

# The State of New Hampshire

## SUPERIOR COURT

MERRIMACK COUNTY

( ) COURT  
(X) JURY

### WRIT OF SUMMONS

segTEL, Inc.  
325 Mount Support Road  
Lebanon, NH 03766

v.

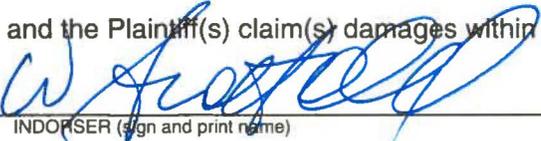
University System of New Hampshire, c/o Lorna H. Jacobsen, Myers Center,  
Durham, NH 03824;  
New Hampshire Optical Systems, Inc., 99 Pine Hill Road, Nashua, NH 03063; and  
Waveguide, Inc., 99 Pine Hill Road, Nashua, NH 03063

The Sheriff or Deputy of any County is ordered to summon each defendant to file a written appearance with the Superior Court at the address listed below by the return day of this writ which is the first Tuesday of February, 2013,  
YEAR MONTH

The PLAINTIFF(S) state(s):

See Declaration attached hereto and incorporated herein by reference.

and the Plaintiff(s) claim(s) damages within the jurisdictional limits of this Court.

  
\_\_\_\_\_  
INDORSER (sign and print name)

12/14/12  
DATE OF WRIT

#### NOTICE TO THE DEFENDANT

The Plaintiff listed above has begun legal action against you. **You do not have to physically appear** in Court on the return day listed above since there will be no hearing on that day. However, if you intend to contest this matter, you or your attorney must file a written appearance form with the Clerk's Office by that date. (Appearance forms may be obtained from the Clerk's Office.) You will then receive notice from the Court of all proceedings concerning this case. If you fail to file an appearance by the return day, judgment will be entered against you for a sum of money which you will then be obligated to pay.

Tina L. Nadeau  
Witness, ~~ROBERT LYNN~~, Chief Justice, Superior Court.

  
\_\_\_\_\_  
William S. McGraw, Clerk  
NH Superior Court Merrimack County  
PO Box 2880  
Concord, NH 03302-2880  
(603) 225-5501

  
\_\_\_\_\_  
SIGNATURE OF PLAINTIFF/ATTORNEY  
NIXON PEABODY LLP  
W. Scott O'Connell, Esq. (NH Bar No. 9070)  
\_\_\_\_\_  
PRINTED/TYPED NAME  
900 Elm Street, 14th Floor  
\_\_\_\_\_  
ADDRESS  
Manchester, NH 03101 / (603) 628-4000  
\_\_\_\_\_  
PHONE

STATE OF NEW HAMPSHIRE

*MERRIMACK, SS.*

*DOCKET NO.*

segTEL, Inc.

vs.

The University System of New Hampshire,

New Hampshire Optical Systems, Inc., and

Waveguide, Inc.

**DECLARATION TO THE WRIT OF SUMMONS**

NOW COMES segTEL, Inc. (“segTEL”), by and through counsel, and brings this petition for damages and injunctive relief arising from the University System of New Hampshire (“USNH”), New Hampshire Optical Systems, Inc. (“NHOS”), and Waveguide, Inc. (“Waveguide”)’s improper actions with regard to segTEL’s fiber optic infrastructure in New Hampshire.

**INTRODUCTION**

Plaintiff segTEL owns and operates a fiber optic infrastructure in New Hampshire that currently runs more than 500 miles on approximately 20,000 utility poles. segTEL built this physical plant over 8 years after painstaking and costly work to secure all the necessary licenses and approvals from pole owners, paid to make room on the poles and for the relocation of other utilities, and purchased and installed its infrastructure. segTEL invested over \$20 million to build this network, and its customers made substantial investments of millions of dollars as well, in order to ensure that they received a specifically stylized network suited to their needs. segTEL’s customers use its network to serve millions of customer in New Hampshire, including

cellular telephone customers, wireless smartphone customers, and satellite television customers. segTEL is under long-term contractual obligations to its customers and has rigid compliance and maintenance requirements to meet, and is subject to severe penalties for non-compliance.

USNH, as recipient of an approximately \$44 million federal Broadband Technology Opportunities Program (“BTOP”) grant for broadband infrastructure projects, is attempting to build a fiber optic network in New Hampshire (the “Middle Mile Project”). In its haste to collect maximum federal dollars under the Middle Mile Project grant, and to ensure that the strict build timeframe required by the government is met<sup>1</sup>, USNH, NHOS, and Waveguide have ignored and violated numerous applicable legal standards and have inappropriately trespassed on segTEL’s property. Further, the defendants’ improper and unlawful actions are tortiously interfering with segTEL’s contracts with its customers and pole owners. The defendants have, *inter alia*: (1) installed fiber optic cable in violation of the applicable National Electric Code (“NEC”) and the National Electrical Safety Code (“NESC”); (2) installed fiber optic cable in locations that only segTEL is allowed to occupy under governing licenses; (3) installed fiber optic cable in ways that improperly “cross<sup>2</sup>,” “box-in<sup>3</sup>,” “wrap<sup>4</sup>,” and “close connect<sup>5</sup>” the segTEL cables which

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<sup>1</sup> The BTOP program documents state: “While the completion time will vary depending on the complexity of the project, grant recipients must substantially complete projects supported by this Program no later than two years, and projects must be fully completed no later than three years, following the date of issuance of the grant award.” See Recovery Act, Section 6001(d)(3). The award period for USNH extends from July 1, 2010 – June 3, 2013.

<sup>2</sup> “Crossing” wires occurs where a utility attaches to a certain spot on one pole, and then attaches either higher or lower on the next pole, crossing other utility lines in the process. This practice not only violates applicable codes and regulations, such as the Telcordia Blue Book, which requires that clearance between cables anywhere along the span should be at least 4 inches, it also causes damage to the crossed lines because the lines touch and rub each other, creating abrasions and holes. It also makes the lines much more difficult to work on safely and more difficult and expensive to maintain.

<sup>3</sup> “Boxing in” (not to be confused with “boxing a pole” which is a legal, although rarely used, practice) occurs where a utility crosses another utility’s wires repeatedly, placing existing wires between its new wires and the pole line, such that the existing wires cannot be moved without first removing the new wires. When a utility’s cable is boxed in, it is much more difficult to access the cables to perform even routine maintenance and is less safe for the workers working on the line.

<sup>4</sup> “Wrapping” occurs when wires are crossed to the extent that they are intertwined and tangled, and must be  
(Footnote continued on next page)

causes wear and degrades the segTEL infrastructure; and (4) installed fiber optic cable in violation of applicable regulations and standards, including attaching too close to power lines<sup>6</sup>, attaching unapproved hardware<sup>7</sup>, attaching so close to other attachments that the pole could be considered defective<sup>8</sup>, attaching too close to the top of a pole<sup>9</sup>, and “trapping” the pole<sup>10</sup>. Not only do these actions violate applicable contractual and legal regulations, they also present a danger to public safety, and the safety of the pole workers, by making the poles more dangerous to work on, and presenting the risk that wires may become electrified.

All of these actions have caused-- or will cause-- segTEL significant monetary damages. Many of these improper installations create unsafe, unstable, unreliable or unnecessarily complicated working conditions for utility personnel called upon to fix portions of the

physically cut in order to become untangled. Wires that are wrapped together rub together and create holes and abrasions in the cables, damaging them and potentially disrupting service. Workers are not able to service wires that are wrapped together without cutting and splicing them back together. Cutting and splicing are highly labor intensive and costly processes which can take more than 24 hours of labor time to complete, require interruptions in service to any customers served by that cable, and can result in long-term outages.

<sup>5</sup> “Close connecting” occurs when attachments on utility poles are placed too close together. Applicable codes and regulations require attachments to be made: (1) at least 12 inches apart, from each other, unless otherwise agreed to by all parties, to avoid crossing and abrading; (2) at least 40 inches from power so that the wires do not become electrified and potentially harm workers and the public; and (3) bolted at least 4 inches apart to protect the integrity of the pole. In addition, when a utility attaches too close to another utility’s wires it makes it much more difficult to work on the wires and perform routine maintenance, such as “lashing,” which is the process of binding two facilities together.

<sup>6</sup> Communications lines are required to be a minimum of forty inches from any ungrounded power lines or equipment, in order to ensure that communications workers do not come into contact with power, and that communications lines do not become energized, which is a public safety hazard.

<sup>7</sup> The NESC, Rural Utility Service (“RUS”) Standards, and the Telcordia Blue Book set specific standards for hardware used on utility poles. Connectors must either screw securely into the pole or be secured with bolts that pass completely through the pole. Connectors not specified for use by the RUS are not authorized for federally funded installations.

<sup>8</sup> The NESC and Telcordia Blue Book do not allow bolts to be installed closer than four inches apart, in order to ensure the integrity of a wooden pole.

