

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 12-246

Electric and Telephone Utilities - Review of Utility Pole Access Issues

**COMMENTS OF
NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC**

**CONCURRENCE OF
NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC
IN NECTA MOTION FOR STAY**

I. INTRODUCTION

On August 29, 2012, the Staff held a stakeholder meeting with interested parties in Docket DT 12-246. This docket was initiated as a result of a vague complaint filed by New Hampshire Optical Systems, LLC (“NHOS”), in Docket DT 12-107. In that proceeding, the Commission directed Staff to initiate a stakeholder process to review pole attachment access issues.¹ Consequently, Staff hosted a stakeholder meeting on August 29, 2012. Subsequent to the stakeholder meeting, Staff issued a Recommendation on October 9, 2012, after which the Commission issued a Secretarial Letter on October 15, 2012 prescribing a two week comment period and permitting stakeholders to submit written comments to Staff’s report.

As part of its report, Staff recommended that DT 12-246 “be used to develop Commission rules” surrounding the following three issues: (i) establishing timing and coordination of third party make-ready when a new competitor is licensed to attach to a utility pole, (ii) establishing dispute resolution options and (iii) addressing the general practice of

¹ DT 12-107, Order No. 25,386 (Jul. 3, 2012).

requiring new attachments to be located forty inches below the electric company's neutral, while considering other options which may be more efficient.

Pursuant to the Commission's Secretarial Letter, Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE ("FairPoint") hereby submits the following comments to Staff's report.

II. COMMENTS

A. Timing and Coordination of Third Party Make-Ready

Regarding Staff's suggestion that the "proceeding should be used to develop Commission rules,"² FairPoint disagrees with the recommendation to continue with Docket No. DT 12-246. This proceeding was developed as a result of NHOS's petitions in Docket DT 12-107. Subsequent to NHOS's petitions, the Commission offered NHOS additional opportunities to clarify the specificity of its complaints. Presuming that NHOS has finally provided the Commission with enough information to adjudicate DT 12-107, which likely is not the case, FairPoint recommends moving forward with DT 12-107 and terminating DT 12-246 or, at the very least, staying this docket until such time as DT 12-107 is completed. In that regard, FairPoint fully supports the Motion to Stay filed on October 24, 2012, by the New England Cable & Telecommunications Association, Inc. ("NECTA"). Thus, FairPoint requests that no further action be undertaken in this Docket pending the Commission's ruling on NECTA's Motion.

As further support of FairPoint's above recommendation, FairPoint reiterates its position and advice that the pole access process in New Hampshire generally has worked well both prior to and since the advent of the Puc. 1300 Rules. The attachment process utilized in New

² DT 12-246, Staff Recommendation and Report of Stakeholder Meeting at 3 (Oct. 9, 2012)

Hampshire is the same process that has worked effectively in the neighboring States of Vermont and Maine. As the Commission is well aware, entities in these neighboring states also have undertaken Federal stimulus-based network construction projects and these projects had significant pole licensing requirements. FairPoint continues to view NHOS's issue as one between itself and another competitive local exchange carrier ("CLEC"), although not clearly articulated by NHOS. To that end, it is not sensible to adjudicate DT 12-246, involve both the telecommunications and electric industries, and entangle many parties in a lengthy and assuredly costly proceeding. It is noteworthy that, in Staff's report, it listed representatives from twenty-five different private and public entities and associations attending the stakeholder meeting.³ It is only logical that the most effective and efficient path to resolve NHOS's initial petition is to adjudicate DT 12-107.

Notwithstanding FairPoint's position above, to the extent that it is determined that the DT 12-246 proceeding continues, FairPoint maintains that the scope of such procedure be narrowed to ensure that the plethora of issues formerly scrutinized at length in DRM 08-044 are not revisited and essentially re-litigated. In that light, and notwithstanding FairPoint's position that this proceeding be terminated, FairPoint supports Staff's recommendation to focus the rulemaking on the issues of timing, and that any investigation of the provisions for coordinating third party make-ready responsibilities be focused exclusively on third parties and not pole owners. As Staff's report captured, pole owners "do not want to be fact finders to resolve disputes between third parties and should not be expected to incur the liability of moving another utility's working facilities."⁴

³ *Id.* at 1.

⁴ *Id.* FairPoint also notes that requiring pole owners to so act as a "referee" and the related potential exposure to damages such a role necessarily entails would likely constitute an

Finally, FairPoint maintains that the timing rules previously established in Puc 1300, which relate to pole owner make ready work, should be sustained. These rules continue to be applicable and there is no need to revisit them.

B. Practice of Requiring New Attachments to be Located Forty Inches Below the Electric Company's Neutral

In regard to the general practice of requiring new attachments to be located forty (40) inches below the electric company's neutral, FairPoint opposes Staff's recommendation to review this practice in this proceeding. This practice is one that offers the most efficient access to poles. For purposes of clarity, the process is described below:

- When a requesting licensee applies for access to a pole, it is generally placed at the top of the communications space on said pole, which is 40" below the electric company's neutral.
- Consequently, any existing attachments on the pole that are in conflict with this space must move their facilities down the pole to provide access to the requesting entity.
- However, in instances where it is determined that other space is available on the pole line to the requesting licensee (aside from 40" below neutral), and this same consistent path is available for the majority of the route the licensee is requesting, that space is assigned to the requesting licensee. This obviously provides a more efficient path to the requesting party, and avoids costs related to cable rearrangements. For the avoidance of doubt, it is very rare that this scenario exists.

FairPoint believes that this process offers two primary advantages; the first being that the licensee is allowed the quickest path to the pole, particularly with pole replacement scenarios where the requesting party is first to attach to the new pole. It also is practical from a coordination perspective, as rearrangements on multiple poles can be completed in full by one

unconstitutional taking of FairPoint's property. FairPoint reserves the right to raise this and other legal issues at a later date in the event this proceeding continues.

provider, allowing the next provider the same dispatching efficiencies as well as any subsequent attachees.

Second, this practice also preserves the same attachment height per provider throughout the pole route, which is important to ensure that facilities do not cross, which is not operationally sound. Cable crossings can result in maintenance challenges that include complicated pole replacements as well as complicated cable placements. Preserving the same consistent height per provider is sound engineering and construction practice.

To the extent that Staff is suggesting additional alternatives to the placement of newly requesting attachees, FairPoint also opposes approaches that were previously suggested in DRM 08-044, such as boxing and the use of extension arms. While used in rare situations, they are not an effective and safe general practice, and FairPoint feels there is no need to reconsider such alternatives in the instant docket.

III. CONCLUSION

For the reasons described herein, FairPoint respectfully requests that the Commission stay or dismiss Docket DT 12-246. In the event the Commission rejects such requests, the Commission should appropriately limit this Docket to issues not litigated in Docket DRM 08-044.

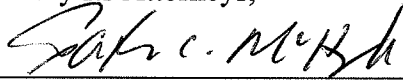
Respectfully submitted,

NORTHERN NEW ENGLAND TELEPHONE
OPERATIONS LLC D/B/A
FAIRPOINT COMMUNICATIONS-NNE

By Its Attorneys,

Dated: October 26, 2012

By:



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties by electronic mail.

Dated: October 26, 2012

By:


Abigale E. Chesley