

**STATE OF NEW HAMPSHIRE**  
**Before the**  
**PUBLIC UTILITIES COMMISSION**  
**DRM 22-023**

**RULEMAKING**

**New Hampshire Code of Administrative Rules Chapter 1300**  
**Utility Pole Attachments**

**COMMENTS OF**

**NEW ENGLAND CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC.**

NOW COMES the New England Cable and Telecommunications Association, Inc. (“NECTA”), by and through its undersigned attorneys, and, pursuant to the Order of Notice issued by the New Hampshire Public Utilities Commission (“the Commission” or “NH PUC”) on April 14, 2022 in the above-captioned docket, respectfully submits these written comments to supplement the oral comments provided on behalf of NECTA at the public comment hearing held jointly by the Commission and the New Hampshire Department of Energy (“NH DOE”) on June 10, 2022. NECTA notes that it will submit written comments to NH DOE separately on the pole attachment rules proposed by that agency.

**I. Introduction**

NECTA appreciates the opportunity to provide these comments regarding the Commission’s proposed pole attachment rules. NECTA is a non-profit corporation and regional trade association that represents the interests of most cable television and broadband internet providers in New Hampshire, including affiliates of Breezeline, Charter Communications and Comcast and their competitive local exchange company affiliates.

NECTA Members are “attaching entities” within the meaning of existing and proposed rule Puc 1302.01. They attach their facilities to poles as defined in RSA 374:34-a, I, existing rule Puc 1302.10, and proposed rule Puc 1302.07, to deploy broadband and other advanced communications services to business and residential customers in New Hampshire. Given the recent announcement that New Hampshire will be receiving \$50 million in federal aid<sup>1</sup> for increasing access to high-speed affordable internet service, it is of utmost importance to broadband providers that rules are in place to promote nondiscriminatory and efficient pole attachment processes, and just and reasonable pole attachment rates.

NECTA believes that when the pole attachment rules were last amended in 2018, they adequately balanced the interests of attaching entities and pole owners. Since that time, however, the world has changed. The COVID 19 pandemic has changed the way that we work, learn and communicate with one another. Increased distance learning, remote work environments and videoconferencing during in the past two years, have necessitated more broadband deployment to meet these needs. Therefore, the rules that govern facility attachments that deliver essential broadband services must be fair and clear, and must ensure that pole attachment rates are just and reasonable. For the reasons discussed below, the existing pole attachment rules must be updated to keep pace with a changing environment that demands expeditious broadband deployment. As indicated above, NECTA will be submitting comments to the NH DOE regarding that agency’s proposed rules relating to pole access procedures; the comments below are therefore focused only on the Commission’s rules relating to pole attachment rates.

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<sup>1</sup> [https://www.concordmonitor.com/Four-states-receive-first-allocations-of-\\$10B-broadband-fund-46712280](https://www.concordmonitor.com/Four-states-receive-first-allocations-of-$10B-broadband-fund-46712280)

## **II. Just and Reasonable Pole Attachment Rates**

RSA 374:34-a, II authorizes the Commission to regulate and enforce pole attachment rates, charges, terms and conditions, to provide that such rates, charges, terms and conditions are just and reasonable. NECTA respectfully submits that to provide clarity and certainty regarding the determination of just and reasonable pole attachment rates, the Commission should adopt the Federal Communications Commission's ("FCC's") cable rate formula and should eliminate the other more subjective criteria that appear in the current and proposed rules.

The current and proposed rules contain two sets of rate standards. The first set of standards (appearing in current rule Puc 1304.06(a) and proposed rule Puc 1304.06(a)) applies to attachments of: cable television providers, wireless service providers, and excepted local exchange carriers ("ELECs") that are not incumbent local exchange carriers ("ILECs"), to poles owned by electric utilities or ILECs. The second set of standards (in section (b) of both the current and proposed rules) applies to "all other pole attachments" (which includes attachments of information service providers, telecommunications providers, incumbent local exchange carriers, electric utilities and governmental entities.) (*See* current rule Puc 1302.01). Both sets of standards require that the Commission consider several criteria<sup>2</sup> when determining just and reasonable rates. In addition, the first set of criteria also includes consideration of the formulae adopted by the FCC in 47 CFR §§1.1409(b) through (g) in effect on October 1, 2017.

