

**State of New Hampshire  
Before the New Hampshire Public Utilities Commission**

**DRM 07-119**

**Proposed Rulemaking (Puc 1300/Utility Pole Attachments) – Interim Rules**

**and**

**DRM 08-004**

**Proposed Rulemaking (Puc 1300/Utility Pole Attachments) – Regular Rules**

**COMMENTS OF EIGHT ILEC MEMBERS OF THE  
NEW HAMPSHIRE TELEPHONE ASSOCIATION**

**March 5, 2008**

**Submitted on behalf of:**

**BRETTON WOODS TELEPHONE COMPANY, INC.  
DIXVILLE TELEPHONE COMPANY  
DUNBARTON TELEPHONE COMPANY, INC.  
GRANITE STATE TELEPHONE, INC.  
TDS TELECOM/HOLLIS TELEPHONE COMPANY, INC.  
TDS TELECOM/KEARSARGE TELEPHONE COMPANY  
TDS TELECOM/MERRIMACK COUNTY TELEPHONE  
TDS TELECOM/WILTON TELEPHONE COMPANY, INC.**

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Eight independent New Hampshire incumbent local exchange carriers who are members of the New Hampshire Telephone Association (the "Eight NHTA ILECs" or "NHTA"),<sup>1</sup> by and through the undersigned counsel and pursuant to RSA 541-A:11, I & VIII, hereby offer the following comments to the New Hampshire Public Utilities Commission ("PUC") concerning both the Interim Rule (Chapter Puc 1300—Utility Pole Attachments) that was adopted by the PUC on January 11, 2008, and the possibility that the PUC will adopt Regular Rules concerning utility pole attachments.

While supportive of the PUC's desire to act quickly to activate and exercise the jurisdiction granted to it by the New Hampshire General Court in 2007, the Eight NHTA ILECs are quite concerned that the PUC's Pole Attachment rules appear likely to exclude incumbent local

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<sup>1</sup> The Eight NHTA ILECs are: Bretton Woods Telephone Company, Inc.; Dixville Telephone Company; Dunbarton Telephone Company, Inc.; Granite State Telephone, Inc.; TDS Telecom/Hollis Telephone Company, Inc.; TDS Telecom/Kearsarge Telephone Company; TDS Telecom/ Merrimack County Telephone Company; and TDS Telecom/Wilton Telephone Company, Inc.

exchange carriers ("ILECs") from the rights and benefits that the PUC seeks to establish. For this reason, and as discussed further below, the Eight NHTA ILECs respectfully ask the PUC to withdraw the present rulemaking, which is grounded solely on RSA 374:34-a and 47 U.S.C. § 224(c), and to start over with a new rulemaking that encompasses the PUC's full statutory authority over utility poles.

**A. Background**

On July 16, 2007, the New Hampshire General Court and the Governor enacted 2007 N.H. Laws 340:1 (codified as RSA 374:34-a). That statute authorizes the PUC to "regulate and enforce rates, charges, terms, and conditions for [utility] pole attachments, with regard to the types of attachments regulated under 47 U.S.C. section 224," and to "adopt rules under RSA 541-A to carry out the provisions of this section." RSA 374:34-a, II & III. In 2007 N.H. Laws 340:2, an uncoded section enacted as part of the new act, the General Court set an additional requirement for the PUC: "For a period of at least 2 years after the effective date of this act, the rules shall be consistent with the regulations adopted by the Federal Communications Commission under 47 U.S.C. section 224, including the formulae used to determine maximum just and reasonable rates."

The referenced federal statute, 47 U.S.C. § 224, vests jurisdiction over the "rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way" in the Federal Communications Commission ("FCC"), except "where such matters are regulated by a State." 47 U.S.C. § 224(c)(1). For a State to exercise its regulatory jurisdiction over pole attachments, the State must certify to the FCC that the State "regulates the rates, terms, and conditions for pole

attachments" and that the State "has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services." 47 U.S.C. § 224(c)(2). State regulatory jurisdiction over pole attachments is not recognized, however, unless (1) "the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments," and (2), in the event of a specific dispute, the State has taken final adjudicative action within timeframes specified under federal law. 47 U.S.C. § 224(c)(3).

