

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

IR 18-062

Investigation of Utility Poles and Attachments
Storm Damage and Response Issues

NHTA's Motions for Protective Order and Confidential Treatment
and for Waivers of Redaction and Hardcopy Filing Rules

The New Hampshire Telephone Association and its ten (10) constituent members¹ (collectively, the “NHTA Companies” and, individually, an “NHTA Company”), by and through their undersigned attorneys and pursuant to RSA 91-A:5, IV and N.H Admin. Rule Puc 203.08(b), respectfully move the New Hampshire Public Utilities (the “Commission”) to issue a protective order that accords confidential treatment to the joint pole agreements and their related Intercompany Operating Procedures (“IOPS”) sought by the Staff in DR 1.2(a) and submitted herewith.

Because the joint pole agreements and IOPs are voluminous and are confidential in their entirety, the NHTA Companies also request waivers of the Commission’s redaction requirements (Puc 201.04(b) & (c)), and the requirement to file paper copies (Puc 202.06(b) & 203.02(a)(1)). The undersigned counsel has conferred with the Staff’s attorney, who has no objection to the requested waivers. The NHTA Companies will provide the Staff with an electronic version of each requested agreement and IOP, with each document marked “CONFIDENTIAL” in its entirety.

In support of this Motion, the NHTA Companies state as follows:

1. On April 12, 2018, the Commission issued an Order of Notice (the “Order of Notice”) opening the above-referenced proceeding and instructing its Staff to conduct an investigation and deliver a report of its findings, conclusions and recommendations to the Commission no later than September 28, 2018.

¹ The ten constituent members of the New Hampshire Telephone Association are: Bretton Woods Telephone Company, Inc.; Dunbarton Telephone Company, Inc.; Granite State Communications; Northern New England Telephone Operations LLC d/b/a Consolidated Communications; Northland Telephone Company of Maine, Inc. d/b/a Consolidated Communications; TDS Telecom/Hollis Telephone Company, Inc.; TDS Telecom/Kearsarge Telephone Company; TDS Telecom/ Merrimack County Telephone Company; TDS Telecom/Union Telephone Company; and TDS Telecom/Wilton Telephone Company, Inc.

2. The Order of Notice further instructed Staff to convene a public stakeholder technical session at the Commission's offices on May 17, 2018.

3. On April 24, 2018, Staff propounded its Set 1 Data Requests to the stakeholders identified on the Commission's service list for this proceeding, including the NHTA Companies. The Data Requests established a response date of May 8, 2018, subsequently extended to May 14, 2018.

4. Staff's Data Request 1.2(a) asks each Utility Pole Owner to produce "[t]he company's current, signed Intercompany Operating Procedures (IOPs) between pole owners."

5. By way of clarification, the NHTA Companies note that IOPs are typically appended either to a Joint Ownership Agreement ("JOA") or a Joint Use Agreement ("JUA") entered into between two Utility Pole Owners. Accordingly, the NHTA Companies assume that Staff's Data Request 1.2(a) seeks production of each JOA or JUA to which an NHTA Company is a party, along with all IOPs appended to the respective JOA or JUA.

6. The NHTA Companies assert that every JOA, JUA and IOP to which an NHTA Company is a party contains proprietary and commercially sensitive information that the NHTA Company does not routinely disclose to anyone outside of its corporate organization and its authorized representatives, except, in certain cases, to joint pole owners with whom the NHTA Company has entered into private, business-to-business agreements.

5. The NHTA Companies seek protective treatment for each NHTA Company's response to Data Request 1.2(a) and all documents attached as exhibits to Data Request 1.2(a).

6. In furtherance of this Motion, the NHTA Companies have herewith submitted unredacted copies of the foregoing responses and the attached documents, with each page of such documents designated with the word "CONFIDENTIAL".

7. The above-referenced confidential information consists of descriptions and copies of private business-to-business contracts that contain proprietary trade secrets of each NHTA Company and that are commercially sensitive in the highly competitive marketplace in which each NHTA Company presently operates. The JOAs, JUAs and IOPs that the Staff has requested are not agreements that require prior submission to or approval by the Commission and so, to the best of the NHTA Companies' knowledge, the agreements and procedures have not heretofore been subject to public disclosure in regulatory proceedings. Disclosure of these confidential documents would harm each NHTA Company by exposing its business-to-business practices and procedures to public scrutiny, thereby placing the NHTA Companies at a competitive disadvantage in relation to their competitors, who are not subject to analogous regulation and so are not required to make public disclosure of their commercially sensitive business-to-business agreements and procedures. Each NHTA Company does not routinely disclose the above-referenced information to anyone outside of its corporate organization or its authorized representatives, other than to the other contracting party. As such, the information is

entitled to be protected from public disclosure under RSA 91-A:5, IV; *see also* RSA Chapter 350-B (the “Uniform Trade Secrets Act”).

