

ATTACHMENT A

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

TIME WARNER ENTERTAINMENT
COMPANY, L.P.

Petitioner,

v.

PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE

Respondent.

Docket No. DT 12-___

AFFIDAVIT OF JULIE PATTERSON LAINE

I, Julie Patterson Laine, hereby depose and say as follows:

1. I am currently Group Vice President, Regulatory at Time Warner Cable Inc. (“TWC”). Time Warner Entertainment Company, L.P. is a wholly owned subsidiary of TWC. My business address is 60 Columbus Circle, New York, New York 10023.

2. I am responsible for legal and regulatory matters relating to TWC’s video, voice and data services. Prior to becoming Group Vice President, Regulatory, I was Vice President & Chief Counsel, Telephony for TWC. I have worked for TWC in these roles for ten years.

3. I make the statement in this Affidavit based on my own personal knowledge or on information and belief, and where based on information and belief, I believe the statements to be true and accurate.

4. TWC is a cable television operator that provides various communications services over its cable systems to subscribers in New Hampshire and elsewhere, including traditional

cable television service, broadband Internet access service and related state-of-the-art services such as high-definition video and video-on-demand. Time Warner Entertainment Company, L.P. is a limited partnership with its principle place of business at 60 Columbus Circle, New York, New York 10023.

5. In the last five years alone, TWC has invested approximately \$12 million to maintain, expand and upgrade our cable system facilities within New Hampshire so we can deliver increased video, broadband Internet access, voice and other advanced services to an ever-growing percentage of our customers. In New Hampshire, TWC's facilities pass 83,000 homes, and TWC provides services to approximately 60,000 subscribers in the state.

6. TWC began to provide interconnected Voice over Internet Protocol ("VoIP") service in parts of the State at the end of 2005. Although TWC has continued to expand the areas in which it provides VoIP service, it does not yet offer the service everywhere it provides video and Internet access services.

7. At no time has TWC provided circuit switched telephone services in New Hampshire.

8. TWC's communications facilities are connected to poles owned by Public Service Company of New Hampshire ("PSNH") in certain locations within the State of New Hampshire. Certain poles to which TWC is attached are solely owned by PSNH and others are jointly owned with FairPoint Communications, Inc. ("FairPoint") (previously Verizon New England, Inc.). According to PSNH invoices, more than 97 percent of the PSNH poles to which TWC is attached are jointly owned with FairPoint.

9. TWC and PSNH are parties to three three-party pole attachment agreements: (1) Pole Attachment Agreement dated February 6, 2004 between Verizon New England, Inc. and PSNH and Time Warner Entertainment Co., L.P. ("Pole Attachment Agreement 1"); (2) Aerial License

Agreement dated October 27, 1998 between New England Telephone and Telegraph Company d/b/a Bell Atlantic-New England and Public Service Company of New Hampshire and Contoocook Valley Telephone Company, Inc. and State Cable TV Corporation (“Pole Attachment Agreement 2”); and (3) Aerial License Agreement dated August 17, 1993 between New England Telephone and Telegraph Company and Public Service Company of New Hampshire and Grassroots Cable Systems, Inc. (“Pole Attachment Agreement 3”). *See* Exhibit 1.

10. TWC pays PSNH annual recurring pole attachment rent for the use of PSNH’s poles pursuant to the Pole Attachment Agreements. Article III of each Agreement pertains to fees and charges and includes required procedures for changes in fees and charges. Appendix I of each agreement sets forth the pole fees and charges.

11. Pole Attachment Agreement 1 includes an Appendix I setting forth PSNH’s annual attachment fees of \$4.10 per jointly owned and jointly used PSNH pole, and \$8.20 per solely owned PSNH pole. Pole Attachment Agreement 2 includes an Appendix I setting forth PSNH’s annual attachment fees of \$3.42 per jointly owned and jointly used PSNH pole, and \$6.84 per solely owned PSNH pole. TWC has been unable to locate its copy of Appendix I to Pole Attachment Agreement 3, the oldest of the three agreements. However, based upon the date of such Agreement, upon information and belief, the attachment fees and charges set forth therein are similar to or less than the fees set forth in Agreement 2, Appendix I.

12. Pole Attachment Agreement 1 provides that PSNH shall provide 60 days advance written notice of any changes in pole attachment fees and charges, and shall provide TWC with an updated Appendix I following the effective date of the new attachment fees and charges. Pole Attachment Agreements 2 and 3 provide that changes to Appendix I (setting forth the fees and charges) shall be effected by the separate execution of Appendix I.

13. At no time has PSNH provided effective notice of pole attachment fees and charges under the Agreements. At no time has PSNH provided a revised Appendix I to any of the Agreements.

