

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-084

TIME WARNER ENTERTAINMENT CO., LP D/B/A TIME WARNER CABLE

Petition for Resolution of Dispute with Public Service Company of New Hampshire

ORDER OF NOTICE

On March 30, 2012, Time Warner Entertainment Company, LP d/b/a Time Warner Cable (Time Warner) filed a petition with the Commission to resolve a dispute with Public Service Company of New Hampshire (PSNH). The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2012/12-084.html>.

According to Time Warner's petition, to provide various services to its approximately 63,000 end user customers in New Hampshire, Time Warner attaches its cables to utility poles owned by numerous entities including PSNH. Time Warner's petition states that in addition to television programming and Internet access, Time Warner has, since 2005, been providing voice communications services through a Voice over Internet Protocol product. The petition further notes that Time Warner and PSNH are parties to three pole attachment agreements that govern the rates, terms and conditions for the attachment of Time Warner's cables to poles owned, jointly or solely, by PSNH.

Time Warner's petition alleges that pursuant to its pole attachment agreements with PSNH, PSNH is required to abide by certain procedures prior to and following any change in the rates charged for attachments. Time Warner's petition alleges that PSNH has not followed those procedures and has repeatedly raised the rates for Time Warner's attachments. In addition, Time

Warner's petition alleges that the rates charged by PSNH are unlawfully high and are based on an outdated formula from the Federal Communications Commission. According to the petition, PSNH is improperly charging different rates depending upon PSNH's assessment that certain attachments, or portions of attachments, are for the provision of television and Internet services, and others are for the provision of communications service. Time Warner's petition alleges that PSNH is the only pole owner charging these inappropriate rates. Further, Time Warner's petition states that Time Warner has been paying for its attachments at the rate it contends is the proper one.

Time Warner's petition states that in early 2012, PSNH sued Time Warner in Merrimack County Superior Court for failing to pay the amounts PSNH contends are due for Time Warner's attachments. According to Time Warner's petition, the amount alleged to be due now exceeds \$1,000,000. In March 2012, Time Warner petitioned to remove the case to the Federal District Court for the District of New Hampshire. Time Warner then filed a petition with the Commission to resolve the dispute contending that the Commission is the proper venue for this matter and stating that it intended to move to dismiss the matter from federal court. On April 16, 2012, PSNH responded to Time Warner's petition with a letter stating, in relevant part, that it did not object to Time Warner's petition to the extent it seeks to have the Commission determine the just and reasonable rates for pole attachments prospectively. PSNH, however, contends that the Merrimack County Superior Court is the proper venue for a determination on the parties' dispute over unpaid attachment fees and that the Commission does not have jurisdiction over the entirety of the parties' dispute.

The filing raises, *inter alia*, issues related to the requirements of the parties' pole attachment agreements and whether they have been met; the manner in which pole attachment

rates are set; and the just, reasonable and appropriate rates for pole attachments. At the pre-hearing conference, in addition to any statements of positions, parties will be expected to provide relevant argument and authority regarding the jurisdiction of this Commission to hear and decide this matter in light of the dispute currently pending in federal court. Each party has the right to have an attorney represent the party at the party's own expense.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Code Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on May 15, 2012 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition, as well as statements of the Commission's jurisdiction as described above, and any of the issues set forth in N.H. Code Admin. Rules Puc 203.15 shall be considered; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, Time Warner, PSNH, the Staff of the Commission and any Intervenors hold a Technical Session to review the petition and allow Time Warner to provide any amendments or updates to its filing; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.12, Time Warner shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than May 1, 2012, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before May 15, 2012; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a

Petition to Intervene with copies sent to PSNH and the Office of the Consumer Advocate on or before May 10, 2012, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before May 15, 2012.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of April, 2012.



Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.