<sup>9</sup> The Telcordia Blue Book requires that attachments be made at least eight inches from the top of any pole.

<sup>10</sup> “Trapping” a pole is when the steel messenger strand is placed on the field side of a pole, while the fiber optic cable of the same attachment is placed on the street side, trapping the pole between the two facilities. Not only is such a practice not industry standard and not acceptable under any of the safety standards, it effectively ensures that the attachment can never be moved without cutting the messenger strand which supports the fiber optic cable.

infrastructure damaged or otherwise in need of repair. Further, all of these actions interfere with segTEL's contractual obligations to its clients, who may claim default. Because these actions are being done with one-time subsidies in the form of federal grant monies, it is believed that the defendants will have inadequate resources to restore the infrastructure and pay the resulting damages caused to segTEL. Such a result will cause irreparable harm that can only be remedied by injunctive relief preventing the defendants from further violations of applicable standards, laws and the rights of segTEL and its customers.

### **PARTIES**

1. segTEL, a wholly owned subsidiary of Tech Valley Communications ("Tech Valley"), is a New Hampshire corporation with a principal place of business located at 325 Mount Support Road, Lebanon, New Hampshire. segTEL constructs, owns, and maintains fiber optic facilities in New England, which it uses to provide telecommunication and other services to its customers throughout New Hampshire, Vermont, Massachusetts, Maine, and New York. segTEL is a public utility duly registered and authorized by the Federal Communications Commission ("FCC") and the New Hampshire Public Utilities Commission ("NH PUC" or "Commission").

2. USNH is a body politic and corporate created under RSA 187-A:1 "the main purpose of which shall be to provide a well-coordinated system of public higher education ..." It maintains its executive offices at Dunlap Center, 25 Concord Road, Durham, New Hampshire. It is unclear under what authority USNH is acting to build out a fiber optic network in the state.

3. NHOS is a New Hampshire corporation with a principal place of business located at 99 Pine Hill Road, Nashua, New Hampshire. NHOS was created solely for the purposes of receiving grant money from the Middle Mile Project. NHOS applied for and was granted status as a public utility in New Hampshire based on the provision of retail Ethernet services. NHOS was the successful bidder in a request for proposals issued by USNH for the build out of the Middle Mile Project.

4. Waveguide is a Massachusetts corporation with a principal place of business located at 14 Kidder Road, Chelmsford, Massachusetts. Waveguide has permission to operate in New Hampshire as a foreign corporation. Waveguide provides engineering, management, construction, and maintenance for fiber optic networks. Waveguide is a contractor for, and agent of, NHOS. Waveguide has the same principal and the same shareholders as NHOS.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to RSA 498:1, 491:7 and 491:22.

6. Venue is proper in this court because (1) the actions described herein took place, at least in part, in this county, and, (2) the goods and chattels affected by the defendants' improper actions are located in this county.

#### **FACTS COMMON TO ALL COUNTS**

##### **A. segTEL's New Hampshire Fiber Optic Infrastructure**

7. segTEL owns and maintains fiber optic network infrastructure throughout New Hampshire and has been actively engaged in business in New Hampshire for over a decade. segTEL currently has more than 500 miles of cable attached to approximately 20,000 poles in New Hampshire. segTEL's pole attachments in question in this case have been in place for as long as eight years.

8. segTEL's infrastructure consists in pertinent part of fiber optic cable attached to specific locations on utility poles determined by agreement with, and licenses from, the utility pole owners. The locations of attachments must be in compliance with licenses issued by the pole owners, and must be consistent and identifiable, for a number of reasons, including: (1) safety of the pole and plant for the utility workers that must access the pole and attachments to it;

(2) safety of police and fire officials who must identify utility plant and notify utilities in the event of emergencies; (3) maintenance of the pole by its owners; and (4) maintenance of attached infrastructure such as fiber optic cables by its owners.

9. The integrity of this infrastructure is important to the public because safe and reliable electric and telephone utility service is in the public interest. In evaluating the public good, the NH PUC considers: (1) whether there exists a public need for the service; and (2) whether the applicant has the capability of fulfilling that need by providing safe, adequate, and reliable service. When a franchised utility fails to meet this standard by providing service which is not safe and compliant with applicable codes, and the utility is unwilling or unable to bring its system into compliance with applicable standards, the public good requires that the franchise be suspended or revoked. *See Re Claremont Gas Light Co.*, 68 N.H. P.U.C. 231, April 27, 1983.

10. segTEL has legal, regulatory, and contractual obligations to ensure safe and reliable service to the public. As a public utility licensed by the FCC, segTEL must maintain and update substantial network documentation and licenses that accurately reflect field conditions. segTEL, as well as NHOS, is obligated to comply with the National Electric Safety Code (“NESC”), and the National Electrical Code (“NEC”) as adopted in NH RSA 155A:1(IV), and SR1421, the Blue Book Manual of Construction Procedure issued by Telcordia Technologies (“Telcordia Blue Book”), and Occupational Safety and Health Administration (“OSHA”) Regulations.

11. The NESC establishes the following requirements:

- a. Communications facilities must be not less than thirty inches from a grounded neutral and not less than forty inches from load-carrying power facilities of specific voltage (Rule 235C);

- b. A communication worker safety zone shall be maintained between power space and communications space, and no hardware may be placed in the safety zone (Rule 238);
- c. There must be not less than twelve inches of spacing between communications cables at the pole, and not less than four inches between different communications utilities anywhere in the span (Rule 235H2); and
- d. Utilities must maintain spacing between facilities and correct non-compliant spacing as soon as the utility is aware of its non-compliance (Rule 230I).

12. FairPoint, a significant pole owner in New Hampshire, uses the Telcordia Blue Book, SR-1421, Issue 4, issued December 2007, as its safety and construction standard.

Attachers such as segTEL and NHOS are both subject to the following rules:

- a. Rule 3.2, “Clearances Between Communication Facilities,” requires that the clearance between communication cables be at least 12 inches, and bolt holes “must never” be closer than 4 inches apart. This is because spacing bolts closer than 4 inches from each other compromises the integrity of the pole. Furthermore, the vertical clearance between cables anywhere along the span should be at least 4 inches, ensuring that wires do not cross and touch each other.
- b. Rule 4.5 requires that entities provide sufficient support for cables in order to meet the clearance minimums in Rule 3.2.
- c. Rule 3.2.1 provides a hierarchy for the pole, requiring that heavier metallic plant be located lowest on the pole.

13. The integrity of segTEL’s infrastructure is essential to its customers.

Interruptions, degradation, or impairments of service to customers impose severe monetary and reputational consequences on segTEL, and harm to segTEL's customers. *See infra*, Count IV. segTEL's customer agreements specify rigid advance notice and process requirements for all network modifications, including all non-emergency routine maintenance such as relocating a cable on a utility pole. Due to the business use its customers make of these services, segTEL's customers have demanded and received contract terms that establish severe penalties for any disruptions in service. Penalties include the loss of months of revenues and can lead to a process that can end 5-7 year contracts currently in place. In addition, segTEL is contractually obligated to abide by all applicable legal and regulatory rules mentioned above.

14. In New Hampshire, longstanding practice calls for competitive local exchange carriers such as segTEL to enter into pole attachment agreements with pole owners. segTEL is a party to no fewer than sixteen such agreements, covering approximately 20,000 utility poles in New Hampshire, dating back to 2004. While these agreements vary in rates, terms and conditions, each of these agreements requires segTEL to maintain its attachments in a manner consistent with safety codes and generally applicable engineering practices. In the event that segTEL's plant is out of compliance, it must bring it into compliance at its own expense, or the pole owners have the authority to sever the agreements and require segTEL to remove its attachments. Losing its authorization to maintain pole attachments would mean segTEL could no longer meet its contractual obligations to its customers.

15. When utilities obtain licenses to attach to poles, the existing attachers have the responsibility to move their respective infrastructure to accommodate the new licensee. The process of moving infrastructure is known in the industry as "make-ready" work. The new attacher is financially responsible for the make-ready work incurred by existing attachers. The

cost for make-ready work can be as much as \$20,000 per pole and can be a difficult process to perform without causing customers to lose service. Because poles often have multiple attachers, the make-ready work needs to be sequentially performed. This means that attachers must wait for the make-ready work of others to be performed before their own can be undertaken.

16. Because of the significant obligations it has to its customers, segTEL only permits third party contractors approved and hired by it to perform its make-ready work and all work on its live network. Like most utility companies in the industry, it does not allow other attachers, contractors, or subcontractors to perform its make-ready work. segTEL has repeatedly informed the defendants that they are not authorized to move, relocate, or perform make-ready work on the segTEL infrastructure. The defendants have disregarded this instruction, have tampered with, interfered with, or moved segTEL facilities and property, and have performed make-ready work that is to be done only by segTEL. These improper actions have put segTEL out of compliance with its legal and regulatory obligations, as well as its contractual obligations to pole owners and customers.

