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March 7, 2013

Via Hand Delivery and Electronic Mail

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



Re: DT 12-107, New Hampshire Optical Systems, LLC

Dear Ms. Howland:

This letter is filed on behalf of New England Cable and Telecommunications Association (“NECTA”) in response to the January 30, 2013 Staff Report and Recommendations (“Staff Report”) concerning the complaint filed by New Hampshire Optical Systems, LLC (“NHOS”). The Staff Report makes three (3) separate recommendations to which NECTA responds as follows:

1) Formation of agreement between segTEL and NHOS on a process for completing make-ready work related to NHOS’s Middle Mile Project.

NECTA concurs with Staff’s recommendation that the process for resolving disputes between segTEL and NHOS should be limited to those two parties and should not involve pole owners or other attachers.

2) Separate proceeding to review make-ready rates.

Staff has recommended that “the Commission open a separate proceeding to review rates to be charged for make-ready, and require NHOS to escrow a reasonable amount to ensure third parties will be reimbursed once a determination on rates has been made.” Staff Report at 7. This recommendation appears to stem from Staff’s observation that NHOS has argued that make-ready rates charged by segTEL, BayRing and TelJet are “heavily inflated and do not reflect the cost of performing make-ready.” Staff Report at 2. Staff also noted that NHOS agreed to pay the pole owner the same rate when NHOS signed its pole attachment agreement. *Id.* Although Staff indicated that it did not have any information about the cost of this work, it nonetheless determined that the rate charged by segTEL, FairPoint and PSNH for lowering an attachment (i.e. \$214.50) “seems high” and that “the rate [should] be investigated in a separate proceeding.” *Id.* To the extent that Staff is recommending that a separate docket be opened to investigate this particular rate charged by these particular companies to NHOS, NECTA takes no position.

However, to the extent that Staff is recommending that the Commission institute a separate proceeding to generally examine and determine all make-ready rates charged by all existing pole attachers who are not pole owners (e.g. competitive local exchange carriers ["CLECs"] and cable television companies), NECTA objects and urges the Commission not to adopt this recommendation.

At the outset, NECTA notes that other than NHOS, no other party has complained about make-ready rates. NECTA concurs with FairPoint's observation that, since the inception of third party attachments in 1996, it is unaware of any party that has disputed the costs associated with make-ready work. Therefore, opening a generic investigation into such rates is unwarranted. Moreover, for the reasons set forth below, it is arguable that the Commission lacks authority over make-ready work or rates associated with such work. RSA 374:34-a governs the Commission's authority over pole attachment issues. The statute makes no mention of make-ready work or rates. Although two subsections of the statute do address rates, they do not expressly provide the Commission with the authority to generally investigate or regulate make-ready work rates charged by CLECs, cable television companies and other entities that are not pole owners. The first of these subsections - RSA 374:34-a, II - authorizes the Commission to regulate and enforce rates, charges, terms and conditions for *pole attachments* in those instances when "a pole owner is unable to reach agreement with a party seeking pole attachments." By its terms, this statute is expressly limited to situations where a pole owner and a prospective attacher cannot agree on pole attachment rates. It therefore does not provide the Commission with authority to investigate make-ready charges imposed by existing pole attachers that are not pole owners. The second provision of RSA 374:34-a concerning "rates" authorizes the Commission to "hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments." RSA 374:34-a, VII. Assuming, *arguendo*, that make-ready work rates are covered by this statute, the Commission's authority is expressly limited to hearing and resolving specific complaints about such rates; it does not include the authority to conduct a general investigation into make-ready work rates.

In addition to the wording of RSA 374:34-a, the conclusion that the Commission lacks authority to generally investigate and regulate make-ready work rates charged by CLECs and cable companies is further bolstered by the fact that the Commission lacks ratemaking authority over these entities. In view of the foregoing, the Commission should not adopt Staff's recommendation to open a separate proceeding to review or set rates to be charged for make-ready.

3) Consideration of temporary attachment process.

The Staff Report recommends that the Commission consider with interested CLECs and pole owners a pilot process underway in Connecticut in which attachments on poles requiring substantial make-ready are made on an expedited basis. As referenced by Staff, this process allows for temporary attachments beneath the lowest pole attachment if there is enough clearance to the roadway as required by the National Electrical Safety Code. The temporary attachment is allowed only for a limited period and must be relocated once make-ready is complete. As noted

in the Staff Report, this practice allows for new attachments to be made quickly but requires the extra expense of moving the attachment once make-ready is complete. The Staff Report does not include details or results of the Connecticut pilot.

For several reasons, NECTA does not believe that the Connecticut pilot program for temporary pole attachments should be implemented in New Hampshire. First, and perhaps most importantly, it should be noted that the Connecticut pilot is a voluntary program with just a few participants and was created to address a specific project which, upon information and belief, is expected to be completed in June 2013. Three pole owners (The Connecticut Light and Power Company, The United Illuminating Company, Southern New England Telephone Company d/b/a AT&T Connecticut) reached agreement with Fiber Technologies Networks L.L.C. ("Fibertech") on guidelines for temporary pole attachments to resolve disputed issues and claims. *See Attachment A, Northeast Utilities System letter* (July 12, 2011) at 3, fnt. 2. Second, the Connecticut guidelines were established to address only Fibertech's immediate pole attachment needs and do not apply generally to all new pole attachments. Third, NECTA strongly opposes temporary attachments made beneath the lowest pole attachment. NHOS's permanent attachment location is above the cable company's wire and below the electric wire. If NHOS were to attach temporarily beneath the lowest pole attachment (typically the telephone wire), moving the NHOS wire to its permanent attachment point would require that NHOS move its wire past/around all existing wires extending from the poles laterally. Such lateral attachments include service drops and hardline wires. To make this move, either NHOS would have to cut, pull back, and reroute its wires over the lateral attachments, or the owners of the lateral attachments would need to disconnect and cut their wires to allow NHOS to raise their plant. Both of these options create the potential for service disruptions and safety issues and therefore are not reasonable.

Given the voluntary nature of the Connecticut temporary attachment pilot program, the fact that it was designed to address only one specific project of a limited duration, and the potential for service disruptions and safety concerns associated with moving temporary lines to permanent locations, NECTA believes that it would be inappropriate to consider such a program for general application in New Hampshire.

In view of the foregoing, and in light of the fact that NHOS's complaints are in the process of being resolved, NECTA respectfully submits that there is no need to consider or adopt the Connecticut pilot guidelines for temporary pole attachments in New Hampshire. Even if pole owners and NHOS are able to agree on a temporary attachment pilot program for NHOS's Middle Mile Project, NECTA strongly opposes temporary attachments for the reasons explained above.

NECTA appreciates the opportunity to submit these comments, and urges the Commission not to adopt the above referenced recommendations. Please contact me if there are any questions about this filing. Thank you.

Ms. Debra A. Howland, Executive Director
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Very truly yours,


Susan S. Geiger

SSG/gvb
Attachment

cc: Service List (electronic mail only)
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