

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 12-107

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

Petition for Investigation into Proposed Charges for Utility Pole Make Ready

NECTA'S RESPONSE TO NHOS STATEMENT OF POSITION
REGARDING CHARGES FOR UTILITY POLE MAKE-READY

NOW COMES New England Cable & Telecommunications Association, Inc. (“NECTA”), by and through its undersigned counsel, and respectfully responds to the Statement of Position (“Position Statement”) filed in the above-captioned docket by New Hampshire Optical Systems, Inc. (“NHOS”) by stating as follows:

1. NHOS’s Position Statement was filed in support of its Petition for Investigation into Proposed Charges for Utility Pole Make Ready (“Petition”). In response to the Petition, NECTA filed on June 5, 2012 a Motion to Dismiss and/or Motion to Limit Scope of Proceeding. The instant Response incorporates by reference all of the information and arguments set forth in NECTA’s above-referenced Motions as if set forth fully herein.

2. The Position Statement was submitted “regarding the need for rulemaking to ensure that charges for third party make-ready work are just and reasonable.” Position Statement, p. 1. Thus, notwithstanding its title, the Position Statement is actually a petition for rulemaking. *See* RSA 541-A:4, I.

3. NHOS’s rulemaking request must be denied for all of the reasons set forth in NECTA’s Motion to Dismiss and/or Motion to Limit Scope of Proceeding. The Position

Statement, like the Petition, alleges specific complaints against unnamed parties, but requests generic relief. In addition to requesting rulemaking, the Position Statement “[r]ecommends” that the Commission: 1) “[a]dopt a policy to ensure access is not denied or delayed due to disputes related to scope and/or costs of third party make-ready” and 2) “[e]stablish methods, standards and definitions to ensure that rates for third party make-ready are just and reasonable.” Position Statement, p. 7. None of the relief requested or recommended by NHOS is an appropriate resolution of the specific complaints posed in the Petition and Position Statement for the following reasons:

A. RSA 374:34-a and related rules (N.H. Code Admin. R. Chapter Puc 1300) establish the Commission’s authority to adjudicate disputes concerning particular pole attachments and pole attachment rates, not generic issues relating to make-ready work charges imposed by third party attachers. Such adjudications must examine the particular facts alleged, and any order issued pursuant thereto binds the disputing parties- not others (against whom the complaining party may have no complaint).

B. Unlike Commission adjudications that resolve disputes between specific parties, rules promulgated by the Commission have the force and effect of law. *See Petition of Mooney*, 160 N.H. 607, 611-612 (2010). Because rules bind the public generally, a rulemaking proceeding is an inappropriate mechanism for resolving the specific factual complaints alleged by NHOS in connection with its particular project.

C. Each make-ready event is fact- specific as to the pole, location and facilities that must be moved. A generic proceeding or rulemaking solution to address the

specific complaints raised by NHOS is inappropriate because it would force utilities and pole attachers, some of whom are not subject to the Commission's jurisdiction, into a proceeding that may impact their make-ready practices and rates even if those attachers have never posed a problem for NHOS or others. It would create a larger, more complex proceeding than necessary, wasting both resources of additional parties, the Commission and Staff, and resulting in an expansive, generic approach instead of fashioning a specific remedy to address the particular disputes between NHOS and the unnamed parties referenced in the Petition and Position Statement.

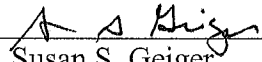
WHEREFORE, NECTA respectfully requests that the Commission:

- A. Deny NHOS's request for rulemaking;
- B. In the alternative, limit the scope of this proceeding to an adjudication of NHOS's specific complaints against specific pole attachers as indicated in NECTA's Motion to Limit Scope of Proceeding; and
- C. Grant such further relief as is appropriate.

Respectfully submitted,

NEW ENGLAND CABLE AND
TELECOMMUNICATIONS ASSOCIATION, INC.

By its attorneys,
Orr & Reno, P.A.

By: 
Susan S. Geiger
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550
(603) 223-9154
sgeiger@orr-reno.com

William D. Durand (sg)

William D. Durand, Executive V.P./Chief Counsel
New England Cable and Telecommunications
Association, Inc.
10 Forbes Road, Suite 440W
Braintree, MA 02184
(781) 843-3418
wdurand@necta.info

Dated: June 18, 2012

Certificate of Service

I hereby certify that on this 18th day of June, 2012, a copy of the within Response was sent by electronic or U.S. mail to persons listed on the Service List.

S S Geiger
Susan S. Geiger

891766_1