one way of demonstrating that
18 would be some kind of certification. But you're
19 suggesting make that clear in the rules. Would it make
20 any difference or would it be problematic if we required
21 that it be not just, you know, one party providing a
22 certification, which -- or do we require both sides to
23 sign the certification or you could envision that creating
24 problems?

1 MR. PHILLIPS: I think that would be
2 helpful. I think our concern is that, obviously, the word
3 "exhaustion" is a term of art in administrative law. So,
4 it gets into all this procedural showings that need to
5 happen. And, I think what we're concerned about is that
6 the use of that word is going to create a significant
7 threshold process that parties need to go through. I
8 think the issue arises, frankly, when the parties don't
9 agree and they're coming to the Commission with a dispute.
10 And, so, in that situation, it's in the interest of one
11 party to throw whatever roadblocks they can in the way of
12 the party that is seeking relief. So, to create a
13 situation where both parties have to agree to something up
14 front, even as they're coming to the Commission with a
15 dispute, strikes me as perhaps not a workable solution.
16 So, that's why we thought that simply a certification from
17 the petitioner, which the Commission could then challenge,
18 if it wishes, would be the better course.

19 CHAIRMAN GETZ: But, if it's a
20 certification from one party, and the other party wants to
21 -- says "no, I'm still willing to talk."

22 MR. PHILLIPS: Uh-huh.

23 CHAIRMAN GETZ: I'm just concerned
24 whether we've really moved the ball in a way that, you

1 know, makes it simpler and more direct. But --

2 MR. PHILLIPS: Well, in essence, I think
3 we're getting at the issue the same way, which is that,
4 you know, a party certifying it has done everything it can
5 do at least is a statement of good faith that they have
6 done that. A demonstration that they have exhausted their
7 efforts I think would be just as problematic, because the
8 other party can say "No, you didn't."

9 CHAIRMAN GETZ: Okay. I understand the
10 point. Thank you.

11 MR. PHILLIPS: Thank you.

12 CMSR. BELOW: I have a question.

13 CHAIRMAN GETZ: Mr. Phillips.

14 CMSR. BELOW: You've said that, in
15 effect, that the ILEC is entitled to the lowest pole
16 position, sort of out of convention and tradition. And,
17 because of that convention, that there should be this cost
18 sharing if they choose to move. Is there a compelling
19 argument for why that convention should be upheld? Why a
20 CLEC, if there's room, couldn't just go in the lower pole
21 position and avoid the cost to either party to relocate
22 the ILEC's lines?

23 MR. PHILLIPS: Well, I'm not sure it's a
24 compelling reason. But the reason that the convention

1 exists is because, traditionally, you know, the ILEC's
2 facilities are there -- they don't weigh as much, they
3 don't sag as much. There's engineering reasons why those
4 facilities are the lowest on the pole.

5 I mean, I guess what I would suggest is
6 that the 100 percent cost burden on the ILEC will really
7 penalize the ILEC for deciding to move lower. And, I
8 don't see that there's a need to penalize the ILEC for
9 doing that. And, that strikes me as not the right policy
10 choice. But, if the ILEC chooses to move lower, then they
11 can pay 50 percent of the cost. If they choose not to
12 move lower, then I guess there's some incentive for them
13 to save some money. But it wouldn't be saving, you know,
14 all the money. There is some cost causation that's
15 involved in the attacher coming on the pole. So, I guess
16 our view is that ought to be split more fairly.

17 CMSR. BELOW: Okay.

18 MR. PHILLIPS: I'd be willing to,
19 obviously, provide additional written comments about that
20 next week. Thanks.

21 CHAIRMAN GETZ: Thank you. Marla
22 Matthews.

23 MS. MATTHEWS: Good morning, Mr.
24 Chairman, members of the Committee. I'm here today on

1 behalf of National Grid. And, we appreciate the
2 opportunity we've had to comment on the rules in the
3 several iterations that the Staff has gone through.
4 Several of our concerns have been addressed already. We
5 plan on submitting some written comments, but I'm just
6 going to outline a couple of our areas of concern.

7 One is in 1301.02, the "Applicability"
8 and the definition of "attaching entity" that's included
9 in 1301.01. Our concern is that this language is still
10 quite broad, especially with the "included, but not
11 limited to" language. And, it could be read to expand the
12 applicability of the rules beyond what's contemplated by
13 RSA 37 -- I'm sorry, 374:34-a. And, we'll expound on that
14 in our written comments.

15 We also have a concern about the
16 notification procedures in 1303.06. Where they appear to
17 require 60 days prior written notice before the utility
18 takes certain actions, even if the attaching entity is an
19 unauthorized attacher. So, we'll make some
20 recommendations possibly for a language change in that
21 section. There's also no exception for safety in that
22 provision.