At the outset, NECTA notes that the citation to the FCC's pole attachment rate formulae contained in the current and proposed rules is incorrect.<sup>3</sup> In addition, NECTA believes that for

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<sup>2</sup> These criteria are: relevant federal state, or local laws, rules, and decisions; the impact on competitive alternatives; potential impact on the pole owner and its customers; potential impact on deployment of broadband services; and any other interests of the subscribers and users of the services offered via the attachments or consumers of any pole owner providing such attachments, as may be raised.

<sup>3</sup> The FCC's current pole attachment rate formulae are found at 47 CFR § 1.1406(d).

ease of administration, and to ensure that all pole attachers are subject to the same nondiscriminatory, just and reasonable pole attachment rates, the Commission should adopt a single rate formula for all pole attachers, and should eliminate the other more subjective criteria listed in the current and proposed rate standards. NECTA does not believe it is necessary or appropriate to apply different sets of pole rate standards simply because attaching entities have different regulatory definitions. As the cable industry has evolved, with the switch to fiber and now internet protocol television, there are few technical differences in how internet service providers and cable companies provide their services, or how they connect to homes or attach to poles. Attachments are attachments; different rates need not apply to those attachments simply because they are used by different types of service providers. Underscoring this point is the fact that Eversource no longer tracks attachments by type (*i.e.*, telecom v. cable) because there is no difference in the rate it charges for those types of pole attachments.<sup>4</sup> Accordingly, the Commission should adopt a single formula that can be applied to all pole attachments.

NECTA respectfully submits that the FCC's cable rate formula found at 47 CFR §1.1406(d)(1) (and as may be subsequently amended or redesignated by the FCC) should apply to all New Hampshire pole attachments. This is an objective standard that will provide uniformity, certainty and clarity for the Commission, pole owners and pole attachers, when determining just and reasonable pole attachment rates. NECTA respectfully urges the

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<sup>4</sup> Eversource's pole attachment rates are set pursuant to a Commission-approved settlement. *See Time Warner Entertainment Company L.P. d/b/a Time Warner Cable*, DT 12-084, Order No. 25,453 (Jan. 17, 2013).

Commission to follow the path taken by the Maine Public Utilities Commission,<sup>5</sup> and adopt the FCC cable rate formula for calculating a just and reasonable pole attachment rate.

### **III. Availability of Pole Related Records and Data**

In order to ascertain whether pole attachers are billing just and reasonable pole attachment rates, pole attachers must have access to the records and data relating to the pole-related information that is used to calculate pole attachment rates. NECTA believes that the pole attachment rules should clearly require that pole owners maintain and make available such information to pole attachers upon request. Increased mandatory information sharing by pole owners will greatly decrease the likelihood of disputes over pole attachment rates, and significantly increase the speed of pole attachments and thus broadband deployment. The rules, therefore, should require that, on request, pole owners must provide access to records that flow into their FERC Form 1, including for example their outside plant records relevant to poles, historically referred to as Continuing Property Records, with detailed accounting of the types of equipment and associated units in FERC account 364 which is used to report pole plant investment (appurtenances, poles, towers, platforms, insulators, etc.)<sup>6</sup> and actual records on pole height. Access to detailed records in possession of the pole owners is necessary to enable pole

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<sup>5</sup> See Maine PUC Rules Ch. 880, Section 4 (adopting FCC cable rate formula with certain rebuttable presumptions for space factors and pole top space occupation), and Section 1.L. (definition of FCC Cable Rate Formula = 47 CFR § 1.1406(d)(1)).

<sup>6</sup> FERC Account 364 includes the cost of installed poles, towers, and appurtenant fixtures used for supporting overhead distribution conductors and service wires and includes the following items: 1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc. 2. Brackets. 3. Crossarms and braces. 4. Excavation and backfill, including disposal of excess excavated material. 5. Extension arms. 6. Foundations. 7. Guards. 8. Insulator pins and suspension bolts. 9. Paving. 10. Permits for construction. 11. Pole steps and ladders. 12. Poles, wood, steel, concrete, or other material. 13. Racks complete with insulators. 14. Railings. 15. Reinforcing and stubbing. 16. Settings. 17. Shaving, painting, gaining, roofing, stenciling, and tagging. 18. Towers. 19. Transformer racks and platforms.

attachers to compare actual data against initial presumptions used in calculating pole rates in order to determine whether those presumptions can be rebutted.