The term "pole attachment" is defined in Section 224 to mean "any attachment by a cable television or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(5) (emphasis added). The scope of federal jurisdiction is thus limited to the regulation of pole attachments by cable and telecommunications providers. Federal jurisdiction over such attachments extends to ensuring that "rates, terms, and conditions are just and reasonable," and to establishing "procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions." 47 U.S.C. § 224(b)(1). Even more limited, however, is the jurisdiction granted to the FCC to prescribe regulations governing pole attachment rates and to ensure nondiscriminatory access to poles: in both cases, federal jurisdiction extends only to the attachments of cable television systems and telecommunications carriers. See 47 U.S.C. § 224(d)(3), (e)(1) & (f)(1). A "telecommunications carrier," under federal law, "does not include any incumbent local exchange carrier as defined in section 251(h) of this title." 47 U.S.C. § 224(5) (emphasis added).

These limitations are further reflected in the regulations adopted by the FCC pursuant to Section 224. The "rate formulae" that the FCC adopted for calculating just and reasonable pole

attachment rates apply only to attachments by telecommunications carriers and cable operators. See 47 C.F.R. § 1.1409(e)(1)-(3). Only "a cable television operator or any telecommunications carrier" enjoys the right of "nondiscriminatory access to any pole." 47 C.F.R. § 1.1403(a) (emphasis added). Moreover, the term "complainant" is defined to include "a telecommunications carrier, or an association of telecommunications carriers who files a complaint." 47 C.F.R. § 1.1402(e) (emphasis added).<sup>2</sup> As in Section 224 itself, the FCC's rules expressly state that "the term telecommunications carrier ... does not include ... incumbent local exchange carriers ...." 47 C.F.R. § 1.1402(h) (emphasis added). As noted, the New Hampshire General Court has required the PUC to adopt "rules ... consistent with the regulations adopted by the Federal Communications Commission under 47 U.S.C. section 224, including the formulae used to determine maximum just and reasonable rates."

On November 8, 2007, the PUC opened Docket No. DRM 07-119 for the purpose of promulgating interim rules governing Utility Pole Attachments, as required by 2007 N.H. Laws 340:1 (codified at RSA 374:34-a; eff. July 16, 2007). On November 28, 2007, the Commission requested a waiver of RSA 541-A:40 from the Joint Legislative Committee on Administrative Rules ("JLCAR") for the purpose of allowing prompt adoption of Interim Rule Puc 1300. Following JLCAR's approval of the Commission's request for a waiver, the Commission, on January 11, 2008, adopted Interim Rule Puc 1300. By Secretarial Letter dated January 18, 2008, the PUC announced its adoption of Interim Rule Puc 1300 and opened Docket No. DRM 08-004

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<sup>2</sup> A complainant may also be "a utility," which is defined to include "a local exchange carrier," but the term "utility" is limited to a person "who owns or controls poles," and is not meant to apply to attaching entities. See 47 C.F.R. § 1.1402(a); 47 C.F.R. § 1.1402(e).

for the purpose of considering and adopting a Regular Rule (also to be designated as Puc 1300), governing Utility Pole Attachments.

In its "Request for Advance Public Comment," the PUC noted that it relied solely on RSA 374:34-a and 47 U.S.C. § 224(c) for its statutory authority to engage in the present rulemaking. In Interim Rule Puc 1300, the PUC states that it is acting "pursuant to the mandate of RSA 374:34-a." Interim Rule Puc 1301.01. For purposes of determining just and reasonable pole rates under Interim Rule Puc 1300, the PUC "shall apply the standards and formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007." Interim Rule Puc 1304.04.

The PUC conducted a Technical Session in Docket Nos. DRM 07-119 and DRM 08-004 on February 27, 2008, and has requested that any written comments from interested persons be submitted by March 5, 2008.

## **B. General Comments**

### **1. Support for the PUC's Acceptance of Jurisdiction**

The Eight NHTA ILECs support the prompt action by the PUC to implement the requirements of RSA 374:34-a. The 2007 enabling legislation and the PUC's Interim Rule Puc 1300 will allow pole owners and authorized attachers who are unable to resolve disputes over utility pole attachments to obtain adjudicative relief in a more efficient and less costly fashion from the PUC, rather than (as was true previously) having to seek such relief from the FCC. The availability of the PUC as a forum to hear and decide such cases is a welcome and positive change in the law.