23 And, we have a few other substantive
24 comments, but we'll be making those in writing.

1 CHAIRMAN GETZ: Thank you.

2 MS. MATTHEWS: Thank you.

3 CHAIRMAN GETZ: Chris Allwarden.

4 MR. ALLWARDEN: Good morning. I
5 represent Public Service Company of New Hampshire. With
6 me today are Bob Hybsch, PSNH's Director of Operations,
7 and George Kellermann, our Manager of Operations Support.
8 Thank you for the opportunity to address the Commission
9 this morning concerning these proposed final rules. PSNH
10 does intend to file written comments, and we will comment
11 on some wording, proposed wording changes to a few of the
12 rules. However, we do have a broader concern with regard
13 to the rules as proposed and we would like to briefly
14 identify and explain that concern this morning.

15 Just to quickly summarize, that concern
16 relates to the scope of the rules and the Commission's
17 regulatory authority under the enabling statute over pole
18 attachment matters. It's the same issue that Marla just
19 alluded to in her comments. But let me first state for
20 the record that, except for this broader concern, PSNH is
21 generally supportive of the proposed rules in their
22 present form. We recognize that these rules are the
23 product of a series of prior meetings and discussions
24 between Staff and the various interested parties,

1 including PSNH and the other entities in this room
2 participated in those proceedings. And, we commend the
3 Staff of the Commission for their willingness to listen to
4 and consider the varied pole attachment issues and
5 concerns raised by the parties.

6 We believe that the final rules as
7 proposed generally reflect a reasonable accommodation of
8 many subject and matter issues that were raised by the
9 parties, some of which were in direct conflict with each
10 other.

11 PSNH's broader concern, as I mentioned
12 at the beginning, is based on the provisions of RSA
13 374:34-a. That was enacted in 2007, and delegates to this
14 Commission the authority to regulate pole attachments.
15 The statute very clearly limits the Commission's
16 regulatory authority over pole attachments with regard to
17 the types of attachments regulated under 47 U.S. Code
18 Section 224. That wording, excuse me, is in II of the
19 statute, and references what is commonly referred to as
20 the "Federal Pole Attachment Act". Similar restrictive
21 and consistent language appears in VI of the statute,
22 which obligates a pole owner to provide nondiscriminatory
23 access to its poles for the types of attachments regulated
24 under the subdivision.

The Federal Pole Attachment Act

established the Federal Communications' jurisdiction over pole attachment matters. But only with respect to pole attachment access requests of a limited class of attaching parties. Limited to cable system TV operators and telecommunications carriers providing telecommunications services. These are the attaching entities entitled to federal access rates under the federal act, the types of attachments regulated under that law.

PSNH believes that, under RSA 374:34-a the Commission's regulatory authority has been limited to the regulation of pole attachments by the same entities regulated under that federal law. This would include cable companies and various CLECs and other telecommunication carriers in New Hampshire, but not other parties requesting pole attachment access.

We also believe that the Commission's rules on pole attachments, which are intended to implement its statutorily delegated authority, must be consistent with the scope of that authority, and may not expand it beyond what has been delegated. I will mention that this is a concern that we have had since the inception and discussion of pole attachment rules. And, we continue to have the same concern with the proposed rules.

1 In the current set that you have before
2 you, the final proposed rule, we think the issue is really
3 keyed up in the definition of "attaching entities" in
4 1301.01. It's our position that the definition of the
5 "attaching entities" covered by these rules must be
6 limited to the attachments of cable system TV operators
7 and telecommunications carriers. This does not include
8 ILECs, other electricians, governmental entities, or other
9 private businesses or persons who may want or request pole
10 attachment access.

11 And, this is not to say that PSNH is
12 completely opposed to pole attachments by these other
13 types of entities. We are merely taking the position that
14 these types of attachments are not subject to Commission
15 jurisdiction or regulation under the law.

16 With the exception of these entities
17 that I've just mentioned who have a public interest
18 entitlement to access, pole access, PSNH believes that
19 utility pole owners must be able to consider other pole
20 attachment requests in light of their operational policies
21 and their operational priority needs. We believe that
22 available pole space is not an unlimited commodity. PSNH
23 cannot support access by private parties who want access,
24 when doing so could drive up the resulting costs for

1 attachment of captive companies and CLECs, who want access
2 to the same poles, who have a right to have that space
3 available to them and who have a public interest priority
4 right to attach.

5 With respect to municipalities, PSNH has
6 had a long history of allowing police and fire signaling
7 attachments to its pole system to accommodate the safety
8 needs of various governmental entities. Additionally, I
9 think it's important for the Commissioners to know that
10 over the past several years, PSNH and a number of other
11 electric utilities, Grid included and Unitil, and
12 FairPoint Communications, have been working in close
13 collaboration with the municipal association and the local
14 government center to develop a universally -- what I would
15 call a "universally applicable pole attachment agreement",
16 which will allow for universal access by municipalities in
17 New Hampshire to the poles for governmental purposes and
18 noncommercial purposes.

19 Good news is we're very close to
20 finalizing that process, and I think we'll shortly be in
21 the position to provide to the municipalities within this
22 state a common form of pole attachment arrangement for
23 their consideration and their use.