For example, average pole height is a rebuttable presumption under the FCC's cable formula and in the formula that applies to Eversource's pole attachment rates,<sup>7</sup> but because pole owners – not pole attachers - possess pole height data and records, pole attachers must be provided with access to that information to assess whether they can rebut the height presumption. Pole owners also must be required to track data, such as pole height, in sufficient detail to allow the presumption to be tested against actual data.

While electric pole owners must provide the FERC Form 1 and backup information, the rules should also require that, on request, telecommunications pole owners must provide analogous records related to poles, including information on the so-called ARMIS Report (FCC Report 43-01) or on an analogous form. Similarly, electric cooperative pole owners should be required to provide, upon request, the data they maintain in FERC-equivalent accounting records.<sup>8</sup>

#### **IV. Suggested Revisions to Proposed Rules**

The text below reflects NECTA's suggested changes to the proposed rules, consistent with the comments presented above.

##### **Puc ~~1303~~1304.06 Rate Review Standards.**

~~(a) In determining just and reasonable rates for the all pole attachments, of cable television service providers, wireless service providers, and excepted local exchange carriers that are not incumbent local exchange carriers to poles owned by electric utilities or incumbent local exchange carriers under this chapter, the commission shall consider:~~ **apply the cable rate**

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<sup>7</sup> See *Time Warner Entertainment Company L.P. d/b/a Time Warner Cable*, DT 12-084, Order No. 25,453 (Jan. 17, 2013), p. 3, fnt. 3 (pole height presumption of 37.5 feet may be rebutted before the Commission).

<sup>8</sup> Electric cooperatives typically maintain accounting records equivalent to FERC accounts under the Rural Utilities Service guidelines that enable them to borrow through the Rural Utilities Service. See 7 C.F.R. § 1767.41.

**formula adopted by the FCC in 47 C.F.R. §1.1406(d)(1), 47 C.F.R. §1.1410, and as may be subsequently amended or redesignated by the FCC.**

- ~~(1) Relevant federal, state, or local laws, rules, and decisions;~~
- ~~(2) The impact on competitive alternatives;~~
- ~~(3) The potential impact on the pole owner and its customers;~~
- ~~(4) The potential impact on the deployment of broadband services; and~~
- ~~(5) The formulae adopted by the FCC in 47 C.F.R. §1.1409(b) through (g) in effect on October 1, 2017; and~~
- ~~(6) Any other interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.~~

~~(b) In determining just and reasonable rates for all other pole attachments under this chapter, the commission shall consider:~~

- ~~(1) Relevant federal, state, or local laws, rules, and decisions;~~
- ~~(2) The impact on competitive alternatives;~~
- ~~(3) The potential impact on the pole owner and its customers;~~
- ~~(4) The potential impact on the deployment of broadband services; and~~
- ~~(5) Any other interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.~~

#### **Puc 1303.07 Availability of Pole Related Records.**

**Pole owners shall track, maintain and make available upon request to attaching entities all pole-related records, data and other relevant information needed to calculate pole attachment rates under these rules, including, but not limited to:**

- (a) For electric pole owners, the FERC Form 1; for telecommunications pole owners information on the FCC Report 43-01 or an analogous form (the “ARMIS” report); for electric cooperatives, information maintained in accounting records consistent with 7 C.F.R. § 1767.41;**
- (b) Information and data from the pole owners’ accounting and plant records including those historically referred to as Continuing Property Records, including detailed accounting of the items and associated units for FERC Account 364 which is used to report pole plant investment, and information on average pole height; and**
- (c) Information needed to rebut the presumptions contained in the FCC’s cable rate formula.**

**Puc 1303.08**~~1304.07~~ Remedies. When the commission determines just and reasonable rates under this part that differ from the rates paid by the petitioner, the commission shall order a payment or refund, as appropriate. Such refund or payment shall be the difference between the amount actually paid and the amount that would have been paid under the rates established by the commission, plus interest, as of the date of the petition.

Puc ~~1303.09~~1304.08 Interest. Refunds or payments ordered under Puc 1304.07 shall accrue simple annual interest at a rate equal to the prime rate.

V. **Conclusion**

NECTA appreciates the opportunity to provide these comments and respectfully requests that the Commission adopt the above suggestions in developing its final rules proposal.

Respectfully submitted,

**NEW ENGLAND CABLE AND  
TELECOMMUNICATIONS ASSOCIATION,  
INC.**

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



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Dated: June 21, 2022

**Certificate of Service**

I hereby certify that on the date set forth above a copy of the within Comments was sent by electronic mail to persons listed on the Service List in this docket.



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Susan S. Geiger