In addition, NHTA supports the PUC's decision to preserve pole attachment agreements as the preferred mechanism for establishing the legal relationship between the pole owner and the authorized attaching entity. The Interim Rule makes clear that "[a]ny pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory" (Interim Rule Puc 1303.04). In addition, under the Interim Rule, the PUC becomes involved in pole attachment arrangements only if a party is "unable to reach agreement with the owner or owners of a pole or poles subject to this chapter" (Interim Rule Puc 1304.01), or if a dispute arises concerning either "a voluntary pole attachment agreement entered into pursuant to this chapter" or a standing order of the PUC establishing rates, charges, terms and conditions for pole attachments (Interim Rule Puc 1304.02). These provisions underscore the reliance, both by parties and by the PUC, on voluntary pole attachment agreements as the principal mechanism governing the rates, charges, terms and conditions of pole attachments in the State of New Hampshire.

## **2. Eligibility of ILECs to be Attaching Entities**

### **a. Objection**

Despite these positive developments, however, the NHTA is quite concerned that the enabling legislation, the Interim Rule and in a possible Regular Rule that the PUC may adopt will be read as excluding ILECs (such as the NHTA member companies) from the class of attaching entities who are entitled to have nondiscriminatory access to poles at just and reasonable rates. In the NHTA's view, this exclusion is a glaring defect in the enabling legislation and any PUC rules adopted thereunder. The NHTA believes it is necessary for the

PUC to withdraw its present effort to consider a Regular Rule, and to restart the process with a broader foundation of statutory authority.

The exclusionary reading results from the treatment of ILECs under federal law. Under federal law, the rights and privileges accorded to attaching entities extend only to cable television system operators and telecommunications carriers. But both in federal statute and in federal regulation, ILECs are expressly excluded from the definition of "telecommunications carrier" for purposes of regulating pole attachments. 47 U.S.C. § 224(5); 47 C.F.R. § 1.1402(h).

The rights and privileges that are otherwise given to attaching entities include:

- The right of nondiscriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by utilities. 47 U.S.C. § 224(f)(1); 47 C.F.R. § 1.1403(a).
- The right to receive a response to a request for access to a pole within 45 days of the request. 47 C.F.R. § 1.1403(b).
- The right to 60 days' advance written notice before a pole owner may:
  - remove facilities from a pole, 47 C.F.R. § 1.1403(c)(1);
  - increase pole attachment rates, 47 C.F.R. § 1.1403(c)(2);
  - modify facilities other than for routine maintenance or emergencies, 47 C.F.R. § 1.1403(c)(3).
- The right to file a complaint, and have the complaint adjudicated, alleging unjust or unreasonable rates, terms or conditions for pole attachments. 47 C.F.R. §§ 1.1404-1.1410.
- The right to use formulae established by the FCC for calculating charges for pole attachments. 47 C.F.R. § 1.1409(e)(1)-(3)

ILECs are excluded from the application of each of these rights and privileges under federal law because they are not "telecommunications carriers." Because of the exclusion under federal law, RSA 374:34-a, which incorporates the federal standards, could also be read to exclude ILECs



from the rate formulae and other standards that the PUC is given jurisdiction to adopt and regulate.<sup>3</sup>

At the Technical Session, representatives from Verizon-New Hampshire and Public Service Company of New Hampshire suggested that the General Court, in RSA 374:34-a, expressly limited the PUC's regulatory authority to "pole attachments, with regard to the types of attachments regulated under 47 U.S.C. section 224." RSA 374:34-a, II (emphasis added). They further noted that the statute obligates a pole owner to "provide nondiscriminatory access to its poles for the types of attachments regulated under this subdivision." RSA 374:34-a, VI (emphasis added). In each case, they suggest, the General Court made clear that not all types of pole attachments would be regulated, but rather only those "types of attachments regulated under 47 U.S.C. section 224."

The Eight NHTA ILECs concur that the General Court limited the regulatory scope of the statute to attachments by cable television systems and providers of telecommunications service, as set forth in 47 U.S.C. § 224(e). NHTA's concern, however, is that federal law further limits the availability of each of the rights and privileges of attaching entities to cable television systems and "telecommunications carriers," who are defined to exclude ILECs. Although this exclusion is not clearly stated in the New Hampshire statute (or in the Interim Rule adopted by the PUC thereunder), there is at least a colorable argument that the exclusions under federal law were incorporated unchanged in the state law.