24 So, in this respect, PSNH's broader

1 concern over the current pole attachment rules is really
2 narrowly limited to the issue which I've just mentioned,
3 and that's the Commission's regulatory authority over pole
4 attachment matters. We believe the rule should be limited
5 to regulation of attachment requests by cable operators
6 and telecommunications carriers. Thank you. A question?

7 CMSR. BELOW: Yes, Mr. Allwarden. I'm
8 trying to see what -- you referenced a concern about
9 private parties versus public interest priority providers
10 in 1301.01.

11 MR. ALLWARDEN: Uh-huh.

12 CMSR. BELOW: But, other than the
13 incumbent local exchange carriers and governmental
14 entities, what specific words do you see that would bring
15 in something, an entity that's not covered by the federal
16 act, the federal policy?

17 MR. ALLWARDEN: Well, the listing itself
18 in 1301 include several entities which are not covered by
19 the federal act, first of all. So, the inclusion language
20 of those entities, to the extent that that language would
21 be construed to give them some sort of attachment rights
22 or regulation of their attachment requests is a problem
23 from our perspective.

24 CMSR. BELOW: That being governmental

1 and ILECs?

2 MR. ALLWARDEN: Governmental entities,
3 electric utilities, and incumbent local exchange carriers.
4 Those are entities which, under the federal statute, do
5 not, in our opinion, have federal attachment access
6 rights. So, the same would apply to the Commission's
7 regulatory authority here.

8 CMSR. BELOW: And, you don't think,
9 under general authority over regulated entities, like
10 electric utilities and ILECs, you don't think we have that
11 authority, for instance, pursuant to 374:3?

12 MR. ALLWARDEN: The Commission's general
13 authority to regulate the operations of utilities clearly
14 exists. But we're focused on the specific delegation of
15 the authority under 374:30 -- I'm sorry, 374:34-a, which
16 we believe is very narrow, and ties this Commission's
17 authority to the same attaching entities that are governed
18 by the federal statute. So, to the extent that definition
19 in 1301 is inconsistent with that, we've got a problem
20 with it. And, I think we'll propose some language in our
21 written comments, which could rectify that definition of
22 "attaching entity" from our perspective. And, we think
23 the use of the term "attaching entities" throughout the
24 rules, I think, once we've got a change in that from our

1 perspective, the rest of the rules would dovetail nicely
2 with that.

3 CMSR. BELOW: Would it be fair to say
4 your biggest concern is the "including, but not limited
5 to" that leaves the door open?

6 MR. ALLWARDEN: It's partly that, and
7 it's partly the reference to the contract right as well,
8 Commissioner Below. I would point out that there is a
9 reference there that "attaching entity" means "a party
10 that has a statutory or contract right." The statutory
11 right, to the extent it derives from the federal statute
12 or the 374 statute is fine, but the reference to the
13 contract right, I think, opens up a much broader scope
14 than the Commission's authority.

15 CMSR. BELOW: Okay. Thank you.

16 MR. ALLWARDEN: You're welcome.

17 CHAIRMAN GETZ: Mr. Allwarden, I just
18 have a question about --

19 MR. ALLWARDEN: Yes.

20 CHAIRMAN GETZ: I'm trying to envision
21 what the treatment under your theory, if you're correct
22 about your legal theory of pole attachment. So, there
23 would be our rules that would apply just to
24 telecommunications providers and cable service providers.

1 You would have worked out some kind of model contract with
2 municipal and governmental entities. And, then, that
3 would be purely a contractual right between PSNH or other
4 similarly situated companies and the governmental
5 entities, and then that would be -- any disputes under
6 that would go where?

7 MR. ALLWARDEN: Well, they would have to
8 go, I suppose, wherever the contract defines that they
9 need to go. And, there would presumably be a dispute
10 resolution provision in that, and then subject to whatever
11 --

12 CHAIRMAN GETZ: Superior Court?

13 MR. ALLWARDEN: -- other remedies.
14 Superior Court or otherwise. Yes.

15 CHAIRMAN GETZ: And, then, is there
16 another category of other parties then that would be --
17 that wouldn't have a model form of relationship that would
18 have to be negotiating *ad hoc* with the company?

19 MR. ALLWARDEN: Yes. And, we don't --
20 we have in the past authorized private party attachments
21 to our poles. Our policy on that has recently changed.
22 So that the answer to your question is "yes". I mean,
23 there is always the possibility for the utility or the
24 pole owner to negotiate private access rights.

1 CHAIRMAN GETZ: And, again, your theory
2 would be that any dispute resolution, we wouldn't have
3 authority to be involved in that, that will be something
4 that would have to go through the -- go through the state
5 court processes?

6 MR. ALLWARDEN: That's correct.

7 CHAIRMAN GETZ: Okay.

8 MR. ALLWARDEN: Thank you.

9 CHAIRMAN GETZ: Thank you. Jeremy Katz.

10 MR. KATZ: Good morning. I'm
11 representing the segTEL. First, I'd like to concur with
12 all of the statements made by Bill Durand, from New
13 England Cable. SegTEL supports his positions, and we
14 really don't feel any need to repeat any of those.
15 Second, generally speaking, a lot of the rules are pretty
16 good and take into account contributions that segTEL and
17 other competitors made during the process.

