

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DRM 08-004 (Regular PUC 1300 Rules Re Utility Pole Attachments)

**COMMENTS OF NEW ENGLAND CABLE AND TELECOMMUNICATIONS
ASSOCIATION ON PROPOSED FINAL PUC 1300 RULES**

The New England Cable and Telecommunications Association, Inc. (“NECTA”) hereby submits comments on the proposed final PUC 1300 pole attachment rules (“Rules”) issued on June 16, 2008.

Proposed final Rule 1304.06 represents a significant improvement over proposed interim Rule 1303.04, Voluntary Agreements. Under the new Rule, attachers have the right to demonstrate that a contract entered into “under this part” (i.e., the new Rules) was not entered into voluntarily, and the Commission may set aside terms that a pole owner cannot defend as just, reasonable and non-discriminatory.¹ NECTA files here to clarify that pole agreements that pre-date the Rules’ enactment – i.e., that were not entered into under the new Rules – have no such presumption.

Pole attachment agreements that pre-date the new Rules were entered into under the Federal Communications Commission pole attachment regime and its attendant presumptions that attachers may always challenge an agreement because of the inherent imbalance in bargaining power between pole owners and attaching entities when it comes to pole attachment agreements.² In addition, with

¹ “A pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory for purposes of adjudication before the commission. An attaching entity filing a petition under this part shall have the burden of proving that an agreement entered into voluntarily is not just, reasonable and nondiscriminatory.”

² See Comments of New England Cable and Telecommunications Association (March 5, 2008), pp. 1-3 (citing cases).

the time that has passed since most of these agreements were signed, few will have records necessary to prove or disprove that a signature long past “was reasonably necessary to avoid significant delay or business interruption.”³ Understandably, this is why the new Rules limit the new presumption to agreements entered into under the new Rules.

With this clarification, NECTA supports the proposed final pole attachment Rules.

Respectfully submitted,

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³ PUC 1304.06(b).

CERTIFICATE OF SERVICE

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