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<sup>3</sup> Such a reading is reinforced by the fact that RSA 374:34-a expressly *includes* rural electric cooperatives within the class of pole-owning utilities in New Hampshire, *see* RSA 374:34-a, I, even though cooperatives are expressly *excluded* from the class of pole-owning utilities under federal law. *See* 47 U.S.C. § 224(1). The shift in jurisdictional scope demonstrates that the New Hampshire General Court was aware of the limitation under federal law and took steps to overcome that limitation in the New Hampshire statute.

The NHTA believes such an exclusion is unfair and unwarranted. New Hampshire's ILECs have been attaching entities on utility poles in the State for as long as there have been utility poles. While the Eight NHTA ILECs presently attach their facilities to poles pursuant to pole attachment agreements, those agreements are typically for a term of years. Upon the expiration of those contracts, a New Hampshire ILEC should be in no worse position to negotiate a new contract than any other provider of telecommunications services in the state. There is no principled basis in New Hampshire law for allowing non-incumbent telecommunications carriers to enjoy the rights and privileges of state regulatory protections while excluding incumbent carriers from those same benefits.

To the extent the PUC's proposed rules would perpetuate the exclusion of ILECs from rate formulae and other standards adopted for the regulation of pole attachments, NHTA respectfully objects to such exclusion, but offers the following proposal to address its objection.

**b. Proposal**

The NHTA believes it is necessary, and so respectfully requests the PUC, to withdraw any pending rulemaking proceeding that would result in the exclusion of ILECs from the rate formulae and other standards to be considered for the regulation of pole attachments. Withdrawal of the pending rulemaking would not affect the continued validity of Interim Rule Puc 1300, which the PUC adopted on January 11, 2008, and which will remain in force until a Regular Rule Puc 1300 can be adopted.

In place of the present rulemaking proceeding, the NHTA proposes that the PUC commence a new rulemaking proceeding that would not rely solely on RSA 374:34-a and 47

U.S.C. § 224(c) as its statutory bases. Instead, the PUC would undertake a new rulemaking to regulate the rates, charges, terms and conditions of pole attachments under the full statutory authority of the PUC, including both RSA 374:34-a and other jurisdictional bases.

In the NHTA's view, the PUC has sufficient statutory authority in other provisions of New Hampshire law to overcome the limitations of the new statute. Under existing provisions of the Public Utilities law:

- "The public utilities commission shall have the general supervision of all public utilities and the plants owned, operated or controlled by the same so far as necessary to carry into effect the provisions of this title." RSA 374:3.
- "Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable." RSA 374:1.
- "The commission, on its own motion or upon petition of a public utility, may investigate or make inquiry in a manner to be determined by it as to any rate charged or proposed or as to any act or thing having been done, or having been omitted or proposed by any public utility; and the commission shall make such inquiry in regard to any rate charged or proposed or to any act or thing having been done or having been omitted or proposed by any such utility in violation of any provision of law or order of the commission." RSA 365:5.
- "All charges made or demanded by any public utility for any service rendered by it or to be rendered in connection therewith, shall be just and reasonable and not more than is allowed by law or by order of the public utilities commission. Every charge that is unjust or unreasonable, or in excess of that allowed by law or by order of the commission, is prohibited." RSA 374:2.
- "Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful

rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed. The commission shall be under no obligation to investigate any rate matter which it has investigated within a period of 2 years, but may do so within said period at its discretion." RSA 378:7.

- "Any person may make complaint to the commission by petition setting forth in writing any thing or act claimed to have been done or to have been omitted by any public utility in violation of any provision of law, or of the terms and conditions of its franchises or charter, or of any order of the commission." RSA 365:1.

The foregoing list of statutory provisions is not intended to be exhaustive but merely representative of the broad authority that the PUC now has over the rates, terms and conditions of facilities owned and operated by, and services provided by, New Hampshire utilities, and over the enforcement of violations and resolution of disputes arising from such facilities and services.

The PUC can and should commence a new rulemaking proceeding that relies on a broader scope of existing authority than is afforded to the PUC under RSA 374:34-a. Such a rulemaking proceeding should consider rules for pole attachments that will apply to all public utilities (as that term is defined in RSA 362:2 and used in 374:34-a) without regard to limitations created under federal law. The Eight NHTA ILECs specifically request, in the event the PUC commences a new rulemaking, that any rights and privileges given to entities that attach facilities to utility poles should apply to ILECs in the same manner and with the same force as such rights and privileges apply to other providers of telecommunications services.