18 Our primary concern here is that New
19 Hampshire is coming in quite late to the game of
20 regulating pole attachments. Essentially, it's been 13
21 years since the '96 Act, and the FCC has made quite a lot
22 of rulings that substantially govern the manner in which
23 competitive attachers interact with incumbent utilities.

24 Our concern with these rules is that, in

1 certain places, these rules don't appear to take into
2 account the fact that those rulings at the FCC level have
3 already been made on the basis of both facts and legal
4 arguments. Certainly, the issue of a presumption of
5 voluntariness on the agreement that Mr. Durand spoke to is
6 one of our primary issues, as we have preexisting
7 agreements that we signed under a presumption of no
8 voluntariness under the previous FCC regime, as did most
9 of the cable companies as well.

10 Other categories in general, which we
11 will be submitting comments on next week, are issues
12 related to, for instance, requirement for prepayment,
13 which the FCC has already ruled are unjust and
14 unreasonable. Requirements for notice of modification and
15 overlash, which the FCC had previously ruled were not
16 necessary. Makeready and definitions of "makeready",
17 which really are specific to the impact of a attaching
18 entity on a currently compliant facility. The idea that a
19 competitive attacher, like a CLEC, that seeks to attach to
20 a facility that presently is not in compliance would have
21 to pay to replace or bring that facility into compliance,
22 simply on the basis that they would like to make a new
23 attachment, is something that had previously been reviewed
24 and adjudicated.

1 Administrative fees and surcharges that
2 are often placed on applications and makeready, which have
3 already also, by the FCC, been deemed to be unjust and
4 unreasonable. And, that those administrative fees are
5 already taken into account in fully allocated costs of
6 incumbent utilities in their pole attachment rates. And,
7 rights of access.

8 And, in addition, you know, survey and
9 prepayment related to, for instance, survey fees, where,
10 for instance, at the FCC, a per pole survey fee of \$10 per
11 pole was deemed to be unjust and unreasonable as a
12 prepayment. But segTEL presently is required to, in order
13 to receive surveys with one of the utilities that we
14 attach to, required to pay \$75 per pole and \$275 per
15 individual application.

16 I just wanted to provide a very quick
17 illustration on how some of the rules as presently
18 proposed could theoretically cause undesired results.
19 And, what I just want to focus in on is the time frame for
20 survey and makeready, in conjunction with the presumption
21 that a agreement that is entered into is voluntary. Many
22 of the agreements that segTEL entered into previously in
23 the time frame between 2002 and 2006 have a 2,000 pole
24 attachment application maximum to them. So, essentially,

1 the incumbent has a contract that states "you can have a
2 maximum of 2,000 poles that you're requesting attachment
3 to at one time." And, until those clear the process, they
4 reserve the right to reject, refuse to survey and to do
5 makeready for further applications.

6 Essentially, to go through the process,
7 if an incumbent utility follows these rules, it is
8 something that looks like about 10 to 12 months, sort of
9 soup to nuts, to -- from the time an application is made
10 to the time a survey is made and makeready and a license
11 is issued to then go and construct. Two thousand (2,000)
12 poles, which, again, under these rules, may be presumed to
13 be voluntary. That's approximately 30 miles of poles,
14 that's somewhere between 60 and 70 poles per mile. To
15 give an idea of 30 road miles of poles, that would be an
16 area approximately the size of Lyme, New Hampshire, which
17 has 29 road miles within the municipality. So,
18 essentially, if segTEL were to want to apply for broadband
19 stimulus money to go build fiber to the premise in a
20 municipal area such as Lyme, New Hampshire, which is,
21 let's say, could be up to 2,000 poles, that would
22 foreclose all the rest of our deployment of fiber optics
23 in the state while we had those pole attachments in
24 process. So, it essentially limits and is presumed to be

1 voluntary under these rules, the amount of deployment that
2 a competitor can make.

3 Another example that would illustrate
4 this is in PUC Order 24,723, which dealt with the FCC
5 Triennial Remand order, with what happens when central
6 offices are found to be non-impaired, and CLECs purchase
7 unbundled network elements, such as dark fiber, a
8 transition period of 13 months to self-deploy replacement
9 facilities was found to be appropriate in New Hampshire.
10 So, essentially, if segTEL had a 30-mile dark fiber route
11 between two central offices, FairPoint made a case that
12 those COs were no longer impaired, and that was found to
13 be true, segTEL would have 13 months to go out and file
14 pole attachment applications, presumably with FairPoint,
15 to replace our dark fiber run. Well, those 30 miles would
16 exceed the maximum amount of poles. And, essentially,
17 FairPoint, as an incumbent provider, would retain the
18 right, under our existing -- deemed to be voluntary
19 attachment agreements, to refuse to survey that entire
20 30-mile run, and would effectively create a situation
21 where we could run afoul of transitioning off of a
22 non-impaired UNE dark fiber to our own facility.