17. The process for requesting make-ready from third-party attachers, which must be completed before new attachments can be safely made to a pole, is not regulated in New Hampshire. segTEL and other third-party attachers have historically worked out rates, terms, and conditions for third-party make-ready work cooperatively, either by negotiating agreements or by setting out rates in a publicly-filed rate sheet pursuant to Commission rules. segTEL's rate sheet is not a tariff, but under NH PUC rules, it is presumed to be just and reasonable.

#### **B. USNH's Efforts to Build a Fiber Optic Network in New Hampshire**

18. The Middle Mile Project is funded from an approximately \$4 billion BTOP grant

program administered by NTIA<sup>11</sup> as part of the American Recovery and Reinvestment Act and intended to help bridge the technological divide, create jobs, and improve education, health care, and public safety in communities across the country.

19. Upon information and belief, in 2010, USNH was awarded an approximately \$44 million BTOP grant for the purpose of deploying or enhancing more than 700 miles of fiber to create an open access network enabling local Internet service providers to offer enhanced broadband service. Section 8C of the Special Award Condition document for the BTOP grant addresses construction-related requirements. It states that the grant recipient “shall comply, and must require each contractor and subcontractor to comply, with all applicable federal, state and local laws and regulations.” (emphasis added).

20. Upon information and belief, NHOS is a startup company created in 2010 for the sole purpose of bidding on the work requested by USNH to fulfill the requirements of the BTOP grant made to USNH. After winning bids, NHOS is responsible for building, operating and managing the network, and contracts out construction to its commonly owned entity, Waveguide. At the time of NHOS’s creation, it had no operating history, no credit history, no customers, and no contracts for customers. According to quarterly project filings with the NTIA, USNH reports that the project has no signed agreements with broadband wholesalers or so-called “last mile”<sup>12</sup> providers since the Middle Mile Project’s inception in 2010. Nonetheless, NHOS is purchasing substantial inventory from multiple vendors, and hiring contractors and sub-contractors to perform work. NHOS appears to have no employees independent of its contractor, Waveguide.

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<sup>11</sup> “NTIA” or “National Telecommunications and Information Administration,” located within the Department of Commerce, is the United States Executive Branch agency that is principally responsible by law for advising the President of the United States on telecommunications and information policy issues.

<sup>12</sup> The phrase “last mile” is used by the telecommunications and cable television and internet industries to refer to the final leg of the telecommunications networks delivering communications connectivity to end-user or retail customers; the “last mile” of a network is the part that actually reaches the ultimate beneficiary of the services.

21. It is the duty of every public utility to ensure that its service and facilities are reasonably safe and adequate and in all other respects just and reasonable. RSA 374:1.

22. As federal grantees, the defendants are required to comply with certain regulations set out in 7 C.F.R. 1753, Telecommunications System Construction Policies and Procedures and 7 C.F.R. 1755, Telephone Standards and Specifications. Federal telephone standards require grantees and their contractors and agents to follow the requirements set out in relevant Rural Utilities Service (“RUS”) telecommunications bulletins, including, but not limited to, Bulletin 1753F-152 Form 515c, Specifications and Drawings for Construction of Aerial Plant. RUS regulations incorporate the NESC by reference, and require all grantees to comply with both the RUS regulations as well as all state standards, and to follow the more stringent requirements in the event of any conflict.

**C. Defendants’ Refusal to Pay segTEL’s Published Rates for Necessary Make-Ready Work**

23. The requirements as to how new telecommunications utilities may attach to poles in New Hampshire are well known to the defendants. USNH has recently stated the following in its mandatory filings with the federal government:

In New Hampshire, third party Make-Ready costs and timelines stand as primary roadblocks to constructing broadband networks. **The Make-Ready process requires coordination between the pole owners and the telecommunications firms that are already attached to the poles. In New Hampshire, each third party is responsible for moving its own wires and equipment.** As a result, each third party is free to establish its own pricing and timelines, and no rules or procedures exist to prevent excessive pricing or payment demands that contravene the policies underlying PUC 1300 and the federal and state broadband policies. In addition to meeting with the New Hampshire Public Utilities Commission, NTIA, and Federal and NH state representatives, NHOS continues to work with the utility pole owners and Competitive Local Exchange Carriers (CLECs) to complete Make-Ready for this project. PUC 12-246 was opened last quarter to investigate rules regarding pole access in NH.

USNH Third Quarter 2012 Report to National Telecommunications and Information

Administration (emphasis added).

24. Despite this unambiguous obligation, the Defendants have refused to confirm that they will pay segTEL its published rates for make-ready and other work they have requested that segTEL perform.

#### **D. Defendants' Improper Attachments and Self Help**

25. As part of the Middle Mile Project build out, the defendants have improperly trespassed on, moved, occupied, and otherwise tampered with segTEL's network infrastructure on utility poles, putting segTEL in violation of its legal, regulatory, and contractual obligations. The defendants have failed to exercise due care with segTEL's public utility plant, cable, strand, and attachments.

26. segTEL has discovered that the defendants have attached their fiber optic cable and messenger strand<sup>13</sup> in violation of the applicable codes and regulations resulting in the following non-compliant circumstances all of which improperly interfere with segTEL's infrastructure:

- a. The defendants have improperly bolted attachments within 4 inches of segTEL attachments, a practice which compromises the structural integrity of the pole. segTEL has documented at least 34 instances of this occurring. A picture of this improper practice is attached as Exhibit A;
- b. The defendants have improperly hung their cable and strand within 12 inches of segTEL attachments without permission. segTEL has documented at least 463 places where this is occurring, and at least 83 places where NHOS is installed too close to a utility other than segTEL. A picture of this improper

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<sup>13</sup> "Messenger strand" is a steel cable installed for the purpose of supporting fiber optic cable.

- practice is attached as Exhibit B;
- c. The defendants have improperly “crossed” segTEL’s infrastructure. segTEL has documented at least 96 instances of this occurring. A picture of this improper practice is attached as Exhibit C;
  - d. The defendants have improperly “boxed in” segTEL’s infrastructure. A diagram of this improper practice is attached as Exhibit D;
  - e. The defendants have improperly “wrapped” segTEL’s infrastructure. segTEL has documented at least one instance of this occurring. A picture of this improper practice is attached as Exhibit E;
  - f. The defendants have improperly “trapped” utility poles. segTEL has documented at least five instances of this occurring. A picture of this improper practice is attached as Exhibit F; and
  - g. The defendants have improperly placed their cables too close to power lines. segTEL has documented at least 167 instances of this occurring. A picture of this improper practice is attached as Exhibit G.
  - h. The defendants have otherwise trespassed on, mishandled, and interfered with segTEL’s infrastructure. A picture of an example of this improper practice is attached as Exhibit H.

27. In Boscawen, NHOS applied for licenses to attach to nearly four hundred poles, a large number of which are already occupied by segTEL. Although segTEL has completed field surveys for the purpose of identifying necessary make-ready work at the request of NHOS, NHOS has not yet authorized segTEL to perform make-ready work, despite requests from segTEL for NHOS to provide such authorization. Instead, NHOS has installed plant on poles

without waiting for the requisite make-ready work to be performed by segTEL and other attachers. The defendants installed their facilities in close proximity to segTEL, forcing segTEL out of compliance with the Telcordia Blue Book in 92 locations. Defendants have placed their facilities closer than four inches to segTEL in several locations, and, in at least one instance, crossed segTEL facilities, in violation of all applicable safety standards. The defendants' facilities are in violation of the NESC – creating a public safety hazard – by being placed too close to power on nearly fifteen percent of the poles. In at least one location, defendants moved segTEL facilities without permission. Defendants also used “J-hooks,” for installation of their facilities, in violation of the RUS guidelines.

28. In Bow, NHOS applied for licenses to attach to 150 poles, nearly all of which are occupied by segTEL. After receiving make-ready requests from NHOS, segTEL surveyed and scheduled the make-ready work in Bow and in Hooksett as well. However, although NHOS was aware of segTEL's work schedule, they nonetheless scheduled the installation of their own plant on poles in Bow and Hooksett just days prior to segTEL starting its make-ready work, effectively blocking segTEL from completing its make-ready work. Defendants installed approximately six miles of cable, crossing and blocking segTEL in multiple locations, placing cable below segTEL's on several poles in the location that is assigned to segTEL, and installing too close to segTEL on more than one-third of the poles. This occurred in one instance over a weekend at night. In some instances, the defendants appear to have moved segTEL's cable to an unlicensed location, putting segTEL in violation of its contractual obligations to the pole owners.

29. In Sunapee, on Springfield Road, the defendants placed equipment on segTEL cable, moved, handled, and interfered with segTEL facilities, placed attachments in close proximity in violation of safety codes, and worked with reckless disregard for the integrity and

reliability of segTEL's network. NHOS fiber optic cable was placed so close to segTEL cable that even the most routine operations, such as lashing the cable to the supporting steel strand, will cause damage to segTEL's fiber optic cable.