### **C. Other Comments**

Notwithstanding the NHTA's desire to have the pending rulemaking withdrawn and to commence a new rulemaking that would recognize the rights and privileges of ILECs as attaching entities, the NHTA offers the following additional comments on the Interim and possible Regular Rule Puc 1300.

#### **1. Tariffing Option**

At the public hearing last week, an attendee raised the question of whether the PUC would be authorized under RSA 374:34-a to impose a tariffing requirement on pole owners for the purpose of establishing standard rates, terms and conditions for attachments to their poles.<sup>4</sup> Without responding to the question of legal authority, the Eight NHTA ILECs do not believe it is necessary or desirable for the PUC to impose such a tariffing requirement on pole owners in New Hampshire. In NHTA's view, the pole attachment agreement, which both the enabling legislation and the PUC's Interim Rule rely on as the principal means of establishing the Pole Owner/Attaching Entity relationship, is the mechanism that best ensures the use of industry standards and best practices among pole owners and attachers. Pole agreements, which typically run for a fixed term of years, provide an efficient and effective means of maintaining a stable framework for pole owners and attaching entities, while allowing for improvements and developments in industry standards over time, without the need for tariff amendments and approvals.

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<sup>4</sup> The attendee correctly pointed out that every pole owner in Vermont is required to file a pole attachment tariff, which must be approved by the Vermont Public Service Board. See VPSB Rule 3.703 (Tariff Required), available at [http://www.state.vt.us/psb/rules/OfficialAdoptedRules/3700\\_Pole\\_Attachments.pdf](http://www.state.vt.us/psb/rules/OfficialAdoptedRules/3700_Pole_Attachments.pdf).

## **2. Authority to Alter Pole Agreements**

The Eight NHTA ILECs are concerned with the provision, in Interim Rule Puc 1303.04, that bars the PUC from altering the terms of a pole agreement as part of an adjudicative review of that agreement. The Interim Rule, as noted previously, establishes a presumption that a pole attachment agreement is "just, reasonable and nondiscriminatory." The NHTA fully supports the establishment of this presumption. The Interim Rule, however, goes on to say, "The commission shall not alter the terms of any such agreement." (Interim Rule Puc 1303.04). In NHTA's view, this prohibition is at odds with the enabling legislation, RSA 374:34-a, and with good administrative practice and should be eliminated from the Interim Rule.

In RSA 374:34-a, the General Court authorized the PUC "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 (emphasis added). With respect to voluntary pole-attachment agreements, the PUC has properly exercised that authority, in the Interim Rule, by creating the presumption of justness and reasonableness for pole agreements. This presumption means that a party seeking to void such an agreement, in whole or in part, will bear the burden of proving that part or all of the agreement that the party voluntarily entered into is not just, reasonable or nondiscriminatory. Putting the burden of proof on the petitioner in such a case is proper. But prohibiting the PUC from altering such an agreement fatally undermines the adjudicative authority granted to the PUC by RSA 374:34-a. In a case in which a party challenging a voluntary agreement succeeds in proving that all or part of that agreement violates the PUC's rules, the PUC would nonetheless be barred from striking the offending provision and bringing the agreement into conformity with the PUC's rules. This means that while the PUC

can *hear* a complaint about a voluntary pole agreement, the PUC is prohibited from fully *resolving* that complaint. Under RSA 374:34-a, the General Court authorized the PUC "to hear and resolve complaints concerning ... voluntary agreements ..." (Emphasis added.)

An alternative reading of the "shall not alter" provision of Interim Rule Puc 1303.04 leads to just as unwelcome a result. Because the PUC has barred itself from "altering" voluntary pole agreements, then the only option it would have, when faced with a complaint about a voluntary agreement, is to strike the agreement down in its entirety if the petitioner prevails in the case. Under this reading, the "shall not alter" provision creates an "all or nothing" rule, in which the agreement either stands in its entirety or fails in its entirety, with the PUC having no authority to cure an offending term or provision of that agreement. While this might appear to preserve the "hear and resolve" authority granted to the PUC in RSA 374:34-a, VII, the Eight NHTA ILECs believe such a reading would unnecessarily constrain the authority granted by the new statute.