8. In determining whether confidential or commercial information within the meaning of RSA 91-A:5, IV is exempt from public disclosure, the Commission employs a “three-step balancing test for determining whether certain documents meet this designation.” *Vivant Solar, Inc.*, DE 15-303, Order No. 25859 (Jan. 15, 2016), at 22. The Commission first determines whether the information in question involves a privacy interest. *Id.*, at 23. If a privacy interest is implicated, the Commission considers whether the public has an interest in disclosure of the information. *Id.* If so, then the Commission balances the public’s interest in disclosure against the moving party’s privacy interests “to determine whether disclosure is warranted.” *Id.*

9. Each NHTA Company satisfies the Commission’s three-part test. The information it seeks to protect is private, commercially sensitive information that the NHTA Companies do not publicly disclose outside their respective organizations (other than to the other contracting party). Disclosure of this commercially sensitive information would be an invasion of each NHTA Company’s privacy and would be competitively harmful to such company if its competitors were able to gain access to it, particularly in a regulatory environment where the competitors are not subject to similar regulation and so are not required to disclose similarly sensitive information in a public proceeding such as this. There is little public interest in the disclosure of each NHTA Company’s business-to-business agreements and procedures with other private businesses. Even assuming *arguendo* that a public interest in such disclosure exists, that interest is outweighed by each NHTA Company’s privacy interest in maintaining the confidentiality of the subject information. Accordingly, public disclosure is not warranted.

10. The NHTA Companies respectfully request that the Commission issue an order protecting the information described in Paragraph 5 hereof from public disclosure and prohibiting copying, duplication, dissemination, or disclosure of such information in any form. The NHTA Companies request that the protective order also extend to any further discovery, testimony, argument or briefing in this proceeding relative to the confidential information.

11. In addition, the NHTA Companies request waivers of the Commission’s redaction requirements (Puc 201.04(b) & (c)), and the requirements to submit their filings in paper form (Puc 202.06(b) & 203.02(a)(1)). The requested JOAs, JUAs and IOPs are voluminous and, in each case, the NHTA Companies assert confidentiality for the entire document. Redaction in such circumstances can prove unduly burdensome in the discovery phase. *See, e.g., Joint Petition for Findings in Furtherance of the Acquisition of FairPoint Communications, Inc.*, DT 16-872, Order Granting Labor Intervenors’ Motion to Compel Responses to Discovery Requests, (Order No. 25,997, Mar. 17, 2017), at 16. The requirement to file multiple paper copies of documents, rather than a single electronic copy, is similarly burdensome. The present

proceeding is a non-adjudicative investigation conducted by the Commission Staff. *See* Order of Notice, at 1-2. Waiver of the redaction and paper-filing requirements does not adversely affect any public interest.

WHEREFORE, the NHTA Companies respectfully request that the Commission:

A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of the information designated as confidential and appropriately marked and/or labeled as such in the unredacted copies of each NHTA's data responses and exhibits;

B. Grant waivers of Rules Puc 201.04(b) & (c) (requiring redaction of the confidential portions of documents containing both confidential and public information), and Rule Puc 202.06(b) (or, in the alternative, Rule Puc 203.02(a)(1)) (requiring the submission of original documents and copies in paper form); and

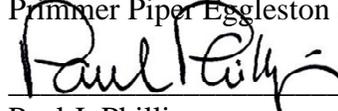
C. Grant such additional relief as the Commission deems appropriate.

Respectfully submitted,

The New Hampshire Telephone Association and its constituent members: Bretton Woods Telephone Company, Inc.; Dunbarton Telephone Company, Inc.; Granite State Communications; Northern New England Telephone Operations LLC d/b/a Consolidated Communications; Northland Telephone Company of Maine, Inc. d/b/a Consolidated Communications; TDS Telecom/Hollis Telephone Company, Inc.; TDS Telecom/Kearsarge Telephone Company; TDS Telecom/Merrimack County Telephone Company; TDS Telecom/Union Telephone Company; and TDS Telecom/Wilton Telephone Company, Inc.

By their Attorneys,
Primmer Piper Eggleston & Cramer PC

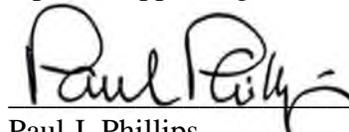
Dated: May 14, 2018



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Certificate of Service

I hereby certify that on this 14th day of May, 2018, a copy of the foregoing Motion was served electronically to each person appearing on the Service List in this docket.



Paul J. Phillips