30. In Concord, on information and belief, installers working on the Middle Mile Project were observed by Concord Fire Chief Rick Wollert moving segTEL cable from its assigned location to another location on a pole. When challenged, one worker told Chief Wollert that his instructions were "to do whatever it takes" to put NHOS's cable in place. Elsewhere in Concord, NHOS cable was installed in an unworkmanlike manner, affecting the integrity of the utility poles, effectively and knowingly placing segTEL and other utility workers in jeopardy, and making segTEL facilities, which were compliant with all applicable codes regulations and licenses, non-compliant with the NESC and the Telcordia Blue Book. These actions put segTEL facilities out of compliance with its legal, regulatory, and contractual obligations.

31. In Lyme, the defendants installed four utility poles by excavating holes next to the existing poles (owned by segTEL) and inserting new poles such that they affect the stability of the existing poles, and come into contact with segTEL's fiber optic cable, inhibiting segTEL's ability to maintain its plant in a safe and reliable manner, and putting segTEL out of compliance with NH PUC rules. Although segTEL's poles have been in place for four years, and are labeled as belonging to segTEL, NHOS made no attempt to request permission to attach as required by state law, instead engaging in self-help by recklessly installing double poles.

32. In Orford, defendants installed facilities above and below segTEL on a pole in an unworkmanlike manner that is not generally accepted industry practice in New Hampshire. Installing cable in such a manner effectively blocks segTEL from performing make-ready work required by the pole owners necessary to allow NHOS to attach safely, and inhibits the ability of

segTEL to maintain or repair its plant in the safe and reliable manner required by state law and regulations. NHOS facilities are installed such that they cross segTEL cable multiple times, making routine maintenance on segTEL cable much more difficult and more hazardous to both workers and the public.

33. In Meredith, the defendants placed its facilities closer to segTEL than allowed by the NESC and without segTEL's permission. NHOS did so even though it had requested make-ready work from segTEL and without waiting for segTEL and other attachers to complete their make-ready, effectively making segTEL's existing compliant attachments non-compliant with the NESC, and putting segTEL out of compliance with applicable laws, rules, and regulations requiring segTEL to maintain its plant to such standards.

34. In Tilton, the defendants improperly installed cable less than six inches above and below segTEL cable, putting both NHOS and segTEL out of compliance with the NESC. In another location in Tilton, the defendants failed to place NHOS cable on two new poles that were placed by the pole owners for defendants' use, instead choosing to attach in close proximity to segTEL on the old poles, degrading the existing utility poles and putting segTEL out of compliance with the NESC and its contractual obligations to the pole owners.

35. In Laconia, the defendants wrapped their strand and cable around segTEL cable. In addition, on Wednesday, May 2, 2012, segTEL discovered non-segTEL fiber-optic cable, which was unmarked and not in service, occupying segTEL's conduit on North Main Street in Laconia. segTEL had not been notified regarding any cable installations and had received no requests for occupation of its solely-owned conduit. segTEL learned from FairPoint that the cable was installed by Waveguide for NHOS. segTEL filed a notice of trespass with the Laconia Police Department and sent a copy by certified mail to NHOS and to Waveguide. When segTEL

removed the cable from the conduit on May 4, segTEL noted that the fiber was unprotected within the conduit, a practice inconsistent with industry standards.

36. In Lebanon, the defendants installed their facilities in close proximity to segTEL, crossing segTEL cable in places, not allowing segTEL to perform make-ready work.

37. In Tilton and Franklin, segTEL installed network on poles where the defendants were licensed but not yet installed. In six locations, segTEL's contracted employees erred and placed segTEL cable in the wrong location. Before segTEL was able to discover and correct the error, the defendants installed cable on those same poles, also installing in the wrong location. NH PUC Staff agreed that the proper resolution to the situation was for both companies to cooperatively move their cables. Despite the fact that both segTEL and NHOS had crews in the area that day, prepared and equipped to do such work, when segTEL expressed its willingness and desire to take care of the problem immediately, NHOS refused to do so, and continues to refuse to do so.

38. Due in part to some of these activities, and in response to a report that Waveguide's subcontractor, Eustis Cable, improperly moved facilities that it did not have authority to move, on July 23, 2012, segTEL sent cease and desist letters to various subcontractors for Waveguide and NHOS notifying them that they were not authorized to move or otherwise disturb segTEL facilities.

39. Despite this notice, Waveguide and NHOS continued to trespass on, relocate, and otherwise interfere with segTEL's infrastructure as described above without prior notice to segTEL. This interference continues to be on-going with no foreseeable end in sight.

**E. Harm Caused to segTEL by USNH, NHOS, and Waveguide's Actions**

40. The conduct of Waveguide, NHOS, and its contractors has caused segTEL and

utility company workers to be in danger while working on the poles and, more importantly, puts the public at risk of death or serious injury due to potentially energized wires.

41. The defendants' conduct has prevented segTEL from performing necessary and agreed upon make-ready work, costing segTEL time and money.

42. Furthermore, NHOS has installed facilities that violate applicable codes, regulations, NHOS applications for licenses, NHOS's own commitments and promises, explicit instructions from pole owners, and have generally disrupted a pole attachment and make-ready process that the remainder of the industry has indicated (with unusual unanimity) has worked effectively for the past decade.

43. The NHOS installations impair segTEL's ability to extend, build, modify, maintain, and repair its network. segTEL is unable to determine the extent of the damage, due to the widespread nature of NHOS's reckless, careless, and negligent installations that were made with wanton neglect to industry standards. Waveguide and NHOS have profited and continue to profit from these bad acts.

44. Any failure to maintain exclusive control and custody of segTEL's network devalues and diminishes segTEL's network, its ability to provide service to its customers, its ability to fulfill its representations and warranties, and its ability to maintain and repair its network. segTEL's network spans hundreds of miles and repeated or continuing physical examination of every part of its network is extraordinarily difficult and expensive.

45. Under its regulatory obligations to the NESC, NEC, and Telcordia Bluebook, segTEL will be required to perform maintenance, at significant cost of personnel, expense, and time, to offset and reverse the harm done by NHOS. This work is expensive for segTEL to perform, and should not be necessary in the first instance because NHOS has no right to interfere

with or commit trespass against segTEL's property.

46. Under its contractual agreements with customers, segTEL is subject to steep and severe penalties for failing to restore service within defined intervals and for failure to maintain its service and network within stringently defined parameters.

47. As a result of NHOS's recent improper and unlicensed deployments, segTEL has been impeded from seeking the benefits of its contracts. segTEL has lost business due to cancelled contracts directly due to delays deliberately caused by NHOS. Even when notified of problems and issues, the defendants have failed to mitigate, minimize, avoid, or cease causing or attempting to cause damage.

48. segTEL has been harmed by the improper interference with its infrastructure in an amount within the jurisdictional limits of this Court and to be proved at trial.

49. segTEL will be irreparably harmed if the defendants continue to displace and otherwise interfere with segTEL's infrastructure.

**COUNT I**  
**(Declaratory Judgment)**

50. segTEL incorporates by reference and realleges the foregoing allegations as if fully set forth herein.

51. Pursuant to RSA 492:22, I, "any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive."

52. segTEL has present legal and equitable rights, and indeed obligations, to occupy its specifically contracted for attachment locations on utility poles and to freely and safely access its infrastructure on utility poles.

53. USNH, and its agents NHOS and Waveguide, are adversely claiming segTEL's rights of occupancy and safe access by, *inter alia*:

- a. relocating and interfering with segTEL's infrastructure on utility poles in towns including but not limited to Bow, Boscawen, Concord, Lyme, Laconia, Orford, Meredith, Franklin, Hooksett, Lebanon, Sunapee and Tilton;
- b. interfering with segTEL's control, maintenance and repair of its infrastructure;
- c. "crossing," "wrapping," "close connecting," and "boxing in" segTEL's infrastructure;
- d. demanding that segTEL perform large amounts of make-ready work while simultaneously interfering with segTEL's ability to complete the requested work and refusing to pay segTEL's rates for the work performed; and
- e. demanding that segTEL perform work far in excess to NHOS's financial capacity to pay, as evidenced by their budget reports.

54. Accordingly, segTEL seeks a declaration from this Court that segTEL has the exclusive right to occupy its contracted for pole attachment locations and that segTEL is entitled to safe and unfettered access to its infrastructure without interference from USNH, NHOS, or Waveguide.

55. segTEL further seeks a declaration from this Court that USNH, NHOS, and Waveguide have improperly claimed or interfered with segTEL's rights of occupancy and access to its infrastructure.

**COUNT II**  
**(Violation of RSA 358-A)**

56. segTEL incorporates by reference and realleges the foregoing allegations as if fully set forth herein.

