

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DT 12-107

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

Petition for Investigation into Proposed Charges for Utility Pole Make Ready

NECTA'S MOTION TO DISMISS

NOW COMES New England Cable & Telecommunications Association, Inc. ("NECTA"), by and through its undersigned counsel, and respectfully moves the New Hampshire Public Utilities Commission ("the Commission") to dismiss with prejudice the Petition filed by New Hampshire Optical Systems, Inc. ("NHOS") as supplemented and amended by a filing made by NHOS on August 2, 2012 and to close the instant docket. In support of this Motion, NECTA states as follows:

1. By Order No. 25, 386 dated July 3, 2012, the Commission afforded NHOS the opportunity to revise its filings in the instant docket within 30 days "to provide greater clarity and specificity about the particular acts or actors that NHOS alleges are improperly impeding its work." *Petition for an Investigation into Proposed Charges for Utility Pole Make-Ready*, DT 12-107, Order No. 25, 386, Order on Petition (July 3, 2012) at 11-12. The Commission indicated that in order to move ahead with this docket, the Commission requires specific factual allegations such as the identity of "the offending parties, the rates in question and the poles that are at issue..." *Id.* at 10.

2. Instead of supplying the Commission and the parties to this docket with the information requested by the Commission, NHOS filed on the last day of the above-

referenced 30-day period, an “Amendment to NHOS Petition for Investigation” (“the Amended Petition”) that is as lacking in specificity as its original Petition filed April 24, 2012. The Amended Petition merely incorporates NHOS’s earlier filings by reference, provides descriptions of NHOS’s Middle-Mile Project and Pole Attachment Agreement provisions, and alleges that NHOS has been unable to begin the Middle-Mile Project “because existing third-party attachers, in particular segTEL, have refused to perform the make-ready work that must occur before NHOS can attach its fiber optic cable.” *Amended Petition*, ¶ 15. Other than naming segTEL, NHOS identifies no other attachers, and provides no examples of such refusals, the make-ready work requested, or the poles at issue.

3. Although the Amended Petition names segTEL, it contains no specific or concrete factual examples to support the claims against segTEL or the other unnamed “third-party attachers” who NHOS alleges have “demanded that NHOS agree to pay for make-ready work that is unrelated to new attachments, unreasonable in scope, and charged at excessive rates...” and “deliberately delayed the start of that work, even after NHOS assented to their unreasonable payment demands.” *Amended Petition*, ¶ 16. Similarly, the Petition fails to provide examples of the unrelated make-ready work, the “unreasonable scope” of such work, or the “excessive rates” about which NHOS complains. Thus, the Amended Petition suffers from the same infirmities as NHOS’s original Petition.

4. The Commission’s July 3rd Order allowed NHOS the opportunity to supplement its deficient Petition and make a more specific and clear filing within 30 days, and states that “[i]f no filing is made, we will close this docket without further

action.” *Petition for an Investigation into Proposed Charges for Utility Pole Make-Ready*, DT 12-107, Order No. 25, 386, Order on Petition (July 3, 2012) at 12. Given that the Amended Petition does not provide the Commission or the parties with any greater degree of specificity than the allegations contained in NHOS’s original Petition, the noncompliant Amended Petition should be dismissed and this docket should be closed.

5. Paragraph 4 of the Amended Petition asserts that federal funding for the Middle-Mile Project will lapse if NHOS does not install its cable by June 2013, and paragraph 15 asserts that third-party attachers and/or pole owners are to blame for NHOS’s inability to proceed with its Middle-Mile Project. Notwithstanding these claims, NHOS has failed to identify any particular facts demonstrating that its delays have been caused by third-party attachers. Moreover, NHOS’s conduct in this docket belies any sense of urgency that would require the Commission to expeditiously proceed with this docket in order to enable NHOS to meet its Project deadlines. NHOS’s original Petition was filed April 24, 2012 and NHOS has not requested that the Commission provide expedited relief. On the contrary, NHOS has asked for an “investigation” rather than an expeditious adjudication of the specific complaints that it alleges have caused a delay in the Mile-High Project. In addition, NHOS has waited until the very last day of the 30-day period provided by the Commission for making a supplemental filing that does little more than reassert NHOS’s original, non-specific allegations which the Commission has already determined to be deficient. In these circumstances, it is questionable whether NHOS is serious about obtaining timely relief from the Commission that would enable NHOS to meet its Project deadline.

6. Lastly, in response to NHOS's unspecific claims asserted in its original Petition filed April 24, 2012 in this docket, the Commission has opened Docket DT 12-246 for the general and broad purpose of considering issues relating to pole attachment access. In light of the fact that NHOS has persisted in its vague and general accusations against third-party attachers and pole owners in the instant docket, and given that third-party attachments have been occurring in New Hampshire without incident for over fifty years, the stakeholder process outlined in the Commission's August 6, 2012 Order of Notice in DT 12-246 would be of questionable value and therefore should not proceed unless and until the issues in the instant docket are resolved.

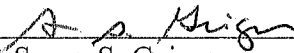
WHEREFORE, NECTA respectfully requests that the Commission:

- A. Dismiss NHOS's Amended Petition with prejudice;
- B. Close this docket and docket DT 12-246;
- C. In the alternative, if the instant docket is not closed, stay the proceedings in DT 12-246 until the issues in the instant docket are resolved; and
- D. Grant such further relief as is appropriate.

Respectfully submitted,

NEW ENGLAND CABLE AND
TELECOMMUNICATIONS ASSOCIATION, INC.

By its attorneys,
Orr & Reno, P.A.

By: 

Susan S. Geiger
One Eagle Square
P.O. Box 3550
Concord, NH 03302-3550
(603) 223-9154
sgeiger@orr-reno.com

William D. Durand (ssg)
William D. Durand, Executive V.P./Chief Counsel
New England Cable and Telecommunications
Association, Inc.
10 Forbes Road, Suite 440W
Braintree, MA 02184
(781) 843-3418
wdurand@necta.info

Dated: August 13, 2012

Certificate of Service

I hereby certify that on this 13th day of August, 2012, a copy of the within Motion was sent by electronic or U.S. mail to persons listed on the Service List.

A S Geiger
Susan S. Geiger

888999_1