

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

DRM 08-004

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

**COMMENTS ON THE FINAL PROPOSED RULE
SUBMITTED BY EIGHT ILEC MEMBERS OF THE
NEW HAMPSHIRE TELEPHONE ASSOCIATION**

June 24, 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"),¹ 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 the Final Proposed Rule (Chapter Puc 1300—Utility Pole Attachments) that was circulated for public comment on June 16, 2008.

The NHTA is grateful for the changes that the PUC has adopted in the Final Proposed Rule, which have the effect of clarifying the PUC's ability to hear and resolve disputes over pole attachments between pole owners and attaching entities. However, the NHTA must renew its objection to the exclusion of incumbent local exchange carriers ("ILECs"), including the Eight NHTA ILECs, from all of the significant protections and benefits that the PUC seeks to establish with the Final Proposed Rule. As the NHTA discussed more fully in its March 5, 2008 Comments on the Interim Rule, the PUC has offered no principled basis for excluding ILECs from the benefits of Rule Puc 1300. In its earlier Comments, the NHTA recommended

¹ 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.

withdrawing the proposed rulemaking, which is grounded only on the narrow authority of RSA 374:34-a and 47 U.S.C. § 224(c), and starting over again using the full scope of the PUC's existing statutory authority over the rates, services and facilities provided by regulated utilities in the State of New Hampshire. Such a rulemaking, were it undertaken, would allow the PUC to include ILECs in the benefits of any new pole-attachments rules. By perpetuating the narrow statutory basis of the Interim Rule and continuing to exclude ILECs from the intended regulatory benefits, the Final Proposed Rule produces an unfair result that could easily be avoided through prompt corrective action. Instead, the PUC proposes to give regulatory advantages to certain classes of attaching entities that the PUC inexplicably denies to ILECs.

The analysis that led NHTA to conclude that ILECs are excluded from the protections and benefits to be established in the new Rule was set forth in complete detail in the NHTA's March 5th Comments and need not be repeated here. The NHTA is troubled that the PUC has not responded to the NHTA's analysis, either by confirming it or refuting it, but instead has circulated the Final Proposed Rule with only the most cursory suggestion that "all comments were given careful consideration." It seems to NHTA that the exclusion of ILECs from the scope of Puc 1300 is a significant omission in the jurisdiction that the PUC seeks to exercise and deserves a more direct response than the PUC has provided. In particular, if the PUC has decided, as a matter of public policy, that New Hampshire ILECs should be excluded from the protections given to attaching entities, the PUC should state this policy explicitly, rather than relying on an omission that emerges only upon an intricate analysis of the interplay among several state and federal statutes and regulations.²

² See 2007 N.H. Laws 340:2 (July 16, 2007) (requiring any PUC rules adopted thereunder to "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"); see also 47 U.S.C. § 224(5) (defining "pole attachment" 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" but further stating that "telecommunications carrier . . . does not include any incumbent local exchange carrier"). See also 47 C.F.R. §§ 1.1409(e)(1)-(3), 1.1403(a), 1.1402(e) and 1.1402(h) (establishing the rate formulae and other regulatory protections

The PUC has missed the opportunity provided by the General Court with the enactment of 374:34-a by failing to determine the best public policy for the State of New Hampshire and by silently incorporating a federal-law limitation into state law without any public acknowledgment of this policy limitation or any consideration of the need for such a limitation in the utility regulations of the State of New Hampshire.


WHEREFORE, NHTA respectfully renews its objection to the PUC's exclusion of ILECs from the protections and privileges found in the Final Proposed Rule and renews its request that the PUC withdraw the Final Proposed Rule and commence a new rulemaking under RSA 541-A that will exercise the full scope of the PUC's statutory authority in these matters and allow an opportunity to include ILECs (and other excluded entities) within any new pole-attachment rules to be adopted hereafter.

DATED at Plymouth, New Hampshire, this 24th day of June, 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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to be afforded to "telecommunications carriers and cable operators" who attach facilities to utility poles, but stating that "the term telecommunications carrier ... does not include ... incumbent local exchange carriers....").