23 These are really just two examples that
24 I wanted to bring up, because segTEL is actively deploying

1 fiber throughout the state. We have maintained in excess
2 of 50 collocated COs. We take CLEC fiber pole out of just
3 about every one of the COs. And, we have over ten towns
4 and ten municipalities right now where we are building
5 fiber facilities. And, these rules, presumably, we would
6 all want to have a set of fair, nondiscriminatory and
7 equitable rules that would speed up the deployment of the
8 next generation facilities that companies like segTEL are
9 trying to deploy. Thank you.

10 CHAIRMAN GETZ: Thank you. Erin Austin.

11 MS. AUSTIN: Good morning. I'm Erin
12 Austin. I'm here as the VP of Outside Plant Engineering
13 and Planning for FairPoint Communications. So, I'm
14 representing FairPoint. Thank you for the opportunity to
15 voice our concerns. I'm going to focus on FairPoint's
16 three major issues. We do have a number of other
17 concerns, but we'll submit those via written comments.

18 FairPoint, first of all, FairPoint and
19 the ELCos, the power companies, are pole owners and have
20 the financial and resource burdens of building out the
21 pole lines, as well as maintaining of the pole lines.
22 Other attachees are renting space on those pole lines, the
23 assets that we own. There should be some benefit that
24 goes along with the financial burden and the resource

1 burden of owning those poles. And, one of those benefits
2 should certainly be the right to, you know, ask the muni
3 -- or, ask the attachees to attach in a certain manner so
4 that we can safely operate our business, as well as where
5 to attach on the pole. We certainly welcome any
6 guidelines that are nondiscriminatory, and we'll
7 administer those in a fair manner.

8 So, our three greatest concerns are
9 1303.09, the location of attachments; 1303.10, boxing of
10 poles; and 1303.11, use of extension arms. There is, in
11 fact, a compelling reason for us to be the lowest attachee
12 on the pole. First of all, we design from top to bottom
13 lightest to heaviest on the pole. And, that's in
14 compliance with our Telcordia Blue Book, which is what we
15 use for our operations. NESC has determined our space on
16 the pole due to electrical interference with copper pairs,
17 as well as the weight guidelines. We're the heaviest
18 cable, in most cases, on the pole. So, we sag the
19 greatest. So, it would be inefficient use of the pole
20 space if we were then to attach above somebody else, and
21 we had to attach high enough so that we wouldn't sag into
22 them. And, we would see some damage to both the licensee
23 and ourselves, if we did, in fact, not attach high enough
24 to take into account that sag. As well as the fact that

1 there's additional work here, whether you're talking more
2 work created to raise the cables for clearance, if
3 FairPoint has to -- is the responsible party for
4 maintaining the area, so we're removing the pole. We
5 would have to go out with a pole relocation, transfer our
6 facilities to the new pole, notify the attachee to remove
7 or transfer their facilities, and then go back out and
8 pull the pole. So, it does result in additional work for
9 us, if we're not the lowest attachee.

10 We are concerned as well if additional
11 strand or cable was needed for ourselves, what would be
12 the procedure there, if they were the lowest on the pole,
13 who would pay, if we need another position on the pole?
14 And, we also have concerns about the bonding, the bonding
15 and the grounding, if the attachee is the lowest on the
16 pole.

17 The second issue, the boxing of poles,
18 in the ideal world, that wouldn't happen. Typically, you
19 know, everybody wants to be on the road side, attached to
20 the road side of the pole. It does certainly happen out
21 there, if a pole is located and placed in an inopportune
22 location, so it is out there, but we certainly -- that is
23 not the ideal. Boxing makes the pole removals and
24 associated transfers much more complex. And, coax is a

1 lot easier to deal with than our fiber and copper cables
2 when it comes to boxing. In an emergency pole replacement
3 situation, if you have a boxing situation, could result in
4 longer time to replace or remove the pole. We could get
5 out there and not have the right size of the pole, because
6 we didn't realize it was a boxing situation, and we want
7 everybody roadside on the pole. And, we're certainly not
8 going to fish a pole up through strands. So, it does
9 result in more time.

10 It doesn't necessarily create additional
11 space on the pole, as the clearances and mid-spans still
12 have to remain as per the NESC guidelines. And, there has
13 to be a certain separation. The attachees have to stay
14 within four inches -- or, at least four inches away from
15 any previously drilled holes in the pole. So, it's not
16 like they can just attach, you know, in the same location
17 right behind us.

18 As far as extension arms go, this was
19 our primary concern, certainly, the safety issues with
20 getting around extension arms, you know, climbing, getting
21 around and working around them. And, if the attachee is
22 the lowest on the pole, rather than us, we wouldn't be
23 able to gain access to the strand, the cable, the
24 terminals, drop wires, and lashing or adding a new strand

1 would be near impossible for us.