57. Pursuant to RSA 358-A:2, it is “unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state.”

58. Waveguide and NHOS are engaged in trade and commerce in New Hampshire.

59. Waveguide and NHOS have engaged in unfair and deceptive practices by, *inter alia*:

- a. relocating and interfering with segTEL’s infrastructure on utility poles in towns including but not limited to Bow, Boscawen, Concord, Lyme, Laconia, Orford, Meredith, Franklin, Hooksett, Lebanon, Sunapee and Tilton;
- b. interfering with segTEL’s control, maintenance and repair of its infrastructure;
- c. “crossing,” “wrapping,” “close connecting,” and “boxing in” segTEL’s infrastructure;
- d. demanding that segTEL perform large amounts of make-ready work while simultaneously interfering with segTEL’s ability to complete the requested work and refusing to pay segTEL’s rates for the work performed; and
- e. demanding that segTEL perform work far in excess to NHOS’s financial capacity to pay, as evidenced by their budget reports.

60. Waveguide and NHOS’s violations of RSA 358-A:2 were knowing and willful.

61. As a direct and proximate result of Waveguide’s and NHOS’s conduct, segTEL has suffered actual and consequential damages within the jurisdictional limits of this Court.

62. As a result of Waveguide’s and NHOS’s knowing and willful violation of RSA chapter 358-A, segTEL seeks, and is entitled to, treble damage, attorneys’ fees, and costs.

**COUNT III**  
**(Trespass to Chattels)**

63. segTEL incorporates by reference and realleges the foregoing allegations as if fully set forth herein.

64. NHOS and Waveguide have intentionally used or intermeddled with segTEL's infrastructure as described above.

65. Due to NHOS's and Waveguide's actions, segTEL's infrastructure has been impaired as to its condition, quality, and value, and segTEL has been deprived of use of the chattel.

66. As a direct and proximate result of Waveguide and NHOS's conduct, segTEL has suffered actual and consequential damages within the jurisdictional limits of this Court.

**COUNT IV**  
**(Intentional Interference With Another's Performance of His Own Contract)**

67. segTEL incorporates by reference and realleges the foregoing allegations as if fully set forth herein.

68. segTEL maintains a contractual relationship with several companies, including FairPoint, through multiple Pole Attachment Agreements, dating back to July 30, 2004.

69. Pursuant to the Pole Attachment Agreements, segTEL is required to, "at its own expense, construct and maintain its attachments and facilities on [FairPoint's] poles in a safe condition and in a manner acceptable to [FairPoint]. [segTEL] shall construct and maintain its attachments and facilities so as not to conflict with the use of [FairPoint's] poles by [FairPoint] or by other authorized users of [FairPoint's] poles, nor electrically interfere with [FairPoint's] facilities attached thereto." Upon information and belief, NHOS is operating under a similar agreement with FairPoint.

70. By relocating and otherwise interfering with segTEL's infrastructure as alleged above NHOS has intentionally and improperly interfered with segTEL's ability to meet its contractual obligations to FairPoint by preventing segTEL from performing the contract and by making performance much more expensive and burdensome. Because of NHOS's actions, significant portions of segTEL's network infrastructure are currently in an unsafe and illegal condition, through no fault of segTEL, and often in a manner that cannot be reversed or mitigated by segTEL alone, causing segTEL to be in breach of its agreement with FairPoint through no fault of its own.

71. NHOS's conduct has tortiously interfered with segTEL's customer agreements as well. NHOS's actions have caused segTEL to become out of compliance with state and local regulations and laws, and accordingly, be out of compliance with its customer service contracts and subject to default under those agreements. Due to the extent of the damage and harm caused to segTEL, if segTEL were to take the time required to repair NHOS's mistakes, segTEL would be in breach of the provisions of its customer service contracts that prohibit chronic disruptions in service.

72. For example, one national carrier requires that segTEL ensure that cable will be "engineered, designed, constructed, installed, and maintained in compliance with applicable building, construction and safety codes" and "perform in accordance with industry accepted standards and practices." Furthermore, this agreement requires segTEL to comply "with all applicable laws and regulations" including "regulations of the FCC, and all local and state rules and regulations." The agreement also contains detailed specifications regarding standards for construction, including minimum depths and distances for the placement of conduit and aerial wires, and specific space specifications and construction practices that segTEL is required to use.

All work is required to be done “in strict accordance with federal, state, local and applicable private rules and laws regarding safety and environmental issues” and “all work and the resulting fiber system will comply with the current requirements of all governing entities (FCC, NEC, DEC, and other national, state, and local codes).” Furthermore, the agreement requires that scheduled maintenance which is “reasonably expected to produce any signal discontinuity must be coordinated between the Parties,” and “should be scheduled after midnight and before 6:00 a.m. local time.”

73. If this customer complains about segTEL’s failure to maintain cable in compliance with applicable regulations and industry standards, and segTEL is unable to cure within 30 days, segTEL would be in default under the agreement.

74. segTEL is also party to a second agreement with a national wireless provider. This agreement requires segTEL to represent and warrant “that all Service rendered hereunder will be designed, produced, installed and furnished and in all respects provided and maintained in conformance and compliance with applicable federal, state and local laws.” This agreement provides certain remedies to this customer in the event of excessive service outages, including, *inter alia*, the right to terminate the contract, the right to require segTEL extend credit, move the impacted service to a temporary route, move the impacted service to a new permanent path, or provide replacement service as necessary. This contract provides for severe monetary penalties in the event of a service outage which start at one month’s worth of revenue per circuit suffering from a service outage, and increase with time.

75. segTEL also has a third agreement with national provider of communications services. This agreement also requires segTEL to “design, produce, install, furnish and in all material respects provide and maintain the Services in conformance and compliance with

applicable federal, state, and local laws, administrative and regulatory requirements and any other authorities having jurisdiction.” Furthermore, “[b]oth Parties must give notices and comply with laws bearing on safety of persons and property and their protection from damage, injury or loss.” “Each party will perform its obligations under this Agreement in a manner that complies with all applicable federal, state and local laws, rules, regulations, ordinances, orders and judicial administrative law decisions,” and “[segTEL] will comply with all applicable laws and regulations.” The agreement also contains a service window of between 4-6 hours for repairs, and requires fifteen calendar days prior written notice before any maintenance is performed. There cannot be more than four continuous hours of “Service Impacting Planned Maintenance” in a given calendar month, unless otherwise agreed in writing. If such maintenance exceeds 24 cumulative hours in one month, the customer has the right to cancel service without penalty. The customer also has remedies in the event of chronic interruption to service or a mean time to repair of greater than 4-6 hours in 2 out of 3 consecutive months, including requiring segTEL to reroute services, or terminating the services without liability.

76. If this customer complains about segTEL’s failure to maintain cable in compliance with applicable regulations and industry standards, and segTEL is unable to cure within 30 days, segTEL would be in default under the agreement.

77. Due to the defendants’ conduct, segTEL is out of compliance with applicable codes, and therefore subject to liability and default under its customer contracts.

78. As a direct and proximate result of the defendants’ conduct, segTEL has suffered actual and consequential damages within the jurisdictional limits of this Court.

**COUNT V**  
**(Injunctive Relief)**

79. segTEL incorporates by reference and realleges the foregoing allegations as if

fully set forth herein.

80. The defendants' actions have caused and, if not enjoined, will continue to cause, immediate and irreparable harm to segTEL for which segTEL has no adequate remedy at law.

81. Pursuant to RSA 358-A:10, segTEL is also permitted to seek injunctive relief to restrain the respondents' unfair, unreasonable, and deceptive practices.

82. segTEL should be awarded, preliminary and permanent orders as to the defendants as follows:

- a. preventing the defendants from relocating, crossing, wrapping, boxing in, or otherwise interfering with segTEL's infrastructure;
- b. preventing the defendants from installing infrastructure to utility poles without appropriate make-ready work performed by segTEL;
- c. preventing the defendants from directing others to relocate, cross, wrap, box in, or otherwise interfere with segTEL's infrastructure;
- d. preventing the defendants from directing others to install infrastructure to utility poles without appropriate make-ready work performed by segTEL; and
- e. instructing defendants to remove or fix all non-code compliant installations of NHOS facilities, or which have caused segTEL installations to be non-code compliant.

WHEREFORE, segTEL respectfully requests that this Court:

- A. Issue Orders of Notice;
- B. Enter a preliminary injunction following a hearing;
- C. Enter a permanent injunction following trial;
- D. Award segTEL damages resulting from the defendants' conduct;

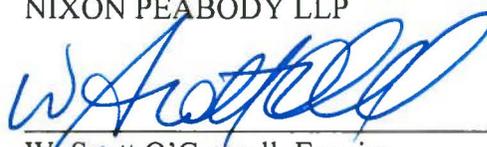
- E. Award segTEL enhanced damages resulting from the defendants' knowing and willful conduct;
- F. Award segTEL its costs and attorneys' fees; and
- G. Award such further relief as this Court deems just, equitable, and proper.

