



April 5, 2018

Via email and U.S. Postal Service

NHPUC 9APR'18AM10:15

Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord NH 03301-2429

Re: DRM 17-139, Rulemaking, N.H. P.U.C 1300 Utility Pole Attachment Rule
Comments on Draft Final Proposal for Readoption and Amendments

Dear Ms. Howland,

FirstLight Fiber offers the following comments regarding the Draft Final Proposal of Commission staff, David Wiesner and Kath Mullholand, distributed March 15, 2018, for readoption and amendment of NH PUC Chapter 1300, the Commission's Utility Pole Attachment Rule ("the Proposal").

Wireless Service Provider Inclusion: Staff proposed to expressly include wireless service providers in Rule 1300. In addition to the fact that federal law recognizes wireless service providers to be telecommunications carriers, which are therefore entitled to attach to utility poles, expressly recognizing the right of wireless service providers to attach to utility poles will promote the State of New Hampshire's objectives for enhancement of access to advanced broadband services in the state. Given the coordination necessary among pole owners and multiple attaching entities, if wireless service providers are to be allowed access to utility poles, those rights should derive from a single administrative rule that encompasses all types of attachments to utility distribution poles. The Proposal would do, and ought to be adopted by the Commission.

Applicability of Rules to VoIP and IP-Enabled Service Providers: As for attachments by wireless service providers, if the State is to allow VoIP and IP-Enabled Service Providers access to utility poles, the rights should be codified in the same administrative rule as allows for attachments by other types of providers.

Overlash: In the Proposal, "overlash" would be defined, and allowed on 60 days prior notice b the attaching entity to the pole owner(s). As we interpret this Proposal, the overlash would not require a license, which is appropriate given that overlash does not require any change in the hardware attached to the pole, nor materially change clearances between the cable that will be overlashed and other attachments. It's not clear



why 60 days prior notice would be necessary. Accordingly, we respectfully suggest a shorter period for prior notice, or even a notice with 30 days after the overlash.

Duplicate Poles: Staff proposed to add a provision to Section 1303.7 to expressly state that the costs of removing a pre-existing duplicate pole, or the cost to complete other work started before the make-ready work, not be assessed to the entity seeking to add a new attachment. It is hard to imagine that a pole owner would believe it reasonable to do so – i.e. to impose a cost on a new attacher for work that ought to be someone else's responsibility. Regardless of whether any pole owner has taken that position in the past, there is no harm in expressly prohibiting such cost shifts by rule.

Boxing and Use of Extension Arms: The current rule allows boxing consistent with the pole owner's written methods and procedures. In general, the pole owners' written methods and procedures discourage boxing and extension arms. However, pole owners make exceptions for their own attachments, sometimes employing attachment methods that their own written methods and procedures discourage or simply not allow. Federal law requires that pole owners offer non-discriminatory access to poles. In order to offer non-discriminatory access, if pole owners make exceptions for themselves, they must make similar exceptions for other attaching entities. Accordingly, it is appropriate that Rule 1300 expressly state that this, as does the Proposal.

Make-Ready Timelines: Staff proposes to incorporate, by and large, the timelines established by the FCC. The general good of the State of New Hampshire would be promoted by similarity between its make-ready timelines and those applicable in many other states, as well as by faster completion of make-ready. Other parties have commented in greater detail about why the Commission ought to adopt the FCC's timelines. The extent pole owners view those timelines as being unrealistically fast, please take note of the provision 1303.12(e), which would allow a pole owner to deviate from the time limits set out in Rule 1300 "for good and sufficient cause." Rather than set long time limits for completion of every make-ready job based on the worst, possible set of circumstances (e.g., number of attachers needing to move, pole transfers, state or federal permits, municipal work permits), the rule should require completion in relatively short time frames, with pole owners having the right to take more time if external constraints require it.

Surveys and Make-Ready Done by a Contractor Hired by an Attaching Entity: Staff proposed, in section 1303.12(f), that an attaching entity would be authorized to hire a pole-owner-approved contractor to complete a pre-construction survey, or to complete make-ready work, after notice to the pole owner, and after the pole owner fails to meet the completion dates specified in the rule. This provision would alleviate delays in completion of surveys and make-ready, whether caused by limitations on a pole owner's in-house resources or choices the pole owners make regarding allocation of resources and prioritization of work.

As proposed, Pole owners, if they prefer to maintain direct control of this survey and make-ready work, may also hire contractors to undertake and complete the work within the timeframes set out in the Rule 1300. Pole



owners may prefer to undertake work with internal resources, and this Proposal would allow them to make that choice. To the extent that one might consider a complaint to the Commission to be the best self-help remedy for an attaching entity that is experiencing make-ready delays, one should also recognize that requesting the Commission to intervene is both expensive and time-consuming, no matter how earnest the Commission's efforts to expedite resolution. A Commission policy that includes, as a default policy, a means for an attaching entity to safely and timely complete the work, is better than a framework that would rely on dispute resolution by the Commission.

The Maine PUC's pole attachment rule includes a substantially identical provision; such a policy would not be breaking new ground among state commission pole policies. Of all the elements of the Proposal, this element may be the beneficial in terms of ensuring that whatever time deadlines are established by administrative rule and agreement for conduct of surveys and completion of make-ready are actually met.

FirstLight respectfully suggests that, if the Commission is not inclined to adopt all elements of the Proposal, that it carefully consider each separate change on its merits, and incorporate those which it concludes are beneficial into the Commission's proposed rule.

Thank you for the opportunity to comment on this proposal.

Regards,

A handwritten signature in black ink, appearing to read 'Lawrence Lackey', with a stylized, cursive script.

Lawrence Lackey
Director of Regulatory