2 Section 3 of -- it's actually Table 3.3
3 in the NESC Safety Guidelines do indicate that an
4 extension situation does raise the cable up, so you have
5 to take into account the mid-span clearances. You could
6 have issues there as a result of the extension arms being
7 placed. We only use extension arms when we're clearing
8 obstructions in a span or we're trying to align, you know,
9 improve the cable alignment, and is the only other means
10 to do this. And, we've looked at means such as relocating
11 the pole. So, it's kind of the last resort. And, they're
12 not used on corners at all by the NESC Guidelines, so they
13 certainly can't be used as a way to avoid guying. And,
14 you have to use a certain class of ANSI hardware. So,
15 that's certainly our concern, if they were to do that as
16 well.

17 And, just in general, for all three
18 major concerns, other attachees don't respond to
19 call-outs, emergency call-outs like we do. So, in any one
20 of those unique situations out there, it's going to be the
21 pole owners to deal with it in an emergency situation. To
22 either deal with it, the unique situation, or to leave an
23 unsafe condition, which we certainly don't want to do.

24 Our recommendation would be, you know,

1 to remove 1303.10, 1303.11, and change 1303.09, to
2 indicate the location should be, you know, 12 inches above
3 the highest facility, communications facility on the pole,
4 if the space is there. And, that we require a field
5 survey in order to determine exactly where they should
6 attach. Thank you.

7 CHAIRMAN GETZ: Thank you. Richard
8 Wollert?

9 MR. WOLLERT: No comment.

10 CHAIRMAN GETZ: Martin Rothfelder.

11 MR. ROTHFELDER: Would have Jamie Hoare
12 go first, we're both here on behalf of Fibertech, and we
13 would like to do a one, two, if we could.

14 CHAIRMAN GETZ: Please proceed.

15 MR. HOARE: Thank you. Thank you for
16 giving me the opportunity to speak this morning.
17 Fibertech Networks was founded in 2000. And, we build and
18 operate networks in Connecticut, New York, Massachusetts,
19 Rhode Island, New Hampshire, Pennsylvania, Delaware,
20 Maryland, Ohio, Indiana, and New Jersey. Our networks are
21 100 percent fiber optic local communications networks.
22 Our original business plan was to connect all significant
23 local telephone central offices in each of our markets
24 with a ring of unlit or dark fiber optic cable, and then

1 lease those transport lines to the many competitive local
2 exchange carriers that were in operation in 2000.

3 When the number of operating CLECs fell
4 precipitously in 2001, we changed our business plan,
5 focusing on serving large end-user customers, which we
6 call "enterprise customers". For those enterprise
7 customers, we continue to provide dark fiber. The
8 enterprise customers included hospitals, universities,
9 secondary schools, governmental agencies, large
10 businesses, such as banks and insurance companies. The
11 common denominator among these customers was that they
12 each had numerous facilities within one of Fibertech's
13 markets that they wish to connect with high capacity
14 communications lines. To serve these customers, Fibertech
15 extended its original fiber optic rings by building
16 laterals to the customer locations. And, as a result, our
17 fiber optic networks grew both in overall geographic scope
18 and in density.

19 In 2005 and 2006, we decided to serve a
20 broader universe of customers by lighting many of our
21 networks, thereby enabling us to sell to any customer a
22 portion of the capacity represented by a single fiber --
23 or by, yes, a single fiber optic strand. In order to
24 serve this group of smaller customers, we used passive

1 optical networks, or PON technology. This technology
2 represents the most recent developments in
3 telecommunications delivery systems, and allows us to
4 offer Internet access service directly to the end-user
5 customers with speeds of up to one gigabit per second.

6 Timely and reasonably priced access to
7 utility poles is essential to the development of
8 competition in the wireline communications market, and
9 it's essential to the ability of companies like Fibertech
10 to compete. Companies that have attempted to compete with
11 ILECs by using ILEC facilities have achieved only limited
12 success, and many have become bankrupt. Full and vital
13 competition can be achieved only by facilities-based
14 competition.

15 If competitors seek to compete using
16 ILEC last mile copper facilities, they will compete on
17 price only. They will be unable to offer customers new
18 and improved services, and therefore will fail to push the
19 ILEC to improve its own network and services. In short,
20 the competition will be stunted. In contrast, the
21 competitor deploying its own fiber optic network for use
22 by itself or other competitors, bring state-of-the-art
23 technology and the potential for new services that will
24 attract buyers, and exert a strong motivating influence

1 upon the ILEC to bring its own innovations to market.
2 There's an economic development component of this as well.
3 The presence of competitive state-of-the-art
4 telecommunications is an attraction to high-tech business.

5 Where Fibertech has found good
6 conditions for pole access, it has successfully built
7 large, dense networks, potentially serving many customers.
8 For example, in Connecticut, the original 300-mile build
9 has grown to approximately 1,875 miles, serving most of
10 the state. But that is because, in Connecticut, there are
11 relatively beneficial pole access requirements.