Respectfully submitted,

segTEL, Inc.,

By its Attorneys,

NIXON PEABODY LLP



Dated: December 14, 2012

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**EXHIBIT A**



BOSCAWEN NH  
Photo 1 of 2

POLE TDS 3/48 ELCO 225  
11/30/2012

Route 3  
Betty Hackett

Showing NHOS cable and strand (blue label) attached immediately above segTEL cable (yellow label), failing to maintain the requisite 12" of space between communications attachments, and failing to keep the absolute minimum 4" of space between attachments.



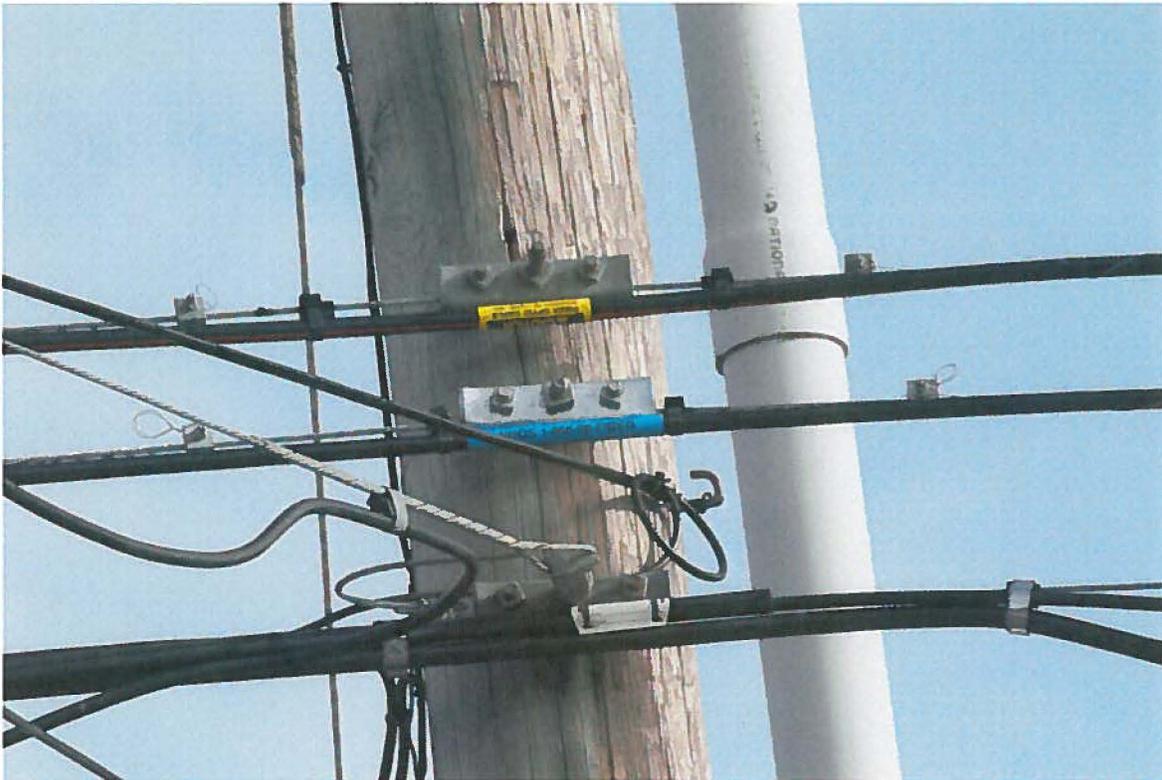
BOSCAWEN NH  
Photo 2 of 2

POLE TDS 3/48 ELCO 225  
11/30/2012

Route 3  
Betty Hackett

Showing NHOS cable and strand (blue label) attached immediately above segTEL cable (yellow label), failing to maintain the requisite 12" of space between communications attachments, and failing to keep the absolute minimum 4" of space between attachments.

**EXHIBIT B**



Bow NH  
Photo 1 of 1

POLE FP 36 UES 127  
11/30/2012

Route 3A  
Kevin Shea

segTEL cable and strand (yellow label; orange stripe on the black cable) was licensed and installed 12" above the next attacher (white label; two black cables). NHOS (blue label) installed its cable between segTEL and the other attacher, closer than the requisite 12" that is to be maintained between communications attachers under the NESC.

**EXHIBIT C**



ORFORD NH  
Photo 1 of 4

POLE FP 98 PSNH 41/90  
10/12/2012

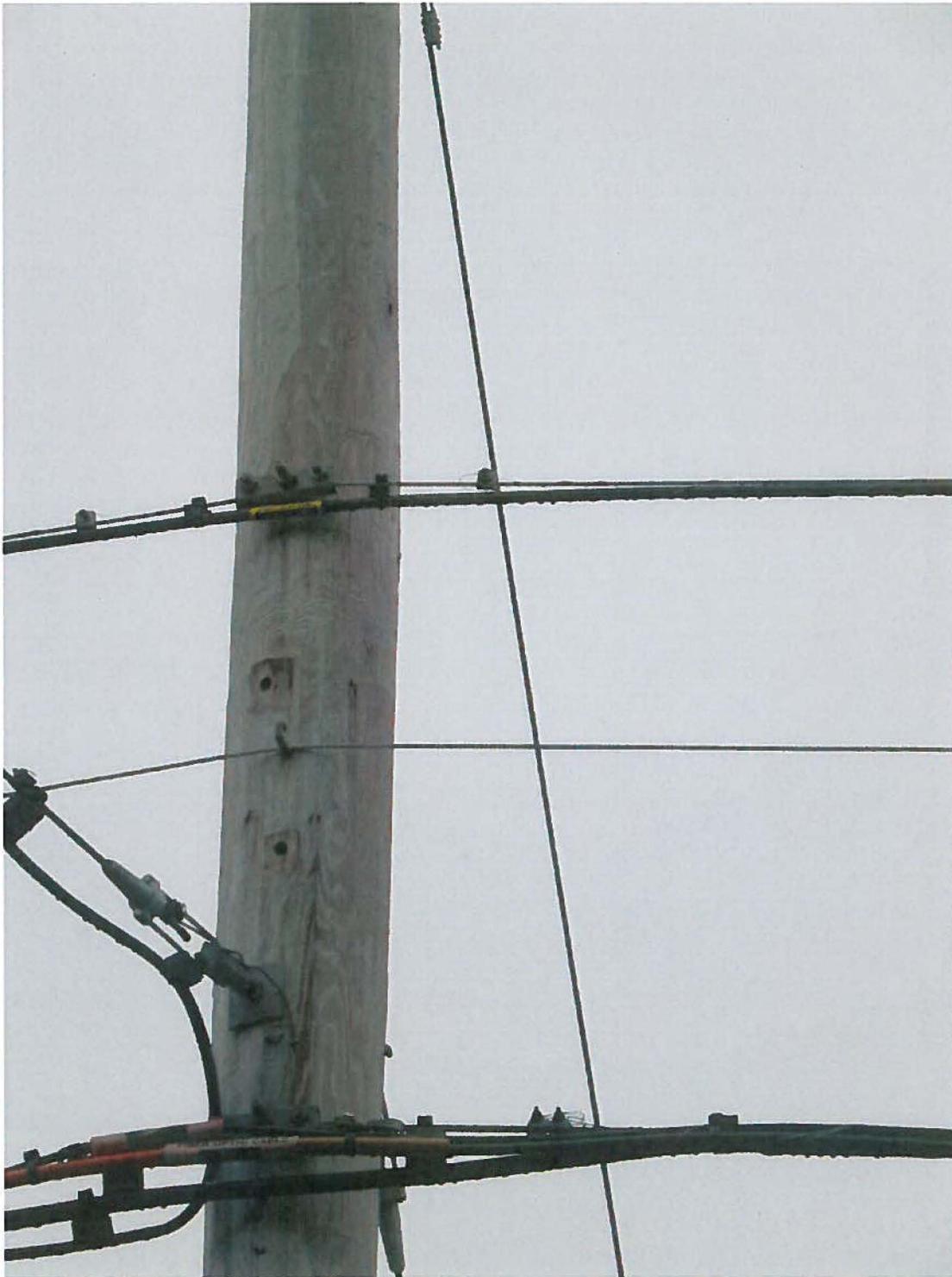
State Route 10  
T Parssinen



ORFORD NH  
Photo 2 of 4  
Showing pole identification tags

POLE FP 98 PSNH 41/90  
10/12/2012

State Route 10  
T Parssinen



ORFORD NH

POLE FP 98 PSNH 41/90

State Route 10

Photo 3 of 4

10/12/2012

T Parssinen

Top cable has yellow segTEL fiber optic cable ID label. The unidentified cable below segTEL's is NHOS cable. Note J-hook attachment. Note unlicensed position between holes properly spaced 12" apart.