14. For each bi-annual billing period beginning January 1, 2006 to June 30, 2006 through January 1, 2012 to June 30, 2012, PSNH has sought to change its pole attachment fees by providing invoices to TWC that included new annual per pole rent charges which were to take effect at the beginning of the next calendar year. In each semiannual invoice from 2006 to 2012, PSNH listed attachment fee amounts for “TV & Internet” and higher attachment fee amounts for “Communications.” *See* Exhibit 2 (sample invoices from PSNH). The listed per pole annual charges also differed depending on whether a pole was “solely-owned” by PSNH, “jointly-owned” with another pole owner (typically the incumbent telephone company, FairPoint Communications), or owned by PSNH and two other pole owners (“tri-owned”). *Id.* The invoices also listed different charges for Communications in Urbanized and Non-Urbanized areas. *Id.*

15. PSNH’s most recent invoice seeks to charge \$10.07 for TV and Internet attachments to PSNH solely owned poles and \$22.96 for Communications attachments to PSNH solely owned poles. *See id.* Rates for jointly owned poles are half these amounts, reflecting, upon information and belief, FairPoint’s 50 percent ownership interest in the poles. *Id.*

16. PSNH’s invoices continued with these apparent FCC attachment classifications in setting rates after this Commission assumed pole attachment jurisdiction in 2008, after this Commission’s pole attachment rules became effective in December 2009, and after the FCC’s adoption of the Revised Telecom Rate Formula. *See* Exhibits 2 and 3 (11/11 letter from PSNH to TWC) hereto.

17. At all times relevant to this Petition, TWC has objected to payment of pole attachment rates based on the PSNH's classification of certain TWC attachments as telecommunications and PSNH's apparent use of the federal pole attachment rate formula governing telecommunications ("Historic Telecom Rate Formula") to calculate those rates. Attached hereto as Exhibit 4 are true and accurate copies of letters that I sent to PSNH contesting PSNH's invoicing of rates that exceeded the maximum rates permitted under the rules of the Federal Communications Commission ("FCC"), and this Commission. The letters dated in 2006 and 2008 were executed and sent to PSNH.

18. Consistent with its notice to PSNH that the FCC's Historic Telecom Rate Formula did not apply, TWC paid the rates charged by PSNH for "TV & Internet," which rates appeared to be calculated using the federal formula applicable to cable and comingled Internet service ("FCC Cable Rate Formula"). TWC has continued to pay for all PSNH attachments at the amount charged for TV & Internet attachments to the present.

19. Among other things, the invoices sought to impose a telecom surcharge in communities where TWC has never offered any type of voice service.

20. TWC has paid PSNH over \$1.2 million in pole attachment fees during the period in dispute, from January 1, 2006 to the present, for all PSNH invoiced attachments at the rate billed by PSNH for TV & Internet.

21. Throughout this period, PSNH continued to assess TWC for alleged underpayments and to impose late payment charges on such alleged underpayments. *See* Exhibit 3.

22. In a letter dated November 18, 2011, PSNH stated its position that "Because Time Warner's attachments are for the purpose of providing telecommunications service, Time Warner

is responsible for payment of the rate applicable to attachments used for the provision of telecommunications services.” *See* Exhibit 3.

23. TWC’s cable television system facilities are currently attached to poles belonging to pole owners in New Hampshire other than PSNH, including FairPoint Communications, Inc., Central Maine Power, National Grid, Contocook Valley Telephone, Littleton Water and Light, and Municipal Electric Department.

24. No pole owner in New Hampshire other than PSNH has sought to impose a bifurcated rate structure for TWC television, Internet and voice services or a surcharge on TWC attachments carrying voice services.

25. On February 1, 2012, PSNH filed a Writ of Summons asserting contract and debt claims against TWC in Merrimack Superior Court, without any notice or warning to TWC (“Court Complaint”). *See* Petition, Attachment C. Based upon correspondence between the parties, TWC has reason to believe that PSNH’s Court Complaint is an illegal attempt to extract unjust and unreasonable pole attachment rates from TWC based upon its provision of VoIP services in certain areas in New Hampshire.

26. Like most companies, TWC evaluates broadband investment opportunities based on the anticipated costs and revenue opportunities they entail. As a result, TWC’s decisions to deploy broadband and offer advanced broadband services such as VoIP are impacted by the cost of deployment, including pole rents.

27. Unfortunately, the parties remain far apart on the matter in dispute and TWC believes that further attempts to resolve this matter without the Commission’s involvement would be fruitless.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED this 30th day of March, 2012.

Julie Patterson Laine

Julie Patterson Laine

STATE OF NEW YORK
COUNTY OF New York

Subscribed and sworn to, before me.

March 30th 2012

Patricia R. Hastoo
Notary Public

PATRICIA R. HASTOO
Notary Public, State of New York
No. 01HA6023253
Qualified in New York County
Commission Expires July 15, 2015

Notary Public
State of New York
My Commission Expires July 15, 2015