12 For our particular comments on the
13 proposed rules, I'm going to defer to Marty Rothfelder.

14 CHAIRMAN GETZ: Thank you.

15 MR. ROTHFELDER: Good morning. I'm
16 Martin Rothfelder, here for Fibertech Networks, LLC,
17 following up on Jamie. In our oral comments today, we're
18 going to focus on certain recommendations in the Utility
19 Pole Attachment Rules specifically. We'd like to see the
20 Commission establish reasonable, but generally firm,
21 timeframes for completion of pre-makeready surveys,
22 including makeready estimates and makeready work. To
23 provide for the ability to take -- to undertake automatic
24 remedies to address delays, such as use of temporary pole

1 attachments, pending completion of makeready work, and the
2 ability to use acceptable third party contractors to
3 complete surveys and makeready work.

4 We would also like to address the fact
5 that we think boxing of a utility pole should be available
6 where it's code compliant and safety, which we'll expand
7 upon.

8 And, finally, there should be provisions
9 to address the reasonable -- to address reasonable
10 nonrecurring costs and cost information associated with
11 pre-makeready surveys, bills -- estimates for makeready
12 work and bills for makeready work.

13 Let me start off talking about
14 timeframes. Fibertech urges the PUC to establish a
15 maximum 90 day schedule from the submittal of a completed
16 pole attachment application for the completion of any
17 makeready work, 90 days, start to end, subject to extra
18 time when there are applications that involve large
19 numbers of poles or the need to replace one or more poles.
20 A number of states have adopted schedules reasonably
21 consistent therewith, including Connecticut, New York,
22 Oregon, or slightly longer in Maine.

23 By way of background, this overall
24 process involves the application for pole attachments, the

1 survey of poles, and related to the type of makeready work
2 that needs to be done, the provision of a makeready
3 estimate, addressing the cost to make the makeready work,
4 and then usually payments based on that estimate, and the
5 completion of the makeready work.

6 Fibertech notes, as Jamie has already
7 suggested, that the pole attachments in Connecticut have
8 been undertaken successfully, and generally expeditiously,
9 pursuant to a schedule that the Connecticut DPUC mandated,
10 which provides for a 45 day period for a pre-makeready
11 survey, and, at the same time, requires that the makeready
12 estimate be ready at that same 45 day period. And, as I
13 think I may have already mentioned, that there's another
14 45 days for the makeready work, with a 35 day extension if
15 pole replacement is involved.

16 Your Initial Proposal in 1303.04
17 proposes a 45 day period from submittal of a completed
18 application and fee payment to the completion of the
19 survey, for applications involving not more than 200
20 poles. While this proposal is reasonable and consistent
21 with some of the above cited states I've mentioned,
22 Fibertech urges the Commission to provide a schedule limit
23 for applications involving larger numbers of poles, not
24 leaving it unlimited for over 200.

1 Furthermore, with regard to timeframes,
2 there is no deadline at all in the rule the provision of a
3 makeready cost estimate. The deadline is in there for the
4 survey, perhaps it was intended that that include the
5 makeready estimate, but it's not clear from the plain
6 reading of the rule. So, we suggest, as several other
7 states, Connecticut, New York, that they explicitly put in
8 the deadline for the makeready estimate, and that it be
9 ready at the time the survey is ready, and on a specific,
10 predictable, reasonable time frame.

11 One of the problems that Fibertech faces
12 is when utilities, pole owners, are unable to make
13 timeframe -- time deadlines, what do they have? It
14 doesn't help their business to say "Well, we have a
15 potential to come to the Commission for a complaint."
16 That doesn't serve customers, it doesn't create a
17 reputable business. And, some of the remedies that are
18 out there, and there is certain state rules, and we will
19 be citing other states' provisions in our written
20 comments, is to provide for mutually agreeable third party
21 contractors to provide the pre-makeready work survey, to
22 provide temporary attachments to deal with delays in
23 makeready work being done, and for mutually acceptable
24 third party contractors to do the makeready work.

1 Speaking more directly to the makeready
2 work, and the final part of the timeframes here, the
3 proposal provides for a 180 day period to provide such
4 work. Fibertech cannot overemphasize that this amount of
5 time will have a chilling effect on the provision of
6 competitive telecommunications services in the state, and,
7 based on work in other states, it's entirely unnecessary
8 to have that kind of a timeframe. I've already discussed
9 Connecticut having a 45 day period, extended by another
10 35, if there are pole replacements.

11 Of the states that have put in time
12 deadlines, we've only been able to find two states,
13 Vermont and Utah, that use the 180 day timeframe, and
14 that's at the high end. And, for both of those states,
15 those aren't for the smallest builds, those are for larger
16 builds.

17 There are some states that leave, in
18 interest of full disclosure, there are some states that
19 leave the larger builds open, without a deadline. We
20 would suggest that all of these things should have
21 deadlines, even if it needs to be a longer one.

22 Let me turn now to boxing poles. In
23 your proposal, at 1303.10, permits the pole owner to
24 restrict the practice of boxing poles, consistent with the

1 restrictions it places on its own practice of boxing poles
2 as described in the Company's written methods and
3 procedures. Fibertech suggests that this proposed rule is
4 unnecessary and restrictive. It should be modified to
5 permit boxing of poles where it is safe and demonstrably
6 cost-effective.