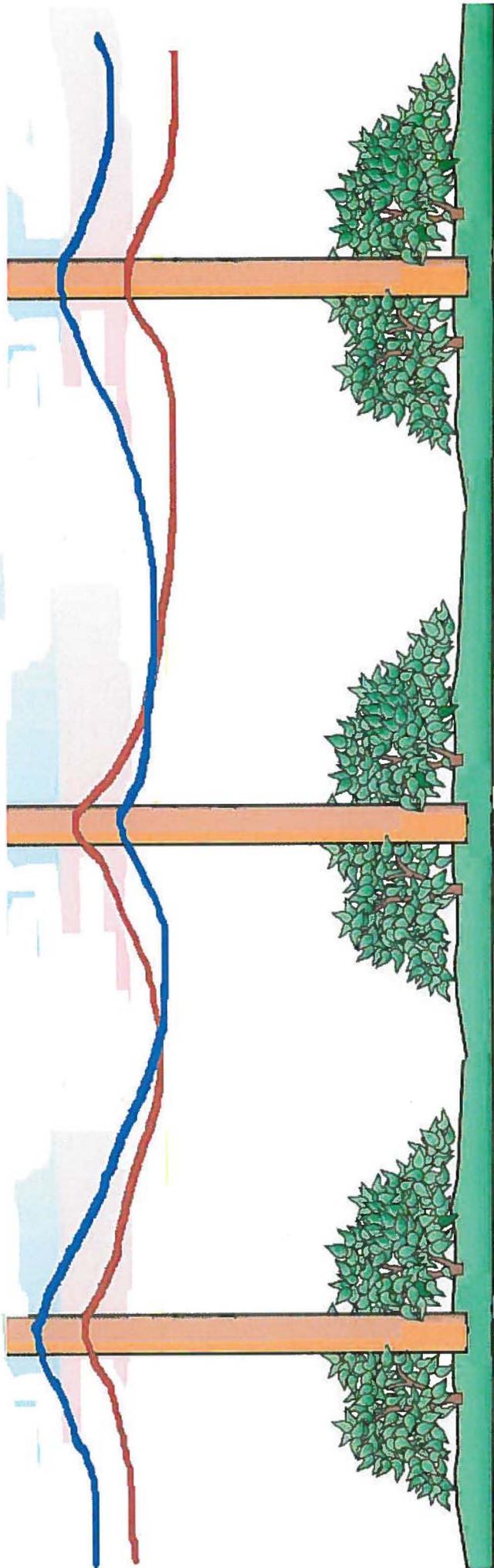
ORFORD NH  
Photo 4 of 4

POLE FP 98 PSNH 41/90  
10/12/2012

State Route 10  
T Parssinen

Span to next pole shows NHOS strand crossing segTEL cable with no cable guard or other protection to avoid damage.

**EXHIBIT D**



**EXHIBIT E**



Laconia NH  
Photo 1 of 3

In the vicinity of GPS 43.5474, -71.4858  
11/30/2012

North Main St, Route 106N  
Kath Mullholand

This pole has four communications attachments. The second one from the bottom is NHOS (blue label); the third from the bottom is segTEL (yellow label).



Laconia NH  
Photo 2 of 3

In the vicinity of GPS 43.5474, -71.4858  
11/30/2012

North Main St, Route 106N  
Kath Mullholand

The previous photo is of the pole on the right, which has four communications attachments. The second one from the bottom is NHOS; the third from the bottom is segTEL. If you follow the lines from the pole towards the center of the photo, you can see the two lines cross in midspan and then separate again. The lines cross and stay crossed because they are entwined; NHOS cable is wrapped around segTEL's cable.



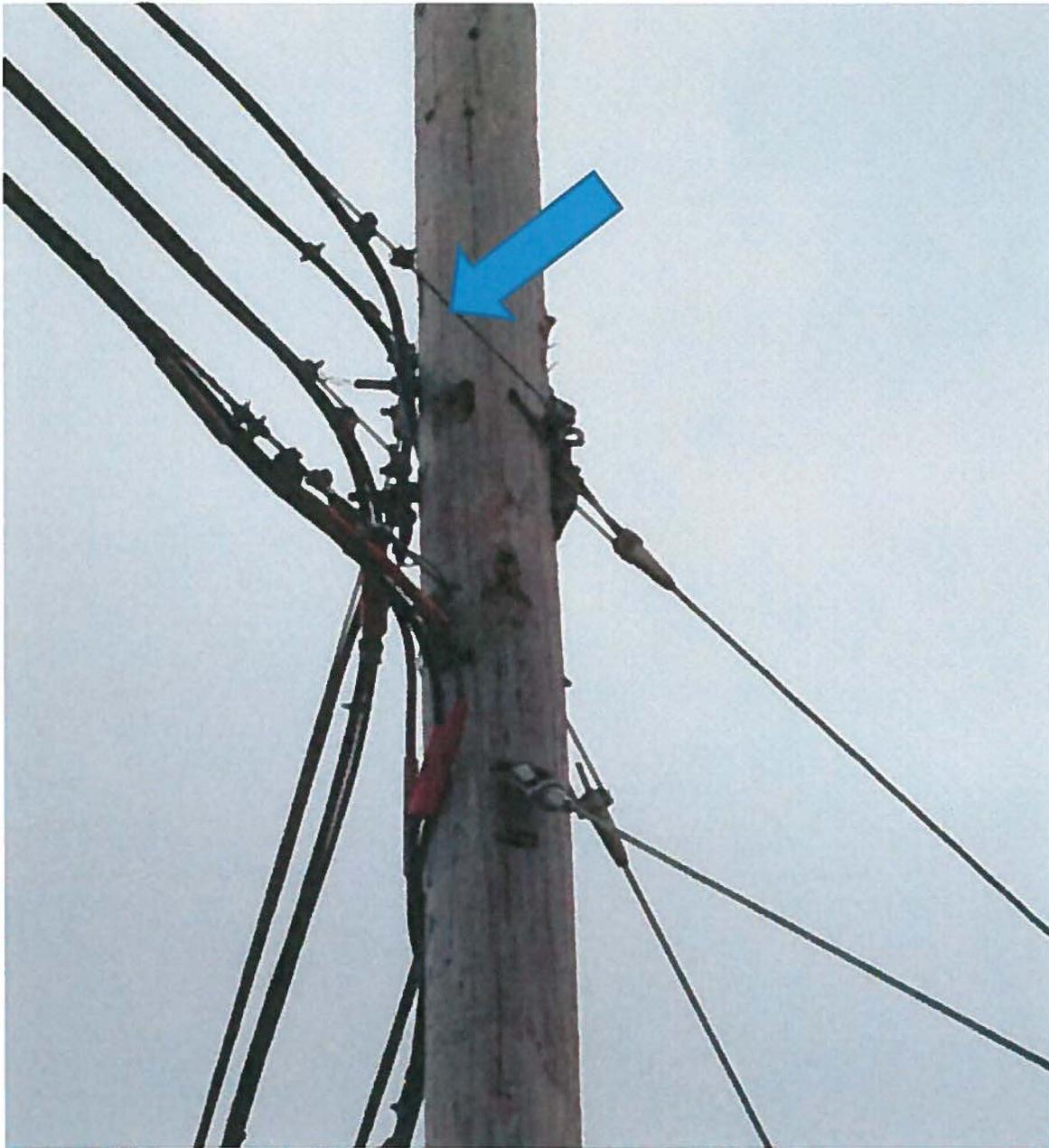
Laconia NH  
Photo 3 of 3

In the vicinity of GPS 43.5474, -71.4858  
11/30/2012

North Main St, Route 106N  
Kath Mullholand

This photo is a close-up of where the two cables come together. The bluish-black cable (NHOS) rises to meet the orange-shaded cable (segTEL). The NHOS cable passes behind the segTEL cable, and then goes over the top of it before going down to its original spot. The NHOS cable is completely wrapped around the segTEL cable. This entwining cannot be undone without cutting one cable or the other, which would put one of the networks out of service on this route until the cable can be unentangled, checked for damage, and spliced back together. The spliced cable would then have to be reinstalled.