NHTA would strike the second sentence of Interim Rule Puc 1303.04. In NHTA's view, the proper place for clarifying the PUC's authority over disputed provisions of pole agreements is in Interim Rule Puc 1304.03 (Procedure). Accordingly, the NHTA would also add a new second sentence to that rule, as follows:

Puc 1304.03 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct adjudicative proceedings pursuant to Puc 203 for the purpose of considering and ruling on the petition. *Where the public interest so requires, the commission may order that rates, charges, terms or conditions for pole attachments be modified.* The commission shall issue its order resolving the complaint within 180 days of the receipt of a complete petition under this part.

(Proposed addition underlined and italicized.)

The addition of authority for PUC to modify the provisions of existing agreements or orders is consistent with the authority granted under RSA 374:34-a, as well as with the analogous jurisdiction exercised by the FCC under federal law. *See* 47 C.F.R. 1.1410. When viewed in conjunction with the legal presumption of justness and reasonableness that is given to voluntary pole attachment agreements in Interim Rule Puc 1303.04, there is no reason to believe that having the PUC exercise the authority to modify those agreements will create an incentive to "sign and sue," since a petitioner seeking to modify the terms of a voluntary agreement will face a heavy burden in making its case, as is proper when dealing with voluntary contracts entered into between public utilities.

### **3. Errata**

The NHTA respectfully points out typographical errors in Interim Rule Puc 1300 that should be corrected in any future amendments or versions of the Rule:

- In Interim Rule Puc 1303.01, first sentence, second line, the phrase "access to such pole" should be "access to such poles".
- In Interim Rule Puc 1303.02, last line, the word "conductions" should most likely be "conditions".

### **D. CONCLUSION**

The NHTA supports the PUC's prompt exercise of jurisdiction over pole attachments in New Hampshire and favors the presumption of justness and reasonableness that is accorded to voluntary pole attachment agreements. Voluntary agreements are and should remain the principal basis for establishing the relationship between the pole owner and the attaching entity.



However, NHTA is greatly concerned that the enabling legislation (RSA 374:34-a) and resulting PUC rules governing pole attachments unfairly exclude ILECs from any rights and privileges given to attaching entities under those rules. This exclusion results from the incorporation into the state statute and, by extension, into the PUC's rules, of rate formulae and other standards adopted by the FCC under federal law. The NHTA can discern no principled basis for perpetuating this federal law exclusion in state law, and such a result may well have been inadvertent on the part of the General Court. Nevertheless, a plausible reading of the New Hampshire statute and PUC rules would lead to the exclusion of ILECs from the rights and privileges of attaching entities, and NHTA cannot accept this result as fair or justifiable. Accordingly, NHTA asks the PUC to withdraw its pending rulemaking (while leaving Interim Rule Puc 1300 in full force while a regular rule is considered) and substitute in its place a new rulemaking that relies for its statutory authority on a broader range of jurisdictional statutes than RSA 374:34-a alone. NHTA contends that the PUC has sufficient statutory authority under existing law to adopt rules for pole attachments that would recognize the rights and privileges of ILECs as attaching entities.

Finally, the NHTA offers additional comments disfavoring the suggested use of pole-attachment tariffs by pole owners and favoring an amendment to the Interim Rule (or any Regular Rule) that would allow the PUC to exercise its authority to modify the terms of voluntary agreements upon a sufficient showing by a petitioning party and when the public interest so requires.

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WHEREFORE, the Eight NHTA ILECs ask the PUC to consider the foregoing Comments as part of the public comment process required by RSA 541-A:11, I & VIII, in these matters.

DATED at Plymouth, New Hampshire, this 5th day of March, 2008.

Respectfully submitted,

BRETTON WOODS TELEPHONE COMPANY, INC.; DIXVILLE TELEPHONE COMPANY; DUNBARTON TELEPHONE COMPANY, INC.; GRANITE STATE TELEPHONE, INC.; TDS TELECOM/HOLLIS TELEPHONE COMPANY, INC.; TDS TELECOM/KEARSARGE TELEPHONE COMPANY; TDS TELECOM/ MERRIMACK COUNTY TELEPHONE COMPANY; and TDS TELECOM/WILTON TELEPHONE COMPANY, INC.

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