7 The Maine PUC, in a recent order, which
8 we will cite in our written rules, explicitly found that,
9 following the Verizon practice, it was inappropriate, and
10 stated, and I'll quote them, "the Verizon practice of
11 prohibiting third party attachers from boxing poles,
12 except in the precise circumstances in which it boxes
13 poles, is an unreasonable act and practice and is
14 discriminatory." And, it directed Verizon, in that case,
15 the Oxford Networks case, and it directed Verizon to
16 follow the pole attachments that are -- to allow boxing of
17 poles that are consistent with the requirement of the
18 applicable codes, of course, including the NESC, and also
19 limited it to circumstances in which the poles can be
20 safely accessed by bucket trucks, ladders, or emergency
21 equipment.

22 It's hard to describe in words how
23 allowing a boxing of poles creates -- lowers costs and
24 difficulty of putting in a competitive network. But we

1 will be providing you a copy of a New Jersey Board of
2 Public Utilities' decision from the 1990s, where a company
3 was putting in a competitive cable network. And, in that
4 particular situation, the estimates, without boxing, for
5 the makeready, there were two estimates that the Board
6 found credible. One was \$2.1 million and one was just
7 under a million dollars. They found that the estimate of
8 work with boxing was \$200,000. So, regarding which one
9 you -- the original estimates the Board relies on there,
10 it's either an 80 or 90 percent reduction in cost related
11 to it, to boxing. And, it's because you just simply need
12 to do less. And, also, with regard to the timeframes that
13 is taking, if there's less work to do, the timeframes
14 obviously get shorter.

15 Fibertech will be urging in its written
16 comments that the PUC adopt a rule permitting boxing of
17 poles, as consistent with the policy adopted by the Maine
18 PUC, and we'll provide exact suggested wording in our
19 written comments.

20 Finally, I'd like to address the
21 pre-makeready survey and survey costs and the estimates
22 and billing that parties receive for it. Fibertech
23 requested that the PUC establish standards for posting
24 cost estimates for makeready work, for estimates for

1 makeready work, and for the bills for completed makeready
2 work. Absent such cost detail is difficult, if not
3 possible, for the pole attacher to determine the
4 reasonableness of the costs, and could result in the
5 bringing of what might otherwise be avoidable complaints
6 before the PUC to resolve the makeready cost disputes.

7 Other states have addressed the
8 transparency of such charges and cost detail. The New
9 York PSC requires pole owners to post preconstruction
10 survey charges and makeready charges in their pole
11 attachment agreement on their websites, subject to
12 furnishment of supporting papers at the request of a pole
13 attacher, and to obtain prior agreement of the pole
14 attacher for any overtime charges. It requires makeready
15 estimates, they state, and I quote "shall be detailed and
16 subject to discussion as the reasonableness of what
17 makeready work is necessary." And, "the makeready invoice
18 shall include, at a minimum, the date of work, description
19 of work, location of work, unit cost of labor per hour,
20 cost of itemized materials, and any miscellaneous
21 charges."

22 The New Jersey Board of Public Utilities
23 adopted recommendations of a hearing examiner to report on
24 the level of detail in such bills, and listed

1 approximately -- I believe they listed 11 items that need
2 to be in such bills. We'll provide you exact suggested
3 language in our written comments.

4 In conclusion, the poles and conduits in
5 New Hampshire are a great resource. The safe and
6 efficient use of it are essential, to existing attachers
7 and to competitive networks yet to come. A regulatory
8 environment that provides for reasonable predictable
9 timeframes for construction of networks, for boxing of
10 poles, when it's safe and in compliance with applicable
11 codes, and predictable, verifiable costs for attaching are
12 critical to the success of the construction of additional
13 competitive networks in New Hampshire.

14 Thank you for listening to us today.

15 CHAIRMAN GETZ: Just one question,
16 Mr. Rothfelder. On the boxing, I want to make sure I
17 understand. Are you suggesting any change to the existing
18 language or are you just trying to ensure that the
19 existing language stays in the new rules?

20 MR. ROTHFELDER: We'll be suggesting a
21 change. It's not entirely clear to me, with the existing
22 language, which I will locate here, whether you're solely
23 restricted by the existing utility policy or if the
24 Commission is requiring a broadening of that. We'll

1 suggest that it not be solely restricted to the existing
2 utility or pole owner policy.

3 CHAIRMAN GETZ: All right. Okay. Thank
4 you.

5 MR. ROTHFELDER: Uh-huh. Thank you.

6 CHAIRMAN GETZ: That's all the
7 individuals that I have notice of wishing to speak. Is
8 there anyone who didn't get a change to sign in and would
9 like to speak this morning?

10 (No verbal response)

11 CHAIRMAN GETZ: Okay. Hearing nothing,
12 anything further from the Commissioners? Then, we will
13 close this rulemaking hearing. We will await your written
14 comments, and then take action based on those comments.
15 Thank you very much, everyone.

16 (Whereupon the hearing ended at 10:25
17 a.m.)

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