**EXHIBIT F**

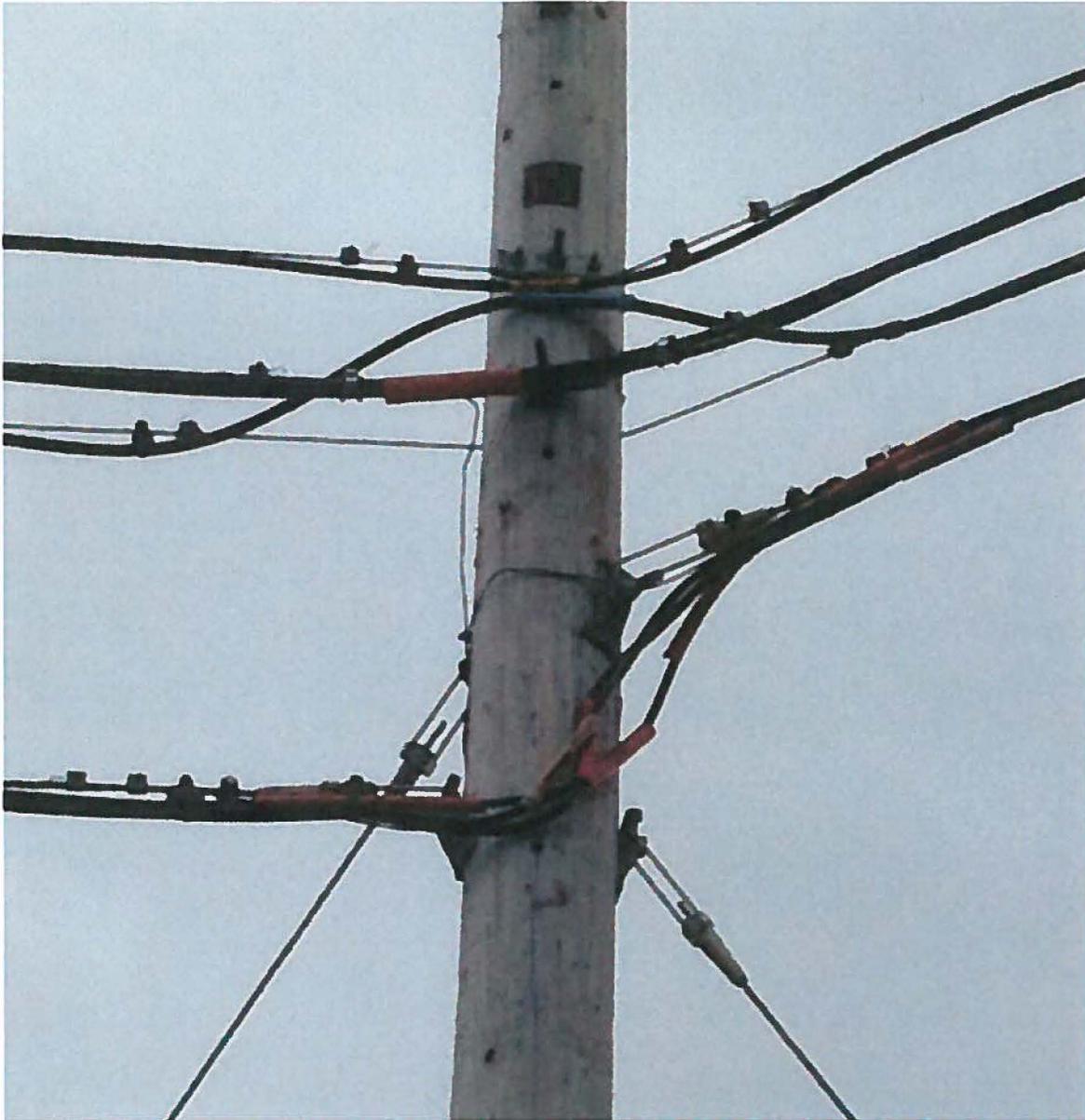


Tilton NH  
Photo 1 of 2

FP 171  
11/30/2012

Route 3  
Kath Mullholand

This NHOS attachment traps the pole, making the pole much harder to replace, and making it harder to move attachments as necessary. Notice that the messenger strand (the steel cable that supports the fiber optic cable) goes around the back of the pole, and is the only cable or strand that does so.



Tilton NH  
Photo 2 of 2

FP 171  
11/30/2012

Route 3  
Kath Mullholand

This is another angle of the same instance as the previous picture. The NHOS attachment (blue label) messenger strand (the steel cable that supports the fiber optic cable) goes around the back of the pole; the fiber optic cable is on the front of the pole. This attachment is not to code because it passes on both sides of the pole, is at the same level as another attachment (the one with the orange label), and is not properly bolted to the pole.

**EXHIBIT G**



Milford NH  
Photo 1 of 1

FP 47 PSNH 4/127  
11/12/2012

Elm Street  
T Parssinen

NHOS's attachment (blue label) is approximately 24 inches from power (blue arrow) in violation of the NESC.

**EXHIBIT H**

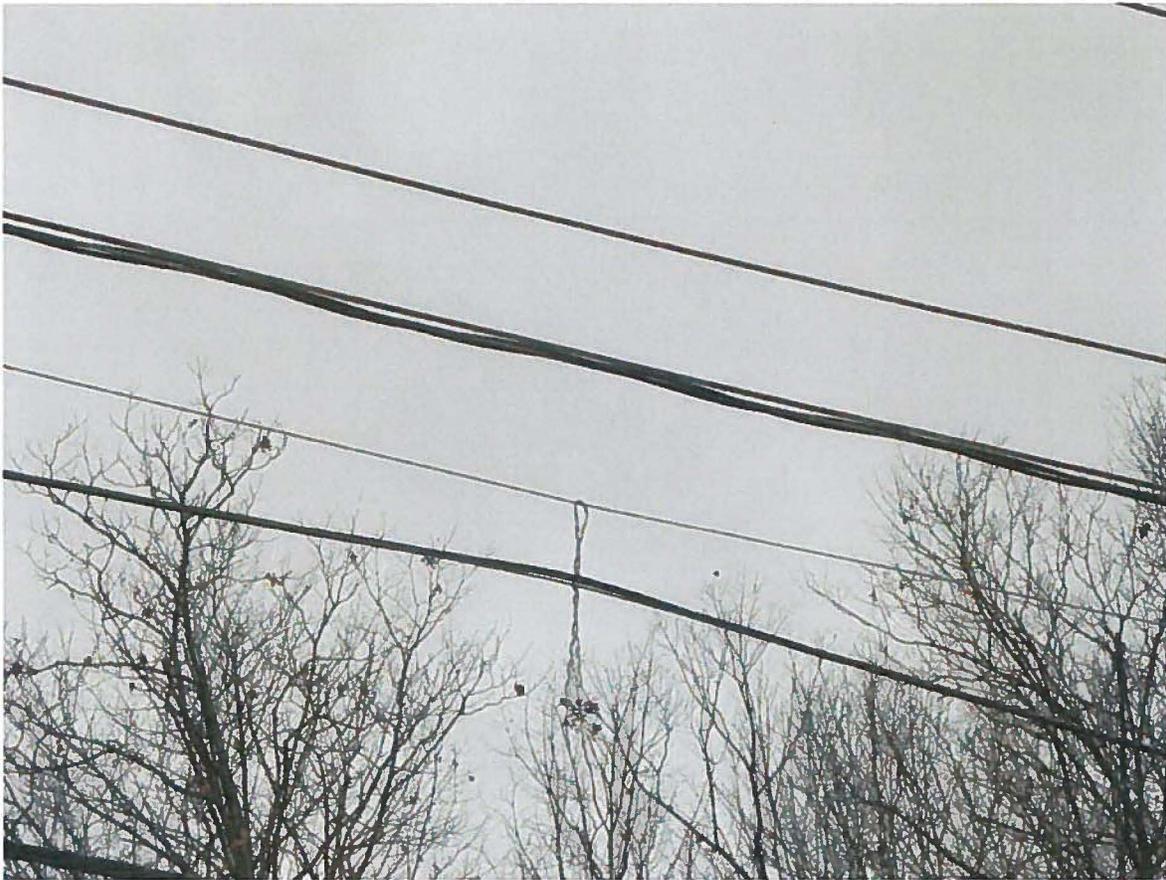


SUNAPEE NH  
Photo 1 of 5

POLE FP 17 ELCO 21  
11/26/2012

Springfield Rd  
T Parssinen

Following photographs show NHOS / Todd Cable Construction installation activity in the area of this pole.



SUNAPEE NH  
Photo 2 of 5

POLE FP 17 ELCO 21 (vicinity)  
11/26/2012

Springfield Rd  
T Parssinen

Shows device attached to segTEL fiber, pulling and bending the fiber optic cable. The top of the device is hanging from NHOS messenger strand.



SUNAPEE NH  
Photo 3 of 5

POLE FP 17 ELCO 21 (vicinity)  
11/26/2012

Springfield Rd  
T Parssinen

Overview picture of area of work. Note device attached to segTEL fiber, pulling and bending the fiber optic cable. The top of the device is hanging from NHOS messenger strand.



SUNAPEE NH  
Photo 4 of 5

POLE FP 17 ELCO 21 (vicinity)  
11/26/2012

Springfield Rd  
T Parssinen

Todd Cable Construction vehicle including placard showing NHOS and Waveguide logos.



SUNAPEE NH

Photo 5 of 5

Showing Todd Cable Construction worker and vehicle placing the devices.

POLE FP 17 ELCO 21 (vicinity)

11/26/2012

Springfield Rd

T Parssinen



SUNAPEE NH  
Photo 5 of 5

POLE FP 17 ELCO 21 (vicinity)  
11/26/2012

Springfield Rd  
T Parssinen

Showing Todd Cable Construction worker and vehicle placing the devices.